
HEARING STATEMENT

LAND AT BIRD IN EYE FARM, SOUTH OF BIRD
IN EYE HILL (FRAMFIELD PARISH), UCKFIELD

Appeal against failure of Wealden District Council to determine an outline planning application within the statutory period for up to 290 dwellings, associated landscaping, informal open space and strategic SANG, with access from the B2102.

Prepared by:

Steven Brown BSc Hons DipTP MRTPI

On behalf of:

Croudace Homes Ltd



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Woolf Bond Planning
Chartered Town Planning Consultants

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DOCUMENTS

- WB1.** Ecology Statement prepared by Mark Rose (CSA Environmental) (Jan 2023)
- WB2.** Highways Statement prepared by Matthew Twinberrow (Bellamy Roberts) (Jan 2023)
- WB3.** Landscape Statement prepared by Clive Self (CSA Environmental) (Jan 2023)
- WB4.** Wealden District Council Five Year Housing Land Supply Statement as of 1st April 2022 (Dec 2022)
- WB5.** Woolf Bond Planning Assessment of Wealden District Council's Five Year Housing Land Supply Position (Jan 2023)
- WB6.** Appeal Decision, for land at Old Orchard House, Horebeech Lane, Horam (22 Aug 2022)
- WB7.** Wealden District Council Housing Action Plan (June 2022)
- WB8.** Appeal Decision, Land west of Station Road, Hailsham (27 Sept 2022)
- WB9.** Appeal Decision, Morning Mill Farm, Eastbourne Road, Lower Willingdon (28 Sept 2022)
- WB10.** Appeal Decision, Old Nursery House, The Street, Framfield (5 Jan 2023)
- WB11.** SHELAA Extract (2019)
- WB12.** Previous Appeal Decision Feb 2009 (PINS Ref: APP/C135/A/07/2053422)
- WB13.** Previous Appeal Scheme Plans (WD/2006?3564/MAO)

WB14. Site Location Plan No. PRB/BIE/PA1L

WB15. Proposed Access Plan No. 5330/021 Rev H

WB16. Proposed Access Plan No. 5330/021 Rev K

WB17. Illustrative Site Layout PRB/BIE/PA2S

WB18. Indicative Parameter/ Land Use Plan PRB/BIE/PA4E

WB19. Landscape Strategy and SANG Plan No. CSA/2646/114M

WB20. Hopkins Homes Ltd v SSCLG [2017] UKSC 37

WB21. Eastleigh BC v SSCLG [2019] EWHC 1862 (Admin)

WB22. Wokingham BC v SSCLG [2019] EWHC 3158 (Admin)

WB23. Appeal Decision, Watery Lane, Curborough, Lichfield, Secretary of State
Decision (13th February 2017) (APP/K3415/A/14/2224354)

WB24. Heritage Officer's Consultation Response (22 Nov 2021)

QUALIFICATIONS AND EXPERIENCE

Steven Brown will say:

I hold a Bachelor of Science and Post Graduate Diploma in Town and Country Planning and I am a Member of the Royal Town Planning Institute.

I am a Principal of Woolf Bond Planning LLP – Chartered Town Planning Consultants and I have been engaged in town planning with more than 20 years of experience as a private consultant acting for major house builders, development companies, estates and private individuals. Past and present house builder clients and strategic land promoters include Bargate Homes, Barratt David Wilson Homes, Bellway Homes, Bloor Homes, CEG, City & Country, Croudace, Fairfax, Foreman Homes, Griggs Homes, Persimmon Homes, Redrow Homes and Taylor Wimpey.

I am an expert planning witness, having appeared at numerous s78 inquiries and Local Plan Examinations.

My involvement with the Appeal Site dates from 2016. During that time I have provided planning advice in relation to the evolution of the scheme design. I also attended the Local Plan Examination in 2019. I instructed the consultant disciplines as part of the preparation of the planning application and I am well versed in the planning policy position in Wealden, including in relation to the numerous schemes that have been allowed at appeal.

I have visited the Appeal Site and its surroundings on numerous occasions and I have examined the relevant plans and documents for the purpose of the appeal.

The evidence which I have prepared and provide for the appeal in this Hearing Statement is true and has been prepared, and is given, in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

1.0 Introduction

Context

- 1.1. This Appeal is made by Croudace Homes against the failure of Wealden District Council to determine an outline planning application within the statutory period for up to 290 residential dwellings, associated landscaping, informal open space and strategic SANG, with access from the B2102 (all matters reserved except for access) (LPA Ref: LW/21/0937).
- 1.2. My Hearing Statement is accompanied by documents **WB1 to WB24**, which include Hearing Statements prepared in relation to ecology, highways and landscape matters as follows:
- Ecology Statement prepared by Mark Rose (CSA Environmental) (Jan 2023) (**WB1**)
 - Highways Statement prepared by Matthew Twinberrow (Bellamy Roberts) (Jan 2023) (**WB2**)
 - Landscape Statement prepared by Clive Self (CSA Environmental) (Jan 2023) (**WB3**)
- 1.3. As to the planning policy context, the Appeal Site is located adjoining, but immediately beyond the settlement policy boundary as defined on the Local Plan Proposals Map. Accordingly, it is located in the countryside. In addition, the Site is not allocated for housing development. As such, the Appeal Scheme is contrary to the Development Plan. However, and having regard to the 38(6) balance, there are a number of material considerations that justify the grant of planning permission.
- 1.4. The development plan is out of date in terms of the spatial application of its housing policies by virtue of it being predicated on an out-of-date assessment of development needs¹, whilst, in addition, the Council is not able to demonstrate a five year supply of deliverable housing land.

¹ See Hopkins Homes paragraph 63 (**WB20**)

- 1.5. In the circumstances, the presumption in favour of sustainable development (the tilted balance) at paragraph 11(d) of the NPPF is clearly engaged. This requires planning applications to be approved unless footnote 7 considerations provide a clear reason for refusing development (which they do not in this case); or any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Again, they do not.
- 1.6. As such, the development plan policies for the supply of housing are out of date for two reasons (either one triggers the tilted balance at paragraph 11(d) of the NPPF):
- (i) the spatial application of settlement boundaries (which have been breached in order to meet current housing need); and
 - (ii) the lack of a five year supply of deliverable housing land.
- 1.7. This is demonstrably a case where the weight to be attached to conflict with the development plan (on account of the location of the site beyond the defined settlement boundary for Uckfield) can be reduced given the need to breach the settlement boundaries identified in the development plan to meet development needs.
- 1.8. The particularly weighty material considerations in favour of this Appeal are clearly sufficient to outweigh the limited conflict with the out-of-date development plan.

S.38(6) the Development Plan

- 1.9. The development plan consists of the saved policies of the Wealden Local Plan (1998) (policies saved 2007), Wealden Core Strategy (2013) and the Affordable Housing Delivery Local Plan (2013).
- 1.10. The development plan documents pre-date the publication of the first iteration of the NPPF, and as such the policies contained therein have varying degrees of consistency with the objectives of the NPPF.

- 1.11. The Core Strategy is a strategic level plan for the whole District, providing a strategic policy framework to guide development in the period to 2027. Its housing requirement was based on the 2007 Strategic Housing Market Assessment and consequently pre-dates the standard method required by the current NPPF (or indeed any methodology calculated to meet the post-2012 policy requirement to “boost significantly” the supply of new homes).
- 1.12. Policy WCS1 (Provision of Homes and Jobs 2006 – 2027) makes provision for some 4,525 net additional dwellings within the District reflecting the findings of the 2007 Strategic Housing Market Assessment. Policy WCS2 (Distribution of Housing Growth 2006 – 2027) seeks to allocate those additional dwellings throughout the district with Uckfield earmarked for 1,000 new allocations in addition to the 742 already committed or built.
- 1.13. Policies WCS1 and WCS2 Policy WCS4 set out a number of strategic development areas; with SD1 (Land at West Uckfield) seeking to allocate the 1000 dwellings in one strategic area.
- 1.14. It is nevertheless highly material that the housing provision figure within Policy WCS2, and subsequently WCS4, do not represent full objectively assessed need when assessed against the annual requirement set by the standard methodology which is in excess of 1,200 dwellings a year as confirmed in the Council’s December 2022 assessment of housing land supply as at April 2022².
- 1.15. It is evident therefore that Policies WCS1, WCS2 and WCS4 are out of date and that significant additional housing is required on greenfield sites, an issue accepted by the Council in the Core Strategy. This is confirmed in paragraph 5.8 which states “**it is inevitable that there will have to be a substantial use of greenfield land to meet existing and future housing**”

² Page 5 of the Council’s April 2022 assessment indicates that the District’s capped annual need is 1,221dpa (**WB4**)

needs....” This has been further accepted in the decisions by the Council and through appeals on subsequent applications.

- 1.16. As accepted by the Council, the development plan is not based upon a NPPF compliant assessment of housing need and cannot be said to be up to date in respect of its housing requirement or in relation to policies that seek to restrict development within the defined settlement boundaries.
- 1.17. Its content pre-dates the publication of the NPPF and the NPPG together with the Hunston and Solihull High Court Judgments; which require LPA to undertake an assessment of the objectively assessed housing need. Accordingly, and even at the point of adoption, the Core Strategy did not meet the objectively assessed need for housing during the plan period, which represents a clear conflict with paragraph 60 of the NPPF to significantly boost the supply of homes.
- 1.18. By operation of paragraph 219 of the NPPF, I am of the opinion that the weight to be attached to the development plan must be reduced on account of its inconsistency with the approach in the NPPF to meeting identified housing needs.
- 1.19. As to five year housing land supply, paragraph 74 of the NPPF requires local planning authorities to demonstrate a five year supply of deliverable housing land against the housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old.
- 1.20. In so far as the Core Strategy was adopted in February 2013 and is more than five years old, and has not been reviewed, the five year housing land supply position falls to be determined against the local housing need, derived from the standard method.
- 1.21. The Council's Five Year Housing Land Supply Statement for 1st April 2022 was published in December 2022 and covers the five year period 1st April 2022 to 31st March 2027 (**WB4**).

- 1.22. It only shows a 3.92 year supply of deliverable housing land supply, representing a substantial shortfall of 1,566 dwellings. This represents a material consideration of significant weight in support of the Appeal Scheme.
- 1.23. I have carried out a review of the five year land supply position and I identify a 3.35 year supply of deliverable housing land, representing a shortfall of 2,407 dwellings. Details are included in the accompanying Five Year Housing Land Supply Review (Jan 2023) (**WB5**).
- 1.24. The Appellant and the Council will seek to agree a position on housing land supply matters in a Statement of Common Ground (“SoCG”).
- 1.25. The Appellant reserves the right to submit a detailed response to any revised five year housing land supply figures should more up to date information be made available by the Council in advance of the Hearing.
- 1.26. As confirmed by the Council in numerous Officer Reports to Planning Committee, the local plan policies that are most important for determining planning applications for housing carry less weight, and the NPPF’s presumption in favour of sustainable development will apply to decision making³.
- 1.27. This position was explored in the August 2022 appeal decision relating to the erection of 38 dwellings on land beyond the settlement policy boundary at Horam (footnote 3 below refers).
- 1.28. A copy of the decision is included at **WB6**. Paragraphs 19 and 20 conclude as follows:

³ Examples include but are not limited to WD/2021/1637/MAO, WD/2021/2356/MAO (PINS Ref: APP/C1435/W/22/3297371); and WD/2020/2509/MAO (PINS Ref: APP/C1435/W/22/3296579)

“It is common ground that the CS is out of date and does not meet Wealden’s local housing needs. The plan provides for only 450 homes per annum as opposed to a requirement for 1,225, as calculated under the standard method set out in national planning guidance. Paragraph 74 of the Framework requires Councils identify and update annually a minimum five-year housing land supply (5YHLS) against their local housing need. Wealden can currently demonstrate a 3.66-year housing land supply. I consider this to be a substantial shortfall in meeting current Government policy requirements.

A lack of a 5YHLS has endured in Wealden for over six years. In this situation the Council has granted permission for housing in a number of sites outside the Horam settlement boundary, as detailed in the appellant’s evidence. Unlike this proposal, these sites appear to have all been within a development boundary proposed in a Submission Local Plan. However, this was later withdrawn and the Council is now preparing a new Local Plan, due for Regulation 18 consultation later this year.”

- 1.29. It is within that context that the Council published its Housing Action Plan (June 2022) (**WB7**), which sets out a number of actions that the Council will progress to boost housing delivery.
- 1.30. A key action is continuing to progress a Local Plan. A draft (Regulation 18) version of the Local Plan was to be consulted upon in Spring 2022. That did not materialise. The Council has indicated that plan preparation is currently on hold. As such, there is no known timeframe for the publication of a consultation draft Local Plan.
- 1.31. This delay impacts upon the ability of the Council to resolve the significant shortfall in supply within the short to medium term.
- 1.32. More recent appeal decisions have concluded in a similar manner to the Horam appeal Inspector in relation to the out of date policy position that prevails within Wealden. Those decisions are included at **WB8** to **WB10**.

- 1.33. The aforementioned appeal decisions provide an important context for the determination of the appeal by Croudace Homes.
- 1.34. Accordingly, whilst there is a conflict between the Appeal Scheme and Development Plan (with the Site located beyond the defined settlement boundary for Uckfield), I have gone on to assess whether there are material considerations which justify the grant of planning permission. Importantly, the Site is not identified within the development plan as forming any part of a valued landscape.
- 1.35. As to the footnote 7 considerations set out in the NPPF, the heritage assessment of the Appeal Scheme, finding less than substantial harm within the lowest level of the less than substantial scale, engages the 'heritage balance' at paragraph 202 of the NPPF. This requires any harm to be weighed against the public benefits of the proposal.
- 1.36. I have carried out that balance and I consider the many public benefits (economic, social and environmental), demonstrably outweigh the limited heritage harm that has been identified (which harm attracts great weight in my balance).
- 1.37. Overall, in accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), I have paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.
- 1.38. In so far as I conclude that the paragraph 202 heritage balance is satisfied, on account of the public benefits outweighing the less than substantial harm that has been identified to the setting of the Oast (a designated heritage asset), the heritage considerations at footnote 7 of the NPPF does not provide a clear reason for refusal.

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- 1.39. In addition, the Appellant has taken a more cautious approach to the assessment of heritage impacts in so far as the Council's Heritage Officer considers that it should be possible to accommodate development on the Site without harm to the significance of the listed building (the heritage officer's consultation responses dated 22 Nov 22 refers (**WB24**)).
- 1.40. In addition, the previous Secretary of State appeal decision for his Site also confirmed (in that case) that the setting of the Grade II oast house would not be materially harmed (**WB12**, paragraph 43).
- 1.41. The Council also raise ancient woodland as a possible footnote 7 issue in the determination of this appeal. However, as the supporting material demonstrates, the proposal will not have an adverse effect upon ancient woodland. Matters are addressed at paragraphs 4.1 to 4.11 of the accompanying Ecology Statement prepared by Mark Rose (**WB1**). As such, the presence of ancient woodland does not represent a clear reason for refusal.
- 1.42. As to the benefits, the material considerations are considerable in number and include the requirement to determine the scheme within the prism of the titled balance, along with the substantial social, economic and environmental benefits, that justify the grant of planning permission.
- 1.43. The Appeal Scheme is promoted in the context of the presumption in favour of sustainable development (paragraph 1.5 above refers). The Site was also positively assessed by the Council in their Strategic Housing and Economic Land Availability Assessment "(SHELAA)" (2019) (Site Ref 002/1410) (**WB11**) which notes that the site is potentially suitable in principle for housing development.

Overarching Summary

- 1.44. Having regard to the relevant planning policy and material considerations, the acceptability of the Appeal Scheme may be summarised as follows:

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- i. The development of the Appeal Site for a sustainable form of development should now be considered favourably in accordance with the approach at paragraph 8 of the NPPF, having regard to the economic, social and environmental objectives of the planning system.
 - ii. The Council's spatial strategy is out of date and cannot meet its identified housing need without breaching the settlement boundaries identified in the development plan.
 - iii. In addition, the Council accepts it cannot demonstrate an up-to-date five year supply of deliverable sites for housing. It claims a maximum 3.92 year supply⁴ (a shortfall of 1,566 dwellings).
 - iv. As such, and in accordance with paragraph 11(d) NPPF, the most important policies (including those relating to settlement boundaries) are to be regarded as out of date and the presumption in paragraph 11(d) of the NPPF applies (subject to paragraph 182 of the NPPF).
 - v. For the reasons explained at paragraph 1.5 above, the tilted balance is engaged for any one of two scenarios to be applied to the consideration of the Appeal Scheme: (i) the spatial application of settlement boundaries (which have been breached in order to meet current housing need); and (ii) the lack of a five year supply of deliverable housing land.
 - vi. There are no footnote 7 considerations in the NPPF that result in a clear reason for refusal. This includes on heritage grounds, where the impact on the setting of the listed Oast is assessed as being less than substantial; and where this Statement carries out the paragraph 202 balance in the NPPF, including that the public benefits outweigh the identified harm. In addition, the Appeal Scheme will not result in the

⁴ Wealden District Council Five Year Housing Land Supply Statement – as of 1st April 2022 (Dec 2022) (WB4)

loss or deterioration of ancient woodland such that the scheme is compliant with paragraph 180(d) of the NPPF.

- vii. The Scheme represents a sustainable form of development.
- viii. The Appeal Scheme involves the provision of significant benefits, including the delivery of market and 35% affordable housing, new public open space and materially in excess of 10% biodiversity net gain.
- ix. Not only are there no adverse impacts which significantly and demonstrably outweigh the benefits, but there are in fact significant benefits which justify the grant of planning permission.
- x. The Appeal Scheme is submitted in accordance with the NPPF and the Scheme should be allowed so as to permit a sustainable form of much needed new market and affordable housing in helping to meet the District's housing needs and to provide the additional benefits which have been identified, including the delivery of a strategic SANG.

2.0 PLANNING HISTORY

Previous Appeal Decision (Feb 2009)

General

- 2.1. A previous scheme (considered some 13 years ago, against a fundamentally different planning policy context) proposing development of the Site for the erection of 197 dwellings, including affordable housing, with associated access, structural landscaping and recreation space was dismissed at appeal by decision dated February 2009 (PINS Ref: PP/C135/A/07/2053422) (LPA Ref: WD/2006/3564/MAO). The appeal decision is included at **WB12** and the illustrative layout plans for that proposal (comprising extracts from the Design and Access Statement) are at **WB13**. The decision is a material consideration in the determination of the current Appeal Scheme.
- 2.2. The previous scheme related to a smaller part of the appeal site and did not include the area proposed as strategic SANG.
- 2.3. The Secretary of State dismissed the earlier appeal (paragraph 52) on the basis “that there was more than a five-year supply of housing land and therefore no good case for releasing any of these greenfield sites on grounds of housing need at this time.”
- 2.4. As indicated, at the time of dismissing the earlier appeal, the development plan was found to be up to date, with the Council also being able to demonstrate a five-year supply of deliverable housing land. That is no longer the case. The planning policy context has changed substantially.
- 2.5. Paragraphs 18 and 19 of the SoS decision state as follows:

*“For the reasons given in IR655, the Secretary of State agrees with the Inspector that conclusions on housing land supply requirements should be based on the figures in the emerging SE Plan as this represents the most up to date position. For the reasons given in IR657-658, the Secretary of State agrees with the Inspector that the Council’s assessment of housing supply is robust. **She is satisfied that there is at present more than 5 year supply of housing in Wealden.** She is further satisfied that the supply is higher in ‘rest of Wealden’ than for the district as a whole. Notwithstanding the fact that emerging SE Plan requirements are to be treated as a minimum (IR682), she therefore considers there is no good case to allow any of the three appeals on the basis of housing need at this time.*

*The Secretary of State has considered the appeals in the light of paragraphs 69-72 of PPS3. In the light of her conclusion above, and the fact that these greenfield sites are not allocated in the overall land supply, she considers that they do not fall to be considered under paragraph 71. Paragraph 72 states that applications should not be refused solely on the grounds of prematurity; the Secretary of State’s reasons for refusing all of the appeals are set out in this decision letter and summarized in the conclusions (paragraphs 51-55). **Given the existence of a 5 year housing and supply,** she considers that the damage to the plan-led system that would arise from granting permission for housing on any of these unallocated greenfield sites weights against all the schemes, and that it would be preferable for housing sites to come forward via the LDF process, and in tandem with a town centre traffic scheme. [My emphasis]*

- 2.6. At that time, it is clear that Wealden District could demonstrate the minimum five-year supply of housing land. As explained and accepted by the Council, this is no longer the case with a maximum supply of 3.92 years.

Landscape

- 2.7. Landscape considerations at the Appeal Site was considered in paragraph 27 of the SoS decision:

“She agrees with the Inspector, for the reasons given in IR689, that there are no cogent reasons to resist BIES [Bird in Eye South] proposals purely on landscape grounds.”

2.8. IR Para 689 States:

“...any development on BIES would be very visible from the Community Hospital and nearby existing and approved residential areas off the Framfield Road, but it would not breach the skyline when looking eastwards, and could be designed (as shown by the DAS) to protect existing views of the listed oast house building at Bird In Eye Farm. Like BIEN, but unlike Downlands, it would appear as a natural and logical extension to the town, and not significantly separated, much less divorced, from it by the Framfield stream. As with BIEN, I think that the landscape proposals would complement the form and layout of development shown in the DAS, and help provide a pleasing new urban edge to Uckfield. In sum, there are in my opinion no cogent reasons to resist the BIES proposals purely on landscape grounds.”

- 2.9. I note here the conclusion that development of the Appeal Site was considered by the Inspector to be acceptable in landscape terms.

Ecology

- 2.10. This assessment of the Secretary of State on ecology and nature conservation is set out in paragraph 33, where:

“For the reasons given in IR731-738, the Secretary of State agrees with the Inspector that there is no sound case for rejecting BIEN or BIES schemes on the grounds of any harm to ecological/nature conservation interests.”

Heritage

- 2.11. The impact of the scheme on heritage assets is addressed in paragraph 43 which concludes:

“The Secretary of State notes that there is a Grade II listed oast house immediately adjacent to BIES. Like the Inspector, the Secretary of State is satisfied that the setting of this building would not be materially harmed by the BIES proposals (IR792).”

Highways

- 2.12. Paragraph 742 of the Inspector's Report confirms the accessibility of the site in terms of walking distance to the town railway station and bus station.

Conclusion

- 2.13. The overall conclusions with respect of the Appeal Site was set out in paragraph 55. This states:

"The Secretary of State has taken into account that the landscape and ecology considerations do not make this proposal unacceptable, but that there are some site-specific drawbacks in terms of transport sustainability and the town centre linkage. While she notes that the traffic impact would fall within the 300-unit headroom figure, and considers that the provision of affordable housing carries some weight in its favour, the Secretary of State considers that, overall, in the light of her conclusions on housing need, there are not sufficient material considerations in favour of the scheme to outweigh the conflict with the development plan."

- 2.14. As explained above the planning policy context has evolved and substantial change has occurred since that time, which position has triggered the presumption in favour of sustainable development.
- 2.15. Based on the foregoing, although the previous scheme was refused on the basis of a lack of demonstrable housing need, at that time, the scheme was not refused on technical grounds.
- 2.16. As such, and for the reasons set out in the supporting information to the proposed scheme for up to 290 dwellings (as now proposed), there are no technical reasons that would preclude the grant of planning permission.

3.0 DESCRIPTION OF THE APPEAL SITE AND SURROUNDING AREA

The Appeal Site

- 3.1. The Site extends to approximately 41ha and is located to the south of south of Bird in Eye Hill, on the eastern side of Uckfield.
- 3.2. The Site comprises a series of paddocks in the northern western part, with further paddocks and some plantation woodland to the east and south. Ancient Woodland lies along parts of the western, southern and south eastern boundaries as well as bisecting the site.
- 3.3. The southern parcel of land is separated from rest of the site by a strip of Ancient Woodland known as Bird in Eye Shaw, which has a stream running through it and a pond. Ancient Woodland also extends along part of the western boundary.
- 3.4. The Site surrounds Bird in Eye Farm, which lies to the south of the current access into the farm, approximately 90m from the B2102, Bird in Eye Hill. The farmyard contains a number of barns currently occupied by several small business units, areas of hard standing, a number of stable blocks, a manège and a dwelling.
- 3.5. There is a public right of way that protrudes along the southern edge of the Site, footpath Framfield 65b.
- 3.6. The Site is bound by Bird in Eye Hill to the north, to the east lie open agricultural fields with the village of Framfield beyond. To the south of the main section proposed for development lies a band of ancient woodland with open land proposed for the strategic SANG beyond. To the west lies the River Uck tributary with the Uckfield community hospital and residential development on the other side of the valley.

- 3.7. The Site is split into two distinct parts with the flatter area to the north of the ancient woodland comprising the area where the proposed built form elements of the scheme would be located with an area of SANG proposed to the east. The area to the south of the ancient woodland belt forms the larger area of SANG land.
- 3.8. No part of the site forms part of a Conservation Area and nor is it identified for any landscape 'value'.
- 3.9. The Multi Agency Geographic Information for the Countryside Map ('MAGIC') and the Proposals Map (adopted March 2014) indicates that the site is not covered by any statutory or non-statutory designations for landscape character or quality.
- 3.10. The Oast (Grade II listed building) at Bird in Eye Farm is located on the western side of the farmyard, around which the Site is wrapped. It occupies an elevated aspect that affords a visual link between the building and the eastern edge of Uckfield.
- 3.11. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the masterplan approach has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess. Overall, there are no environmental or statutory designations that would otherwise serve to limit the development potential of the site.
- 3.12. As set out in the LVIA views of the proposed houses would be contained to the near vicinity. The new housing will be overlooked at the edge of Uckfield to the west, which has an urbanising influence on this part of the site. Development in this location would relate to existing housing in the settlement, and would be consistent with the settlement pattern on the valley sides to the west, northwest and southwest of the Site. As such the scheme represents a logical extension of Uckfield into largely unconstrained land.

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- 3.13. As detailed in the Flood Risk Assessment that accompanied the application, the area where the development is proposed is classified as falling within Flood Zone 1. There are no further environmental constraints which would preclude the proposed development.

Context and Settlement Hierarchy

- 3.14. Uckfield is one of the three designated District Centres listed in the Adopted Core Strategy. This is the highest settlement tier located within Wealden District. It is described as *“an accessible settlement by road and public transport containing a range of shops, employment opportunities and facilities including secondary school. Not reliant upon other centres within the District to meet day to day needs, but requires support from other secondary or primary centres to meet the needs of residents”*.
- 3.15. Uckfield provides a variety of shops (including several supermarkets), restaurants and employment areas. As well as the cinema, Uckfield has community facilities including children’s nursery, community hospital, health centre and a library.
- 3.16. Uckfield supports primary and secondary schools, as well as a leisure centre which includes a swimming pool. These extensive facilities are an illustration of its sustainability.
- 3.17. The Site is approximately 1.2km from the centre of Uckfield where there are a number of shops, employment opportunities and a train station.
- 3.18. The accompanying Highways Statement (**WB2**) further explains the sustainability merits of the Site, including with reference to the walking and cycling distances set out in the Transport Assessment submitted with the Appeal Scheme.

4.0 APPEAL SCHEME DESCRIPTION

General and Plans

- 4.1. The Framework Layout has been developed and informed following a thorough review of the opportunities and constraints afforded by the Site, including a collaborative pre-application process with local organisations (including community groups) and local residents.
- 4.2. Extensive pre-application discussions took place with Wealden District Council, although this related to a larger scheme for up to 400 dwellings. The application scheme was refined through the collaborative approach to place-making.
- 4.3. The Appeal Scheme description is as follows:

“Outline application for up 290 residential dwellings, associated landscaping, informal open space and strategic SANG, with access from B2102 (all matters reserved except for access)”

- 4.4. Only the principle of developing the Site for up to 290 dwellings, the proposed informal and strategic open space and the means of access are to be determined as part of this outline application.
- 4.5. Appearance, landscaping, layout and scale are reserved for subsequent determination.
- 4.6. The Appeal Scheme is set out on the following plans:

The Scheme

- i. Site Location Plan No. PRB/BIE/PA1L (**WB14**)
- ii. Proposed Access Plan No. 5330/021 Rev K (**WB16**)

Supporting Plans

- i. Illustrative Site Layout PRB/BIE/PA2S (**WB17**)
- ii. Indicative Parameter/ Land Use Plan PRB/BIE/PA4E (**WB18**)
- iii. Landscape Strategy and SANG Plan No. CSA/2646/114M (**WB19**)

4.7. Plans (iii) to (v) are submitted for illustrative purposes only, with permission sought for the principle of up to 290 dwellings along with the proposed land uses listed in the application description and the means of access.

4.8. For the avoidance of doubt, and if desired, a separate condition could be imposed requiring the reserved matters to be submitted in general conformity with the Indicative Parameter Plan (iv).

Access Design

4.9. As explained at paragraphs 2.24 to 2.25 of the accompanying Transport Statement (**WB2**), there has been a minor update to the proposed access drawing.

4.10. Appendix 3 to the Transport Assessment Second Addendum (Bellamy Roberts) (Sept 2022)⁵ includes Access Plan no. No. 5330/021 Rev H, which Plan is included at **WB15**. However, and following the submission of the appeal, discussions between the Appellant and County Highways have been ongoing. As such, minor amendments have been made to the access design. Details are shown on Plan No. 5330/021 Rev K (**WB16**).

4.11. The Appellant is seeking the Appeal to be determined based on Access Plan No. 5330/021 Rev K (**WB16**).

4.12. As paragraphs 2.24 and 2.25 of **WB2** explain, a traffic island previously proposed on Bird in Eye Hill is now proposed as a solid white lining to prohibit eastbound vehicles from crossing the centreline of the carriageway. In addition, the extension of the 30mph speed limit has been relocated to incorporate only the Appeal Scheme's segregated pedestrian/cycle access.

⁵ See Essential List of Supporting Information

The Masterplan Approach

- 4.13. Preparation of the Illustrative Site Plan (**WB17**) has been informed by a contextual appraisal of the local area, the findings of the site specific technical studies undertaken to inform the layout design and an assessment of relevant planning policy considerations.
- 4.14. Key to the evolution of the layout of the proposed development is the identification of existing trees and hedgerows for retention. In particular, a line of existing hedgerow which bisects the site to the east of the existing farm buildings has been identified as an important part of the character of the site, and is proposed for retention with a 5m buffer zone. This effectively creates a green corridor down the centre of the Site. Furthermore, there are 15m minimum buffer zones provided to the ancient woodland to the south.
- 4.15. Analysis of the Site's topography and drainage requirements has informed the siting of a large proposed balancing pond towards the south-western corner of the site, outside the ancient woodland. Together with the constraint of the farm buildings, identification of these features to be retained and/or created results in parcels of land which can be developed for housing.
- 4.16. The Masterplan vision is to create a high-quality development that has a strong sense of character and identity whilst linking seamlessly and positively with the adjoining development of Uckfield to the west.
- 4.17. The Masterplan approach, including in relation to design, is underpinned by a thorough contextual appraisal of the site and its surroundings.
- 4.18. The vision is to be achieved through the following design principles included in the masterplan design:
- i. The creation of a sustainable living environment with a mix of residential accommodation.
 - ii. A place with a varied character that responds to the local vernacular and built context to provide a sense of place.

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- iii. A sustainable development which responds to best practice, with house type designs to be approved at the reserved matters stage that will seek to minimise energy use, sustainably manage water, responsibly source materials and manage waste and ecology.
 - iv. Opening up views of The Oasthouse a unique heritage asset thereby enhancing its significance and setting.
 - v. The provision of highway benefits to Uckfield centre through the linking of the two traffic light controlled junctions through the SCOOT system.
 - vi. Enhancing the landscape edge to the boundaries of the site, in particular the eastern boundary that will further enclose the development in conjunction with the ancient woodland to the south.
 - vii. A development which preserves and enhances biodiversity by retaining natural features on the site and reinforcing them by creating opportunities for new habitat areas, including tree planting.
 - viii. To encourage and enhance the opportunities for sustainable movement, through the provision of pedestrian and cycle linkages to neighbouring facilities and public transport routes within Uckfield.
 - ix. Creation of landscape rich SANG area together with numerous walking routes and footpaths for future residents and the wider community.

4.19. The principal elements of the scheme are summarised as follows:

- i. The scheme provides for up to 290 dwellings, to include an appropriate mix of house types, within a landscaped setting.
- ii. The scheme will include a mix of housing tenures, together with up to 35% affordable housing provision.
- iii. Buildings heights will be in conformity with existing dwellings in the vicinity of the proposal.
- iv. Vehicle access is provided from Bird in Eye Hill.
- v. Increased public footpath to facilitate sustainable travel into Uckfield and the associated services, facilities and public transport links.
- vi. SuDS.

4.20. The component parts of the Scheme are summarised as below.

Access and Layout

4.21. Vehicular access to the proposed dwellings will be provided by a single means of access from Bird in Eye Hill. Details of the proposed access are provided on Bellamy Roberts drawing no. 5330/021 Rev K (**WB16**).

Dwelling Mix

4.22. As set out above, the scheme provides for a total of up to 290 dwellings, including the provision of up to 35% affordable dwellings (up to 101 dwellings).

4.23. The tenure mix is to be negotiated through preparation of the legal agreement.

4.24. The overall housing mix, including in relation to the market housing, is a matter to be determined at the subsequent reserved matters application stage. It will however provide for a mix of housing types to cater for all members of the community.

Design

4.25. The house type designs, to be considered at the reserved matters stage do not need to replicate any existing patterns of development or utilise particular materials but should achieve a cohesive appearance sympathetic to the properties within the eastern parts of Uckfield.

4.26. As shown on the Illustrative Site Plan (**WB17**), the overall layout and form of the development has been designed to be sympathetic to the urban edge location of the site. This includes the creation of a new landscape buffer to the western and eastern boundaries of the Site.

Density

4.27. The Illustrative Site Plan provides for up to 290 dwellings which equates to a net density of 19dph.

- 4.28. This density will ensure the new dwellings integrate with, and complement the local area in terms of scale, massing and layout, whilst sympathetically responding to the site's edge of settlement location.

Landscaping Strategy and SANG

- 4.29. Although landscaping is a reserved matter, the accompanying Illustrative Site Plan provides for a landscaped buffer to the eastern boundary of the site. This is in conjunction with the areas of ancient woodland which will be retained and enhanced to ensure a visually enclosed development.
- 4.30. The strategic SANG forms an integral part of the scheme, with the overarching landscape and design principles shown on Plan CSA/2646/114/M (**WB19**).
- 4.31. The SANG proposals can be quantified as follows:
- 26.17ha of SANG land
 - A walking route extending to circa 2.7km
 - A car park for 30 vehicles.
- 4.32. The SANG secures a significant recreational benefit for existing and future residents whilst also securing biodiversity enhancements through additional habitat creation.
- 4.33. The delivery of the SANG and future ownership of the land will be secured by means of a planning obligation(s) and/or through the imposition of appropriately worded conditions.
- 4.34. A summary of the acceptability of the Appeal Scheme in landscape terms is included at **WB3**. I consider this matter further in section 7 below.

Ecology

- 4.35. As set out in **WB1**, the Scheme results in an on-site biodiversity net gain of c.40% (considerably in excess of 10%), which requirement can be secured by condition.

Drainage Strategy

- 4.36. A Drainage Technical Note accompanies the Ecology Statement (See **WB1, Appendix C**) and explains the acceptability of the proposed drainage strategy.
- 4.37. Surface water drainage proposals originally submitted under the outline suggested a new drainage outfall to be constructed from the proposed attenuation basin in the south-western corner of the proposed development, through the intersection between Woodlands W1 and W2, discharging to Framfield Stream to the south-west. These proposals would have required temporary vegetation clearance to facilitate a c. 4m wide installation corridor, extending along an 8m stretch of woodland between the basin and the proposed outfall to Framfield Stream. Much of the existing vegetation within this corridor comprises scrub and shrub species, due to the corridor largely being under the easement for overhead power lines and is hence cleared periodically for maintenance access.
- 4.38. As an alternative approach, and to avoid any impact on Ancient Woodland, the potential for surface water to be dealt with via infiltration, and thus avoiding the need for a surface water outfall into Framfield Stream, was explored. As detailed within the appended Technical Summary prepared by Stantec, high groundwater levels were recorded resulting in poor infiltration rates, rendering an infiltration-led design unviable. Therefore, options for provision of an alternative outfall have instead been explored.
- 4.39. An underground outfall pipe is proposed to be installed from the north-east corner of the south-eastern attenuation basin, with the outfall pipe running northwards to a discharge point along the Framfield Stream to the north-west, avoiding any construction activity within the 15m Ancient Woodland buffer.
- 4.40. Final designs for the Surface Water Drainage Strategy and the respective outfall are subject to future relevant reserved matters applications and Flood Risk Activity Permit from the Environment Agency

Land Uses

- 4.41. On the basis of the foregoing, and having regard to the on-site opportunities and constraints informing the proposed development, proposed land uses are summarised in Table 1 below.

Table 1: Proposed Land Uses

Land use	Ha	Approx No. Dwellings
Residential Area <i>Includes local open space, amenity areas, semi-natural greenspace and landscape buffers</i>	Up to 15ha	290
SANG	Approx. 26ha	
Total	41ha	290

Scheme Benefits

- 4.42. The key benefits of the proposed scheme can be summarised below:
- Provision of up to 290 new dwellings in a sustainable location.
 - Contribution towards the provision of much needed market and affordable housing.
 - Provision of a strategic SANG, with additional headroom capacity of circa 15.6ha which could potentially become available for mitigation of future local development of up to 1,073 dwellings or 2,575 new residents (using a 2.4 residents / unit factor).
 - Ecological enhancements and BNG in excess of 10% (c.40%).
 - Appropriate landscaping strategy throughout the site and proposed SANG which will contribute to a sense of place.
 - Provision of new public footpaths.
 - Creation of new vistas from which to appreciate the unique Oasthouse heritage asset.

5.0 THE DEVELOPMENT PLAN AND PLANNING CONTEXT

General

- 5.1. This section summarises the planning policy position, against which the acceptability of the Appeal Scheme falls to be determined.
- 5.2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a requirement that planning applications are to be determined in accordance with the Development Plan unless other material considerations indicate otherwise. This represents the s.38(6) 'balance'.
- 5.3. The Appeal Site is located adjoining, but ultimately beyond the settlement policy boundary as defined on the Local Plan Proposals Map. Accordingly, it is located in the countryside. In addition, the Site is not allocated for housing development. As such, the Appeal Scheme is contrary to the Development Plan. However, and having regard to the 38(6) balance, there are a number of material considerations that justify the grant of planning permission.
- 5.4. Save for the location of the Appeal Site beyond the out of date adopted settlement boundary for Uckfield, the Appeal Scheme accords with the spatial and development management policies of the development plan.
- 5.5. It is the Appellant's case that the Appeal Scheme accords with the spatial and development management policies of the development plan, save for the location of the site beyond the out of date adopted settlement/development boundary for Uckfield. However, and in so far as the settlement/development boundary relates to an out of date housing need, the weight to be attached to this policy conflict is significantly reduced.
- 5.6. In the circumstances, where the only development plan conflict is the location of the site adjacent to but beyond the settlement policy for Uckfield, in a scenario where the Council is unable to demonstrate a five-year supply

of deliverable housing land, the most important policies for determining the application are out of date.

- 5.7. I am of the view that the heritage assessment undertaken pursuant to the requirement at paragraph 202 of the NPPF does not provide a clear reason for refusing the development. As set out in **WB24**, the Council's Heritage Officer's consultation response confirms no heritage harm. As such, the paragraph 202 balance is not even engaged on the Council's case.
- 5.8. Furthermore, I have already set out the acceptability of the drainage strategy in relation to the Ancient Woodland. Paragraphs 4.35 to 4.39 above refer. As such, Ancient Woodland is not a footnote 7 consideration that provides a clear reason for refusing planning permission.
- 5.9. In addition, and as explained, the adverse impacts of granting permission comprising the loss of countryside and minor degree of heritage harm, cannot be said to demonstrably, let alone significantly, outweigh the many benefits. In the circumstances, planning permission should be granted.
- 5.10. The Council also acknowledges it is unable to demonstrate a five-year supply of deliverable housing land, and whilst the Site is beyond the settlement policy boundary for Uckfield, as defined in the development plan, the Council nevertheless assess the Site as being potentially suitable in its SHELAA.
- 5.11. For the reasons explained, the material considerations clearly tilt the balance in support of the grant of planning permission, including the Council's acceptance that they cannot demonstrate a five year supply of deliverable housing land, the significant need for housing, the grant of planning permission by the Council and at appeal for housing on land beyond the settlement boundaries as defined in the Development Plan, the proposed review of the settlement boundaries as per of the emerging Local Plan Review; and the content of the NPPF (2021).
- 5.12. Section 39 of the 2004 Act identifies the requirement for decision makers to exercise their functions with the objective of contributing to the achievement of sustainable development. These requirements must be considered in

light of the NPPF, including the 3 roles of sustainability set out at paragraph 8 (economic, social and environmental). However, and as set out at paragraph 9 of the NPPF, the three roles are not a checklist and their values are considered in light of that context.

The Development Plan

General

5.13. The Development Plan comprises the following:

- Wealden Local Plan Saved Policies (1998) (saved 2007)
- Wealden Core Strategy Local Plan (2013)
- Affordable Housing Delivery Local Plan (2013)

5.14. The settlement boundaries as set out within the Proposals Map for the Wealden District were identified to meet the housing needs from Policy WCS1 of the Core Strategy.

5.15. The boundaries were drawn at that time to meet a need for at least 9,440 dwellings over the period 2006 to 2027. This equates to 450dpa within that part of the District outside of the SDNP. This was the level of growth set for the district in policy H1 of the former South East Plan (2009).

5.16. In so far as the Core Strategy is more than five years old, and in accordance with the requirements in paragraph 74 and footnote 39 of the NPPF, the housing requirement falls to be determined by the local housing need derived from the application of the standard method.

5.17. The Council's Five-Year Housing Land Supply Statement for April 2022 identifies that the District's local housing need figure is 1,212dpa. This represents a significant uplift on the 450dpa figure in the adopted Core Strategy.

5.18. In so far as the settlement boundaries were not identified in relation to the current housing need, they operate as a constraint to development. Moreover, and in so far as the housing requirement on which the settlement

boundaries were defined cannot be said to be consistent with the NPPF, the weight to be attached to any conflict with them can and should be reduced. Indeed, as Lord Gill observed in **Hopkins Homes Ltd v SSCLG** [2017] UKSC 37 (**WB20**) at [83]:

“If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated”

Wealden Local Plan Saved Policies (1998) (saved 2007)

- 5.19. Paragraph 14 of the Eastbourne Road, Lower Willingdon appeal decision (**WB9**) considers the weight to be attached to saved policies from the Local plan, stating as follows:

“Saved policies GD2 and DC17 of the LP seek to restrict development to within defined development boundaries. The proposed development is outside of the development boundaries, but these were drawn to accommodate the level of housing required at the time the LP was adopted, which is far below the level now required. If these policies continue to be strictly applied, they will inevitably prevent the delivery of much needed housing in the district, in conflict with the objectives of the National Planning Policy Framework (the Framework). This would be particularly troubling given the Council’s poor record of housing delivery and current housing land supply of just 3.66 years at best. For all of these reasons, policies GD2 and DC17 are out of date. Whilst the proposal is in conflict with them, I attach the conflict only very limited weight.”

- 5.20. I adopt that position in relation to my assessment of the Appeal Scheme.
- 5.21. Policy GD2 of the Local Plan states development outside the settlement boundaries will be resisted unless it accords with specific policies in the Plan.
- 5.22. As set out above, this policy is to be afforded only very limited weight as it inconsistent with the NPPF.

- 5.23. As Garnham J held in ***Eastleigh BC v SSCLG*** [2019] EWHC 1862 (Admin) at [62] (**WB21**), the NPPF adopts a more nuanced approach to the countryside than such policies.
- 5.24. Where a local plan policy which pre-dates the NPPF does not reflect that more nuanced approach, the inspector is **“fully entitled to conclude that ... reduced weight [should be] attributed to the retained policies”**.

Core Strategy

- 5.25. The Core Strategy was adopted in February 2013 and covers the period 2006 to 2027.
- 5.26. Policy WCS1 (Provision of Homes and Jobs 2006 – 2027) makes provision for some 4,525 net additional dwellings within the district reflecting the findings of the 2007 Strategic Housing Market Assessment alongside the requirements of policy H1 of the former South East Plan⁶. Policy WCS2 (Distribution of Housing Growth 2006 – 2027) seeks to allocate those additional dwellings throughout the district with Uckfield earmarked for 1000 new allocations in addition to the 742 already committed or built).
- 5.27. Policy WCS4 set out a number of strategy development areas with SD1 (Land at West Uckfield) seeking to allocate the 1,000 dwellings in one strategic area.
- 5.28. It is nevertheless highly material that the housing provision figures within Policy WCS2, and subsequently WCS4, do not represent full objectively assessed need when assessed against the annual requirement set by the standard methodology which is in excess of 1,200 dwellings a year as confirmed in the Council’s assessment of housing land supply for April 2021⁷.

⁶ This required 450dpa within the district from 2006 to 2026

⁷ Paragraph 2.3 of the April 2022 assessment indicates that the District’s capped annual need is at least 1,212dpa

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- 5.29. It is evident therefore that Policies WCS1, WCS2 and WCS4 are out of date and that significant additional housing is required on greenfield sites. This is confirmed in paragraph 5.8 which states “**it is inevitable that there will have to be a substantial use of greenfield land to meet existing and future housing needs....**” This has been further accepted in the decisions by the Council and through appeals on subsequent applications.
- 5.30. In so far as the housing requirement of Core Strategy Policy WCS1 is expressed as a minimum, the Appeal Scheme is in accordance with it.
- 5.31. Policy WCS2 sets out the spatial approach to the distribution of the housing requirement identified in WCS1. It indicates that at least 1,742 dwellings are to be delivered at Uckfield, including 1,000 dwellings on allocations. The allocations are set by policy WCS4.
- 5.32. Other applicable policy considerations from the Core Strategy which evidence for the Appellant will explain the scheme is in accordance with, include Policies WCS8 (Affordable Housing), WCS12 (Biodiversity), WCS13 (Green Infrastructure) and WCS14 (Presumption in Favour of Sustainable Development).
- 5.33. Applicable Core Strategy policies comprise as follows:
- **WCS1 – Provision of Homes and Jobs**
 - **WCS2 – Distribution of Housing Growth**
 - WCS4 – Strategic Development Areas
 - WCS5 – Managing the Release of Housing Land
 - WCS8 – Affordable Housing
 - WCS12 – Biodiversity
 - WCS13 – Green Infrastructure
 - WCS14 – Presumption in Favour of Sustainable Development
- 5.34. The policies in bold represent those I consider to be the most important for determining the Appeal Scheme, and which are considered to be out of date.
- 5.35. In *Hopkins Homes Ltd v SSCLG* [2017] UKSC 37 Lord Carnwath said [63] (**WB20**) the inspector was “clearly entitled” to reduce the weight to be attached to restrictive policies, such as countryside and landscape policies,

can be reduced where they are derived from settlement boundaries that in turn reflect out of date housing requirements. There are obvious parallels with Wealden District.

- 5.36. In addition, the Council cannot demonstrate an up-to-date five year supply of deliverable sites for housing. As such, and in accordance with paragraph 11(d) and footnote 8 of the NPPF, the most important policies (including those relating to settlement boundaries) are to be regarded as out of date.
- 5.37. In the case of Wealden District, the Council has been granting planning permissions for housing development outside of settlement areas that are in breach of countryside and landscape policies to meet market and affordable housing needs and maintain a rolling five-year land supply.
- 5.38. They include those at footnote 7 below⁸. Schemes have also been allowed at appeal (including those at **WB6, WB8, WB9** and **WB10**).
- 5.39. In ***Wokingham BC v SSCLG*** [2019] EWHC 3158 (Admin) (**WB22**) Lang J held at [60] that the fact that a settlement boundary had been set to an out of date housing requirement figure was a relevant consideration when determining the weight to attach to a conflict with it, even if there were a temporary five-year land supply by virtue of breaching those boundaries.

Summary

- 5.40. The countryside and landscape policies are not meeting current housing needs based on the definition of built-up areas as defined in the development plan. On this basis, and as accepted by the Council, reduced weight applies to the conflict with saved policies GD2 and DC17 of the Wealden Local Plan.
- 5.41. As an overarching assessment, it is worth pausing to note the following considerations:

⁸ Including since January 2020, resolutions of the Council with respect of applications off Walshes Road, Crowborough (WD/2020/0743/MAO and WC/2020/0596/MAO), At Straight Half Mile, Maresfield (WD/2017/0694/MAO), east of Benhall Mill Road, Tunbridge Wells (WD/2017/0143/MAJ) and Friday Street Farm, Oak Tree Lane, Eastbourne (WD/2020/1391/MAO).

1. The spatial policies for the supply of housing do not meet current housing needs; and the Council has been granting planning permissions for the development of sites for housing beyond the settlement boundaries as defined in the Core Strategy.
 2. Accordingly, the settlement boundaries defined under GD1 and GD2 are not sufficient to meet current housing need and the weight to be given to the conflict with this policy is reduced.
 3. Although the Application Site is within the countryside, it is not a valued landscape nor are there any other constraints on site that would preclude such a development as proposed. As such, and although there is some conflict with EN8, the weight attached to this minor policy conflict is reduced in so far as the policy is not consistent with the NPPF and greenfield sites beyond defined settlement boundaries are required to be developed if housing needs are to be met.
 4. The Scheme provides a safe means of access.
 5. The Site is in a sustainable location.
 6. The loss of subgrade 3b agricultural land should be afforded no more than limited weight.
 7. Although the Appeal Scheme results in negligible heritage harm, a consideration of great weight, the public benefits are overriding.
 8. The requisite mitigation measures are secured by condition and/or through the planning obligation such that the impacts of the scheme can be adequately mitigated.
- 5.42. I therefore conclude that the proposal is broadly consistent with the aims of the development plan. However, the Appeal Scheme is in conflict with the development plan when taken as a whole on account of its countryside status. However, in that regard, conflict with GD2, EN8 and DC17 attracts only very limited weight.
- 5.43. As with Saved Policies GD2, EN8 and DC17 of the Local Plan, Policies WCS2 and WCS4 of the Core Strategy are also inconsistent with the requirement in the Framework to boost significantly the supply of housing land as they are based on housing projections which are out of date. As such, the weight given to these policies in the overall planning balance must logically be significantly reduced, reflecting the approach endorsed at paragraphs 63 and 83 of the **Hopkins** judgment (above).

5.44. Table 2 below summarises the main development plan policies of relevance to the Appeal Scheme.

	Most important policies for the determination	Consistent with NPPF	Weight to be afforded	Scheme accords with policy
Wealden Core Strategy (2013)				
WCS1 – Provision of Homes and Jobs 2006 - 2027	✓	×	Limited	×
WCS2 – Distribution of Housing Growth	✓	×	Limited	×
WCS4 – Strategic Development Areas	✓	×	Limited	×
WCS5 – Managing the Release of Housing Land	-	×	Limited	×
WCS8 – Affordable Housing	-	✓	Full	✓
WCS12 - Biodiversity	-	✓	Full	✓
WCS13 – Green Infrastructure	-	✓	Full	✓
WCS14 – Presumption in Favour of Sustainable Development	✓	✓	Full	✓
Wealden Local Plan (Saved Policies)				
GD2 - Development Proposals Outside Development Boundaries	✓	×	Limited	×
EN1 - Sustainable Development	✓	✓	Limited	✓
EN2 - Sustainable Locations	✓	✓	Full	✓
EN7 - Ashdown Forest	✓	✓	Full	✓
EN8 – Low Weald	✓	×	Limited	×
EN12 - Trees and Woodlands	✓	✓	Full	✓
EN13 - Ancient Woodland	-	✓	Full	✓
EN27 - Design	-	✓	Full	✓
DC17 – Housing in the Countryside	✓	×	Limited	×
HG5 - Dwelling Mix	-	✓	Full	✓
HG6 - Crime Prevention	-	✓	Full	✓
UC1 - Uckfield	-	×	Limited	×

- 5.45. As set out in the above table, **the Appeal Scheme is in conflict with saved Local Plan policies GD2 and UC1. It is also in conflict with Core Strategy policies WCS1, WCS2, WCS4 and WCS5.**
- 5.46. However, the conclusions drawn from recent committee reports, and from a review of the current development plan policies are set out below:
- i. Countryside policy (GD2) of the Local Plan is too restrictive when considered against the requirements of the NPPF and as such should be afforded significantly less weight;
 - ii. The Core Strategy Policies related to housing provision do not provide for an NPPF consistent objectively assessed housing need and as such the settlement limits set in the Saved Local Plan Policies are out of date.
 - iii. The corresponding weight to be attached to such policies is therefore reduced.
 - iv. The Council cannot currently demonstrate an up to date 5 year housing land supply; the effect of this is even more acute following the need to prepare a Housing Action Plan as the Council have failed the Housing Delivery Test.
 - v. The Council's own Core Strategy accepts the need to use greenfield sites to accommodate additional housing needs; which is exacerbated as since the Core Strategy was adopted the need for housing has increased further still.
- 5.47. The Council has accepted that limited weight applies to the conflict proposals with Development Plan policies GD2 and DC17. Furthermore, it has been established above that the basket of most important policies is to be considered out of date as they are inconsistent with the NPPF, in conjunction with the lack of a deliverable five-year supply of housing land.
- 5.48. It is considered that whilst the scheme does not strictly accord with certain countryside policies these are out of date and attract limited weight. As such, the numerous benefits, particularly in increasing the supply of market and affordable houses and enhancing the setting of the unique Oasthouse heritage asset, clearly outweigh any minor dis-benefit.

Material Considerations

National Planning Policy Framework

5.49. The National Planning Policy Framework (NPPF) was most recently updated in July 2021. It is a material consideration of particular standing in the determination of planning applications.

5.50. The content of the NPPF as it relates to the proposed development of the application site is addressed in the order set below:

- The presumption in favour of sustainable development
- Decision making
- Delivering a sufficient supply of homes
- Open space and recreation
- Promoting sustainable transport
- Achieving well-designed places
- Conserving and enhancing the natural environment
- Conserving and enhancing the historic environment

5.51. Paragraph 8 of the NPPF identifies that there are three dimensions to sustainable development, comprising (i) economic, (ii) social; and (iii) environmental.

Economic Role

5.52. The economic role requires the planning system to, inter alia, ensure that sufficient land of the right type is available in the right places and at the right time to support growth. This is achieved with the Appeal Scheme on the basis that it is located within a sustainable location, within walking and cycle distance to local services and facilities.

5.53. The Scheme also provides for housing development of the type and mix required to meet identified needs.

- 5.54. The Scheme further addresses the economic role in terms of increased LPA Revenues, Construction impacts (increased GVA, jobs etc.) and increased expenditure in the local area.

Social Role

- 5.55. The social role requires the planning system to provide the supply of housing required, creating a high-quality built environment, accessible to local services and reflecting the community's needs. All these requirements can be achieved with the Appeal Scheme. This includes the provision of 35% affordable housing, together with a significant and publicly accessible SANG.

Environmental Role

- 5.56. The environmental role requires the planning system to protect and enhance the natural, built and historic environment. This can be achieved with the proposal in a location that will not result in any significant adverse effects upon the character of the surrounding area, including in landscape terms.

Decision Making

- 5.57. In setting out the presumption in favour of sustainable development, paragraph 11 of the NPPF adds at paragraph 11(d) that where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, permission should be granted unless (i) policies in the NPPF provide a clear reason for refusing the development; or (ii) any adverse impact of doing so would significantly and demonstrably outweigh the benefits.
- 5.58. It has been discussed earlier in this Statement, why I consider that the policies for the supply of housing (both in terms of the housing requirement and the associated settlement boundaries) are materially out of date.

5.59. Section 4 of the NPPF sets out the approach to decision-making. Paragraph 38 makes it clear that decision-makers at every level should seek to approve applications for sustainable development where possible.

5.60. The Site is located in a sustainable location and will improve the economic and social conditions of the area. It will also help to provide an enhanced landscaped edge to the settlement and new biodiversity habitats.

Delivering a Sufficient Supply of Homes

5.61. Paragraph 60 sets out the Government's objective of significantly boosting the supply of homes.

5.62. Paragraph 61 sets out the approach to determining the minimum number of homes needed, which should be informed by a local housing need assessment conducted using the standard method in national planning guidance – unless an alternative approach is justified.

5.63. It is also added that any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.

5.64. Paragraph 68 sets out the need to provide a five year supply of deliverable sites for housing. It also requires sites for years 6-10 and beyond.

5.65. Paragraph 74 requires LPAs to demonstrate a five year supply of deliverable housing land. Pursuant to footnote 8, the lack of a five year supply triggers the presumption at paragraph 11(d).

5.66. This Appeal Scheme for up to 290 dwellings would make a notable contribution towards the shortfall in supply, including the provision of 35% affordable housing.

Open Space and Recreation

- 5.67. Paragraph 98 sets out support for enabling access to a network of high-quality open spaces and opportunities for sport and recreation.
- 5.68. Paragraph 100 also requires planning policies and decisions to protect and enhance public rights of way and access including taking opportunities to provide better facilities for users.
- 5.69. These requirements are met by the Appeal Scheme.

Promoting Sustainable Transport

- 5.70. Section 9 sets out the approach to providing for sustainable growth.
- 5.71. Paragraph 105 states as follows:

‘The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making’.

- 5.72. The Appeal Site is located adjoining an identified settlement, within safe and convenient walking distance to local services and facilities.
- 5.73. The supporting Transport Assessment demonstrates the acceptability of the scheme in sustainability terms. Accordingly, the Scheme is consistent with paragraph 105. It is also consistent with paragraph 111.
- 5.74. Furthermore, the Transport Assessment also sets out highway improvements through the proposed linking of the traffic light controlled

town centre junctions which will bring about a betterment to the existing highways condition.

- 5.75. The Highways Statement at **WB2** further explains the justification for the Appeal Scheme in highway terms.

Achieving Well-Designed Places

- 5.76. Section 12 sets out the approach to achieving well-designed places.
- 5.77. Paragraph 126 states that the creation of high-quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. It is added that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
- 5.78. Paragraph 131 adds that trees make an important contribution to the character and quality of urban environments, with planning policies and decisions to ensure opportunities are taken to incorporate trees within developments.
- 5.79. The outline scheme incorporates a number of trees whilst the detailed design is a matter that can be controlled at the reserved matters stage.

Natural Environment

- 5.80. Section 15 sets out the approach to conserving and enhancing the natural environment.
- 5.81. The Scheme is located within the wider zone of influence and as such proposes a substantial SANG that will ensure there are no direct effects on the Ashdown Forest. In addition, the scale of the SANG will facilitate the provision of further housing in the locality.

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- 5.82. As to landscape considerations, the site is not located within any formal designations for the most valued landscapes. The accompanying LVIA confirms that the proposal would be similar in character to the existing residential development to the west, and the retention of the existing woodlands and trees will further mitigate the appearance of the scheme.
- 5.83. The proposal retains and enhances the majority of the existing landscape features including the thick band of ancient woodland planting to the south and west. The strategic SANG will act to contain development on the eastern side of the town, while providing a significant recreation resource for the town, and opportunities for new planting and habitat creation.
- 5.84. The Scheme is also expected to result in a substantial biodiversity net gain of approximately 40% through on-site habitat creation and enhancement measures.

Historic Environment

- 5.85. Section 16 sets out the approach to conserving and enhancing the historic environment.
- 5.86. The red line site itself wraps around the cluster of farm buildings associated with Bird in Eye Farm. Within this is the Grade II Listed Oasthouse, a particularly unique Oasthouse. There are two other listed buildings beyond to the east which lie to the west of Framfield. These are hidden from view from the Site owing to extensive landscaping.
- 5.87. The submitted Heritage Statement (RPS) (March 2022) considers that the Appeal Scheme would result in no harm to the setting and therefore significance of Framfield Place and the Stables to the North West of Framfield Place and no harm to the setting to the Framfield Conservation Area. However, it is concluded that the proposals would result in less than substantial harm to the setting and therefore significance of The Oast. That harm is recorded as falling within the lowest end of the less than substantial scale, resulting in negligible harm.

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- 5.88. As set out above, this engages the heritage balance at paragraph 202 of the NPPF.
- 5.89. The many public benefits (economic, social and environmental), demonstrably outweigh that harm, even when affording great weight to the negligible level of harm in accordance with paragraph 199 NPPF.
- 5.90. Overall, in accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the experts for the Appellant have paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess. This will be explained in evidence.

Government Announcements

- 5.91. The NPPF should also be read in the context of a number of Government and Ministerial Statements which have emphasised the importance on the timely delivery of housing development.
- 5.92. These announcements are of some vintage, demonstrating the emphasis placed upon the need to significantly boost the supply of homes. They include, but are not limited to, 'Laying the Foundations: A Housing Strategy for England' (Nov 2011); the Ministerial Statement 'Planning for Growth' (March 2011); and the Ministerial Statement 'Housing and Growth' (6 September 2012) with the latter confirming that the need for new homes is 'acute', that supply remains constrained and that a proactive approach was required to support growth.
- 5.93. Government announcements have repeatedly confirmed the need to increase the supply of housing.

5.94. As far back as 2013 the Government referred to the existence of a nationally identified housing crisis⁹. This further supports the need to significantly increase the supply of housing.

5.95. The message relating to the need to boost the supply of housing and the associated economic benefits that arise have been carried forward in the more recent Statement produced in July 2015 by HM Treasury “Fixing the Foundations: Creating a More Prosperous Nation.”

5.96. Paragraph 9.1 states in relation to house building as follows:

“The UK has been incapable of building enough homes to keep up with growing demand. This harms productivity and restricts labour market flexibility, and it frustrates the ambitions of thousands of people who would like to own their own home.”

5.97. Paragraph 9.7 adds in relation to the planning system and the need for increased house building:

“There remains more to do. As the London School of Economics (LSE) Growth Commission found, ‘under-supply of housing, especially in high-growth areas of the country has pushed up house prices. The UK has been incapable of building enough homes to keep up with growing demand’¹⁰.”

5.98. Most recently, The House of Commons Committee of Public Accounts (19th June 2019) (paragraph 1 of summary) concluded:

“The Department has a highly ambitious target to deliver 300,000 new homes per year by the mid-2020s but does not have detailed projections or plans on how it will achieve this. Meeting the target of 300,000 new homes a year will need a significant step-up in the level of house building. Current levels are not promising: the number of new homes has increased every year since 2012–13, with 222,000 new homes

⁹ In the House of Commons Debate on 24 October 2013, the Planning Minister, Nick Boles, reaffirmed that there is a national housing crisis.

¹⁰ Investing for Prosperity, London School of Economics Growth Commission, September 2013

*in 2017–18, but the average number in the period 2005–06 to 2017–18 was still only 177,000 a year. The Department accepts that it will need to transform the housing market to get more new homes built and says that achieving the target would be “very challenging”. Despite having introduced some projects to help, including encouraging small builders through the small builders guarantee scheme and reforming the planning system, the Department simply does not have the mechanisms in place to achieve the 300,000 target. This is compounded by lack of detailed rationale as to why this target was chosen in the first place. It also lacks year-on-year projections on how it will ramp up house building, only illustrative projections which are not in the public domain. **To make this even more concerning, the target does not align with the Department’s new method for calculating the need for new homes which shows that just 265,000 new homes a year are needed.**”*

- 5.99. The Committee of Public Accounts also noted with respect of affordable housing (paragraph 5), that:

***“The Department acknowledges that it will need to sustain and increase the numbers of affordable housing built to help it achieve the target of 300,000 new homes but cannot say how many and what types of affordable homes are needed.** The Department has not detailed its expectations for numbers of these types of homes to be built as part of its 300,000 target for new homes. It is encouraging greater numbers of affordable homes to be built through the Affordable Homes Programme; and its reforms to the planning system aim to deliver more homes in areas of high unaffordability, such as London and the South East. At local level, local authorities detail the numbers of types of affordable housing needed in their local plans including social housing, affordable rent, built to rent, and that provided by Housing Associations. However, these planned numbers can be undermined as developers renegotiate section 106 agreements to provide less affordable housing than originally agreed with local authorities. The Department believes that its reforms to section 106 agreements would help the provision of affordable homes.”*

- 5.100. The announcements explain the importance of the need to support the *Government’s objective of significantly boosting the supply of homes* (NPPF paragraph 60) which matter is a material consideration in relation to the assessment of housing supply. Within this boosting of the supply of housing is a clear recognition of the importance of providing affordable homes

(NPPF paragraph 62) as this will help meet the needs of specific groups (paragraph 60).

Housing White Paper (Aug 2020)

5.101. The content of the White Paper is a further material consideration relevant to the assessment and determination of the Appeal proposal.

5.102. It expands upon certain of the above publications, highlighting the fact that the country does not have enough homes and that the housing market is broken. The introduction identifies the cause as being very simple: the lack of supply. Accordingly, the proposals set out how the Government intends to boost housing supply.

5.103. These recent publications and announcements highlight the importance and therefore weight to be given to increasing the supply of housing land.

Governments Announcements December 2022

Written Ministerial Statement (Dec 2022)

5.104. On 6th December 2022, the Secretary of State for Levelling Up, Housing & Communities Minister for Intergovernmental Relations, made a Written Ministerial Statement (“WMS”) in which announcements were made about the government’s intentions to make further changes to the planning system alongside those in the Levelling Up and Regeneration Bill.

PINS NOTE 14/2022

5.105. The implications of the WMS were considered in the PINS NOTE 14/2022, where paragraph (3) states as follows:

“A WMS is an expression of government policy and, therefore, capable of being a material consideration (or important and relevant) in all casework and local plan examinations. It should be noted, however, that this WMS

states that further details of the intended changes are yet to be published and consulted upon.”

5.106. Paragraph (5) provide greater clarity, stating as follows:

“No action is required in any casework areas, at present, as the WMS sets out proposals for consultation rather than immediate changes to government policy. Consequently, the starting point for decision making remains extant policy, which we will continue to implement and to work to until such time as it may change.”

5.107. I have considered the Appeal in this context.

NPPF - Consultation Changes

5.108. I note the changes proposed in the consultation draft NPPF, including in relation to the approach to five year housing land supply. However, and for the reasons set out in PINS NOTE 14/2022, sets out proposals for consultation rather than immediate changes to government policy. Consequently, the starting point for decision making remains extant policy. The suggested changes only carry limited if any weight.

5.109. There may be further updates that may need consideration in oral submissions at the Hearing.

Five Year Housing Land Supply Statement (Dec 2022)

5.110. Wealden District Council's latest position is set out in their April 2022 Position Statement, and purports to be able to show 3.92 year supply of deliverable housing land for the period 1st April 2022 to 31st March 2027.

5.111. This results in a shortfall of 1,566 dwellings. As such, and on their own assessment, the Council is not able to demonstrate a five-year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.

5.112. I summarise my assessment of the five year housing land supply position in section 6 below.

Affordable Housing

5.113. The Appeal Scheme proposes the on-site provision of 35% affordable homes, achieving a policy-compliant level of affordable housing provision.

5.114. Paragraphs 20(a), 60 and 62 of the NPPF sets a strong emphasis on the delivery of sustainable development including affordable homes, within the context of the Government's aim to "boost significantly the supply of homes".

5.115. The acute affordable housing need reinforces the merits of the Appeal Scheme with the on-site provision of up to 101 affordable dwellings.

5.116. I consider that substantial weight is attributable to the benefits associated with the provision of affordable housing as part of the Appeal Scheme, which matter I consider further in section 6 below.

6. FIVE YEAR HOUSING LAND SUPPLY AND AFFORDABLE HOUSING

Five Year Housing Land Supply

- 6.1. As set out in sections 1 and 5 above, the Council is not able to demonstrate a five year supply of deliverable housing land. This triggers the presumption of sustainable development at paragraph 11(d) of the NPPF.
- 6.2. The Council's Five Year Housing Land Supply Statement for 1st April 2022 was published in December 2022 and covers the five year period 1st April 2022 to 31st March 2027 (**WB4**). It only shows a 3.92 year supply of deliverable housing land supply, representing a substantial shortfall of 1,566 dwellings. This represents a material consideration of significant weight in support of the Appeal Scheme.
- 6.3. I have carried out a review of the five year land supply position and I identify a 3.35 year supply of deliverable housing land, representing a shortfall of 2,407 dwellings. Details are included in the accompanying Five Year Housing Land Supply Review (Jan 2023) (**WB5**).
- 6.4. The Appellant and the Council will seek to agree a position on housing land supply matters in a Statement of Common Ground ("SoCG").
- 6.5. The respective positions are summarised in Table 3 below.

Table 3: *The Respective Five Year Housing Land Supply Positions at 1st April 2022 to 31st March 2027*

	Council	Appellant
Requirement 2022 to 2027	7,272	7,272
Deliverable supply	5,706	4,865
Shortfall	-1,566	-2,407
No. of years supply	3.92yrs	3.35yrs

- 6.6. On either position, the shortfall is substantial.

- 6.7. As confirmed in case law, the extent of the shortfall is relevant to the weight that can be given to out-of-date policies, as well as to the benefits of housing delivery. Accordingly, whilst the Council concedes that it is unable to demonstrate an up-to-date five-year housing land supply, the extent of the shortfall is material to assessing the merits of housing delivery from the Appeal Scheme.
- 6.8. Even on the Council's figures, the shortfall is substantial. In this context, delivery of 290 dwellings from the Appeal Scheme attracts substantial weight in the overall planning balance.

Affordable Housing

- 6.9. There is an acute need for affordable housing within the District.
- 6.10. This is confirmed in recent appeal decisions in the district, including that on land at Old Nursery House, The Street, Framfield (**WB10**)¹¹ allowed on 5th January 2023 where the Inspector (paragraph 68) concluded:

In addition, the evidence before me shows that delivery of affordable housing in the district has been substantially below the level of identified need for at least the last few years, and the main parties agree that there is an acute need for more affordable homes in Wealden. The proposal includes 35% affordable housing which would provide for up to 20 affordable homes, and I afford substantial weight to this benefit. I also give significant weight to the provision for 5% of dwellings as self-build or custom-build which would contribute to meeting needs.

- 6.11. This clear need for affordable housing should be resolved to reflect the advice nationally and locally. Paragraphs 20 and 61 of the NPPF sets a strong emphasis on the delivery of sustainable development including affordable homes, whilst paragraph 60 clearly sets out the Government's aim to "boost significantly the supply of homes.

¹¹ LPA ref WD/2021/0573/MAO and PINS ref APP/C1435/W/22/3301104.

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- 6.12. The need for affordable housing and the importance in achieving sustainable development is emphasised in many government publications, including House of Commons Committee of Public Accounts – Planning and the Broken Housing Market (19th June 2019).
- 6.13. The provision of affordable housing is a key part of the planning system. A community's need for affordable housing was first enshrined as a material consideration in PPG3 in 1992 and has continued to play an important role in subsequent national planning policy, including the National Planning Policy Framework (2012, 2018, 2019 and 2021 versions).
- 6.14. The National Planning Policy Framework (NPPF) is a material planning consideration. It is important in setting out the role of affordable housing in the planning and decision-making process.
- 6.15. The NPPF sets a strong emphasis on the delivery of sustainable development, including affordable homes, at paragraphs 20 and 62.
- 6.16. Paragraph 60 clearly sets out the Government's aim to "boost significantly the supply of homes". To both achieve higher housing supply and address the needs of the whole community, paragraphs 61 and 62 indicate:

61. To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.

62. Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers²⁵, people who rent their homes and people wishing to commission or build their own homes²⁶). (My underlining)

6.17. The need for affordable housing and the importance of its provision is emphasised in many Government publications, including:

- Planning and the broken housing market, Committee of Public Accounts, House of Commons (June 2019)
- Reaffirmation of the Government support for affordable housing in press release of 6th July 2020¹²
- Planning White Paper – August 2020

Affordable Housing Delivery and Supply in Wealden

6.18. Policy AFH1 of the Affordable Housing Delivery Local Plan sets out a 35% affordable housing requirement on schemes of 5 or more dwellings.

6.19. The supporting text to Policy AFH1 (paragraph 2.2) notes that the Council's commissioned local housing needs survey in 2009 confirmed an annual need to 812 affordable homes.

6.20. Whilst the more recent Wealden District SHMA (2016) identified an annual need for 331 affordable homes from 2013 to 2033, this is still a significant need as illustrated in the Council's achievement of delivery.

6.21. This is shown in Table 4 below, alongside the extent provision has achieved that assessed in the Council's Local Housing Need Assessment (LHNA) (August 2021) which indicates that at least 519 affordable homes are required annually 2019-39 (Table 7.16).

6.22. As indicated in Table 4, the Council has delivered 1,555 affordable homes in the period April 2013 to March 2022. This is equivalent to an average rate of 172.8 affordable dwellings per annum since 2013.

¹² <https://www.gov.uk/government/news/jenrick-acts-to-safeguard-affordable-homes-during-pandemic>

Table 4: Affordable Housing Completions compared to SHMA and LHNA

Year	Net Affordable Delivery	Compared to SHMA (2016)		Compared to Local Housing Need Assessment (2019-39)	
		331dpa	Annual Shortfall	5196dpa	Annual Shortfall
2013/14	201	331	-130		
2014/15	193	331	-138		
2015/16	82	331	-249		
2016/17	81	331	-250		
2017/18	144	331	-187		
2018/19	130	331	-201		
2019/20	273	331	-58	519	-246
2020/21	275	331	-56	519	-244
2021/22	176	331	-155	519	-343
Total	1,555	2,979	-1,424	1,557	-833

6.23. The delivery of affordable housing falls considerably short of the 331dpa or 519dpa requirements in the SHMA or the LHNA.

6.24. Compared to the SHMA, cumulative under-delivery is 1,424 dwellings (a 48% shortfall). Compared to the LHNA, there is a cumulative deficit of 833 dwellings (53.5% shortfall). These very significant shortfalls affect the District and how it functions in an economic, social and environmentally sustainable way.

6.25. On the basis of the available evidence, it is clear that there is a significant need for additional affordable homes and the delivery of affordable housing against the identified need has been woeful.

6.26. In addition to the under-delivery of affordable housing compared to that assessed within the SHMA and LHNA, it is also necessary to consider how the District's housing waiting list has also been affected by the under-delivery of affordable homes. This is shown in Table 5 below.

Table 5: Extent of housing waiting list in Wealden District¹³

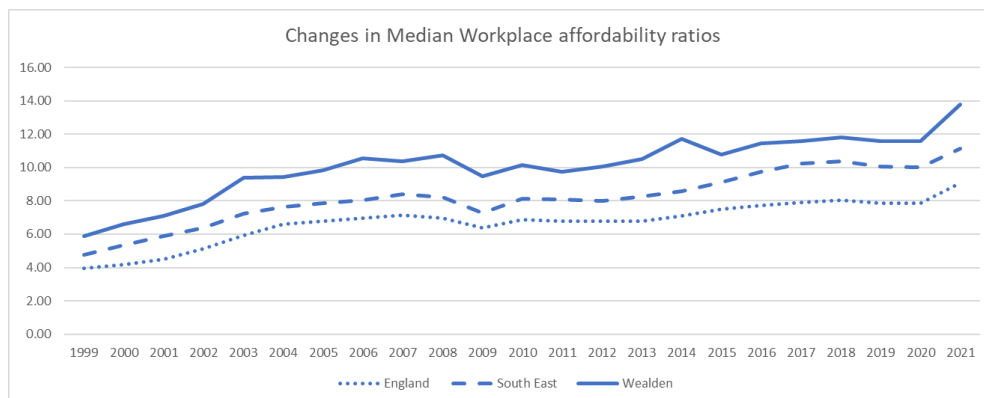
	1/4/15	1/4/16	1/4/17	1/4/18	1/4/19	1/4/20	1/4/21	1/4/22
Households on waiting list	1,012	962	1,013	794	671	796	629	552
Households in reasonable preference category	506	388	537	407	347	448	371	252
Homeless	51	58	51	20	0	5	11	13

Future Affordable Housing Supply in Wealden

- 6.27. The future delivery of affordable housing in Wealden District is highly uncertain.
- 6.28. In addition to the existing very significant shortfall, there is also the question of whether future needs will be met with annual need for at least a further 331 affordable homes (SHMA) or 519 affordable homes under the LHNA.
- 6.29. This has the potential to make the situation even more severe, not just for Wealden District's vulnerable position on housing land supply, but for the significant number of households on the Council's Housing Register on 1st April 2022 as indicated in the above table.
- 6.30. Paragraph 62 of the NPPF requires that the needs of groups with specific housing requirements are addressed, which includes those requiring affordable housing. There is no evidence that this will be achieved in Wealden District.
- 6.31. The failure to meet the identified needs of affordable housing is a dire situation indicating that the Council is not fulfilling the objectives at paragraph 61 of the NPPF.

¹³ Data from [Local authority housing data - GOV.UK \(www.gov.uk\)](https://www.gov.uk/local-authority-housing-data).

- 6.32. The continued under delivery of affordable housing, has contributed to the worsening of the affordability ratios in the District as indicated in the chart below:



- 6.33. The chart also shows that affordability ratios in Wealden District have more than doubled between 1999 (5.88) and 2021 (13.76), and whilst they starting to increase in parallel with those of the South East region from 2015 to 2020, the most recent results indicate a significant divergence with a very substantial worsening.
- 6.34. This doubling in the affordability ratio has occurred because of a failure to deliver sufficient homes to meet market and affordable need in the District. This is illustrated by the divergence of the affordability ratio for the district from those for both England and the Region. Consequently, it is essential that further increases in house building occurs to improve affordability, especially given the continual under-delivery in supply.
- 6.35. A step change in the delivery of affordable housing is therefore required to begin to address the dysfunctions of the local housing market. Such a step change would be consistent with the thrust of paragraph 60 of the NPPF, to boost significantly the supply of homes.

Weight to be Afforded to the Proposed Affordable Housing

- 6.36. The social need for affordable housing is an important material planning consideration and making social progress in tackling such needs is an important element of sustainable development running through the NPPF.

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- 6.37. The importance of affordable housing as a material consideration has been reflected in a number of Secretary of State (SoS) and Planning Inspector decisions. A consistent theme is the significant amount of weight which is attached to affordable housing relative to other material planning considerations in the planning balance.
- 6.38. Of particular relevance is the weight to be attached to affordable housing provision even in situations where Councils believe they have a sufficient supply of housing land.
- 6.39. With regard to land off Watery Lane, Curborough, Lichfield, Secretary of State Decision (13th February 2017) (APP/K3415/A/14/2224354), the Secretary of State's decision letter at paragraph 44 confirmed an existence of a five year housing land supply (**WB23**).
- 6.40. Notwithstanding, the Secretary of State still attached "Very substantial weight" to the benefits of the provision of affordable and market housing (paragraph 53).
- 6.41. As part of the planning balance and overall conclusion, the Secretary of State also gave modest weight to the landscape and visual harm from the development, considerable weight to the harm to the setting of heritage assets and considerable weight to the loss of veteran trees and ancient hedgerows (paragraph 54). Despite this, the Secretary of State at paragraph 55 concluded that the social and economic benefits of providing affordable and market housing were of such importance that they outweighed this environmental harm such that the proposal represented sustainable development.
- 6.42. This is a clear example of where the provision of housing, including affordable housing, despite the existence of a five year housing land supply, represented significant benefits and a weighty material consideration that outweighed environmental harms.

- 6.43. In the Secretary of State's decision in the appeal for 121 dwellings on land north of Dark Lane, Alrewas (**WB5, HLS9**), he stated (paragraph 49):

"The Secretary of State notes that since the inquiry closed, the Council's affordable housing requirement for the site has increased from 25% to 31%. The Secretary of State agrees with the Inspector for the reasons given (IR12.71) that the need for affordable housing in the district is acknowledged to be acute and, therefore, the affordable housing element of the scheme should carry substantial weight" (My underlining)

- 6.44. In paragraph 60, he concluded:

"Weighing in favour of the proposal for the reasons given above he attaches substantial weight to the benefits of the provision of affordable housing and also attaches further significant weight to the benefits of market housing. In doing so he considers that the appeal proposal advances the social and economic roles identified in paragraphs 7 and 8 of the Framework which are not diminished owing to the Council now being able to demonstrate a five year supply." (My underlining)

- 6.45. The benefits of affordable housing were also acknowledged by the Inspector in the appeal for up to 180 dwellings on land at Deerlands Road, Wingerworth (**WB5, HLS10**).

- 6.46. Paragraph 54 of the decision notes, in relation to the need for and weight to be attributed to the provision of affordable housing:

"In addition, the need for affordable housing is agreed by the parties to be acute and significant. The Council criticised some of the details of the appellant's approach towards consideration of affordable housing at the Inquiry, but it is clear that there is a very significant need for affordable housing in the District, and that there is very considerable doubt as to delivery. Even if one accepts the Council's position that there is a pipeline of affordable housing coming forward in Wingerworth - which is far from clear - the

provision of 40% affordable housing in the appeal scheme is a benefit. This is a very significant material consideration weighing in favour of the appeal scheme.”

- 6.47. Paragraph 72 states that the **“provision of affordable housing weigh in favour of the appeal”** before paragraph 75 concludes as follows:

“Although I have concluded that there is a five year housing land supply in the District, based on the standard methodology, this is not a ceiling and the provision of general needs housing is a significant material consideration in the light of national policy. In addition the provision of 40% affordable housing is a very significant material consideration weighing in favour of the appeal scheme.”

- 6.48. This acceptance of the benefits of affordable housing is also recognised in an appeal for land off Satchell Lane, Hamble-le-Rice for up to 70 dwellings (**WB5, HLS8**). Notwithstanding the Inspector’s conclusion that the Council was able to show a five-year supply of deliverable housing land, paragraph 47 of the decision states in relation to the provision of affordable housing as follows:

“The Council gave evidence as to how the authority has managed to achieve its current housing land supply position and the parties agreed that the Council can demonstrate a five year land supply. The Council’s evidence was that there is a figure of 7.8 years, with the appellant evidencing a 7.2 year supply. Both parties agreed that there is no need to explore the reasons for this slight difference further. At the close of the Inquiry it was suggested by the Council that the figure is around 10 years on the basis of recently released data. However again there is no need to explore this further. Overall, despite the presence of significantly more than a five year supply, the provision of market and affordable housing weighs significantly in favour of the proposal, in the light of the national policy to significantly boost the supply of homes.”
(Our emphasis underlined)

- 6.49. Paragraph 64 of the decision concludes as follows:

“As agreed by the Council, the economic and social benefits of the proposal are worthy of significant weight. Given the national objective of significantly boosting the supply of homes, the provision of market and especially affordable housing carries significant weight. I appreciate the Council’s point that the economic benefits related to short term construction jobs, and the longer term boost to local spending power, could arise from any similar development. However that does not detract from the fact that this particular development offers these benefits, which I accord significant weight.” (My underlining)

- 6.50. The Hamble-le-Rice Inspector’s decision was reviewed through the Eastleigh Borough Council v Secretary of State judgement ([2019] EWHC 1862 (Admin)) (**WB21**). In paragraph 18, the judge acknowledged:

“Despite the presence of significantly more than a 5YHLS, the provision of market and affordable housing weighed significantly in favour of the proposal in light of the national policy to significantly boost the supply of homes.”

- 6.51. Paragraph 20 adds:

“As agreed by the Council, the economic and social benefits of the proposal were worthy of significant weight and, given the national objective of significantly boosting the supply of homes, the provision of market and especially affordable housing carries significant weight.”

- 6.52. The above decisions emphasise the great weight which the Secretary of State and Inspectors have, on various occasions, attached to the provision of affordable housing in the consideration of planning applications and appeals. The appropriateness of attributing great weight to the benefits of affordable housing has also been accepted by the Courts.

- 6.53. Some of the key points that arise are that:

- i. Affordable housing is an important material consideration;
- ii. Affordable housing can be considered in its own right;

-
- iii. The importance of unmet need for affordable housing being met; and
 - iv. Even where there is a five year housing land supply (which does not apply in this case), material benefits arising from affordable housing can still justify the grant of planning permission despite harm/development plan policy conflicts.
- 6.54. The above has set out the context for applying planning policy, and the planning benefits of the Appeal scheme associated with the affordable housing part of the scheme, to be weighed in the overall planning balance.

7. THE MAIN ISSUES

7.1. This section of the Planning Statement summarises the Appellant's case in relation to the acceptability of the Appeal Scheme.

7.2. The main issues are considered to comprise the following:

1. Principle
2. Highways & Transport
3. Drainage
4. Dwelling Mix and Tenure
5. Character and Landscape
6. Heritage
7. Ancient Woodland
8. Ashdown Forest, SANG Provision and Ecology
9. Agricultural Land Quality
10. Energy and Sustainability
11. Planning Obligations
12. Development Plan Compliance and Overall Planning Balance

Principle (including five year housing land supply)

7.3. The presumption in favour of sustainable development (or 'tilted balance') is engaged on account of the inconsistency between the development plan and the NPPF. This includes in relation to the spatial application of its policies being out of date; and in relation to the lack of a five year supply of deliverable housing land. Either issue separately triggers the presumption in favour of sustainable development.

7.4. The Council acknowledges that planning settlement boundaries as defined in the development plan may need to be breached to satisfy the local housing need identified through the standard method.

- 7.5. As to five-year housing land supply, the Council's latest position is set out in their Supply Statement at 1st April 2022 purports to be able to show a 3.92 year supply of deliverable housing land for the period 1st April 2022 to 31st March 2027.
- 7.6. This results in a shortfall of 1,566 dwellings. As such, and on their own assessment, the Council is not able to demonstrate a five-year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 7.7. However, and on my analysis, the actual shortfall is greater still. As confirmed in case law, the extent of the shortfall is relevant to the weight that can be given to out-of-date policies, as well as to the benefits of housing delivery. Accordingly, whilst the Council concedes that it is unable to demonstrate an up-to-date five-year housing land supply, the extent of the shortfall is material to assessing the merits of housing delivery from the Appeal Scheme.
- 7.8. The Appellant also reserves the right to review the five-year housing land supply case should the Council publish more recent information ahead of the Hearing.
- 7.9. In the circumstances, the weight to be attributed to the conflict between the location of the Appeal Site adjacent to, but beyond the settlement policy boundary for Uckfield is significantly reduced. This is the only development plan policy conflict that is said by the Appellant's to be occasioned by the Appeal Scheme. All other policy tests are satisfied.

Highways and Transport

- 7.10. The Appellant's highway case is advanced in **WB2**.
- 7.11. The assessment of the scheme's highway impacts has been an integral aspect of the scheme from the outset, with pre-application meetings and discussions convened with the Highway Authority since September 2019.

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- 7.12. In turning to the potential highway impacts, development of the site for up to 290 dwellings and a strategic SANG could generate in the region of 148 two-way movements during the morning peak hour, and 152 two-way movements during the evening peak hour.
- 7.13. Capacity assessments have been undertaken at the two critical town centre signalised junctions and at the site access.
- 7.14. In order to accommodate the increase in traffic from the proposed development in the town centre, it is proposed to improve the existing junctions by linking the two signalised junctions via a SCOOT type system.
- 7.15. The proposed improvements provide sufficient capacity at the two junctions to accommodate the proposed development traffic and will provide an overall highway benefit at the junctions within the centre of Uckfield.
- 7.16. The capacity assessment of the proposed site access demonstrates that it will operate comfortably, with very limited queuing and delay, and reveals that a right-turn lane is not required.
- 7.17. With the introduction of the proposed SCOOT system the application proposal can bring about real terms improvements to the highway conditions within Uckfield thereby representing a significant benefit arising from the scheme.
- 7.18. Both the NPPF and Policy EN2 seek to ensure new development is located where it will encourage sustainable transport.
- 7.19. National Travel Survey data reveals the majority of trips (80%) under one mile (1.6km) are undertaken on foot, and 15% of journeys between 1 and 5 miles (1.6 to 8km) are usually undertaken on foot.
- 7.20. Providing new homes on the Appeal Site, within 1.2km of the facilities available within Uckfield, gives a real opportunity for the majority of trips to be made on foot and by bicycle thereby contributing towards sustainable modes of transport and corresponding reduction in traffic emissions.

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- 7.21. Access can be gained to local shopping facilities, health facilities, eating and drinking establishments, schools and nurseries.
- 7.22. A shared footway/cycleway link from the site will be provided to the existing footway on Bird in Eye Hill.
- 7.23. Bus stops and Uckfield railway station are located within easy walking distance from the site, providing access to frequent bus and rail services to the surrounding area.
- 7.24. A considerable package of measures is proposed to mitigate the impact of the development, which matters are summarised as follows:
- Extension to 30mph speed limit to enhance sustainable modes of transport:
 - Bus stop improvements;
 - Bus service improvements;
 - Improvements to the on-street parking regime along Framfield Road, to improve vehicle flow and safety.
 - Install SCOOT system and two town centre junctions to increase capacity.
 - Provide shared footway/cycleway from the site to Bird in Eye Hill.
 - Car-club scheme
 - Framework Travel Plan
- 7.25. Numerous discussions and meetings have taken place with the County Highways Authority (“CHA”), which matters are summarised in the Transport Assessment Second Addendum (Sept 2022).
- 7.26. Preparation and submission of that document was in response to the consultation comments received from the CHA. And whilst it is not felt necessary by the Appellant’s, the Scheme access has nevertheless been revised to respond to CHA’s request for a right turn lane.

- 7.27. As such, the Site access will incorporate a right turn lane which meets all relevant design guidance and is not reliant on the proposed speed limit reduction at this location (Plan Ref: 5330/021 Rev. H).
- 7.28. With the proposed mitigation measures in place, the Scheme will not have a severe impact on highway safety and the flow of traffic along Bird in Eye Hill or within Uckfield town centre thereby complying with Policies EN2 and TR3 of the Local Plan and Section 9 of the NPPF.

Drainage

- 7.29. As set out in the submitted Flood Risk Assessment, a sequential approach has been applied to the development masterplan. The proposals for residential dwellings constitute a **More Vulnerable** land use, which is considered appropriate within Flood Zone 1 and 2 (reference PPG: Tables 2 in *Paragraph 066 Reference ID: 7-067-20140306* and Table 3 in *Paragraph: 067 Reference ID: 7-067-20140306*).
- 7.30. As all built development lies entirely within Flood Zone 1, the requirements of the Sequential and Exception tests are met.
- 7.31. The flood risk mitigation strategy for the development consists of the following elements:
- The proposed ground floor levels are set at a minimum of 300mm above the 1 in 100 annual probability plus allowance for climate change level; and
 - Continuous safe access from the site is provided at the 1 in 100 annual probability plus climate change flood level.
- 7.32. The Surface Water Drainage Strategy has been developed using best practice Sustainable Drainage System (SuDS) techniques. Guidance on suitable techniques and methods has been obtained from the EA, the Non-Statutory Technical Standards for Sustainable Drainage Systems, East Sussex County Council's Local Flood Risk Management Strategy and '*The SuDS Manual*' (CIRIA C753) amongst other sources.

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- 7.33. As set out in the Updated Surface Water Drainage Strategy Following Infiltration Testing (Stantec) (Jan 2022), which content supersedes the submitted Flood Risk Assessment, the surface water drainage strategy ("SWDS") promotes the discharge of surface water via infiltration. As such, the SWDS will have no interaction or impact on designated woodland.
- 7.34. Foul water, or effluent, flows from the site will be managed in a new sewer network, which will connect into the existing public foul sewer network in Framfield Road/Bird in Eye Hill.
- 7.35. The foul and surface water drainage strategy is included at Appendix G to the FRA; with the amended outfall location now shown in the Drainage Technical Note included at **Appendix C to WB1**.
- 7.36. As I confirm at paragraphs 4.35 to 4.39 above, an underground outfall pipe is proposed to be installed from the north-east corner of the south-eastern attenuation basin, with the outfall pipe running northwards to a discharge point along the Framfield Stream to the north-west, avoiding *any* construction activity within the 15m Ancient Woodland buffer.
- 7.37. Overall, the drainage strategy demonstrates that the proposed development in accordance with the requirements of national and local planning policy.

Dwelling Mix and Tenure

- 7.38. Whilst submitted in outline, with only the principle of the development and means of access to be considered, it is nevertheless important to consider the underlying need to provide for a range of house size, mix and tenure.
- 7.39. Whilst the emerging Local Plan was withdrawn from examination following concerns raised by the Local Plan Inspector, the evident base behind it is still important in framing the latest up to date need for a range of house types within the District.
- 7.40. The SHMA (2016) that helped inform the, now withdrawn, Local Plan states that the district needs predominantly 2 and 3 bedroom properties that together make up approximately 75% of total need.

7.41. The breakdown is as shown below:

- 1 bedroom – 7.8%
- 2 bedroom – 42.8%
- 3 bedroom – 32.4%
- 4 bedroom – 12.3%
- 5 + bedrooms – 4.8%

7.42. The Appeal Site, and the corresponding quantum of development will provide for a range of dwelling size and type that reflects the findings of the latest up to date evidence to ensure it provides for dwellings that appeal to all members of the community.

7.43. The Appeal Scheme will also provide for a policy compliant quantum of affordable housing which is currently set at 35%. This would generate up to an additional 101 affordable houses, a significant benefit in its own right.

7.44. As with dwelling mix; the illustrative layout allows for a series of smaller blocks which incorporate design elements such as natural surveillance to ensure the scheme is designed to reduce crime. As such, development of the Site can accord with Policies HG5 of the Local Plan and the overarching aims of the Core Strategy.

Character and Landscape

7.45. The Appellant's landscape case is set out in the Hearing Statement prepared by Clive Self (CSA Environmental) (Jan 2023) (**WB3**).

7.46. The Appeal Site is split into two distinct parts, the northern, flatter area enclosed by the band of ancient woodland and the more undulating southern part where the proposed SANG land would be located.

7.47. The northern part of the site is currently used for horse-grazing, it is adjoined by existing housing along Bird in Eye Hill, and within it lies Bird in Eye Farm, which has a number of commercial enterprises. This part of the site overlooks Uckfield, from where the town can be seen rising up the opposite slope from Framfield Stream.

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- 7.48. The southern part of the Site is predominantly bound by woodland, giving it an enclosed character, which separates it from the town.
- 7.49. A band of dense woodland separates the northern part of the Site from the southern part and also extends along part of the western boundary, it is this which is classified as 'Ancient Woodland'. The site has three trees identified as veteran, a Common Ash tree, on the edge of the ancient woodland and two English Oak trees, close to the eastern boundary. The ancient woodland and the veteran trees will be retained thereby respecting the existing characteristics of the landscape.
- 7.50. Importantly the landscape of the site is not designated for its landscape character or quality and as such the site is in this regard an unconstrained site. Views of the northern part of the site are available from parts of the town to the west and for a short section of Bird in Eye Hill when adjacent to the site. There are views of the southern part of the site along public footpath Framfield 65b as it follows the internal site boundary, but from here, there are no views of the northern part of the site, due to the intervening woodland.
- 7.51. The landscape-led design will provide housing in the northern part of the site only, while protecting and retaining the vast majority of the existing woodland, trees and hedgerows. The illustrative layout provides a wide viewing corridor to the Grade II Listed The Oast, with a children's play area and planting within it.
- 7.52. The new housing would be set away from the Ancient Woodland and veteran trees, beyond a buffer of at least 15m.
- 7.53. Open, landscaped areas are to be retained either side of the retained hedgerow and tree belt. These areas will be part of the extensive new public open space around the housing parcels. Trees are proposed to be planted, for amenity value as well as for biodiversity benefits, within the open space. Street trees will provide visual and wildlife connectivity between the streets and public open space.
- 7.54. In addition, the large area of SANG, discussed in detail below, will provide a significant resource for the community and the larger area, as well as

biodiversity benefits whilst respecting the character of the landscape through the retention of existing landscape features.

7.55. Section 8 of the accompanying Landscape Hearing Statement prepared by Mr Clive Self (**WB3**) concludes in relation to the acceptability of the scheme in landscape terms as follows:

- i. The Site has a varying character with the southern part being intact farmland with a strong relationship to the neighbouring countryside. This area is separated from the northern part, both physically and visually, by Bird in Eye Shaw. The southern part of the Site will be kept free of development and will provide a SANG, which will bring benefits for mankind and wildlife alike.
- ii. The area of land to the north of Bird in Eye Shaw and south of Bird in Eye Hill has a rural fringe character and a number of detracting features within it, such as the commercial buildings which sit within the centre of the Site. There is also intervisibility with the eastern edge of Uckfield.
- iii. The masterplan can be accommodated on the Site without giving rise to any significant adverse landscape, townscape or visual effects. It will complement the character of Uckfield and the neighbouring landscape and provide significant wildlife and recreational benefits, amongst other things.

7.56. It is evident from the above that the landscape has been an integral element of the design process with the findings of the accompanying LVIA demonstrating this. As such the Scheme complies with the aims of Saved Local Plan Policy EN12.

Heritage

7.57. There are no listed buildings or structures within the Application Site, but Bird in Eye Farm is located within the centre of the northern section of the Site, although outside the site boundary.

7.58. Within the farmyard there is a listed building, The Oast and to the east of the proposed SANG in the southern section of the site there are two listed buildings, Framfield Place and the Stables to the West of Framfield Place.

7.59. The proposed development has been designed to avoid any harmful impact on these listed buildings and to enhance the existing experience of The

Oast.

- 7.60. The Oast is listed Grade II and is located in the centre of the group of buildings that comprise Bird in Eye Farm, facing the west half of the Appeal Site. It is the only listed building within the farm and sits within a cluster of older farm buildings and is the only building that has escaped significant alteration or adaption.
- 7.61. The Oast is a rare and unique example of a hop kiln which included internal flues, with a furnace below, to heat the drying floor where the hop blossoms were laid out to dry. This design is different to the vast majority of kilns built in the 18th and 19th centuries.
- 7.62. The building is listed because of what it tells us about the development of hop production at this time, not because of its age or its architectural qualities.
- 7.63. This means that unlike other rural or agricultural buildings, The Oast is not considered important because of the way it is seen within the landscape like other agricultural buildings such as historic barns or granaries.
- 7.64. The special interest of the building lies in its technical innovation, not the age of the building or its relationship to the landscape. However, the Appeal proposals provide an opportunity for the building to be seen and experienced within the landscape in a way that is not possible at present and in that way, to be better understood and appreciated.
- 7.65. To provide new and enhanced views of the listed building from within the Appeal Site, the illustrative layout includes an area of public open space alongside the western boundary of the farm. This area is of a sufficient size to allow The Oast to be seen and understood as a former agricultural building and the development proposals would therefore provide new opportunities to see and experience the listed building.
- 7.66. The way in which the proposed housing is laid out also provides new views from the south to the listed building where the top of the building would be visible, and its distinctive cowl seen and easily recognised.

- 7.67. The southern part of the site would be public open space and so the impact on the immediate area around these fields would be negligible. They would remain as open areas of pasture or grassland and would not result in any change to Framfield Place and the Stables to the West of Framfield Place, to the east of the application site.
- 7.68. The proposed layout provides for new, enhanced views of The Oast as part of the masterplan and these new views are considered a heritage benefit because they would open up and enhance the setting to the listed building within the south and east of the site. At present, there are no public views of The Oast from within the fields around the building and so the proposals would provide an opportunity for an increased appreciation and understanding of the listed building within the application site itself.
- 7.69. Paragraph 202 of the NPPF ensures that where there is less than substantial harm to a heritage asset, such harm should be weighed against the public benefits of the proposal. In this case, the enhancements to the public views of and understanding of The Oast it is clear the Scheme is a positive and are to be considered alongside the less than substantial harm caused by the provision of housing development within the setting of The Oast. Overall, the Scheme would result in negligible harm, at the lowest end of the less than substantial scale.
- 7.70. As set out in **WB24**, the Council's Heritage Officer's consultation response confirms no heritage harm. As such, the paragraph 202 balance is not even engaged on the Council's case.
- 7.71. The previous Secretary of State decision also considered the Appeal Site could be developed absent harm to the designated heritage asset at the Oast, concluding that the setting of the building would not be materially harmed (section 2 above refers).
- 7.72. As to the footnote 7 considerations set out in the NPPF, the heritage assessment of the Appeal Scheme, finding less than substantial harm within the lowest level of the less than substantial scale, engages the 'heritage balance' at paragraph 202 of the NPPF. This requires any harm to be

weighed against the public benefits of the proposal.

- 7.73. I am of the view that the many public benefits (economic, social and environmental), demonstrably outweigh the negligible heritage harm that has been identified (to which great weight is attached).
- 7.74. Overall, in accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the witnesses for the Appellant have paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess. This will be explained in evidence.

Ancient Woodland

- 7.75. For the reasons set out at **WB1** (paragraphs 4.1 to 4.11), paragraphs 4.35 to 4.39 and 7.35 to 7.36 above, the Appeal Scheme will have no adverse impact upon Ancient Woodland. As such, Ancient Woodland is not a footnote 7 consideration that would disengage the presumption in favour of sustainable development and/or provide a clear reason for refusing planning permission.

Ashdown Forest, SANG Provision and Ecology

- 7.76. The Appellant's ecology case is set out in the Hearing Statement prepared by Mark Rose (CSA Environmental) (Jan 2023) (**WB1**).
- 7.77. A circa 26ha SANG is proposed as an integral part of the scheme design, and secures mitigation for potential recreational impacts to Ashdown Forest Special Protection Area (SPA).
- 7.78. Using the metric of 8ha of SANG per 1,000 population (which metric is applied by Natural England and Wealden District Council), the delivery of a 26.17ha SANG has the capacity to provide mitigation for c. 3,271 new residents or 1,363 dwellings (using a 2.4 residents / dwelling factor).

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- 7.79. Predicted occupancy rates (based on 2.4 people per dwelling), will result in circa 5.57ha SANG land being required as mitigation for the proposed up to 290 dwellings (696 new residents), leaving a headroom capacity of circa 15.6ha which could potentially become available for mitigation of future local development of up to 1,073 dwellings or 2,575 new residents (using a 2.4 residents / unit factor).
- 7.80. As such, the strategic-SANG could be used to help mitigate the recreational impacts of future housing schemes elsewhere in and around Uckfield upon the Ashdown Forest SPA. In my opinion, this represents a substantial benefit in the overall planning balance.
- 7.81. The SANG proposals include areas of plantation woodland, ancient woodland and grassland. Residents will be able to use this area for walking and dog exercising, with visitors and their dogs having open access over SANG land at all times without restriction.
- 7.82. There will be direct access to the SANG from the proposed development, with a 30-space car park also in place. Direct access to existing footpaths, leading from the town of Uckfield, will allow residents to easily enjoy the SANG.
- 7.83. A circular walk of c. 2.7km will be created within the SANG, with additional shorter walking routes and access through woodland areas also being provided. Enhancement of existing habitats and creation of new areas of woodland and tree planting, wildflower meadows and new ponds will provide a varied walking experience as well as increasing habitat diversity and net gains for biodiversity. Two viewpoints at the highest elevations of the Site will provide open views of the countryside to the south and east with benches in these locations.
- 7.84. Interpretation boards will be incorporated containing information regarding habitats and species present as well as walking routes, in addition to pathway signage to guide users. Dog bins will also be provided at key access points and within the parking area.

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- 7.85. In addition to the above, the accompanying ecology report acknowledges that it is best practice to avoid adverse impacts through the Mitigation by Design approach. Such an approach has been an integral aspect of the Scheme's design and evolution from the outset.
- 7.86. In this regard, the loss of trees and hedgerow has been kept to a minimum with only small sections being removed to facilitate vehicular access, the necessary 15m buffer zones to veteran trees and ancient woodland are in fact greater than the minimum required whilst such buffers will be subject to appropriate planting to strengthen the edges of the woodland.
- 7.87. Whilst there would be adverse impacts on a range of species that are found largely within the areas of ancient woodland the ecological reports recommend a range of ecology mitigation measures.
- 7.88. Such mitigation measures include the use of plant species of wildlife value, provision of bat roost facilities, dormouse nesting opportunities and barn owl hunting opportunities.
- 7.89. Overall, the Scheme secures a 40% biodiversity net gain, which I consider is a substantial benefit.
- 7.90. The ecology report concludes that subject to such mitigation measures and others including construction management plans the proposal will, in ecological terms comply with local policies, particularly WCS12 and WCS13 of the Core Strategy and the overarching aims of the NPPF.

Agricultural Land Quality

- 7.91. Paragraph 174 of the NPPF ensures, inter alia, that planning policies and decisions recognise the benefits that the best and most versatile agricultural land can bring.
- 7.92. Whilst the site covers a large area, the accompanying Agricultural Land Classification Report concludes that the application site is comprised entirely of subgrade 3b agricultural land. As such the loss of such land would not compromise wider agricultural interests thereby complying with the aims of paragraph 174 of the NPPF.

Energy and Sustainability

- 7.93. The Energy Statement demonstrates how the Appeal Scheme accords with the requirements at Policy WCS14 of the Wealden District Core Strategy (2013). This is achieved by outlining the predicted energy demand and resultant carbon emissions of the development.
- 7.94. Energy efficiency measures informed by the requirements of the Wealden Design Guide Supplementary Planning Document Section 4 Sustainability, can be secured by condition.
- 7.95. Through energy efficient design and the specification of high efficiency building services a 1.0% reduction in Carbon emissions and a 1.10% reduction in energy demand has been achieved. In addition to the above the assessed dwellings fabric energy efficiency improves upon the target fabric energy efficiency by a margin of 9.53%.
- 7.96. Overall, the submitted information demonstrates compliance with Policy WCS14 and Part L1A of the Building Regulations; which matters can be secured by the imposition of appropriately worded conditions.
- 7.97. The Appeal Site is also in a sustainable location and will provide for a significant number of social public and environmental benefits. This includes providing development within walking distance from the town centre, accessible by bus whilst also creating recreational opportunities as well as enhancements to the sites biodiversity through habitat creation.

Planning Obligations

- 7.98. Matters of detail, including in relation to the likely financial contributions are to be agreed as part of the preparation of a legal agreement.
- 7.99. Subject to meeting the necessary tests at paragraph 57 of the NPPF, it is considered that the following may be provided for in a legal agreement:

- i. Affordable Housing (up 35%) (up to 101 dwellings)
- ii. Provision and management of strategic SANG land
- iii. A financial contribution towards the Ashdown Forest SAMM
- iv. Off- site highway improvement works
- v. On-site public open space provision
- vi. Sustainable Transport/Travel Plan

7.100. Wealden District is a CIL Charging Authority and financial contributions will also be secured at the reserved matters stage once the amount of proposed floorspace is fixed.

Development Plan Compliance and Overall Planning Balance

7.101. In the circumstances, where the only development plan conflict is the location of the site adjacent to but beyond the settlement policy for Uckfield, thus conflicting with the Development Plan. However, in a scenario where the Council is unable to demonstrate a five year supply of deliverable housing land, the most important policies for determining the application are out of date and the adverse impacts of granting permission, comprising the loss of countryside cannot be said to demonstrably, let alone significantly, outweigh the many benefits, such that planning permission should be granted.

8. PLANNING BALANCE

General

- 8.1. This section assesses the significant merits of the Scheme in relation to the three sustainability tests set out at paragraph 8 of the NPPF and clearly shows that whilst there are considered to be some slight adverse impacts, these considerations are plainly incapable of outweighing, let alone significantly and demonstrably outweighing, the many benefits of the Scheme.
- 8.2. Paragraph 9 of the NPPF states (amongst other things) the assessment of the sustainability roles should not be undertaken in isolation, because they are mutually dependent.
- 8.3. A planning balance exercise has been carried out in accordance with the guidance at paragraph 9 of the NPPF and sets out a combined analysis in relation to the sustainability roles (economic, social and environmental).

Economic

- 8.4. The Appeal Scheme satisfies the economic role of sustainability including through the provision of housing to support growth and the associated provision of infrastructure, to be secured through preparation of the S106 agreement and by on-site provision of 35% affordable housing.
- 8.5. The Appeal Scheme generates a series of local and District-wide economic benefits including through (i) construction of the scheme and the range of employment generated as a result; and (ii) the on-going expenditure from the households purchasing and occupying the new homes.
- 8.6. The principal economic benefits arising from the scheme are summarised below:

- i. Increased house building in an area where there is an acute need for new housing that in turn drives economic growth further and faster than any industry. In this regard the proposals will contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is being made available in the right place and at the right time to support growth.
- ii. The provision of up to 290 new homes in the district where there is an established need housing given the demonstrable shortfall in the five year housing land supply position.
- iii. The application scheme will deliver much needed affordable homes that will meet identified needs that are otherwise not being met.
- iv. Meeting general housing needs is a significant benefit, consistent with the Government's objective of significantly boosting the supply of housing.
- v. In order for the economy to function, sufficient housing is required in the right locations and at the right time. This site represents a location where there would be no significant impact upon the landscape, historic environment nor on the amenity of neighbouring properties.
- vi. Based upon a multiplier of 2.3 jobs per new home¹⁴, up to 290 dwelling Application Scheme is estimated to create approximately 667 new jobs.
- vii. Increased expenditure in the local area will support local FTE jobs.
- viii. Helping to deliver a significant boost to the local economy through 'first occupation' expenditure of £1.58m¹⁵. This is expenditure on new furniture and other household goods that residents spend as 'one-offs' when moving into a new home.
- ix. Generating a further significant economic boost of £543,859 from residents moving into the District's existing housing stock which were vacated so that the owners could move into the new homes proposed on land south of Bird in Eye, Uckfield. This is a result of the spending on renovations, household goods, removals, surveys, estate and legal fees that are associated with the purchase of existing rather than new homes within the District's housing stock¹⁶.

¹⁴ See page 13 of the Homes Builders Federation "Economic Footprint of UK Housebuilding " (July 2018) - https://www.hbf.co.uk/documents/7876/The_Economic_Footprint_of_UK_House_Building_July_2018LR.pdf

¹⁵ Research carried out by OnePoll on behalf of Barratt Homes (August 2014; <https://www.barratthomes.co.uk/the-buying-process/home-buying-advice/>) which shows an average of £5,462 per dwelling.

¹⁶ Research by HBF and Knight Frank on "Economic Benefits of housing market activity" which shows a contribution per house sale/purchase transaction of £9,560 -

- x. In terms of household expenditure, data from ONS Family Expenditure Survey 2020-21¹⁷ shows that the 'average UK household spend' is £567.10 per week (Table A33) (or £29,570 per year), whereas in South East England it is 19.4% higher than the UK average (Table A33). This means average weekly spend per household is £665.40 (or £34,696 per annum). For the application proposal at Bird in Eye providing up to 290 dwellings, the total gross expenditure is estimated to be £10.62m per year to the economy. A proportion of this household expenditure is anticipated to be spent in local shops and services and will help sustain the existing services in Wealden District including those in Uckfield. The expenditure will include that a proportion of that spent on areas including food & non-alcoholic drinks (£72.80 per week); alcoholic drinks (£13.80 per week); recreation and culture (£88.80 per week), household goods and services (£42.70) and miscellaneous goods and service i.e. hairdressing & beauty treatments (£50.50 per week).¹⁸ Given the current economic challenges facing the UK these are significant economic benefits.
- 8.7. By providing land of the right type, in the right place, and at the right time to support economic growth, the development of up to 290 no. dwellings on the site satisfies the objectives at paragraph 8 of the NPPF and assists in the aims of the NPPF in helping to build a strong and competitive economy.
- 8.8. This is further emphasised in the Government's November 2011 Paper 'Laying the Foundations: A Housing Strategy for England' where paragraph 11 states *"getting house building moving again is crucial for economic growth – housing has a direct impact on economic output, averaging 3 per cent of GDP in the last decade. For every new home built up to two new jobs are created for a year"*.
- 8.9. In the Rectory Farm decision (APP/D0121/W/21/3286677), at DL,149-151, Inspector Stephens found that paragraph 81 NPPF required "significant weight" to be attached to the economic benefits of any development at a scale such as this.

https://content.knightfrank.com/research/2121/documents/en/knight-frankhbf-economic-benefits-of-housing-market-activity-2020-7616.pdf?pk_campaign=newsletter_4034. The 2011 Census indicates that 30.1% of owner occupied or shared ownership households in Wealden District that had moved within previous year, had lived within the authority.

¹⁷ [Family spending workbook 3: expenditure by region - Office for National Statistics \(ons.gov.uk\)](#).

¹⁸ Figures based upon SE Regional data in Table A33

- 8.10. The economic benefits are to be accorded **substantial weight** in the planning balance.

Social

- 8.11. The Appeal Scheme satisfies the social role, in helping to support strong, vibrant and healthy communities, including through providing the supply of housing required to meet identified needs in open market and affordable sectors. This is a significant benefit. In addition;
- 1) Future residents will be in an easy walking and cycling distance to a wide range of other uses including the shops and services in Uckfield town centre.
 - 2) The Appeal Scheme will, to be agreed at the reserved matters stage, provide a range of housing types and size.
 - 3) The Scheme secures high quality residential environment together with extensive SANG land, children's play park and other areas of open space consistent with development plan policy.
 - 4) The Scheme would deliver a policy compliant 35% affordable housing contribution.
- 8.12. The details of the layout and house type design are to be agreed through the determination of a subsequent reserved matters application, with the detailed scheme to reflect the particular need for housing at that time.
- 8.13. Any increased pressure upon local services will be mitigated through the planning obligation(s) and/or capital receipts secured through CIL.
- 8.14. In relation to education provision, research undertaken by EFM Ltd for the Applicant (March 2021) identifies spare capacity within the 6 no. primary schools that are within a two-mile walking distance from the Site, whilst the funding of any necessary additional capacity for the provision of secondary school places at Uckfield Community Technical College will be secured through CIL.

- 8.15. Overall, the social benefits of the scheme can be afforded **substantial weight** in the overall planning balance.

Environmental

- 8.16. In terms of the environmental role, the Application Site is not located on land designated for its landscape value. The accompanying reports demonstrate that the scheme will not have any material impact on existing ecology and will in fact significantly enhance the biodiversity characteristics of the site, resulting in a significant biodiversity net gain of circa 50%.
- 8.17. The retention of existing boundary trees and hedges, and the areas of ancient woodland, around the site and the sensitive set back of the development will ensure the proposed built form is subsumed positively into the landscape character of the area.
- 8.18. The improvement of the built environment in heritage terms, and the enhancement of the settlement edge through the introduction of a substantial woodland buffer is viewed as a significant benefit of the proposal.
- 8.19. The proposals would deliver sustainable homes allowing the fulfilment of this important objective whilst at the same time moving to a low carbon economy and securing an environmentally sustainable form of new residential development.
- 8.20. On the basis of the above, there are environmental benefits which would arise from the proposals, to which, on balance, **substantial weight** should be attached to in the overall planning balance.

Planning Balance: Harms and Benefits

- 8.21. The planning balance in so far as it relates to harms and benefits is summarised in Table 4 below.

Table 4: Harms and Benefits

Harm	Weight
Outside settlement boundary	Very limited weight
Loss of greenfield site in the countryside	Limited weight
Loss of Grade 3b agricultural land	Limited weight
Negligible heritage harm	Great weight

Benefit	Weight
Provision of 189 market homes	substantial weight
Provision of 101 affordable homes	substantial weight
Provision of c.40% BNG	substantial weight
Creation of jobs during the construction phase and increased spend during the operational phase –	substantial weight
Provision of SANG beyond the capacity of the site, unlocking future development	substantial weight
Provision of recreational open space	moderate weight

8.22. It is clear from the above summary that whilst there are considered to be some slight adverse impacts, these considerations are plainly incapable of outweighing, let alone significantly and demonstrably outweighing, the many substantial benefits of the Scheme.

9. SUMMARY AND CONCLUSION

Development Plan

- 9.1. The Appeal Scheme proposes an outline application for up to 290 residential dwellings, associated landscaping, informal open space and strategic SANG, with access from the B2102 (all matters reserved except for access) (LPA Ref: WD/2021/2198/O).
- 9.2. Development of the Site for 197 dwellings (including affordable housing), with associated access, structural landscaping and recreational space (including 4 LAPS and one LEAP) was previously dismissed by the Secretary of State in the call-in appeal decision dated 24th February 2009 (PINS Ref: APP/C1435/A/07/2053422) (LPA Ref: WD/2006/3564/MAO).
- 9.3. At the time of dismissing the earlier appeal, the development plan was found to be up to date, with the Council also being able to demonstrate a five year supply of deliverable housing land. That is no longer the case. The planning policy context has changed substantially.
- 9.4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a requirement for planning applications to be determined in accordance with the development plan unless other material considerations indicate otherwise.
- 9.5. In this instance, the location of the Appeal Site beyond the settlement boundary for Uckfield as defined in the Local Plan, means the Appeal Scheme is in conflict with its policies.
- 9.6. However, and along with the publication of a revised NPPF in 2019 and 2021, the development plan is now out of date in terms of the spatial application of its housing policies, whilst, in addition, the Council is not able to demonstrate a five-year supply of deliverable housing land.

-
- 9.7. As accepted by the Council, the development plan is not based upon a NPPF compliant assessment of housing need and cannot be said to be up to date in respect of its housing requirement or in relation to policies that seek to restrict development within the defined settlement boundaries.
- 9.8. In the circumstances, the presumption in favour of sustainable development (the titled balance) at paragraph 11(d) of the NPPF is engaged. This requires planning applications to be approved unless footnote 7 considerations provide a clear reason for refusing development (which they do not); or any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Again, they do not.
- 9.9. This is demonstrably a case where the weight to be attached to conflict with the development plan (on account of the location of the site beyond the defined settlement boundary for Uckfield) can be reduced on account of the need to breach the settlement boundaries identified in the development plan to meet development needs. The weighty material considerations in favour of the Appeal Scheme are clearly sufficient to outweigh the identified conflict with the development plan policy.
- 9.10. Either of (i) the lack of consistency between the housing requirement and settlement boundaries with the NPPF; or (ii) the lack of a deliverable five year supply of deliverable housing land triggers the presumption in favour of sustainable development at paragraph 11(d) of the NPPF.
- 9.11. On the basis of the foregoing, whilst under the application of 38(6), there is a *prima facie* conflict with development plan in terms of the location of the Appeal Site beyond the defined settlement policy boundary for Uckfield, the settlement boundaries upon which the spatial policies operate are out of date by virtue of having been drawn to accommodate non-NPPF compliant development needs, quite apart from issues of five-year land supply. All this goes to reduce the weight of any breach identified.
- 9.12. On the basis of the foregoing, the weight to be attached to the conflict between the Appeal Site and its location adjoining but ultimately beyond the

settlement policy boundary for Uckfield is significantly reduced.

Summary

- 9.13. The benefits are many and manifest, not least the provision of housing and affordable housing when the Country and the District faces a housing crisis, which government policy is seeking to address. The Site is sustainably located and will also deliver qualitative and quantitative improvements to recreation and BNG within Uckfield and improve access into the town centre, which benefits both existing and future residents.
- 9.14. When carrying out the overall planning balance, in the context of the presumption in favour of sustainable development at paragraph 11(d) of the NPPF, the material considerations in favour of the Scheme (provision of market and affordable housing, economic benefits, social benefits and environmental benefits) outweigh the conflict with an out of date settlement boundary, negligible heritage harm (which carries great weight) loss of Grade 3b agricultural and localised change to the landscape.
- 9.15. For the reasons set out above, the Appeal should be allowed.



January 2023

Land at Bird in Eye Farm, Uckfield

Ecology Statement

Prepared by

Mark Rose

BSc (Hons) MSc PGDip MCIEEM

LPA Ref: WD/2021/2198/MAO

PI Ref: APP/C1435/W/22/3307820

on behalf of

Croudace Homes Ltd

Report No: CSA/2646/19

Report Reference	Revision	Date	Prepared by	Approved by	Comments
CSA/2646/19	-	10/01/2023	MR	-	First draft for comment
	A	20/01/2023	MR	-	Second draft
	B	26/01/2023	MR	-	Updated Appendix C



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Appendices

Appendix A: Habitats Plan (CSA/2646/108/D)

Appendix B: Photographs

Appendix C: Technical Summary – Surface Water Drainage Strategy

Appendix D: Natural England comments 23/03/2022

Appendix E: Natural England comments 10/11/2021

Appendix F: Land Trust Letter of Intent 15/04/2021

Appendix G: CIEEM Advice Note on Lifespan of Surveys

Appendix H: Badger Survey Plan (CSA/2646/116)

Appendix I: Biodiversity and Arboricultural Officer comments 30/11/2021

Appendix J: Biodiversity Metric 3.1

Appendix K: Biodiversity Net Gain Report (CSA/2646/15)

1.0 INTRODUCTION

- 1.1 I am Mark Rose, Associate Ecologist at CSA Environmental. I am an experienced practitioner with 12 years' full time experience in professional ecological consultancy, and am a full member of the Chartered Institute of Ecology and Environmental Management (CIEEM). I hold Natural England species survey/class licences for bats, great crested newts, rare reptiles and dormice. My academic qualifications include a BSc (Hons) in Zoology and an MSc in Biodiversity Conservation from the University of Southampton. I confirm that this Statement has been prepared by me, and that it presents my true and professional opinion.
- 1.2 I am instructed by Croudace Homes ('the Appellant') in respect of appeal case PP/C1435/W/22/3307820, concerning Land at Bird in Eye Farm, south of Bird in Eye Hill, Uckfield (the 'Appeal Site'). CSA Environmental was first instructed by the Appellant in 2016 to provide technical inputs in connection with a proposed development at the Appeal Site (the 'Appeal Scheme').
- 1.3 An outline planning application (WD/2021/2198/MAO) was submitted to Wealden District Council (WDC) in August 2021 for *'the erection of up to 290 dwellings, associated landscaping, informal open space and strategic SANG, with access from the B2102'*. This was supported by an Ecological Impact Assessment (June 2021), Information to Inform Habitats Regulations Assessment (April 2021) and Biodiversity Net Gain Report (June 2021) prepared by CSA Environmental. I did not personally author these documents, but have visited the Appeal Site on 16 January 2023 and am in agreement with their conclusions.
- 1.4 The Appellant has lodged an appeal against WDC for non-determination of the outline planning application. At the time of writing, WDC have not issued putative reasons for refusal, however in their letter of 03 October 2022 the Council identifies the key matters it intends to contest. These include purported impacts on Ancient Woodland, which it is said would, *"significantly and demonstrably outweigh the benefits of approving dwellings at this site when assessed against the policies in the NPPF."*
- 1.5 My Statement will address matters relating to my technical expertise in the discipline of ecology; specifically those matters cited above (i.e. impacts to Ancient Woodland) as well as wider ecological issues which are relevant to the Appeal Scheme (the purpose and efficacy of the SANG, protected and priority species, and biodiversity net gain).

2.0 CONTEXT

Location

- 2.1 The Appeal Site is located around central grid reference TQ 4832 1206, to the south-east of Uckfield, East Sussex. The landscape context of the Site is dominated by grassland and arable fields to the north, south and east, with scattered remnant parcels of semi-natural woodland connected by a network of field boundary hedgerows. The town of Uckfield, intersected by treelines and woodland blocks, extends to the west of the Appeal Site.

Site

- 2.2 The proposed residential component of the Appeal Site occupies an area of c. 14.37ha and consists of a series of grassland fields, hedgerows, trees and a strip of ancient woodland along the western boundary, with further woodland adjacent off-site to the south. These habitats are shown in a Habitats Plan provided at **Appendix A**, with representative photographs taken during my site visit in January 2023 provided at **Appendix B**.
- 2.3 The proposed SANG occupies an area of c. 26.17ha to the south and east, and consists of further grassland fields, trees, ancient woodland and broadleaved plantation woodland.
- 2.4 The grassland which dominates both components of the Appeal Site is classed as agriculturally improved, or 'modified grassland'. This has predominately been tightly grazed by horses and ponies (to the north) and cattle (to the south), resulting in a short, uniform sward with low species- and structural-diversity, and is composed of common grasses and grassland forbs.
- 2.5 Several parcels of woodland are present within and adjacent to the Appeal Site; including two parcels of designated semi-natural Ancient Woodland along the western boundary. These are classified as lowland mixed deciduous woodland; a priority habitat type. Two further parcels of on-site broadleaved woodland consist of comparatively recent and structurally immature Millenium Woodland plantations.
- 2.6 Field boundaries at the Appeal Site are marked by fencing as well as hedgerows and tree lines. These vary in their species compositions and connectivity, with detailed descriptions provided in the submitted Ecological Impact Assessment.

Proposals

- 2.7 The outline planning application submitted to WDC in August 2021 described the proposal as *'the erection of up to 290 dwellings,*

associated landscaping, informal open space and strategic SANG, with access from the B2102.' The submitted Ecological Impact Assessment was primarily based upon this description of development, as well as the submitted:

- Land Use Parameter Plan (PRB/BIE/PA4)
- Illustrative Site Layout (PRB/BIE/PA2)
- Landscape Strategy and SANG Design (CSA/2646/114/L)

2.8 It was summarised that the construction phase of the Appeal Scheme will comprise the following:

- Cessation of agricultural use of the existing grassland fields
- Removal of sections of hedgerow from H2 (c. 4m), H4 (c. 4m) and H5 (c. 2m) for vehicular and pedestrian accesses, and complete loss of defunct H3 (c. 5m), to facilitate new residential dwellings
- Construction of up to 290 residential dwellings
- Construction of associated gardens, parking and access infrastructure
- The establishment of Public Open Space (POS) totalling c. 6.28ha including a LEAP (Locally Equipped Area for Play), as well as recreation routes around the periphery of residential areas
- Establishment of Sustainable Urban Drainage Systems (SUDS) including a large attenuation basin set open space to the south-west of the proposed residential development area
- Strengthening of boundary vegetation with new native species planting
- The creation of SANG in relation to Ashdown Forest SPA, including the creation of new recreational routes, tree and shrub planting and installation of limited infrastructure such as benches, dog bins and exhibition boards

2.9 The operational phase of the Appeal Scheme will comprise the following:

- Occupation of the new residential dwellings
- Increase in human activity, including use of vehicles and presence of domestic pets
- Increased artificial lighting and anthropogenic noise
- Use of the SANG for regular informal recreation such as dog walking.

3.0 RELEVANT LEGISLATION & PLANNING POLICY

Ancient Woodland

Legislation

- 3.1 Ancient Woodlands do not receive statutory protection.

National Policy

- 3.2 Paragraph 180(d) of the National Planning Policy Framework (NPPF, July 2021) states 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."* In this context, such wholly exceptional reasons might include, for example, *"infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat."*

Local Policy

- 3.3 The Wealden District Core Strategy Local Plan (adopted February 2013, hereafter 'the adopted Local Plan') contains no specific policy prescriptions relevant to the protection of Ancient Woodlands. However, the Wealden Design Guide (2008) states that WBC *"will resist development which proposes the removal, or otherwise prejudices the ecology of ancient semi-natural woodland, or plantations on ancient woodland sites. It will actively seek the sensitive conservation, enhancement and management of ancient woodland on or adjacent to development sites."*

Suitable Alternative Natural Greenspace

- 3.4 The concept of Suitable Alternative Natural Greenspace (SANG) is rooted in the protection of European sites, the legal and policy context for which is set out below.

Legislation and Case Law

- 3.5 Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), termed 'European sites', collectively form part of a suite of sites known in the UK as the national site network, and are afforded strict protection from the potentially damaging effects of human activities.
- 3.6 All European sites in England and Wales are afforded protection through the Conservation of Habitats and Species Regulations 2017 (as amended). These Regulations are widely referred to as the 'Habitat Regulations'. Regulation 63 of these Regulations states that, *"A competent authority, before deciding to undertake, or give any*

consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site...(either alone or in combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives." This assessment process is commonly referred to as 'Habitats Regulations Assessment' (HRA).

- 3.7 The above Regulations formerly transposed Article 6(3) of Council Directive 92/43/EEC on the 'Conservation of Natural Habitats and of Wild Fauna and Flora', commonly referred to as the 'Habitats Directive'. This Directive is the means by which the European Union meets its obligations under the Bern Convention (1992) on the Conservation of European Wildlife and Natural Habitats. Following the UK's departure from the European Union, the provisions of the 2017 Regulations have been retained through enactment of the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, which came into force on 31 December 2020.
- 3.8 Many procedural facets of HRA have been established through case law. A non-exhaustive summary of some key judgements is provided in Appendix D of the submitted Information to inform Habitats Regulations Assessment, with key cases including:
- Waddenzee (ECJ Case C-127/02; 07.09.04.)
 - Boggis v Natural England (EWCA Civ 1061; 20.10.09.)
 - People over Wind (CJEU Case C-323/17, 12.04.2018)

National Policy

- 3.9 At paragraph 182, the NPPF establishes that the presumption in favour of sustainable development (also known as the 'tilted balance' in planning) does not apply where the plan or project is likely to have a significant effect on a European site, unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the European site.

Local Policy

- 3.10 Policy WCS12 of the adopted Local Plan originally indicated that residential development within 400m-7km of the Ashdown Forest SPA and SAC had the potential for likely significant effects, and would require mitigation. However, in response to a Court of Appeal decision in 2015 the Council made changes to policy WCS12, removing specific reference to the 7km buffer. The amended policy wording is reproduced below.

"In order to avoid the adverse effect on the integrity of the Ashdown Forest Special Protection Area and Special Area of Conservation it is the

~~Council's intention to reduce the recreational impact of visitors resulting from new housing development within 7 kilometres of Ashdown Forest by creating an exclusion zone of 400 metres for net increases in dwellings in the Delivery and Site Allocations Development Plan Document and requiring provision of Suitable Alternative Natural Green Space and contributions to on-site visitor management measures as part of policies required as a result of development at SD1, SD8, SD9 and SD10 in the Strategic Sites Development Plan Document. Mitigation measures within 7 kilometres of Ashdown Forest for windfall development, including provision of Suitable Alternative Natural Green Space and on-site visitor management measures will be contained within the Delivery and Sites Allocation Development Plan Document and will be associated with the implementation of the integrated green network strategy. In the meantime the Council will work with appropriate partners to identify Suitable Alternative Natural Green Space and on-site management measures at Ashdown Forest so that otherwise acceptable development is not prevented from coming forward by the absence of acceptable mitigation."~~

Priority and Protected Species

Legislation

- 3.11 The Conservation of Habitats and Species Regulations 2017 (as amended) make prescriptions for the protection of European Protected Species (EPS). These include all native bats, great crested newts, dormice, otters and certain reptiles, listed under Annex II of the Regulations. Following the UK's departure from the European Union, the provisions of the Regulations have been retained through enactment of the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, which came into force on 31 December 2020.
- 3.12 The Wildlife and Countryside Act 1981 (as amended, principally by the Countryside and Rights of Way Act 2000) provided statutory protection for native species that are rare and vulnerable in a national context. Additionally, badgers are protected under the Protection of Badgers Act 1992.
- 3.13 Section 40(1) of the Natural Environment and Rural Communities (NERC) Act 2006 states that each public authority, "*must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.*" This legislation makes it clear that planning authorities should consider impacts to biodiversity when determining planning applications, with particular regard to the Section 41 lists of 56 habitats and 943 species of principal importance for the conservation of biodiversity in England (commonly termed 'priority species').

National Policy

- 3.14 Paragraph 180(a) of the NPPF states that, *"if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused."*

Local Policy

- 3.15 While the adopted Local Plan contains no policies with prescriptions specifically for the protection of priority species, within the explanatory text the Council, *"acknowledge the importance of protected species and species of principal importance and its role in seeking to enhance and promote their wellbeing through the protection, enhancement, restoration and creation of their associated habitats. For this reason, development proposals must be informed by up to date information about biodiversity that may be affected. Furthermore, guidance requires an approach of seeking to avoid significant harm to biodiversity and geological interests before considering adequate mitigation measures or lastly seeking appropriate compensation measures."*

Biodiversity Net Gain

Legislation

- 3.16 Section 98, Part 6 of the Environment Act (2021), through Schedule 14, makes provision for biodiversity net gain to be a condition of planning permission in England to a minimum threshold of 10%. As set out in Part 8 of the Act, Section 147(3), Section 98 of the Act comes into force *"...on such date as Secretary of State may by regulation appoint"* with the government anticipating a two-year implementation period (i.e. November 2023).

National Policy

- 3.17 The NPPF encourages the delivery of biodiversity net gain [paragraph 174(d)], and this is further supported within Planning Practice Guidance (PPG). The Natural Environment PPG addresses principles across a broad spectrum of topics targeting biodiversity conservation, from individual site and species protection through to the supporting of ecosystem services, and the use of local ecological networks to support the national Nature Recovery Network. In particular the PPG promotes the delivery of measurable Biodiversity Net Gain through the creation and enhancement of habitats alongside development.

Local Policy

- 3.18 Policy WCS12 on Biodiversity of the adopted Local Plan establishes that the Council will, *"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." In contrast to the forthcoming legal requirements, it does not specify a quantified threshold for biodiversity net gain.

4.0 ECOLOGY MATTERS

Ancient Woodland

Baseline

- 4.1 As described in the submitted Ecological Impact Assessment, designated semi-natural Ancient Woodland is present along the western boundary of the Appeal Site. A parcel labelled W1 is present within the red line to the west of the proposed residential component ('Nightingale Shaw'), while a further off-site parcel W2 envelopes the western side of the proposed SANG; including land separating the residential and SANG components. Please refer to the Habitats Plan at **Appendix A**. The two parcels support a similar species composition, being dominated by hazel *Corylus avellana* and elder *Sambucus nigra*, with hawthorn *Crataegus monogyna*, willow *Salix* sp., honeysuckle *Lonicera periclymenum* and bramble *Rubus fruticosus* also present. The ground flora includes extensive carpets of bluebell *Hyacinthoides non-scripta*, yellow archangel *Lamium galeobdolon* and wild garlic *Allium ursinum*, with frequently occurring dog's mercury *Mercurialis perennis*, lords and ladies *Arum maculatum*, cleavers *Galium aparine*, harts-tongue fern *Asplenium scolopendrium* and ground ivy *Glechoma hederacea*.

- 4.2 Ancient Woodland on and adjacent to the Appeal Site is not currently publicly accessible.

Potential Impacts, Effects and Mitigation

- 4.3 No loss of Ancient Woodland is proposed under the Appeal Scheme, with built form adopting (and in most cases significantly surpassing) the 15m buffer advocated by Natural England to avoid damage to the root protection area. Standard protection measures in accordance with BS 5837:2012 will be employed to protect all retained woodland, trees and hedgerows during construction.
- 4.4 Potential impacts which could, however, in the absence of mitigation, lead to the deterioration of Ancient Woodland at the Appeal Site are described below.

Drainage Infrastructure

- 4.5 Surface water drainage proposals originally submitted under the outline application required a new drainage outfall to be constructed from the proposed attenuation basin in the south-western corner of the proposed development, through the intersection between Woodlands W1 and W2, discharging to Framfield Stream to the south-west. These proposals would have required temporary vegetation clearance to facilitate a c. 4m wide installation corridor, extending along an 8m stretch of woodland between the basin and the proposed outfall to Framfield Stream. Much of the existing vegetation within this corridor comprises

scrub and shrub species, due to the corridor largely being under the easement for overhead power lines and is hence cleared periodically for maintenance access. This would have resulted in a temporary impact on habitat mapped as Ancient Woodland, which could be interpreted as resulting in deterioration.

- 4.6 As an alternative approach to avoid any impact on Ancient Woodland the potential for surface water to be dealt with via infiltration, and thus avoiding the need for a surface water outfall into Framfield Stream, was explored. As detailed within the appended Technical Summary prepared by Stantec (January 2023, **Appendix C**), high groundwater levels were recorded resulting in poor infiltration rates, rendering an infiltration-led design unviable. Therefore, options for provision of an alternative outfall have instead been explored. An underground outfall pipe will instead be installed from the north-east corner of the south-eastern attenuation basin, with the outfall pipe running northwards to a discharge point along the Framfield Stream to the north-west, avoiding any construction activity within the 15m Ancient Woodland buffer.
- 4.7 The proposed route for the surface water drainage sewer is shown at **Appendix C**. Final designs for the Surface Water Drainage Strategy and the respective outfall are subject to future relevant reserved matters applications and Flood Risk Activity Permit from the Environment Agency

Recreation/Urbanisation

- 4.8 In order to avoid the introduction of potentially damaging recreational pressure to the on-site Ancient Woodland, W1 and its 15m buffer are excluded from the proposed SANG under the submitted Land Use Parameter Plan, and will be retained solely for wildlife. Public access to W1 will further be discouraged through defensive planting within the buffer.
- 4.9 Although Woodland W2 lies outside the red line, it is proposed that the existing footpath bisecting W2 will be upgraded to provide a suitable pedestrian connection, linking the SANG areas to the north and south of the woodland. Fencing and signage will be installed to discourage users from deviating from the path. The remainder of the woodland is characterised by steep banks that drop towards a central stream, which is only bridged in the existing footpath location (see **Appendix B**), such that the advent of additional desire lines through the woodland, between the SANG parcels, is highly unlikely.
- 4.10 The SANG design has been the subject of extensive consultation between CSA ecologists with Natural England, both pre-application via Natural England's charged Discretionary Advice Service (DAS) and during the determination period. In their most recent representations (**Appendix D**) Natural England confirm that the securing of future management of on-site Ancient Woodland within Nightingale Shaw,

under a management plan to be secured by planning condition, will in their opinion mitigate any residual urbanisation impacts. Having initially raised concerns in this regard (**Appendix E**), Natural England no longer object to the Appeal Scheme.

Conclusion

- 4.11 It is my conclusion that the Appeal Scheme will not result in the loss or deterioration of Ancient Woodland, and it is therefore compliant with NPPF paragraph 180(d) and relevant prescriptions of the Wealden Design Guide.

Suitable Alternative Natural Greenspace

Ashdown Forest SPA

- 4.12 Visitor access patterns to protected lowland heathland sites in southern England, and the implications of recreation pressure for the associated Annex I bird species, have been extensively studied and widely publicised. In summary, research has demonstrated a clear link between recreation pressure and reduced reproductive success of these species, which form qualifying features for the Ashdown Forest SPA (Liley & Clarke, 2003; Murison, 2002; Liley & Clarke, 2002). The following evidence base on visitor access patterns has informed policy making in Wealden, as set out in the Ashdown Forest SPA Mitigation Zone Background Paper (2019):
- Ashdown Forest Visitor Survey 2016 (Liley, D., Panter, C. & Blake, D., 2016)
 - Visitor surveys at potential SANGs sites in Wealden District (Liley, D. & Floyd, L., 2013)
 - Ashdown Forest visitor survey data analysis (Natural England Commissioned Report NECR048)
 - Visitor Access Patterns on Ashdown Forest for Mid Sussex and Wealden District Councils (UE Associates and Brighton University, (2009)
- 4.13 The Background Paper establishes that a strategic mitigation zone of 7km will capture 100% of daily visitors, 93.95% of those who visit 1-3 times per week, 91.05% of those who visit 2-3 times per month and 83.91% of those who visit less than once per month. The Appeal Site is located c. 5.4km from the SPA.
- 4.14 Pursuant to the legal tests imposed by the Conservation of Habitats and Species Regulations 2017 (see Section 3), mitigation is required to avoid an adverse effect on the integrity of the SPA, resulting from a contribution toward an in-combination increase in recreational pressure associated with local population growth.

The Proposed SANG

- 4.15 Within Wealden the approach to avoidance and mitigation measures follows that originally developed for the Thames Basin Heaths SPA, centred around (i) the provision and enhancement of Suitable Alternative Natural Greenspace (SANG) to draw recreational pressure away from the SPA, and (ii) Strategic Access Management and Monitoring (SAMM) measures at the SPA itself, funded by development. Full details are presented in the submitted Information to Inform Habitats Regulations Assessment (April 2021).
- 4.16 The submitted Land Use Parameter Plan allocates c. 26.17ha of the Appeal Site for the creation of a bespoke SANG. To demonstrate how the proposed SANG can meet SANG design quality criteria (WDC, 2013, and Natural England, 2021) and achieve the aims of attracting recreational visitors, an illustrative Landscape Strategy and SANG Design Plan was submitted. Furthermore, a SANG Design and Framework Management Plan was submitted, setting out habitat and visitor access enhancement measures and a clear management and monitoring schedule.
- 4.17 The proposed SANG will be positioned immediately adjacent (east and south) of the proposed residential component of the Appeal Scheme, providing an attractive and convenient location for routine recreation such as dog walking. It will be created on former farmland, comprising open grassland and plantation woodland blocks, set within an undulating landscape, unencumbered by other development or visual intrusion. The SANG will feature a main circular walk totalling c. 2.7km following an intuitive and unconvoluted route, in addition various secondary route options, and will connect to the existing public footpath network. Artificial infrastructure will be limited to maintain a naturalistic aesthetic, but will include benches, dog waste bins and boundary fencing as appropriate to allow dogs to be safely exercised off the lead. The SANG has been designed to be attractive to new and existing residents within the local area; and a SANG car park will be provided to facilitate access for those beyond walking distance.
- 4.18 Natural England have confirmed that the capacity for the proposed SANG can be based on 8ha/1000 residents. As such, c. 5.57ha of SANG would be required to mitigate the proposed development of up to 290 dwellings; leaving a substantial headroom capacity of c. 20.6ha.
- 4.19 In addition to delivering the above measures required under SANG quality criteria, new tree planting, grassland enhancement and wildlife pond creation are proposed within the SANG as part of the strategy to delivery biodiversity net gain (see below).
- 4.20 The Land Trust, a leading non-profit SANG provider, has issued a Letter of Intent confirming their willingness to take on ownership and

management responsibility (**Appendix F**). All costs associated with the acquisition of the land, capital works to create the SANG and its ongoing management in perpetuity will be met by the Appellant.

- 4.21 As has been touched upon above in respect of Ancient Woodland, the SANG proposals were developed under repeated, iterative engagement with Natural England via the DAS service, including multiple site meetings and dating back to 2016. Notwithstanding initial concerns raised in connection with Ancient Woodland, which as described have now been resolved (see **Appendices D and E**), neither WDC nor Natural England object to the SANG.

Conclusion

- 4.22 In addition to provision of the bespoke SANG prior to occupation of the Appeal Scheme, the applicable financial contribution toward SAMM will be made in accordance with the 2019 Ashdown Forest SPA Tariff Guidance (or published update thereof).
- 4.23 As competent authority in respect of the Habitats Regulations, the Inspector may therefore conclude that the Appeal Scheme will have no adverse effect on the integrity of the Ashdown Forest SPA, either alone or in combination with other plans or projects.

Priority and Protected Species

Baseline

- 4.24 The outline application was supported by an evidence-based Ecological Impact Assessment prepared by CSA Environmental. A desk study and habitat survey were undertaken of part of the Appeal Site in April 2019, as part of a Preliminary Ecological Appraisal (PEA), which was extended to include the proposed SANG in April 2020. To provide a comprehensive evidence base for the EclA, the following detailed species surveys were undertaken:
- Great crested newt surveys (April-May 2019)
 - Bat activity surveys (June-September 2019)
 - Reptile surveys (June-September 2019)
 - Badger survey (April 2020)
 - Dormouse surveys (May 2019-September 2020)
 - Otter and water vole surveys (June and August 2020)
- 4.25 With reference to CIEEM's 2019 advice note on the lifespan of ecological reports and surveys (**Appendix G**), it can be seen that the evidence base was up-to-date at the time of the application's submission for consideration by WDC. For the purposes of the non-determination appeal, an update habitat survey was carried out on 12 October 2022 by CSA Associate Director of Ecology Clare Caudwell CEcol MCIEEM. Although some of the habitats were re-classified owing to use of an updated classification system, the habitats on-site were

found to have remained largely unchanged, with grazing management having been maintained within the grassland fields. Low intervention or no management actions appeared to have taken place within woodlands, and hedgerows appeared to have been maintained regularly (e.g. annual basis). As such, it is unlikely that populations of priority and protected species at the Appeal Site have changed significantly, and the assessment presented within the Ecological Impact Assessment remains reliable (with the single exception of badgers, as described below).

- 4.26 The baseline surveys determined that grass snake *Natrix helvetica* and common lizard *Zootoca vivipara* populations are present on-site, and several common and widespread species of bat have been recorded utilising the Appeal Site for foraging and dispersal. A main badger *Meles meles* sett was identified within adjacent off-site woodland, and dormice *Muscardinus avellanarius* have also been confirmed to be present within suitable woodland and hedgerow habitats. Great crested newts *Triturus cristatus* were determined to be likely absent from the Appeal Site, and surveys failed to identify any conclusive evidence of riparian mammals.

Potential Impacts, Effects and Mitigation

- 4.27 In accordance with the mitigation hierarchy, a considered design which responds to the specific ecological constraints and opportunities of the Appeal Site has been developed, which avoids the majority of potential impacts on species by confining built development to habitats of least value, as well as extensive habitat creation and enhancement within SANG and other open space.
- 4.28 Dispersal opportunities for bat species will be maintained through the retention of green corridors and buffers to built development, while foraging opportunities will be enhanced through habitat creation including tree and thicket planting and a dedicated wildlife pond. A sensitive lighting strategy will also be provided at the detailed design stage, to ensure dark corridors are maintained across the Appeal Site.
- 4.29 The illustrative layout demonstrates that a minimum 30m buffer can be accommodated around the off-site badger sett, which will avoid direct impacts and reduce the potential for disturbance.
- 4.30 The retention of all woodland and only minor hedgerow removals to accommodate access are unlikely to significantly affect the local dormouse population, and the strengthening of existing habitats will reduce the potential for edge-effects such as increased predation by domestic cats.
- 4.31 Taken as a whole the Appeal Scheme will markedly increase habitat suitability and availability for reptiles, however measures will be required during construction to avoid killing or injury of individuals. A programme

of capture, exclusion and translocation would be disproportionately ecologically invasive and not justified by the low counts during surveys; rather, precautionary impact avoidance measures will be set out in the Construction Environmental Management Plan (CEMP) to be secured by planning condition.

Update Badger Survey

2022 Update Survey

- 4.32 Badgers and their setts are highly dynamic, making it important that any assessment of development impacts is based on up-to-date survey information. An update badger survey was undertaken on 12 October 2022 alongside the aforementioned update habitat survey. This survey focused in particular on areas of the Appeal Site likely to be impacted by updated site access and drainage proposals.
- 4.33 During the original 2020 survey, a main badger sett was identified close to the northern edge of Woodland W2 (see Target Note 11 on the Habitats Plan provided at **Appendix A**). The sett comprised of at least eleven holes, six of which were considered to have been recently used by badgers, with evidence of recent digging, spoil heaps and fresh bedding outside various entrances. In addition, paw prints and badger hairs were observed within some entrances.
- 4.34 An additional sett had been identified in the north-west corner of the Site close to Hedgerow H2 (Target Note 4; **Appendix A**), which showed signs of recent use when identified during a dormouse survey conducted by CSA in September 2019. There were no signs of recent use during the badger survey in April 2020. The update badger survey conducted in October 2022 identified a single, partially used badger sett entrance at this location, and therefore it is considered to be an outlier sett under occasional use.
- 4.35 A number of additional setts were identified across and close to the Appeal Site in the 2020 survey, including an outlier within Woodland W2 within close proximity to Pond P1 (Target Note 10; **Appendix A**) consisting of two entrances (one collapsed), and two entrances along Hedgerow H7 (Target Note 12; **Appendix A**). These were each located during the update badger survey and considered to be partially active outlier setts.
- 4.36 During the update badger survey an additional sett was identified in the north-east of the Appeal Site (Target Note 13; **Appendix A**), at the north-eastern corner of Field F1, extending into off-site woodland to the east. Approximately ten sett entrances were present, the distribution of which is shown in the Badger Survey Plan (CSA/2646/116) provided at **Appendix H**. One entrance is located on-site within a parcel of bramble scrub, with the remaining entrances along the northern bank of the off-site woodland, c. 5m from the road edge. Some tunnels contained leaf litter, but spoil heaps were found outside others indicating recent use.

This sett is considered to be a possible main / subsidiary sett, in active use by badgers.

- 4.37 Two additional outlier setts were identified within Woodland W1 during the update survey, consisting of three active entrances each (Target Notes 7 and 8; **Appendix A**).

Potential Impacts, Effects and Mitigation

- 4.38 Access infrastructure proposals have been amended to include a right turn lane into the Appeal Site from Bird in Eye Hill. Details are shown on submitted Drawing No. 5330/ 201 Rev H (Bellamy Roberts, November 2022); which forms the base plan for **Appendix H**.
- 4.39 Technical constraints will require the access junction from Bird in Eye Hill to be moved further east than that as existing, and will necessitate some additional land take either side of the new junction to accommodate the required visibility splays. Final working areas are to be confirmed, however it is understood that the works will result in the loss of part of the existing bank to the west of the proposed junction and loss of some scrub / trees to the east. Working areas may be within 5-7m of entrances to the newly identified badger sett. Whilst it is anticipated that all sett entrances could be retained without direct impacts, construction of the proposed access will likely result in disturbance through noise, vibration, and lighting.
- 4.40 Badgers are a common and widespread species, with their statutory protection being intended to prevent cruel bloodsports rather than being a reflection of any conservation concern. Nevertheless, badgers and their setts are afforded protection under the Protection of Badgers Act 1992. Impact avoidance and reduction measures will therefore need to be put in place to ensure that disturbance to badgers is minimised. The works will need to be subject to a badger disturbance licence (A24 – licence to interfere with a sett for development purposes) from Natural England. A detailed Badger Method Statement would need to be submitted as part of the licence application which sets out the purpose of the development work, clearly describes how works could interfere with a sett and demonstrates how mitigation will be carried out (including a Work Schedule, details of sett protection, maintenance and monitoring).

Conclusion

- 4.41 While the Appeal Scheme is in outline and the full detail of strategies to avoid and mitigate potential negative effects on priority and protected species can only be forthcoming at the detailed design stage, the submitted materials demonstrate that the Appeal Scheme can come forward in a manner consistent with all relevant legal and policy requirements.

- 4.42 In their consultation response of 30 November 2021 (**Appendix I**), the WDC Biodiversity and Arboricultural Officer confirmed their view that the protected species surveys undertaken were, “adequate to inform the application, with appropriate methodology and survey effort,” and that, “Recommendations for adequate avoidance, mitigation and compensation have been provided.”

Biodiversity Net Gain

- 4.43 The Natural England Biodiversity Metric was used to calculate the change in biodiversity units (including ‘Habitat’ Units and linear ‘Hedgerow’ Units) and the overall percentage of gain/loss achieved. A copy of the completed metric is provided as accompanying as **Appendix J**. The submitted Biodiversity Net Gain Report (June 2021) provided comprehensive details on:

- Classifications on habitat type, distinctiveness, condition and strategic significance, pre- and post-development.
- Data collection methods, limitations and assumptions.
- Calculated pre- and post-development Habitat Units and Hedgerows Units using the Biodiversity Metric, and the percentage net change projected of each.
- The approach to ‘additionality’, i.e. avoiding double counting of habitat creation required to meet SANG obligations.
- Compliance with habitat ‘trading’ guidelines.

- 4.44 Since preparation of the submitted Biodiversity Net Gain Report, an updated assessment has been prepared by CSA Environmental; provided at **Appendix K**.

Update Habitat Survey

- 4.45 The habitat survey was updated on 12 October 2022 by Clare Caudwell CEcol MCIEEM (FISC level 4) and Lydia Galbraith (FISC level 3), using the UK Habitat (‘UKHab’) classification system. A Habitat Condition Assessment (using UKHab Professional edition [Butcher *et al.* 2020] method) was undertaken to inform an update assessment of baseline biodiversity units. Habitats recorded on-site are illustrated on the Habitats Plan (**Appendix A**). A summary of the UKHabs classification is provided below; with full details provide within the Biodiversity Net Gain Report (**Appendix K**):

- *Modified grassland (g4)* - The Appeal Site is dominated by a series of modified grassland fields (F1-F16) the majority of which are tightly grazed by horses and ponies in the northern part of the Site, and cattle / cut for silage to the south (proposed SANG land).
- *Lowland mixed deciduous woodland (w1f)* – Woodland W1 (ancient woodland) and W5. These woodland blocks form part of Nightingale Shaw.

- *Other woodland: broadleaved (w1g)* – Woodlands W3 and W4 located within the proposed SANG land; planted as part of the Millennium Woodland project.
- *Mixed scrub (h3h)* – Small patches dominated by hawthorn *Crataegus monogyna* and likely to be remnant hedgerow.
- *Priority hedgerows (h2a)* - Several native hedgerows are present throughout the Site, four of which are species-poor (H1, H5, H7 and H9) and the remainder being species rich (H2, H4 and H8).
- *Lines of trees (w1g6)* – H6 has been re-classified as a line of trees; present within the north-eastern part of the proposed SANG land.
- *Hard-standing (u1b), buildings (u1b5) and artificial unsealed non-vegetated surfaces (u1c)* - Occur along access tracks and around the farm buildings adjacent to the proposed SANG land.

4.46 In addition to the above on-site habitats, Framfield Stream borders the western boundary (flowing northwards). A small tributary of Framfield Stream, flows in a westerly direction through off-site Ancient Woodland W2. Although some of the habitats present have been re-classified since the original Phase 1 habitats survey (2019) due to differences between 'Phase 1' and UKHabs classification systems, the habitats on-site were found to have remained materially unchanged.

Biodiversity Net Gain Calculations

- 4.47 Further to the reclassification of baseline habitats, as well as the above described alterations to proposed access arrangements, and release of newer versions of Natural England's Biodiversity Metric (currently v. 3.1), an updated Biodiversity Net Gain Report has been prepared by CSA Environmental and is provided at **Appendix K**.
- 4.48 The updated Biodiversity Net Gain Report demonstrates that a net gain of c. 53.57 Habitat Units (40.27%) and of 0.16 Hedgerow Units (1.75%) could be expected to result from the Appeal Scheme, on the basis of the submitted illustrative layout and landscape proposals. In reality the latter represents an underestimate; it will be readily achievable to deliver a net gain in Hedgerow Units well in excess of 10% at the detailed design stage, when soft landscaping proposals for the residential area are developed.
- 4.49 While it will be necessary to update the assessment at the reserved matters application stage, it can be concluded that the Appeal Scheme will deliver a net gain in biodiversity well in excess of existing policy and emerging legal requirements. In their consultation response of 30 November 2021 (**Appendix I**), the WDC Biodiversity and Arboricultural Officer expresses their support for the submitted BNG strategy.

5.0 CONCLUSION

- 5.1 The appeal is for non-determination, and at the time of writing WDC have not issued putative reasons for refusal. My Statement has therefore focussed on matters relating to my technical expertise in the discipline of ecology; specifically Ancient Woodland (as a matter cited by the Council as one it intends to contest) as well as wider ecological issues which are relevant to the Appeal Scheme (the purpose and efficacy of the SANG, protected and priority species, and biodiversity net gain).
- 5.2 My Statement has shown that, following amendments to the drainage strategy and with consideration of proposals to limit urbanisation impacts, the Appeal Scheme will not result in the loss or deterioration of Ancient Woodland, and it is therefore compliant with NPPF paragraph 180(d).
- 5.3 In addition to provision of the applicable financial contribution toward SAMM, the Appeal Scheme will deliver a bespoke SANG. The SANG strategy has been the subject of extensive pre-application engagement with Natural England, and all costs associated with the acquisition of land, capital works and in perpetuity management will be met by the Appellant. As competent authority in respect of the Habitats Regulations, the Inspector may conclude that the Appeal Scheme will have no adverse effect on the integrity of the Ashdown Forest SPA, either alone or in combination with other plans or projects.
- 5.4 The Appeal Scheme is in outline and the full detail of strategies to avoid and mitigate potential negative effects on priority and protected species, as well as the calculation to quantify the precise net gain in biodiversity which will be yielded by the development, can only be forthcoming at the detailed design stage. However, the submitted materials demonstrate that the Appeal Scheme can accommodate all relevant legal and policy requirements in respect of priority and protected species, and will deliver a net gain in biodiversity well in excess of existing policy and emerging legal requirements.
- 5.5 In their comments on the planning application, the WDC Biodiversity Officer confirmed their contentment with the scope of baseline ecological survey work, the assessments of effects carried out and the proposals for impact avoidance and mitigation; with the exception of concerns raised over impacts on Ancient Woodland (**Appendix I**), which were initial shared by Natural England (**Appendix E**). However, further to engagement, Natural England have now confirmed that in their view the proposed mitigation addresses their concerns (**Appendix D**).

6.0 REFERENCES

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Appendix A

Habitats Plan (CSA/2646/108/D)



- Site boundary
- Modified grassland (g4)
- Lowland mixed deciduous woodland (w1f)
- Other woodland; broadleaved (w1g)
- Ancient woodland
- Dense (mixed) scrub (h3)
- Hardstanding (u1b)
- Building (u1b5)
- Artificial unvegetated unsealed surface (u1c)
- Hedgerow (priority habitat) (h2a)
- Hedgerow (priority habitat) with trees (h2a)
- Line of Trees (w1g6)
- Stream (r2) and direction of flow
- Pond (r1)
- Fence

Target Notes:
TN1: Bluebells in woodland
TN2: Woodpecker holes and tree creeper sighting
TN3: Spoil heap and log pile
TN4: Badger sett (x1 partially active tunnel)
TN5: Barn owl sighting and barn owl box
TN6: Badger sett (x2 active tunnels)- 2019
TN7: Badger sett (x3 active tunnels)
TN8: Badger sett (x3 outlier tunnels)
TN9: Badger sett (x2 disused tunnels)- 2019
TN10: Badger sett (x1 outlier tunnel)
TN11: Badger sett (x11 tunnels, 6 active)- 2019
TN12: Badger sett (x2 partially active tunnels)
TN13: Badger sett (c. x10 partially active tunnels)
TN14: Muck heap
TN15: Veteran trees



Office 20, Citibase, 95 Ditchling Road,
Brighton BN1 4ST
t 01273 573871
e brighton@csaenvironmental.co.uk
w csaenvironmental.co.uk

Project	Land at Bird in Eye Farm	Date	Oct 2022	Drawing No.	CSA/2646/108
Drawing Title	Habitats Plan	Scale	Refer to scale	Rev	D
Client	Croudace Homes Limited	Drawn	LG	Checked	CC

Appendix B

Photographs



Photograph 1. Framfield Stream, west of Field F7, at approximate location of drainage outfall.



Photograph 2. On-site Woodland W1, west of Field F9, view south.



Photograph 3. Steeply sloping northern bank of Woodland W2, south of Field F9.



Photograph 4. View north over Fields F9 and F10 toward farm buildings.



Photograph 5. Existing gated access to footpath through the centre of Ancient Woodland W2.



Photograph 6. Existing footpath through the centre of Ancient Woodland W2.



Photograph 7. Existing footbridge over stream, along footpath through Ancient Woodland W2.



Photograph 8. View south-east over Field F15.



Photograph 9. View south-west over Field F15.



Photograph 10. Millenium Woodland W4 within proposed SANG.



Photograph 11. Millenium Woodland W3 within proposed SANG.



Photograph 12. View north-east over Field F14 toward tree line H6.

Appendix C

Technical Summary – Surface Water Drainage Strategy

TECHNICAL NOTE

Job Name: Land at Bird in Eye Farm, South of Bird in Eye Hill, Uckfield
Job No: 48494/2002
Note No: TN004/C
Date: January 2023
Prepared By: Amy Hensler
Subject: **Technical Summary – Surface Water Drainage Strategy**

1 Introduction

- 1.1.1 Amy Hensler BSc (Hons), MSc, MCIWEM, C.WEM, CEnv, Director of Flood Risk at Stantec UK Limited is an experienced practitioner with 22 years' experience in professional engineering and environmental consultancy, and a chartered environmentalist and chartered water and environmental manager. Her academic qualifications include a BSc (Hons) in Geography from the University of Southampton and an MSc in Water Resource Management and Technology from the University of Birmingham.
- 1.1.1 This technical note has been produced by Stantec UK Limited ('Stantec') to provide a Technical Summary of the design progression of the Surface Water Drainage Strategy (SWDS) for the site known as 'Land at Bird in Eye Farm, South of Bird in Eye Hill, Uckfield' (henceforth referred to as 'the site').
- 1.1.2 The Technical Summary is required as part of the over-arching Planning Statement produced in support of the planning appeal in relation to the site, submitted by the applicant regarding the non-determination of outline planning application WD/2021/2198/MAO.
- 1.1.3 It is understood by Stantec that the matter outstanding for consensus between the applicant, the East Sussex County Council (ESCC) as the /Lead Local Flood Authority (LLFA) and Wealden District Council (WDC) is the discharge destination for the site's SWDS. Therefore, this Technical Summary has been produced to specifically address this matter i.e. other aspects of the SWDS are not discussed further within this document.
- 1.1.4 This Technical Summary should be read in conjunction with the documents previously produced by Stantec regarding the SWDS for the site, as listed in **Section 2**.

2 Surface Water Drainage Outfall Design

2.1 Chronology of Design

- 2.1.1 Stantec has provided technical support and evidence regarding the SWDS for the site since early 2020. Over that period several documents have been produced, describing the SWDS and documenting its evolution.
- 2.1.2 **Table 2.1** provides a chronology of SWDS-related documents produced by Stantec and others:

TECHNICAL NOTE

Document Title	Document Reference	Author	Date	Status
Flood Risk Assessment including Drainage Strategy & SuDS Report	48494/2001/C	Stantec	29 April 2021	Issued to WDC
Indicative Surface Water & Foul Drainage	48494/2002/500/A	Stantec	29 April 2021	Issued to WDC
Surface Water Drainage Outfall Concept Design	48494/2002/SK01/A	Stantec	22 November 2021	Issued to WDC
Bird in Eye Farm, Uckfield – GI1770	GI1770	Geotechnical Investigations Ltd	17 January 2022	Issued to WDC
Ground Conditions and Infiltration Assessment	332510180/3500/tn001/Rev0	Stantec	28 January 2022	Issued to WDC
Updated Surface Water Drainage Strategy following Infiltration Testing	48494/2002/TN002A	Stantec	31 January 2022	Issued to WDC
Indicative Surface Water & Foul Drainage Discharging Surface Water via Infiltration	48494/2002/510	Stantec	31 January 2022	Issued to WDC
Bird in Eye Farm, Uckfield – GI1789	GI1789	Geotechnical Investigations Ltd	23 November 2022	Not issued
Assessment of Alternative Outfall Route	48494/2002/SK05/A	Stantec	11 January 2023	Not issued

Table 2.1 - Summary of Surface Water Drainage Documents Produced

- 2.1.3 The following sub-section provides a description of how the proposed surface water drainage outfall design has progressed since initial outline planning application submission to present-day.

2.2 Description of Surface Water Drainage Outfall Design Progression

Initial Surface Water Drainage Outfall Design

- 2.2.1 For details of the initial surface water drainage outfall design, reference should be made to documents 48494/2001/C (henceforth referred to as 'the FRA'), 48494/2002/500/A and 48494/2022/SK01/A, as listed previously.
- 2.2.2 The FRA set out the application of the drainage hierarchy, in accordance with the Planning Practice Guidance (PPG) 'Flood risk and coastal change', Building Regulations Part H and CIRIA C753. It concluded that infiltration would not be suitable on site due to the easily erodible nature of the underlying geology and therefore the risk of surface collapse. However, this statement was based on available desk-based information and recommended that targeted in-situ soakage testing in accordance with BRE Soakaway Design (DG 365) be carried out at a future reserved matters application stage. That approach had been agreed with the LLFA.
- 2.2.3 As such, the FRA recommended discharge to a surface water body until infiltration was proven viable. The preferred receptor for discharge of surface water was the Framfield Stream on the site's western boundary, due to the sites natural fall towards the stream and its location within the site's control i.e. no third party agreements would be required for construction of this outfall.
- 2.2.4 Following this, the initial design for discharging surface water was developed. The route of the surface water outfall was via a gravity sewer through the Ancient Semi-Natural Woodland (ASNW) via an existing clearing for overhead powerlines on the site's southern and western boundary. This design was developed to make use of the natural topography of the site whilst minimising impact to the ASNW.
- 2.2.5 Following submission of outline planning application WD/2021/2198/MAO, it was indicated, on 25 October 2021, that WDC would not accept the initial surface water outfall route as it passed through ASNW and that infiltration testing must be undertaken at this stage to prevent any negative impacts.

TECHNICAL NOTE

- 2.2.6 It was agreed with the LLFA on 05 May 2020 that on site soakage testing would be deferred to a future reserved matters application. This reflected working practices in response to the COVID-19 pandemic at the time, whereby non-essential travel away from the home was not permitted. WDC was not present at this meeting and as such, WDC later stated on 26 November 2021 that it would accept infiltration testing to be conditioned in accordance with the agreement with the LLFA.
- 2.2.7 Through coordination with other technical disciplines following submission of the outline planning application, Stantec acknowledged that it would not be acceptable to utilise a clearing in the ASNW for surface water drainage features. This is because there would be potential for adverse impacts to the ASNW. It was then agreed by Stantec and the applicant that infiltration testing would be undertaken to remove reliance on the initial surface water outfall design for drainage.

Revised Infiltration-led Surface Water Drainage Outfall Design

- 2.2.8 For details of the revised infiltration-led surface water drainage outfall design, reference should be made to documents GI1770, 332510180/3500/tn001/Rev0, 48494/2022/TN002A and 48494/2002/510.
- 2.2.9 Following WDC's comments regarding the initial surface water drainage outfall design, targeted in-situ soakage testing in accordance with BRE DG 365 was undertaken by Geotechnical Investigations Ltd, with the results and interpretation provided by Stantec shortly afterwards. This testing was undertaken to provide the applicant an initial steer on the viability of infiltration drainage on site, albeit acknowledging this would still be subject to further testing during winter alongside monitoring groundwater levels to determine a seasonal peak groundwater level.
- 2.2.10 This investigation concluded that infiltration was not viable across the site but could be utilised at the proposed basin location based on current design guidance in CIRIA C753.
- 2.2.11 As such, the proposed detention basin design was converted to an infiltration basin and resized to manage surface water to the same standard as the FRA previously. Additionally, a 5m offset of buildings and structures (including highways) from the infiltration basin was recommended due to the ground stability issues highlighted in the FRA
- 2.2.12 The methodology for this amendment and the relevant changes to the SWDS within the FRA were set out in 48494/2002/TN002A and issued to WDC and the LLFA for their information during determination of the outline planning application.
- 2.2.13 Therefore, a revised SWDS was provided to WDC that managed surface water runoff and provided no impact on the ASNW.
- 2.2.14 Comments received from WDC on 01 March 2022 indicated that they were "sceptical" regarding the revised infiltration-led surface water drainage outfall design as a seasonal peak groundwater level could not be determined through one test alone. However, as before, they were willing to condition further testing alongside groundwater monitoring during the winter period to determine wet weather performance and a seasonal peak groundwater level.

Alternative Surface Water Drainage Outfall Design

- 2.2.15 For details of the alternative surface water drainage outfall design, reference should be made to documents GI1789 and 48494/2002/SK05/A.
- 2.2.16 Further soakage testing and groundwater monitoring at the proposed basin location was undertaken by Geotechnical Investigations Ltd in November 2022. This was undertaken ahead of the anticipated condition for further infiltration testing and groundwater monitoring requested by WDC whilst awaiting determination of the outline planning application, seeking a robust SWDS and that this information could be provided in a timely manner.

TECHNICAL NOTE

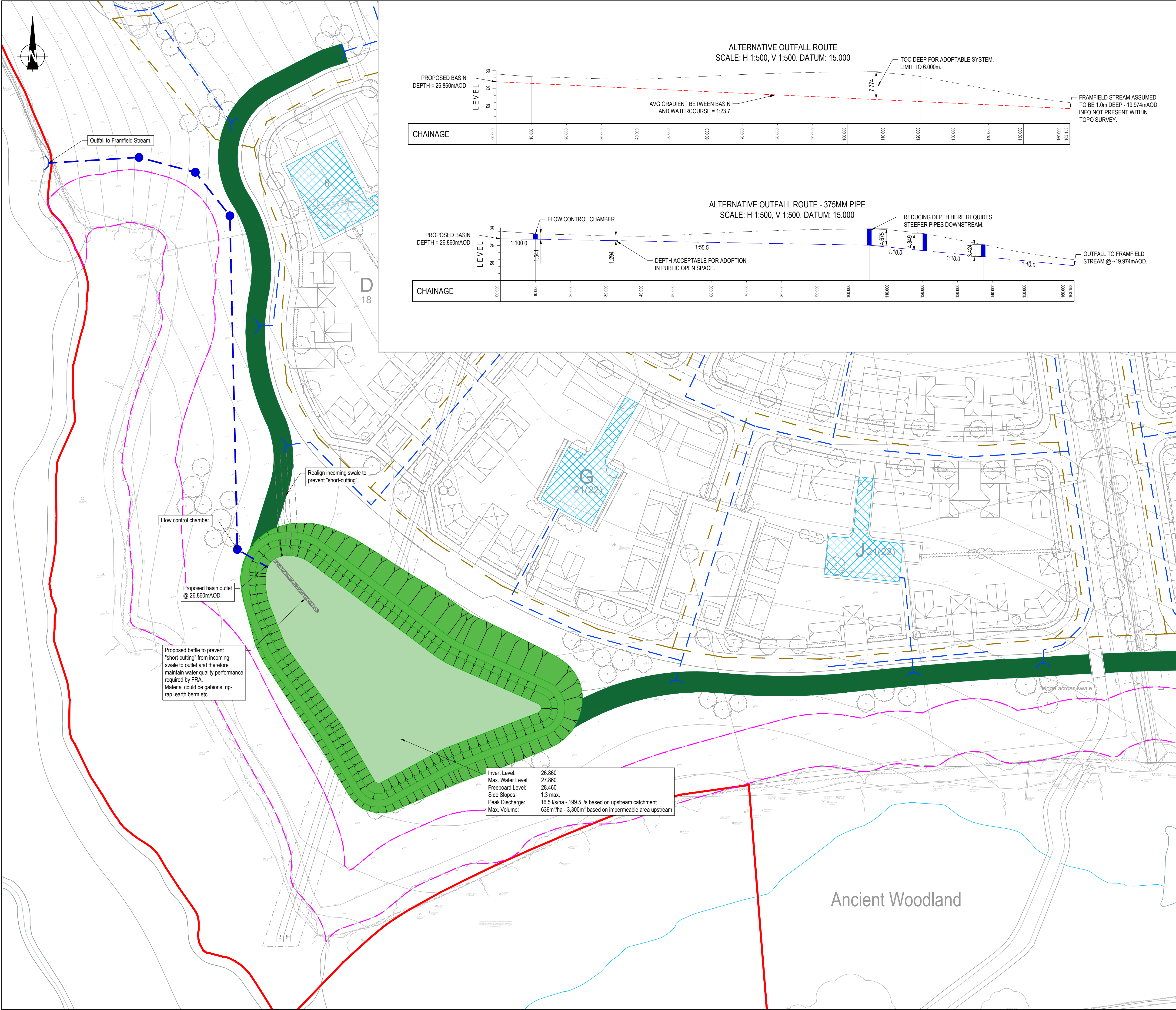
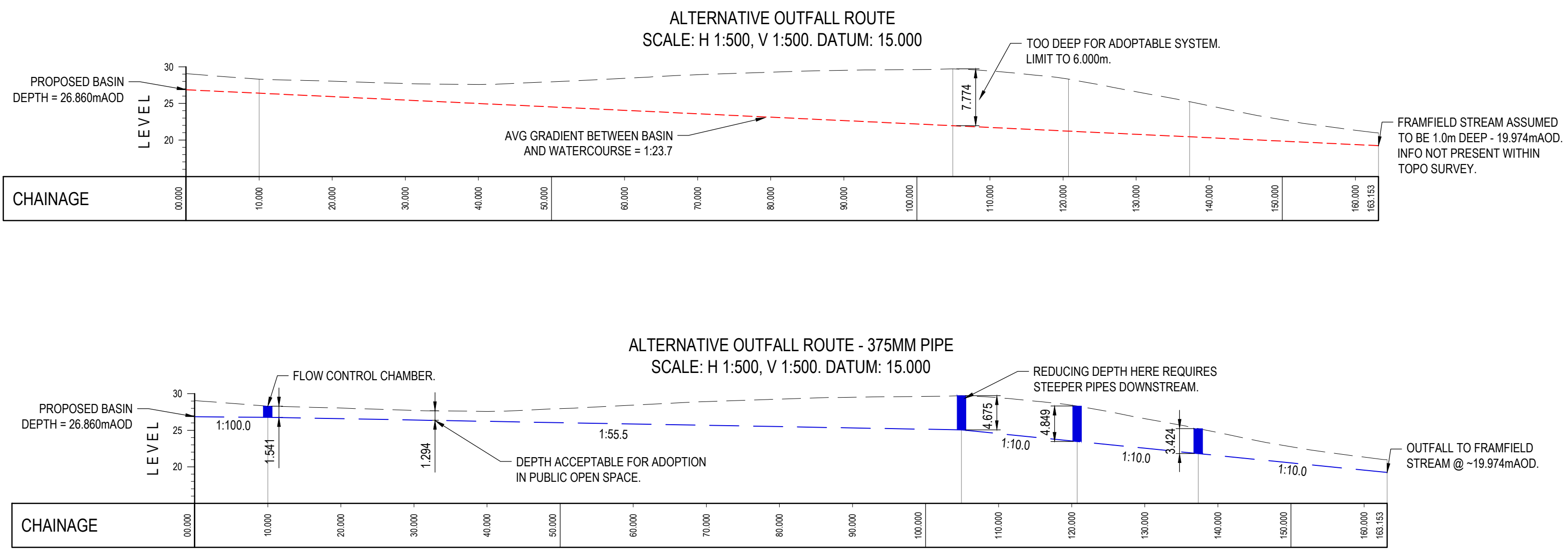
- 2.2.17 However, high groundwater levels were recorded resulting in poor infiltration rates, indicating an infiltration-led surface water outfall design unviable. Therefore, infiltration as a means of surface water discharge on site was discounted, with further testing and monitoring abandoned as it was no longer necessary.
- 2.2.18 Discharge to the Framfield Stream, as per the initial surface water drainage outfall design, again becomes the preferred point of discharge. However, cognisant of WDC's previous comments, the outfall route is designed to avoid the ASNW designation.
- 2.2.19 An alternative outfall route has been determined by Stantec which circumnavigates the ASNW designation. The outfall route directs surface water northwards around the ASNW before turning west towards the Framfield Stream at a point outside of the designation. This outfall design does not completely follow the natural topography on site, however it is still achievable via a gravity sewer but requires surface water drainage infrastructure up to 6.0m below existing ground levels, depending on the size of outfall pipe used. This depth is the limit of such infrastructure that would potentially be adoptable by Southern Water as the local sewerage undertaker.
- 2.2.20 It should be noted, owing to timescales and on the ongoing planning appeal process, WDC and the LLFA have not been provided GI1789 or 48494/2002/SK05/A to date and are attached to this Technical Summary.

3 Conclusion

- 3.1.1 This Technical Summary has provided a chronology and description of the proposed surface water outfall to serve the proposed development applied for within WD/2021/2198/MAO.
- 3.1.2 Following receipt of comments from WDC over the lifetime of this project, and in accordance with the relevant policy and guidance, a surface water drainage outfall design has been developed by Stantec has robustly demonstrated that infiltration is not a viable means of surface water discharge, that has no impact on the ASNW and is fully deliverable without third party agreement.
- 3.1.3 Therefore, it is concluded that the proposed development has a viable surface water drainage outfall that does not prejudice the delivery of the development itself.
- 3.1.4 It is accepted that a surface water drainage related condition will still be required for discharge via a future reserved matters application. This condition will require the provision of more detail surface water drainage design information, as is typical, but will no longer require the specific wording proposed by WDC regarding infiltration testing as this has already been undertaken.
- 3.1.5 Final designs of the SWDS and the respective outfall are subject to future relevant reserved matters applications and Flood Risk Activity Permit from the Environment Agency (the Framfield Stream is designated as a Main River).
- 3.1.6 The iterative design process, as set out in this Technical Summary, has resulted in a surface water drainage strategy that achieves its purpose, in accordance with national and local policy and guidance, but entirely avoids encroachment into the ASNW.

Attachments

- 48494/2002/SK05/A – Assessment of Alternative Outfall Route
- Bird in Eye Farm, Uckfield – GI1789



Notes:

1. This drawing is to be read in conjunction with all other Engineer's drawings.
2. Do not scale from this drawing.
3. All dimensions are in metres unless noted otherwise.
4. All levels are in metres above Ordnance Datum (AOD).
5. Levels, pipe diameters and gradients, and manhole depths are indicative only and subject to detailed design.

Key:

- Application Boundary
- Ancient Woodland 15m Buffer Zone
- Proposed Surface Water Drainage Sewer (indicative only)
- Proposed Foul Drainage Sewer (indicative only)
- Proposed Surface Water Drainage Headwall
- Proposed Permeable Paving
- Proposed Swale
- Proposed Basin

A		Outfall alignment amended	11.01.23	LWD	-	-
Mark	Revision		Date	Drawn	Chkd	Appd

SCALING NOTE: Do not scale this drawing - any errors or omissions shall be reported to Stantec without delay.
UTILITIES NOTE: The position of any existing public or private sewers, utility services, plant or apparatus shown on this drawing is believed to be correct, but no warranty to this is expressed or implied. Other such plant or apparatus may also be present but not shown. The Contractor is therefore advised to undertake their own investigation where the presence of any existing sewers, services, plant or apparatus may affect their operations.

Drawing Issue Status

For Information

Land at Bird in Eye Farm
South of Bird in Eye Hill, Uckfield

Assessment of Alternative Outfall Route

Client		
Croudace Homes Limited and Mr & Mrs Berry		
Date of 1st Issue	Designed	Drawn
08.11.2022	LWD	LWD
A1 Scale	Checked	Approved
1:500	-	-
Drawing Number		Revision
48494/2002/SK05		A

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TAUNTON
Tel: 01823 218 940

Croudace Homes
Croudace House
Tupwood Lane
Caterham
Surrey
CR3 6XQ

Geotechnical Investigations Limited
Unit 1
Far Hill Farm
Fairford
Gloucestershire
GL7 4PZ

23rd November 2022

Bird in Eye Farm, Uckfield – GI1789

Geotechnical Investigations Limited (this Company) was instructed by Emma Challenger of Croudace Homes (the Client) via email dated 14th October 2022, to undertake a site investigation at the above site.

The sitework was conducted between 7th and 10th November 2022 and comprised the excavation of four (4) trial pits. Trial pits referenced TP101 to TP103 and TP102A were formed for the purpose of soakaway tests, which were conducted at each location.

The exploratory hole locations were set out by this company using the coordinates and exploratory location plan provided by the Client and are shown in figure 1.

Service information provided by the Client was reviewed by this company in advance of the siteworks. A CAT (cable avoidance tool) was used by a suitably qualified engineer at every exploratory location before commencing each excavation.

The trial pits were excavated using a 13 tonne tracked excavator using 0.45m and 0.60m wide buckets. The trial pits were 'made square' as much as possible prior to commencing the soakaway tests.

The material arising was logged by an engineering geologist.

A slotted 50mm diameter HDPE groundwater monitoring pipe was installed to the base of each pit, before imported 20mm washed shingle was used to backfill each soakaway pit to near surface, using the excavator and a 6 tonne dumper, in order to maintain the stability of the pits during soakaway testing.

A supply of potable water contained within 2500ltr water bowzers, towed by the 6 tonne dumper, was then used to rapidly fill each trial pit where soakaway testing was undertaken. Soakaway tests were conducted in accordance with BRE DG 365 (2016) and the result for each test are attached.

Initially a soakaway test was commenced in TP102 at 3.60m, which was beyond the target depth of 2.80m. TP102A was therefore excavated to 2.80m adjacent to TP102.

Due to heavy rainfall during the night of 8th/9th November (which resulted in surface water runoff entering the soakaway pits) water levels within all of the soakaway pits were seen to rise overnight.

It was agreed on the 9th November to monitor the subsequent water levels within the pits and this was continued throughout 10th November. A single reading was also taken on the 11th November and the results are attached.

It was agreed that the formation of three (3) proposed shallow boreholes with monitoring standpipes would be postponed and the 50mm diameter groundwater monitoring standpipes used within the pits should be installed with headworks for future potential monitoring.

Trial pit logs and the results of associated soakaway tests are attached to this letter, along with photographs of the excavations.

On completion of the works, the exploratory hole locations were backfilled above the granular backfill layer with material arising and the surface was made good. Reinstatement was also made to the ground with the excavator, as a result of deep tracks being made by the heavy plant in soft surface conditions. This was done to the general satisfaction of the landowner.

This written report has been prepared by Geotechnical Investigations Limited solely for the benefit of Croudace Homes. It shall not be relied upon or transferred to any third party without the prior written authorisation of Geotechnical Investigations Limited.



Robert Ewens BSC (Hons) PGC FGS

Director



Site plan provided by Stantec
Not to scale



**GEOTECHNICAL
INVESTIGATIONS
LIMITED**

CLIENT Croudace Homes
SITE Bird in Eye Farm,
Uckfield
CONTRACT GI1789
Figure 1.



GEOTECHNICAL INVESTIGATIONS LIMITED

Soakaway Test

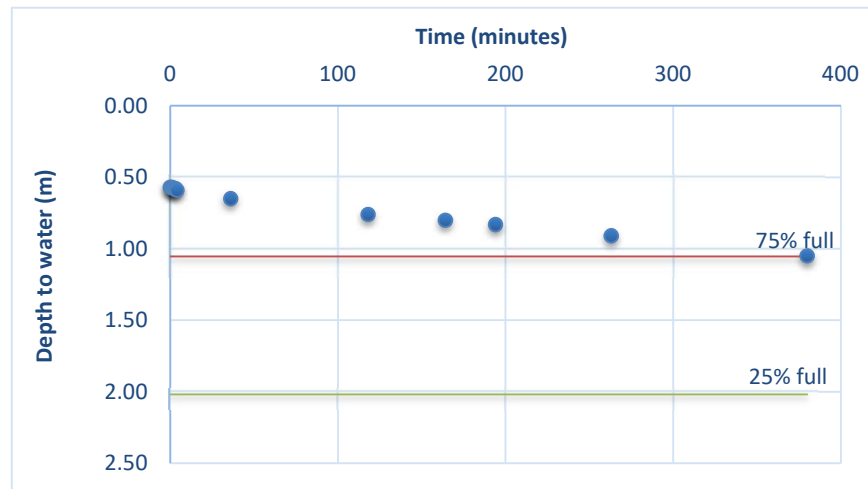
CLIENT Croudace Homes
SITE Bird Eye Farm, Uckfield
CONTRACT GI1789
DATE 08/11/2022
HOLE ID TP101

TEST 1

LENGTH 3.10 m
 BREADTH 0.60 m
 DEPTH 2.50 m
 WATER LEVEL PRE TEST Dry
 FILL LEVEL To 100% 0.57 m

V_{p75-25} 1.79 m³
 a_{p50} 9.00 m²
 t_{p75-25} ** min

soil infiltration rate, $f =$ **



Remarks

Trial pit excavated on 7/11/2022 using 13T tracked excavator.
 Trial pit remained stable during excavation.
 Groundwater seepage noted at 0.80m.
 Test carried out in accordance with BRE DG 365 (2016).

Trial pit backfilled to 0.60mbgl with 20mm washed shingle to ensure pit stability. A 50mm HDPE groundwater monitoring pipe was installed to 2.50m with slotted section 2.50-0.60m and plain pipe 0.60-0.00m.

** Insufficient fall in water level to calculate t_{p75-25} and soil infiltration rate.

Geological Description (BS5930 2015)

0.00-0.50m Grass over brown very silty SAND/very sandy SILT.

0.50-2.50m Light brown and orangish-brown silty gravelly fine SAND with occasional cobbles. Gravel and cobbles are subangular fine to coarse sandstone.



GEOTECHNICAL INVESTIGATIONS LIMITED

Soakaway Test

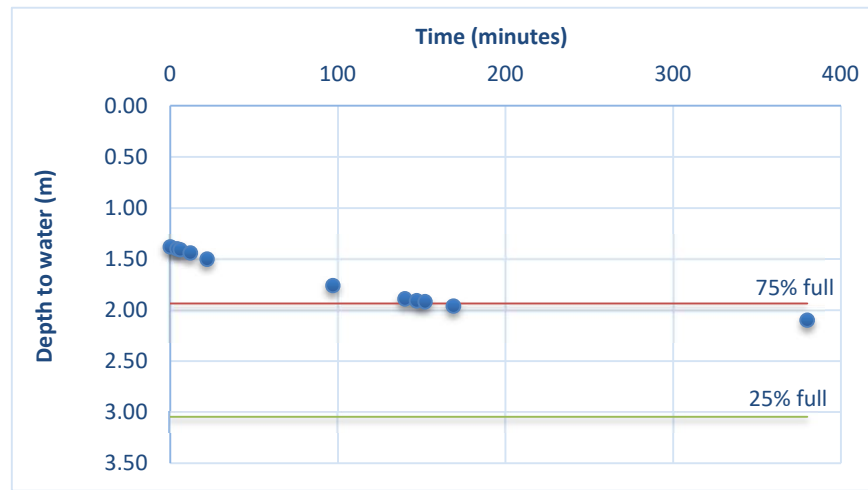
CLIENT Croudace Homes
SITE Bird Eye Farm, Uckfield
CONTRACT GI1789
DATE 08/11/2022
HOLE ID TP102

TEST 1

LENGTH 3.00 m
 BREADTH 0.60 m
 DEPTH 3.60 m
 WATER LEVEL PRE TEST Dry
 FILL LEVEL To 100% 1.38 m

V_{p75-25} 2.00 m³
 a_{p50} 9.79 m²
 t_{p75-25} ** min

soil infiltration rate, $f =$ **



Remarks

Trial pit excavated on 7/11/2022 using 13T tracked excavator.
 Some sidewall spalling noted 0.50-1.00m during excavation.
 Groundwater seepage noted at 0.80m.
 Test carried out in accordance with BRE DG 365 (2016).

Trial pit backfilled to 0.50mbgl with 20mm washed shingle to ensure pit stability. A 50mm HDPE groundwater monitoring pipe was installed to 2.50m with slotted section 2.50-0.50m and plain pipe 0.50-0.00m.

** Insufficient fall in water level to calculate t_{p75-25} and soil infiltration rate.

Geological Description (BS5930 2015)

0.00-0.45m	Grass over brown very silty SAND/very sandy SILT.
0.45-1.40m	Firm fissured mottled light brown and buff silty CLAY.
1.40-3.60	Light brown and orangish-brown silty gravelly fine SAND with occasional cobbles. Gravel and cobbles are subangular fine to coarse sandstone.



GEOTECHNICAL INVESTIGATIONS LIMITED

Soakaway Test

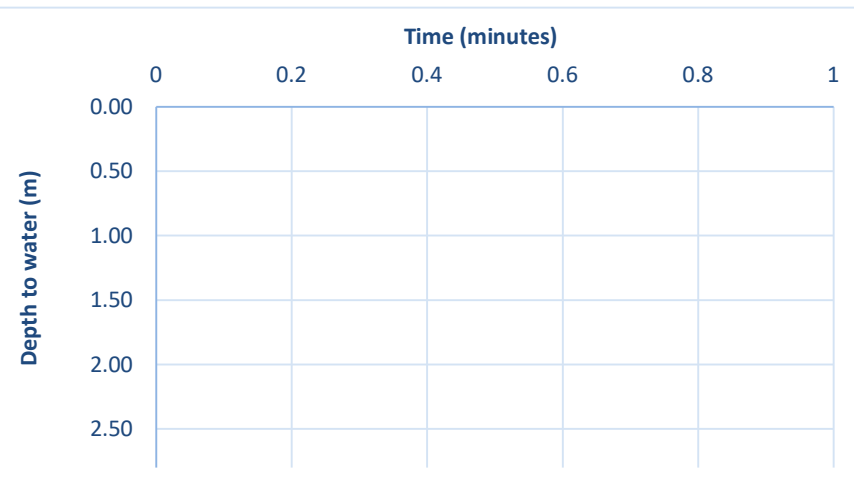
CLIENT Croudace Homes
SITE Bird Eye Farm, Uckfield
CONTRACT GI1789
DATE 08/11/2022
HOLE ID TP102A

TEST 1

LENGTH 2.90 m
BREADTH 0.45 m
DEPTH 2.80 m
WATER LEVEL PRE TEST Dry
FILL LEVEL To 100% 0.37 m

 V_{p75-25} 0.00 m³
 a_{p50} 1.31 m²
 t_{p75-25} min

soil infiltration rate, $f =$



Remarks

Trial pit excavated using 13T tracked excavator.
Trial pit remained stable during excavation.
Groundwater not encountered.
Unable to undertake BRE soakaway test due to surface water runoff entering the pit overnight on 8th/9th November. Water levels in pits monitored following water ingress.

Trial pit backfilled to 0.40mbgl with 20mm washed shingle to ensure pit stability. A 50mm HDPE groundwater monitoring pipe was installed to 2.80m with slotted section 2.80-0.40m and plain pipe 0.40-0.00m.

Geological Description (BS5930 2015)

0.00-0.40m Grass over brown very silty SAND/very sandy SILT.
0.40-1.40m Firm fissured mottled light brown and buff silty CLAY.
1.40-2.80 Light brown and orangish-brown silty gravelly fine SAND with occasional cobbles. Gravel and cobbles are subangular fine to coarse sandstone.



GEOTECHNICAL INVESTIGATIONS LIMITED

Soakaway Test

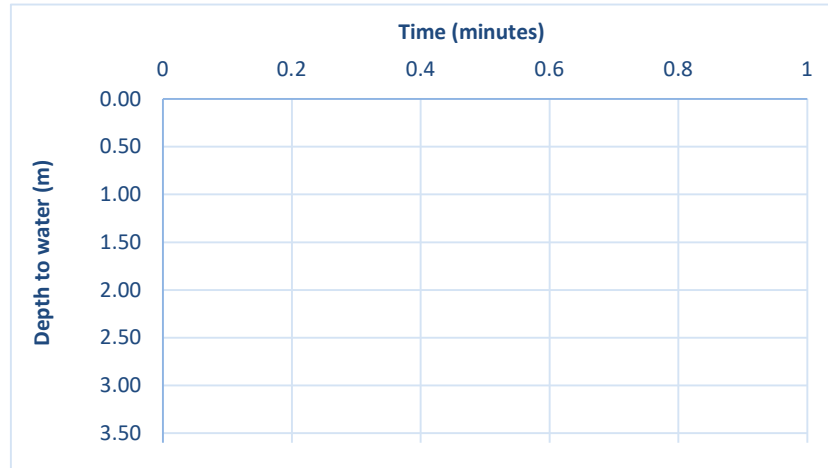
CLIENT Croudace Homes
SITE Bird Eye Farm, Uckfield
CONTRACT GI1789
DATE 08/11/2022
HOLE ID TP103

TEST 1

LENGTH 3.10 m
BREADTH 0.60 m
DEPTH 3.60 m
WATER LEVEL PRE TEST Damp
FILL LEVEL To 100% 0.37 m

 V_{p75-25} 0.00 m³
 a_{p50} 1.86 m²
 t_{p75-25} min

soil infiltration rate, $f =$



Remarks

Trial pit excavated using 13T tracked excavator.
Trial pit remained stable during excavation.
Groundwater seepage noted at 2.70m.
Unable to undertake BRE soakaway test due to surface water runoff entering the pit overnight on 8th/9th November. Water levels in pits monitored following water ingress event.

Trial pit backfilled to 1.00mbgl with 20mm washed shingle to ensure pit stability. A 50mm HDPE groundwater monitoring pipe was installed to 3.60m with slotted section 3.60-1.00m and plain pipe 1.00-0.00m.

Geological Description (BS5930 2015)

0.00-0.40m Grass over brown very silty SAND/very sandy SILT.
0.40-1.80m Light brown and orangish-brown very silty slightly gravelly SAND. Gravel is subangular fine to coarse sandstone.
1.80-3.10m Light brown and orangish-brown silty gravelly fine SAND with occasional cobbles. Gravel and cobbles are subangular fine to coarse sandstone.
3.10-3.60m SANDSTONE recovered as silty sandy angular GRAVEL and COBBLES.



**GEOTECHNICAL
INVESTIGATIONS
LIMITED**

Groundwater Monitoring

CLIENT Croudace Homes
SITE Bird Eye Farm, Uckfield
CONTRACT GI1789
DATE 9/11/2022 - 11/11/2022

Date	Hole ID	Time	Water level mbgl
09/11/2022	TP101	08:30hrs	0.41
09/11/2022	TP101	10:07hrs	0.47
09/11/2022	TP101	11:31hrs	0.54
09/11/2022	TP101	12:00hrs	0.54
09/11/2022	TP101	12:42hrs	0.62
09/11/2022	TP101	13:47hrs	0.69
09/11/2022	TP101	14:44hrs	0.73
09/11/2022	TP101	15:43hrs	0.76
09/11/2022	TP101	16:41hrs	0.81
10/11/2022	TP101	08:05hrs	1.34
10/11/2022	TP101	09:01hrs	1.37
10/11/2022	TP101	09:53hrs	1.39
10/11/2022	TP101	10:50hrs	1.41
10/11/2022	TP101	12:22hrs	1.45
10/11/2022	TP101	14:12hrs	1.52
10/11/2022	TP101	15:04hrs	1.53
10/11/2022	TP101	16:26hrs	1.55
11/11/2022	TP101	09:47hrs	1.84



**GEOTECHNICAL
INVESTIGATIONS
LIMITED**

Groundwater Monitoring

CLIENT Croudace Homes
SITE Bird Eye Farm, Uckfield
CONTRACT GI1789
DATE 9/11/2022 - 11/11/2022

Date	Hole ID	Time	Water level mbgl
09/11/2022	TP102A	08:35hrs	0.10
09/11/2022	TP102A	10:08hrs	0.10
09/11/2022	TP102A	11:34hrs	0.20
09/11/2022	TP102A	12:04hrs	0.20
09/11/2022	TP102A	13:50hrs	0.35
09/11/2022	TP102A	14:46hrs	0.41
09/11/2022	TP102A	15:45hrs	0.49
09/11/2022	TP102A	16:45hrs	0.57
10/11/2022	TP102A	08:07hrs	1.35
10/11/2022	TP102A	09:03hrs	1.38
10/11/2022	TP102A	09:54hrs	1.41
10/11/2022	TP102A	10:51hrs	1.45
10/11/2022	TP102A	12:09hrs	1.50
10/11/2022	TP102A	14:06hrs	1.53
10/11/2022	TP102A	15:02hrs	1.57
10/11/2022	TP102A	16:24hrs	1.59
11/11/2022	TP102A	09:45hrs	1.86



**GEOTECHNICAL
INVESTIGATIONS
LIMITED**

Groundwater Monitoring

CLIENT Croudace Homes
SITE Bird Eye Farm, Uckfield
CONTRACT GI1789
DATE 9/11/2022 - 11/11/2022

Date	Hole ID	Time	Water level mbgl
09/11/2022	TP103	08:38hrs	2.07
09/11/2022	TP103	10:11hrs	2.07
09/11/2022	TP103	11:36hrs	2.06
09/11/2022	TP103	12:06hrs	2.06
09/11/2022	TP103	12:46hrs	2.04
09/11/2022	TP103	14:49hrs	2.03
09/11/2022	TP103	15:47hrs	2.02
09/11/2022	TP103	16:43hrs	2.01
10/11/2022	TP103	08:09hrs	1.99
10/11/2022	TP103	09:05hrs	1.94
10/11/2022	TP103	09:56hrs	1.94
10/11/2022	TP103	10:53hrs	1.94
10/11/2022	TP103	11:58hrs	1.94
10/11/2022	TP103	14:02hrs	1.95
10/11/2022	TP103	15:00hrs	1.97
10/11/2022	TP103	16:22hrs	1.97
11/11/2022	TP103	09:47hrs	2.00

Appendix D

Natural England comments 23/03/2022

From: Scott-Heagerty, Tom <Thomas.Scott-Heagerty@naturalengland.org.uk>
Sent: 23 March 2022 13:39
To: Claire Turner
Cc: planning
Subject: Planning Application WD/2021/2198/MAO

Dear Claire Turner,

I have been in contact with the applicant since our last consultation (ref 370366, 10 November 2021), and subsequently have additional comments for consideration for this application.

In our previous response letter (ref 370366, 10 November 2021), we spoke about the functionality of the SANG, and recommended that boardwalks were installed through areas of woodland to ensure that the paths remained functional all year round. The applicant has now clarified this point and has shown that boardwalks may not be feasible due to safety concerns, and may cause greater damage to neighbouring woodland/trees. Woodchipped/gravel paths have been proposed as an alternative solution to boardwalks which we have now considered. Natural England are content with the use of wood chip/gravel paths on the condition that the paths will be suitable managed and maintained to ensure that they remain function all year round.

Natural England are concerned that the adjacent ancient woodland could experience an increase in recreational pressure due to the proposed planning application. For this reason, the inclusion of a well-maintained and managed fencing along the entire SANG boarder should help avoid and restrict recreational impacts to the ancient woodland. In addition, some management of ancient woodland would help mitigate some recreational disturbance impacts, that are still likely to occur due to this proposal. Although we requested that this management of ancient woodland be included within the SANG management scheme. The applicant has now clarified that an area of ancient woodland within Nightingale shaw can be included within the development zone management plan. If this management of ancient woodland can be conditioned to be included with this development zone management plan, then this should address our concerns with regards to recreational disturbance impacts to ancient woodland.

If you have any further queries relating to these comments or our last consultation letter, then please contact me on 07919 659298, or at thomas.scott-heagerty@naturalengland.org.uk

Yours sincerely,

Tom Scott-Heagerty
Lead Adviser - Sustainable Development
Sussex and Kent Area Team
Natural England
Guildbourne House
Worthing
BN11 1LD

Mobile: 07919 659298

Pronouns: he/him - [why have I put this?](#)

Working Pattern: Monday – Friday, 9am – 5pm
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Clare Caudwell

From: Scott-Heagerty, Tom <Thomas.Scott-Heagerty@naturalengland.org.uk>
Sent: 05 January 2022 14:18
To: Clare Caudwell
Subject: RE: 2646 Bird In Eye Farm, Uckfield WD/2021/2198/MAO

Dear Clare,

Thank you for your email and a Happy New Year to you too. I've had a read through your additional information and I've provided some comments below which I hope will be useful to you.

- Use of bark chip or gravel sounds like a sensible approach if boardwalks are likely to cause greater impacts to tree/woodland. If bark chip/gravel pathways are used, then they will need to be maintained throughout the year (and especially during the wetter winter months). I acknowledge that the footpath through the woodland is not a flood risk, however the concern is that the footpath may become boggy and unusable in the wetter months. However I'm sure this can be resolved through good design and regular maintenance of the path.
- Thank you for clarifying that the AW within Nightgale Shaw (and additional woodland to the eastern boundary) will be included in a development zone Management Plan. We asked for some management of AW as protective fencing around AW is not a guarantee that it'll be protected against recreational disturbance impacts. If the development zone Management Plan can include some AW management or instead monitoring and maintenance of protective fencing around the areas of AW, then this should address our concerns about recreational disturbance impacts to the AW.

Kind regards,
Tom

Tom Scott-Heagerty

Lead Adviser - Sustainable Development
Sussex and Kent Area Team
Natural England
Guildbourne House
Worthing
BN11 1LD

Mobile: 07919 659298

Pronouns: he/him - [why have I put this?](#)

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From: Clare Caudwell <clare.caudwell@csaenvironmental.co.uk>
Sent: 04 January 2022 12:30
To: Scott-Heagerty, Tom <Thomas.Scott-Heagerty@naturalengland.org.uk>
Subject: FW: 2646 Bird In Eye Farm, Uckfield WD/2021/2198/MAO

Dear Tom,

A Happy New Year to you. I contacted you towards the back end of 2021 with regards to the attached planning consultation response.

Please see my response to the queries you raise below. Would you be able to provide me with a further response or could we perhaps discuss over the phone at some point this week to try and resolve?

Best regards

Clare

Clare Caudwell BSc (Hons) MSc CEcol MCIEEM
Associate Director (Ecology)



Office 20, Citibase, 95 Ditchling Road, Brighton, East Sussex, BN1 4ST
t 01273 573871 m 07968 192178 w csaenvironmental.co.uk

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From: Clare Caudwell
Sent: 29 November 2021 16:30
To: Thomas.Scott-Heagerty@naturalengland.org.uk
Subject: FW: 2646 Bird In Eye Farm, Uckfield WD/2021/2198/MAO

Dear Thomas,

Bird In Eye Farm, Uckfield WD/2021/2198/MAO

CSA are the consultant ecologists working on behalf of Croudace in relation to the above application. I have received a copy of your planning consultation response attached. I would just like to provide a response / request some clarification with regards to the points raised (see below) – but perhaps we could have a brief telephone conversation next week to try and cover these points off?

- *SANG – Provision of Boardwalks to ensure that woodland access will be provided at all times of year.* This was considered in consultation with the project arborist and The Land Trust (proposed managing agent for the SANG). It was concluded that installation of such features would result in likely greater potential impacts to trees / woodland than keeping the existing footpath route as it is through the woodland, as well as representing a huge cost to install, maintain and replace (and often prone to vandalism). As an alternative bark chip (or possibly bound gravel) is recommended with the addition of bark chip where necessary and stock (dog) proof fencing either side of the footpath to prevent access into the wider woodland (see para 5.77 of the ECIA CSA/2646/C). In addition, in

places the footpath route through the ancient woodland is fairly steep and as such it was considered that the provision of a boardwalk might increase the risk of slips and trips in wet weather.

- Whilst a small ditch does pass through the woodland (and an upgraded footbridge will be provided to provide access over this feature), any significant / frequent seasonal flooding has not been noted within the woodland. I would direct you to the Flood Risk Assessment (Stantec, 2020) (see para 5.77 of the ECIA CSA/2646/C) which identified that the majority of the site (including the majority of Bird in Eye Shaw) falls within Flood Zone 1 (low flood probability of flooding) with the point at which the footpath crossing over the ditch falling just within Flood Zone 2 (medium probability; chance of flooding of 0.1-1% probability of flooding from river each year) (see Fig 3 App D of the FRA). The risk of flooding from surface water (generated by heavy rainfall modelled on the topography rather than flows in the watercourse itself) is shown to be "High", which means a greater than 3.3% probability each year. Fig 4 App D of the FRA indicates this flood depth could be between 0.9-1.2m. However, given the low probability and partial coverage of Flood Zone 2 through the woodland, we would not anticipate that flooding would significantly affect use of the footpath / crossing of the stream (as confirmed by the Stantec). In addition to the above, given the conditions required to result in a flooding event (fairly extreme rain) it is unlikely that residents would be out walking in such conditions. It is not considered likely that excessively wet conditions / flooding will significantly affect usage of this pedestrian route through the woodland as to affect the delivery of SANG mitigation.
- *SANG Management Plan inclusion of Ancient Woodland* – The only area of AW actually included within the proposed SANG area is the footpath connection that crosses through the AW. AW woodland to the west of the proposed development (Nightingale Shaw) is not actually included within the SANG boundary; as such no specific measure for AW management were included within the SANG Management Plan (as costed by the Land Trust). Management of AW within Nightingale Shaw (and additional woodland to the eastern boundary) would be picked up in a development zone Management Plan – which would typically be secured by way of condition (as indicated within para 5.66 of the ECIA).

I hope that the above addressed the concerns you have raised; however should you wish to discuss further perhaps you could advise me of a good time to give you a call this week?

Best regards

Clare

Clare Caudwell BSc (Hons) MSc CEcol MCIEEM
Associate Director (Ecology)



Office 20, Citibase, 95 Ditchling Road, Brighton, East Sussex, BN1 4ST
t 01273 573871 m 07968 192178 w csaenvironmental.co.uk

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Appendix E

Natural England comments 10/11/2021

Date: 10 November 2021
Our ref: 370366
Your ref: WD/2021/2198/MAO



Mrs C Turner
Planning Case Officer
Wealden District Council

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

T 0300 060 3900

BY EMAIL ONLY

Dear Mrs C Turner,

Planning consultation: OUTLINE PLANNING APPLICATION FOR THE ERECTION OF UP TO 290 DWELLINGS, ASSOCIATED LANDSCAPING, INFORMAL OPEN SPACE AND STRATEGIC SANG, WITH ACCESS FROM THE B2102.

Location: LAND AT BIRD IN EYE FARM, SOUTH OF BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

Thank you for your consultation on the above dated 01 October 2021 which was received by Natural England on the same date.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

SUMMARY OF NATURAL ENGLAND'S ADVICE

FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES

As submitted, the application could have potential significant effects on Ashdown Forest Special Area of Conservation (SAC), Special Protection Area (SPA) and Site of Special Scientific Interest (SSSI). Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation.

The following information is required:

- Details on how impacts to ancient woodland can be prevented. Including the use of boardwalks, and consideration of woodland management within the SANG Management Plan.
- Consideration of any potential likely significant effects upon Ashdown Forest SPA and SAC through a Habitats Regulations Assessment, and proceeding to the Appropriate Assessment stage to incorporate the proposed Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring Strategy (SAMMS) mitigation.

The proposed SANG and SAMMS measures to avoid and mitigate for recreational disturbance impacts may need to be formally checked and confirmed by your Authority, as the competent authority, via an appropriate assessment in view of the European Site's conservation objectives and in accordance with the Conservation of Habitats & Species Regulations 2017 (as amended).

Without this information, Natural England may need to object to the proposal.

Please re-consult Natural England once this information has been obtained.

Natural England's further advice on designated sites/landscapes and advice on other issues is set out below.

Additional Information required:

Habitats Regulations Assessment

DESIGNATED SITES [EUROPEAN] – Recreational Disturbance

Since this application will result in a net increase in residential accommodation, impacts to the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC) may result from increased recreational disturbance.

Your authority has measures in place to manage these potential impacts through the agreed Strategic Access Management and Monitoring Strategy (SAMMS) in line with Policy WCS12 of the Wealden District Adopted Core Strategy Local Plan (2013), which Natural England find ecological sound. These SAMM financial contributions should be secured and included within your Authority's Appropriate Assessment, as well as the proposed SANG mitigation.

It is Natural England's advice that the proposal is not directly connected with or necessary for the management of European sites. Your authority should therefore determine whether the proposal is likely to have a significant effect on any European site, proceeding to the Appropriate Assessment stage where significant effects cannot be ruled out. Natural England must be consulted on any appropriate assessment your authority may decide to make.

Proposed SANG

Natural England has reviewed the updated SANG design and now acknowledge that modifications to the design have now incorporated most of our suggestions that we made to the applicant in our Discretionary Advice Service (DAS) meeting on the 13th May 2021. We now acknowledge that the following negative design points have now rectified:

- The concern for achieving a suitable circular walking route of at least 2.5km has now been achieved. In total, a circular route of c2.7km has now been proposed. This has been made possible by increasing the proposed area of the SANG, from 12ha to an area of 26.16ha.
- A pinch point along the walking route was identified as a constraint on the design. This has now been rectified by the addition of a footpath through the Ancient Woodland. This will prevent a bottleneck where the two paths would cross, and creates a more circular and varied walking route.
- Additional focal points in the form of scattered trees and pond have now been in the design of the open areas of the SANG. These additional features will act as focal points for the walking route, which will encourage people to use the full extent of the circular route.
- Concerns on potential impacts to ancient woodland have now been addressed by the inclusion of dog proof fencing, as well as fencing along the entire SANG boarder. These fences shall deter the public from entering and negatively impacting the ancient woodland.

However, further details are required to show that impacts to ancient woodland habitat can be prevented;

- We still recommend that boarded paths are installed through areas of woodland as this will ensure functionality of the paths during the wetter months.
- In our previous discussions, we also recommended that some management of the ancient woodland is provided within the management scheme. From reviewing the SANG Management Plan, it is not clear if this consideration has been included, we therefore advice that some management to ancient woodland is factored in to the final SANG management scheme.

Management and maintenance of the SANG by a reputable management company must be secured in perpetuity, for the lifetime of the developments. This is required under the Appropriate Assessment, to provide certainty that the SANG will remain in good functional condition, ensuring that it remains as suitable recreation disturbance mitigation for Ashdown Forest designated sites. We note that arrangements with The Land Trust for the management of the SANG in perpetuity are in progress, and that The Land Trust has signed the letter of intent (12th April 2021). The management of the SANG in perpetuity by The Land Trust should be secured by a s106 and included within your Authority's Appropriate Assessment.

Other advice

Ancient woodland, ancient and veteran trees

You should consider any impacts on ancient woodland and ancient and veteran trees in line with paragraph 180 of the NPPF. Natural England maintains the Ancient Woodland [Inventory](#) which can help identify ancient woodland. Natural England and the Forestry Commission have produced [standing advice](#) for planning authorities in relation to ancient woodland and ancient and veteran trees. It should be taken into account by planning authorities when determining relevant planning applications. Natural England will only provide bespoke advice on ancient woodland, ancient and veteran trees where they form part of a Site of Special Scientific Interest or in exceptional circumstances.

In addition, Natural England would advise on the following issues.

Please note that if your authority is minded to grant planning permission contrary to the advice in this letter, you are required under Section 28I (6) of the Wildlife and Countryside Act 1981 (as amended) to notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, your authority has taken account of Natural England's advice. You must also allow a further period of 21 days before the operation can commence.

Further general advice on the protected species and other natural environment issues is provided at Annex A.

If you have any queries relating to the advice in this letter please contact me at thomas.scott-heagerty@naturalengland.org.uk.

Please consult us again once the information requested above, has been provided.

Yours sincerely

Thomas Scott-Heagerty
Sussex and Kent Area Team

Annex A – Additional advice

Natural England offers the following additional advice:

Landscape

Paragraph 174 of the [National Planning Policy Framework](#) (NPPF) highlights the need to protect and enhance valued landscapes through the planning system. This application may present opportunities to protect and enhance locally valued landscapes, including any local landscape designations. You may want to consider whether any local landscape features or characteristics (such as ponds, woodland, or dry-stone walls) could be incorporated into the development to respond to and enhance local landscape character and distinctiveness, in line with any local landscape character assessments. Where the impacts of development are likely to be significant, a Landscape & Visual Impact Assessment should be provided with the proposal to inform decision making. We refer you to the [Landscape Institute](#) Guidelines for Landscape and Visual Impact Assessment for further guidance.

Best and most versatile agricultural land and soils

Local planning authorities are responsible for ensuring that they have sufficient detailed agricultural land classification (ALC) information to apply NPPF policies (Paragraphs 174 and 175). This is the case regardless of whether the proposed development is sufficiently large to consult Natural England. Further information is contained in [GOV.UK guidance](#). Agricultural Land Classification information is available on the [Magic](#) website on the [Data.Gov.uk](#) website. If you consider the proposal has significant implications for further loss of 'best and most versatile' agricultural land, we would be pleased to discuss the matter further.

Guidance on soil protection is available in the Defra [Construction Code of Practice for the Sustainable Use of Soils on Construction Sites](#), and we recommend its use in the design and construction of development, including any planning conditions. Should the development proceed, we advise that the developer uses an appropriately experienced soil specialist to advise on, and supervise soil handling, including identifying when soils are dry enough to be handled and how to make the best use of soils on site.

Protected Species

Natural England has produced [standing advice](#)¹ to help planning authorities understand the impact of particular developments on protected species. We advise you to refer to this advice. Natural England will only provide bespoke advice on protected species where they form part of a Site of Special Scientific Interest or in exceptional circumstances.

Local sites and priority habitats and species

You should consider the impacts of the proposed development on any local wildlife or geodiversity sites, in line with paragraphs 175 and 179 of the NPPF and any relevant development plan policy. There may also be opportunities to enhance local sites and improve their connectivity. Natural England does not hold locally specific information on local sites and recommends further information is obtained from appropriate bodies such as the local records centre, wildlife trust, geoconservation groups or recording societies.

Priority habitats and Species are of particular importance for nature conservation and included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. Most priority habitats will be mapped either as Sites of Special Scientific Interest, on the Magic website or as Local Wildlife Sites. List of priority habitats and species can be found [here](#)². Natural England does not routinely hold species data, such data should be collected when impacts on priority habitats or species are considered likely. Consideration should also be given to the potential environmental value of brownfield sites, often found in urban areas and former industrial land, further information including links to the open mosaic habitats inventory can be found [here](#).

¹ <https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

² <http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

Environmental gains

Development should provide net gains for biodiversity in line with the NPPF paragraphs 174(d), 179 and 180. Development also provides opportunities to secure wider environmental gains, as outlined in the NPPF (paragraphs 8, 73, 104, 120, 174, 175 and 180). We advise you to follow the mitigation hierarchy as set out in paragraph 180 of the NPPF and firstly consider what existing environmental features on and around the site can be retained or enhanced or what new features could be incorporated into the development proposal. Where onsite measures are not possible, you should consider off site measures. Opportunities for enhancement might include:

- Providing a new footpath through the new development to link into existing rights of way.
- Restoring a neglected hedgerow.
- Creating a new pond as an attractive feature on the site.
- Planting trees characteristic to the local area to make a positive contribution to the local landscape.
- Using native plants in landscaping schemes for better nectar and seed sources for bees and birds.
- Incorporating swift boxes or bat boxes into the design of new buildings.
- Designing lighting to encourage wildlife.
- Adding a green roof to new buildings.

Natural England's [Biodiversity Metric 3.0](#) may be used to calculate biodiversity losses and gains for terrestrial and intertidal habitats and can be used to inform any development project. For small development sites the [Small Sites Metric](#) may be used. This is a simplified version of [Biodiversity Metric 3.0](#) and is designed for use where certain criteria are met. It is available as a beta test version.

You could also consider how the proposed development can contribute to the wider environment and help implement elements of any Landscape, Green Infrastructure or Biodiversity Strategy in place in your area. For example:

- Links to existing greenspace and/or opportunities to enhance and improve access.
- Identifying opportunities for new greenspace and managing existing (and new) public spaces to be more wildlife friendly (e.g. by sowing wild flower strips)
- Planting additional street trees.
- Identifying any improvements to the existing public right of way network or using the opportunity of new development to extend the network to create missing links.
- Restoring neglected environmental features (e.g. coppicing a prominent hedge that is in poor condition or clearing away an eyesore).

Natural England's [Environmental Benefits from Nature tool](#) may be used to identify opportunities to enhance wider benefits from nature and to avoid and minimise any negative impacts. It is designed to work alongside [Biodiversity Metric 3.0](#) and is available as a beta test version.

Access and Recreation

Natural England encourages any proposal to incorporate measures to help improve people's access to the natural environment. Measures such as reinstating existing footpaths together with the creation of new footpaths and bridleways should be considered. Links to other green networks and, where appropriate, urban fringe areas should also be explored to help promote the creation of wider green infrastructure. Relevant aspects of local authority green infrastructure strategies should be delivered where appropriate.

Rights of Way, Access land, Coastal access and National Trails

Paragraphs 100 and 174 of the NPPF highlight the important of public rights of way and access. Development should consider potential impacts on access land, common land, rights of way and coastal access routes in the vicinity of the development. Consideration should also be given to the potential impacts on the any nearby National Trails. The National Trails website www.nationaltrail.co.uk provides information including contact details for the National Trail Officer. Appropriate mitigation measures

should be incorporated for any adverse impacts.

Biodiversity duty

Your authority has a [duty](#) to have regard to conserving biodiversity as part of your decision making. Conserving biodiversity can also include restoration or enhancement to a population or habitat. Further information is available [here](#).

Appendix F

Land Trust Letter of Intent 15/04/2021



15th April 2021

Emma Challenger
Croudace Homes Ltd
Croudace House
Tupwood Lane
Caterham
Surrey
CR3 6XQ

Dear Emma,

Subject to Board Approval

Subject to Contract

Re: Land Trust SANG provision and maintenance

Location: Land at Bird in Eye Farm, South of Bird in Eye Hill, Uckfield

Following our recent correspondence, discussions and site review concerning the Strategic Suitable Alternative Natural Greenspace (SANG) to be created at Land at Bird in Eye Farm, I am pleased to confirm that subject to Board approval, contract and payment of an agreed endowment, the Land Trust ('LT') is able to take formal ownership of the proposed SANG, being an area of approximately 26 hectares, and would thereafter remain responsible for its provision and maintenance in perpetuity - for the avoidance of doubt being a term no less than 80 years.

LT expects an unencumbered transfer with all SANG to be made available with the full endowment.

The site would be funded by the agreed in perpetuity endowment that would include for all management and maintenance, including the periodic capital replacement of site furniture and access infrastructure. The capital sum is ring fenced to the site and is invested in within LT's wider investment portfolio of over £160M.

Investment returns, assumed at 3.5%, are generated to fund the site management and delivery of LT's wider charitable objectives. The capital endowment is not spent and grows in line with inflation.

The site would be managed in accordance with a planning approved SANG Management Plan.

The SANG is considered to be of 'strategic' status as it contains more capacity than is required for the Land at Bird in Eye Farm development. This will enable other developments within a 5km catchment to acquire surplus capacity to help mitigate the impact of their developments on the Ashdown Forest SPA. LT is able to provide the current landowners the legal mechanism and structure, to allow LT to deliver the SANG in perpetuity and the current landowners to retain control over the allocation and sale of surplus capacity themselves.

This model is widely accepted by Local Planning Authorities such as Guildford Borough Council and Royal Borough of Windsor and Maidenhead.

LT is an independent Charity with influential partners, members and trustees. We manage open spaces on behalf of and in partnership with local communities. Our Key Principles and detail on our approach to site management are appended.

LT is leading the charge for cost effective solutions to deliver high quality and sustainably managed open space which preserves the character, value and benefits of our open spaces. LT supports people across the country to take control of their local green space.

We are highly experienced in every aspect of SANGs including:

- Identifying land
- Site design and management plans
- Reviewing third party designs and management plans
- Calculating capital works and in-perpetuity funding
- Project managing capital works
- Acquisition and in-perpetuity management

LT has a proven track record in managing land for the benefit of communities and wildlife. It has been approved by Natural England and a number of Local Planning Authorities as an appropriate body to manage SANG. The sites we manage includes 110 hectares of SANG land at Wellesley, Hampshire, 56 hectares of SANG land at Prince Philip Park, Hampshire and 26 hectares of strategic SANG land at Ash, Surrey.

The SANG at Wellesley is the largest in the country and has been established to deliver the recreational infrastructure to offset any negative impact on the Thames Basin Heaths Special Protection Area (SPA) and is part of the planning consent for the delivery of 3,850 new homes.

Ash Green Meadows is a 25 hectare strategic SANG in Surrey. The site was originally intended to transfer to Guildford Borough Council, however Bewley Homes Ltd undertook a Deed of Variation to the s106 to allow the land to be transferred to LT. Gifting the land to LT provided Bewley with a more cost effective funding model and allowed them to retain control over the sale of surplus capacity to third party developments.

LT acquired the site in September 2018 and has recently contributed towards a planning application that will see the site expand to the north thereby increasing strategic SANG capacity for the Borough. The success of Ash Green Meadows has meant that LT is now due to acquire five further strategic SANGs in Guildford covering over 100 hectares of land.

More information about LT, and the role we are undertaking at Wellesley Woodlands and Ash Green Meadows, can be found on the following web links:

<http://www.wellesleywoodlands.co.uk>

<https://thelandtrust.org.uk/space/wellesley-woodlands/>

<https://thelandtrust.org.uk/space/ash-green-meadows/>

LT's role at Bird in Eye Farm (South) SANG would be to manage the landscape as a recreational resource for residents to mitigate any negative impact that the possible increased footfall may have on the Ashdown Forest SPA.

LT will happily take part in discussions with Wealden District Council and Natural England concerning the subject SANG, if it is felt beneficial to the scheme. This could include a meeting with local partners, to discuss our planned role with ongoing management and maintenance of the land subject to transfer.

In response to any specific concerns regarding guarantees over long term security, funding management and the requirement for the Local Planning Authority, or other suitable body to have step-in rights, we can confirm the following would apply to the SANG at Land at Bird in Eye Farm (South).

Management Standards and Security of Investment

LT manages land specifically to deliver against its 5 Charitable Aims that include illustrating clear benefit to Environment, Education, Social Cohesion, Health and Local Economy.

Each transfer has to clearly illustrate sufficient opportunity to deliver against each of the LT's charitable objectives. If a site cannot provide a sound business case, the Board of Trustees will not approve the transfer of the land.

Risk Management

In order to avoid the situation where costs outstrip income, they will be monitored carefully and regularly against site and annual seasonal budgets. This will allow us to respond quickly to variations in income and expenditure and any other issues of concern. Other financial risk management measures include:

- The establishment of LT on a permanent basis was approved following a full appraisal in accordance with the HM Treasury 'green book' in 2010.
- The above appraisal reviewed LT's long term business plan underpinned by its core investment strategy.
- LT invests to achieve a real rate of return of 3.5% pa taking into account HMT and Bank of England guidance on long term investment returns.
- This rate of return is also in accordance with the HMT approved Best Practice Note on endowments agreed between HMT, MHCLG, and Homes England.
- LT currently has in excess of £160 million of investments, thus optimising returns.
- The endowment is not a commitment to spend and therefore most of the annual expenditure is discretionary.
- The agreements with our managing partners allow for downwards negotiations on annual site budgets.

Protection of assets

LT is a registered charity and as such it can only use its assets in furtherance of its charitable objects. At the heart of LT's charitable purpose is the maintenance of open areas for recreation within communities and this is the purpose for which LT uses gifted land. LT's trustees have a legal duty (arising from trust law) to use LT's assets solely in furtherance of its charitable objects and they cannot use its assets to further private benefit.

Article 5 of LT's Articles also provide that its assets will only be used for charitable purposes. If LT were to dissolve, its assets would pass to another organisation with similar charitable purposes by virtue of Article 8 of its Articles and as a matter of charity law.

Furthermore, as a registered charity, as well as a Company Limited by Guarantee, we are regulated by the Charity Commission, the Companies Act and other relevant legislation.

The investment model LT applies is based on management and maintenance costed from the return on investment. The whole of the principal capital sum is invested and we do not draw down on the capital. The endowment although invested as part of our overall investment portfolio, is ring fenced for the site it relates to, with the investment income used to deliver site management and LT's wider charitable aims.

With the risk management we apply to our investments, combined with the excellent track record we have in land management, we strongly believe that the transfer of land to LT provides partners with the best and most secure form of long term management, and negates the need for step-in rights.

Yours sincerely,

**Business Development Manager
Land Trust**

Appendix 1

Our key principles

We aim to deliver high standards of management on all our sites and this is an essential element of our land management strategy.

Our work is guided by the following key principles:

- i. A guarantee that the land is managed properly to an agreed standard i.e. the management plan
- ii. That we protect the original investment made in creating the open space and ensure it has a permanent and positive effect on the economy and environment of the local area
- iii. That we create long-term relationships with landowners, businesses, the wider community and other agencies devoted to land management and sustainability
- iv. That we find sustainable funding solutions in order to guarantee long term maintenance in line with established management plans
- v. That we host educational events and activities that promote healthier lifestyles
- vi. That we leverage additional funding options
- vii. That we actively manage the land in a way that significantly reduces incidents of anti-social behaviour
- viii. That we provide landscape conservation which enriches biodiversity and protected species.

Site Management

At a local level, LT identifies and appoints an appropriate local organisation to act as Managing Partner and to manage the site on behalf of ourselves and the local community. The benefits for communities are twofold: they can enjoy the local expertise, activities and events offered by the on-site ranger team; and be safe in the knowledge that the managing agents are fully accountable to LT to deliver the outputs outlined in the Management Agreement.

The Management Plan is the key safeguard to ensure the site is managed in accordance with planning. This document is appended to the Management Agreement between LT and the Managing Partner, outlining specific aims and objectives for site maintenance, environmental improvements and community involvement. The agreement is set for a 10-year period to ensure longevity but the Management Plan is reviewed regularly to provide comfort that the partnership is delivering their commitments and the community is receiving the outputs it can expect.

Managing Partners provide detailed quarterly performance reports and the Management Plan and contract is reviewed annually. This management process gives the current landowner, funder and other stakeholders assurance that the site and the investment within it is being well managed.

Appendix G

CIEEM Advice Note on Lifespan of Surveys

ON THE LIFESPAN OF ECOLOGICAL REPORTS & SURVEYS

APRIL 2019

It is important that planning decisions are based on up-to-date ecological reports and survey data. However, it is difficult to set a specific timeframe over which reports or survey data should be considered valid, as this will vary in different circumstances. In some cases there will be specific guidance on this (such as for the age of data which may be used to support an EPS licence application). In circumstances where such advice does not already exist, CIEEM provides the general advice set out below.

For some projects the time taken between commencing the scoping or design and submitting a planning application can be several years, and this can result in the early ecology surveys becoming out-of-date (based on the advice set out below); this can lead to additional costs for developers associated with updating survey data. Nevertheless, there are considerable advantages associated with undertaking surveys early during the scoping or design phases of a project.

Ecological consultants should give careful consideration to which, if any, surveys need to be updated; design their data collection in a way which maximises the benefits of early surveys whilst minimising the costs to developers; and provide clarity on the likely lifespan of surveys in their reports.

AGE OF DATA	REPORT / SURVEY VALIDITY
Less than 12 months	Likely to be valid in most cases.
12-18 months	<p>Likely to be valid in most cases with the following exceptions:</p> <ul style="list-style-type: none"> Where a site may offer existing or new features which could be utilised by a mobile species within a short timeframe (see scenario 1 example); Where a mobile species is present on site or in the wider area, and can create new features of relevance to the assessment (see scenario 2 example); Where country-specific or species-specific guidance dictates otherwise. <p>Report authors should highlight where they consider it likely to be necessary to update surveys within a timeframe of less than 18 months.</p>
18 months to 3 years	<p>A professional ecologist will need to undertake a site visit and may also need to update desk study information (effectively updating the Preliminary Ecological Appraisal) and then review the validity of the report, based on the factors listed below. Some or all of the other ecological surveys may need to be updated. The professional ecologist will need to issue a clear statement, with appropriate justification, on:</p> <ul style="list-style-type: none"> The validity of the report; Which, if any, of the surveys need to be updated; and The appropriate scope, timing and methods for the update survey(s). <p>The likelihood of surveys needing to be updated increases with time, and is greater for mobile species or in circumstances where the habitat or its management has changed significantly since the surveys were undertaken. Factors to be considered include (but are not limited to):</p> <ul style="list-style-type: none"> Whether the site supports, or may support, a mobile species which could have moved on to site, or changed its distribution within a site (see scenario 1&2 examples); Whether there have been significant changes to the habitats present (and/or the ecological conditions/functions/ecosystem functioning upon which they are dependent) since the surveys were undertaken, including through changes to site management (see scenario 3 example); Whether the local distribution of a species in the wider area around a site has changed (or knowledge of it increased), increasing the likelihood of its presence (see scenario 4 example).
More than 3 years	The report is unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist, as described above).



EXAMPLE SCENARIOS

1

- Trees or buildings on site have been surveyed for evidence of bat roosts and none were found; new roosts may be present, and trees or buildings may have developed new features which were not previously present. An update bat roost survey is likely to be required.
- One or more potential otter resting sites have been identified, although there was no evidence of use at the time of the survey; such features may have been used by otters during the intervening period. An update otter survey is likely to be required.

2

- A badger survey confirmed the presence of badgers on site; new setts may have been excavated within the site. An update badger survey is likely to be required.

3

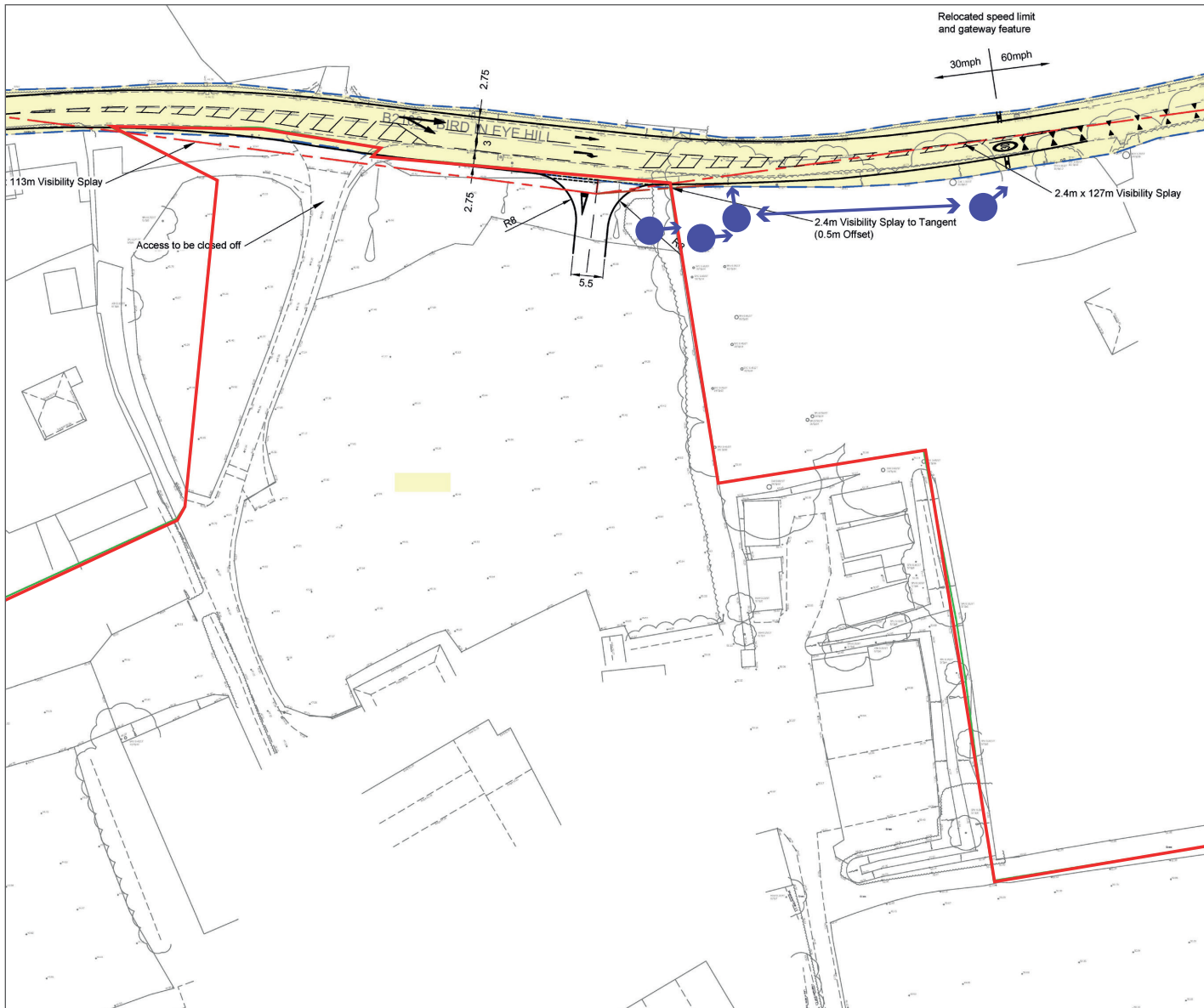
- An area of grassland was heavily grazed by cattle at the time of the original survey and was considered to be unsuitable for reptiles, although slow-worms were known to be present in the wider area; grazing has since ceased and the grassland has been cut once annually, which has encouraged the development of a tussocky sward which provides suitable habitat for slow-worms. A reptile survey is now likely to be required.

4

- A water vole survey confirmed their absence from the site but identified them as present in the wider area surrounding it; a recovery project is underway in the local area through a mink control programme, which is encouraging the spread of water voles.

Appendix H

Badger Survey Plan (CSA/2646/116)



Site boundary



Badger tunnels and tunnel direction.
Sett consists c. 10 partially-used tunnels. (The arrow represents the area of which tunnels are present)

CSA
environmental

Office 20, Citibase, 95 Ditchling Road,
Brighton BN1 4ST

† 01273 573871
e brighton@csaenvironmental.co.uk
w csaenvironmental.co.uk

Project Land at Bird in Eye Farm

Drawing Title Badger Plan

Client Croudace Homes Limited

Date Oct 2022

Scale Refer to scale

Drawn LG

Drawing No. CSA/2646/116

Rev -

Checked CC

Appendix I

Biodiversity and Arboricultural Officer comments 30/11/2021

From: Ben Rainbow
Sent: 30 November 2021 12:28
To: Claire Turner
Cc: planning; David Massheder
Subject: WD/2021/2198/MAO LAND AT BIRD IN EYE FARM, SOUTH OF BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

Categories: Consultee

Dear Claire,

Please find below my ecology consultation for this application:

Ecological Survey Reports

The following documents are deemed to have been generally undertaken to best practice standards (including CIEEM guidelines for Preliminary Ecological Appraisal 2017, Guidelines for Ecological Impact Assessment 2018 and Government guidance on DEFRA Biodiversity Metric):

- Ecological Impact Assessment dated June 2021
- Biodiversity Net Gain Assessment dated June 2021

Comments are provided below regarding ancient woodland.

Protected Species and European Protected Species

Protected species surveys are deemed adequate to inform the application with appropriate methodology and survey effort. Recommendations for adequate avoidance, mitigation and compensation have been provided. The EcIA states the development is largely set back from boundaries to maintain ecological functionality and dark corridors and a sensitive lighting strategy is proposed. It is noted further survey for bats may be required should further tree removal be required.

Ancient Woodland, Irreplaceable Habitat

The ancient woodland (AW) has been identified as diverse and generally in good, undisturbed condition. A minimum 15 metre buffer zone has been proposed from development to ancient woodland, this is greater in places and appears to have been taken account of in proposed development design.

The ancient woodland is omitted from the red line boundary of the site and enhancement measures are not proposed, despite the woodland being subject to higher levels of indirect impacts post-development – light, noise, potential for trampling. As per Natural England's comments: *"In our previous discussions, we also recommended that some management of the ancient woodland is provided within the management scheme. From reviewing the SANG Management Plan, it is not clear if this consideration has been included, we therefore advice that some management to ancient woodland is factored in to the final SANG management scheme"*.

The development proposes construction of a pathway through the ancient woodland between development area and proposed SANG. The level of pedestrian impact on the site will significantly increase leading to greater impacts: direct impacts of trampling, compaction & disturbance of ancient woodland habitat and indirect impacts including noise and disturbance. The application (EcIA) proposes construction of a path on the ancient woodland habitat using bark chip. This is not deemed a long-term sustainable option as this substrate degrades leading to a wet muddy surface, encouraging users to walk on alternative woodland

habitat to avoid. Bark chip may also negatively impact ancient woodland soil ecology. In Natural England's consultation response they state: *"further details are required to show that impacts to ancient woodland habitat can be prevented; - We still recommend that boarded paths are installed through areas of woodland as this will ensure functionality of the paths during the wetter months."* Further information should be provided on how the development can avoid direct and indirect impacts on ancient woodland and demonstrate AW ecological enhancement.

The EclA states the development proposes loss of ancient woodland to accommodate/facilitate a new drainage outfall which will extend from the attenuation basin in the south-western corner of the site, towards Framfield Stream. This is contrary to section 180 c) of the National Planning Policy Framework 2021: *"Development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused"*.

Comments submitted with the application (332510180/2001/TAU/LD/ET/ASm) state intention for site drainage infiltration testing to be undertaken at the reserved matters stage. Whilst this may be deemed acceptable from ESCC's LLFA officer's consultation with regard to drainage/flooding, it is not deemed acceptable on ecology grounds as impact/loss of irreplaceable habitat AW is a material consideration. Should drainage not be able to be accommodated through onsite infiltration, drainage features onsite would result in direct loss of AW. The loss of AW irreplaceable habitat is deemed unacceptable and whether infiltration can be accommodated onsite, negating proposals for drainage through AW, should be confirmed prior to determination.

Recommendation

Ecological objection: Current proposals would result in indirect and direct (degradation and loss) of ancient woodland, irreplaceable habitat, contrary to:

- National Planning Policy Framework 2021, section 180c
- Natural England Standing Advice, ancient woodland & veteran trees
- Wealden Local Plan 1998, saved policy EN13

Regards,

Ben Rainbow | Biodiversity and Arboricultural Officer

Planning and Environmental Services, Wealden District Council
01892 602885

ben.rainbow@wealden.gov.uk

Council Offices | Vicarage Lane | Hailsham | East Sussex | BN27 2AX

<http://www.wealden.gov.uk>

 [@wealdendistrict](https://twitter.com/wealdendistrict)  [@wealden](https://facebook.com/wealden)  [@wealdendc](https://instagram.com/wealdendc)

Appendix J

Biodiversity Metric 3.1

The Biodiversity Metric 3.1 - Calculation Tool

Start page

Project details

Planning authority:	Wealden District Council
Project name:	Bird in Eye Farm
Applicant:	Croudace Homes Ltd
Application type:	
Planning application reference:	
Assessor:	Lydia Galbraith- CSA Ecologist
Reviewer:	Clare Caudwell- CSA Associate Director - Ecology
Metric version:	3.1
Assessment date:	01/12/2022
Planning authority reviewer:	

Instructions

Main menu

Results

Cell style conventions

	Enter data
	Automatic lookup
	Result

View all

Reset view

On-site baseline map

Insert

On-site post intervention map

Insert

Off-site baseline map

Insert

Off-site post intervention map

Insert

On-site baseline	Habitat units	133.04
	Hedgerow units	9.24
	River units	0.00
On-site post-intervention <small>(Including habitat retention, creation & enhancement)</small>	Habitat units	186.61
	Hedgerow units	9.40
	River units	0.00
On-site net % change <small>(Including habitat retention, creation & enhancement)</small>	Habitat units	40.27%
	Hedgerow units	1.75%
	River units	0.00%
Off-site baseline	Habitat units	0.00
	Hedgerow units	0.00
	River units	0.00
Off-site post-intervention <small>(Including habitat retention, creation & enhancement)</small>	Habitat units	0.00
	Hedgerow units	0.00
	River units	0.00
Total net unit change <small>(including all on-site & off-site habitat retention, creation & enhancement)</small>	Habitat units	53.57
	Hedgerow units	0.16
	River units	0.00
Total on-site net % change plus off-site surplus <small>(including all on-site & off-site habitat retention, creation & enhancement)</small>	Habitat units	40.27%
	Hedgerow units	1.75%
	River units	0.00%
Trading rules Satisfied?	Yes ✓	

Bird in Eye Farm

Detailed Results

Return to results menu

Summary Figures

Net project biodiversity units
(including all on-site & off-site habitat retention/creation)

Habitat units

Hedgerow units

River units

53.57

0.16

0.00

Total project biodiversity % change
(including all On-site & Off-site Habitat Creation + Retained Habitats)

Habitat units

Hedgerow units

River units

40.27%

1.75%

0.00%

Combined habitat retention and enhancement

Habitats

Hedgerows

Rivers

Total on-site and off-site baseline area / length

42.58

1.14

0.00

Total on-site and off-site baseline units

133.04

9.24

0.00

Total on-site and off-site baseline area / length retained

14.22

0.36

0.00

Total on-site and off-site baseline units retained

57.24

8.42

0.00

Area / length proposed for enhancement

14.84

0.15

0.00

Baseline units proposed for enhancement

49.52

0.60

0.00

Total on-site and off-site baseline area / length lost

13.52

0.03

0.00

Total on-site and off-site baseline units lost

26.28

0.22

0.00

Area habitats

On site change by broad habitat type

Habitat group	Baseline		Post development on site		Onsite Change	
	Existing area	Existing value	Proposed area	Proposed value	Area change	Onsite Unit change
Cropland	0.00	0.00	0.00	0.00	0.00	0.00
Grassland	34.88	69.76	24.02	92.00	-10.86	22.24
Heathland and shrub	0.02	0.08	1.00	6.69	0.98	6.61
Lakes	0.04	0.16	0.04	0.32	0.00	0.16
Sparsely vegetated land	0.00	0.00	0.00	0.00	0.00	0.00
Urban	2.41	18.24	11.68	24.33	9.27	6.09
Wetland	0.00	0.00	0.00	0.00	0.00	0.00
Woodland and forest	5.23	44.80	6.72	63.27	1.49	18.47
Intertidal sediment	0.00	0.00	0.00	0.00	0.00	0.00
Coastal saltmarsh	0.00	0.00	0.00	0.00	0.00	0.00
Rocky shore	0.00	0.00	0.00	0.00	0.00	0.00
Coastal lagoons	0.00	0.00	0.00	0.00	0.00	0.00
Intertidal Hard Structures	0.00	0.00	0.00	0.00	0.00	0.00

Combined area lost by distinctiveness band

Category	Area lost (hectares)	Area lost (%)
V.High	0	
High	0	
Medium	0.02	0
Low	13.098	97
V.Low	0.4	3

% Area lost by distinctiveness category

On-site and off-site habitat retention by category area (hectares)

On-site and off-site habitat retention category biodiversity units

Off site change by broad habitat type

Habitat group	Baseline		Post development Off-site		Off-site Change	
	Existing area	Off-site Existing value	Off-site proposed area	Off-site Proposed value	Off-site area change	Off-site unit change
Cropland	0.00	0.00	0.00	0.00	0.00	0.00
Grassland	0.00	0.00	0.00	0.00	0.00	0.00
Heathland and shrub	0.00	0.00	0.00	0.00	0.00	0.00
Lakes	0.00	0.00	0.00	0.00	0.00	0.00
Sparsely vegetated land	0.00	0.00	0.00	0.00	0.00	0.00
Urban	0.00	0.00	0.00	0.00	0.00	0.00
Wetland	0.00	0.00	0.00	0.00	0.00	0.00
Woodland and forest	0.00	0.00	0.00	0.00	0.00	0.00
Intertidal sediment	0.00	0.00	0.00	0.00	0.00	0.00
Coastal saltmarsh	0.00	0.00	0.00	0.00	0.00	0.00
Rocky shore	0.00	0.00	0.00	0.00	0.00	0.00
Coastal lagoons	0.00	0.00	0.00	0.00	0.00	0.00
Intertidal Hard Structures	0.00	0.00	0.00	0.00	0.00	0.00

Unit change by habitat group

On site area change by habitat group

Combined on site and off site change by broad habitat type

Habitat group	Baseline		On-site and Off-site post development		Combined change	
	Existing area	Existing value	Combined proposed area	Combined proposed value	Proposed area	Proposed value
Cropland	0.00	0.00	0.00	0.00	0.00	0.00
Grassland	34.88	69.76	24.02	92.00	-10.86	22.24
Heathland and shrub	0.02	0.08	1.00	6.69	0.98	6.61
Lakes	0.04	0.16	0.04	0.32	0.00	0.16
Sparsely vegetated land	0.00	0.00	0.00	0.00	0.00	0.00
Urban	2.41	18.24	11.68	24.33	9.27	6.09
Wetland	0.00	0.00	0.00	0.00	0.00	0.00
Woodland and forest	5.23	44.80	6.72	63.27	1.49	18.47
Intertidal sediment	0.00	0.00	0.00	0.00	0.00	0.00
Coastal saltmarsh	0.00	0.00	0.00	0.00	0.00	0.00
Rocky shore	0.00	0.00	0.00	0.00	0.00	0.00
Coastal lagoons	0.00	0.00	0.00	0.00	0.00	0.00
Intertidal Hard Structures	0.00	0.00	0.00	0.00	0.00	0.00

Combined Biodiversity Unit change

Combined habiat area change

Hedgerows and lines of trees

On site change by hedgerow type

	Baseline	Post development on site	Onsite Change
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Combined length lost by distinctiveness band

Category	Length lost (km)	Length lost (%)
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% Length lost by distinctiveness category

On-site and off-site hedge retention by category length (km)

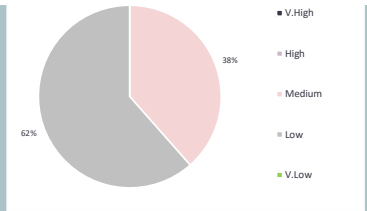
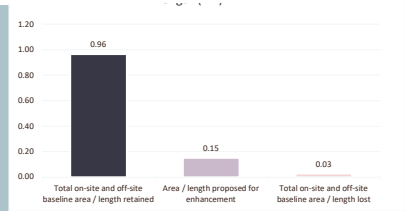
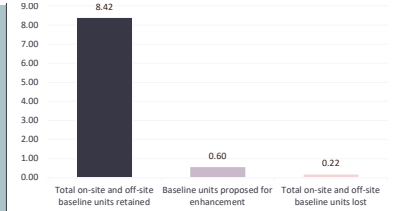
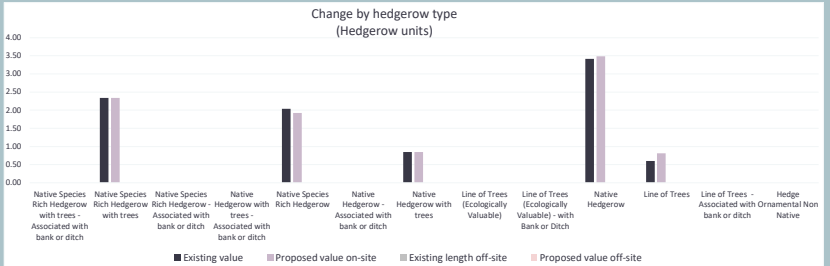
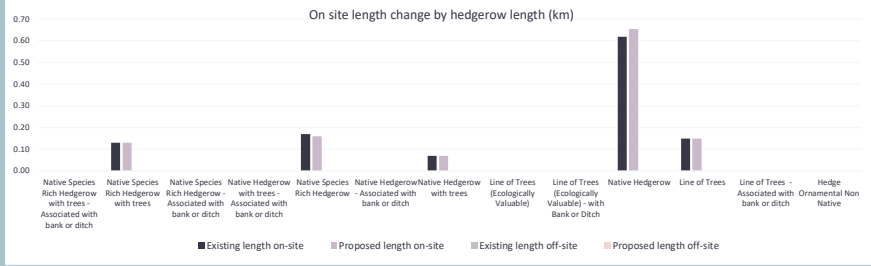
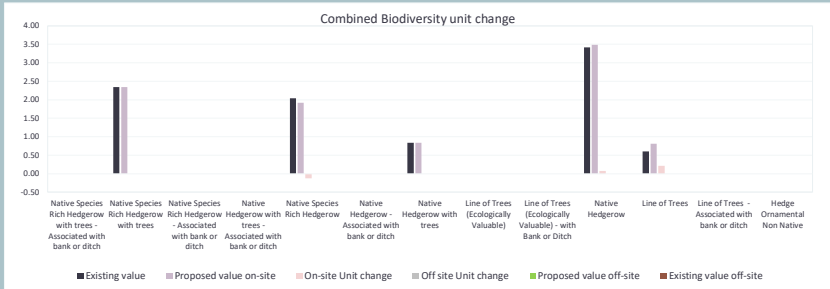
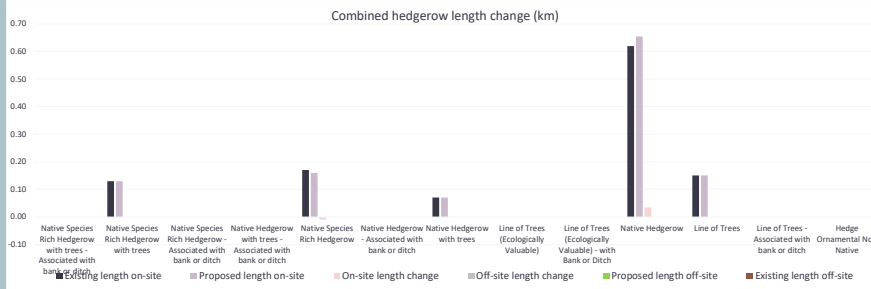
On-site and off-site hedge retention category biodiversity units

Hedgerow type	Existing length on-site	Existing value	Proposed length on-site	Proposed value on-site	On-site length change	On-site Unit change
Native Species Rich Hedgerow with trees - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Species Rich Hedgerow with trees	0.13	2.34	0.13	2.34	0.00	0.00
Native Species Rich Hedgerow - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Hedgerow with trees - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Species Rich Hedgerow	0.17	2.04	0.16	1.92	-0.01	-0.12
Native Hedgerow - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Hedgerow with trees	0.07	0.84	0.07	0.84	0.00	0.00
Line of Trees (Ecologically Valuable)	0.00	0.00	0.00	0.00	0.00	0.00
Line of Trees (Ecologically Valuable) - with Bank or Ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Hedgerow	0.62	3.42	0.65	3.49	0.03	0.07
Line of Trees	0.15	0.60	0.15	0.81	0.00	0.21
Line of Trees - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Hedge Ornamental Non Native	0.00	0.00	0.00	0.00	0.00	0.00

Off site change by hedgerow type						
Hedgerow type	Off site baseline		Post development off site		Off site Change	
	Existing length off-site	Existing value off-site	Proposed length off-site	Proposed value off-site	Off-site length change	Off-site Unit change
Native Species Rich Hedgerow with trees - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Species Rich Hedgerow with trees	0.00	0.00	0.00	0.00	0.00	0.00
Native Species Rich Hedgerow - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Hedgerow with trees - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Species Rich Hedgerow	0.00	0.00	0.00	0.00	0.00	0.00
Native Hedgerow - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Hedgerow with trees	0.00	0.00	0.00	0.00	0.00	0.00
Line of Trees (Ecologically Valuable)	0.00	0.00	0.00	0.00	0.00	0.00
Line of Trees (Ecologically Valuable) - with Bank or Ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Hedgerow	0.00	0.00	0.00	0.00	0.00	0.00
Line of Trees	0.00	0.00	0.00	0.00	0.00	0.00
Line of Trees - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Hedge Ornamental Non Native	0.00	0.00	0.00	0.00	0.00	0.00

Combined on and off site change by hedgerow type						
Hedgerow type	Baseline		Post development on site		Onsite Change	
	Existing length	Existing value	Proposed length	Proposed value	length change	Onsite Unit change
Native Species Rich Hedgerow with trees - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Species Rich Hedgerow with trees	0.13	2.34	0.13	2.34	0.00	0.00
Native Species Rich Hedgerow - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Hedgerow with trees - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Species Rich Hedgerow	0.17	2.04	0.16	1.92	-0.01	-0.12
Native Hedgerow - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Hedgerow with trees	0.07	0.84	0.07	0.84	0.00	0.00
Line of Trees (Ecologically Valuable)	0.00	0.00	0.00	0.00	0.00	0.00
Line of Trees (Ecologically Valuable) - with Bank or Ditch	0.00	0.00	0.00	0.00	0.00	0.00
Native Hedgerow	0.62	3.42	0.65	3.49	0.03	0.07
Line of Trees	0.15	0.60	0.15	0.81	0.00	0.21
Line of Trees - Associated with bank or ditch	0.00	0.00	0.00	0.00	0.00	0.00
Hedge Ornamental Non Native	0.00	0.00	0.00	0.00	0.00	0.00

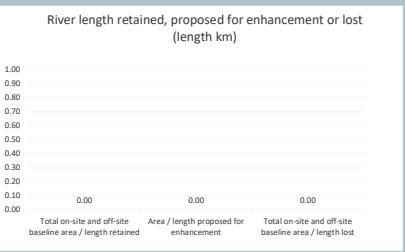
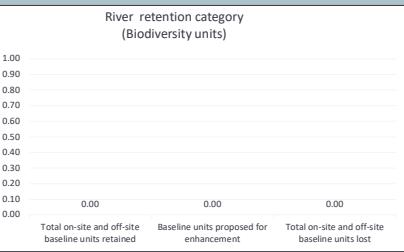
Category	Length lost (KM)	Length lost (%)
V.High	0	
High	0	
Medium	0.01	38
Low	0.018	62
V.Low	0	



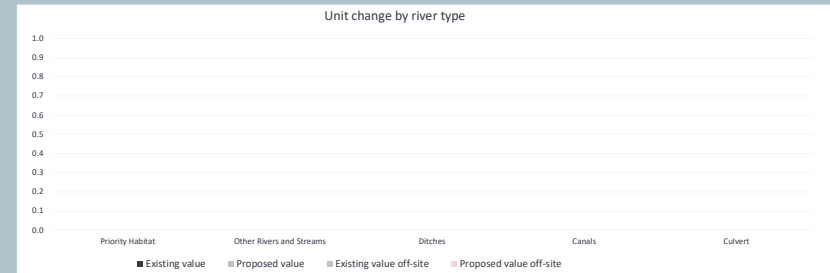
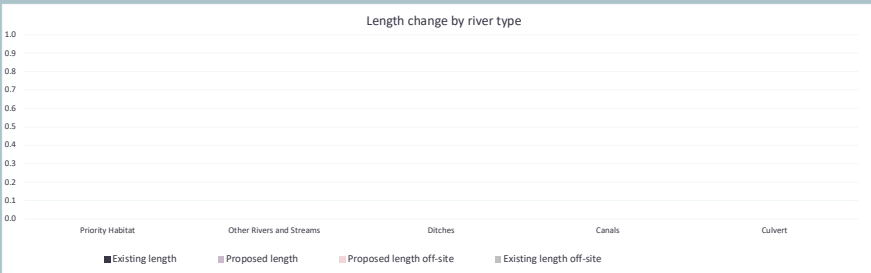
Rivers and Streams

On site change by river type						
River type	Baseline		Post development on site		Onsite Change	
	Existing length	Existing value	Proposed length	Proposed value	length change	Onsite Unit change
Priority Habitat	0.0	0.0	0.0	0.0	0.0	0.0
Other Rivers and Streams	0.0	0.0	0.0	0.0	0.0	0.0
Ditches	0.0	0.0	0.0	0.0	0.0	0.0
Canals	0.0	0.0	0.0	0.0	0.0	0.0
Culvert	0.0	0.0	0.0	0.0	0.0	0.0

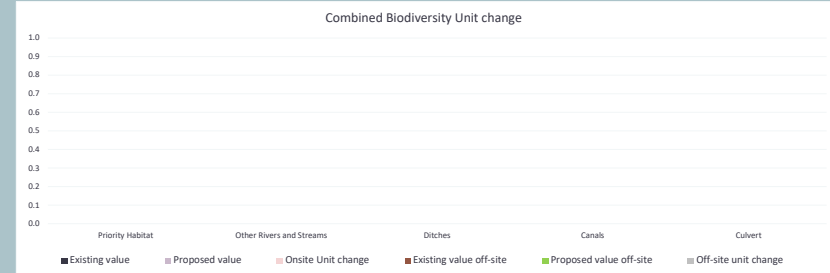
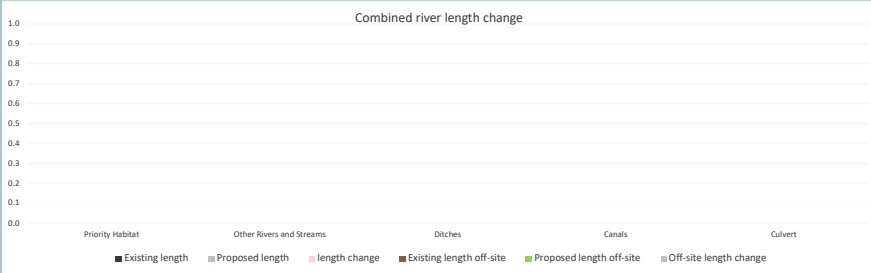
Category	Length lost (KM)	Length lost (%)
V.High	0	
High	0	
Medium	0	
Low	0	



Off site change by river type						
River type	Baseline		Post development off-site		Off-site Change	
	Existing length off-site	Existing value off-site	Proposed length off-site	Proposed value off-site	Off-site length change	Off-site unit change
Priority Habitat	0.0	0.0	0.0	0.0	0.0	0.0
Other Rivers and Streams	0.0	0.0	0.0	0.0	0.0	0.0
Ditches	0.0	0.0	0.0	0.0	0.0	0.0
Canals	0.0	0.0	0.0	0.0	0.0	0.0
Culvert	0.0	0.0	0.0	0.0	0.0	0.0



Combined on and off site change by river type						
River type	Baseline		Post development on site		Onsite Change	
	Existing length	Existing value	Proposed length	Proposed value	length change	Onsite Unit change
Priority Habitat	0.0	0.0	0.0	0.0	0.0	0.0
Other Rivers and Streams	0.0	0.0	0.0	0.0	0.0	0.0
Ditches	0.0	0.0	0.0	0.0	0.0	0.0
Canals	0.0	0.0	0.0	0.0	0.0	0.0
Culvert	0.0	0.0	0.0	0.0	0.0	0.0



Return to results menu

Trading Summary		
Distinctiveness Group	Trading Rule	Trading Satisfied?
Very High	Bespoke compensation likely to be required ✖	Yes ✓
High	Same habitat required =	Yes ✓
Medium	Same broad habitat or a higher distinctiveness habitat required (2)	Yes ✓
Low	Same distinctiveness or better habitat required ≥	Yes ✓

Very High Distinctiveness					
Habitat group	Group	On Site Unit Change	Off Site Unit Change	Project wide Unit Change	Unit Losses
Grassland - Lowland dry acid grassland	Grassland	0.00	0.00	0.00	
Grassland - Lowland meadows	Grassland	0.00	0.00	0.00	
Grassland - Upland hay meadows	Grassland	0.00	0.00	0.00	
Heathland and shrub - Mountain heaths and willow scrub	Heathland and shrub	0.00	0.00	0.00	
Lakes - Aquifer fed naturally fluctuating water bodies	Lakes	0.00	0.00	0.00	
Sparsely vegetated land - Calaminarian grasslands	Sparsely vegetated land	0.00	0.00	0.00	
Sparsely vegetated land - Limestone pavement	Sparsely vegetated land	0.00	0.00	0.00	
Wetland - Blanket bog	Wetland	0.00	0.00	0.00	
Wetland - Depressions on Peat substrates (H7150)	Wetland	0.00	0.00	0.00	
Wetland - Fens (upland and lowland)	Wetland	0.00	0.00	0.00	
Wetland - Lowland raised bog	Wetland	0.00	0.00	0.00	
Wetland - Oceanic Valley Mire[1] (D2.1)	Wetland	0.00	0.00	0.00	
Wetland - Purple moor grass and rush pastures	Wetland	0.00	0.00	0.00	
Wetland - Transition mires and quaking bogs (H7140)	Wetland	0.00	0.00	0.00	
Woodland and forest - Wood-pasture and parkland	Woodland and forest	0.00	0.00	0.00	
Rocky shore - High energy littoral rock - on peat, clay or chalk	Rocky shore	0.00	0.00	0.00	
Rocky shore - Moderate energy littoral rock - on peat, clay or chalk	Rocky shore	0.00	0.00	0.00	
Rocky shore - Low energy littoral rock - on peat, clay or chalk	Rocky shore	0.00	0.00	0.00	
Rocky shore - Features of littoral rock - on peat, clay or chalk	Rocky shore	0.00	0.00	0.00	
Intertidal sediment - Littoral seaweeds on peat, clay or chalk	Intertidal sediment	0.00	0.00	0.00	
		0.00	0.00	0.00	0.00

Very High Distinctiveness Summary	
Very High Distinctiveness Units available to offset lower distinctiveness deficit	0.00

High Distinctiveness					
Habitat group	Group	On Site Unit Change	Off Site Unit Change	Project wide Unit Change	Losses not yet accounted for
Grassland - Traditional orchards	Grassland	0.00	0.00	0.00	
Grassland - Floodplain Wetland Mosaic (CFGM)	Grassland	0.00	0.00	0.00	
Grassland - Lowland calcareous grassland	Grassland	0.00	0.00	0.00	
Grassland - Tall herb communities (H6430)	Grassland	0.00	0.00	0.00	
Grassland - Upland calcareous grassland	Grassland	0.00	0.00	0.00	
Heathland and shrub - Lowland Heathland	Heathland and shrub	0.00	0.00	0.00	
Heathland and shrub - Sea buckthorn scrub (Annex 1)	Heathland and shrub	0.00	0.00	0.00	
Heathland and shrub - Upland Heathland	Heathland and shrub	0.00	0.00	0.00	
Lakes - High alkalinity lakes	Lakes	0.00	0.00	0.00	
Lakes - Low alkalinity lakes	Lakes	0.00	0.00	0.00	
Lakes - Mori Lakes	Lakes	0.00	0.00	0.00	
Lakes - Moderate alkalinity lakes	Lakes	0.00	0.00	0.00	
Lakes - Peat Lakes	Lakes	0.00	0.00	0.00	
Lakes - Ponds (Priority Habitat)	Lakes	0.00	0.00	0.00	
Lakes - Temporary lakes, ponds and pools	Lakes	0.00	0.00	0.00	
Sparsely vegetated land - Coastal sand dunes	Sparsely vegetated land	0.00	0.00	0.00	
Sparsely vegetated land - Coastal vegetated shingle	Sparsely vegetated land	0.00	0.00	0.00	
Sparsely vegetated land - Inland rock outcrop and scree habitats	Sparsely vegetated land	0.00	0.00	0.00	
Sparsely vegetated land - Maritime cliff and slopes	Sparsely vegetated land	0.00	0.00	0.00	
Urban - Open Mosaic Habitats on Previously Developed Land	Urban	0.00	0.00	0.00	
Wetland - Reedbeds	Wetland	0.00	0.00	0.00	
Woodland and forest - Felled	Woodland and forest	0.00	0.00	0.00	
Woodland and forest - Lowland beech and yew woodland	Woodland and forest	0.00	0.00	0.00	
Woodland and forest - Lowland mixed deciduous woodland	Woodland and forest	0.00	0.00	0.00	
Woodland and forest - Native pine woodlands	Woodland and forest	0.00	0.00	0.00	
Woodland and forest - Upland birchwoods	Woodland and forest	0.00	0.00	0.00	
Woodland and forest - Upland mixed ashwoods	Woodland and forest	0.00	0.00	0.00	
Woodland and forest - Upland oakwood	Woodland and forest	0.00	0.00	0.00	
Woodland and forest - Wet woodland	Woodland and forest	0.00	0.00	0.00	
Coastal lagoons - Coastal lagoons	Coastal lagoons	0.00	0.00	0.00	
Rocky shore - High energy littoral rock	Rocky shore	0.00	0.00	0.00	
Rocky shore - Moderate energy littoral rock	Rocky shore	0.00	0.00	0.00	
Rocky shore - Low energy littoral rock	Rocky shore	0.00	0.00	0.00	
Rocky shore - Features of littoral rock	Rocky shore	0.00	0.00	0.00	
Intertidal sediment - Littoral mud	Intertidal sediment	0.00	0.00	0.00	
Intertidal sediment - Littoral mixed sediments	Intertidal sediment	0.00	0.00	0.00	
Coastal saltmarsh - Saltmarshes and saline reedbeds	Coastal Saltmarsh	0.00	0.00	0.00	
Intertidal sediment - Littoral biogenic reefs - Mussels	Intertidal sediment	0.00	0.00	0.00	
Intertidal sediment - Littoral biogenic reefs - Sabellaria	Intertidal sediment	0.00	0.00	0.00	
Intertidal sediment - Features of littoral sediment	Intertidal sediment	0.00	0.00	0.00	
Intertidal sediment - Littoral muddy sand	Intertidal sediment	0.00	0.00	0.00	
		0.00	0.00	0.00	0.00

High Distinctiveness Summary	
High Distinctiveness Units available to offset lower distinctiveness deficit	0.00
Unit Deficit: Like for like not satisfied	✓ 0.00

Medium Distinctiveness					
Habitat Group	Group	On site unit change	Off Site Unit Change	Project wide unit change	Cumulative Broad Habitat Change
Cropland - Arable field margins cultivated annually	Cropland	0.00	0.00	0.00	
Cropland - Arable field margins game bird mix	Cropland	0.00	0.00	0.00	0.00
Cropland - Arable field margins pollen & nectar	Cropland	0.00	0.00	0.00	
Cropland - Arable field margins tussocky	Cropland	0.00	0.00	0.00	
Grassland - Other lowland acid grassland	Grassland	0.00	0.00	0.00	
Grassland - Other neutral grassland	Grassland	66.86	0.00	66.86	66.86
Grassland - Upland acid grassland	Grassland	0.00	0.00	0.00	
Heathland and shrub - Blackthorn scrub	Heathland and shrub	0.00	0.00	0.00	
Heathland and shrub - Bramble scrub	Heathland and shrub	0.00	0.00	0.00	
Heathland and shrub - Gorse scrub	Heathland and shrub	0.00	0.00	0.00	6.61
Heathland and shrub - Hawthorn scrub	Heathland and shrub	0.00	0.00	0.00	
Heathland and shrub - Hazel scrub	Heathland and shrub	0.00	0.00	0.00	
Heathland and shrub - Mixed scrub	Heathland and shrub	6.61	0.00	6.61	
Lakes - Ponds (Non-Priority Habitat)	Lakes	0.16	0.00	0.16	0.16
Lakes - Reservoirs	Lakes	0.00	0.00	0.00	
Sparsely vegetated land - Other inland rock and scree	Sparsely vegetated land	0.00	0.00	0.00	0.00
Urban - Cemetery and churchyards	Urban	0.00	0.00	0.00	
Urban - Biodiverse green roof	Urban	0.00	0.00	0.00	2.69
Urban - Urban Trees	Urban	2.69	0.00	2.69	
Woodland and forest - Other Scot's Pine woodland	Woodland and forest	0.00	0.00	0.00	
Woodland and forest - Other woodland, broadleaved	Woodland and forest	18.47	0.00	18.47	18.47
Woodland and forest - Other woodland, mixed	Woodland and forest	0.00	0.00	0.00	
Intertidal sediment - Littoral coarse sediment	Intertidal sediment	0.00	0.00	0.00	
Intertidal sediment - Features of littoral sediment	Intertidal sediment	0.00	0.00	0.00	0.00
Intertidal sediment - Littoral sand	Intertidal sediment	0.00	0.00	0.00	
Intertidal Hard Structures - Artificial hard structures with Integrated Greening of Grey Infrastructure (IGGI)	Intertidal	0.00	0.00	0.00	
		94.80	0.00	94.80	

Medium Distinctiveness Summary	
Medium Distinctiveness Units available to offset lower distinctiveness deficit	94.80
Medium Distinctiveness Broad Habitat Deficit to be offset by trading up	0.00
Higher distinctiveness surplus units minus Medium Distinctiveness Broad Habitat Deficit	0.00
Cumulative surplus of units	94.80

Low Distinctiveness				
Habitat group	Group	On site unit change	Off Site Unit Change	Project wide unit change
Cropland - Cereal crops	Cropland	0.00	0.00	0.00
Cropland - Horticulture	Cropland	0.00	0.00	0.00
Cropland - Intensive orchards	Cropland	0.00	0.00	0.00
Cropland - Non-cereal crops	Cropland	0.00	0.00	0.00
Cropland - Temporary grass and clover leys	Cropland	0.00	0.00	0.00
Cropland - Cereal crops winter stubble	Cropland	0.00	0.00	0.00
Grassland - Modified grassland	Grassland	-44.82	0.00	-44.82
Grassland - Bracken	Grassland	0.00	0.00	0.00
Heathland and shrub - Rhododendron scrub	Heathland and shrub	0.00	0.00	0.00
Lakes - Ornamental lake or pond	Lakes	0.00	0.00	0.00
Sparsely vegetated land - Ruderal/Ephemeral	Sparsely vegetated land	0.00	0.00	0.00
Urban - Bioswale	Sparsely vegetated land	0.00	0.00	0.00
Urban - Allotments	Urban	0.00	0.00	0.00
Urban - Facade-bound green wall	Urban	0.00	0.00	0.00
Urban - Ground based green wall	Urban	0.00	0.00	0.00
Urban - Ground level planters	Urban	0.00	0.00	0.00
Urban - Other green roof	Urban	0.00	0.00	0.00
Urban - Intensive green roof	Urban	0.00	0.00	0.00
Urban - Introduced shrub	Urban	0.00	0.00	0.00
Urban - Rain garden	Urban	0.00	0.00	0.00
Urban - Actively worked sand pit quarry or open cast mine	Urban	0.00	0.00	0.00
Urban - Sustainable urban drainage feature	Urban	0.00	0.00	0.00
Urban - Vacant/derelict land/ bareground	Urban	0.00	0.00	0.00
Urban - Vacant/derelict garden	Urban	3.46	0.00	3.46
Woodland and forest - Other coniferous woodland	Woodland and forest	0.00	0.00	0.00
Coastal saltmarsh - Artificial saltmarshes and saline reedbeds	Coastal saltmarsh	0.00	0.00	0.00
Intertidal sediment - Artificial littoral coarse sediment	Intertidal sediment	0.00	0.00	0.00
Intertidal sediment - Artificial littoral mud	Intertidal sediment	0.00	0.00	0.00
Intertidal sediment - Artificial littoral sand	Intertidal sediment	0.00	0.00	0.00
Intertidal sediment - Artificial littoral muddy sand	Intertidal sediment	0.00	0.00	0.00
Intertidal sediment - Artificial littoral mixed sediments	Intertidal sediment	0.00	0.00	0.00
Intertidal sediment - Artificial littoral seaweeds	Intertidal sediment	0.00	0.00	0.00
Intertidal sediment - Artificial littoral biogenic reefs	Intertidal sediment	0.00	0.00	0.00
Intertidal Hard Structures - Artificial hard structures	Intertidal	0.00	0.00	0.00
Intertidal Hard Structures - Artificial features of hard structures	Intertidal	0.00	0.00	0.00
Heathland and shrub - Sea buckthorn scrub (other)	Heathland and shrub	0.00	0.00	0.00
		-41.23		-41.23

Low Distinctiveness Summary	
Low Distinctiveness Net Change in Units	-41.23
Cumulative surplus of units	53.57

Bird in Eye Farm	
A-1 Site Habitat Baseline	
Condense / Show Columns	Condense / Show Rows
Main Menu	Instructions

Habitats and areas				Distinctiveness		Condition		Strategic significance			Suggested action to address habitat losses	Ecological baseline
Ref	Broad Habitat	Habitat Type	Area (hectares)	Distinctiveness	Score	Condition	Score	Strategic significance	Strategic significance	Strategic Significance multiplier		Total habitat units
1	Grassland	Modified grassland	0.53	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	1.06
2	Grassland	Modified grassland	0.09	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	0.18
3	Grassland	Modified grassland	0.25	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	0.50
4	Grassland	Modified grassland	0.65	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	1.30
5	Grassland	Modified grassland	0.11	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	0.22
6	Grassland	Modified grassland	0.66	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	1.32
7	Grassland	Modified grassland	1.15	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	2.30
8	Grassland	Modified grassland	0.38	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	0.76
9	Grassland	Modified grassland	2.55	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	5.10
10	Grassland	Modified grassland	2.12	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	4.24
11	Grassland	Modified grassland	2.15	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	4.30
12	Grassland	Modified grassland	2.72	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	5.44
13	Grassland	Modified grassland	0.74	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	1.48
14	Heathland and shrub	Mixed scrub	0.02	Medium	4	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same broad habitat or a higher distinctiveness habitat required (2)	0.08
15	Woodland and forest	Lowland mixed deciduous woodland	0.59	High	6	Good	3	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same habitat required =	10.62
16	Woodland and forest	Lowland mixed deciduous woodland	0.13	High	6	Good	3	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same habitat required =	2.34
17	Urban	Developed land, sealed surface	0.52	V.Low	0	N/A - Other	0	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Compensation Not Required	0.00
18												
19												
20	Grassland	Modified grassland	3.98	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	7.96
21	Grassland	Modified grassland	6.19	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	12.38
22	Grassland	Modified grassland	4.44	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	8.88
23	Grassland	Modified grassland	0.55	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	1.10
24	Grassland	Modified grassland	2.54	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	5.08
25	Grassland	Modified grassland	3.08	Low	2	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same distinctiveness or better habitat required ≥	6.16
26	Woodland and forest	Lowland mixed deciduous woodland	0.06	High	6	Good	3	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same habitat required =	1.08
27	Woodland and forest	Other woodland, broadleaved	1.21	Medium	4	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same broad habitat or a higher distinctiveness habitat required (2)	4.84
28	Woodland and forest	Other woodland, broadleaved	2.89	Medium	4	Moderate	2	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same broad habitat or a higher distinctiveness habitat required (2)	23.12
29	Urban	Developed land, sealed surface	0.2	V.Low	0	N/A - Other	0	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Compensation Not Required	0.00
30	Urban	Artificial unvegetated, unsealed surface	0.11	V.Low	0	N/A - Other	0	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Compensation Not Required	0.00
31												
32												
33	Lakes	Ponds (Non- Priority Habitat)	0.04	Medium	4	Poor	1	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same broad habitat or a higher distinctiveness habitat required (2)	0.16
34	Woodland and forest	Other woodland, broadleaved	0.35	Medium	4	Moderate	2	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same broad habitat or a higher distinctiveness habitat required (2)	2.80
35	Urban	Developed land, sealed surface	0.06	V.Low	0	N/A - Other	0	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Compensation Not Required	0.00
36	Urban	Urban Tree	1.52	Medium	4	Good	3	Area/compensation not in local strategy/ no local strategy	Low Strategic Significance	1	Same broad habitat or a higher distinctiveness habitat required (2)	18.24
37												
38												
39												
40												
41												
		Total habitat area	42.88									133.04

Retention category biodiversity value						Bespoke compensation agreed for unacceptable losses	Comments	
Area retained	Area enhanced	Baseline units retained	Baseline units enhanced	Area habitat lost	Units lost		Assessor comments	Reviewer comments
0.08	0.24	0.16	0.48	0.21	0.42	Not within SANG Field F1. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition.		
0.02		0.04	0.00	0.07	0.14	Not within SANG Field F2. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition.		
0.002		0.00	0.00	0.25	0.50	Not within SANG Field F3. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition.		
		0.00	0.00	0.65	1.30	Not within SANG Field F4. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition.		
0.03		0.06	0.00	0.08	0.16	Not within SANG Field F5. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition.		
		0.00	0.00	0.66	1.32	Not within SANG Field F6. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition.		
0.18		0.36	0.00	0.97	1.94	Not within SANG Field F7. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition. Have accounted for easment for new drainage pipe		
		0.00	0.00	0.38	0.76	Not within SANG Field F8. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition.		
0.24		0.48	0.00	2.31	4.62	Not within SANG Field F9. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition.		
0.11		0.22	0.00	2.01	4.02	Not within SANG Field F10. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition.		
0.41	0.01	0.82	0.02	1.73	3.46	Not within SANG Field F11. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition.		
0.43		0.86	0.00	2.29	4.58	Not within SANG Field F12. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition.		
0.37		0.74	0.00	0.37	0.74	Not within SANG Grassland path between fields and Woodland W5, W1 and W2, and to south of F12. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition.		
		0.00	0.00	0.02	0.08	Not within SANG Mixed scrub within Field F7 (formally Hedgerow H3). Pass 1 or 2/5 criteria, failing on presence of >3 woody species, age range and presence of clearance and glades (need to double check criteria 4). Regardless poor.		
0.59		10.62	0.00	0.00	0.00	Not within SANG Woodland W1. Scored 33/39 points, scoring poorly on veteran trees. Small area to be lost to easment for drainage pipe, too small to be measured (c. 2m2)		
0.13		2.34	0.00	0.00	0.00	Not within SANG Woodland W5. Scored 33/39 points, scoring poorly on veteran trees.		
0.12		0.00	0.00	0.40	0.00	Not within SANG Hardstanding - road in north and paths within fields.		
						SANG Field F14. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition.		
1.91	1.58	3.82	3.16	0.49	0.98	SANG Field F15. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition. (Excludes area to be enhanced to CNG poor)		
4.02	1.6	8.04	3.20	0.57	1.14	SANG Field F16. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition. (Excludes area to be enhanced to CNG poor)		
2.73	1.69	5.46	3.38	0.02	0.04	SANG Grassland path between W3. Pass 5/7 criteria, failing on 6-Sep/m2 (essential criteria 1 needed for good condition) and varied sward height. Poor condition.		
0.55		1.10	0.00	0.00	0.00	Area of F15 to be enhanced to CNG poor from natural succession		
	2.5	0.00	5.00	0.04	0.08	Area of F15 to be enhanced to CNG poor from natural succession		
	3.08	0.00	6.16	0.00	0.00	SANG Path through W2. Assumed same criteria as on-Site ancient woodland (W1). Retained		
0.06		1.08	0.00	0.00	0.00	SANG Woodland W3. Scored 25/39, scoring poorly on age distribution, number of native species, woodland regeneration, ground flora, vertical structure and presence of veteran trees. Enhancement proposed		
	1.21	0.00	4.84	0.00	0.00	SANG Woodland W4. Scored 26/39, scoring poorly on age distribution, number of native species, ground flora, vertical structure and presence of veteran trees. Enhancement proposed		
	2.89	0.00	23.12	0.00	0.00	SANG Hardstanding and building, including path through fields and hardstanding/barn building in west		
0.2		0.00	0.00	0.00	0.00	SANG Track along western boundary of H7		
0.11		0.00	0.00	0.00	0.00	Pond to be created in SANG Have assumed poor baseline to be enhanced to Woodland planting proposed in SANG, includes screening in north		
	0.04	0.00	0.16	0.00	0.00	Cowpark in SANG		
0.35		2.80	0.00	0.00	0.00	Scattered trees to be planted in SANG. Considered good condition achievable due to location		
0.06		0.00	0.00	0.00	0.00			
1.52		18.24	0.00	0.00	0.00			
14.22	14.84	57.24	48.52	13.62	28.28			

Total area lost (excluding area of Urban trees and Green walls)	13.52
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Bird in Eye Farm	
A-2 Site Habitat Creation	
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[illegible]

B-1 Site Hedge Baseline

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Instructions

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B-2 Site Hedge Creation

[Main Menu](#)

Instructions

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Appendix K

Biodiversity Net Gain Report (CSA/2646/15)



Land at Bird in Eye Farm,
Uckfield

Biodiversity Net Gain Report

Prepared by
CSA Environmental

Croudace Homes Ltd

Report No: CSA/2646/06

December 2022

This report may contain sensitive ecological information. It is the responsibility of the Local Authority to determine if this should be made publicly available.

Report Reference	Date	Revision	Prepared by	Approved by	Comments
CSA/2646/06	01/04/2021	-	TF	CC	-
	29/04/2021	A	TF	CC	Submission Issue
	16/06/2021	B	TF	CC	Updated Submission Issue
	02/12/2022	C	LG	CC	Updated scheme; Site Access & Drainage
	18/01/2023	D	LG	MR	Appendix E added



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Appendices

Appendix A: Habitats Plan (CSA/2646/108/D)

Appendix B: Habitat Condition Assessment Sheets

Appendix C: UK Habitat Classification Summary Table

Appendix D: Flora species list

Appendix E: Biodiversity Gain Plan (CSA/2646/117)

1.0 INTRODUCTION

- 1.1 This report has been prepared by CSA Environmental on behalf of Croudace Homes Ltd. It sets out the findings of a Biodiversity Net Gain Assessment (using Biodiversity Metric 3.1) for Land at Bird in Eye Farm, Uckfield (hereafter 'the Site').
- 1.2 The development Site occupies an area of c. 15.36ha and is located around central grid reference TQ 485205 to the east of Uckfield. The Site consists of a series of grazed modified grassland fields and associated hedgerows, parcels of lowland mixed deciduous woodland, including ancient woodland, mixed scrub and a Framfield Stream which borders the western boundary. The proposed strategic SANG occupies an area of 25.25ha and consists of a series of grazed modified grassland fields, associated hedgerows and tree line and parcels of broadleaved plantations (see Habitats Plan in Appendix A).
- 1.3 This Assessment has been informed by a UK Habitat Classification Survey and habitat condition assessments undertaken in October 2022.
- 1.4 Calculation of biodiversity net gain units has been undertaken using the Natural England Biodiversity Metric 3.1 (July 2021); and follows guidance set out within the Biodiversity Net Gain: Good practice principles for development (Baker *et al.*, 2019).
- 1.5 This BNG Assessment aims to:
 - Provide baseline data to classify the type, distinctiveness, condition, connectivity and strategic significance of habitats present prior to and post- development.
 - Ensure that baseline habitat conditions are classified in a robust and consistent manner, and that classification is based on the best data available data at the time of assessment.
 - Clearly identify data collection methods and any limitations.
 - Calculate baseline pre- and post-development habitat units and hedgerows units for the Site based on current development proposals.
 - Propose a Biodiversity Net Gain design with the aim of maximising biodiversity net gain through habitat creation, enhancement and succession.
 - Aim to achieve BNG on-Site wherever possible; with off-site measures being considered as an alternative option if required.

2.0 PLANNING POLICY AND LEGISLATION

- 2.1 The National Planning Policy Framework (NPPF3) (Ministry of Housing, Communities and Local Government, 2019) sets out requirements for the delivery of biodiversity net gain, and this is supported within Planning Policy Guidance (PPG) (updated July 2021). The Natural Environment PPG addresses principles across a broad spectrum of topics targeting biodiversity conservation, from individual site and species protection through to the supporting of ecosystem services, and the use of local ecological networks to support the national Nature Recovery Network. In particular the PPG promotes the delivery of **measurable Biodiversity Net Gain through the creation and enhancement of habitats alongside development**.
- 2.2 The Government confirmed the intention to mandate Biodiversity Net Gain at a minimum of 10%, with this requirement being set out within the Environment Act 2021. Whilst the Act was adopted as UK law in November 2021, secondary legislation will be necessary to require biodiversity net gain to be a condition of planning permission, with a two-year implementation period being anticipated from that point. However, in light of this forthcoming legislation, many Local Planning Authorities have started to include biodiversity net gain requirements in Local Plan Policy.
- 2.3 Accompanying the NPPF, central government guidance on the implementation of planning policies is set out within online Planning Practice Guidance (PPG). That relating to the protection and enhancement of the Natural Environment was most recently updated in August 2021. The Natural Environment PPG addresses principles across a broad spectrum of topics targeting biodiversity conservation, from individual site and species protection through to the supporting of ecosystem services, and the use of local ecological networks to support the national Nature Recovery Network. In particular the PPG promotes the delivery of measurable biodiversity net gain through the creation and enhancement of habitats alongside development.
- 2.4 The following policies from the Wealden District Adopted Core Strategy Local Plan (2013) makes reference to biodiversity and the protection and enhancement of priority habitats and species:
- Policy WCS12: Biodiversity, and in particular 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.
 - Policy WCS13: Green infrastructure, ensuring a multifunctional, accessible network which **maintains and improves biodiversity** and landscape character.

3.0 BIODIVERSITY NET GAIN: GOOD PRACTICE PRINCIPLES

Biodiversity Net Gain

- 3.1 Biodiversity net gain has been defined as 'development that leaves biodiversity in a better state than before, and an approach where developers work with local governments, wildlife groups, landowners and other stakeholders in order to support their priorities for nature conservation' (Baker, 2016).

Good Practice Principles

- 3.2 Good practice principles for biodiversity net gain are set out within Table 1.1 of Biodiversity Net Gain: Good practice principles for development (Baker *et al.*, 2019). Key principles include:

- Apply the 'Mitigation Hierarchy' (in line with CIEEM Guidelines for Ecological Impact Assessment (EcIA) (CIEEM, 2018) and be 'additional' by achieving outcomes that exceed existing obligations.
- Avoid losing biodiversity which cannot be off-set elsewhere (e.g. irreplaceable habitats).
- Address risk (e.g. difficulty of achieving habitat creation/enhancement for net gain).
- Make a 'measurable' net gain contribution (e.g. calculated using an appropriate metric) and ensure that calculations consistent and transparent (i.e. limitations and assumptions are clearly identified).
- Ensure that net gain design achieves the best outcome for biodiversity (this may require both quantitative and qualitative assessment) and create a net gain legacy for long-term benefits.

4.0 METHODS

Habitat Survey

- 4.1 A UK Habitat Classification survey ('UKHab') of the Site was undertaken by Clare Caudwell CECOL MCIEEM (FISC¹ Level 4) and Lydia Galbraith (FISC Level 3) on 06 September 2022. The UK Habitat Classification survey was undertaken in fine and dry weather conditions and encompassed the Site and immediately adjacent habitats that could be viewed. Habitat type and condition were recorded and mapped in line with the UK Habitat Classification survey methodology (UK Hab; Butcher *et al.*, 2020). A Habitats Plan (CSA/3126/106/B) showing the baseline habitat parcels is provided in Appendix A.
- 4.2 A high-level assessment of 'habitat condition' was also undertaken by Clare Caudwell and Lydia Galbraith. Discussion is provided within the 'Assumptions and Limitations' section herein.
- 4.3 This UKHab survey acts as an update for the Extended Phase 1 Habitat survey and condition assessment completed in April 2019 by Tilly Fitzwebster (CSA/2646/11).

Condition Assessment

- 4.4 Habitat condition was assigned following guidance from the 'Technical Supplement' document (Natural England, 2021) which accompanies the Biodiversity Metric 3.1. Assessment criteria were followed for each broad habitat type, to determine the condition of each habitat present.

Calculation of Biodiversity Units

- 4.5 The Biodiversity Metric 3.1 (April 2021) was used to calculate the change in biodiversity units (including habitat units and hedgerow units) and the overall percentage of gain/loss achieved. Metric calculations have been reviewed by Clare Caudwell CECOL MCIEEM who has completed the 'Calculating and Using Biodiversity Units with Metric 2.0 CIEEM Training Course' (December, 2019) and has completed numerous net gain assessments using both Metric 2.0, 3.0 and 3.1.
- 4.6 Pre-development baseline and proposed habitat areas were measured as distinct habitat parcels. Habitat parcels were measured using habitat mapping and aerial imagery overlain in QGIS.
- 4.7 The pre-development habitat areas baseline was calculated using measurements taken from information gathered during the site visit and using aerial photography where appropriate. Hedgerows and tree lines were included as linear habitats only (as per the Metric requirements).

¹ Field Identification Skills Certificate, Botanical Society of Britain and Ireland

- 4.8 Post-development habitats were calculated by measuring the Landscape Strategy SANG Design prepared by CSA (CSA/2646/114/M) on behalf of Croudace Homes Ltd allowing areas of retained, created and enhanced habitat to be identified. This plan demonstrates what level of habitat creation could be achieved alongside the proposed development.
- 4.9 Habitat condition for both retained and created habitats was assigned taking a precautionary approach and with consideration of biotic and operational phase conditions (i.e. those which may limit the extent to which 'good' condition is likely to be reached).
- 4.10 A full copy of the Biodiversity Metric 3.1 calculator should be read in conjunction with this report and is available upon request.

Strategic Significance

- 4.11 This criteria within the Biodiversity Metric 3.1 was assessed by determining if habitat areas within the Site occur within any strategic locations for biodiversity, form part of a designated site for nature conservation or are identified within local plans such as Biodiversity Opportunity Areas and Ecological Networks (MAGIC) and/ or Natura conservation designations. The Site does not fall within any strategic locations for biodiversity.

Trading Summary

- 4.12 'Trading Up' is a concept which requires 'conserving through offset components of biodiversity that are of a higher conservation priority (for example because they are more irreplaceable and vulnerable) than those affected by the development project for which the offset is envisaged' (BBOP, 2018). For example, should non-irreplaceable habitats be lost / impacted as a result of proposed development, offsets should be achieved through the creation / enhancement of habitat of the same or higher distinctiveness, where environmental conditions are appropriate and where it generates the greatest benefits for biodiversity. Trading has been considered during the design stage.

Assumptions and Limitations

- 4.13 It should be noted that the accuracy of habitat area measurement is limited by the form of baseline data collection and resolution of development proposal plans. In this instance baseline habitat areas have been calculated by cross referencing illustrative Habitats Plans with aerial imagery. Post-development habitat areas have been measured from the Landscape Strategy SANG design (CSA/2646/114/M) as provided by CSA Environmental on behalf of Croudace Homes Ltd. In the absence of detailed planting plans,

reasonable assumptions have been made with regards to the type and condition of habitats that could be created.

- 4.14 The assessment assumes that habitats created or enhanced as part of the Proposed Development will be subject to ongoing appropriate management to ensure that they reach the allocated target condition within the required timeframe. It is assumed that all habitats (retained, enhanced or created) post-development will be maintained for a period of 30 years, in line with requirements of the Environment Act 2021. Management will either be undertaken or funded by the Applicant (or their appointed contractor), details of which will be provided at the detailed planning stage.
- 4.15 The following outlines the reasonable assumptions made regarding habitat type and condition, in absence of detailed plans.
- 4.16 Grassland surrounding and within the development that are shown as 'amenity' grassland on the Landscape Strategy Plan have been assigned 'modified grassland' in 'poor' condition. Areas to the west and south of the development, behind the proposed footpath are proposed to be retained 'modified grassland', whilst other proposed amenity grassland is to be created. This is based on the assumption that these areas will have to be kept short enough for amenity use.
- 4.17 Wildflower grassland creation within the development area and the SANG has been assigned 'other neutral grassland' in 'good' condition, and is assumed to be enhanced from the 'modified grassland' baseline, as due to the size and locations of these areas it is considered that this will be achievable through appropriate management.
- 4.18 Aquatic marginal planting around the SuDS has been categorised 'other neutral grassland' in 'good' condition.
- 4.19 Areas of 'longer grassland' within the SANG are assumed to be retained modified grassland, whilst the peripheries are being left to 'natural succession', and have been assumed to be enhanced from modified grassland in 'poor' condition, to other neutral grassland in 'poor' condition.
- 4.20 Areas of thicket planting and the 'woodland margin planting mix' have been assigned 'mixed scrub' in 'moderate' condition, whilst areas of 'structural tree planting mix' have been assigned 'other woodland; broadleaved' in 'moderate' condition, as this is considered achievable through appropriate management of these areas. It is assumed that all existing on-Site woodland will be retained or enhanced.
- 4.21 Tree planting with the development have been assigned 'small' 'urban tree' in 'poor' condition, as it is considered unlikely that the average planted street tree will achieve a higher size or condition than this. Tree

planting with the SANG have been assigned 'small' urban trees in 'good' condition, as this is considered achievable within this open area.

- 4.22 SuDS basins have been assigned the category 'other neutral grassland' in 'moderate' condition, as it is considered that it is achievable through appropriate management. As is it considered likely this basin will include infiltration for drainage, no wet core is assumed. Areas of swales which lead to the SuDS basin have also been assigned 'other neutral grassland' in 'moderate' condition.
- 4.23 A drainage pipe has been proposed from the SuDS in the south west of the development to an outfall to the north of Woodland W1, with an 3m easement either side of the pipeline to maintain access. It has been assumed this will be free from planting, and will be retained modified grassland.
- 4.24 As no gardens are shown on the Landscape Strategy Plan, it is assumed that there will be a 70/30 split between houses/driveways and other built areas and gardens, with 'developed land; sealed surface' used as the habitat classification for the built areas and 'vegetated garden' in 'poor' condition used as the habitat classification for gardens.
- 4.25 In line with current Natural England guidance, any habitat creation and enhancement within the SANG area that would be required to achieve the primary purpose of the SANG (i.e. the provision of semi-natural habitats for amenity use) has been included within the baseline of the metric. Any additional habitat creation and enhancement that is not required to achieve the primary purpose of the SANG has been included within the post-development section of the metric. For clarity additional habitat creation and enhancement measures included within the SANG assessment include:
- Creation of modified grassland (in place of areas of existing hard standing) and planting of other broadleaved woodland (within existing modified grassland)
 - Enhancement of existing modified grassland to other neutral grassland (via overseeding and positive management), enhancement of existing other broadleaved woodland (Millennium plantation areas; though species and structural diversification, and positive management)
- 4.26 Full justification for the habitat types selected (baseline and proposed) are detailed herein.

5.0 RESULTS

Existing Habitats

- 5.1 A summary of habitat classification is provided in Appendix C; with a species list provided in Appendix D. Details of the Habitat Condition Assessments are provided in Appendix B.

Modified grassland (g4)

- 5.2 The Site is largely dominated by modified grassland field (Fields F1-F16 on the Habitats Plan), which have been tightly grazed by horses and ponies. These grasslands are all similar in species composition, dominated by perennial rye grass *Lolium perenne*, Yorkshire fog *Holcus lanatus*, and cock's-foot *Dactylis glomerata*, with herbaceous species including creeping buttercup *Ranunculus repens*, ribwort plantain *Plantago lanceolata* and white clover *Trifolium repens*.
- 5.3 Fields F1-F16 passed 5 out of 7 criteria for 'low' distinctiveness grassland, failing on the presence of a varied sward height, and for having fewer than 6 species per m² (essential criteria for achieving 'moderate' condition).
- 5.4 In line with the Natural England Biodiversity Metric 3.1 Fields F1-F16 modified grassland parcels have been assessed to be in '**poor**' condition.

Lowland mixed deciduous woodland (w1f)

- 5.5 Two woodland blocks (Woodland W1 and W5) have been classified as 'lowland mixed deciduous woodland' within the UKHabs classification.
- 5.6 Woodland W1 has been identified as ancient woodland, and is dominated by oak and alder *Alnus glutinosa* with an understory of hazel *Corylus avellana* coppice, elder *Sambucus nigra* and holly *Ilex aquifolium*. Previous surveys have identified a ground flora of ancient woodland indicators included bluebells *Hyacinthoides non-scripta*, yellow archangel *Lamium galeobdolon* and wild garlic *Allium ursinum*.
- 5.7 Woodland W5 is a small parcel of woodland to the north of Woodland W5, which is not included within the ancient woodland classification. This parcel is dominated by oak, with alder and willow *Salix* sp., an understory of holly, hazel, elder, hawthorn *Crataegus monogyna*. The woodland is dark and shaded, with limited ground flora.
- 5.8 Both parcels scored 33 points out of a possible 39 points, scoring poorly (i.e. scoring 1 out of possible 3 points) on the presence of veteran trees (none present). In line with the Natural England Biodiversity Metric 3.1 Woodlands W1 and W5 have been assessed to be in '**good**' condition

Other woodland; broadleaved (w1g)

- 5.9 Two woodland blocks (Woodland W3 and W4) have been classified as 'other woodland; broadleaved' within the UKHabs classification. Both parcels consist of Millennium woodland plantations.
- 5.10 Woodland W3 is largely dominated by oak *Quercus* sp., birch *Betula* sp. and common lime *Tilia x europaea*, with ground flora limited to scattered bramble *Rubus* agg. It scored 25 points out of a possible 39, scoring poorly on age distribution of trees (only one age class present), number of native species present (less than two), woodland regeneration (no classes or coppice regrowth present), ground flora (no recognisable NVC community), woodland vertical structure (one or less storey), and veteran trees (none present).
- 5.11 Woodland W4 is largely monospecific, dominated by oak with the occasional beech *Fagus sylvatica*, with a limited understory. It scored 28 points out of a possible 39, scoring poorly on age distribution of trees (only one age class present), number of native species present (less than two),),ground flora (no recognisable NVC community), woodland vertical structure (one or less storey), and veteran trees (none present).
- 5.12 In line with the Natural England Biodiversity Metric 3.1 Woodland W3 and W5 has been assessed to be in '**poor**' condition.

Mixed scrub (h3h)

- 5.13 A small patch of scrub was noted within Field F7. This scrub is a remnant defunct hedgerow, previously identified as Hedgerow H3 within the Phase 1 Habitat Survey conducted in 2019, but now reclassified as 'mixed scrub' within the UKHabs classification.
- 5.14 It is dominated by hawthorn, with scattered bramble at the peripheries.
- 5.15 This parcel passed 1/5 criteria for scrub habitat, failing on the presence of >3 woody species (one present), age range (one class), well developed edge (none present) and the presence of clearings and glades (none present).
- 5.16 In line with the Natural England Biodiversity Metric 3.1 this patch of mixed scrub has been assessed to be in '**poor**' condition

Hedgerows and Trees

- 5.17 Under UKHab, all native hedgerows are 'Priority hedgerows' (h2a) and are defined as any hedgerow consisting predominantly (i.e. 80% of more cover) of at least one woody UK native species. 'Other hedgerows' (h2b) are hedgerows that do not consist predominantly of at least one woody UK native species. Further divisions of hedgerow habitat types are made within Metric 3.1, depending on their species composition and the present or absence of standard trees.

Priority hedgerows (h2a)

- 5.18 There are eight hedgerows present within the Site, identified as H1, H2, H4, H5, H7-H9 on the Habitats Plan (Hedgerow H3 now reclassified as a parcel of mixed scrub).
- 5.19 Hedgerows H1, H5, H7 and H9 are species poor hedgerows, H1 being dominated by blackthorn *Prunus spinosa*, with hazel, bracken *Pteridium* sp. and hedge bindweed *Calystegia sepium*, H5 and H9 are dominated by hawthorn, with occasional field maple, elder, bracken and ivy, and H7 dominated by hawthorn.
- 5.20 Hedgerows H2 and H8 are hedgerows with trees. Hedgerow H2 is dominated by mature oaks and beech, with hazel, elder, hawthorn, holly and bramble, and has been classified as species-rich. Hedgerow H8 is dominated by hawthorn and blackthorn, with ivy and bramble and has been classified as species-poor.
- 5.21 Hedgerow H4 is a species rich hedgerow, consisting of largely of hawthorn, with elder, hazel, sycamore, oak, dogwood *Cornus sanguinea*, field rose *Rosa arvensis*, ivy and bramble.
- 5.22 In line with the Natural England Biodiversity Metric 3.1 Hedgerows H1, H5, H7 and H9 have been classified as 'native hedgerow', with H1, H5 and H9 (H1 scoring 7/8 and H5 and H9 scoring 8/8 criteria) assessed to be in 'good' condition, and H7 (scoring 4/8 criteria) in '**moderate**' condition.
- 5.23 Hedgerow H2 has been classified as 'native species-rich hedgerow with trees' and passed 9/10 criteria for hedgerows with trees, and therefore been assessed to be in '**good**' condition.
- 5.24 Hedgerow H8 has been classified as 'native hedgerow with trees' and passed 8/10 criteria for hedgerow with trees, and therefore been assessed to be in '**good**' condition
- 5.25 Hedgerow H4 has been classified as 'native species-rich hedgerow' and passed 7/8 criteria, and therefore been assessed to be in '**good**' condition.

Line of trees (w1g6)

- 5.26 A line of trees (Hedgerow H6) is present in the north east of the Site, dividing fields F11 and F12 from F14. The tree line consists of Scot's pine *Pinus sylvestris*, oak, silver birch *Betula pendula* and cherry *Prunus* sp. with a bramble understory.
- 5.27 H6 passes 4 out of 5 criteria for Lines of Trees, failing on the presence of an undisturbed vegetated strip 6m either side (grass grazed or mown close to tree line).

- 5.28 In line with the Natural England Biodiversity Metric 3.1 H6 has been classified as 'line of trees' and has been assessed to be in '**moderate**' condition.

Hardstanding (u1b), buildings (u1b5) and artificial unsealed non-vegetated surface (u1c)

- 5.29 Various areas of hardstanding, buildings and unsealed surface are present on Site, including access paths across fields and farm buildings.
- 5.30 These habitat types are not given a condition within the Natural England Biodiversity Metric 3.1 assessment.

Post-Intervention Habitat Creation and Enhancement

- 5.31 Post intervention habitat types are represented on the Biodiversity Gain Plan provided at Appendix E.
- 5.32 With regards to habitat creation, targeted condition has been assigned taking into consideration the location, usage and likely management of the habitat area.

Biodiversity Unit Calculations

- 5.33 Biodiversity Metric calculations have been based on the above assumptions in terms of habitat creation and enhancement.
- 5.34 Based on the Biodiversity Metric 3.1 calculations, the proposed development alone (inclusive of on-site intervention) would result in an overall **net gain of 53.57 habitat units (40.27% net gain) and a net gain of 0.16 hedgerow units (1.75% net gain)**. A summary of the Biodiversity Metric calculations is provided in Table 1.

Table 1. Quantitative Assessment of Biodiversity Impact

Factor	Habitats (ha)	Hedgerows (km)
Total on-site area / length (baseline)	42.58	1.14
Total site units (baseline)	133.04	9.24
Area / length retained	14.22	0.96
Units retained	57.24	8.42
Area / length enhanced	14.84	0.15
Baseline units enhanced	49.52	0.6
Area / length lost	13.52	0.03
Units lost	26.28	0.22
Post-intervention* units on-site	186.61	9.57
Net project biodiversity units change	53.57	0.16
Total project biodiversity % change	40.27%	1.75%

**Post-intervention – including habitat retention, creation and enhancement*

Habitats

- 5.35 The scheme will not result in the loss of any 'very high' or 'high' distinctiveness habitats.

Development area

- 5.36 There will be a loss of c. 0.02ha of 'medium' distinctiveness habitat, comprising of 'mixed scrub'.
- 5.37 There will be a loss of c. 19.98ha of 'low' distinctiveness habitat, comprising 'modified grassland', and c. 0.4ha of 'very low' distinctiveness habitat comprising of 'developed land; sealed surface' (hardstanding).
- 5.38 The scheme will likely result in the creation of c. 1.48ha of 'modified grassland' in 'poor' condition (alongside development and in areas of informal POS), c. 0.32ha of 'other neutral grassland in 'moderate' condition (SuDS basin), c. 0.12ha of 'other neutral grassland' in 'good' condition (marginal planting around SuDS basin), c. 0.26ha of 'other neutral grassland' in 'moderate condition (swales leading to SuDS basin), c. 0.48 'other woodland; broadleaved' in 'moderate' condition (structural tree planting), c. 1.0ha 'mixed scrub' in 'moderate' condition (thicket planting) and c. 0.88ha of 'urban tree' in 'poor' condition.
- 5.39 In addition, c. 6.99ha of developed land (consisting of c. 2.89ha of roads and c. 4.1ha of housing), as well as c. 0.04ha of LEAP, and c. 1.76ha of 'vegetated garden' will be created.
- 5.40 The scheme will result in the retention of c. 0.72h 'high' distinctiveness 'lowland mixed deciduous woodland' in 'good' condition (Woodlands W1 and W5), as well as c. 1.84ha 'low' distinctiveness 'modified grassland' in 'poor' condition (grassland around the peripheries of the site) and c. 0.12ha of 'very low' distinctiveness developed land; sealed surface.
- 5.41 The scheme will result in the enhancement of c. 0.25ha of 'low' distinctiveness 'modified grassland' in 'poor' condition to 'other neutral grassland in 'good' condition (areas of wildflower meadow).

SANG

- 5.42 There will be a loss of c. 1.08ha of 'low' distinctiveness habitat comprising 'modified grassland'.
- 5.43 As discussed within the Assumptions, the habitat creation and enhancement required to provide the primary purpose of the SANG has been included within the baseline of the metric. This includes c. 0.35ha of 'other woodland; broadleaved' in 'moderate' condition (areas of screening woodland planting), c. 0.04ha of 'pond (non-priority habitat)' (wildlife pond), c. 1.5ha of 'urban trees' in 'good' condition, and c. 0.06ha of 'developed land; sealed surface' (SANG car park). Additional

habitat creation and enhancement that exceeds the requirements for the SANG area (and have therefore been included within the post-development section of the metric) includes creation of c. 0.06ha of 'modified grassland' in 'poor' condition (area of grassland to replace hardstanding/hay storage) and c. 1.01ha of 'other woodland; broadleaved' in 'moderate' condition (large area of woodland planting in south of SANG).

- 5.44 The proposed SANG scheme will result in the retention of c. 9.27ha of 'low' distinctiveness 'modified grassland' in 'poor' condition (areas of 'longer grassland'), and 0.31ha of 'very low' distinctiveness 'developed land; sealed surface' and 'artificial unvegetated, unsealed surface' (hardstanding, building and tracks).
- 5.45 In addition, the proposed SANG scheme will result in the enhancement of c. 4.87ha of 'low' distinctiveness 'modified grassland' in 'poor' condition to 'other neutral grassland' in 'good' condition (areas of wildflower meadow), and c. 5.58ha of 'modified grassland' in 'poor' condition to 'other neutral grassland' in 'poor' condition (areas of 'natural succession' around the peripheries of the SANG). In addition, there will be the enhancement of c. 1.21ha of 'medium' distinctiveness 'other woodland; broadleaved' from 'poor' to 'moderate' condition (Woodland W3) and c. 2.89ha from 'moderate' to 'good' condition (Woodland W4).

Linear features

- 5.46 The scheme will result in the loss of 0.01km of 'medium' distinctiveness hedgerow (Hedgerow H4- 'native species-rich hedgerow' in 'good' condition), and c. 0.02km of 'low' distinctiveness hedgerow (Hedgerow H5- native hedgerow).
- 5.47 The scheme will result in the enhancement of c. 0.15km of 'low' distinctiveness hedgerow ('line of trees') from 'moderate' to 'good' condition.
- 5.48 The scheme will result in the creation of 0.05km of 'native hedgerow' in 'moderate' condition. It is considered that there is suitable scope to increase hedgerow planting within detailed landscape plans, with the aim of reaching a minimum of 10% net gain in hedgerow units. For example, the creation of 0.4km of 'native hedgerow' in 'poor' condition will deliver 0.77 hedgerow units and result in a 10.10% net gain.

Trading Summary

- 5.49 In this instance, the 'Trading Summary' indicates that there are no losses unaccounted for.

6.0 DISCUSSION

- 6.1 Biodiversity Net Gain calculations, using the Biodiversity Metric 3.1 (July 2021) have been undertaken for the proposed development at Land at Bird in Eye Farm, Uckfield. Baseline habitat calculations have been informed by a UK Habitat Classification survey and subsequent condition assessments. Post-development calculations have been made based on the Landscape Strategy SANG design (CSA/2646/114/M) as provided by CSA Environmental on behalf of Croudace Homes Ltd. Assumptions and limitations to the assessment have been highlighted where relevant, and identified in the Metric calculator which should be reviewed in conjunction with this report.
- 6.2 A net gain of 53.57 habitat units (40.27%) and a net gain of 0.16 hedgerow units (1.75%) was identified following the completion of baseline and post-development calculations. However, good scope to also deliver a 10% net gain in relation to hedgerow units through additional hedgerow planting has also been identified. Such planting could be incorporated into Landscape Planting proposals at the detailed design / Reserved Matters stage.
- 6.3 It is concluded that the scheme has good scope to provide significant net gains for biodiversity, and will meet the requirements of Policy WCS12 and WCS13 of the Wealden District Adopted Core Strategy Local Plan (2013) and be in line with provisions of the Environment Act 2021.
- 6.4 It should be noted that as a condition of biodiversity net gain, the management of all enhanced/created habitats must be secured for 30 years, to ensure proposals are achieved.

7.0 REFERENCES

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Appendix A

Habitats Plan (CSA/2646/108/D)



- Site boundary
- Modified grassland (g4)
- Lowland mixed deciduous woodland (w1f)
- Other woodland; broadleaved (w1g)
- Ancient woodland
- Dense (mixed) scrub (h3)
- Hardstanding (u1b)
- Building (u1b5)
- Artificial unvegetated unsealed surface (u1c)
- Hedgerow (priority habitat) (h2a)
- Hedgerow (priority habitat) with trees (h2a)
- Line of Trees (w1g6)
- Stream (r2) and direction of flow
- Pond (r1)
- Fence

Target Notes:
TN1: Bluebells in woodland
TN2: Woodpecker holes and tree creeper sighting
TN3: Spoil heap and log pile
TN4: Badger sett (x1 partially active tunnel)
TN5: Barn owl sighting and barn owl box
TN6: Badger sett (x2 active tunnels)- 2019
TN7: Badger sett (x3 active tunnels)
TN8: Badger sett (x3 outlier tunnels)
TN9: Badger sett (x2 disused tunnels)- 2019
TN10: Badger sett (x1 outlier tunnel)
TN11: Badger sett (x11 tunnels, 6 active)- 2019
TN12: Badger sett (x2 partially active tunnels)
TN13: Badger sett (c. x10 partially active tunnels)
TN14: Muck heap
TN15: Veteran trees



Office 20, Citibase, 95 Ditchling Road,
Brighton BN1 4ST
t 01273 573871
e brighton@csaenvironmental.co.uk
w csaenvironmental.co.uk

Project Land at Bird in Eye Farm
Drawing Title Habitats Plan
Client Croudace Homes Limited

Date Oct 2022
Scale Refer to scale
Drawn LG
Drawing No. CSA/2646/108
Rev D
Checked CC

Appendix B

Habitat Condition Assessment sheets

Condition Sheet: GRASSLAND Habitat Type (low distinctiveness)

Site name/location	Land at Bird-in-Eye Farm, Uckfield	Central grid reference of habitat	TQ 48463 20749													
Date surveyed and surveyor	06/09/2022 Clare Caudwell & Lydia Galbraith															
Habitat Description																
Condition Assessment Criteria		Condition Achieved (Y/N)														
		F1	F2	F3	F4	F5	F6	F7	F8	F9	F10	F11	F12	F14	F15	F16
1	There must be 6-8 species per m2. If a grassland has 9 or more species per m2 it should be classified as a medium distinctiveness grassland habitat type. NB - this criterion is essential for achieving moderate condition.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
2	Sward height is varied (at least 20% of the sward is less than 7 cm and at least 20% is more than 7 cm) creating microclimates which provide opportunities for insects, birds and small mammals to live and breed.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
3	Some scattered scrub (including bramble) may be present, but scrub accounts for less than 20% of total grassland area. Note - patches of shrubs with continuous (more than 90%) cover should be classified as the relevant scrub habitat type.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
4	Physical damage is evident in less than 5% of total grassland area. Examples of physical damage include excessive poaching, damage from machinery use or storage, erosion caused by high levels of access, or any other damaging management activities.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
5	Cover of bare ground is between 1% and 10%, including localised areas (for example, a concentration of rabbit warrens).	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
6	Cover of bracken less than 20%.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
7	There is an absence of invasive non-native species (as listed on Schedule 9 of WCA, 1981).	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Essential criterion 1 achieved (Y/N)		N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Number of criteria passed		5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
Condition Assessment Result	Condition Assessment Score	Score Achieved x/✓														
Passes 6 or 7 of 7 criteria including	Good (3)															
Passes 4 or 5 of 7 criteria; OR	Moderate (2)															
Passes 4 or 5 of 7 criteria including																
Passes 0, 1, 2 or 3 of 7 criteria; OR	Poor (1)															
4, 5 or 6 of criteria but failing criterion 1		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Notes																

Condition Sheet: SCRUB Habitat Type			
Site name/location		Land at Bird-in-Eye Farm, Uckfield	Central grid reference
			TQ 48463 20749
Date surveyed and surveyor		06/09/2022 Clare Caudwell & Lydia Galbraith	
Condition Assessment Criteria		Condition Achieved (Y/N)	
		In Field F7 (previously H3)	
1	Habitat is representative of UKHab description (where in its natural range). There are at least three woody species, with no one species comprising more than 75% of the cover (except common juniper, sea buckthorn or box, which can be up to 100% cover).	N	
2	There is a good age range – all of the following are present: seedlings, young shrubs and mature shrubs.	N	
3	There is an absence of invasive non-native species (as listed on Schedule 9 of WCA, 1981) and species indicative of sub-optimal condition make up less than 5% of ground cover.	Y	
4	The scrub has a well-developed edge with scattered scrub and tall grassland and/or herbs present between the scrub and adjacent habitat(s).	N	
5	There are clearings, glades or rides present within the scrub, providing sheltered edges.	N	
Number of criteria passed		1	
Condition Assessment Result	Condition Assessment Score	Score Achieved x/✓	
Passes 5 of 5 criteria	Good (3)		
Passes 3 or 4 of 5 criteria	Moderate (2)		
Passes 0, 1 or 2 of 5 criteria	Poor (1)	✓	

Condition Sheet: WOODLAND Habitat Type							
UKHab Habitat Type(s)							
Site name/location		Land at Bird-in-Eye Farm, Uckfield	Central grid reference	TQ 48463 20749			
Date surveyed and surveyor		06/09/2022 Clare Caudwell & Lydia Galbraith					
Condition Assessment Criteria				W1	W3	W4	W5
Indicator	Good (3 points)	Moderate (2 points)	Poor (1 point)	Lowland mixed deciduous	Other woodland; broadleaved	Other woodland; broadleaved	Lowland mixed deciduous
1 Age distribution of trees ¹	Three age classes present	Two age classes present	One age class present	2	1	1	2
2 Wild, domestic and feral herbivore damage	No significant browsing damage evident in woodland ²	Evidence of significant browsing pressure is present in 40% or less of whole woodland	Evidence of significant browsing pressure is present in 40% or more of whole woodland	3	2	3	3
3 Invasive plant species ³	No invasive species present in woodland	Rhododendron or laurel not present, other invasive species < 10% cover	Rhododendron or laurel present, or other invasive species > 10% cover	3	3	3	3
4 Number of native tree species	Five or more native tree or shrub species found across woodland parcel	Three to four native tree or shrub species found across woodland parcel	None to two native tree or shrub species across woodland parcel	3	1	1	3
5 Cover of native tree and shrub species	> 80% of canopy trees and >80% of understory shrubs are native	50-80% of canopy trees and 50-80% of understory shrubs are native	< 50% of canopy trees and <50% of understory shrubs are native	3	3	3	3
6 Open space within woodland ⁴	10 – 20% of woodland has areas of temporary open space, unless woodland is <10ha in which case lower threshold of 10% does not apply	21- 40% of woodland has areas of temporary open space	More than 40% of woodland has areas of temporary open space	3	3	3	3
7 Woodland regeneration ⁵	All three classes present in woodland; trees 4-7cm dbh, saplings and seedlings or advanced coppice regrowth	One or two classes only present in woodland	No classes or coppice regrowth present in woodland	2	1	2	2
8 Tree health	Tree mortality less than 10%, no pests or diseases and no crown dieback	11% to 25% mortality and/or crown dieback or low risk pest or disease present	Greater than 25% tree mortality and or any high risk pest or disease present	3	3	3	3
9 Vegetation and ground flora	Ancient woodland flora indicators present	Recognisable NVC plant community present	No recognisable NVC community	3	1	1	3
10 Woodland vertical structure ⁶	Three or more storeys across all survey plots or a complex woodland	Two storeys across all survey plots	One or less storey across all survey plots	2	1	1	2
11 Veteran trees ⁷	Two or more veteran trees per hectare	One veteran tree per hectare	No veteran trees present in woodland	1	1	1	1
12 Amount of deadwood	50% of all survey plots within the woodland parcel have standing deadwood, large dead branches/ stems and stumps	Between 25% and 50% of all survey plots within the woodland parcel have standing deadwood, large dead branches/ stems and stumps	Less than 25% of all survey plots within the woodland parcel have standing deadwood, large dead branches/ stems and stumps	3	2	3	2
13 Woodland disturbance ⁸	No nutrient enrichment or damaged ground evident	Less than 1 hectare in total of nutrient enrichment across woodland area and/or less than 20% of woodland area has damaged ground	More than 1 hectare of nutrient enrichment and/or more than 20% of woodland area has damaged ground	2	3	3	3
Total Score				33	25	28	33
Condition Assessment Result		Condition Assessment Score					
Total score >32 (33 to 39)		Good (3)		✓			✓
Total score 26 to 32		Moderate (2)				✓	
Total score <26 (13 to 25)		Poor (1)			✓		
Notes							
All footnotes below refer to the EWBG woodland condition assessment methodology: EWBG (No date). Assessing your Woodland's Condition [online]. Available from: Woodland Wildlife Toolkit (sylva.org.uk)							

Condition sheet: HEDGEROW Habitat Types									
Site name/Location	Land at Bird-in-Eye Farm, Uckfield		Central grid reference	TQ 48463 20749					
Date surveyed and surveyor	06/09/2022 Clare Caudwell & Lydia Galbraith								
Condition Assessment Criteria									
A series of ten attributes, representing key physical characteristics, are used for this assessment. The attributes, and the minimum criteria for achieving a favourable condition in each, are defined. The attributes use similar favourable condition criteria to the Hedgerow Survey Handbook and the handbook is the recommended source of reference for assessing individual hedgerow attributes.									
Hedgerow favourable condition attributes									
Attributes and functional groupings (A, B, C, D & E)	Criteria (the minimum requirements for 'favourable condition')	Description	Condition Achieved (Y/N)						
Core groups - applicable to all hedgerow types			H1	H2	H4	H5	H7	H8	H9
A1. Height	>1.5 m average along length	The average height of woody growth estimated from base of stem to the	Y	Y	Y	Y	Y	Y	Y
A2. Width	>1.5 m average along length	The average width of woody growth estimated at the widest point of the	Y	Y	Y	Y	N	Y	Y
B1. Gap - hedge base	Gap between ground and base of canopy <0.5 m for >90% of length (unless 'line of trees')	This is the vertical gappiness of the woody component of the hedgerow, and its distance from the ground to the lowest leafy growth.	Y	Y	Y	Y	N	Y	Y
B2. Gap - hedge canopy continuity	Gaps make up <10% of total length and No canopy gaps >5 m	This is the horizontal gappiness of the woody component of the hedgerow. Gaps are complete breaks in the woody canopy (no matter how small).	Y	N	Y	Y	Y	N	Y
C1. Undisturbed ground and perennial vegetation	>1 m width of undisturbed ground with perennial herbaceous vegetation for >90% of length: - measured from outer edge of hedgerow, and - is present on one side of the hedge (at least)	This is the level of disturbance (excluding wildlife disturbance) at the base of the hedge. Undisturbed ground should be present for at least 90% of the hedgerow length, greater than 1m in width and must be present along at least one side of the hedge. This criterion recognises the value of the hedge base as a boundary habitat with the capacity to support a wide range of species. Cultivation, heavily trodden footpaths, poached ground etc. can limit available habitat niches.	Y	Y	Y	Y	Y	Y	Y
C2. Undesirable perennial vegetation	Plant species indicative of nutrient enrichment of soils dominate <20% cover of the area of undisturbed ground	The indicator species used are nettles (<i>Urtica</i> spp.), cleavers (<i>Galium aparine</i>) and docks (<i>Rumex</i> spp.). Their presence, either singly or together, should not exceed the 20% cover threshold.	N	Y	N	Y	N	Y	Y
D1. Invasive and neophyte species	>90% of the hedgerow and undisturbed ground is free of invasive non-native and neophyte species	Neophytes are plants that have naturalised in the UK since AD 1500. For information on neophytes see the JNCC website and for information on invasive non-native species see the GB Non-Native Secretariat website.	Y	Y	Y	Y	Y	Y	Y
D2. Current damage	>90% of the hedgerow or undisturbed ground is free of damage caused by human activities	This criterion addresses damaging activities that may have led to or lead to deterioration in other attributes. This could include evidence of pollution, piles of manure or rubble, or	Y	Y	Y	Y	N	N	Y
Additional group - applicable to hedgerows with trees only									
E1. Tree age	At least one mature tree per 30m stretch of hedgerow. A mature tree is one that is at least 2/3 expected fully mature height for the species.	This criterion addresses if there are sufficient mature trees (within the scope of planning timescales) which are of higher value to biodiversity.	n/a	Y	n/a	n/a	n/a	Y	n/a
E2. Tree health	At least 95% of hedgerow trees are in a healthy condition (excluding veteran features valuable for wildlife). There is little or no evidence of an adverse impact on tree health by damage from livestock or wild animals, pests or diseases, or human activity.	This criterion identifies if the trees are subject to damage which compromises the survival and health of the individual specimens.	n/a	Y	n/a	n/a	n/a	Y	n/a
Each attribute is assigned to one of five functional groups (A – E), as indicated in Table TS1-2 and the condition of a hedgerow is assessed according to the number of attributes from these functional groups which pass or fail the 'favourable condition' criteria according to the approach set out in Table TS1-3.									
The hedgerow condition assessment generates a weighting (score) ranging from 1-3, which is used within the biodiversity metric 3.1. The scores for each are set out in tables TS1-3 and TS1-4 below.									
TABLE TS1-3: Hedgerow condition assessment and weighting									

TABLE TS19. Hedgerow condition assessment and weighting

Condition categories for hedgerows without trees									
Category	Maximum number of attributes that can fail to meet 'favourable condition' criteria in Table TS1-2	Weighting (score)							
Good	No more than 2 failures in total; AND No more than 1 in any functional group.	3	✓		✓	✓			✓
Moderate	No more than 4 failures in total; AND Does not fail both attributes in more than one functional group (e.g. fails attributes A1, A2, B1 & C2 = Moderate condition).	2					✓		
Poor	Fails a total of more than 4 attributes; OR Fails both attributes in more than one functional group (e.g. fails attributes A1, A2, B1 & B2 = Poor condition).	1							
Score achieved:			Good	/	Good	Good	Moderate	/	Good
Condition categories for hedgerows with trees									
Category	Maximum number of attributes that can fail to meet 'favourable condition' criteria in Table TS1-2	Weighting (score)							
Good	No more than 2 failures in total; AND No more than 1 failure in any functional group.	3		✓				✓	
Moderate	No more than 5 failures in total; AND Does not fail both attributes in more than one functional group (e.g. fails attributes A1, A2, B1, C2 & E1 = Moderate condition).	2							
Poor	Fails a total of more than 5 attributes; OR Fails both attributes in more than one functional group (e.g. fails attributes A1, A2, B1 & B2 = Poor condition).	1							
Score achieved:			/	Good	/	/	/	Good	/

Condition Sheet: LINE OF TREES Habitat Type			
Site name/location		Land at Bird-in-Eye Farm, Uckfield	Central grid reference
		TQ 48463 20749	
Date surveyed and surveyor		06/09/2022 Clare Caudwell & Lydia Galbraith	
Condition Assessment Criteria		Condition achieved (Y/N)	
		H6	
1	More than 70% of trees are native species.	Y	
2	Tree canopy is predominantly continuous with gaps in canopy cover making up <10% of total area and no individual gap being >5 m wide.	N	
3	Includes one or more mature ¹ or veteran ² tree.	Y	
4	There is an undisturbed naturally vegetated strip of at least 6 m on both sides to protect the line of trees from farming and other anthropogenic operations.	N	
5	At least 95% of the trees are in a healthy condition (excluding veteran features valuable for wildlife). There is little or no evidence of an adverse impact on tree health by damage from livestock or wild animals, pests or diseases, or human activity.	Y	
Nu		3	
Condition Assessment Result		Condition Assessment Score	
		Score Achieved x/✓	
Passes 5 of 5 criteria		Good (3)	
Passes 3 or 4 of 5 criteria		Moderate (2)	
Passes 0, 1 or 2 of 5 criteria		Poor (1)	

Notes
Footnote 1 - A mature tree in this context is one that is at least 2/3 expected fully mature height for the species.

Appendix C

UK Habitat Classification Survey Summary Table

Table 1. UK Habitat Classification Summary Table

Habitat Parcel Number	Habitat Type	Habitat Code(s)	Description
F1	Modified grassland	g4	Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog and cock's-foot. Few herb species including creeping buttercup, ribwort plantain, common sorrel, dock sp., ragwort and red clover. Sward height is unvaried.
F2	Modified grassland	g4	Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog and cock's-foot. Few herb species including creeping buttercup, ribwort plantain, common sorrel, dock sp., ragwort and red clover. Sward height is unvaried.
F3	Modified grassland	g4	Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog and cock's-foot. Few herb species including creeping buttercup, ribwort plantain, yarrow, red deadnettle and red clover. Sward height is unvaried.
F4	Modified grassland	g4	Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog and cock's-foot. Few herb species including creeping buttercup, ribwort plantain, yarrow, red deadnettle and red clover. Sward height is unvaried.
F5	Modified grassland	g4	Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog and cock's-foot. Few herb species including creeping buttercup, ribwort plantain, yarrow, red deadnettle and red clover. Sward height is unvaried.
F6	Modified grassland	g4	Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog and cock's-foot. Few herb species including creeping buttercup, ribwort plantain, yarrow, red deadnettle and red clover. Sward height is unvaried.
F7	Modified grassland	g4	Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog and cock's-foot. Few herb species including creeping buttercup, ribwort plantain, yarrow, red deadnettle and red clover. Sward height is unvaried.

Habitat Parcel Number	Habitat Type	Habitat Code(s)	Description
F8	Modified grassland	g4	Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog and cock's-foot. Few herb species including creeping buttercup, ribwort plantain, yarrow, red deadnettle and red clover. Sward height is unvaried.
F9	Modified grassland	g4	Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog and cock's-foot. Few herb species including creeping buttercup, ribwort plantain, yarrow, red deadnettle and red clover. Sward height is unvaried.
F10	Modified grassland	g4	Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog and cock's-foot. Few herb species including creeping buttercup, ribwort plantain, yarrow, red deadnettle and red clover. Sward height is unvaried.
F11	Modified grassland	g4	Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog and cock's-foot. Few herb species including creeping buttercup, creeping thistle, ribwort plantain, dock sp., dandelion, cranesbill sp. and red clover. Sward height is unvaried, bare patches are present but considered to make up less than 10% of total area.
F12	Modified grassland	g4	Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog and cock's-foot. Few herb species including creeping buttercup, creeping thistle, ribwort plantain, dock sp., dandelion, cranesbill sp. and red clover. Sward height is unvaried, bare patches are present but considered to make up less than 10% of total area.
F14	Modified grassland	g4	Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog and cock's-foot. Few herb species including creeping buttercup, creeping thistle, ribwort plantain, dock sp., dandelion, cranesbill sp. and red clover. Sward height is unvaried, bare patches are present but considered to make up less than 10% of total area.
F15	Modified grassland	g4	SANG area. Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog, sweet vernal and Poa sp. Few herb species including

Habitat Parcel Number	Habitat Type	Habitat Code(s)	Description
			creeping buttercup, creeping cinquefoil, silverweed, clover sp. and creeping thistle.
F16	Modified grassland	g4	SANG area. Tightly grazed grassland, dominated by perennial rye grass, Yorkshire fog, sweet vernal and <i>Poa</i> sp. Few herb species including creeping buttercup, creeping cinquefoil, silverweed, clover sp. and creeping thistle.
W1	Lowland mixed deciduous woodland	w1f	Ancient woodland dominated by oak and alder with a hazel, elder and holly understory, and ground flora including bluebell.
W3	Other woodland; broadleaved	w1g	Millennium woodland plantation, dominated by oak, bird and common lime and a limited understory and ground flora.
W4	Other woodland; broadleaved	w1g	Millennium woodland dominated by oak with occasional beech, limited understory and ground flora.
W5	Lowland mixed deciduous woodland	w1f	Small parcel of woodland to the north of ancient woodland W1 (not classified as ancient woodland) dominated by oak, with alder and willow, with holly, hazel, elder and hawthorn understory, and limited ground flora. Woodland is dark and shaded.
	Mixed scrub	h3h	Small parcel of mixed scrub (previously Hedgerow H3), dominated by hawthorn with bramble.
H1	Priority hedgerow	h2a	Native hedgerow consisting hazel, blackthorn with bramble and bracken.
H2	Priority hedgerow	h2a	Native hedgerow with trees consisting mature oaks, beech and hazel, with bramble, holly, elder, oak, beech and hawthorn.
H4	Priority hedgerow	h2a	Native hedgerow dominated by hawthorn, with elder, hazel, sycamore, oak, dog wood, bramble, ivy and field rose.
H5	Priority hedgerow	h2a	Native hedgerow dominated by hawthorn, with field maple, elder, bracken and ivy.
H6	Line of Trees	w1g6	Mature line of trees, with oak, silver birch, Scots Pine and cherry, with a bramble understory.

Habitat Parcel Number	Habitat Type	Habitat Code(s)	Description
H7	Priority hedgerow	h2a	Native hedgerow dominated by hawthorn. Close to track and over-managed.
H8	Priority hedgerow	h2a	Native hedgerow with trees dominated by hawthorn and blackthorn, with bramble and ivy.
H9	Priority hedgerow	h2a	Native hedgerow dominated by hawthorn, with field maple, elder, bracken and ivy.

Appendix D

Habitats and Flora Species List

Table 1. Habitat Polygons

Site Name	Bird In Eye Farm, Uckfield						
Survey Date and Surveyor(s)	12/10/2022 Clare Caudwell & Lydia Galbraith						
Scientific Name	Common Name	Habitat Parcel Number/Habitat Type					
		F1-F16 Modified grassland	W1 Lowland mixed deciduous	W3 Other woodland;br oad-leaved	W4 Other woodland;br oad-leaved	W5 Lowland mixed deciduous	Mixed scrub
Herb Species							
Achillea millefolium	Yarrow	X					
Cirsium arvense	Creeping thistle	X					
Geranium sp.	Crane's-bill sp.	X					
Hyacinthoides non-scripta	Bluebell		X				
Hypochaeris radicata	Cat's-ear	X					
Lamium purpureum	Red dead-nettle	X					
Leontodon sp.	Hawkbit	X					
Plantago lanceolata	Ribwort plantain	X					
Potentilla anserina	Silverweed	X					
Potentilla reptans	Creeping cinquefoil	X					
Ranunculus repens	Creeping buttercup	X					
Rumex acetosa	Common sorrel	X					
Rumex sp.	Dock	X					
Senecio jacobaea	Common ragwort	X					
Taraxacum agg.	Dandelion	X					
Trifolium pratense	Red clover	X					
Trifolium repens	White clover	X					
Urtica dioica	Common nettle	X					
Grasses							
Holcus lanatus	Yorkshire-fog	X					
Lolium perenne	Perennial rye-grass	X					
Poa sp.	Meadow-grass	X					
Woody Species							
Broadleaved							
Alnus glutinosa	Common alder		X			X	
Betula pendula	Silver birch			X			
Corylus avellana	Hazel		X			X	
Crataegus monogyna	Hawthorn					X	X
Fagus sylvatica	Beech				X		
Ilex aquifolium	Holly		X			X	
Quercus sp.	Oak		X	X	X	X	
Rubus fruticosus agg.	Bramble			X		X	X
Salix sp.	Willow					X	
Sambucus nigra	Elder		X			X	
Tilia x europaea	Common lime			X			

Table 2. Linear Habitats

Site Name	Bird In Eye Farm, Uckfield						
Survey Date and Surveyor(s)	12/10/2022 Clare Caudwell & Lydia Galbraith						
Scientific Name	Common Name	Habitat Parcel Number/Habitat Type					
		H1 Hedgerows (priority)	H2 Hedgerows (priority)	H4 Hedgerows (priority)	H5 Hedgerows (priority)	H6 Line of Trees	H7 Hedgerows (priority)
Ferns							
<i>Pteridium aquilinum</i>	Bracken	X			X		
Herb Species							
<i>Calystegia sepium</i>	Hedge bindweed	X					
Woody Species							
Coniferous							
<i>Pinus sylvestris</i>	Scots pine					X	
Broadleaved							
<i>Acer campestre</i>	Field maple				X		
<i>Acer pseudoplatanus</i>	Sycamore			X			
<i>Betula pendula</i>	Silver birch					X	
<i>Cornus sp.</i>	Dogwood			X			
<i>Corylus avellana</i>	Hazel	X	X	X			
<i>Crataegus monogyna</i>	Hawthorn		X	X	X		X
<i>Fagus sylvatica</i>	Beech		X				
<i>Hedera helix</i>	Ivy			X	X		
<i>Ilex aquifolium</i>	Holly		X				
<i>Prunus avium</i>	Cherry					X	
<i>Prunus spinosa</i>	Blackthorn	X					
<i>Quercus sp.</i>	Oak		X	X		X	
<i>Rosa arvensis</i>	Field-rose			X			
<i>Rubus fruticosus agg.</i>	Bramble	X	X	X		X	
<i>Sambucus nigra</i>	Elder		X	X	X		

References

Atherton, I., Bosanquet, S. and Lawley M., 2010. *Mosses and Liverworts of Britain and Ireland - a field guide* . British Bryologica
 Stace, C. A., 2019. *New Flora of the British Isles* . 4th ed. Suffolk: C & M Floristics.

Table 2. Linear Habitats

Site Name	Bird In Eye Farm, Uckf		
Survey Date and Surveyor(s)	12/10/2022 Clare Cai		
Scientific Name	Common Name	H8 Hedgerows (priority)	H9 Hedgerows (priority)
Ferns			
<i>Pteridium aquilinum</i>	Bracken		X
Herb Species			
<i>Calystegia sepium</i>	Hedge bindweed		
Woody Species			
Coniferous			
<i>Pinus sylvestris</i>	Scots pine		
Broadleaved			
<i>Acer campestre</i>	Field maple		X
<i>Acer pseudoplatanus</i>	Sycamore		
<i>Betula pendula</i>	Silver birch		
<i>Cornus</i> sp.	Dogwood		
<i>Corylus avellana</i>	Hazel		
<i>Crataegus monogyna</i>	Hawthorn	X	X
<i>Fagus sylvatica</i>	Beech		
<i>Hedera helix</i>	Ivy	X	X
<i>Ilex aquifolium</i>	Holly		
<i>Prunus avium</i>	Cherry		
<i>Prunus spinosa</i>	Blackthorn	X	
<i>Quercus</i> sp.	Oak		
<i>Rosa arvensis</i>	Field-rose		
<i>Rubus fruticosus</i> agg.	Bramble	X	
<i>Sambucus nigra</i>	Elder		X

References

Atherton, I., Bosanquet, S. and Lawley M., 2010. Mos:
 Stace, C. A., 2019. *New Flora of the British Isles* . 4th e

Appendix E

Biodiversity Gain Plan (CSA/2646/117)



	Site boundary		Other woodland; broadleaved (w/g)		Roads (developed land, sealed surface u/b)
	SANG boundary		Lowland mixed deciduous woodland (w/f)		Native hedgerow
	Modified grassland (g4)		SuDS basin (consisting of other neutral grassland g3c and open water r/l).		Line of trees
	Other neutral grassland (g3c)		Swales leading to SuDS (other neutral grassland g3d)		Native species rich hedgerow
	Mixed scrub (h3h)		Urban habitat (developed land; sealed surface u/b and vegetated garden 23/)		



Dixies Barns, High Street, Ashwell,
Hertfordshire SG7 5NT

t 01462 743647

e ashwell@csaenvironmental.co.uk

w csaenvironmental.co.uk

Suite 1, Deer Park Business Centre, Eckington,
Pershore, Worcestershire WR10 3DN

t 01386 751100

e persshore@csaenvironmental.co.uk

w csaenvironmental.co.uk

Office 20, Citibase, 95 Ditchling Road,
Brighton BN1 4ST

t 01273 573871

e brighton@csaenvironmental.co.uk

w csaenvironmental.co.uk

Southgate Chambers, 37-39 Southgate
Street, Winchester SO23 9EH

t 01962 587200

e winchester@csaenvironmental.co.uk

w csaenvironmental.co.uk



Clover House
Western Lane
Odiham
Hampshire
RG29 1TU
Tel: 01256 703355

Land at Bird in Eye Farm
South of Bird in Eye Hill
Uckfield

HEARING STATEMENT

Re: TRANSPORT MATTERS

by

Matt Twinberrow BEng, MCIHT

On behalf of
Croudace Homes Limited

croudacehomes

Appeal Ref: APP/C1435/W/22/3307820
LPA Ref: WD/2021/2198/MAO

MT/5330/HS.5
February 2023

Experience and expertise working together

QUALIFICATIONS AND EXPERIENCE

MATTHEW JAMES TWINBERROW will say:

I am an Associate Partner at Bellamy Roberts Highway and Transportation Consultants. I hold a Bachelors degree in Civil Engineering from the University of Portsmouth and am a member of the Chartered Institution of Highways and Transportation. I have over 10 years' experience of traffic and highway engineering and have been responsible for dealing with development proposals on behalf of a wide range of private and public sector clients.

Bellamy Roberts specialises in the traffic and transportation area, with particular emphasis on development related matters, and the practice operates throughout Great Britain and Northern Ireland, with clients from major public and private sector organisations.

The evidence which I have prepared and provided for this Appeal is true and is given in accordance with the guidance. I can confirm that the opinions expressed are my true and professional views.

Signed: A handwritten signature in blue ink, appearing to read 'M. J. Twinberrow'.

Date: 1st February 2023

Document Control Sheet

Client: Croudace Homes
Croudace House
Tupwood Lane
Caterham
Surrey
CR3 6XQ

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Appendix 4	Bus Stop Improvements & Speed Limit Extension (5330/016 Rev. H)
Appendix 5	Walking, Cycling Horse-riding Assessment & Review (MT/5330/WCHAR.3)
Appendix 6	Framfield Road Improvements (5330/017 Rev. G & 5330/018 Rev. F)
Appendix 7	Bus Interchange (5330/240 & 241)

1.0 INTRODUCTION

1.1 My Hearing Statement has been prepared to accompany an Appeal against the non-determination of an outline planning application for up to 290 residential dwellings with access from the B2102, on land to the south of Bird in Eye Farm, Uckfield. As yet, no putative reasons for refusal have been published by the LPA, however the letter from the LPA to PINS dated 3rd October 2022, stated the following:

- *“The provision of up to 290 units would not represent sustainable development because the proposed development, is likely to generate a range of needs for its various residents to travel to access services and facilities including employment, healthcare and leisure. The location of the development constrains access to facilities by means other than the private car.”*

1.2 The latest consultation comments received from the County Highway Authority (East Sussex County Council) are dated 4th November 2022 (see [Appendix 1](#)). The Highway Authority has sustained their objection to the proposal, and has provided the following four reasons for this decision:

- *“The proposal would result in a material change in the volume of traffic using B2102 Bird in Eye Hill where speeds are derestricted, and hazards would be introduced by the slowing, stopping, and turning traffic at the proposed access, contrary to para 111 of the National Planning Policy Framework.*
- *The proposal would lead to increased traffic hazards on the B2102 Bird in Eye Hill by reason of the inadequate visibility at the proposed access and would therefore be contrary to para 111 of the National Planning Policy Framework.*
- *Insufficient measures have been submitted on the highway to support an urban extension, for purposes of reducing traffic speeds which are required to support sustainable transport modes.*
- *Non-car travel choices for residents/users are limited between the site and Uckfield town centre as a result of substandard highway infrastructure which would not encourage sustainable travel modes and would therefore be contrary to para 104 and 106 of the National Planning Policy Framework.”*

- 1.3** The purpose of my Hearing Statement is to address the objections given by the Highway Authority and to demonstrate that the Appeal Scheme will not have an unacceptable impact on the local highway network.
- 1.4** A number of meetings have been held with the Highway Authority, the latest of which was on 1st December 2022 during which the Authority's comments of 4th November were discussed in detail.

2.0 CONSIDERATION OF HIGHWAY AUTHORITY'S OBJECTION

2.1 The Highway Authority has given four reasons as to why their objection to the Appeal Scheme is sustained. The objections raised by the Highway Authority have been considered in turn and for ease of reference have been quoted verbatim from their consultation comments of 4th November.

First Reason

2.2 ***The proposal would result in a material change in the volume of traffic using B2102 Bird in Eye Hill where speeds are derestricted, and hazards would be introduced by the slowing, stopping, and turning traffic at the proposed access, contrary to para 111 of the National Planning Policy Framework.***

2.3 As set out at Table 7 of my Transport Assessment (ref. ITR/MT/5330/TA.3 – April 2021) the proposal will generate in the region of 143-147 two-way trips during the morning and evening peak hour periods respectively.

2.4 The ATC (Automatic Traffic Counter) survey on Bird in Eye Hill in the vicinity of the proposed site access recorded a two-way flow of 410 and 397 vehicles during the morning and evening peak hours respectively (see Table 1 of my Transport Assessment).

2.5 The Appeal Scheme will result in an increase in traffic movements of approximately 35-37% during both peak hour periods at the location of the site access. As this traffic dissipates onto the local highway network, this impact will lessen.

2.6 However, the quantum of traffic added to the highway network is not a justifiable reason in and of itself to refuse the outline planning application, it is merely an indication in this instance that additional analysis is necessary to determine what impact the proposal will have on the wider highway network.

Junction Capacity Analyses

2.7 Whilst the impact of the Appeal Scheme traffic on the wider highway network is not stated as being a reason that the Highway Authority are objecting to the scheme, it

is worth noting that comprehensive LinSig analyses of the two town centre junctions has been undertaken, the results of which are set out in my Transport Assessment. The results demonstrate that by linking the two town centre junctions via a SCOOT type system, sufficient capacity is achievable to accommodate the traffic from the Appeal Scheme.

2.8 A meeting was held with the ESCC signals team on 17th February 2022 to discuss matters relating to the signalised town centre junctions. The ESCC signals team confirmed that SCOOT represents the only means of improving capacity at these junctions, given the physical constraints present. The reason SCOOT has not yet been installed at the junctions is financial. Furthermore, the signals team has reviewed the submitted LinSig model and confirmed that the model is suitable and gives an accurate representation of these junctions. This was set out in my Transport Assessment Addendum (ref. ITR/MT/5330/TAA.4 – March 2022).

2.9 In addition to the assessment summarised above, the Highway Authority also requested that an assessment be undertaken of the cumulative impact of future major housing schemes in Uckfield. A Statement of Common Ground (SoCG) was prepared in collaboration with the developer parties associated with promoting four specific residential development sites in Uckfield, Wealden District Council as Local Planning Authority and East Sussex County Council as County Highway Authority

2.10 The sites identified by the Local Planning Authority (LPA) and County Highway Authority are as follows:

- | | | |
|--|---|-----------------|
| • Bird in Eye South (Croudace Homes) | - | up to 290 units |
| • Bird in Eye North (Martin Grant Homes) | - | circa 240 units |
| • Horsted Pond Farm (Castlefort Homes) | - | up to 450 units |
| • Downlands Farm (Gleeson Homes) | - | up to 550 units |

2.11 At the time of writing, the Appeal Scheme, Horsted Pond Farm and Downlands Farm have submitted planning applications.

2.12 Whilst government guidance states clearly that the cumulative impact is that which arises from developments that are *committed*, and there is no requirement for a planning application to consider “speculative” development elsewhere, the requested cumulative assessment was undertaken to assist the Highway Authority.

- 2.13** The results of the cumulative assessment are set out in my Cumulative Impact Assessment report (ref. MT/5330/CIA.2) which was submitted in draft form to the Highway Authority only, in April 2022. See [Appendix 2](#).
- 2.14** In summary, the cumulative assessment used data from a SATURN model of the local highway network for a base year of 2018 and future design year of 2039. Assessments were undertaken for each site in isolation and with all speculative developments. The Highway Authority's consultants (Jacobs) built the SATURN model and confirmed that the flows are suitable for use in specific junction modelling.
- 2.15** Discussions have been held with the ESCC signals team who requested that the signalised High Street/Church Street junction and the two standalone signalised pedestrian crossings on the High Street between Church Street and Framfield Road also be included within this cumulative assessment. In this regard, the following junctions were assessed:
- Framfield Road/High Street/Bridge Farm Road signalised crossroads;
 - High Street/Bell Lane signalised T-junction; and
 - High Street/Church Street.
- 2.16** In summary, the cumulative assessment demonstrated that the Appeal Scheme would not result in a severe impact at the town centre junctions. The junctions will operate well within their theoretical capacities in the future base year of 2039 and will continue to do so when traffic from the Appeal Scheme, and from the three speculative developments elsewhere in Uckfield, is added. The analysis demonstrated that no improvements are necessary to these junctions to accommodate the future development traffic.
- 2.17** Upon submission of the Cumulative Impact Assessment to the Highway Authority, I was advised that the Highway Authority was going to discuss these findings internally and with Jacobs. To date, no substantive response has been received from the Highway Authority on this matter.
- 2.18** Given Jacobs has stated the SATURN model and outputs are suitable for use, there is no reason why the Highway Authority should delay their response to this matter.

Right Turn Lane

- 2.19** In their objection, the Highway Authority state that the change in the volume of traffic along Bird in Eye Hill will occur where speeds are derestricted and hazards would be introduced by the slowing, stopping and turning of traffic at the proposed access.
- 2.20** The design of the proposed site access is based on the recorded vehicle speeds (42.4mph eastbound and 45.9mph westbound) and accords fully with DMRB guidance.
- 2.21** The proposed access arrangement is shown on drawing 5330/021 Rev. K (see [Appendix 3](#)) and includes a right turn lane. Whilst I do not consider that such a facility is necessary to ensure safe and suitable access to the site, such a facility was requested by the Highway Authority has been provided. The Highway Authority state that the right turn facility '*appears to be sufficient in terms of its capacity based on the junction modelling*'.
- 2.22** Whilst some criticism is levied against the width of the through lanes (2.75m), this corresponds to the existing lanes widths on Bird in Eye Hill and is considered suitable. A Stage 1 Road Safety Audit has been undertaken and the design has been amended to replace the traffic island located west of the site access, with solid white lining. All other matters raised by the Auditor can be dealt with at the detailed design stage.
- 2.23** The access drawing at [Appendix 3](#) is revision K, however the access drawing referenced within the Appellant's Statement of Case is revision H. Following submission of the Statement of Case (September 2022), the Stage 1 Road Safety Audit and further comments from the Highway Authority were received (October and November 2022 respectively). To address comments made by both parties, amendments were made to the proposed site access.
- 2.24** To assist, I have summarised the differences between revisions H and K of the site access drawing (5330/021) and the reasons for these changes, below:
- **5330/021 Revision H** - This revision included a central splitter island to the west of the site access (as a traffic calming feature) and extension to the 30mph limit to a point approximately 70m east of the

proposed site access. These items are highlighted on an extract of revision H, at Figure 1.

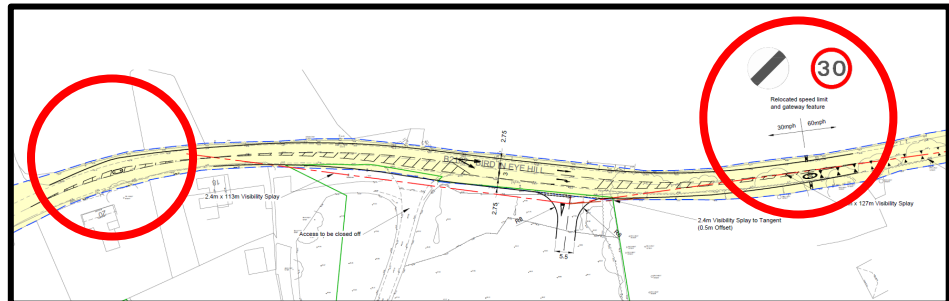


Figure 1: Extract from 5330/021 Rev. H

- 5330/021 Revision K** - To address a matter raised in the Stage 1 Road Safety Audit regarding forward visibility to the central splitter island, the island has been replaced with solid white lining to prohibit eastbound vehicles from crossing the centreline of the carriageway.

To address comments from the Highway Authority, the extension of the 30mph speed limit has been relocated to incorporate the Appeal Scheme's segregated pedestrian/cycle access only. I discuss this further when considering the Highway Authority's third objection.

An extract from revision K is provided at Figure 2.

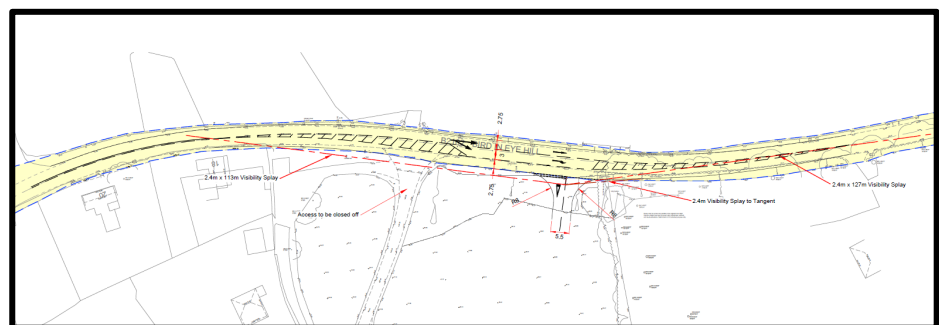


Figure 2: Extract from 5330/021 Rev. K

2.25

The provision of a right turn lane will ensure that any vehicle turning right into the Appeal Scheme from Bird in Eye Hill would not cause a hazard to through traffic on Bird in Eye Hill. Contrary to the Highway Authority's assertion, the access to the Appeal Scheme is safe and suitable and will not result in an unacceptable impact on

highway safety, nor will the residual cumulative impact be severe, as per paragraph 111 of the NPPF (July 2021).

Second Reason

2.26 *The proposal would lead to increased traffic hazards on the B2102 Bird in Eye Hill by reason of the inadequate visibility at the proposed access and would therefore be contrary to para 111 of the National Planning Policy Framework.*

2.27 The ATC survey on Bird in Eye Hill recorded 85th percentile dry-weather speeds of 42.4mph eastbound and 45.9mph westbound. In their correspondence dated 8th December 2021, the Highway Authority requested visibility splays of 113m to the west and 127m to the east, from an x-distance of 2.4m. This corresponds to the Desirable Minimum distances set out in DMRB guidance, albeit do include an allowance for bonnet length which is not a requirement for y-dimension.

2.28 Nevertheless, and to assist the Highway Authority, the requested visibility splays are shown on the proposed access drawing (see [Appendix 3](#)). The commensurate visibility splays are achievable within the adopted highway boundary and can be secured by the Highway Authority by way of a suitably worded planning condition.

2.29 In summary, the visibility splays at the Appeal Scheme access meet the distances requested by the Highway Authority and accord with DMRB guidance. The visibility splays proposed at the Appeal Scheme access will not result in an unacceptable impact on highway safety, nor will the residual cumulative impact be severe, as per paragraph 111 of the NPPF (July 2021).

Third Reason

2.30 *Insufficient measures have been submitted on the highway to support an urban extension, for purposes of reducing traffic speeds which are required to support sustainable transport modes.*

2.31 The drawings submitted in support of the planning application proposed to extend the existing 30mph speed limit to a position approximately 500m east of its current position and approximately 70m east of the proposed site access. The suggested extension to the 30mph was encouraged by the Highway Authority during the

meetings held at the pre-application stage (September and December 2019) with the Authority supportive of the proposal.

2.32 Nevertheless, the Highway Authority state that the measures proposed to accompany the speed limit extension, such as road signs, road markings and a traffic island are not appropriate to effectively bring vehicular speeds down to 30mph, given that existing recorded speeds are in excess of 40mph in both directions. The opportunity to provide additional traffic calming facilities along this section of Bird in Eye Hill has been investigated however is limited by land availability.

2.33 The Highway Authority state in their response of 4th November 2022 that the proposed 30mph speed limit extension is desirable in principle for an urban extension and that such a measure would be sought to support the safety of active users.

2.34 As the Highway Authority consider the 30mph speed limit extension necessary to support the safety of *active users* (i.e., non-motorised users), a more appropriate extension would be to the Appeal Scheme's segregated pedestrian/cycle access. This access is located approximately 85m east of the existing speed limit change. During my meeting with the Highway Authority of 1st December 2022, the Authority indicated that such an extension would be the minimum required.

2.35 To assist the Highway Authority and to support the safety of active users, the applicant is willing to fund the extension of the 30mph speed limit from its present location to a location approximately 85m east which would include the pedestrian/cycle access to the Appeal Scheme. Such an extension would meet the Highway Authority's desire to support the safety of active users which is their stated aim. The proposed speed limit extension is shown on drawing 5330/016 Rev. H (see [Appendix 4](#)).

Fourth Reason

2.36 *Non-car travel choices for residents/users are limited between the site and Uckfield town centre as a result of substandard highway infrastructure which would not encourage sustainable travel modes and would therefore be contrary to para 104 and 106 of the National Planning Policy Framework.*

- 2.37** Sustainable transport is defined in the NPPF as being “*any efficient, safe and accessible means of transport with overall low impact on the environment, including walking and cycling, ultra-low and zero emission vehicles, car sharing and public transport.*”
- 2.38** Paragraph 104, part c) of the NPPF states that “*opportunities to promote walking, cycling and public transport use are identified and pursued*” and paragraph 106, part d) states that planning policies should “*provide for attractive and well-designed walking and cycling networks with supporting facilities such as secure cycle parking (drawing on Local Cycling and Walking Infrastructure Plans).*”
- 2.39** Paragraph 105 of the NPPF states that “*significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.*”
- 2.40** Further to this, paragraph 110, part a), states that “*appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location*”.
- 2.41** The Highway Authority requested that a Walking, Cycling Horse riding Assessment and Review (WCHAR) be undertaken to consider the existing walking and cycling routes to/from Appeal Scheme. The WCHAR was originally submitted within my Highway Note (ref. MT/5330/HN.2 – November 2022).
- 2.42** During the meeting of 1st December, the Highway Authority requested that additional routes be considered within the WCHAR, namely the following:
- To/from Harlands Community School; and
 - To/from the town centre via Keld Avenue and Alexandra Avenue/Mill Drove.
- 2.43** The WCHAR has been updated to include the additional routes requested by the Highway Authority (see [Appendix 5](#)).

Pedestrian Access

- 2.44** The Appeal Scheme will provide a dedicated pedestrian and cycle access at the north-western corner of the application site, which will connect directly to the existing footway network. The section of footway along the southern side of Bird in Eye Hill between the pedestrian cycle access and existing bus stops adjacent to the hospital access will be widened to 3m and designated as a shared footway/cycleway.
- 2.45** It is proposed that tactile paving be provided at all existing crossing points along Framfield Road to improve this route for existing and future users. Furthermore, and at the request of the Highway Authority, a formal crossing point will be provided across Framfield Road in the vicinity of number 78/80. The crossing point has been relocated following discussions with the Highway Authority, to a position approximately 36m west of Keld Avenue. The previous raised table element has been removed (at the request of the Highway Authority) and now comprises a zebra crossing with tactile paving only. This is shown on drawings 5330/017 Rev. G and 5330/018 rev. F (see [Appendix 6](#)).
- 2.46** The existing footway network along Framfield Road varies in width but is generally in excess of 1.5-1.8m wide, and 1m at its narrowest in the vicinity of 2-8 Framfield Road. The provision of a formal crossing point will provide future residents with safe access to the alternative route to the town centre via Alexandra Avenue/Mill Drove.
- 2.47** It is clear that the opportunity exists for future residents to travel to/from the Appeal Scheme on foot using the existing highway network which will be improved by the Appeal Scheme. In this regard, the Appeal Scheme accords with the NPPF.

Cycle Access

- 2.48** A dedicated footway/cycleway access will be provided at the north-western corner of the Appeal Scheme. This will connect to the existing footway along the southern side of Bird in Eye Hill which will be widened to 3m and designated as a shared footway/cycleway.
- 2.49** The Highway Authority stated in their response of 4th November that provision has not been made for eastbound cyclists to join the proposed shared footway/cycleway.

2.50 Guidance on two-way cycle routes is provided within the DfT Local Transport Note 1/20 (July 2020) entitled Cycle Infrastructure Design. This states at paragraph 6.2.16 that two-way cycle tracks may result in the following problems:

- *“transitioning between the cycle track and the carriageway is more difficult for cyclists travelling against the flow of traffic;*
- *the interface between the cycle track and major junctions along the route can be more complex;*
- *there may be more risks associated with retaining priority over side roads or busy accesses;*
- *cyclists’ accessibility to premises along the route on the opposite side of the carriageway is reduced;*
- *it is more difficult for pedestrians, especially disabled people, to cross a two-way cycle track where they do not have priority; and in some locations, especially rural areas without street lights, cyclists may be dazzled by the headlights of motor vehicles. Similarly, cyclists’ use of high powered lighting can dazzle or be confusing to oncoming drivers.”*

2.51 When setting out their reasons for why a right turn lane was needed at the site access, the Highway Authority stated that this would *‘afford right turning vehicles (including cyclists) some protection and assist in the free flow of major road through traffic’* (my emphasis).

2.52 Given the possible problems with providing a two-way cycle route along Bird in Eye Hill (particular the first and fifth bullet points in paragraph 2.38), and the Highway Authority’s view that the right turn lane would afford cyclists protection, my considered opinion is that a two-way cycle lane along Bird in Eye Hill between the hospital access and pedestrian/cycle access into the Appeal Scheme is not necessary to ensure safe cycle access to the site.

2.53 It is clear that the opportunity exists for future residents to travel to/from the Appeal Scheme by bicycle, in accordance with the NPPF.

Bus Access

2.54 At the request of the Highway Authority, bus shelters are proposed at the existing bus stops adjacent to the hospital access (see drawing 5330/016 Rev. H provided at [Appendix 4](#)).

- 2.55** Notwithstanding the improvements set out above, the Highway Authority has requested that closer bus stops should be provided to ensure that all proposed dwellings are within 400m of a bus stop. The Highway Authority state that provision of additional bus stops within the site (with suitable turning) would be considered, provided it did not impact on the timetabling of existing services.
- 2.56** There is sufficient land available within the northern part of the Appeal Scheme to provide a suitable area for a bus to enter and turn, without impacting on the timetabling of services. This could take the form of a roundabout and a suggested bus access strategy has been prepared along with accompanying swept path analyses (see [Appendix 7](#)).
- 2.57** The Appeal Scheme is in outline and all matters relating to the internal layout will be considered at the reserved matters stage, however it is evident that a solution is achievable to significantly improve bus accessibility for future residents.
- 2.58** Provision of bus stops within the site would ensure that future residents will have the opportunity to access this means of sustainable transport. Each future household will be provided with a Travel Plan Welcome Pack, which will include a 'green travel voucher' enabling future residents to purchase bus tickets. The Travel Plan Welcome Pack is provided at [Appendix 7](#) of my Framework Travel Plan (rev. ITR/MT/5330/FTP.3 – April 2021).
- 2.59** The opportunity to travel into the centre of Uckfield and destinations further afield will be available for future residents of the Appeal Scheme.

3.0 SUMMARY & CONCLUSIONS

- 3.1** I have considered the four reasons given by the Highway Authority as justification for sustaining their objection to the scheme and have addressed each matter in turn.
- 3.2** Comprehensive analysis of the critical town centre junctions has been undertaken, based on recorded flows and including committed developments which reveals that with improvements (introduction of SCOOT system), each junction has capacity to accommodate the traffic generated by the Appeal Scheme.
- 3.3** As requested by the Highway Authority, a further cumulative assessment using data from the Authority's SATURN model of the local highway network for a base year of 2018 and future design year of 2039 has been undertaken. The cumulative assessment considered the traffic generation from three other sites which are yet to be granted planning permission.
- 3.4** In summary, the cumulative assessment demonstrated that the Appeal Scheme would not result in a severe impact at the town centre junctions. The junctions will operate well within their theoretical capacities in the future base year of 2039 and will continue to do so when traffic from the Appeal Scheme, and from the three speculative developments elsewhere in Uckfield, is added. The analysis demonstrates that no improvements are necessary to these junctions to accommodate the future development traffic.
- 3.5** Both sets of analyses demonstrate that the Appeal Scheme will not result in a severe impact at the town centre junctions.
- 3.6** The provision of a right turn lane at the site access will mitigate any hazard associated with vehicles slowing, stopping and turning into the proposed access.
- 3.7** The visibility splays at the Appeal Scheme access meet the distances requested by the Highway Authority and the design of the right turn lane accords with DMRB guidance.

- 3.8** The Highway Authority consider the 30mph speed limit extension necessary to support the safety of active users. In this regard, a more appropriate extension would be to the segregated pedestrian/cycle access into the Appeal Scheme. This would meet the Highway Authority's desire to support the safety of active users.
- 3.9** It is clear that the Appeal Scheme is accessible by means of sustainable transport other than the private car, and will provide future residents with the 'opportunity' to travel by sustainable means. In this regard, the Appeal Scheme fully accords with the NPPF.
- 3.10** I therefore conclude, overall, that the highway and traffic implications of the Appeal Scheme will not have an unacceptable impact on highway safety, nor will they give rise to cumulative impacts which would be severe. Paragraph 111 of the NPPF sets those two tests as the thresholds below which development should not be prevented or refused on highway grounds.

Hearing Statement

APPENDICES

Hearing Statement

APPENDIX 1

CHA Consultation Comments

Communities Economy and Transport**Rupert Clubb**

BEng(Hons) CEng MICE
Director

County Hall
St Anne's Crescent
Lewes
East Sussex
BN7 1UE

Tel: 0345 60 80 190
www.eastsussex.gov.uk



To: Head of Planning
Planning and Environmental Services
Wealden District Council
Council Offices
Vicarage Lane, Hailsham
BN27 2AX

FAO: Claire Turner

Copy to: Passenger Transport Team; Highway Implementation Team; PRoW Team

Date: 08.12.21 & 12.05.22 & 04.11.22

Our Ref: WD/2021/2198/MAO

District/Borough Ref: WD/2021/2198/MAO

Applicant: Croudace/Berry

Location: LAND AT BIRD IN EYE FARM, SOUTH OF BIRD IN EYE HILL, FRAMFIELD, TN22 5HA

Development: OUTLINE PLANNING APPLICATION FOR THE ERECTION OF UP TO 290 DWELLINGS, ASSOCIATED LANDSCAPING, INFORMAL OPEN SPACE AND STRATEGIC SANG, WITH ACCESS FROM THE B2102.

Road Name or Number	B2102 Bird In Eye Hill	Consultation Date	1 October 2021
National Reference	Grid 548366120913	Contact Officer Details:	Kal Kamboh 01273 482287 kal.kamboh@eastsussex.gov.uk

Recommendation:

No objection		Objection	x
No objection subject to the imposition of conditions		Objection due to insufficient information	

Comments on Transport Assessment Addendum dated September 2022 following Highway response dated 12.05.22.

Access provision for servicing this proposal was outstanding from the previous comments and matters relating to this aspect of the proposal are still not complete for purposes of giving full consideration of this application.

Being outline, the application form states that approval is sought for access. This means access and accessibility.

Site Access – this has been revised in terms of its position and is shown on drawing 5330/021 Rev. H. In fact, 2 access proposals have been produced, 1 having a ghost right turn lane as recommended, and one as a simple priority working junction. Paragraph 2.25 in the Addendum 2 is incomplete. The applicant at the time of compiling the addendum2 had instructed a RSA audit for the access provision, but to date this has not been provided. A recent email from the transport consultant dated 14/10/22 indicated that this is still awaited. The County Council indicate in their highway guidance for major new development that a RSA should be provide with a designer's response. The proposed access would be serving a major housing development alongside the existing operations on Bird in Eye Farm and a proposed SANG. The access would need to support many types of users and ensuring that the level of road traffic alongside pedestrians with children and/or dogs, cyclists, business/farm vehicles which is from a rural road. A road safety audit is essential to ensure that what is being proposed is fundamentally deliverable and can support its demand. The highway authority wishes to raise comments on the current proposed arrangement with the right turn facility:

- 30mph speed limit extension. This is desirable in principle for an urban extension, and the scale of proposed development gives rise to an increase in activity on the highway by a variety of user types. Sussex Police are required to comment on the speed limit reduction but there is insufficient detail provided to support this. It has been raised on numerous occasions that with actual speeds at 42.4mph EB and 45.9mph WB, that traffic calming and visual influence indicating a change in the environment is required, which a gateway sign cannot provide adequately. Examples are visible frontage development, footways, street lighting, and infrastructure that supports the movement of non-motorised users which are absent.
- The straight through lanes at the new access are only 2.75m wide. Ideally all lanes should be 3m in width though it is noted that the available highway and achieving the required driver sightlines has dictated this arrangement. If a 30mph speed limit can be realistically considered, then the arrangement with narrower lanes either side of the stack lane may be acceptable.
- The Right Turn facility appears to be sufficient in terms of its capacity based on the junction modelling.
- A traffic island at the eastern end of the right turn lane would help to highlight it to drivers travelling towards Uckfield. It may be an issue that drivers could potentially cutting the corner which would conflict with vehicles waiting in the right turn lane, including cyclists as there is no provision for eastbound cyclists returning to the site having a safe means to join the shared path. The principle of a traffic island east of the junction would highlight the road alignment and offer some protection to right-turning vehicles, but may conflict with vehicles turning right from the site and a swept path plan would need to demonstrate the manoeuvres by the largest vehicle regularly requiring access.
- Dragon's teeth markings are not prescribed by the TSRGD 2016. In addition, research carried out on their effectiveness concluded that these markings are only really visible to a driver at the last minute, and it is doubtful, therefore, that they would contribute much to any slowing down effect on the approach. Due to this, the markings are considered an unnecessary maintenance burden and will not be authorised.
- The proposal for access as a simple priority junction is not supported on the basis that the 30mph limit cannot be supported for reasons highlighted above. Existing speeds are in excess of 40mph and a right turning vehicle waiting in the carriageway has a risk of being impacted by an eastbound vehicle.
- The revised position of the access further east is much closer to the adjoining boundary, where is dense vegetation. There is a highway verge allowing some to be cut back, though it is generally required that the hedge is not destroyed. Any growth left unmaintained is likely to hinder a driver's visibility at the access, from a set back point of 2.4m and shallower gradient.



This is the third iteration of the proposed site access submitted which is not supported by a RSA and has problems highlighted that would need to be addressed. Given that this application has now been appealed on non-determination grounds, the proposed access has not been demonstrated to be acceptable for the proposed development. Taking into account the quantum of housing, the generation of traffic and a promotion of a travel plan (encouraging active travel) and its location which would in effect should reflect the design of an urban extension, a 30mph speed limit would be a measure that is sought to support the safety of active users. The existing conditions are not appropriate for the proposed light touch measures such as signs, road markings (which are not acceptable) and a traffic island to effectively bring speeds to 30mph and support a large development in a predominantly rural position. Attention is drawn to the first planning appeal at Mornings Mill Farm which was dismissed on highway grounds based on insufficient details relating to access and accessibility (WD/2017/1942).

Framfield Road:

- Plan 5330/017 rev F shows a raised table zebra crossing outside no. 45. A formal crossing point is supported as was referred to in the previous highway response, but the constraints of a zebra type crossing had been pointed out. Nevertheless, a raised zebra crossing has been indicated by the applicant and road safety colleagues have highlighted that a single traffic calming feature like this is not desirable as it will be unexpected by drivers. There would need to be speed reducing features in advance of any vertical traffic calming such as this.
- The bus stop in advance of the crossing seems less than ideal. A car overtaking a bus would have limited time/space to see someone crossing, especially if they are crossing from north to south.
- It is not clear what the benefits of installing parking bays are, as there are already parking restrictions to control where parking takes place. Enforcement of the any parking restrictions is unlikely.
- Inclusion of bus cages and tactile paving/dropped crossing points is a benefit, though the overall conditions of the walking and cycling environment along Framfield Road are unchanged.

Cycle Track/area to west of the site:

- The bus stops east of no. 185 aren't positioned correctly. The markings don't line up with the flag/high level kerbing. However, it was raised in an earlier response that closer bus stops would be expected to ensure that all dwellings could be within the ideal distance of 400m. A provision

close to the access, within the site (with suitable turning) would be considered provided it did not impact on the timetabling of the services.

- Having the westbound bus stop within the shared cycle/footway would present a conflict unless enough space for people to wait for a bus outside of it is provided. Passenger transport would wish to see shelters at these stops which would potentially obstruct the shared cycle/footway. This aspect of the active travel/sustainable travel provision would need to complement one another.
- Access for pedestrians/cyclists has been raised previously and the provision for eastbound cyclists to join the path indicated has not be accommodated for.

Summary

Access provision is not acceptable for this site as indicated on drawings provided in the Addendum2 for the reasons indicated in this response.

Traffic modelling, in particular impact when considering wider sites is yet to be validated, and to this site there is some concern in terms if expected town bound impact on Framfield Rd Junction with New Town. Further exacerbation on town centre roads is also expected, with knowledge that these roads are already straining to cope with current traffic volumes.

As such highway objection is presented to this development proposal. Again, previous comments highlight that a joint working relation with site proponents for Bird In Eye North would enable a more comprehensive approach to reaching urban extension characteristics that this site cannot achieve with the access arrangement as shown and with the illustrative layout being concealed from the street scene. Framfield Road characteristics are urban and have constraints as set out in earlier responses which cannot be overcome through a parking scheme. An alternative crossing provision that is more appropriate to the function of Framfield Road needs to be considered.

Accessibility proposals (footway/cycleway) have scope to be provided but are expected to join Framfield Road where there are constraints with narrow footways and lack of crossing points.

Highway objection is sustained, for the following reasons:

- 1) The proposal would result in a material change in the volume of traffic using B2102 Bird in Eye Hill where speeds are derestricted, and hazards would be introduced by the slowing, stopping, and turning traffic at the proposed access, contrary to para 111 of the National Planning Policy Framework
- 2) The proposal would lead to increased traffic hazards on the B2102 Bird in Eye Hill by reason of the inadequate visibility at the proposed access and would therefore be contrary to para 111 of the National Planning Policy Framework
- 3) Insufficient measures have been submitted on the highway to support an urban extension, for purposes of reducing traffic speeds which are required to support sustainable transport modes.
- 4) Non-car travel choices for residents/users are limited between the site and Uckfield town centre as a result of substandard highway infrastructure which would not encourage sustainable travel modes and would therefore be contrary to para 104 and 106 of the National Planning Policy Framework.

Comments on Transport Assessment Addendum dated March 2022 following Highway response dated 08.12.21.

2.1 Site Access – Right turn lane requirement

Reference is made to the appeal decision dated 2006 and AADT flows at that time on Bird-In -Eye Hill (4400 vehicles). Data provided by the County Monitoring Team indicated 2019 AADT flows are 5560 and 2020 flows are 4830. As stated previously, the 2020 flows are evidently lower as a result of Covid travel restrictions. The 2019 flows are applicable and should be used for this application. The figures presented by the applicant are less at 3900 and cannot be accepted. PICADY modelling at the proposed site access has been provided but there is no breakdown of the farm/industrial unit related trips in peak periods which would need to be added to the proposal related peak trips. The PICADY analysis should be presented on flow diagrams for each peak for scenarios baseline 2019, baseline 2019 + development and existing uses, 2027 baseline, and 2027 baseline + development and existing uses.

For access to the site, the junction arrangement is required to have a right-turn lane for several reasons:

- i) Site related traffic would be weighted towards the west with more right turns into the site than left turns.
- ii) Emergency vehicles (associated with the nearby hospital) would be obstructed by right turners waiting within the carriageway to make a right turn.
- iii) This arrangement would afford right-turning vehicles (including cyclists) some protection and assist free flow of major road through traffic.
- iv) The daily traffic cumulation from the site exceeds 1400 trips. For developments generating an AADT of over 500 vehicles, right turning traffic should not impinge on general flows which are 5560. Furthermore, the event that other potential development such as Bird In Eye North comes forward, it is likely that the flows on Bird In Eye Hill will increase further.

The modelling provided is incomplete and although it is stated by the applicant that a priority junction would not result in significant queues for right turning vehicles, it is unclear from the submission what data has been used for the PICADY analysis.

Quotes from the 2006 former planning application and dismissed appeal are outdated and not valid for the current proposal now 16 years on. Furthermore, the former application was for 197 dwellings, not 290 and highway response dated June 2007 had requested that the priority junction be upgraded to be a right turn lane. The current standards are in DMRB CD123 CD 123 Geometric design of at-grade priority and signal-controlled junctions.

Access Visibility

A speed survey demonstrates 85th percentile speeds of 42.4mph EB and 45.9mph WB.

The required driver sightlines based on actual speeds are 113m looking west and 127m looking east, from a setback point of 2.4m (desirable minimum distances). The distances stated in the transport assessment addendum are not accepted. Manual for Streets standards are applicable where 85th percentile speeds are up to 37mph, and higher speeds should take account of Stopping Sight Distances. In this case desirable minimum distances should be applied. The sightline looking west is indicated on drawing 5330/020D as only 91m, some 22m short of the requirement based on actual speeds.

The proposal to extend the 30-mph speed restriction was not supported previously unless speeds can be reduced to an appropriate and conducive speed. This was proposed historically by the Parish Council, and it was indicated to them that traffic calming measures would be required to effectively provide suitable traffic calming. It was due to the cost of installing engineered measures that the speed limit reduction was not proceeded with. Any proposal to extend the 30mph limit will require a highway related scheme that would effectively reduce speeds and be self-enforcing and an extent of the limit extension would need to

be agreed. A matter to flag up is the bend in the road to the east of the site which should not conflict with the terminal point of a 30mph limit as traffic may be encouraged to accelerate towards this section. Such traffic calming schemes should ideally benefit from frontage development to guide drivers that they are entering a change in environment. It is expected that a continuation of built form should be visible from drivers' position to support a change to 30 mph. The 30-mph limit extension will require engineered speed reducing solution to bring mean speeds to a maximum of 33mph. Speed limit reduction schemes should accord with the guidance found in ESCC document Local Speed Limits PS05/02 which can be forwarded to the applicant's transport consultant. As shown in appendices 4 and 5, I note that a 30mph extension is shown which terminates just east of the proposed access position. The area of highway contained within the proposed 30mph extension has no significant change in character or appearance other than additional signage and three islands over a section of 500m which may not have a speed influencing effect that would be necessary for accommodating residential development associated travel needs such as walking and cycling.

A change to the speed limit would need to be authorised by a Traffic Regulation Order and have support from Sussex Police, the enforcing body. It is advised that further discussion with the highway authority is necessary to develop a suitable traffic calming scheme. As mentioned previously, collaborative working with site proponent for Bird In Eye North would assist to influence a suitable design for a traffic calming scheme from the junction for Uckfield Hospital up to a suitable point east of the proposed site access.

Following the previous RSA1, a further audit has been commissioned and the designer's response refers to scheme amendment drawings that have not been provided as part of the Transport Addendum. The only highway related application plans are provided in appendices 4, 5 and 6 [5330/020D; 5330/008E; 5330/1001]. The RSA response refers to drawings 5330/16E; 5330/18D and 5330/17E which are part of appendix 9 which in accordance with their revisions, would supersede the plans in the original TA.

Framfield Road

The parking scheme on Framfield Road has received comments from the Traffic and Safety Team in relation to the build-outs: The series of build outs proposed on Framfield Road do not appear to form part of the audit (first) and do not appear to serve any useful purpose? At the same width as the parking bays, they offer no contribution in terms of traffic calming and as there is a bollard central to each one, they do not aid crossing movements. As such, an alternative proposal in Framfield Road may offer more value to assist pedestrians crossing. It is noted that plan 5330/017 rev E shows an uncontrolled crossing with dropped kerbs and tactile paving outside 52 and 45 Framfield Road. There has been a request to the Traffic and Safety team from a local Councillor for a formal crossing with suggestion for a zebra crossing in the vicinity of Harcourt Road/Alexandra Road. There may be constraints in terms of the physical requirements for a zebra, in terms of driveways, junctions and bus stop but a more formal crossing would be preferable to one that is informal.

Proposed build outs have been questioned and the locations of them are questioned.

- i) the build out opposite the former church potentially prevents a bus from stopping close to the kerbs to allow passengers to board and alight safely. Installation of bus cages here is likely to be more useful than a build out.
- ii) parking bays marked either side of 69 Framfield road leave a very narrow space for access into an undercroft access leading to a yard in which a vehicle is parked. Access is likely to be restricted to the yard area if vehicles are parked at capacity either side of the access and opposite within the shown marked bays. See extracts below. Furthermore, the build-outs are provided but it is not known the reason. DYs are present to restrict parking around the junction Keld Avenue.



iii) the proposal indicates demarked bays for parking, though no restrictions for parking where the caged areas are not shown. It is presumed that the parking would still be permitted in the areas outside the marked bays unless DYLS are provided. As parking restrictions are secured through a TRO requiring public consultation, there would need to be a convincing scheme not only to the Highway Authority, but to the local residents that a parking scheme would be beneficial. I have noted the 2nd parking survey provided, undertaken on 9th February 2022. I do not understand what information the first table provides. Does the survey have a plan and photographs indicating the areas that are restricted that have been used for parking?

The parking scheme and survey required further discussion to understand how the survey was carried out and what the overall benefits are of the parking scheme.

Road Safety Audit

Again, a number of safety matters were raised by the auditor.

Regarding the proposed access, as I have indicated that a right turn facility should be the design standard for the proposed scale of development, this element would need to be revisited and so further comments on the access proposal are not provided to this aspect of the audit. Access provision is reliant on achieving driver sightlines and potentially reducing the speed limit with engineered traffic calming features. Turning provision of larger vehicles should also be considered at this stage and not left to detailed design as this application seeks approval for the access and accessibility.

Splitter islands on Bird in Eye Hill: the proposed tapers are not in accordance with CD123, and revisions have been made in dwgs 5330/008E, 020C and 016E. I do not have access to these drawings as they are not provided as part of the TA addendum or application submission.

Problems highlighted on Framfield Rd, that relate to the parking reconfiguration would need to be further discussed and so further comments in this regard are not provided.

Problems A.4.2, A.4.3, and A.4.4 relate to access and accessibility and are likely to require further intervention in design terms and should not be left to detailed design stage. Problem A.4.4 may be affected by off-site highway works relating to Mallard Drive (Harlands Farm) approved development which is under construction. As part of their s278 agreement, bus stops on Framfield Road close to the medical centre are enhanced and tactile paving at the existing dropped kerbs are technically accepted. A drawing can be provided on request.

Relocation of street furniture and telegraph poles can be reviewed as part of the detailed design as these can be moved. The footway sign is adjacent to land being opened up for the footway/cycleway route into the site and there would be scope to relocate this sign and potentially alter the content to indicate direction into the site. For cyclists wishing to continue eastbound, there would need to be a measure for safely re-joining the carriageway.

My concerns remain intact with regard to achieving suitable access and accessibility based on the points raised and having had discussions with the transport consultant with regard to the access, and the need to have verified the impact of the development on the adjacent and wider network, the application attracts objection. Discussions with the applicant have been arranged and the above will be raised to seek solutions.

K Kamboh – 12.05.22

Original response Dec 2021

Executive Summary

This application can only be considered on the access arrangements proposed. The impact of the development cannot yet be considered as the applicant has agreed to jointly work together with other development proponents to consider wider highway impact on the network in Uckfield and surrounding areas. As this work is being carried out currently with purpose to study the existing network and identify the opportunities, constraints and potential mitigation required for future growth that has not been possible through the local plan process, the impact on the network and principle of the development is not yet accepted or understood. Until this joint working group has completed the transport modelling the formal highway response cannot be provided in full. As such a highway objection is presented based on insufficient information that the applicant is fully aware of.

Response:

This application seeks outline planning consent for up to 290 dwellings on a greenfield site (agricultural) and retains an area of existing development comprising Bird-In-Eye farm business units (12 in total). The site is shown to be served from Bird-in-Eye Hill (B2102). The site has history of a planning appeal dismissal for housing dating back to 2009 (WD/2006/3564 for 197 dwellings), when 2 other sites were subject to the appeal inquiry (Downlands and BIE North). At the time of that appeal, the development at Ridgewood Farm had not been submitted or approved.

A Transport Assessment, Road Safety Audit and Travel Plan have been submitted which will be referred to within this response. Pre-application advice for approximately 175 dwellings was provided for site but was not extensive as the scope for the proposed development kept changing and a response was provided which highlighted the constraints of the site location and connectivity by non-motorised users. The applicant refers to meetings with the County Highway Authority which relate to wider impact modelling for several major sites in the Uckfield area.

Existing conditions – B2102

Actual speeds for the B2102 have been measured in two separate positions either side of the proposed access for a 7-day period 9-15th July 2019 and the results of the speed survey indicate that the 85th percentile speeds are 42.4mph EB and 45.9mph WB. Peak period flows 08-0900hrs and 17-1800hrs are approximately 400 vehicles in each hour segment.

The B2102 has Average Annual Daily Traffic count of 5560 (1% HGV) vehicles as of 2019; and 4830 (1% HGV) in 2020. The count for last year demonstrates a Covid19 related reduction in overall trips on the network, hence the 2019 data should be used as baseline and the 2020 is not accepted.

Police reported crash data within the highway has been interrogated for a period of 5 years for area between Sandy Lane junction and Framfield Road junction with Newtown/High Street. A total of 8 injury crashes (categorised as 5 slight, 2 serious and 1 fatal) occurred. Although this is unfortunate, the contributing factors were driver error in all cases, and not contributory to the road design or character.

The site is located within 2km walking distance of Uckfield High Street shops and amenities and approximately 1-1.5km from the railway station and bus station.

The pedestrian infrastructure towards the town centre, when using Framfield Road, is poor as a result of narrow footways, parked vehicles straddling footways, no defined crossing points until the signalised junction with New Town/Bridge Farm Road. Here the inter-visibility for pedestrians is poor, there is little footway width and when pedestrians are waiting to cross the road, there is little space for other pedestrians to pass by. The junction here is very much vehicle dominant and the current pedestrian experience between the site and the Framfield Road signalised junction is not convivial nor would it encourage travel on foot.

Cycling is a mode of travel available to confident cyclists who are not discouraged by the existing local infrastructure/characteristics. However, encouraging new users or less confident cyclists would require the use of quiet residential streets, as an alternative to the main roads that are bus routes and carry high volumes of traffic. The availability of permeable residential streets to serve a suitable cycle route is a convoluted route through Keld Avenue which avoids a potential wait at the signals but this location has uncontrolled connection between the B2102 (New Town) and Mill Drove.

Public bus transport is available on Framfield Road, but which is very limited and cannot support commuter journeys. Although there are bus stops within 300m of the site, the most regular service (231 Uckfield to Etchingham) operates 6 buses per day between 0740 and 1740 so allows a passenger to reach destinations up to Etchingham before 0900 but the last bus to return arrives at 1726 with no option after that. Bus services are also available in the town centre/bus station, but entails a 1.3km walk which exceeds the recommended distance (400m), the walking environment is below a suitable standard and would take 20 minutes plus bus waiting time, which is not convenient and encourage car use instead.

Rail services are available within 1.1km which is an acceptable distance to walk for commuting long distances and trains generally run to schedule with waiting times minimal for regular users. Again, the walking route is using Framfield Road, where constraints have been highlighted.

Employment areas in Uckfield are the Bell Lane and Ridgewood industrial estates; High Street (tertiary sector).

The Application

For the proposed development of 290 units comprising 189 market and 101 social/affordable (unit type unspecified), the main issues to consider and requirements that would need to be met are:

- **Access** - Suitable vehicle, pedestrian and cycle access, to include sufficient width, gradient and visibility splays are a standard requirement.

The proposed vehicular access into the site is in a position a short distance east of the existing farm access which would be closed as part of the proposal. The retained uses at BIE Farm, and existing dwellings Lycroft, 18 and 19 Bird In Eye Hill would have vehicular access from the proposed arrangement. The proposed access is within a section of Bird In Eye Hill (B2102) that is currently subject to a derestricted speed limit (60mph).

The geometry and configuration of the access should take account of the traffic expected to use it and 290 dwellings, 12 business units and 2 existing dwellings would generate in excess of 1400 trips per day. The types of business or related vehicles are not provided. The type of junction shown is a simple priority

arrangement, and at pre-application stage, when 175 dwellings were proposed, the site proponent was requested to consider a right-turn stack lane and given the uplift to the quantum of housing proposed within this application with daily trips on the minor access road exceeding 1400 movements, a right turn lane is recommended, bearing in mind the anticipated distribution of traffic being predominantly weighted to and from Framfield Road junction. Furthermore, the assessment at the site access has been based on 2020 observed trips which are not acceptable and does not account for trips that are derived from the existing dwellings and businesses served by the site access. The TA indicates in 5330/405D the proposal will generate 80 trips turning right into the site in the PM peak hour which is likely to be greater as a result of the businesses and visitors to the proposed SANG (the existing Horsted Green Park SANG should be considered as an example in terms of trip generation).

Driver sightlines at the access should reflect either posted speed limit, or where speeds are lower, the 85th percentile recorded speeds over a period of 7 days. The emerging 85th percentile speeds of 42.4mph EB and 45.9mph WB would require sightlines to be imposed in accordance with Manual for Streets 2. The actual speeds would need to be much lower for consideration for 30 mph speed limit reduction as the speed limit should be self-enforcing. As 30mph limit is suited to urban areas, the extension of an urban zone would need to display the visual character [frontage development, street lighting, built form, footways - as examples] to provide visual guidance for road users that they are within a restricted area. Speed limit signage alone is not acceptable for self-enforcement in this case. The required driver sightlines based on actual speeds are 113m looking west and 127m looking east, from a set back point of 2.4m (desirable minimum distances). The distances stated in the transport assessment are not accepted, nor is there a plan to demonstrate what is achievable.

It is repeatedly mentioned that a 30mph limit extension is supported by the highway authority. This is not the case, and this is not explicitly stated in the pre-application response as this notion is reliant on the view of ESCC Road Safety Team and Sussex Police and as mentioned earlier is reliant on visual characteristics for an urban area to enable self-enforced lower speeds. These parties have been consulted and their views can be provided in due course.

Road safety audit

The vehicular access to the site should be supported with a RSA 1 and scheme promoter's response. It is noted that this has been provided and a total of 10 problems have been highlighted.

1) LOCAL ALIGNMENT - proposed access

Auditor Comment: Vehicles may approach Bird in Eye Hill at inappropriate speeds. The application site is currently set at a level above the adjacent Bird in Eye Hill with the existing access rising gradually away from the main carriageway. The proposals relocate the existing access to Bird in Eye Farm in order to serve a proposed development of 300 residential dwellings as well as two existing dwellings outside of the application site. The scheme drawings do not identify the gradient of the proposed carriageway at this stage, however, the land in proximity appears to be approximately 2 to 2.5 metres higher than the level of the existing carriageway. A gradient in excess of 1 in 20 on approach to a simple priority access could lead to junction overshoot type incidents. It is recommended that the access road is set at a gradient shallower than 1 in 20 on approach to the B2102.

Designer Response: The proposed access will be designed with 1 in 20 or slacker gradient than in accordance with standards with the land either side, graded up away from the carriageway at an appropriate gradient.

LHA view – it is considered that the access details are required as part of the detail for this outline application and the appropriate gradient proposed should be presented as part of the matters for considering suitability and deliverability of the vehicular access. As such as there are no access details such as cross sections, or junction geometry, the access detail is incomplete.

2) GENERAL – Bird in Eye Hill

Auditor Comment: Drivers approaching the proposed traffic island may not become aware of the feature at a safe distance. In proximity of the proposed access, Bird in Eye Hill is derestricted, subject to the 60 mph national speed limit and accommodates a number of bends in proximity of the proposed access. The proposals that are subject to this Stage 1 Road Safety Audit includes two options; one to extend the existing 30mph zone to a point just east of the proposed access and another where the derestricted nature of the road remains unchanged but a splitter island is to be installed just to the west of the proposed access to ensure that eastbound vehicles approaching the proposed access, do not encroach the opposing lane and thus ensure the achievable visibility accords observed speeds. The scheme drawing illustrates that illuminated keep left bollards are to be provided which should highlight the features to approaching drivers, however, due to the existing alignment of Bird in Eye Hill to the west as well as vegetation abutting the carriageway, forward visibility for eastbound drivers is limited. As such, there may be insufficient warning of the traffic island which could lead to vehicles striking the feature and a loss of control type incidents. It is recommended that sufficient forward visibility is achievable to an object within the carriageway.

Designer Response: The Highway Authority are supportive of the extension to the 30mph speed limit and as set out in MfS2, the starting point for visibility on non-trunk roads is MfS. It is clear that Bird in Eye Hill is not a trunk road and sufficient forward visibility is achievable.

LHA view – the 30mph speed limit extension cannot be supported without clear acceptance from Sussex Police and the Road Safety Team at ESCC. Frontage development and an environment conducive to supporting lower speeds is a prerequisite. Although forward visibility is available there is evidence that traffic does breach the speed limit. The presence of the isolated island within a derestricted speed limit that is not supplemented by street lighting or frontage development may encourage middle of road driving during quieter times such as night when road traffic volumes are low.

3) GENERAL – Proposed access

Auditor Comment: Existing Telegraph / Electric pole will become an obstruction to vehicles. Signage and telegraph poles are situated within the existing verge along Bird in Eye Hill. The proposals relocate an existing access approximately 30 metres to the east which is to serve the existing dwellings as well as the proposed development of 300 dwellings. However, a telegraph/electric pole is situated in the proposed bell mouth access in the path of vehicles and will be an obstruction. It is recommended that the telegraph/electric pole is relocated, and the access is free of obstructions.

Designer Response: All existing street furniture, utility covers and gullies will be reviewed during the detail design of the scheme.

LHA view: The pole would need to be relocated to accommodate the access, and it is agreed that this should be reviewed at detailed design stage (S278) and the pole placed in a position that does not obstruct access safety requirements of the highway and its users.

4) GENERAL - Proposed Access and Bird in Eye Hill

Auditor Comment: Existing road gully will be within the path of vehicles. Bird in Eye Hill is cambered with surface water falling to the channels either side of the carriageway where road gullies are present. During the site visit associated with this Audit, a number of gullies in proximity to the proposed works were observed to be blocked and therefore ineffective. The proposals that introduce a traffic island to the west of the proposed access, widen the Bird in Eye Hill carriageway where a gully is present either side of the road. No details of the proposed surface water drainage have been provided at this stage; however, an insufficient network is likely to result in ponding during inclement conditions which increases the likelihood of loss of control type incidents. Furthermore, a road gully within the path of a vehicle could give rise to loss of control type incidents particularly for two wheeled vehicles and vehicles undertaking a braking manoeuvre. It is recommended that an adequate surface water drainage network is provided.

Designer Response: All existing street furniture, utility covers and gullies will be reviewed during the detail design of the scheme.

LHA view: it is agreed that features in the highway that are affected by a highway related scheme can be reviewed at detailed design stage (S278).

5) JUNCTIONS – Bird in Eye Hill

Auditor Comment: Drivers approaching and waiting to turn right into the proposed access may not become aware of each other at a safe distance. In proximity of the proposed access, Bird in Eye Hill is derestricted, subject to the 60 mph national speed limit and accommodates a bend on each approach. The proposals that are subject to this Stage 1 Road Safety Audit includes two options; one to extend the existing 30mph zone to a point just east of the proposed access and another where the derestricted nature of the road remains unchanged but a splitter island is to be installed just to the west of the proposed access to ensure that eastbound vehicles approaching the proposed access, do not encroach the opposing lane and thus ensure the achievable visibility accords with the splays illustrated. The Audit Team took measurements whilst on-site and visibility splays of 2.4x117.2 metres and 2.4x102 metres are achievable from the proposed access to an approaching vehicle, however, due to vegetation within the verge to the north of the carriageway, forward visibility to and from a vehicle attempting to turn right into the access, is restricted to below 117.2 metres for westbound drivers. As such, a westbound driver will have insufficient warning of the traffic attempting to turn right and vice versa. It is recommended that the sufficient forward visibility is achievable.

Designer Response: As stated by the Auditor's, the proposed access is clearly visible for westbound drivers and as such, one would approach cautiously in the knowledge that a vehicle may attempt to turn right. It must be noted that a right turning vehicle will be moving across the carriageway and not be a stationary object. The Highway Authority are supportive of the extension to the 30mph speed limit and in any event, MfS2 advises that the starting point for calculating visibility for non-trunk roads should be MfS. It is evident that sufficient visibility is therefore achievable to/from the proposed access.

LHA view: designer response is assuming that a 30 mph speed limit is supported, and vehicles would approach cautiously, and a right turning vehicle is not stationary (a vehicle waiting to turn has to ensure that it is safe to do so and eastbound vehicles may prevent this). Furthermore, there would be an increase in traffic volume approaching from the west as a result of the proposal. It was raised that a ghost right turn lane at the proposed access should be considered. The auditor comments remain valid.

6) JUNCTION - Proposed access

Auditor Comment: No road markings are provided to highlight the need for exiting vehicles to give-way. The existing access arrangement serving a mixed-use development on land at Bird in Eye Farm does not accommodate any road markings. The proposals subject to this Stage 1 Road Safety Audit are to provide a priority access that serves a development of 300 dwellings. The scheme drawings provided with the Audit Brief provided do not identify that any carriageway markings are to be provided at its junction with Bird in Eye Hill. Vehicles exiting may not therefore align themselves sufficiently to allow space for a vehicle to enter simultaneously which could give rise to sideswipes type incidents as well as rear end shunts along Bird in Eye Hill and junction overshoot type incidents. It is recommended that road markings are provided to guide vehicles sufficiently.

Designer Response: Give-way and road centreline markings are to be provided.

LHA view: it is considered that the access specification is required as part of the detail for this outline application and the appropriate junction configuration should be presented as part of the matters for considering suitability and deliverability of the vehicular access. As such as there are no access details such as cross sections, gradient, or junction geometry, and the access detail is incomplete.

7) JUNCTION – Proposed access

Auditor Comment: Insufficient space may be provided to allow service vehicles to enter. The existing access to Bird in Eye Farm is approximately 5 metres wide with large corner radii that allow for Heavy Goods and Agricultural Vehicles to manoeuvre safely. The proposals include the relocation of the priority access with 8 metre corner radii which provides access to a 5.5m wide carriageway. No swept path analysis has been provided with the Audit Brief and as such, the corner radii may not be sufficient to allow for the infrequent HGV movements that could be expected from a development of 300 dwellings. Should turning movements be restrictive, vehicles could be required to encroach the opposing lane or vehicles may be required to reverse out of the proposed access or in order to enter and exit the access raising the risk of rear-end, sideswipe collisions.

Designer Response: A swept path analysis has been undertaken and the proposals are adequate for the expected vehicles.

LHA view: A refuse truck has been tracked through the access as shown. The access details are insufficient as stated previously. A further note is that the access will serve existing industrial related uses and although the weekly occurrence of a refuse truck would ordinarily be accepted with some overhang onto adjacent lanes, more frequent use of such vehicles for the 12 business units (details been excluded in this application) would require an access that accommodates larger vehicles that require regular use. The access should accommodate regular use by all vehicles without the risk of conflict on the highway or at the access.

8) WALKING, CYCLING & HORSE RIDING – proposed footpath connection BIE Hill

Auditor Comment: Existing signage will become an obstruction to pedestrians. In proximity of the proposed footway cycleway access the verges of Bird in Eye Hill accommodates a number of telegraph / electric poles and road signs. The proposals introduce a connection between Bird in Eye Hill and the local pedestrian network, to the west of the proposed access via footpath through a wooded area. An existing telegraph / electric pole is situated just to the west of the proposed connection will be situated central to the footway and become an obstruction to pedestrians that could force one to enter the carriageway suddenly raising the risk of vehicle collisions with pedestrians. It is recommended that the telegraph pole is relocated.

Designer Response: All existing street furniture, utility covers and gullies will be reviewed during the detail design of the scheme.

LHA view: Agreed, though the proposal should be able to demonstrate deliverability and any relocation of telegraph poles and road signage would require alternative locations that are suitable for their revised positions and should not compromise accessibility or highway safety.

9) WALKING, CYCLING & HORSE RIDING – proposed footpath connection BIE Hill

Auditor Comment: Cyclists are likely to utilise the proposed footpath. Bird in Eye Hill benefits from a footway along the southern side that terminates just to west of the gated access to the application site. The scheme drawing provided with the Audit Brief illustrates that a footpath connection is proposed at this location which is approximately the same width as the existing footway, however, as identified within the Transport Assessment associated with the scheme, a 3.0-metre-wide shared use footway / cycleway link is to be provided. The proposed link is considerably shorter than following Bird in Eye Hill and as such, it is highly likely that cyclists will utilise the link. Should the link be insufficient to accommodate a high number of pedestrians and cyclists, there could give rise to cyclist-pedestrian collisions. It is recommended that the width of the facility is increased appropriately to accommodate cyclists.

Designer Response: The section of footway between the pedestrian/cycle access and the bus stops to the west will be widened to 3m to facilitate its use as a shared footway/cycleway.

LHA view: Agreed, though the proposal should be included as part of access detail submission included in the audit brief, and considering the provision being up to the carriageway, it is advised that a section of verge of say 0.5m is included to separate the non-motorised provision with the carriageway to prevent users from sidestepping into oncoming traffic that may be driving close to this facility (HGV and bus route).

10) WALKING, CYCLING & HORSE RIDING – proposed footpath connection BIE Hill

Auditor Comment: Existing road sign could become an obstruction to users of the footway. Bird in Eye Hill benefits from a footway along the southern side that terminates just to west of the gated access to the application site at a location where a 'pedestrians in carriageway' road sign with a 'no footway for 1 mile' plate is present. The sign face appears to provide insufficient headroom for a pedestrian to walk beneath. Should a pedestrian step slightly off the existing footway, the sign would be an obstruction resulting in a personal head injury. It is recommended that the sign face is relocated further back from the edge of footway or raised to a suitable level.

Designer Response: All existing street furniture, utility covers and gullies will be reviewed during the detail design of the scheme.

LHA view: Auditor recommendation is accepted, and detailed design of the scheme can include the minor adjustment of the sign in position or height provided it does not conflict with the proposed provision of the footway/cycleway

To summarise the Road Safety Audit, it is apparent that insufficient details were included in the audit brief and submitted as part of the application documents. A 30mph speed limit can only be accepted if the environment is conducive to supporting a self-enforcing reduction in speeds. This would be assisted by frontage development, street lighting, and a visual change in character supported by urbanising the street infrastructure. It is contested that the highway authority supports a 30mph as this would be reliant on a suitable scheme to support this notion. Consideration of the Bird In Eye North site which is being offered as a potential housing site has the potential to contribute to the urban extension of Uckfield and the sites are advised to be considered collaboratively as they can coordinate highway enhancements for mutual and wider benefit. As such the vehicular access details submitted are not accepted.

Pedestrian and Cycle Access

This is indicated on the submitted plan as a route from the northern corner on the westernmost point where the site meets the highway. The submitted plans do not show this in detail though a plan is provided within the Transport Assessment documents (5330/008C) which also includes the proposal for a 30mph limit with gateway features.

The ESCC Passenger Transport team have been consulted on this proposal and have provided the following comments and contribution request:

In terms of this application, I have the following observations/concerns.

The size of the site means that dwellings in the south east part of the development will be in excess of 500 metres walking distance to the B2102. The consultant's Transport Assessment, in Appendix 21, appears to be it acceptable to walk a further 450 metres to the existing 'Uckfield Community Hospital' bus stops on the B2102 to the west. Clearly this is totally inappropriate.

Two new bus stops (one in each direction) would need to be provided adjacent to the main site entrance, and even then, they would be in excess of the accepted 400 metre walking distance. Each would need to have a raised kerb, bus stop clearway, bus shelter with seating, new bus stop pole (sourced from Externiture), lighting and real time information provision. A safe and accessible road crossing point would be required.

In Appendix 22 it is noted that the consultant has approached the bus operator for costed proposals to improve the frequency of the weekdays daytime only 2 hourly bus service 231. A couple of return journeys are also provided on Saturdays by a community transport operator.

It is not appropriate for the developer to secure service improvements directly through a bus operator. The current contract with the bus operator of service 231 is due to end in 2022. The indicative prices provided that operator in April 2021 will now have significantly increase due to the cost of securing driving staff due

to the national shortage of bus drivers. The particular is suggesting future contract price increases of up to 20% so as to account for additional driver costs and other cost pressures.

The level of service specified is also not sufficient. Already the existing service is reaching capacity at school times, so additional provision will be needed for pupils from the development attending secondary schools in Heathfield and Uckfield. There is additionally the requirement for an early morning, evening and Sunday service. In particular, the last journey from Uckfield currently is 1735, which is too early for commuters from a wider (eg. from Brighton making connections at Uckfield Bus Station, and train commuters from London). We estimate the additional cost of these bus requirements to be:

- £69,256 per annum for the level of Monday to Saturday provision as shown in Appendix 22 (ie a 20% increase).*
- £10,120 per annum for the additional early morning provision (Mondays to Fridays).*
- £43,560 per annum for the additional evening provision (daily).*
- £18,061 for the Sunday daytime service provision.*

Therefore, a total of £140,997 per annum, which will be required for a minimum of 3 years.

The proposals on Framfield Road include a crossing point in vicinity of 2-8 Framfield Road. This is close to a signalised junction where traffic queues back to and beyond, and where footways are narrow (less than 1.5m in width). This is not included in the RSA and cannot be considered as a deliverable solution as part of accessibility strategy. Bus stop improvements are proposed but these are not to the requirements of the Passenger Transport Team nor have these been part of the RSA.

The installation of parking controls on Framfield Road has been presented by the applicant and supported by a parking survey on one day. The Lambeth methodology requires :

Residential Developments The Council requires a parking survey to cover the area where residents of a proposed development may want to park. This generally covers an area of 200m (or a 2 minute walk) around a site. For further detail see 'Extent of survey' below. The survey should be undertaken when the highest number of residents are at home; generally late at night during the week. A snapshot survey between the hours of 0030-0530 should be undertaken on two separate weekday nights (ie. Monday, Tuesday, Wednesday or Thursday).

The methodology is directed at proposed development and not necessarily for securing parking restrictions for existing development that benefits from unrestricted parking provision. If the applicant wishes to understand where residents park, it may not be solely on Framfield Road as other minor roads are also utilised. The outcome of the parking survey is therefore not considered to be an appropriate parking assumption for this road and further surveys are recommended, jointly with the BIEN site proponents in accordance with a methodology that is agreed with the Highway Authority.

A non-motorised user audit is required carried out to understand any constraints experienced by pedestrians and cyclists using the highway network to connect to local service providers and amenities, to then seek appropriate and commensurate solutions to assist accessibility for this group of highway users. Ideally, as BIEN has a direct relationship to this site and potential link to the north of the railway line, and mentioned earlier, a collaborate approach drawing together sustainable solutions from each site (they are very much reliant on each other) would benefit both sites. Joint solutions to overcome the accessibility constraints for both these sites are likely to be more meaningful and effective if both sites work together to prevent conflicting mitigation measures that come forward independent of each site.

It is recommended that these sites coming forward independently is likely to result in collaborative working to address appropriate and safe mitigation measures later down the line, and as such it would make sense not to have conflicting solutions and have solutions and measures that are conducive to both sites worked out from the outset, given that both these sites have been considered at appeal with the Inspector's comments highlighting the constraints and opportunities in this location.

Since pre-application discussions, which I highlight were not conclusive and did not indicate support for a 30mph extension explicitly (no reference was made within the pre-application response that the applicant has provided in appendix 1).

At this stage, the access and accessibility aspects of the application have not been fully addressed or justified.

Highway Impact

Modelling for this site is being prepared in conjunction with several other major sites in Uckfield as part of an agreed strategy between the County Highway Authority and Wealden District Council. The applicant has signed and committed to a Statement of Common Ground to understand the wider impact of traffic on the highway network. The trip assessment of the proposal, as mentioned earlier is based on 2020 baseline surveys which were taken during a Covid restricted period and are unrepresentative.

Proposals to install SCOOT has been explored as part of the highway assessment for land at Eastbourne Road for 90 dwellings (WD/2020/0410). At that time both MOVA and SCOOT solutions were considered by the East Sussex Highways signals team and deemed as ineffective and it is unlikely that this can be considered as a solution or be modelled to demonstrate mitigation at the critical junctions Framfield Rd or High Street/Bell Lane. Further comments on this aspect of the application cannot be provided until the outcome of the wider modelling exercise is complete.

Internal Layout

An indicative layout of the proposed development is provided. The details do not give any indication for housing types or amount of parking. The TA suggests that the parking will be provided in accordance with the ESCC parking standards. This is essentially a reserved matter, though it should be clear at this stage that the indicative layout can meet the proposal description and highway related requirements. The SANGS car parking area shown as 30 spaces appears to be served from a minor road which is potentially to unadopted standard. If the SANG is available to the general public it would have amenity value and road that connects to it should ideally be adopted or responsible to the SANG managing authority for its maintenance if it remains privately owned.

There is a public right of way that runs along the south boundary of the SANG, and suitable connections should be provided to allow SANG users to link to it, though gated sections.

Swept path plans have been provided throughout the site, though the application seeks consent for access only. As the layout is not for determination, the swept path plans are not considered as part of this response. The swept path plan for the access is shown though the details of the access are not complete and it has been requested that other vehicle movements from the business units are considered as they would require use of this access.

It has not been specified if the proposed site road network is to be offered for adoption. This should be indicated at outline stage.

Travel Plan

This is required to be secured through a s106 agreement.

It is essential that this site and its proposed uses are supplemented with a suitable travel plan which covers a 5 year period (and phased, if phases identified). The applicant has provided with the application a framework travel plan which is welcomed. The Passenger Transport team has suggested that bus service and infrastructure improvements are required as part of this development. In addition, hard measures

which have yet to be agreed and would be identified through a NMU audit, would need to form part of the Travel Plan so that it can be promoted effectively and define non-motorised routes.

Measures that have been included in the submitted travel plan framework are:

- 1) Travel Plan Coordinator
- 2) Residents' information pack – to include local walking and cycle routes, cycle journey planning resources, promotion of cycle training, public transport information on routes and timetables, locations of nearby destinations and mapping with cycle/walking times and distances. A £150 travel voucher offered for sustainable travel.
This pack should also include car club membership details/promotion, home deliveries for shopping, setting up a local group on a social network site by the travel plan coordinator which should also promote car sharing, walking and cycle groups.
- 3) Car club - only 1 vehicle has been included and is likely to be appropriate initially.
For a development of this scale 2 EVs are recommended with fast-charge facilities within an adopted road to enable wider use. For each household, Car club membership for a minimum of 2 year period with 50 miles drivetime should also be provided for each household.
- 4) *For inclusion: A twice annual Dr Bike visit to the development ensure that resident's cycle equipment is maintained to a good standard during the travel plan period.*

Monitoring of the travel plan – baseline surveys should be provided by 25th occupation and future surveys are required in years 1, 3 and 5 at this site, on the basis that sustainable travel modes should be reinforced on a much more regular basis to minimise where possible, the potential impact on the highway network by single occupancy vehicles. This attracts an audit fee of £6k.

Summary:

The application is currently incomplete in terms of access, accessibility and modelling details. Assumptions for a 30mph extension and SCOOT infrastructure are not accepted. Mitigation measures to improve non-motorised environment along Framfield Road should derive from the outcome of a NMU audit, ideally in conjunction with proponents of BIEN site to achieve meaningful and effective transport schemes to create a more sustainable environment.

To note:

S106 requirements (not conclusive)

- 1) Travel Plan for a 5-year period and travel plan audit fee of £6k. TP to include and flexible voucher for £150 for use on sustainable travel measures; car club membership for first occupant of each dwelling for 2 years and 50 miles drive time.
- 2) Car club provision – 2 E-vehicles and 2 dedicated fast-charging bays within the site
- 3) Road layout and access provision - subject to a combined s278/s38 agreement where internal roads are offered for adoption.
- 4) Provision of bus infrastructure (Two new bus stops adjacent to the main site entrance with a pedestrian crossing, raised kerb, bus stop clearway, bus shelter with seating, new bus stop pole, lighting, and real time information provision - subject to a s278 agreement and service improvement contribution of £140,997 per annum, which will be required for a minimum of 3 years.
- 5) Accessibility related highway works – to be agreed

On behalf of the Highway Authority
For Director of Communities, Economy and Transport

Hearing Statement

APPENDIX 2

Cumulative Impact Assessment

CUMULATIVE IMPACT ASSESSMENT

PROPOSAL: Bird in Eye South, Uckfield
REF: MT/5330/CIA.2
PLANNING REF: WD/2021/2198/MAO
DATE: April 2022

Introduction

1. Bellamy Roberts has been instructed by Croudace Homes Limited to prepare a report setting out the results of the assessment undertaken to consider the cumulative impact of future major schemes in Uckfield. A Statement of Common Ground (SoCG) was prepared in collaboration with the developer parties associated with promoting four specific residential development sites in Uckfield, Wealden District Council as Local Planning Authority and East Sussex County Council as County Highway Authority.
2. The sites identified by the Local Planning Authority (LPA) and County Highway Authority (CHA) are as follows:
 - Bird in Eye South (Croudace Homes) - up to 290 units
 - Bird in Eye North (Martin Grant Homes) - circa 240 units
 - Horsted Pond Farm (Castlefort Homes) - up to 450 units
 - Downlands Farm (Gleeson Homes) - up to 550 units
3. At the time of writing, it is only the Bird in Eye South scheme that has submitted a planning application.
4. As set out in the submitted Transport Assessment and SoCG, the process for determining an application is set out clearly within the NPPF and the tests therein. Paragraph 109 of the NPPF states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety or would result in a severe residual

cumulative impact on the road network. Government guidance states the cumulative impact is that which arises from developments that are *committed*, there is no requirement for a planning application to consider “speculative” development elsewhere.

5. The Highway Authority has requested that consideration be given to non-committed (i.e., speculative) development sites. Until this cumulative assessment has been undertaken, the Highway Authority has advised they may be unable to recommend approval of any large-scale development in Uckfield. This approach is contrary to the NPPF and Planning Practice Guidance.
6. In accordance with government guidance, the submitted Transport Assessment (TA) and Transport Assessment Addendum (TAA) has considered the committed developments of Mallard Drive and Ridgewood Farm, as agreed with the Highway Authority. The findings of the TA and TAA are that the scheme is acceptable in highway terms subject to the implementation of SCOOT at the town centre junctions and a financial contribution towards improved bus services and facilities.
7. Nevertheless, and to assist the CHA and LPA determining the planning application, Bellamy Roberts has prepared a pre-application Statement of Common Ground (SoCG) in collaboration with the developer parties associated with the four specific residential development sites in Uckfield identified by the LPA/CHA, as set out in paragraph 1. The SoCG was signed by all developer parties in September/October 2021.
8. In summary the SoCG set out that the CHA would instruct Jacobs to run a SATURN model of the highway network which would include the following junctions:
 - A22 Maresfield Bypass/A272/Batts Bridge Road (Batts Bridge Roundabout).
 - A26/A272/London Road (Budletts Roundabout).
 - A22 Uckfield Bypass/A26 (Black Down Roundabout).
 - A22 Uckfield Bypass/B2102 Bellfarm Road (Copwood Roundabout).
 - A22 Uckfield Bypass/A26/Lewes Road (Little Horsted Roundabout).
 - Framfield Road/New Town junction.
 - Highlands Roundabout.
 - Eastbourne Road/A22 junction.
 - Horsted Pond Roundabout.
 - Owlesbury Roundabout (new roundabout in Ridgewood).

- Copwood Roundabout.
 - Blackdown Roundabout.
 - Budletts Roundabout.
 - Ringles Cross junction.
 - Church Street/High Street/Hempstead Road junction.
 - Bell Lane/High Street junction.
 - Bell Farm Road/Bell Lane roundabout.
 - London Road/A272 junction.
 - Earwig Corner (Ringmer).
9. The SATURN modelling results were published by ESCC to each developer party on 21st January 2021. The output included turning counts, junction delays, level of service and junction Volume over Capacity (VoC) at the junctions identified above. The assessment has considered a base year of 2018 and a future year of 2039. Assessments have been undertaken for each site in isolation and with all for sites combined. These scenarios, and their SATURN references, are summarised as follows:
- BY - base models for year 2018
 - DM - 'without development' models for year 2039
 - DS1 - 'with Bird in Eye North development' for year 2039
 - DS2 - 'with Bird in Eye South development' for year 2039
 - DS3 - 'with Downlands Farm development' for year 2039
 - DS4 - 'with Horsted Pond Farm development' for year 2039
 - DS5 - 'with four developments combined' for year 2039
10. Despite issuing the SATURN modelling outputs in January 2021, at the time of writing (April 2022) final confirmation is still awaited from the CHA that the outputs are suitable to assess the impact at the individual junctions. Nevertheless, Jacobs has confirmed by email (dated 2nd March 2022) that the modelled SATURN flows are suitable for use in specific junction modelling. The email from Jacobs is provided at **Appendix 1**.
11. As such, the previously submitted junction modelling of Uckfield town centre has been updated to include the turning counts generated by the SATURN modelling. Discussions have been held with the ESCC signals team who requested that the signalised High Street/Church Street junction and the two standalone signalised pedestrian crossings on the High Street between Church Street and Framfield Road also be included within this

cumulative assessment. In this regard, the following junctions have therefore been assessed:

- Framfield Road/High Street/Bridge Farm Road signalised crossroads;
- High Street/Bell Lane signalised T-junction; and
- High Street/Church Street.

12. With reference to paragraph 7, the junctions listed above have been analysed in LinSig using the traffic from scenarios DM (2039 without development), DS2 (Bird in Eye South only) and DS5 (four developments combined). The turning movements for these scenarios at the junctions listed in paragraph 9 is provided at **Appendix 2**.

2039 Base Year (Scenario DM)

13. A summary of the LinSig modelling results for the DM scenario (i.e., 2039 without development) is provided in Tables 1 and 2. The full LinSig analysis is provided at **Appendix 3**.

Table 1: Summary of Junction Modelling – SATURN Scenario DM

Road Name	AM			PM		
	Deg. Sat.	Average Delay per PCU (s/PCU)	Mean Max Queue (PCU)	Deg. Sat.	Average Delay per PCU (s/PCU)	Mean Max Queue (PCU)
Framfield Road/High Street/Bridge Farm Road						
High Street (Northbound)	81.4%	41.2	14.1	57.3%	26.5	9.1
Framfield Road	78.7%	64.3	7.2	74.4%	75.2	4.7
Bridge Farm Road	41.4%	56.9	2.0	53.2%	61.6	2.7
High Street (Southbound)	58.3%	27.5	6.4	80.5%	29.9	11.9
High Street/Bell Lane						
Bell Lane	71.8%	69.1	7.9	77.7%	72.8	9.3
High Street (Southbound)	44.2%	9.8	4.4	68.4%	18.3	13.3
High Street (Northbound)	73.8%	26.5	14.2	62.8%	24.3	10.2
High Street/Church Street						
High Street (Northbound)	69.3%	56.9	10.1	79.0%	55.7	15.0
Church Street	66.5%	53.5	10.0	74.0%	66.7	9.3
High Street (Southbound)	70.0%	41.4	15.1	80.2%	47.3	18.9
Hempstead Road	25.5%	42.9	3.2	17.3%	48.6	1.7

Table 2: Summary of PRC Values – SATURN Scenario DM

Junction	AM	PM
	PRC (%)	PRC (%)
High Street/Framfield Road/Bridge Farm Road (Controller C1)	10.6%	11.8%
High Street/Bell Lane (Controller C2)	21.9%	15.9%
High Street/Church Street (Controller C3)	28.5%	12.2%

14. The assessment of the DM scenario demonstrates that the town centre junctions analysed will operate with spare capacity during the morning and evening peak hour periods.

2039 + BIES Only (Scenario DS2)

15. A summary of the LinSig modelling results for the DS2 scenario (i.e., with Bird in Eye south only) is provided in Tables 3 and 4 (the full LinSig analysis is at Appendix 3).

Table 3: Summary of Junction Modelling – SATURN Scenario DS2

Road Name	AM			PM		
	Deg. Sat.	Average Delay per PCU (s/PCU)	Mean Max Queue (PCU)	Deg. Sat.	Average Delay per PCU (s/PCU)	Mean Max Queue (PCU)
Framfield Road/High Street/Bridge Farm Road						
High Street (Northbound)	81.2%	41.0	14.1	57.3%	26.5	9.1
Framfield Road	78.7%	64.3	7.2	75.5%	76.6	4.8
Bridge Farm Road	42.0%	57.1	2.0	52.6%	61.3	2.7
High Street (Southbound)	58.3%	27.5	6.5	78.2%	28.6	10.3
High Street/Bell Lane						
Bell Lane	72.5%	69.6	8.0	77.6%	72.7	9.3
High Street (Southbound)	43.8%	9.7	4.3	67.9%	18.3	13.3
High Street (Northbound)	73.6%	26.3	13.8	62.7%	24.3	10.0
High Street/Church Street						
High Street (Northbound)	69.5%	57.0	10.2	78.8%	55.5	14.9
Church Street	67.0%	53.7	10.2	78.0%	72.0	9.7
High Street (Southbound)	70.3%	41.5	15.2	79.3%	45.7	18.8
Hempstead Road	25.7%	42.9	3.3	16.3%	49.6	1.6

Table 4: Summary of PRC Values – SATURN Scenario DS2

Junction	AM	PM
	PRC (%)	PRC (%)
High Street/Framfield Road/Bridge Farm Road (Controller C1)	10.8%	15.1%
High Street/Bell Lane (Controller C2)	22.3%	15.9%
High Street/Church Street (Controller C3)	28.0%	13.6%

16. The assessment of the DS2 scenario demonstrates that the town centre junctions analysed will operate with spare capacity during the morning and evening peak hour periods. This assessment includes the development traffic from the Bird in Eye south scheme so it is evident that no improvements are necessary at these junctions to accommodate this traffic.
17. The introduction of traffic from the Bird in Eye south development has no material impact on the operation of the junctions analysed.

2039 + All Four Developments (Scenario DS5)

18. A summary of the results for the modelled DS5 scenario (i.e., with all four developments) is set out in Tables 5 and 6.

Table 5: Summary of Junction Modelling – SATURN Scenario DS5

Road Name	AM			PM		
	Deg. Sat.	Average Delay per PCU (s/PCU)	Mean Max Queue (PCU)	Deg. Sat.	Average Delay per PCU (s/PCU)	Mean Max Queue (PCU)
Framfield Road/High Street/Bridge Farm Road						
High Street (Northbound)	81.4%	41.2	14.1	59.3%	27.0	9.5
Framfield Road	78.4%	63.9	7.1	77.1%	79.0	5.0
Bridge Farm Road	42.0%	57.1	2.0	53.2%	61.6	2.7
High Street (Southbound)	55.4%	26.9	5.9	78.6%	28.8	10.3
High Street/Bell Lane						
Bell Lane	75.2%	73.9	8.1	77.6%	72.7	9.3
High Street (Southbound)	43.4%	9.3	4.2	67.6%	18.3	13.2
High Street (Northbound)	73.2%	25.7	13.9	63.0%	24.3	9.9
High Street/Church Street						
High Street (Northbound)	69.5%	57.0	10.2	78.1%	54.9	14.6
Church Street	65.6%	54.1	9.6	80.5%	76.9	9.9
High Street (Southbound)	70.5%	40.8	15.6	79.3%	44.8	19.1
Hempstead Road	31.3%	44.8	4.0	13.9%	50.4	1.3

Table 6: Summary of PRC Values – SATURN Scenario DS5

Junction	AM	PM
	PRC (%)	PRC (%)
High Street/Framfield Road/Bridge Farm Road (Controller C1)	10.6%	14.4%
High Street/Bell Lane (Controller C2)	19.8%	15.9%
High Street/Church Street (Controller C3)	27.6%	11.8%

19. The results of the DS5 scenario modelling reveals that when traffic from the three speculative sites is added, the town centre junctions analysed will operate with spare capacity during the morning and evening peak hour periods. The addition of this additional traffic has no material impact on the operation of the junctions analysed.

Summary

20. It is evident from the modelling work undertaken that the town centre junctions will operate well within their theoretical capacities in the future base year of 2039 and will continue to

do so when traffic from the Bird in Eye south scheme, and from the three speculative developments elsewhere in Uckfield, is added.

21. The analysis demonstrates that no improvements are necessary to the junctions assessed to accommodate the future development traffic, as agreed with the LPA and CHA.

DRAFT

APPENDICES

APPENDIX 1

Matt Twinberrow

Subject: FW: Uckfield sites - Jacobs update and further info required (5330)

From: Withey, Tom
Sent: 02 March 2022 11:09
To: Matt Twinberrow
Subject: RE: Uckfield sites - Jacobs update and further info required (5330)

Hi Matt,

As far as I'm concerned they are, albeit issues that Gareth Elphick raised should be noted, but until you get confirmation from ESCC that that is the case, then anything you do with them is at your own risk. I appreciate the frustration at a lack of response from ESCC – it's the same for me too.

Tom

From: Matt Twinberrow
Sent: 02 March 2022 10:55
To: Withey, Tom
Subject: [EXTERNAL] FW: Uckfield sites - Jacobs update and further info required (5330)

Hi Tom

I hope you're well.

ESCC has gone quiet on matters relating to Uckfield/the SATURN modelling.

As far as Jacobs are concerned, I would be grateful if you could please confirm that the flows set out in the Saturn outputs are suitable to assess the impact at individual junctions?

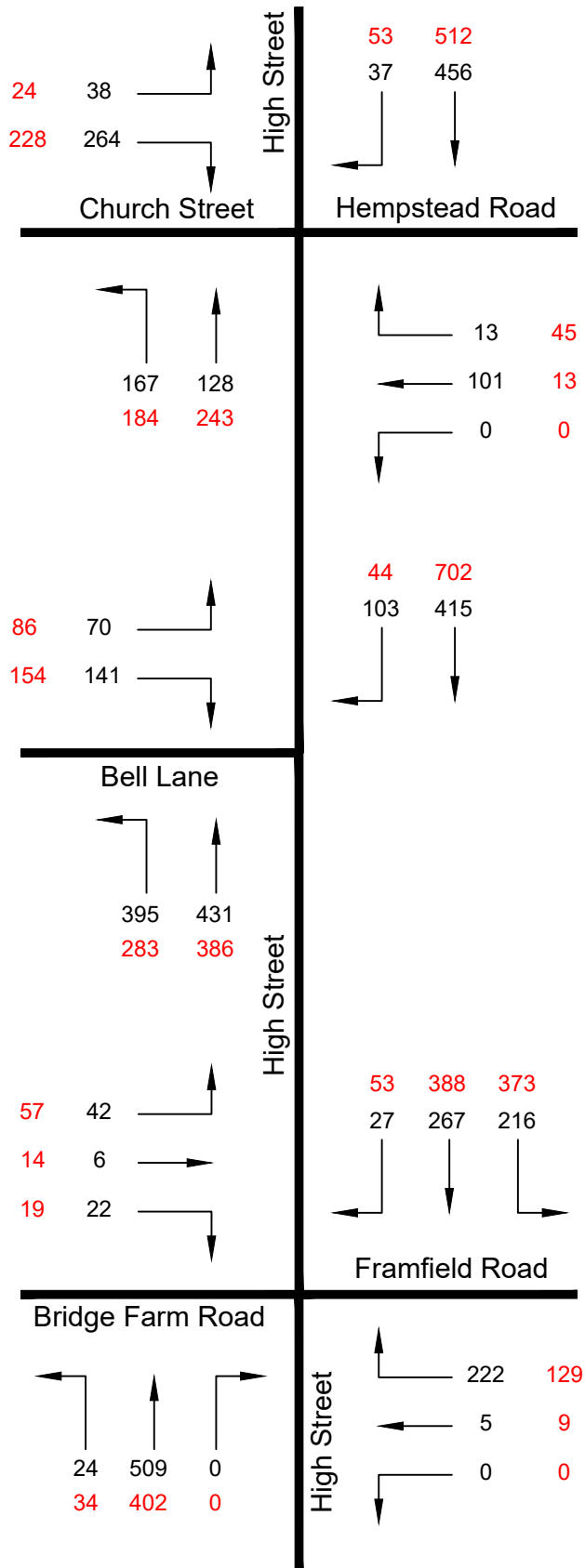
I look forward to hearing from you.

Kind Regards,

Matt Twinberrow BEng MCIHT
Associate Partner
Bellamy Roberts
Highway Transportation and Infrastructure Consultants
Clover House, Western Lane, Odiham, Hampshire, RG29 1TU
Tel: 01256 703355
Mob: 07545 116989

APPENDIX 2

AM
PM



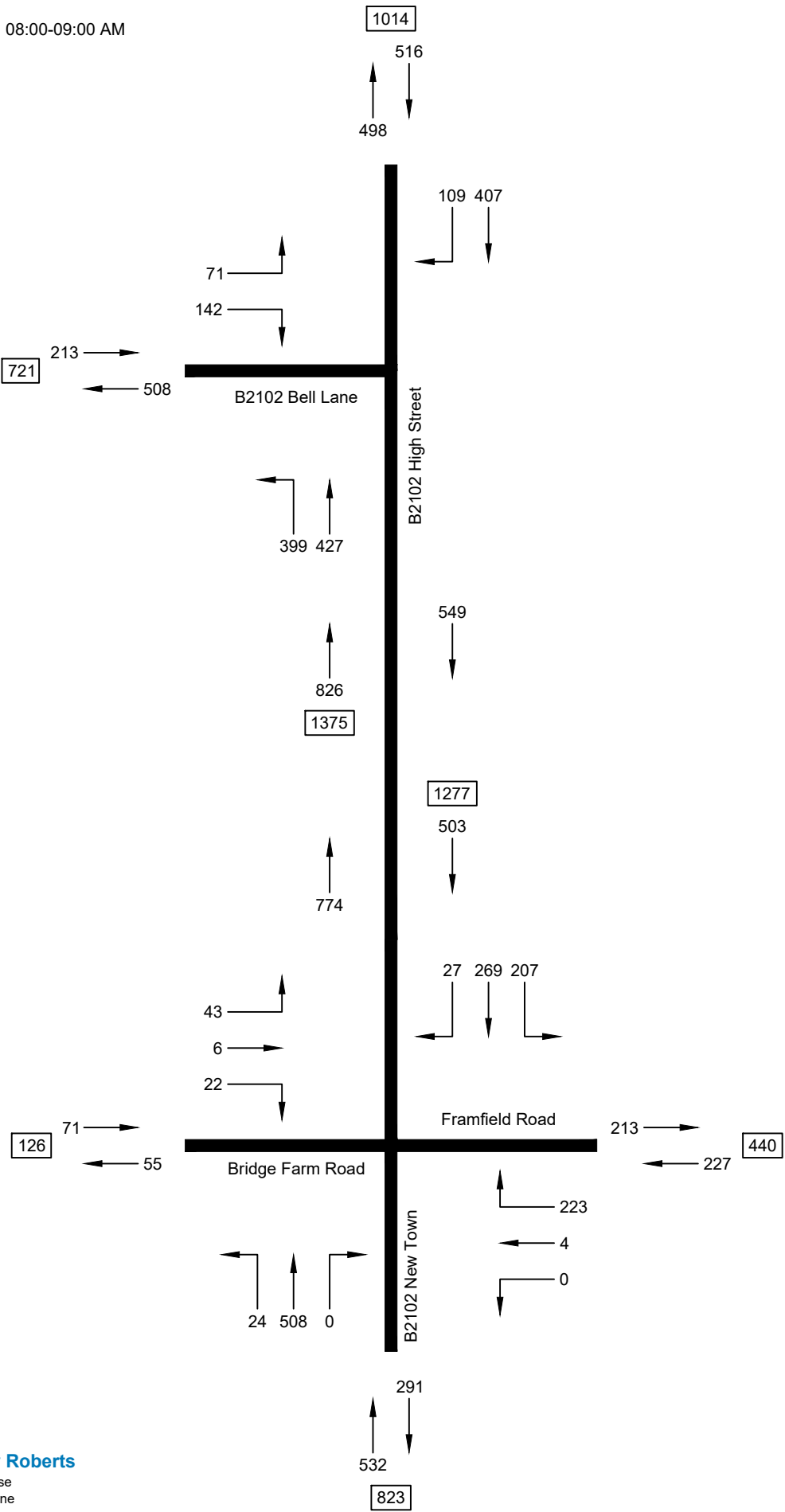
5330 / 432



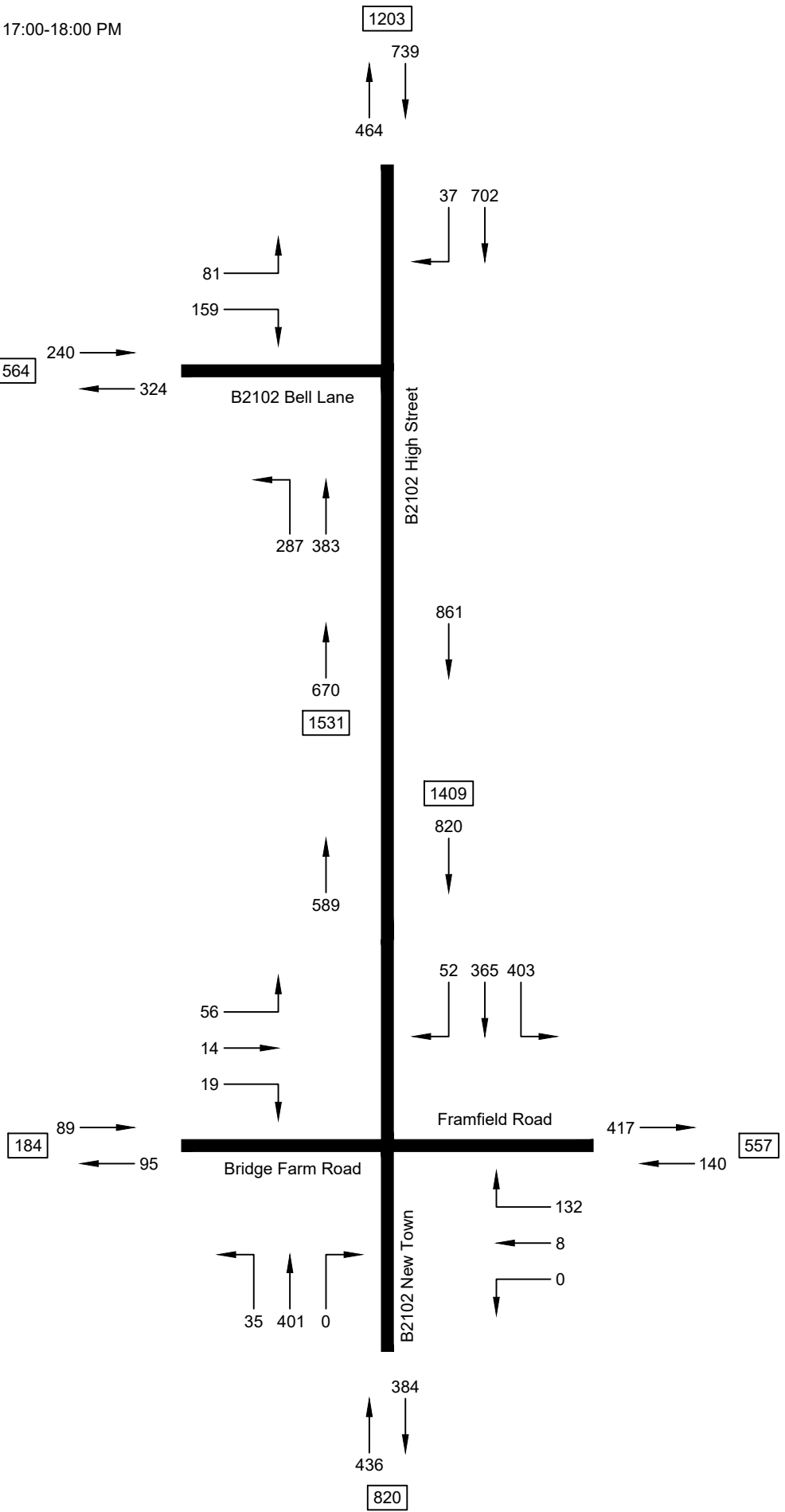
Bellamy Roberts
Clover House
Western Lane
Odiham
Hampshire, RG29 1TU
Tel: 01256 703355
Email: info@bellamyroberts.co.uk

Bird in Eye Hill, Uckfield
2039 Turning Movements (Scenario DM)

08:00-09:00 AM



17:00-18:00 PM



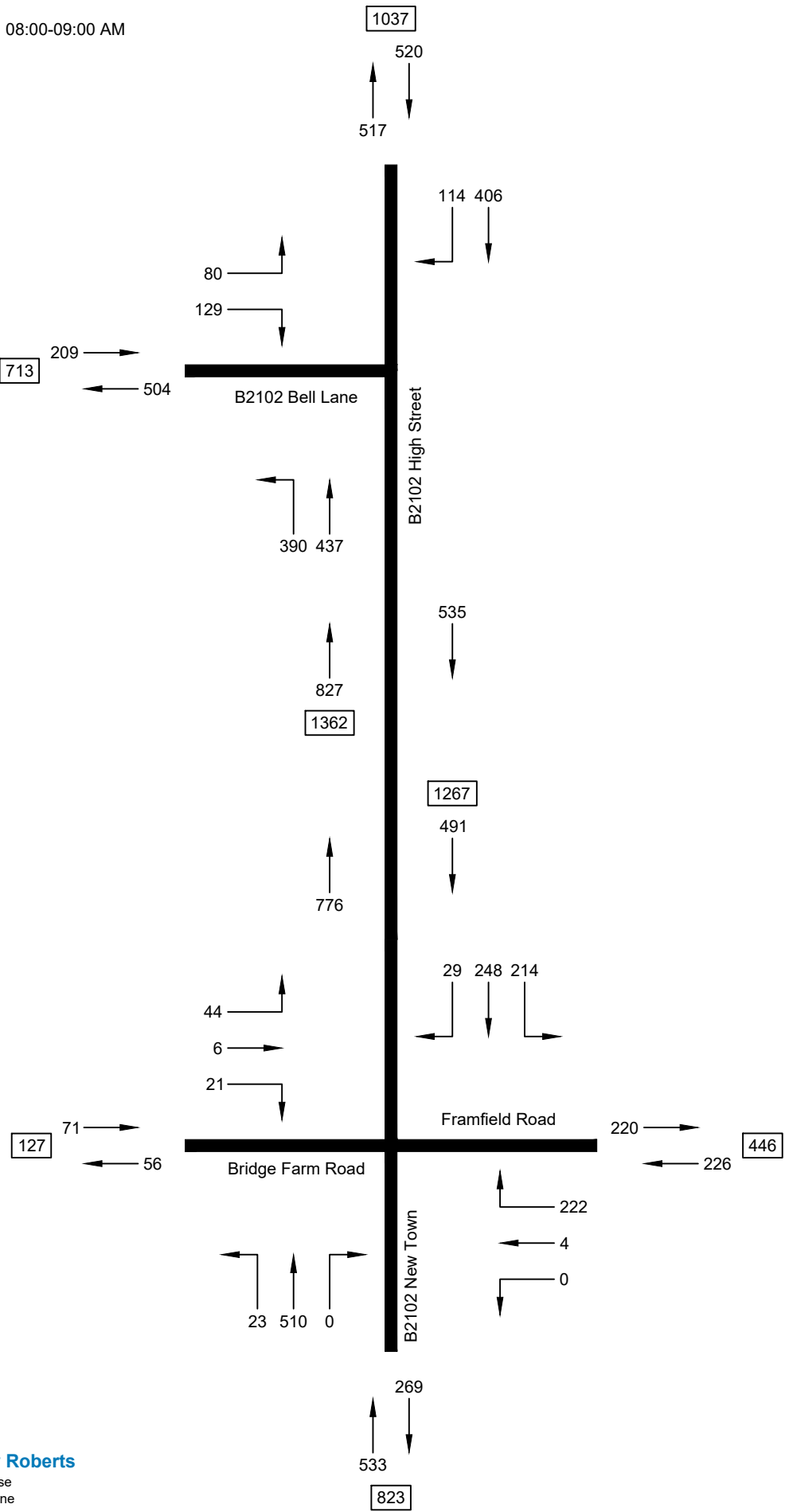
5330 / 429



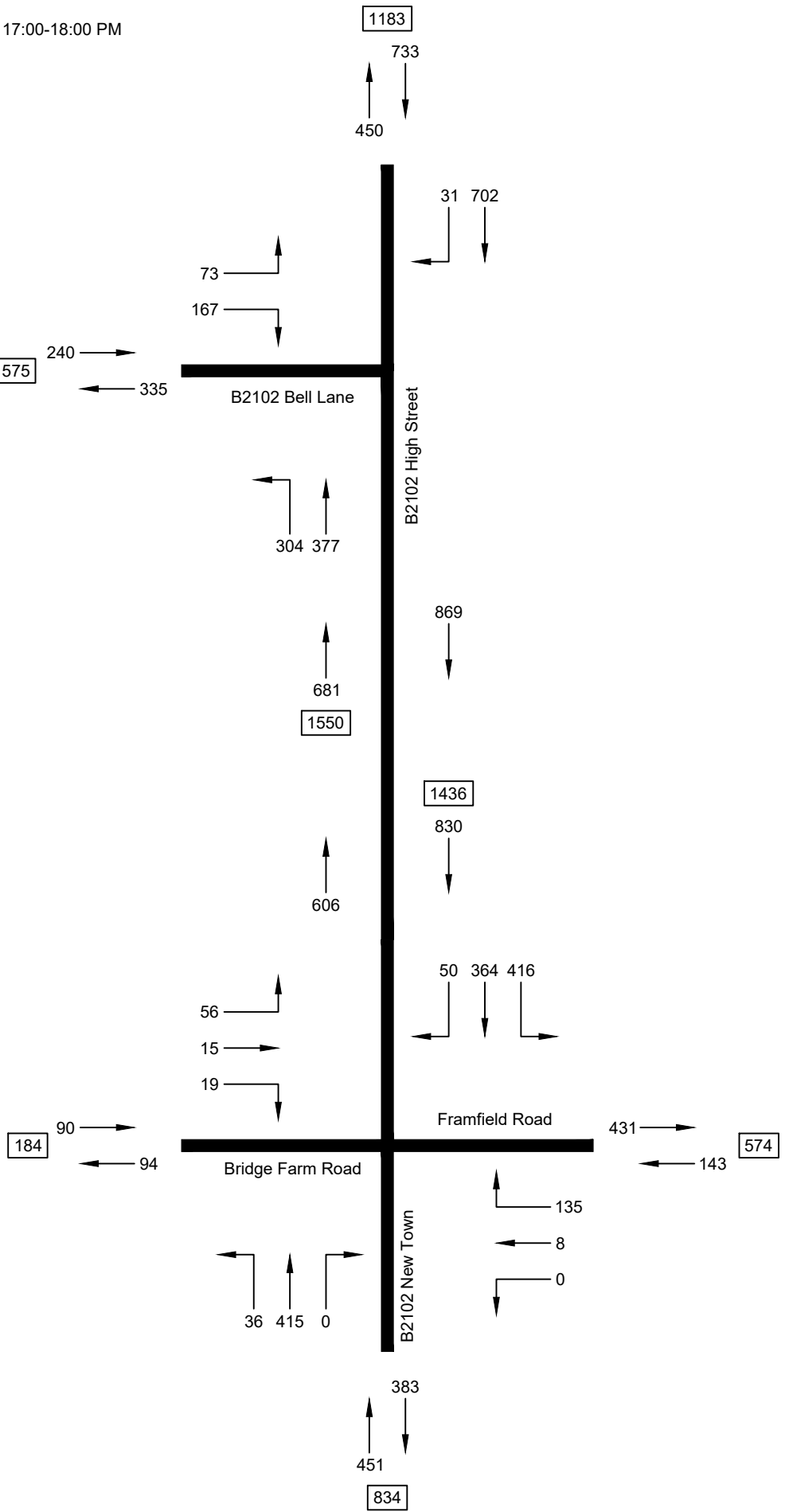
Bellamy Roberts
Clover House
Western Lane
Odiham
Hampshire, RG29 1TU
Tel: 01256 703355
Email: info@bellamyroberts.co.uk

Bird in Eye, Uckfield
DS2

08:00-09:00 AM



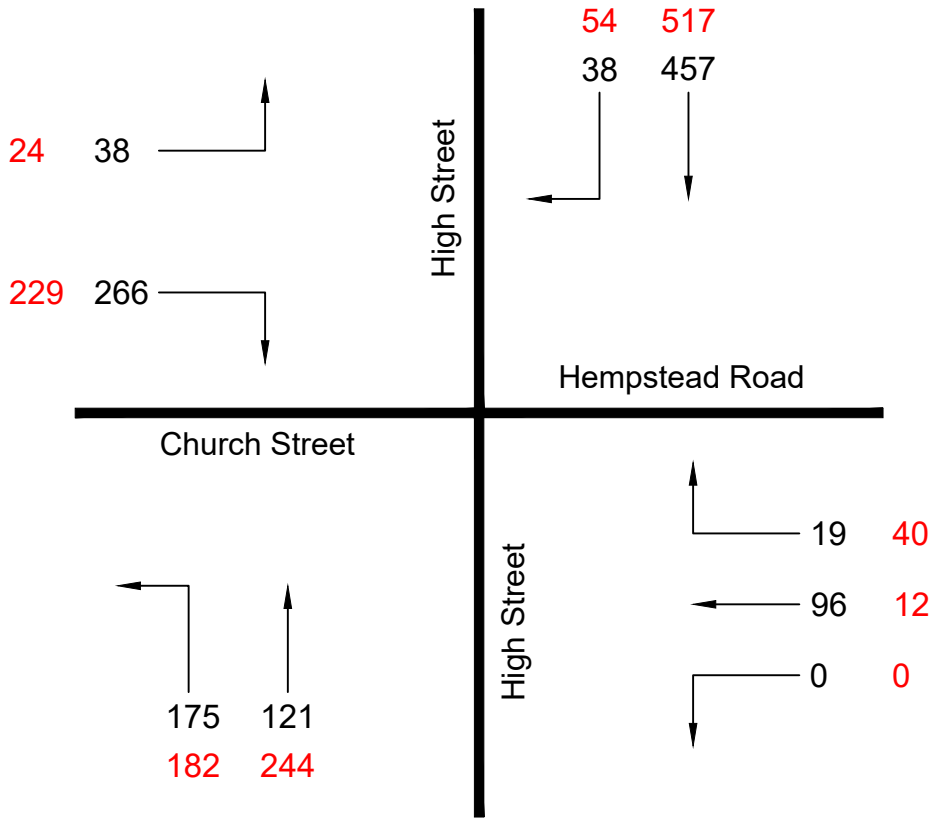
17:00-18:00 PM



5330 / 430

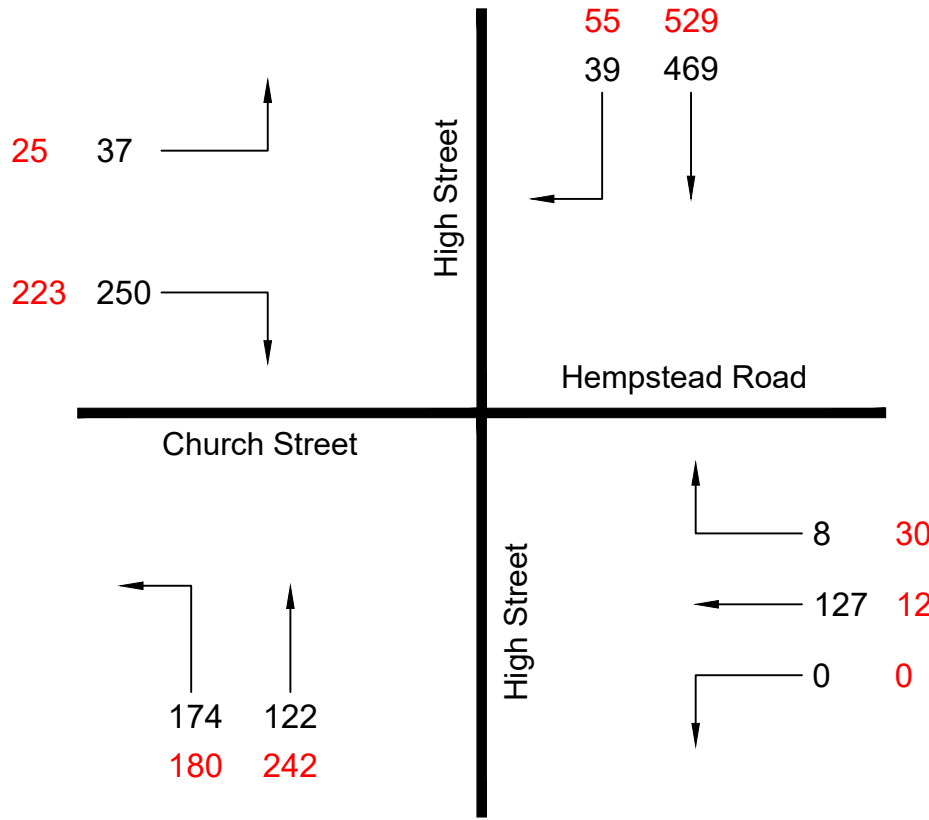
2039 Turning Movements
DS2 (BIES Only)

AM
PM



2039 Turning Movements
DS5 (All Devs)

AM
PM



APPENDIX 3

Basic Results Summary
Basic Results Summary

User and Project Details

Project:	Bird in Eye Farm, Uckfield
Title:	
Location:	
Site Ref(s):	5330
Additional detail:	
File name:	Uckfield Modelling - v2 - ESCC SATURN Outputs (inc Church Street).lsg3x
Author:	
Company:	Bellamy Roberts LLP
Address:	

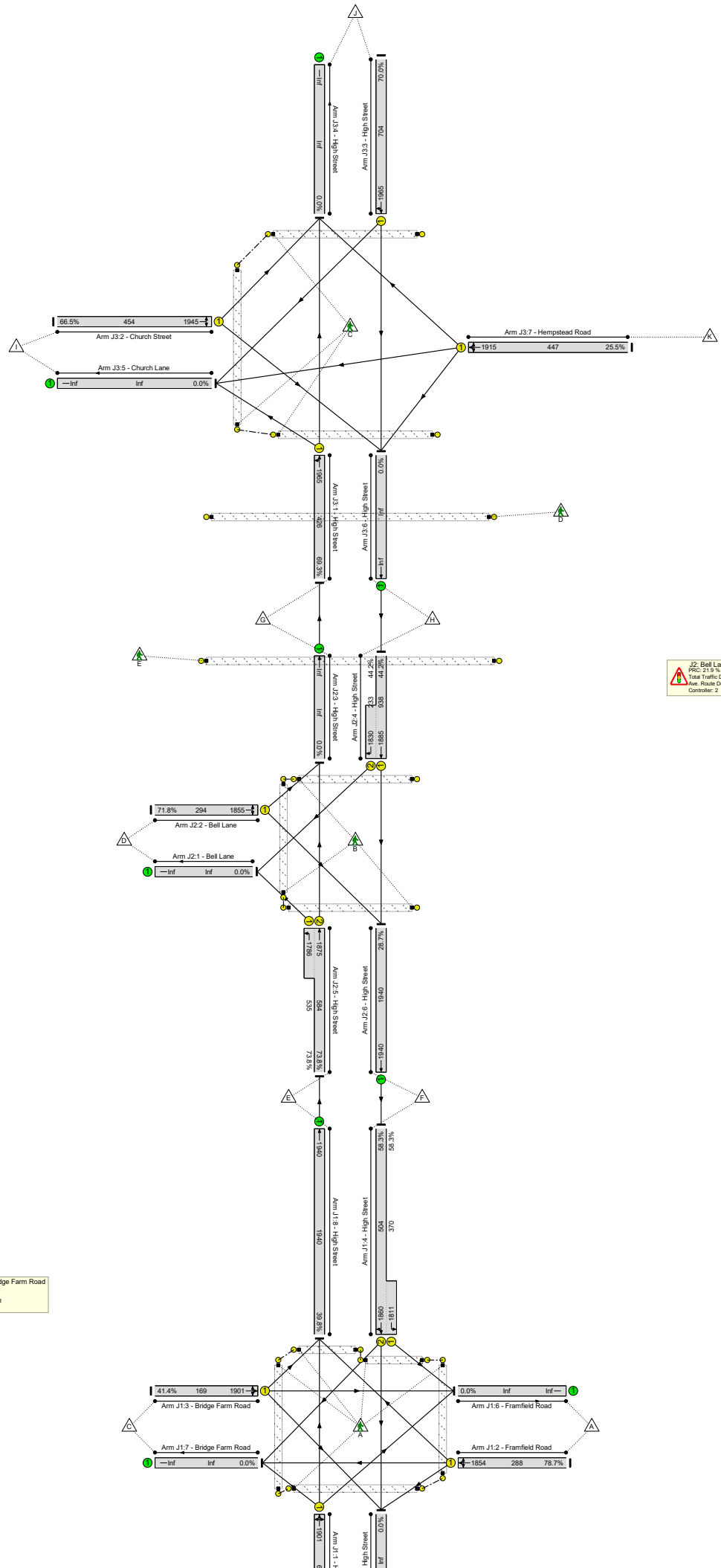
Basic Results Summary

Scenario 1: 'AM 2039 Base Year Traffic Flows DM' (FG5: 'AM Scenario DM - 2039 Base', Plan 1: 'Network Control Plan 1')

Network Layout Diagram

Basic Results Summary

J3: Church Lane/High Street
PRC: 28.5 %
Total Traffic Delay: 16.2 points
Ave. Route Delay Per Ped: 0.0 s/Ped
Controller: 3



J2: Bell Lane/High Street
PRC: 21.9 %
Total Traffic Delay: 11.7 points
Ave. Route Delay Per Ped: 0.0 s/Ped
Controller: 2

J1: High Street/Framfield Road/Bridge Farm Road
PRC: 10.8 %
Total Traffic Delay: 15.5 points
Ave. Route Delay Per Ped: 0.0 s/Ped
Controller: 1

Basic Results Summary

Network Results

Item	Lane Description	Lane Type	Full Phase	Arrow Phase	Num Greens	Total Green (s)	Arrow Green (s)	Demand Flow (pcu)	Sat Flow (pcu/Hr)	Capacity (pcu)	Deg Sat (%)	Turners In Gaps (pcu)	Turners When Unopposed (pcu)	Turners In Intergreen (pcu)	Total Delay (pcuHr)	Av. Delay Per PCU (s/pcu)	Mean Max Queue (pcu)
Network	-	-	-		-	-	-	-	-	-	81.4%	0	0	0	43.4	-	-
J1: High Street/Framfield Road/Bridge Farm Road	-	-	-		-	-	-	-	-	-	81.4%	0	0	0	15.5	-	-
1/1	High Street Right Left Ahead	U	C1:A		1	30	-	533	1901	655	81.4%	-	-	-	6.1	41.2	14.1
2/1	Framfield Road Left Ahead Right	U	C1:B		1	13	-	227	1854	288	78.7%	-	-	-	4.1	64.3	7.2
3/1	Bridge Farm Road Right Ahead Left	U	C1:D		1	7	-	70	1901	169	41.4%	-	-	-	1.1	56.9	2.0
4/2+4/1	High Street Ahead Left Right	U	C1:C C1:J	C1:K	1	30	0	510	1860:1811	504+370	58.3 : 58.3%	-	-	-	3.9	27.5	6.4
8/1	High Street Ahead	U	-		-	-	-	773	1940	1940	39.8%	-	-	-	0.3	1.5	0.3
Ped Link: P1	Unnamed Ped Link	-	C1:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C1:F		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C1:G		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C1:I		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P5	Unnamed Ped Link	-	C1:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
J2: Bell Lane/High Street	-	-	-		-	-	-	-	-	-	73.8%	0	0	0	11.7	-	-
2/1	Bell Lane Left Right	U	C2:B		1	18	-	211	1855	294	71.8%	-	-	-	4.0	69.1	7.9
4/1+4/2	High Street Right Ahead	U	C2:G	C2:F	2	66	7	518	1885:1830	938+233	44.2 : 44.2%	-	-	-	1.4	9.8	4.4

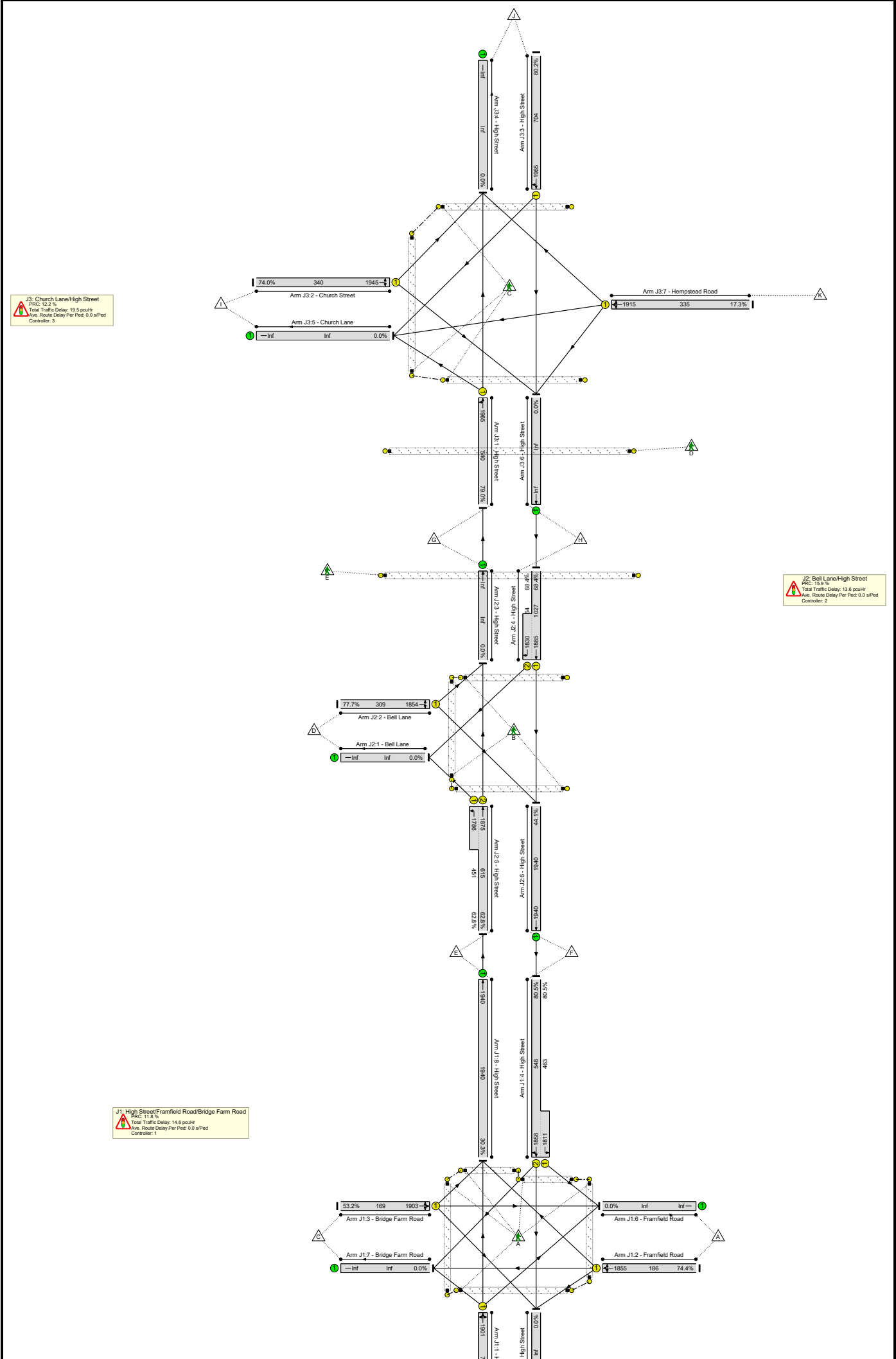
5/2+5/1	High Street Left Ahead	U	C2:A		1	58	-	826	1875:1786	584+535	73.8 : 73.8%	-	-	-	6.1	26.5	14.2
6/1	High Street Ahead	U	-		-	-	-	556	1940	1940	28.7%	-	-	-	0.2	1.3	0.2
Ped Link: P1	Unnamed Ped Link	-	C2:C		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C2:D		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C2:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C2:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
J3: Church Lane/High Street	-	-	-		-	-	-	-	-	-	70.0%	0	0	0	16.2	-	-
1/1	High Street Ahead Left	U	C3:A		1	25	-	295	1965	426	69.3%	-	-	-	4.7	56.9	10.1
2/1	Church Street Left Right	U	C3:B		1	27	-	302	1945	454	66.5%	-	-	-	4.5	53.5	10.0
3/1	High Street Right Ahead	U	C3:C		1	42	-	493	1965	704	70.0%	-	-	-	5.7	41.4	15.1
7/1	Hempstead Road Right Ahead Left	U	C3:D		1	27	-	114	1915	447	25.5%	-	-	-	1.4	42.9	3.2
Ped Link: P1	Unnamed Ped Link	-	C3:G		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C3:F		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C3:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C3:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
<div><div>C1</div><div>C2</div><div>C3</div></div> <div><div>PRC for Signalled Lanes (%):</div><div>PRC for Signalled Lanes (%):</div><div>PRC for Signalled Lanes (%):</div><div>PRC Over All Lanes (%):</div></div> <div><div>10.6</div><div>21.9</div><div>28.5</div><div>10.6</div></div> <div><div>Total Delay for Signalled Lanes (pcuHr):</div><div>Total Delay for Signalled Lanes (pcuHr):</div><div>Total Delay for Signalled Lanes (pcuHr):</div><div>Total Delay Over All Lanes(pcuHr):</div></div> <div><div>15.15</div><div>11.53</div><div>16.17</div><div>43.38</div></div> <div><div>Cycle Time (s):</div><div>Cycle Time (s):</div><div>Cycle Time (s):</div></div> <div><div>90</div><div>120</div><div>120</div></div>																	

Basic Results Summary

Scenario 2: 'PM 2039 Base Year Traffic Flows DM' (FG6: 'PM Scenario DM - 2039 Base', Plan 1: 'Network Control Plan 1')

Network Layout Diagram

Basic Results Summary



Basic Results Summary

Network Results

Item	Lane Description	Lane Type	Full Phase	Arrow Phase	Num Greens	Total Green (s)	Arrow Green (s)	Demand Flow (pcu)	Sat Flow (pcu/Hr)	Capacity (pcu)	Deg Sat (%)	Turners In Gaps (pcu)	Turners When Unopposed (pcu)	Turners In Intergreen (pcu)	Total Delay (pcuHr)	Av. Delay Per PCU (s/pcu)	Mean Max Queue (pcu)
Network	-	-	-		-	-	-	-	-	-	80.5%	0	0	0	47.6	-	-
J1: High Street/Framfield Road/Bridge Farm Road	-	-	-		-	-	-	-	-	-	80.5%	0	0	0	14.6	-	-
1/1	High Street Right Left Ahead	U	C1:A		1	35	-	436	1901	760	57.3%	-	-	-	3.2	26.5	9.1
2/1	Framfield Road Left Ahead Right	U	C1:B		1	8	-	138	1855	186	74.4%	-	-	-	2.9	75.2	4.7
3/1	Bridge Farm Road Right Ahead Left	U	C1:D		1	7	-	90	1903	169	53.2%	-	-	-	1.5	61.6	2.7
4/2+4/1	High Street Ahead Left Right	U	C1:C C1:J	C1:K	1	35	0	814	1858:1811	548+463	80.5 : 80.5%	-	-	-	6.8	29.9	11.9
8/1	High Street Ahead	U	-		-	-	-	588	1940	1940	30.3%	-	-	-	0.2	1.3	0.2
Ped Link: P1	Unnamed Ped Link	-	C1:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C1:F		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C1:G		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C1:I		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P5	Unnamed Ped Link	-	C1:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
J2: Bell Lane/High Street	-	-	-		-	-	-	-	-	-	77.7%	0	0	0	13.6	-	-
2/1	Bell Lane Left Right	U	C2:B		1	19	-	240	1854	309	77.7%	-	-	-	4.9	72.8	9.3
4/1+4/2	High Street Right Ahead	U	C2:G	C2:F	2	65	7	746	1885:1830	1027+64	68.4 : 68.4%	-	-	-	3.8	18.3	13.3

Basic Results Summary

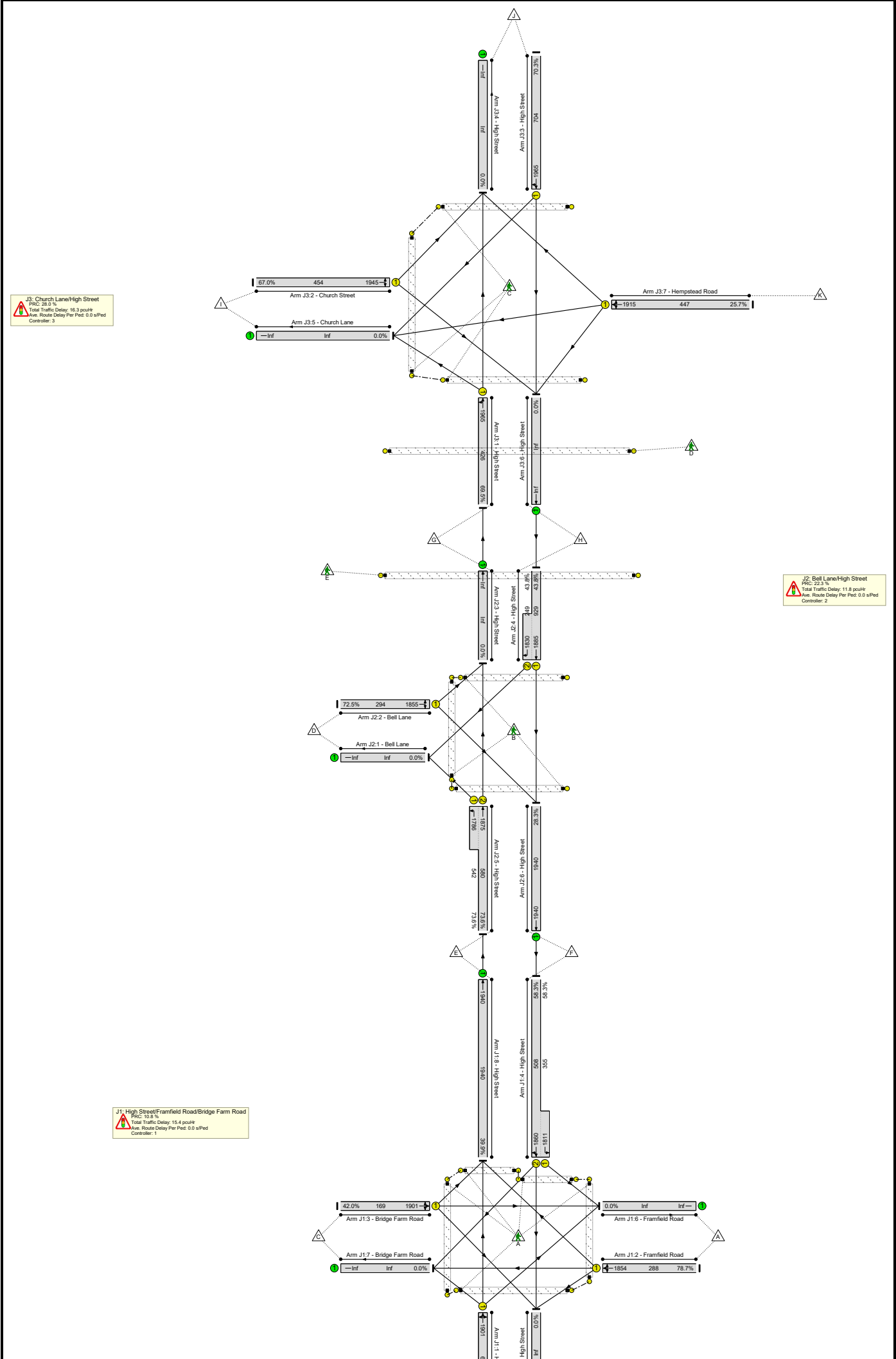
5/2+5/1	High Street Left Ahead	U	C2:A		1	57	-	669	1875:1786	615+451	62.8 : 62.8%	-	-	-	4.5	24.3	10.2
6/1	High Street Ahead	U	-		-	-	-	856	1940	1940	44.1%	-	-	-	0.4	1.7	0.4
Ped Link: P1	Unnamed Ped Link	-	C2:C		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C2:D		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C2:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C2:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
J3: Church Lane/High Street	-	-	-		-	-	-	-	-	-	80.2%	0	0	0	19.5	-	-
1/1	High Street Ahead Left	U	C3:A		1	32	-	427	1965	540	79.0%	-	-	-	6.6	55.7	15.0
2/1	Church Street Left Right	U	C3:B		1	20	-	252	1945	340	74.0%	-	-	-	4.7	66.7	9.3
3/1	High Street Right Ahead	U	C3:C		1	42	-	565	1965	704	80.2%	-	-	-	7.4	47.3	18.9
7/1	Hempstead Road Right Ahead Left	U	C3:D		1	20	-	58	1915	335	17.3%	-	-	-	0.8	48.6	1.7
Ped Link: P1	Unnamed Ped Link	-	C3:G		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C3:F		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C3:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C3:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
C1 C2 C3																	
PRC for Signalled Lanes (%):						11.8	Total Delay for Signalled Lanes (pcuHr):						14.40	Cycle Time (s): 90			
PRC for Signalled Lanes (%):						15.9	Total Delay for Signalled Lanes (pcuHr):						13.16	Cycle Time (s): 120			
PRC for Signalled Lanes (%):						12.2	Total Delay for Signalled Lanes (pcuHr):						19.47	Cycle Time (s): 120			
PRC Over All Lanes (%):						11.8	Total Delay Over All Lanes(pcuHr):						47.65				

Basic Results Summary

Scenario 3: 'AM 2039 Design Year Traffic Flows DS2' (FG1: 'AM Scenario DS2 - BIES Only', Plan 1: 'Network Control Plan 1')

Network Layout Diagram

Basic Results Summary



Basic Results Summary

Network Results

Item	Lane Description	Lane Type	Full Phase	Arrow Phase	Num Greens	Total Green (s)	Arrow Green (s)	Demand Flow (pcu)	Sat Flow (pcu/Hr)	Capacity (pcu)	Deg Sat (%)	Turners In Gaps (pcu)	Turners When Unopposed (pcu)	Turners In Intergreen (pcu)	Total Delay (pcuHr)	Av. Delay Per PCU (s/pcu)	Mean Max Queue (pcu)
Network	-	-	-		-	-	-	-	-	-	81.2%	0	0	0	43.5	-	-
J1: High Street/Framfield Road/Bridge Farm Road	-	-	-		-	-	-	-	-	-	81.2%	0	0	0	15.4	-	-
1/1	High Street Right Left Ahead	U	C1:A		1	30	-	532	1901	655	81.2%	-	-	-	6.1	41.0	14.1
2/1	Framfield Road Left Ahead Right	U	C1:B		1	13	-	227	1854	288	78.7%	-	-	-	4.1	64.3	7.2
3/1	Bridge Farm Road Right Ahead Left	U	C1:D		1	7	-	71	1901	169	42.0%	-	-	-	1.1	57.1	2.0
4/2+4/1	High Street Ahead Left Right	U	C1:C C1:J	C1:K	1	30	0	503	1860:1811	508+355	58.3 : 58.3%	-	-	-	3.8	27.5	6.5
8/1	High Street Ahead	U	-		-	-	-	774	1940	1940	39.9%	-	-	-	0.3	1.5	0.3
Ped Link: P1	Unnamed Ped Link	-	C1:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C1:F		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C1:G		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C1:I		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P5	Unnamed Ped Link	-	C1:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
J2: Bell Lane/High Street	-	-	-		-	-	-	-	-	-	73.6%	0	0	0	11.8	-	-
2/1	Bell Lane Left Right	U	C2:B		1	18	-	213	1855	294	72.5%	-	-	-	4.1	69.6	8.0
4/1+4/2	High Street Right Ahead	U	C2:G	C2:F	2	66	7	516	1885:1830	929+249	43.8 : 43.8%	-	-	-	1.4	9.7	4.3

Basic Results Summary

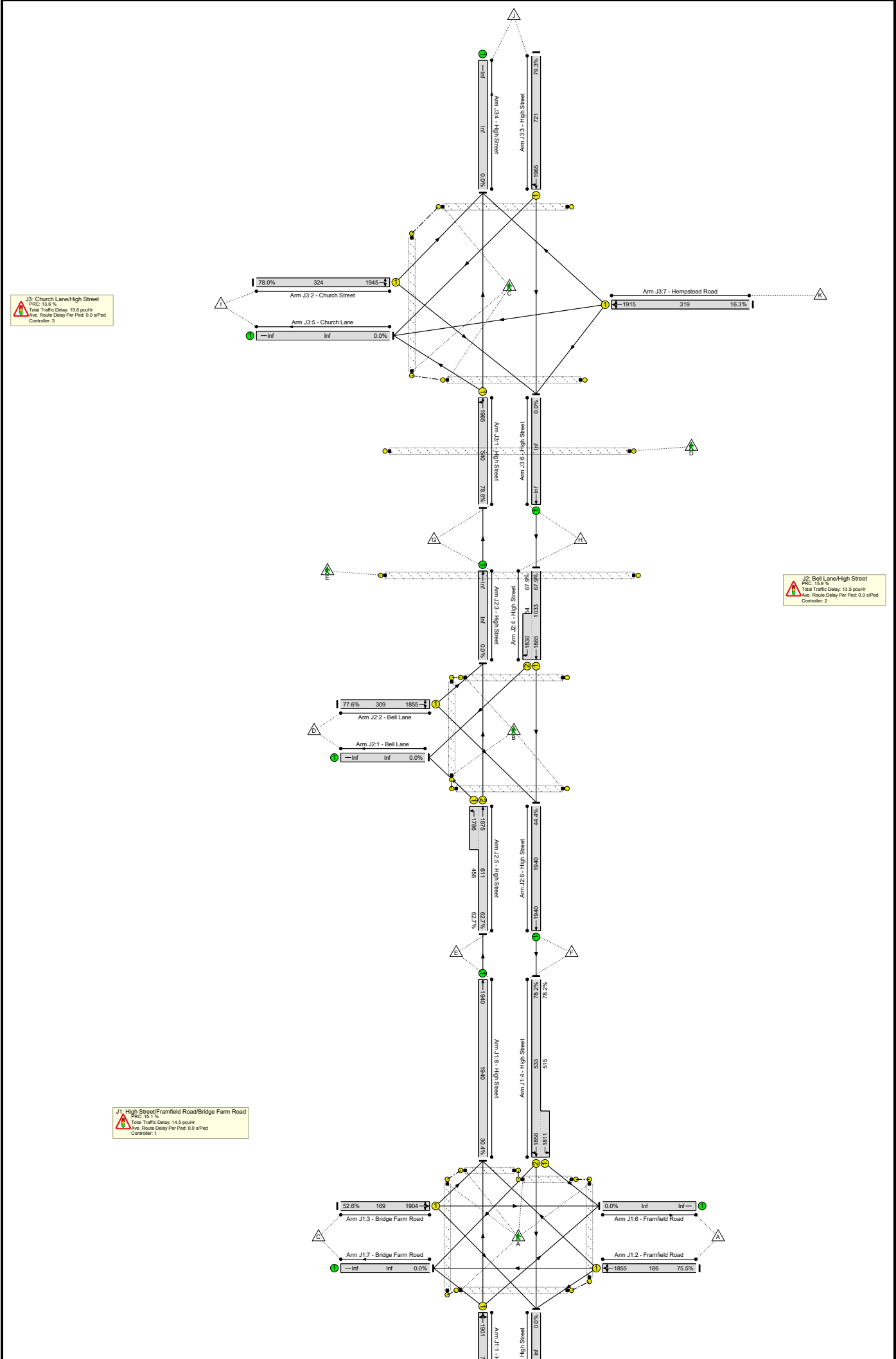
5/2+5/1	High Street Left Ahead	U	C2:A		1	58	-	826	1875:1786	580+542	73.6 : 73.6%	-	-	-	6.0	26.3	13.8
6/1	High Street Ahead	U	-		-	-	-	549	1940	1940	28.3%	-	-	-	0.2	1.3	0.2
Ped Link: P1	Unnamed Ped Link	-	C2:C		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C2:D		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C2:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C2:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
J3: Church Lane/High Street	-	-	-		-	-	-	-	-	-	70.3%	0	0	0	16.3	-	-
1/1	High Street Ahead Left	U	C3:A		1	25	-	296	1965	426	69.5%	-	-	-	4.7	57.0	10.2
2/1	Church Street Left Right	U	C3:B		1	27	-	304	1945	454	67.0%	-	-	-	4.5	53.7	10.2
3/1	High Street Right Ahead	U	C3:C		1	42	-	495	1965	704	70.3%	-	-	-	5.7	41.5	15.2
7/1	Hempstead Road Right Ahead Left	U	C3:D		1	27	-	115	1915	447	25.7%	-	-	-	1.4	42.9	3.3
Ped Link: P1	Unnamed Ped Link	-	C3:G		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C3:F		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C3:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C3:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
C1 C2 C3																	
PRC for Signalled Lanes (%):						10.8	Total Delay for Signalled Lanes (pcuHr):						15.09		Cycle Time (s): 90		
PRC for Signalled Lanes (%):						22.3	Total Delay for Signalled Lanes (pcuHr):						11.56		Cycle Time (s): 120		
PRC for Signalled Lanes (%):						28.0	Total Delay for Signalled Lanes (pcuHr):						16.30		Cycle Time (s): 120		
PRC Over All Lanes (%):						10.8	Total Delay Over All Lanes(pcuHr):						43.47				

Basic Results Summary

Scenario 4: 'PM 2039 Design Year Traffic Flows DS2' (FG2: 'PM Scenario DS2 - BIES Only', Plan 1: 'Network Control Plan 1')

Network Layout Diagram

Basic Results Summary



Basic Results Summary

Network Results

Item	Lane Description	Lane Type	Full Phase	Arrow Phase	Num Greens	Total Green (s)	Arrow Green (s)	Demand Flow (pcu)	Sat Flow (pcu/Hr)	Capacity (pcu)	Deg Sat (%)	Turners In Gaps (pcu)	Turners When Unopposed (pcu)	Turners In Intergreen (pcu)	Total Delay (pcuHr)	Av. Delay Per PCU (s/pcu)	Mean Max Queue (pcu)
Network	-	-	-		-	-	-	-	-	-	79.3%	0	0	0	47.6	-	-
J1: High Street/Framfield Road/Bridge Farm Road	-	-	-		-	-	-	-	-	-	78.2%	0	0	0	14.5	-	-
1/1	High Street Right Left Ahead	U	C1:A		1	35	-	436	1901	760	57.3%	-	-	-	3.2	26.5	9.1
2/1	Framfield Road Left Ahead Right	U	C1:B		1	8	-	140	1855	186	75.5%	-	-	-	3.0	76.6	4.8
3/1	Bridge Farm Road Right Ahead Left	U	C1:D		1	7	-	89	1904	169	52.6%	-	-	-	1.5	61.3	2.7
4/2+4/1	High Street Ahead Left Right	U	C1:C C1:J	C1:K	1	35	0	820	1858:1811	533+515	78.2 : 78.2%	-	-	-	6.5	28.6	10.3
8/1	High Street Ahead	U	-		-	-	-	589	1940	1940	30.4%	-	-	-	0.2	1.3	0.2
Ped Link: P1	Unnamed Ped Link	-	C1:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C1:F		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C1:G		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C1:I		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P5	Unnamed Ped Link	-	C1:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
J2: Bell Lane/High Street	-	-	-		-	-	-	-	-	-	77.6%	0	0	0	13.5	-	-
2/1	Bell Lane Left Right	U	C2:B		1	19	-	240	1855	309	77.6%	-	-	-	4.8	72.7	9.3
4/1+4/2	High Street Right Ahead	U	C2:G	C2:F	2	65	7	739	1885:1830	1033+54	67.9 : 67.9%	-	-	-	3.8	18.3	13.3

Basic Results Summary

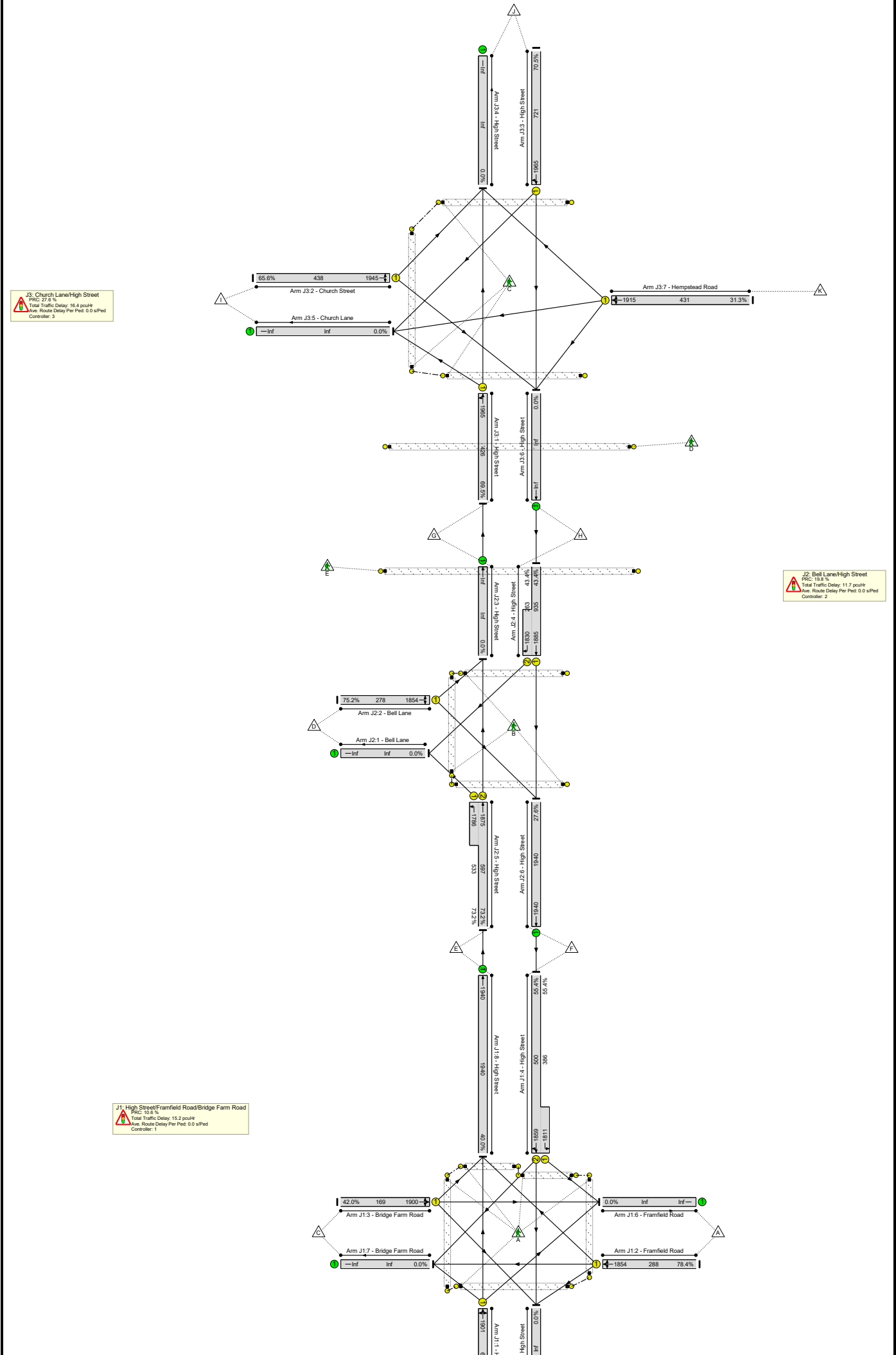
Basic Results Summary																	
5/2+5/1	High Street Left Ahead	U	C2:A		1	57	-	670	1875:1786	611+458	62.7 : 62.7%	-	-	-	4.5	24.3	10.0
6/1	High Street Ahead	U	-		-	-	-	861	1940	1940	44.4%	-	-	-	0.4	1.7	0.4
Ped Link: P1	Unnamed Ped Link	-	C2:C		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C2:D		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C2:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C2:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
J3: Church Lane/High Street	-	-	-		-	-	-	-	-	-	79.3%	0	0	0	19.6	-	-
1/1	High Street Ahead Left	U	C3:A		1	32	-	426	1965	540	78.8%	-	-	-	6.6	55.5	14.9
2/1	Church Street Left Right	U	C3:B		1	19	-	253	1945	324	78.0%	-	-	-	5.1	72.0	9.7
3/1	High Street Right Ahead	U	C3:C		1	43	-	571	1965	721	79.3%	-	-	-	7.2	45.7	18.8
7/1	Hempstead Road Right Ahead Left	U	C3:D		1	19	-	52	1915	319	16.3%	-	-	-	0.7	49.6	1.6
Ped Link: P1	Unnamed Ped Link	-	C3:G		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C3:F		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C3:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C3:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
<div> <div>C1</div> <div>C2</div> <div>C3</div> </div> <div> <div>PRC for Signalled Lanes (%): 15.1</div> <div>PRC for Signalled Lanes (%): 15.9</div> <div>PRC for Signalled Lanes (%): 13.6</div> <div>PRC Over All Lanes (%): 13.6</div> </div> <div> <div>Total Delay for Signalled Lanes (pcuHr): 14.23</div> <div>Total Delay for Signalled Lanes (pcuHr): 13.12</div> <div>Total Delay for Signalled Lanes (pcuHr): 19.59</div> <div>Total Delay Over All Lanes(pcuHr): 47.56</div> </div> <div> <div>Cycle Time (s): 90</div> <div>Cycle Time (s): 120</div> <div>Cycle Time (s): 120</div> </div>																	

Basic Results Summary

Scenario 5: 'AM 2039 Design Year Traffic Flows DS5' (FG3: 'AM Scenario DS5 - All Devs', Plan 1: 'Network Control Plan 1')

Network Layout Diagram

Basic Results Summary



Basic Results Summary

Network Results

Item	Lane Description	Lane Type	Full Phase	Arrow Phase	Num Greens	Total Green (s)	Arrow Green (s)	Demand Flow (pcu)	Sat Flow (pcu/Hr)	Capacity (pcu)	Deg Sat (%)	Turners In Gaps (pcu)	Turners When Unopposed (pcu)	Turners In Intergreen (pcu)	Total Delay (pcuHr)	Av. Delay Per PCU (s/pcu)	Mean Max Queue (pcu)
Network	-	-	-		-	-	-	-	-	-	81.4%	0	0	0	43.4	-	-
J1: High Street/Framfield Road/Bridge Farm Road	-	-	-		-	-	-	-	-	-	81.4%	0	0	0	15.2	-	-
1/1	High Street Right Left Ahead	U	C1:A		1	30	-	533	1901	655	81.4%	-	-	-	6.1	41.2	14.1
2/1	Framfield Road Left Ahead Right	U	C1:B		1	13	-	226	1854	288	78.4%	-	-	-	4.0	63.9	7.1
3/1	Bridge Farm Road Right Ahead Left	U	C1:D		1	7	-	71	1900	169	42.0%	-	-	-	1.1	57.1	2.0
4/2+4/1	High Street Ahead Left Right	U	C1:C C1:J	C1:K	1	30	0	491	1859:1811	500+386	55.4 : 55.4%	-	-	-	3.7	26.9	5.9
8/1	High Street Ahead	U	-		-	-	-	776	1940	1940	40.0%	-	-	-	0.3	1.5	0.3
Ped Link: P1	Unnamed Ped Link	-	C1:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C1:F		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C1:G		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C1:I		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P5	Unnamed Ped Link	-	C1:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
J2: Bell Lane/High Street	-	-	-		-	-	-	-	-	-	75.2%	0	0	0	11.7	-	-
2/1	Bell Lane Left Right	U	C2:B		1	17	-	209	1854	278	75.2%	-	-	-	4.3	73.9	8.1
4/1+4/2	High Street Right Ahead	U	C2:G	C2:F	2	67	7	520	1885:1830	935+263	43.4 : 43.4%	-	-	-	1.3	9.3	4.2

Basic Results Summary

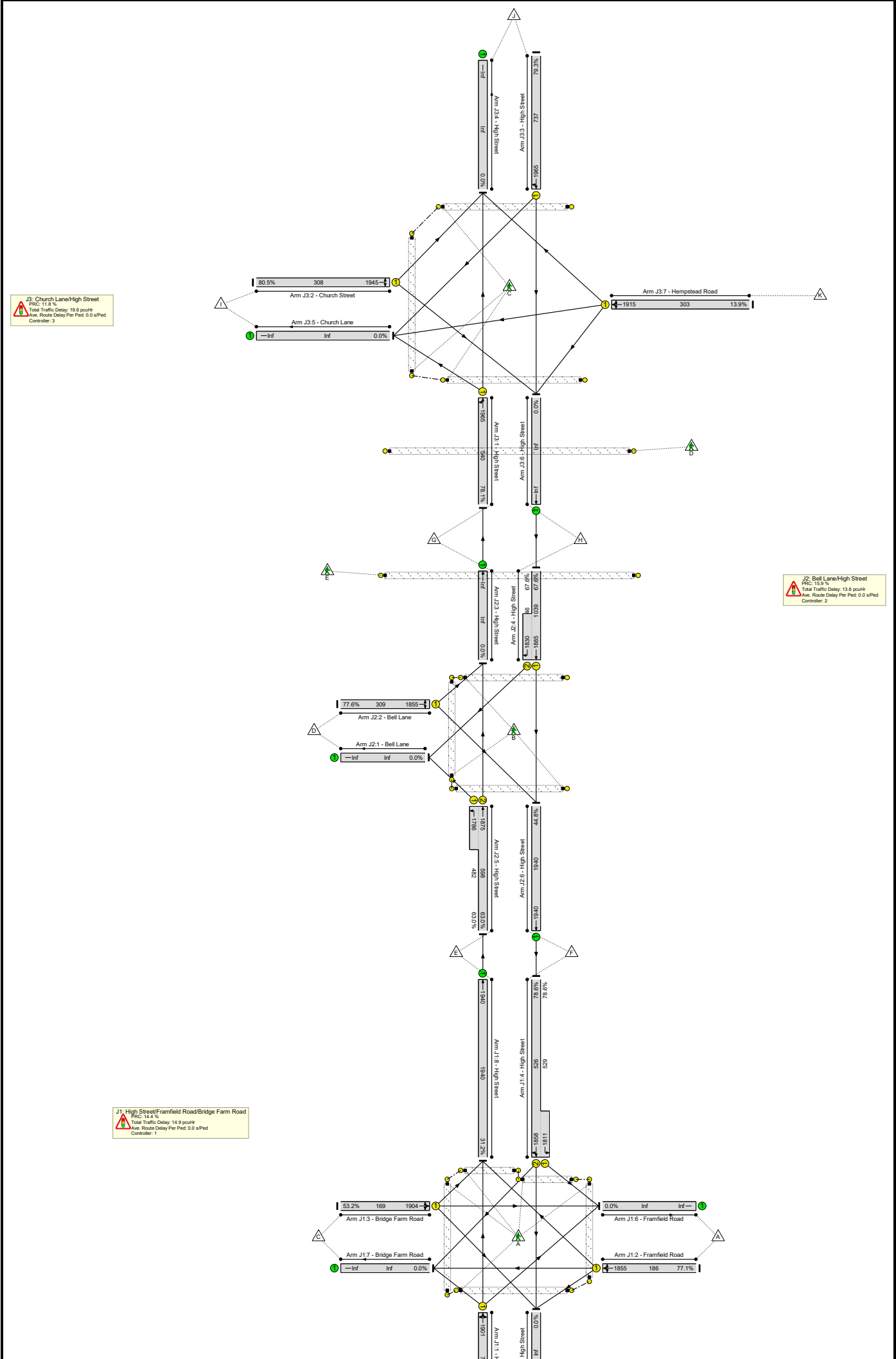
5/2+5/1	High Street Left Ahead	U	C2:A		1	59	-	827	1875:1786	597+533	73.2 : 73.2%	-	-	-	5.9	25.7	13.9
6/1	High Street Ahead	U	-		-	-	-	535	1940	1940	27.6%	-	-	-	0.2	1.3	0.2
Ped Link: P1	Unnamed Ped Link	-	C2:C		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C2:D		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C2:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C2:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
J3: Church Lane/High Street	-	-	-		-	-	-	-	-	-	70.5%	0	0	0	16.4	-	-
1/1	High Street Ahead Left	U	C3:A		1	25	-	296	1965	426	69.5%	-	-	-	4.7	57.0	10.2
2/1	Church Street Left Right	U	C3:B		1	26	-	287	1945	438	65.6%	-	-	-	4.3	54.1	9.6
3/1	High Street Right Ahead	U	C3:C		1	43	-	508	1965	721	70.5%	-	-	-	5.8	40.8	15.6
7/1	Hempstead Road Right Ahead Left	U	C3:D		1	26	-	135	1915	431	31.3%	-	-	-	1.7	44.8	4.0
Ped Link: P1	Unnamed Ped Link	-	C3:G		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C3:F		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C3:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C3:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
<div>C1PRC for Signalled Lanes (%):10.6Total Delay for Signalled Lanes (pcuHr):14.90Cycle Time (s):90</div> <div>C2PRC for Signalled Lanes (%):19.8Total Delay for Signalled Lanes (pcuHr):11.53Cycle Time (s):120</div> <div>C3PRC for Signalled Lanes (%):27.6Total Delay for Signalled Lanes (pcuHr):16.44Cycle Time (s):120</div> <div>PRC Over All Lanes (%):10.6Total Delay Over All Lanes(pcuHr):43.40</div>																	

Basic Results Summary

Scenario 6: 'PM 2039 Design Year Traffic Flows DS5' (FG4: 'PM Scenario DS5 - All Devs', Plan 1: 'Network Control Plan 1')

Network Layout Diagram

Basic Results Summary



Basic Results Summary

Network Results

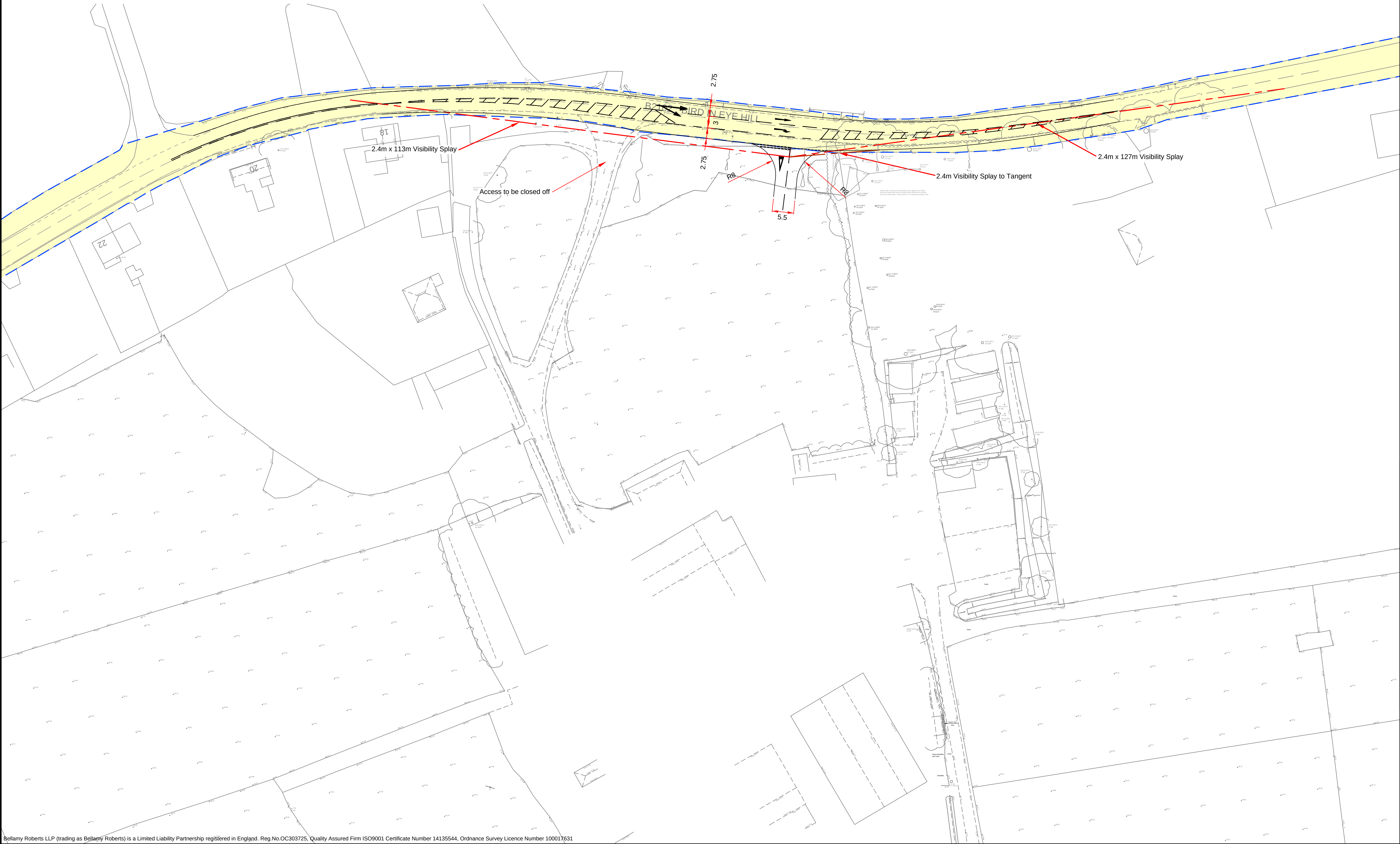
Item	Lane Description	Lane Type	Full Phase	Arrow Phase	Num Greens	Total Green (s)	Arrow Green (s)	Demand Flow (pcu)	Sat Flow (pcu/Hr)	Capacity (pcu)	Deg Sat (%)	Turners In Gaps (pcu)	Turners When Unopposed (pcu)	Turners In Intergreen (pcu)	Total Delay (pcuHr)	Av. Delay Per PCU (s/pcu)	Mean Max Queue (pcu)
Network	-	-	-		-	-	-	-	-	-	80.5%	0	0	0	48.1	-	-
J1: High Street/Framfield Road/Bridge Farm Road	-	-	-		-	-	-	-	-	-	78.6%	0	0	0	14.9	-	-
1/1	High Street Right Left Ahead	U	C1:A		1	35	-	451	1901	760	59.3%	-	-	-	3.4	27.0	9.5
2/1	Framfield Road Left Ahead Right	U	C1:B		1	8	-	143	1855	186	77.1%	-	-	-	3.1	79.0	5.0
3/1	Bridge Farm Road Right Ahead Left	U	C1:D		1	7	-	90	1904	169	53.2%	-	-	-	1.5	61.6	2.7
4/2+4/1	High Street Ahead Left Right	U	C1:C C1:J	C1:K	1	35	0	830	1858:1811	526+529	78.6 : 78.6%	-	-	-	6.6	28.8	10.3
8/1	High Street Ahead	U	-		-	-	-	606	1940	1940	31.2%	-	-	-	0.2	1.3	0.2
Ped Link: P1	Unnamed Ped Link	-	C1:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C1:F		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C1:G		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C1:I		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P5	Unnamed Ped Link	-	C1:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
J2: Bell Lane/High Street	-	-	-		-	-	-	-	-	-	77.6%	0	0	0	13.6	-	-
2/1	Bell Lane Left Right	U	C2:B		1	19	-	240	1855	309	77.6%	-	-	-	4.8	72.7	9.3
4/1+4/2	High Street Right Ahead	U	C2:G	C2:F	2	65	7	733	1885:1830	1039+46	67.6 : 67.6%	-	-	-	3.7	18.3	13.2

5/2+5/1	High Street Left Ahead	U	C2:A		1	57	-	681	1875:1786	598+482	63.0 : 63.0%	-	-	-	4.6	24.3	9.9
6/1	High Street Ahead	U	-		-	-	-	869	1940	1940	44.8%	-	-	-	0.4	1.7	0.4
Ped Link: P1	Unnamed Ped Link	-	C2:C		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C2:D		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C2:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C2:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
J3: Church Lane/High Street	-	-	-		-	-	-	-	-	-	80.5%	0	0	0	19.6	-	-
1/1	High Street Ahead Left	U	C3:A		1	32	-	422	1965	540	78.1%	-	-	-	6.4	54.9	14.6
2/1	Church Street Left Right	U	C3:B		1	18	-	248	1945	308	80.5%	-	-	-	5.3	76.9	9.9
3/1	High Street Right Ahead	U	C3:C		1	44	-	584	1965	737	79.3%	-	-	-	7.3	44.8	19.1
7/1	Hempstead Road Right Ahead Left	U	C3:D		1	18	-	42	1915	303	13.9%	-	-	-	0.6	50.4	1.3
Ped Link: P1	Unnamed Ped Link	-	C3:G		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P2	Unnamed Ped Link	-	C3:F		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P3	Unnamed Ped Link	-	C3:E		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
Ped Link: P4	Unnamed Ped Link	-	C3:H		1	7	-	0	-	0	0.0%	-	-	-	-	-	-
C1		PRC for Signalled Lanes (%):		14.4		Total Delay for Signalled Lanes (pcuHr):		14.70		Cycle Time (s):		90					
C2		PRC for Signalled Lanes (%):		15.9		Total Delay for Signalled Lanes (pcuHr):		13.16		Cycle Time (s):		120					
C3		PRC for Signalled Lanes (%):		11.8		Total Delay for Signalled Lanes (pcuHr):		19.60		Cycle Time (s):		120					
		PRC Over All Lanes (%):		11.8		Total Delay Over All Lanes(pcuHr):		48.10									

Hearing Statement

APPENDIX 3

Proposed Site Access



Notes

- Do not scale this drawing
- Highway Boundary
- Site Boundary

K	Design Revised	MB	MT
J	Design Revised	MB	MT
H	Design Revised	JCB	MT
G	Taper revised to 1:25 on RTL	JCB	MT
F	AMENDMENT NOTE	JCB	MT
E	AMENDMENT NOTE	JCB	MT
D	AMENDMENT NOTE	JCB	MT
C	AMENDMENT NOTE	ARM	MT
B	AMENDMENT NOTE	ARM	MT
A	AMENDMENT NOTE	ARM	MT
REVISION	AMENDMENT	DRN	CHK



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

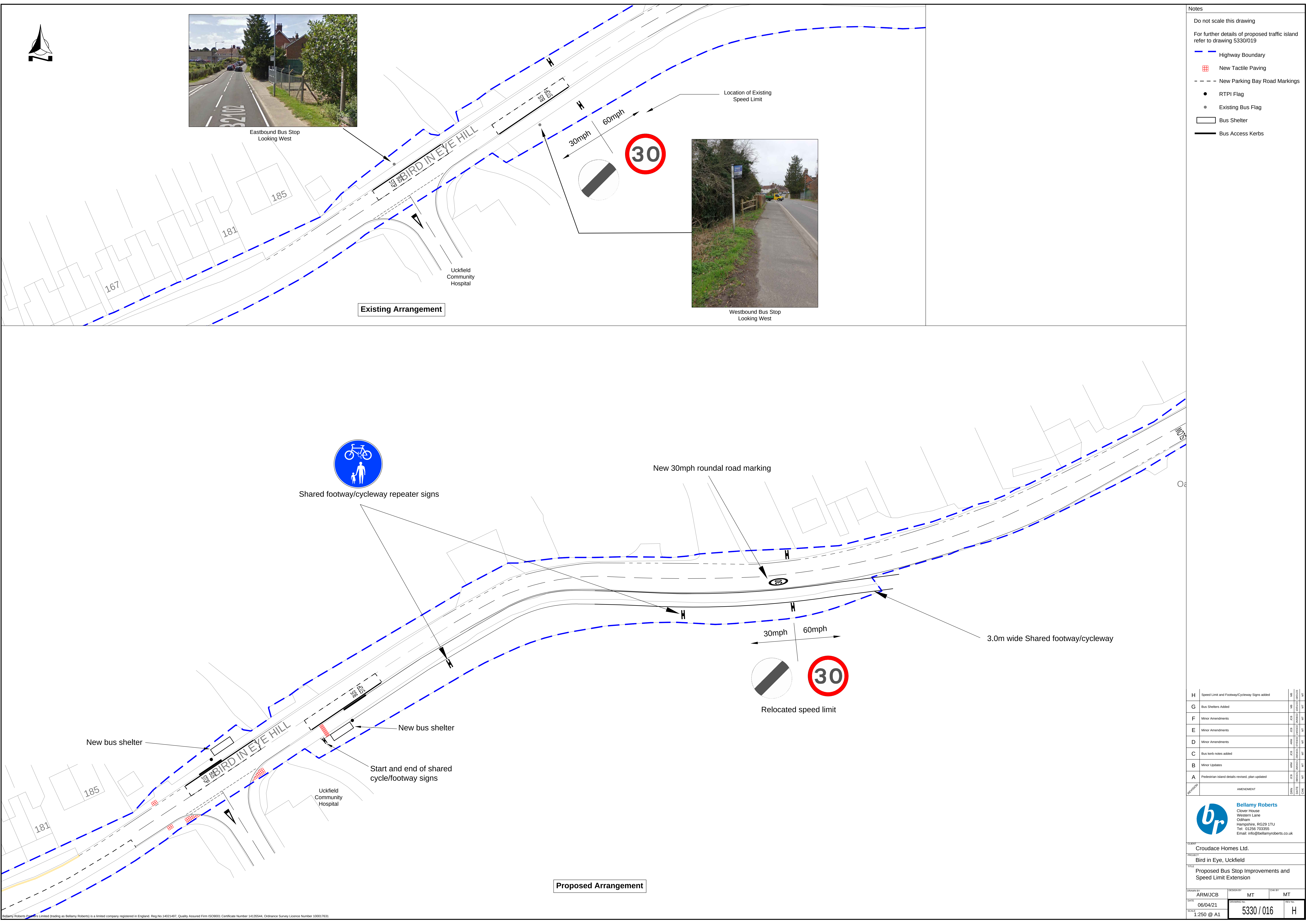
TITLE
Proposed Access - Right Turn Lane

DRAWN BY ARM	DESIGN BY ARM	CHK BY MT
DATE 02/02/22	DRAWING NO. 5330 / 021	REV NO. K
SCALE 1:500 @ A1		

Hearing Statement

APPENDIX 4

Bus Stop Improvements & Speed Limit Extension



Do not scale this drawing

Highway Boundary

 New Tactile Paving

- - - - New Parking Bay Road Markings

- RTPI Flac

- Existing Bus Flag

☐ Bus Shelter

———— Bus Access Kerbs

Bus Access Kerbs:

		Bellamy Roberts Clover House Western Lane Colham Hampshire, RG29 1TU Tel: 01256 703056 Email: info@bellamyroberts.co.uk	
CLIENT			
Croudace Homes Ltd.			
PROJECT			
Bird in Eye, Uckfield			
TITLE			
Proposed Bus Stop Improvements and Speed Limit Extension			
DRAWN BY		DESIGNED BY	CHK BY
ARM/JCB		MT	MT
DATE		DATE	
06/04/21			
SCALE		DRAWING NO.	REV. NO.
1:250 @ A1		5330 / 016	H



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

CLIENT
Croudace Homes Ltd

PROJECT
Bird in Eye, Uckfield

TITLE Proposed Bus Stop Improvements and Speed Limit Extension

DRAWN BY	DESIGN BY	CHK BY
----------	-----------	--------

ARM/JCB	MT	MT
DATE	PERIOD/UNIT: AAA	PERI/A

06/04/21 5220 / 016

1:250 @ A1

Hearing Statement

APPENDIX 5

WCHAR



Land at Bird in Eye Farm
South of Bird in Eye Hill
Uckfield

**WALKING, CYCLING
HORSE-RIDING
ASSESSMENT
AND REVIEW (WCHAR)**

On behalf of
Croudace Homes Limited

croudacehomes

Planning Reference: WD/2021/2198/MAO

MT/5330/WCHAR.3
January 2023

Experience and expertise working together



Document Control Sheet

Client: Croudace Homes
Tupwood Lane
Caterham
Surrey
CR3 6XQ

Report Issue No.	Status	Date	Author	Authorised
MT/5530/WCHAR.1	First Draft	1 st November 2022	MT	MT
MT/5530/WCHAR.2	Second Draft	10 th November 2022	MT	MT
MT/5530/WCHAR.3	Final	19 th January 2023	MT	MT

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Any such party relies on the report at their own risk.



CONTENTS

1.0	SCHEME DETAILS	1
2.0	WCHAR ASSESSMENT	4
3.0	USER OPPORTUNITIES	25
4.0	WALKING, CYCLING AND HORSE-RIDING ASSESSMENT TEAM STATEMENT	26

APPENDICES

Appendix 1	Site Location Plan (5330/301 Rev. A)
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1.0 SCHEME DETAILS

1.1 This is WCHAR has assessed the walking and cycling routes to the key facilities in the local area, which includes Harlands Community Primary School, Manor Primary School, Uckfield College, Uckfield town centre, bus stops and Uckfield railway station. Given the nature of the proposed development, it is not considered that horse riding will represent a viable means of travel for future residents of the proposed development. Therefore, only walking and cycling have been considered as a means of transport for this audit.

1.2 In the absence of guidance from East Sussex County Council, it has been prepared in accordance with the relevant sections of the Design Manual for Roads and Bridges (DMRB) document GG142 (formally HD 42/17).

Scheme Client/Developer

Name: Mark Bentley
Organisation: Croudace Homes
Email: mark.bentley@croudace.co.uk
Tel: 01883 335312

Lead Assessor

Name: Matt Twinberrow/Mozes Baji
Organisation: Bellamy Roberts
Email: info@bellamyroberts.co.uk
Tel: 01256 703355

Design Team Leader

Name: Daniel Easton
Organisation: Bellamy Roberts
Email: info@bellamyroberts.co.uk
Tel: 01256 703355

1.3 Scheme Location and Description of Highway Works

The application site is situated on land to the south of Bird in Eye Hill, Uckfield. For reference, a site location plan is provided at **Appendix 1**, an extract of which is provided at Figure 1.



Figure 1: Site Location Plan

- 1.4** The site is accessed from Bird in Eye Hill (B2102) which is a two-way single carriageway road linking Uckfield to the west, with the village of Cross in Hand to the east, via Framfield. In the vicinity of the application site, Bird in Eye Hill is 'de-restricted' and subject to the national speed limit for single carriageway roads of 60mph. The speed limit changes to 30mph approximately 450m west of the proposed site access. To the west of the site, Bird in Eye Hill becomes Framfield Road which in turn meets the High Street and Bridge Farm Road at signalised cross-roads. To the north of this, the High Street meets Bell Lane at a signalised T-junction.
- 1.5** The existing site is accessed via a simple priority T-junction from the southern side of Bird in Eye Hill. The proposal will relocate this access approximately 30m to the east to serve the proposed development. In addition to providing access to the existing farm, access is also provided to two residential properties. The relocated site access will serve the farm and existing properties.

- 1.6** The Bird in Eye Hill carriageway in the vicinity of the proposed site access is approximately 5.5m wide and allows for two-way, free flowing traffic (ref. MfS figure 7.1). A footway is present along the southern side of Bird in Eye Hill and provides a route from the north-western corner of the application site to the centre of Uckfield.

WCHAR Study Area

- 1.7** The GG142 guidance advises that Table 2.2.1 should be used to determine whether a large or small highway scheme process is applied. For ease of reference, Table 2.2.1 of GG142 has been provided at Table 1, below.

Table 1: Scheme Size Definitions

Scheme Size	Description
Large Highway Scheme	Highway schemes comprising new road construction (including new motorways), significant changes to an existing all-purpose trunk road or significant changes to an urban environment consisting of both the trunk road network and local highway network. In addition, any scheme aimed principally at providing for pedestrians, cyclists or pedestrians.
Small Highway Scheme	Highway schemes comprising minor changes to an existing all-purpose trunk road, or changes to existing motorway or trunk road junctions that affect the local highway network in a rural area.

- 1.8** With reference to Table 1, the scheme can be considered a small highway scheme in accordance with GG142.
- 1.9** This WCHAR has assessed the walking and cycling routes to the key facilities in the local area, which includes Harlands Community Primary School, Manor Primary School, Uckfield College, Uckfield town centre, bus stops and Uckfield railway station. Horse riding will not represent a viable means of travel for future residents of the proposed development and so has been discounted from this audit.

2.0 WCHAR ASSESSMENT

Assessment of Walking, Cycling and Horse-Riding Policies and Strategies *National Planning Policy Framework (July 2021)*

2.1 The National Planning Policy Framework (NPPF) sets out the Governments planning policies for England and how these should be applied. It provides a framework within which locally prepared plans for housing and other developments can be produced.

2.2 Paragraph 104 states:

“Transport issues should be considered from the earliest stages of plan-making and development proposals, so that:

- a) the potential impacts of development on transport networks can be addressed;*
- b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;*
- c) opportunities to promote walking, cycling and public transport use are identified and pursued;*
- d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and*
- e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes and contribute to making high quality places”.*

2.3 Under the heading of ‘Considering Development Proposals’, paragraph 110 sets out the four key transport requirements:

“In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
- b) safe and suitable access to the site can be achieved for all users;*

- c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code 46; and*
- d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.”*

2.4 Paragraph 112 then states that within the context of applications for development should:

- “a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;*
- b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;*
- c) 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;*
- d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and*
- e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.”*

Wealden Core Strategy Local Plan (February 2013)

2.5 The Core Strategy is the over-arching planning policy document for the Wealden District Area and sets out the Council's vision for the future development of the area, over the period up to 2027.

2.6 With regards to reducing the need to travel by car, policy SP07 states the following:

“We will encourage reduction of the need to travel by car by concentrating development where it can most closely relate to public transport opportunities, improving the offer of our towns in terms of retail, leisure and

recreation and by making it easier to travel by more sustainable modes of transport. We want to see noticeable improvements in journey quality for those people making trips on foot, bicycle or by public transport”.

2.7 With regards to Uckfield, paragraph 6.7 states the following:

“Uckfield benefits from a rail link to London, and it is intended to continue to safeguard the potential extension to Lewes where it could connect to another part of the national network...A centrally located bus station, adjacent to the railway station, provides a transport hub with a wide range of services to neighbouring towns and villages”.

2.8 With regards to traffic congestion within the centre of Uckfield, paragraph 6.6 states the following:

“There is significant traffic congestion in the town centre at the junction of the B2102/Lower High Street and at the Bell Lane roundabout. The Highway Authority is currently modelling design solutions for delivery of a traffic management scheme in the town centre aimed at addressing these issues”.

Adopted Wealden Local Plan (1998)

2.9 As of September 2007, a number of policies in the Wealden Local Plan were saved by approval of the Secretary of State.

2.10 Saved policy TR3 states the following:

“Planning applications for new developments will be permitted where the following criteria are met:

- (1) the proposed development does not create or perpetuate unacceptable traffic conditions;
- (2) a satisfactory means of access (vehicular, cycle and pedestrian) is provided to meet Local Planning and Highway Authority standards;
- (3) where appropriate the provision of suitable public transport facilities”.

2.11 With regards to pedestrian routes, policy TR13 states the following:

“The Council will seek to secure the provision of safe and convenient pedestrian routes in new developments, which should link to the existing footpath network where appropriate”.

2.12 Paragraph 17.22 states the following:

“In the town centre, some congestion occurs along the High Street and Bell Farm Road, particularly at peak times. However, since the by-pass opened, the town centre has benefitted from the removal of through traffic in particular heavy goods vehicles”.

Collision Data

2.13 To determine whether there is an existing accident or safety problem with the local highway network, which may be exacerbated by the proposed development; personal injury accident data (PIA) has been reviewed (ref. Crash Map) for the three year period 2019 – 2021. A summary of the recorded collisions on the local highway network in the vicinity of the site is provided at Figure 2 (the application site is denoted by the red boundary).

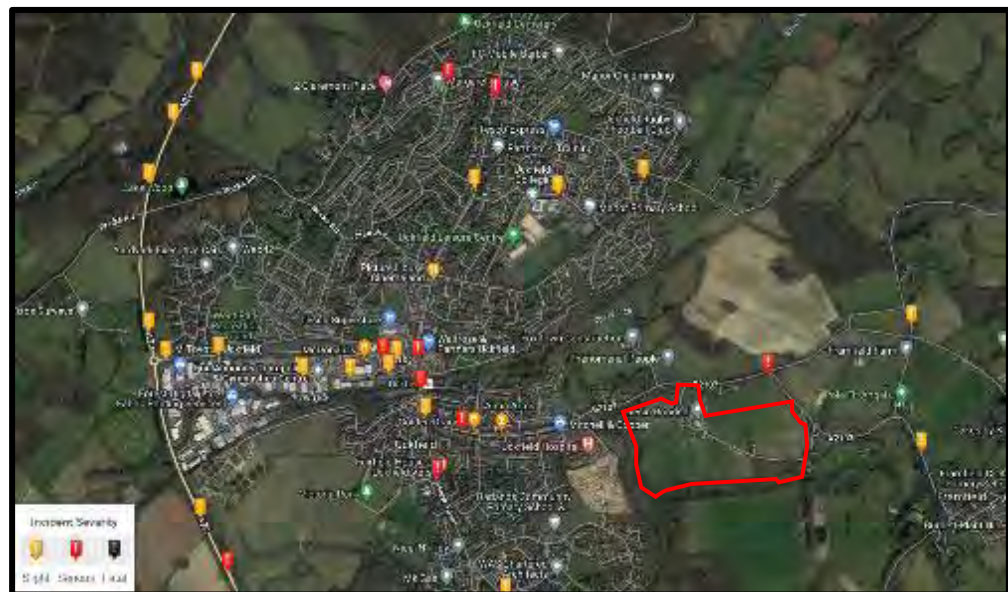


Figure 2: Summary of Collision Data

2.14 The data in Figure 2 can be broken down as follows:

- B2102/Sandy Lane junction - 2
- Framfield Road - 1
- B2102 High Street - 4
- Downsview Crescent - 1

2.15 There is no evidence within the collision data to suggest that there are any inherent safety problems within the local highway network and there have been no

accidents recorded close to the application site on Bird in Eye Hill. Given the number of movements accommodated on the local highway network, collisions are inevitable. Nevertheless, the data does not reveal any patterns or clusters in the results nor does it reveal there to be any inherent safety issue on the local highway network that would be exacerbated by the proposed development.

Multi-Modal Transport Services and Interchange Information

Bus Services

2.16 Bus stops are located on both sides of Bird in Eye Hill, approximately 115m west of the proposed pedestrian/cycle access to the site, close to the hospital access road. From here, access is gained to the following services:

- Route 231 – Compass Travel service between Uckfield Bus Station and Etchingham;
- Route 262 – A community bus service providing a Saturday only service between Hartfield and Heathfield; and
- Route 318 and 331 – School bus services to/from Ringmer King's Academy and Uckfield Community College, respectively.

2.17 Further bus services are available from Uckfield Bus Station, which is located within the centre of Uckfield and a walking distance of approximately 1.3km from the proposed pedestrian/cycle access to the site.

2.18 The proposed development will improve these existing services

Rail Services

2.19 Uckfield railway station is located approximately 970m walking distance from the application site. The station is the southern terminus of the Oxted branch line and provides direct services to London Bridge. All train services are operated by Southern.

2.20 The station typically provides one train per hour to London Bridge on weekdays and Saturdays. On Sundays, this is reduced to an hourly shuttle to Oxted. The station provides significant cycle parking provision with 20 secure and covered cycle parking spaces within its car park, and a further 24 covered spaces located opposite the railway station, on the western side of the High Street.

Site Visit

2.21

The site visit was conducted in March 2021 and January 2023 and comprised a walking assessment of the walking and cycling routes from the application site to key facilities in the local area. This included the following:

- Harlands Community Primary School;
- Manor Primary School;
- Uckfield College;
- Uckfield town centre;
- Uckfield railway station;
- Bus stops; and
- Local employment facilities.

2.22

The WCHAR Audit has identified a number of key routes and some alternative routes from the application site to the facilities listed above. These are set out in Figure 3.

2.23

Route 1 is identified in red, Route 2 in blue, and Route 3 in yellow. The application site is shaded orange. The route to/from Harlands Community Primary School will be via the new residential development known as Harlands Park, which is currently under construction. The future estate roads at the Mallard Drive development are provided in green. Alternative routes between Framfield Road and High Street via Keld Avenue and Alexandra Road are in pink.

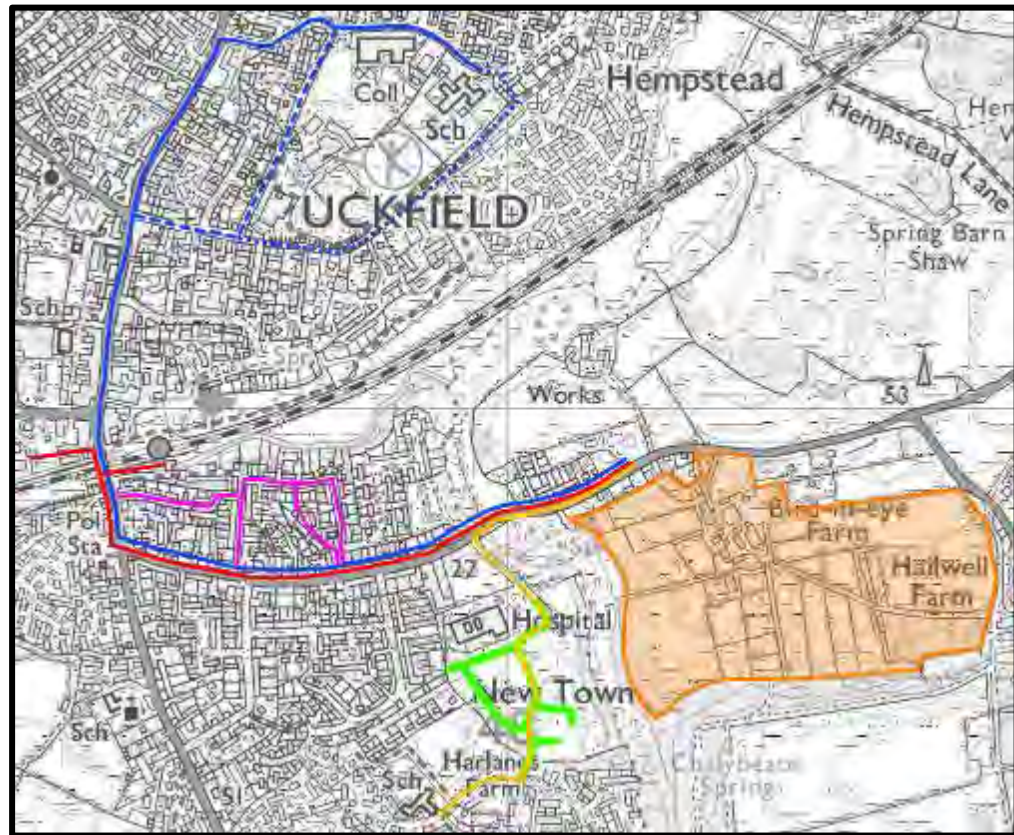


Figure 3: Identified Walking/Cycling Routes

Route 1

2.24 As per Figure 3, this is the route pedestrians/cyclists would take to access the centre of Uckfield, which will include Uckfield railway station and bus station (approximately 1.4km walking/cycling distance from the centre of the application site).

2.25 When exiting the application site via the dedicated pedestrian/cycle link, future residents would head in a westerly direction towards the centre of Uckfield. The proposed development will widen the existing footway (see Figure 4) to provide a shared footway/cycleway from the site access to the Uckfield Hospital access.



Figure 4: Existing Footway to be Widened to Shared Footway/Cycleway

2.26

Future residents would then cross the Uckfield Hospital access at an existing crossing point which has recently been upgraded to include tactile paving (see Figure 5).



Figure 5: Existing Pedestrian Crossing at Access to Uckfield Hospital

2.27

Heading west, future residents would travel along Framfield Road and be required to cross Selby Road and Harcourt Road. See Figures 6 and 7.



Figure 6: Existing Pedestrian Crossing at Selby Road



Figure 7: Existing Pedestrian Crossing at Harcourt Road

- 2.28** The existing footway network varies in width but is generally in excess of 1.5-1.8m wide, and 1m at its narrowest in the vicinity of 2-8 Framfield Road.
- 2.29** At the junction between Framfield Road and High Street, users will cross Framfield Road and travel in a northerly direction along High Street. A signalised crossing is present at this location. A footway is provided from the signalised crossing to Uckfield railway station which is located on the eastern side of High Street.

2.30 Users accessing the bus station would be required to cross the High Street which can be achieved at the signalised crossing located at the western end of Framfield Road.

2.31 An alternative route for those users wishing to access the facilities within the centre of Uckfield is via Alexandra Road/Mill Drove and/or Keld Avenue, which would bypass the signalised crossing at the western end of Framfield Road.

2.32 Footways are present on both sides of Keld Avenue for its entire length. Users travelling along this route will be required to cross Keld Drive or Keld Close. See Figure 8.



Figure 8: Keld Close/Avenue/Drive Junction

2.33 An alternative route exists between Keld Close and Keld Avenue, utilising Public Right of Way (PRoW) 23 via eastern route, albeit this route prohibits cycle access. The footway along Keld Close ends outside number 4, with users then required to use the carriageway. Keld Close serves a small number of properties and would therefore be appropriate as a shared surface. Access to PRoW 23 from Keld Close is shown at Figure 9. Keld Avenue then meets Alexandra Road.



Figure 9: Access to PRoW 23 from Keld Close to Keld Avenue

2.34

Footways are present on both sides of Alexandra Road. Both footways are approximately 1m wide, albeit on-site observations reveal this route to be very lightly trafficked. Figure 10 shows the view north along Alexandra Road.



Figure 10: View North along Alexandra Road

- 2.35** Alexandra Road meets Mill Drove at a simple priority T-junction where the footway widens slightly. Footways are present on both sides of Mill Drove. At the western end of Mill Drove, users will reach the High Street.



Figure 11: Alexandra Road/Mill Drove Junction

Route 2

- 2.36** As per Figure 3, this is the route pedestrians/cyclists would take to access the additional facilities along the High Street, Manor Primary School and Uckfield College.
- 2.37** Users would continue in a northerly direction along the High Street and footways are present on both sides. There are multiple signalised crossing points along the High Street, albeit users accessing the primary school and college will not be required to cross the High Street.
- 2.38** As identified at Figure 3, users can access Manor Primary School or Uckfield College via either Southview Drive/Downsview Crescent or Hempstead Road.

- 2.39** Considering the route via Southview Drive in the first instance, the footway along the eastern side of the High Street varies in width and is at its narrowest on the approach to Southview Drive. See Figure 12.



Figure 12: High Street Footway on Approach to Southview Drive

- 2.40** Southview drive has a footway along its southern side and is separated from the carriageway via a narrow verge. See Figure 13.



Figure 13: Southview Drive Footway

- 2.41** Southview Drive meets Downsvie Crescent at a single priority T-junction (see Figure 14).



Figure 16: Southview Drive/Downsvie Crescent Junction

- 2.42** Footways are present along both sides of Downsvie Crescent and users accessing the primary school and college would continue in a westerly direction along Downsvie Crescent. See Figure 17.
- 2.43** An alternative route to these facilities exists via Hempstead Road and Lime Tree Avenue. Access to Hempstead Road is achieved from the High Street. A virtual footway is present along the southern side of Hempstead Road for the first c. 30m. A continuous footway is provided along its northern side from this location, albeit the footway along the southern side is intermittent. A tactile crossing provides access to the footway along its northern side. See Figure 17.



Figure 19: Hempstead Road Tactile Crossing

2.44

Access to Lime Tree Avenue is taken from the northern side of Hempstead Road. See Figure 20.



Figure 21: Lime Tree Avenue access from Hempstead Road

2.45

As can be seen from the following Figure 22, the route along Lime Tree Avenue is only practical during dry periods and this route is not considered suitable during

the wetter months. On the day of the site visit (January 2023) this route was covered in mud making the surface very slippery.



Figure 21: Lime Tree Avenue

2.46

An alternative route exists to access the educational facilities via footpath 24a located at the eastern end of Hempstead Road. Any user travelling along this route would utilise the existing footway along the southern side of Hempstead Road which gradually become narrower and less well maintained. The footway currently ends at the entrance to the play area. See Figure 22.



Figure 22: Hempstead Road at Access to Play Area

2.47

A short distance northeast of the play area, Hempstead Lane becomes footpath 24a with vehicular traffic prohibited by a gate. This route is wide, has street lighting and is surfaced with a bound material. See Figure 23.



Figure 23: Footpath 24a

- 2.48** Approximately 150m north of the gate on footpath 24a, users accessing the schools would travel northwest along another footpath which connects to Downsview crescent. See Figure 24.



Figure 24: Hempstead Lane gate and footway.

Route 3

- 2.49** Route 3 is the route future residents would take from the application site to access the Harlands Community Primary School. From the proposed pedestrian/cycle access at the application site, users would travel west along Bird in Eye Hill, then north along the Uckfield Hospital access. The footways and crossing points along the hospital access have recently been improved. See Figure 25.



Figure 25: Uckfield Hospital Access Footways

2.50

Access to the new residential development known as Harlands Park is achieved as a continuation of the hospital access road. Whilst Harlands Park is currently under construction, footways are provided on both sides and a safe and suitable route will be achievable to allow pedestrian access. See Figure 26.



Figure 26: Footways within Harlands Park

2.51

At the southern entrance to the Harlands Park development, access is achieved to Mallard Drive. Users travelling to/from the primary school would head in a westerly direction along Mallard Drive utilising the existing footway network to reach the primary school. See Figure 27.



Figure 28: Existing footway on Mallard Drive

3.0 USER OPPORTUNITIES

3.1 The proposed development will provide up to 290 dwellings residential units has the potential to materially increase the number of pedestrian and cycle movements on the local network.

3.2 As such, the existing section of footway between the pedestrian/cycle access into the development and the bus stops adjacent Uckfield Hospital will be upgraded to a shared footway/cycleway.

3.3 Furthermore, the WCHAR Audit has identified a number of locations on Routes 1 and 2 where improvements would be beneficial. No improvements have been identified for the route to Harlands Community Primary School as this route has been improved as part of the Harlands Park development.

3.4 The identified improvements for Routes 1 and 2 are set out below.

Route 1 (towards Uckfield town centre)

3.5 New facilities:

- The scheme will widen the existing section of footway between the pedestrian/cycle access to the development and hospital access to 3m, to operate as a shared footway/cycleway.
- A formal crossing point in the vicinity of 78 Framfield Road will be provided.
- Bus cages will be installed to serve the existing bus stops in the vicinity of Alexandra Road and Harcourt Road.

3.6 Improvements:

- Provision of tactile paving at all crossing points along Framfield Road, Keld Avenue and Alexandra Road.

Route 2 (towards Uckfield College and manor Primary School)

3.7 Improvements:

- Provision of tactile paving at all crossing points along the High Street, Hempstead Road, Southview Drive and

4.0 WALKING, CYCLING AND HORSE-RIDING ASSESSMENT TEAM STATEMENT

Lead Assessor

As Lead Assessor, I confirm that this walking, cycling and horse-riding assessment report has been compiled in accordance with DMRB document GG142.

Name: Matt Twinberrow

Position: Associate Partner

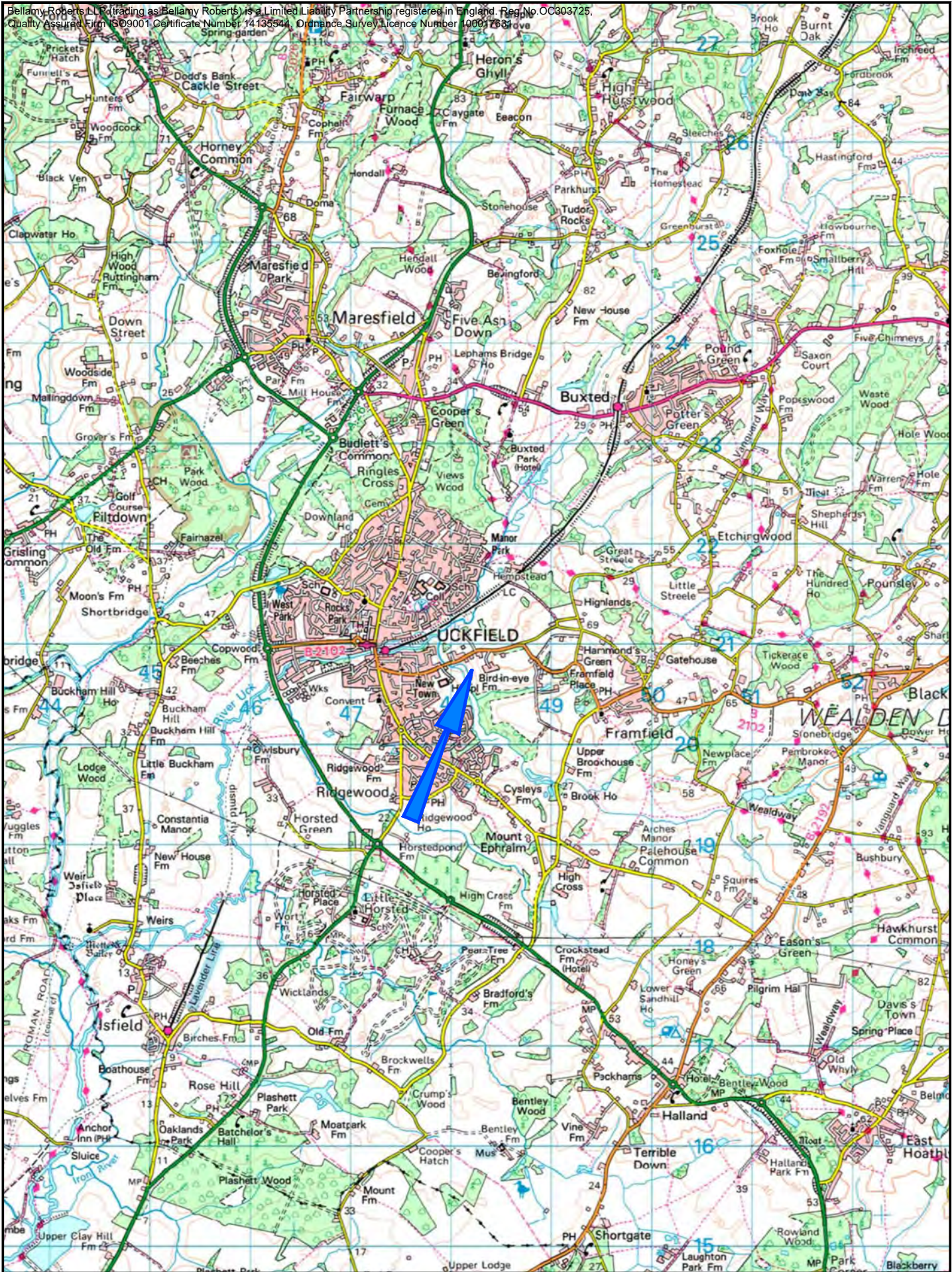
Organisation: Bellamy Roberts

Signature: 

Date: 19th January 2023

APPENDICES

APPENDIX 1

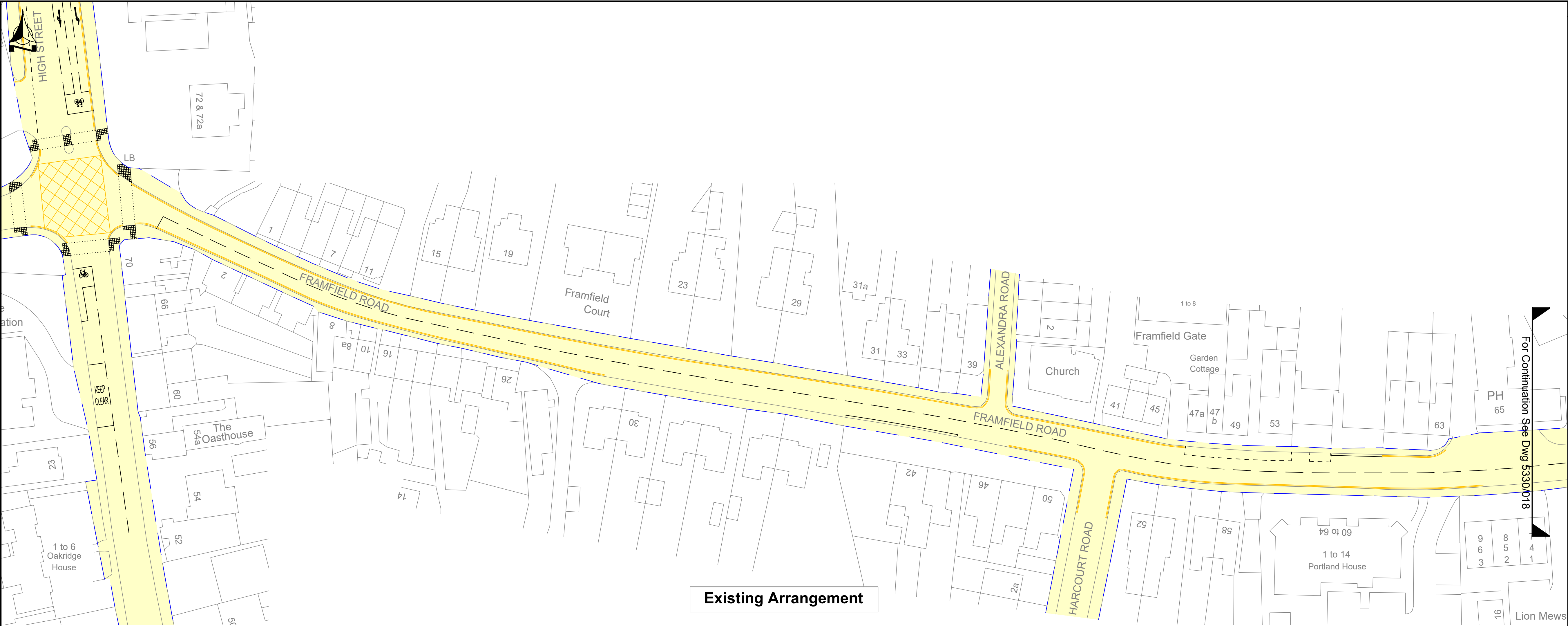


PROJECT Bird in Eye, Uckfield			Bellamy Roberts Clover House Western Lane Odiham Hampshire, RG29 1TU Tel: 01256 703355 Email: info@bellamyroberts.co.uk	DATE 05/07/19	DRAWN BY ARM		
TITLE Site Location Plan				SCALE 1:50,000 @ A4	CHK BY ITR		
				CLIENT Croudace Homes Ltd.			
				DRAWING No. 5330 / 301		REV No. A	

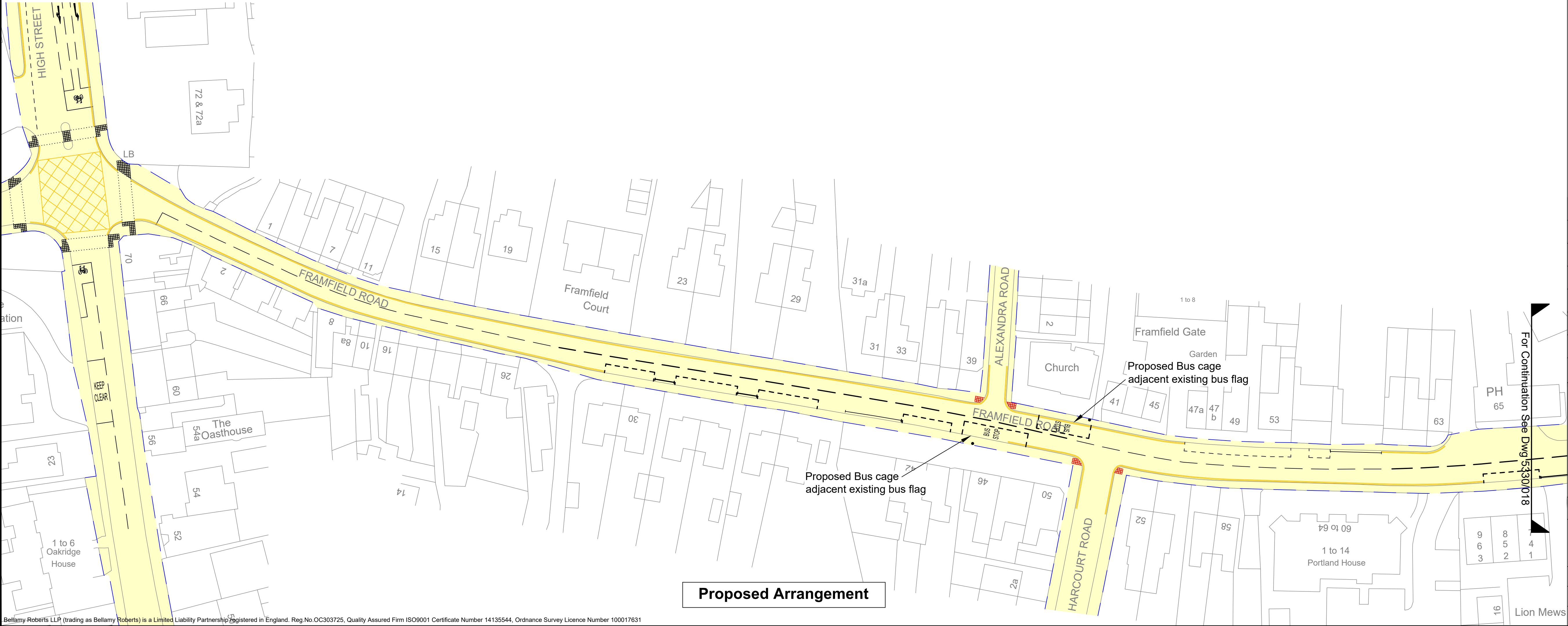
Hearing Statement

APPENDIX 6

Framfield Road Improvements



Existing Arrangement



Proposed Arrangement

- Notes
- Do not scale this drawing
 - Highway Boundary
 - New Tactile Paving
 - New Parking Bay Road Markings

G	Crossing Location Amended	MB	MT
F	Minor amendments	JCB	MT
E	Minor amendments	JCB	MT
D	Crossings/Build-Outs Removed	ARM	MT
C	Pedestrian Crossing Added	ARM	MT
B	Island details amended	JCB	MT
A	Details added, plan updated	JCB	MT
REVISION	AMENDMENT	DRN	CHK



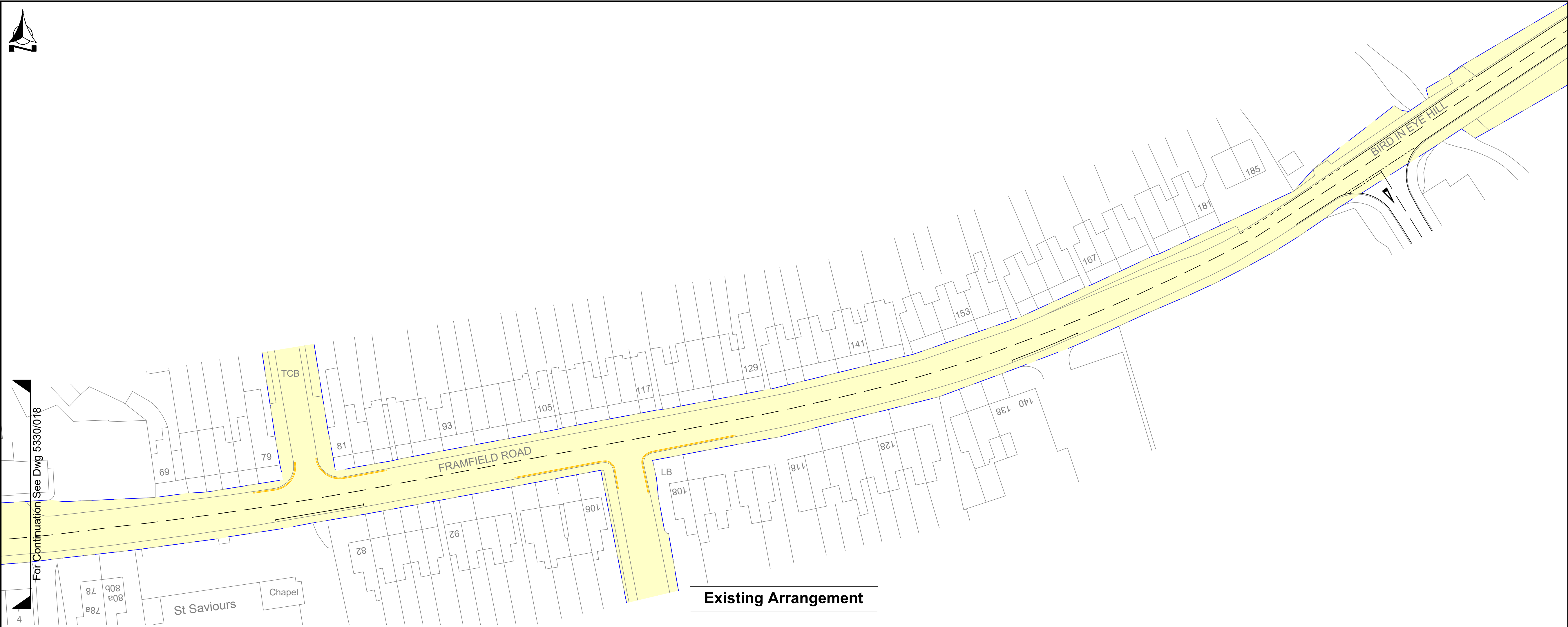
Bellamy Roberts
Clover House
Western Lane
Odiham
Hampshire, RG29 1TU
Tel: 01256 703355
Email: info@bellamyroberts.co.uk

CLIENT
Croudace Homes Ltd.

PROJECT
Bird in Eye, Uckfield

TITLE
Proposed Improvements
Framfield Road
Sheet 1 of 2

DRAWN BY AM/JCB	DESIGN BY MT	CHK BY MT
DATE 06/04/21	DRAWING No. 5330 / 017	REV No. G
SCALE 1:500 @ A1		



For Continuation See Dwa 5330/018

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- - - - New Parking Bay Road Markings

For details of bus stop improvement see 5330/016

F	Crossing Location Amended	MS	10/01/23
E	Minor amendments	JCB	2007/22
D	Minor amendments	JCB	24/03/22
C	Build-Outs Removed	ARM	07/03/22
B	Island details amended	JCB	28/04/21
A	Details added, plan updated	JCB	08/04/21
REVISION	AMENDMENT	DRN	DATE



	DRAWING No.	REV No.
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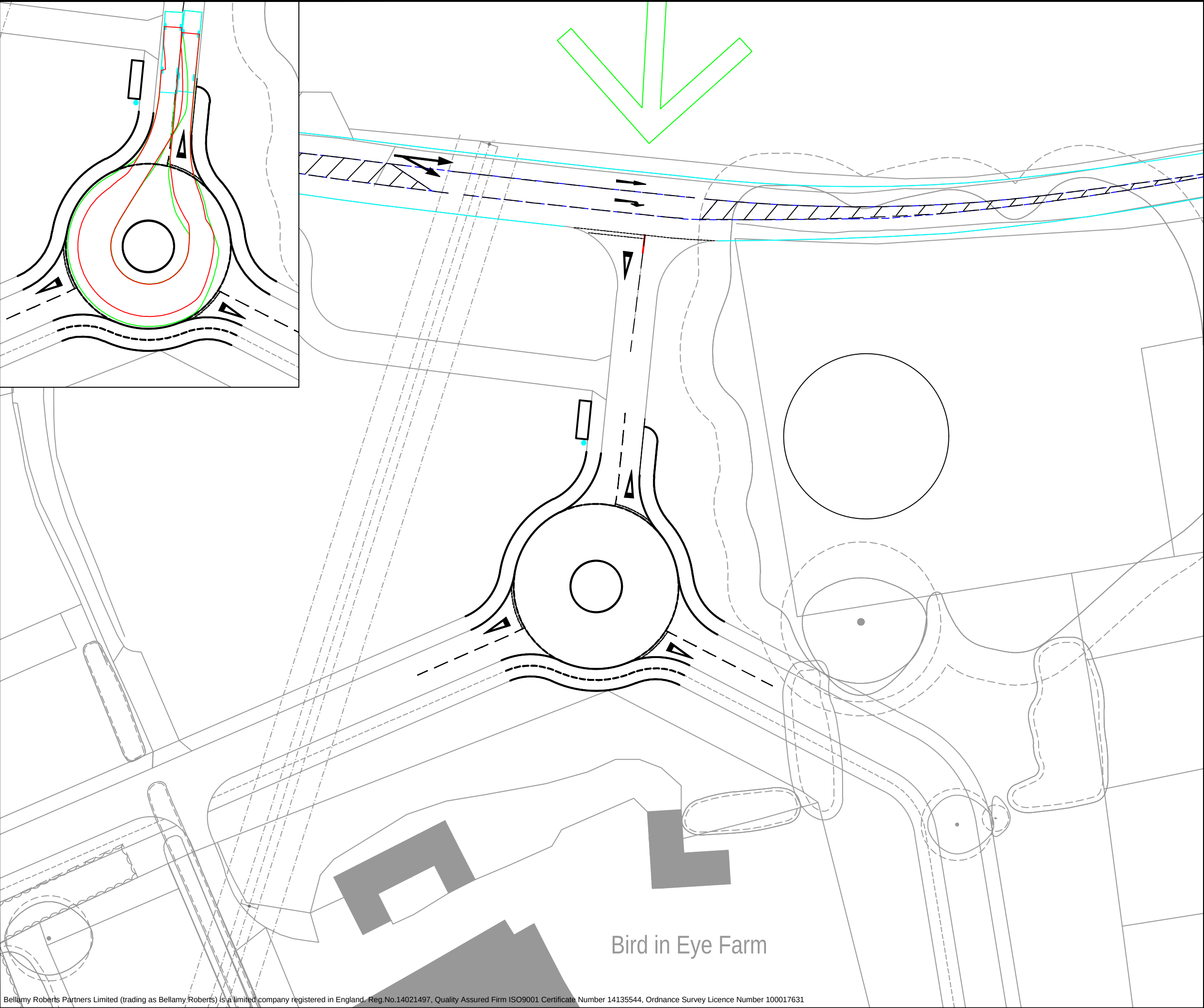
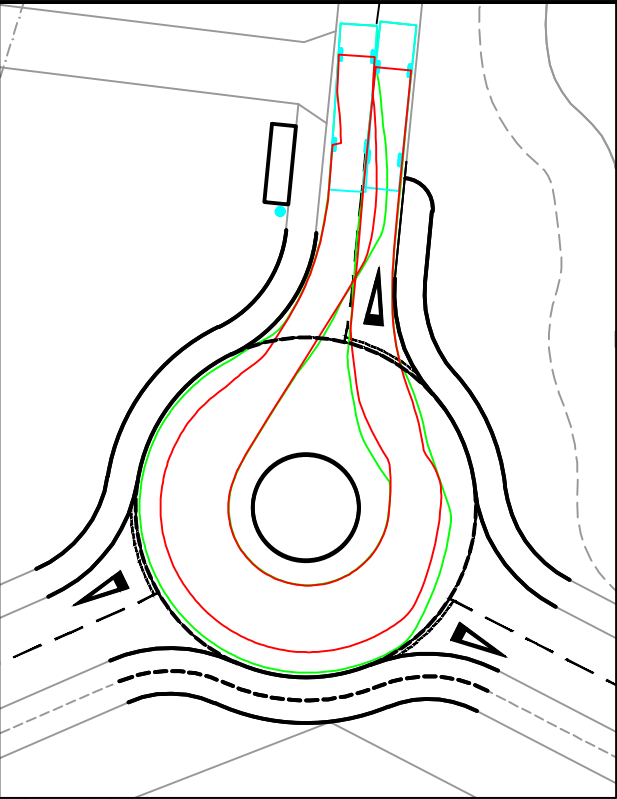
5330 / 018

REV No.	F
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Hearing Statement

APPENDIX 7

Bus Interchange



Notes

Dart SLF 11.20m
Overall Length 11.009m
Overall Width 2.401m
Overall Body Height 3.077m
Min Body Ground Clearance 0.312m
Track Width 2.360m
Lock to lock time 4.00s
Kerb to Kerb Turning Radius 9.518m

Bus Shelter and Flag

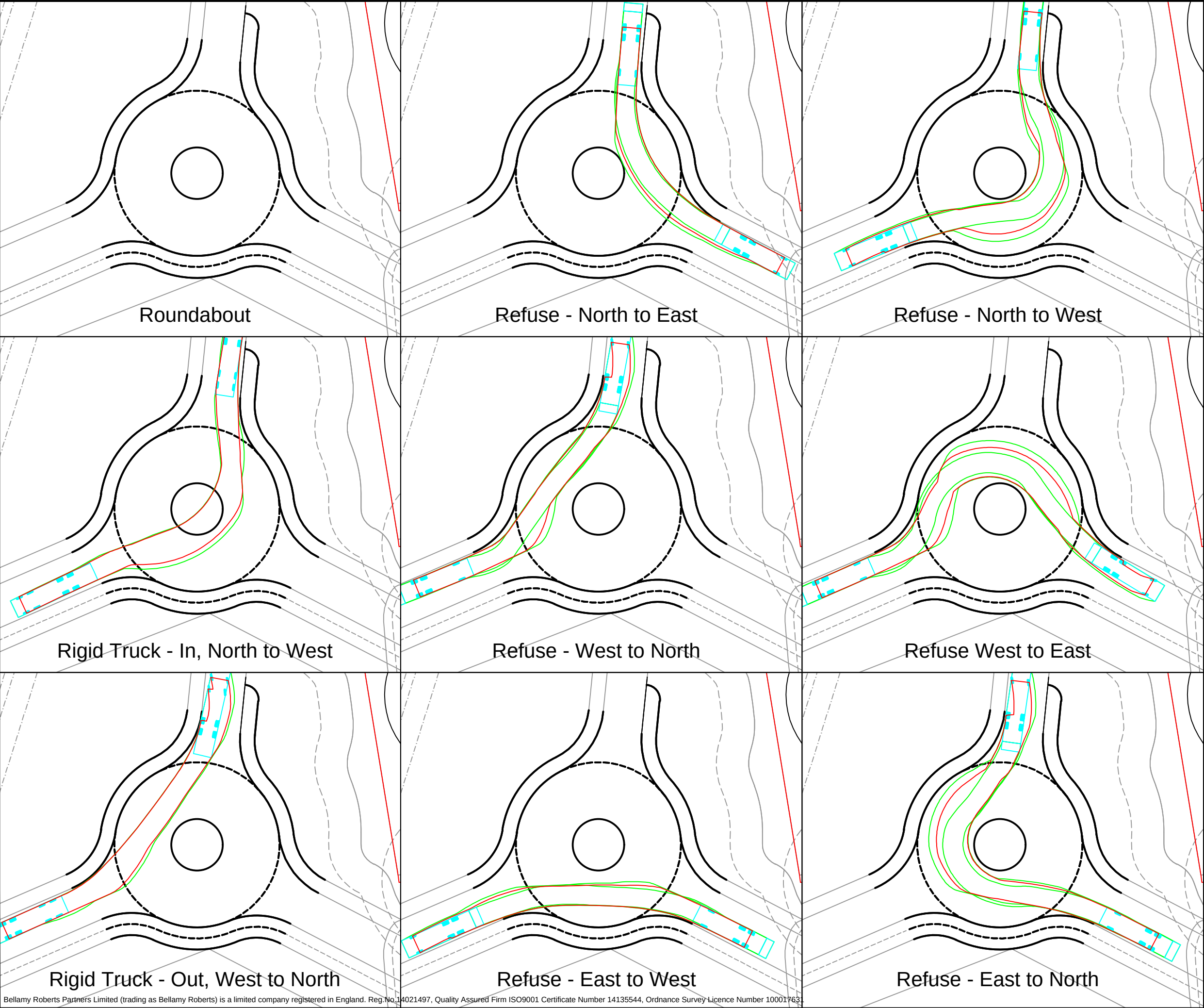
Bellamy Roberts
Clover House
Western Lane
Odiham
Hampshire, RG29 1TU
Tel: 01256 703355
Email: info@bellamyroberts.co.uk

CLIENT
Croudace

PROJECT
Bird in Eye, Uckfield

TITLE
Bus Interchange

DRAWN BY MB	DESIGN BY -	CHK BY MT
DATE 18/01/23	DRAWING No. 5330 / 240	
SCALE 1:500 @ A3		REV No.



Roundabout

Refuse - North to East

Refuse - North to West

Rigid Truck - In, North to West

Refuse - West to North

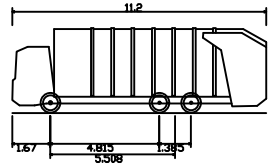
Refuse West to East

Rigid Truck - Out, West to North

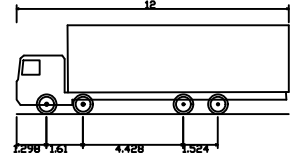
Refuse - East to West

Refuse - East to North

Notes



Phoenix 2 Duo (P2-15W with Elite 6x4 chassis)
Overall Length 11.200m
Overall Width 2.500m
Overall Body Height 3.751m
Min Body Ground Clearance 0.304m
Track Width 2.500m
Lock to lock time 4.00s
Kerb to Kerb Turning Radius 9.500m



Rigid Truck
Overall Length 12.000m
Overall Width 2.500m
Overall Body Height 3.928m
Min Body Ground Clearance 0.412m
Track Width 2.471m
Lock to lock time 6.00s
Kerb to Kerb Turning Radius 11.900m



Clover House
Western Lane
Odiham
Hampshire
RG29 1TU
Tel: 01256 703355



Reg No 14021497. Registered Office: Clover House, Western Lane, Odiham, Hampshire RG29 1TU

Director:
IT Roberts MCIHT
Associate Director:
MJ Twinberrow BEng MCIHT
Consultant:
GD Bellamy BSc CEng MICE

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January 2023

Land at Bird in Eye Farm, TN22 5HA

Landscape Statement

Prepared by

Clive Self

MA (Urb Des) Dip LA CMLI

LPA Ref: WD/2021/2198/O

PINS Ref: APP/C1435/W/22/3307820

On behalf of:
Croudace Homes Ltd
Report No: CSA/2646/08

Report Reference	Revision	Date	Prepared by	Approved by	Comments
CSA/2646/08		22/12/2022	CS	CA	Framework
CSA/2646/08	a	14/01/2023	CS	CA	First draft
CSA/2646/08	b	26/01/2023	CS	CA	Second
CSA/2646/08	c	30/01/2023	CS	CA	Final



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4.0	Landscape Planning Policy Context	9
5.0	Description of the Site and Neighbouring Area	12
6.0	Description of Development	22
7.0	Summary of Landscape and Visual Effects	24
8.0	Conclusion	29

Appendices (As a separate document 2646/09)

Appendix A: Site Location Plan

Appendix B: Aerial Photograph

Appendix C: Photographs

Appendix D: MAGIC map

Appendix E: Summary of Landscape and Visual Effects

Appendix F: Landscape Strategy

Appendix G: Wealden Landscape and Settlement Character 2014

Appendix H: Wealden Landscape Character Assessment
and Development Option Evaluation Study 2009

1.0 SUMMARY

- 1.1 This Statement is submitted on behalf of Croudace Homes Ltd in respect of an appeal against the failure of Wealden District Council to determine an outline planning application for up to 290 dwellings, associated landscaping, informal open space and a strategic SANG, with access from the B2102.
- 1.2 The Statement has been prepared by Clive Self who is a Chartered Landscape Architect and Urban Designer at CSA Environmental.
- 1.3 CSA have been involved with the Site for many years and initially provided an opinion on the suitability of the Site for residential development. Following the initial advice, a full LVIA was undertaken and a series of ecological surveys were carried out. As I shall go on to explain, those findings were pivotal in defining the extent of the development and the opportunities for landscape and wildlife enhancements.
- 1.4 This Statement should be read alongside the submitted Landscape and Visual Impact Assessment ('LVIA') undertaken by CSA Environmental in June 2021 (CSA/2646/07). The LVIA provides a detailed assessment of the Site and the potential impact of the proposed development and as such this Statement only provides a summary of the main landscape and visual effects.
- 1.5 At the time of writing this Statement, there were no putative reasons for refusal, and as far as I am aware, the Council's Landscape and Tree Officer had not objected to the Appeal Scheme on landscape grounds. He had however made a number of observations on potential arboricultural impacts, which are addressed in the Ecological Statement.

Context

- 1.6 The Site is well related to Uckfield with the hospital, community allotments and residential development to the west of the Site, beyond Framfield Brook. There is also a linear band of residential development on the greater part of the Site's northern boundary and similar development on the opposite side of Bird in Eye Hill. The relationship is further strengthened by the intervisibility with development in the eastern part of Uckfield.
- 1.7 The Site is not covered by any statutory or non statutory designations for landscape, ecology or heritage value. The Oast, which is located in the centre of the Site, is Grade II listed. The woodland which separates the

northern and southern parts of the Site and a section of woodland on the western boundary is Ancient Woodland.

- 1.8 The Site is not considered to be a valued landscape for the purpose of para 174a of the NPPF and the Council have not suggested otherwise.
- 1.9 The Site is currently a mixture of sheep grazed grassland, paddocks and arable land. There are also a series of commercial buildings and associated areas of hardstanding in the northern part of the Site, although these do not fall within the redline boundary of the application. The commercial buildings are typically of a utilitarian appearance. Bird in Eye Farm and The Oast are also within this area.
- 1.10 The paddocks in the northern part of the Site and the commercial buildings are discordant with the character of the wider landscape which largely comprises irregular shaped fields with significant areas of woodland. The fields in the southern and eastern parts of the Site have a more rural character and are largely free of detracting features and read as part of the wider landscape. These fields are of higher quality and are set aside for the strategic SANG.
- 1.11 The Site benefits from clearly defined and defensible boundaries, which for the most part comprises mature woodland. As such there will only be limited opportunities to view development on the Site from the wider countryside. Where there are views of development in the northern part of the Site the views are frequently experienced within, or against, the urban area of Uckfield. The heavily wooded character of the landscape screens the vast majority of views from the wider countryside. As a result, the visual effects from public vantage points are assessed as being no greater than moderate adverse at year one, reducing to slight adverse by year 15.

Background Studies

- 1.12 The Wealden Landscape and Settlement Character Study of 2014 identifies the Site as falling within LLCA A4: Blackboys and Framfield, which extends from the south eastern edge of the town into the neighbouring countryside. The study also considers the Landscape Setting of Uckfield and identifies the Site as falling within Area 2. It describes the distinctive characteristics of this area as '... a patchwork of woodlands, arable and pastoral fields which are often lined with mature hedgerows' with '... an intermittent sense of enclosure.' The study concludes that the Landscape Setting of Area 2, in which the Site lies, has a moderate overall landscape sensitivity, moderate landscape value and moderate landscape capacity.

- 1.13 From my observations of the Site and the wider area, I consider the aforesaid description to be a reasonable conclusion although I consider the northern part of the Site to be less sensitive, as I have explained in the main body of this text, with the southern half having greater sensitivity.
- 1.14 The Council's SHELA of 2019 similarly identifies the northern part of the Site as being suitable for residential development.

Proposed Development and Effects

- 1.15 The proposed development, which is at the outline stage, is for a residential development of up to 290 dwellings, associated landscaping, informal open space and strategic SANG.
- 1.16 In formulating the masterplan, landscape, ecology and heritage inputs have been fundamental in defining the developable area of the Site. In broad terms, the northern part of the Site accommodates the residential component of the scheme with the southern and eastern parts retained for a SANG.
- 1.17 In Section 4 of this Statement I have described how the northern part of the Site is of lower landscape quality on account of a number of detracting features, whereas the southern part of the Site is more tranquil and has a stronger relationship to the neighbouring countryside.
- 1.18 Whilst the northern part of the Site is less sensitive, the proposed development has nevertheless been laid out in such a manner as to respect and enhance the features that are within it and its wider context. This has been achieved by:
- Setting the development back from the areas of Ancient Woodland by a minimum of 15 metres.
 - Retaining and enhancing existing hedgerows.
 - Strengthening boundary vegetation.
 - Creating a view corridor to The Oast and setting buildings back from it.
 - Providing a scale and density of development that is compatible with that in the neighbouring area.
- 1.19 The strategic SANG in the southern and eastern parts of the Site will provide a 2.7km walking route with links to the residential area. A car park is also provided and significant areas of native tree and wildflower

planting will be established. This area will provide substantial recreational and ecological benefits for both existing and new residents.

- 1.20 My overall conclusion is that development in accordance with the submitted masterplan can be accommodated on the Site without giving rise to any significant adverse landscape, townscape or visual effects. It will complement the character of Uckfield and the neighbouring landscape and provide significant wildlife and recreational benefits, amongst other things.

2.0 QUALIFICATIONS AND EXPERIENCE

- 2.1 I am a Chartered Landscape Architect and an Urban Designer. I hold a Diploma in Landscape Architecture and a Master's Degree in Urban Design. I have over 30 years' experience in landscape and townscape design and assessment.
- 2.2 I am the Managing Director of CSA, a multi-disciplinary environmental planning practice which I established in 1998. The practice acts for the public and private sector and has an in-house team of urban designers, ecologists, heritage consultants and landscape architects. We operate from offices in Sussex, Hertfordshire, Hampshire, Cambridgeshire and Worcestershire.
- 2.3 Prior to forming CSA I was responsible for landscape architecture and masterplanning at PRC Fewster Architects and before that I was employed in a similar role at Sargent and Potiradis Architects. I have worked throughout the UK, Middle East and the United States on a broad range of landscape projects, townscape appraisals and environmental planning work.
- 2.4 My company is currently involved in projects that range from the masterplanning of new settlements to the redevelopment of inner city brownfield sites. We work throughout the UK in both the rural and urban environment.
- 2.5 I have given landscape and urban design advice on numerous schemes. I have also given landscape and urban design evidence at Local Plan/LDF Inquiries, Section 77 and 78 Inquiries, and CPO Inquiries.
- 2.6 The Statement that I have prepared and provide for this appeal is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

3.0 BACKGROUND AND METHODOLOGY

Background

- 3.1 This Statement is submitted on behalf of Croudace Homes Ltd in respect of an appeal against the failure of Wealden District Council to determine an outline planning application for up to 290 dwellings, associated landscaping, informal open space and strategic SANG, with access from the B2102.
- 3.2 CSA have been involved with the Site for many years and initially provided an opinion on the suitability of the Site for residential development. Following the initial advice, a full LVIA was undertaken and a series of ecological surveys were carried out. As I shall go on to explain, those findings were pivotal in defining the extent of the development and the opportunities for landscape and wildlife enhancements.
- 3.3 In June 2021 CSA prepared a LVIA to inform the illustrative masterplan and to assess the anticipated landscape and visual effects of the scheme. The photographs contained within the LVIA were taken in March 2020, when the vegetation was out of leaf, and therefore show the Site when it is most visible.
- 3.4 This Statement will provide a summary of the character of the Site and the anticipated effects of the development. As the LVIA provides a detailed assessment of the Site and neighbouring area, I have not replicated that information, rather I summarise the most pertinent points. Planning policy and the overall planning balance is addressed in the Planning Statement of Mr Brown.
- 3.5 I did not personally write the LVIA, but I have visited the Site and surrounding area on a number of occasions and I am in agreement with its conclusion, which stated that the proposed development could be accommodated on the Site without giving rise to significant adverse landscape/townscape or visual effects.
- 3.6 At the time of writing this Statement, there were no putative reasons for refusal, and as far as I am aware, the Council's Landscape and Tree Officer had not objected to the Appeal Scheme on landscape grounds. He had however made a number of observations on potential arboricultural impacts, which are addressed in the Ecological Statement.

- 3.7 This Statement will show that the Appeal Scheme occupies a well contained parcel of land on the edge of the settlement. As a result, both landscape and visual effects will be limited and localised. It will also show that significant benefits will arise through the provision of a strategic SANG and BNG, amongst other things.

Methodology

- 3.8 The LVIA produced by CSA contains a full description of the Site and its character, as well as that of the surrounding landscape/townscape. The methodology used within the LVIA is in line with the Guidelines for Landscape and Visual Impact Assessment 3rd edition (GLVIA3).
- 3.9 Photographs contained within the LVIA (see **Appendix C**) were taken using a digital camera with a lens focal length approximating to 50mm, to give a similar depth of vision to the human eye. In some instances images have been combined to create a panorama.

4.0 LANDSCAPE POLICY CONTEXT

- 4.1 The LVIA provides a summary of the most pertinent national landscape planning policies and I have therefore not replicated that information here, rather I have focused on local policies.

Local Policy Context

- 4.2 Planning policy for Wealden District is set out in the Core Strategy Local Plan (adopted 2013), which covers the period until 2027. This is supported by the Wealden Local Plan, 1998, which contains policies saved in 2007. The weight that should be applied to these policies is set out in the Planning Statement.

Adopted Core Strategy Local Plan, 2013

- 4.3 The Core Strategy sets out the settlement hierarchy for the district and Uckfield is classified as one of three District Centres, which means that the town is accessible by road and public transport, and that it has a range of facilities to meet day to day needs.
- 4.4 The landscape policies of most relevance to the Site are summarised below. I have not included those policies which relate to matters of detailed design as these are in set out in the LVIA.
- 4.5 **Policy WCS13 Green Infrastructure** ('GI') states that a Green Infrastructure Strategy will be implemented that will protect, improve and enhance the existing GI network. The overall aim will be to maintain and improve biodiversity and landscape character, with development proposals expected to respect existing GI, and mitigate or provide alternative GI as appropriate.

Wealden Local Plan, 1998

- 4.6 **Saved Policy EN8: Development within the Low Weald** states that development in this area will only be permitted if it conserves the low rolling agriculture of the landscape. The policy gives a list of items that regard will be given to, including:
- *'the setting of settlements;*
 - *the retention of woods, boundary trees and hedges; [and]*
 - *attractive vernacular buildings and groups of buildings.'*

- 4.7 **Saved Policy EN13: Ancient Woodland** states that the Council will resist development proposals where clear felling is proposed or where the ecology of Ancient Woodlands is prejudiced.
- 4.8 **Saved Policy EN14: Landscaping within developments** states that the Council will require development proposals to include landscaping schemes that:
- *'seek to retain existing trees, significant hedgerows and other valuable site features;*
 - *normally comprise primarily native species;*
 - *complement the scale and character of the proposed development and the locality;*
 - *have regard to associated nature conservation benefits; [and]*
 - *be implemented at the earliest practicable opportunity and thereafter satisfactorily maintained during the early years.'*
- 4.9 **Saved Policy EN27: Design and Layout of Development** states that proposals should respect the character of the neighbouring area and create a satisfactory environment for future occupants. The design and materials used should be of a high quality.
- 4.10 **Strategic Housing and Economic Land Availability Assessment (January 2019)**
- 4.11 Part of the Site access and the western part of the Site, extending to 9.27 hectares, is included in the Wealden District Council's Strategic Housing and Economic Land Availability Assessment ('SHELAA') under site reference number 002/1410. It is assessed as being a site which is potentially suitable for development, including for housing and employment. The summary table notes that it is available and it has the development capacity of 197 units, which could be achieved within eleven plus years.
- 4.12 The detailed assessment in the SHELAA notes, among other things, that the site faces toward, and is visible from the town, with the urban area of Uckfield (including Uckfield Hospital) to the west. The assessment goes on to say, that to complement the form and layout of any development, a strong and reinforced landscape scheme would be required; vehicular access and pedestrian and cycle links to the town centre would be required; and that despite the presence of the listed Farmhouse at Bird in Eye Farm, a suitable layout could ensure that its setting is not materially harmed.

- 4.13 The Wealden LCA Development Options Evaluation Study of 2009 (see **Appendix H**) similarly identified the northern part of the Site as having high development potential.

5.0 DESCRIPTION OF THE SITE AND NEIGHBOURING AREA

Context

- 5.1 The Site lies on the eastern edge of Uckfield. It comprises a series of paddocks with Bird in Eye Farm and ancillary business units within the northern part of the Site.
- 5.2 For ease of reference, the Aerial Photograph in **Appendix B** has subdivided the Site into a series of parcels which have been labelled A to E. The development falls within Parcels A to C, with areas D and E set aside for the Strategic SANG.
- 5.3 Immediately to the northeast of the Site is the B2102, Bird in Eye Hill, which has a number of properties facing onto it and backing onto the Site. Further north are a series of irregular shaped fields, the River Uck and the Uckfield to London railway line. Uckfield High Street and neighbouring residential areas occupy the rising ground further to the north and northeast.
- 5.4 Within, and on the edge of Uckfield, are a series of woodland belts. The railway corridor and the River Uck similarly sit within broad swathes of woodland.
- 5.5 To the immediate west of the Site is Framfield Stream, a narrow, well vegetated stream. Beyond the stream are community allotments, Uckfield Hospital and residential development within Uckfield.
- 5.6 The Site's southern and south western boundaries follow the edge of Nightingale Wood, the majority of which is designated as Ancient Woodland. Further to the south are a series of fishing lakes, fields of varying sizes, and further areas of woodland.
- 5.7 To the east of the Site are several dwellings which are served off the B2101, with agricultural fields and small areas of woodland extending to the edge of Framfield, which is approximately 0.8km to the southeast.
- 5.8 Approximately 4.5km to the north of the town is the High Weald AONB.
- 5.9 Ancient Woodland lies along, and partly within, the western boundary of the Site and in close proximity to the southern and south eastern boundaries. It also occupies land between the northern and southern parts of the Site.

Designations

- 5.10 The Site is not covered by any statutory or non statutory designations for landscape, ecology or heritage value. The Oast, which is located in the centre of the Site, is Grade II listed. The part of the Site which is to be developed is not a rare or representative landscape, and it is not publicly accessible.

Landscape Value

- 5.11 As far as I am aware, at no stage during consideration of the planning application did the Planning Officer, or the Landscape Officer, suggest that the Site is a Valued Landscape for the purpose of Para 174a of the NPPF. Having tested the Site against the criteria in Box 5.1 of GLVIA and TGN 02/21, I similarly do not consider the Site itself, nor the wider countryside, to be a Valued Landscape.
- 5.12 As I have already noted, and explain in greater detail below, the northern part of the Site has a different character to the southern part and has a stronger relationship to the settlement, with a number of detracting features. The southern part of the Site has a far stronger rural character and relationship to the neighbouring countryside than the northern part of the Site and for that reason it is to accommodate the SANG. I therefore consider the northern part of the Site to be of considerably lower value than the southern part but I do not consider the Site as a whole to be a valued landscape for the purpose of the NPPF.
- 5.13 However, for completeness, I have assessed the Site against the criteria set out in GLVIA3 and the supplementary advice issued by the Landscape Institute in 2021 (TGN 02/21). The supplementary advice is not intended to provide an exhaustive list and identifies matters that could be considered.
- 5.14 Box 5.1 of the 3rd edition of the Guidelines for Landscape and Visual Impact Assessment (GLVIA) sets out seven factors that can help in the identification of Valued Landscapes. I have set these out below with my observations beneath. Where appropriate, I have added, in italics, the definitions contained in the additional guidance in TGN 02/21.

Landscape quality (condition) *Landscape condition*

- 5.15 The Site is currently a mix of sheep grazed grassland, paddocks and arable land. There are also a series of commercial buildings, and associated areas of hardstanding, in the centre of the Site, and Bird in

Eye Farm. There is nothing in the way that the Site is managed that elevates its quality above that of normal farmland or paddocks.

- 5.16 The paddocks in the northern part of the Site and the commercial buildings within it are discordant with the character of the wider area. The field in the southern part of the Site (Parcel E) has a more rural character and is free of detracting features and reads as part of the wider landscape. This field is of higher quality and is set aside for a strategic SANG.
- 5.17 TGN 02/21 states that examples of indicators of landscape value include the 'absence of detracting/incongruous features (or features are present but have little influence)'. In the case of the Site the recent residential development to the south of Uckfield Hospital, the hospital itself, and development within Uckfield is clearly visible from within the northern part of the Site. The commercial buildings and areas of hardstanding which sit within the northern part of the Site are similarly detracting features.

Scenic quality

- 5.18 The Site as a whole does not carry any designations for its intrinsic landscape quality. In broad terms, Parcel E, which occupies the southern part of the Site is free from detracting features and reads as part of the wider countryside. This parcel will form part of the strategic SANG. Parcels A to C, which are proposed for development, are influenced by the commercial buildings within the Site and to a certain degree by the intervisibility with development within Uckfield. Parcel D occupies the eastern part of the Site and is a single field which is currently sheep grazed. The land gently slopes towards the southeastern boundary and like Parcel E is to form part of the SANG.

Rarity (*Distinctiveness*)

- 5.19 The Site does not contain any rare elements. Part of the Site adjoins an area of Ancient Woodland but this is a relatively common feature of the area. Overall it is not considered to be a rare landscape.

Conservation Interest (*Natural heritage and cultural heritage*)

- 5.20 The Site as a whole is not covered by any ecological designations nor is it covered by any heritage designations. There is the Grade II Oast in the centre of the Site. This is to be retained and its setting respected.

Recreation value

- 5.21 There is currently no public access onto the Site. There is an informal footpath that passes through the Ancient Woodland but this is not open to the public.

Perceptual aspects

- 5.22 GLIVA refers to perceptual aspects as a landscape which is valued for notable qualities of wildness and/or tranquillity. Parcels A to C cannot be described as tranquil as they have visual detractors. Area E, and to a lesser extent Area D, are more tranquil as they have little or no intervisibility with Uckfield and are detached from the neighbouring roads.

Association

- 5.23 As far as I am aware the Site does not have any particular associations with notable historic events or people.
- 5.24 In the TGN 02/21 guidance, the term 'function' covers a range of qualities with the emphasis on 'healthy functioning landscapes'. Examples include hydrological systems, peat bogs, woodlands, oceans and wildflower meadows, amongst other things. It also states that it includes 'landscapes and landscape elements that have strong functional physical or functional links with an adjacent national landscape designation..'
- 5.25 The Site does not have a functional relationship with the AONB that lies to the north of Uckfield. In terms of the wider function of the Site, the strategic SANG will provide significant ecological benefits as well as new recreational opportunities but in its current state does not perform a function, over and above that of normal farmland.
- 5.26 Given the above factors, I do not consider the Site to be a Valued Landscape for the purpose of para 174a of the NPPF, and the Council have not suggested otherwise.

Landscape Character

- 5.27 The LVIA sets out the national and countywide context for the district landscape assessment and as such it is not repeated here. I have however summarised, below, the findings of the local character assessments as they are the most pertinent to the Site.

Wealden Landscape and Settlement Character 2014

- 5.28 In 2014 the District Council published the Wealden Landscape and Settlement Character Assessment. That assessment divides the 38 County Landscape Character Areas ('LCAs') into 9 Local Landscape Character Types ('LLCT') and subsequently subdivides each of these into Local Landscape Character Areas ('LLCA').
- 5.29 The Site is located within LLCT A: Ridges and Valleys which covers the landscape to the north and east of Uckfield, and within LLCA A4: Blackboys and Framfield, which extends from the south eastern edge of the town. The study also includes a section entitled Landscape Setting of Uckfield.
- 5.30 The assessment then goes on to identify the characteristics of LLCA A4: Blackboys and Framfield (**Appendix G**), which include, among other things:
- (i) Undulating patchwork of small-scale pastoral fields interspersed with frequent patches of woodland;
 - (ii) Numerous stream corridors;
 - (iii) Characteristic long distance views across valleys from valley sides, with skylines intermittently wooded which contribute to a sense of place;
 - (iv) Intimate, mainly rural landscape with interconnected, sunken lanes;
 - (v) Strong sense of remoteness and tranquillity in much of the area; and
 - (vi) Villages of Framfield and Blackboys are located within the LLCA situated on ridges of higher land which facilitate long distance views across adjacent valleys.
- 5.31 The section which deals with the Landscape Setting of Uckfield identifies the Site as lying on the northern edge of Uckfield Landscape Setting Area 2. The report identifies the distinctive characteristics of this area as '... a patchwork of woodlands, arable and pastoral fields which are often lined with mature hedgerows' and '... an overall intermittent sense of enclosure.' The study concludes that the Landscape Setting of Area 2, in which the Site lies, has a moderate overall landscape sensitivity, moderate landscape value and moderate landscape capacity (my underlining).

5.32 In the methodology of the study, the definitions of each assessment category are set out. The definition of each of the above assessments are as follows:

- (i) Moderate landscape sensitivity is defined as '*... having some distinctive features and characteristics that provide continuity/time depth and typically has limited visibility due to apparent landforms and intermittent tree cover*';
- (ii) Moderate landscape value is defined as including '*... some important features of conservation value; moderate landscape condition due to relatively coherent landscape pattern and some visual detractors; culturally important landmarks present but not prominent; some rare landscape features/characteristics contribute to a strength of place; limited sense of wildness/tranquillity; and limited cultural associations...*'; and
- (iii) Moderate capacity to accommodate development is defined as '*... the landscape is assessed as having very low to moderate landscape sensitivity and high landscape value, or moderate to high landscape sensitivity and low to moderate landscape value. Subject to appropriate siting, design and landscaping mitigation, medium and small-scale new development could potentially be accommodated without eroding positive key features and characteristics which are desirable to safeguard. Taking into account site-specific constraints, there may also be potential to accommodate some large-scale new development in specific locations with lower landscape sensitivity, subject to appropriate siting, design and landscaping mitigation.*'

5.33 The conclusion of the study that the Landscape Setting Area 2 is of moderate landscape capacity is based on the assessments of moderate landscape sensitivity and landscape value.

5.34 As with any local or regional landscape assessment, it is important to look at the particular characteristics of any site that falls within the assessment area, as there are inevitably a range of enhancing and detracting features in any one area.

5.35 My assessment of the wider landscape broadly concurs with this assessment, but the landscape in which the Site lies differs from it to a certain degree. The northern part of the Site has a rural fringe character as a result of its use as paddocks, the commercial business units in the farmyard and the intervisibility with Uckfield. By contrast, the southern part of the Site relates far more strongly to the wider landscape and has a more tranquil character.

The Wealden District Council Landscape Character Assessment and Development Option Evaluation Study of 2009

- 5.36 This assessment (Para 3.7.8) identifies the area within which the Site lies as East Uckfield, which is described as:

'There are areas to the east of the town where the landscape structure is weak and could be redefined with a strong landscape structure. Urban fringe influences have spread in the form of fences replacing hedges, light industrial uses and associated clutter. These are notably areas surrounding Bird in Eye Farm and the paving works depot to the north of Framfield Road. There is a need to strengthen the countryside gap between Uckfield and Framfield in this area (my underlining).

- 5.37 Paragraph 3.8.4 of the assessment then goes on to say:

'Proposed development around Bird in Eye Farm would need to be in a strong landscape framework in order to strengthen the existing landscape and redefine the urban edge. The eastern boundary would need to be well defined to reinforce the gap between Uckfield and Framfield. This could be established by a wooded boundary which would tie in with existing woodland. The area between the hospital site and Mallards Drive is included in this preferred area. The landscape structure should include a multifunctional green corridor in the Framfield Stream valley and the tributary valley of Bird in Eye Shaw'.

- 5.38 Figure 10 of the assessment identifies the Site as falling within Area 4 which is identified as having High Development Potential (See **Appendix H**).

- 5.39 It is apparent from the above assessments that the Appeal Site has consistently been identified as a suitable location for development.

Site Description

- 5.40 The Site comprises a series of fields currently in use as paddocks, pasture for sheep grazing, and arable use. The Site as a whole is divided into two areas, which are bisected by Bird in Eye Shaw (Ancient Woodland). There is an informal private footpath passing through the woodland which connects the northern and southern parts of the Site. For ease of reference the Aerial Photograph at **Appendix B** has been subdivided into 5 parcels which are labelled A to E.

Parcels A to C (Development)

- 5.41 Parcels A to C encase Bird in Eye Farm and accommodate the vehicular access from the B2102. The land is divided into several paddocks by post and wire fencing.
- 5.42 The northern boundary of Parcel A is formed by the domestic fencing and vegetation that forms the rear garden boundaries of the properties which front onto Bird in Eye Hill. The southern part of Parcel A borders Bird in Eye Shaw, which lies outside the Site boundary. A narrow strip of land, which accommodates an unmade private footpath, extends from the south eastern corner of Parcel A, through Bird in Eye Shaw, to Parcel E.
- 5.43 The western boundary of Parcel A follows the heavily vegetated corridor of Framfield Stream. There is a relatively narrow tract of land which extends to Bird in Eye Hill.
- 5.44 Parcel B accommodates the access from Bird in Eye Hill to the farmyard. The majority of the parcel is occupied by paddocks with small areas of hardstanding. The northern boundary with Bird in Eye Hill is open. There is intermittent vegetation on the other boundaries of the parcel.
- 5.45 Parcel C is a rectangular area of land that is bisected by the farm track which follows a northeast to southwest alignment through the centre of the parcel. The parcel is divided into several paddocks by post and wire fencing. Bird in Eye Shaw forms the southern boundary of the parcel. The western boundary is largely defined by a hedgerow.

Parcels D and E (SANG)

- 5.46 Parcel D comprises a broadly rectangular field on the north eastern side of the Site. It is crossed by a farm track which leads from Bird in Eye Farm to Halwell Farm. To the south of the farm track is an area of semi mature plantation woodland. The land is currently sheep grazed pasture.
- 5.47 Parcel E lies to the south of Bird in Eye Shaw and is a large, irregular shaped field. It's boundary broadly follows the woodland which encloses it on all sides. Nightingale Wood lies immediately to the west. A gentle ridge of higher ground, that follows an east-west alignment, passes through the northern part of this area.

Topography

- 5.48 The topography of the Site is largely influenced by Framfield Stream and the stream that runs through Bird in Eye Shaw.

- 5.49 The northern part of the Site rises from Bird in Eye Hill to Bird in Eye Farm and continues to rise to the north eastern corner of the Site. The land similarly rises from Framfield Stream to the eastern Site boundary.
- 5.50 The southern part of the Site (Parcel E) rises from Bird in Eye Shaw to a gentle ridge which follows an east-west alignment. From the ridge the land falls in a south easterly direction to Nightingale Wood.
- 5.51 Beyond the Site, the land continues to rise to the northeast and east, to reach a localised highpoint of 80m AOD near Highlands. The landscape to the north and west is similarly undulating, with the residential parts of the town located on rising land above the River Uck. Beyond the town, the landscape is dissected by numerous watercourses.

Visibility

- 5.52 The LVIA provides a comprehensive assessment of the visibility of the Site and the tables in **Appendix E** of this Statement provides a commentary on the content of the existing views and the anticipated effects. I have therefore only summarised the key views below.
- 5.53 The Site is visible in the immediate area from two short sections of Bird in Eye Hill which borders the northern Site boundary and from the rising ground to the west. There are also some opportunities for views from the properties which border the Site. Middle distance views are also possible from properties on the higher ground in Uckfield. In the wider landscape, views are restricted by the undulating landform and the dense areas of woodland cover.

North

- 5.54 Views of the northern part of the Site are possible from a short section of Bird in Eye Hill as it passes the Site frontage. From further west, as Framfield Road enters the eastern part of Uckfield, there are heavily filtered views of the western part of the Site.
- 5.55 On the northern side of Bird in Eye Hill, opposite the Site, there are views from the neighbouring land, although this area is not publicly accessible. Similarly, views are possible from further north although this land is similarly not publicly accessible.
- 5.56 From the properties which front onto Bird in Eye Hill there are some opportunities for views of the Site although these views are partially filtered by boundary vegetation.

East

- 5.57 On approaching the Site from the east, on the B2102, the dense belt of woodland which runs alongside the road screens views of the Site until one arrives at the Site frontage. There are some opportunities for views of the Site from the limited number of properties which fall within the countryside to the east, but such opportunities are very limited.

South

- 5.58 Public footpath Framfield 65b follows the Site's south eastern boundary. Views from here are primarily of the rising land within Parcel E and Bird in Eye Shaw and Nightingale Wood. There is also the occasional opportunity for views of housing within Uckfield.

West

- 5.59 There are some views of the western parts of the Site from the access road serving the hospital and from the hospital itself. Similar views are possible from the neighbouring community allotments, although these are generally heavily filtered by the intervening woodland. There are also opportunities for views from the emerging residential development which lies immediately to the south of the hospital.
- 5.60 As one progresses further westwards into the heart of Uckfield there are occasional opportunities for views from a number of properties and from the public realm, although these opportunities are limited.

6.0 DESCRIPTION OF DEVELOPMENT

- 6.1 The DAS provides a comprehensive description of the proposed development and the context of the Site. The landscape strategy in **Appendix F** of this Statement shows that the Site, as a whole, will deliver significant landscape, recreational and wildlife benefits, through the delivery of a strategic SANG and local areas of open space. The DAS also contains an illustrative masterplan.
- 6.2 In broad terms the more sensitive parts of the Site (Parcels D and E), which have a stronger relationship to the neighbouring countryside, are to be kept free of development and are to accommodate a strategic SANG which will deliver significant wildlife and passive recreational benefits for both new and existing residents alike.
- 6.3 Development will be confined to the northern part of the Site which has a more rural fringe character and currently has some detracting features within it, such as the commercial buildings and associated areas of hardstanding. It also has intervisibility with development within Uckfield.
- 6.4 The proposed development, which is at the outline stage, is for a residential development of up to 290 dwellings, associated landscaping, informal open space and strategic SANG, with access from the B2102. Appearance, landscaping, layout and scale are to be addressed at the reserved stage.
- 6.5 The proposed dwellings will be predominately two storeys, with some three storey dwellings. The principles that have informed the development are as follows:
- (i) The proposed development is to be set within a landscape framework, with significant multi-functional green corridors between the housing parcels and along the site boundaries. The existing landscape features within the Site, such as hedgerows and woodland, will be retained and enhanced.
 - (ii) The setting of The Oast will be addressed in an appropriate manner with housing set back from it behind a generous area of green space. A view corridor will also be created to it.
 - (iii) The strategic SANG will provide a 2.7km walking route with links to the residential area, a car park and significant areas of new native trees and wildflower meadows and ponds. This area will provide substantial recreational and ecological benefits.

- (iv) All woodland within and on the edges of the Site is to be protected and a LEMP drawn up to ensure that the woodland is managed in an appropriate manner. A minimum buffer of 15m will be provided to the Ancient Woodland.
- (v) Vehicular access will be from Bird in Eye Hill with pedestrian access at the north western corner of the Site.
- (vi) New tree planting within the public open spaces and within the development will add to the well-treed character of the area, and soften the development in views from the town.
- (vii) Circular walks will be created within the development and these will connect to the routes within the strategic SANG to the east and south.
- (viii) Provision of a Locally Equipped Area of Play ('LEAP'); and
- (ix) Provision of a large attenuation basin in the south western corner of the residential development with swales linking to it.

6.6 It is apparent from the above description that the proposed development responds to the Site in a sensitive manner and that it will deliver a development with a distinct sense of place.

7.0 SUMMARY OF LANDSCAPE AND VISUAL EFFECTS

- 7.1 In the following section I summarise the main effects of the development under the following headings. A more detailed description is contained in the LVIA. The tables in **Appendix E** of this Statement also summarise the anticipated landscape and visual effects at completion of the development and at 15 years.

A. Landscape Character

Relationship to Uckfield

- 7.2 The Site is well related to Uckfield with the hospital, community allotments, and residential development immediately to the west of Framfield Stream. Much of this development is visible from the northern part of the Site. There is also linear development along the greater part of the Site's northern boundary and similar development on the opposite side of Bird in Eye Hill.
- 7.3 Development on the Site would also complement the pattern of development within Uckfield which occupies the valley sides. By virtue of its west-facing location, the proposed development would have a strong visual connection to existing development within Uckfield.

Impact on landscape character

- 7.4 The **Site** as a whole does not carry any designation for landscape character or quality. In broad terms, the northern part of the Site has a rural fringe character which is influenced by its intervisibility with Uckfield, the commercial buildings and associated areas of hardstanding which sit within the centre of the area. Paddocks occupy most of the area and these are subdivided by wire fences. The southern and eastern parts of the Site are more detached from Uckfield, have a more tranquil character and relate more strongly to the open countryside to the south east. The impact of providing a SANG in these area will be beneficial.
- 7.5 In terms of the impact of development on the northern part of the Site, this will give rise to a certain level of harm as greenfield land will largely be given over to housing and associated infrastructure. The harm will however be localised and there will be opportunities for landscape enhancements.
- 7.6 In terms of the impact on the **wider landscape**, the Site lies within LLCA A4: Blackboys and Framfield. The Wealden Landscape and Settlement Assessment describes this study area as a predominantly well wooded

landscape of ridges and valleys, with numerous stream corridors running through the valleys. The field pattern is largely small-scale and pastoral, interspersed with woodland, giving a wooded skyline, with areas away from the settlement considered as tranquil and remote.

- 7.7 As a result of the localised nature of views and the fact that the northern part of the Site is discordant with the character of the wider area, the impact of the development on the character of the wider landscape will be negligible.

Impact on landscape features

- 7.8 The key landscape features of the Site are its undulating topography and the woodland framework within which it sits. The boundary vegetation within the Site is very limited but it will be retained and enhanced nevertheless.
- 7.9 There will be no material change to the landform of the Site given the density of the development. There will be no change to the underlying landform of the parts of the Site that are to accommodate the SANG.
- 7.10 As shown on the Landscape Strategy (**Appendix F**), Bird in Eye Shaw, which is Ancient Woodland, will have a minimum buffer of 15m. Within this buffer new planting is proposed to provide further protection to the woodland.
- 7.11 There is currently a private footpath passing through Bird in Eye Shaw. This footpath will be upgraded, in an appropriate manner, to form part of the strategic SANG walking route.
- 7.12 The majority of the hedgerow between Parcels A and C will be retained and enhanced. There will be the loss of a short section of hedgerow to accommodate vehicular access between the parcels but compensatory planting can be provided.

Public Rights of Way

- 7.13 There is currently no public access onto the Site. There will be connections from the SANG to the public footpath which runs alongside the south eastern Site boundary.
- 7.14 Recreational routes within the residential area will also link the existing footpath on Bird in Eye Hill to the open spaces within the development and to the wider SANG.

Heritage

- 7.15 The Heritage Assessment that accompanied the planning application concluded that the impact of the development on The Oast '*... would not have a discernible impact on the significance of the listed building.*' It also stated that the manner in which the development addressed The Oast, would make it '*...accessible to residents and visitors and this would allow a wider public appreciation and understanding of The Oast.*'
- 7.16 In Section 4 of this Statement I have provided a summary of the key views of the Site. I now summarise the anticipated effects.

B. Visual Effects

North

- 7.17 The access into the Site will be in a similar location to the current access and will only be visible from a very short section of Bird in Eye Hill. The views will mainly be experienced by motorists. The entrance to the Site (and Area B) will be landscaped with tree, hedgerow and wildflower planting, set back from the road to create an attractive entrance into the Site.
- 7.18 From a short section of the B2102, to the west of the Site, there will be framed views of new housing in the north western part of the development.
- 7.19 There will be some views of the new housing in the north western part of the Site from the properties on Bird in Eye Hill although the planting on this boundary will be enhanced and as such the views will be filtered. There will also be some limited opportunities for views from the houses on the opposite side of the road.

East

- 7.20 From the B2102 to the east of the Site, there will be no opportunities to view the development until one has arrived at the Site frontage. At this point existing development within Uckfield will be in view.
- 7.21 There will be some limited opportunities for views from Hailwell Farm Bungalow and Ivy Cottages of the SANG within Parcel D and the potential for glimpsed views of housing in Parcel C and the car park which serves the SANG. As the proposed planting within Parcel C establishes, views will become heavily filtered or screened.

South

- 7.22 In views from public footpath Framfield 65b, on the south eastern Site boundary, the southern part of the strategic SANG will be visible, with new planting within the interior of the open space of the SANG visible along the route. The new housing will be screened by Bird in Eye Shaw.

West

- 7.23 Views of the new housing in the western half of the development will be possible from Uckfield Hospital and the access road and car park that serves it. Similar views will be available from the emerging housing estate to the south of it. There will also be views from the allotments to the west of the Site, albeit these views will be more heavily filtered. There will be some opportunities for views from within Uckfield further to the west.
- 7.24 Views of the development will be largely confined to near distance views and frequently experienced within, or against, the urban area of Uckfield. The heavily wooded character of the landscape screens the vast majority of views from the wider countryside. As a result, the visual effects from public vantage points are assessed as being no greater than moderate adverse at year one, reducing to slight adverse by year 15.

C. Policy Context

- 7.25 **Policy WCS13** of the Core Strategy requires development to provide a Green Infrastructure Strategy which improves and enhances the existing GI network. As the Landscape Strategy (see **Appendix F**) shows, these objectives will be met through provision of the SANG and the green infrastructure network within the development.
- 7.26 **Saved Policy EN27** of the adopted Local Plan is concerned with the design and layout of developments and requires the design, scale, form, site coverage and density, as well as its materials and landscaping to be of an appropriately high standard. It also requires a satisfactory environment to be created for the future occupants which should include appropriately landscaped amenity areas.
- 7.27 I have already explained that the spatial arrangement of the proposed development have been informed by a detailed landscape analysis of the Site and wider area. As a result of these findings, only a relatively small proportion of the Site was identified for development.
- 7.28 The SANG will clearly provide significant opportunities for informal passive recreational activities. There will also be areas of open space

within the development to accommodate play areas and informal area of open space.

- 7.29 Given the above approach, the objective of policy EN27 will be met.
- 7.30 **Saved Policy EN8** states that development within the Low Weald will only be permitted if it conserves the low rolling agriculture of the landscape. The policy then lists a series of items that also need to be considered, such as the setting of settlements and retention of woods, boundary trees and hedges.
- 7.31 There is a conflict with this policy to a certain degree as an element of farmland will be given over to development. The scheme has nevertheless responded to the settlement of Uckfield in an appropriate manner and will preserve and enhance the woodland and hedgerows within the Site. The weight attributed to this policy is addressed in the Planning Statement.

8.0 CONCLUSION

- 8.1 The Site has a varying character with the southern part being intact farmland with a strong relationship to the neighbouring countryside. This area is separated from the northern part, both physically and visually, by Bird in Eye Shaw. The southern part of the Site will be kept free of development and will provide a SANG, which will bring benefits for mankind and wildlife alike.
- 8.2 The area of land to the north of Bird in Eye Shaw and south of Bird in Eye Hill has a rural fringe character and a number of detracting features within it, such as the commercial buildings which sit within the centre of the Site. There is also intervisibility with the eastern edge of Uckfield.
- 8.3 My overall conclusion is that development in accordance with the submitted masterplan can be accommodated on the Site without giving rise to any significant adverse landscape, townscape or visual effects. It will complement the character of Uckfield and the neighbouring landscape and provide significant wildlife and recreational benefits, amongst other things.



Dixies Barns, High Street, Ashwell,
Hertfordshire SG7 5NT
t 01462 743647
e ashwell@csaenvironmental.co.uk
w csaenvironmental.co.uk

Suite 1, Deer Park Business Centre, Eckington,
Pershore, Worcestershire WR10 3DN
t 01386 751100
e persshore@csaenvironmental.co.uk
w csaenvironmental.co.uk

Office 21, Citibase, 95 Ditchling Road,
Brighton BN1 4ST
t 01273 573871
e brighton@csaenvironmental.co.uk
w csaenvironmental.co.uk

9/B.2 Southgate Chambers, 37-39 Southgate
Street, Winchester SO23 9EH
t 01962 587200
e winchester@csaenvironmental.co.uk
w csaenvironmental.co.uk



January 2023

Land at Bird in Eye Farm,
TN22 5HA

**Appendices to the
Landscape Statement**

Prepared by:

Clive Self
MA (Urb Des) Dip LA CMLI

LPA Ref: WD/2021/2198/O
PINS Ref: APP/C1435/W/22/3307820

on behalf of:
Croudace Homes Ltd

Report No: CSA/2646/09

Report Reference	Revision	Date	Prepared by	Approved by	Comments
CSA/2646/09		27/01/2023	HG	CS	

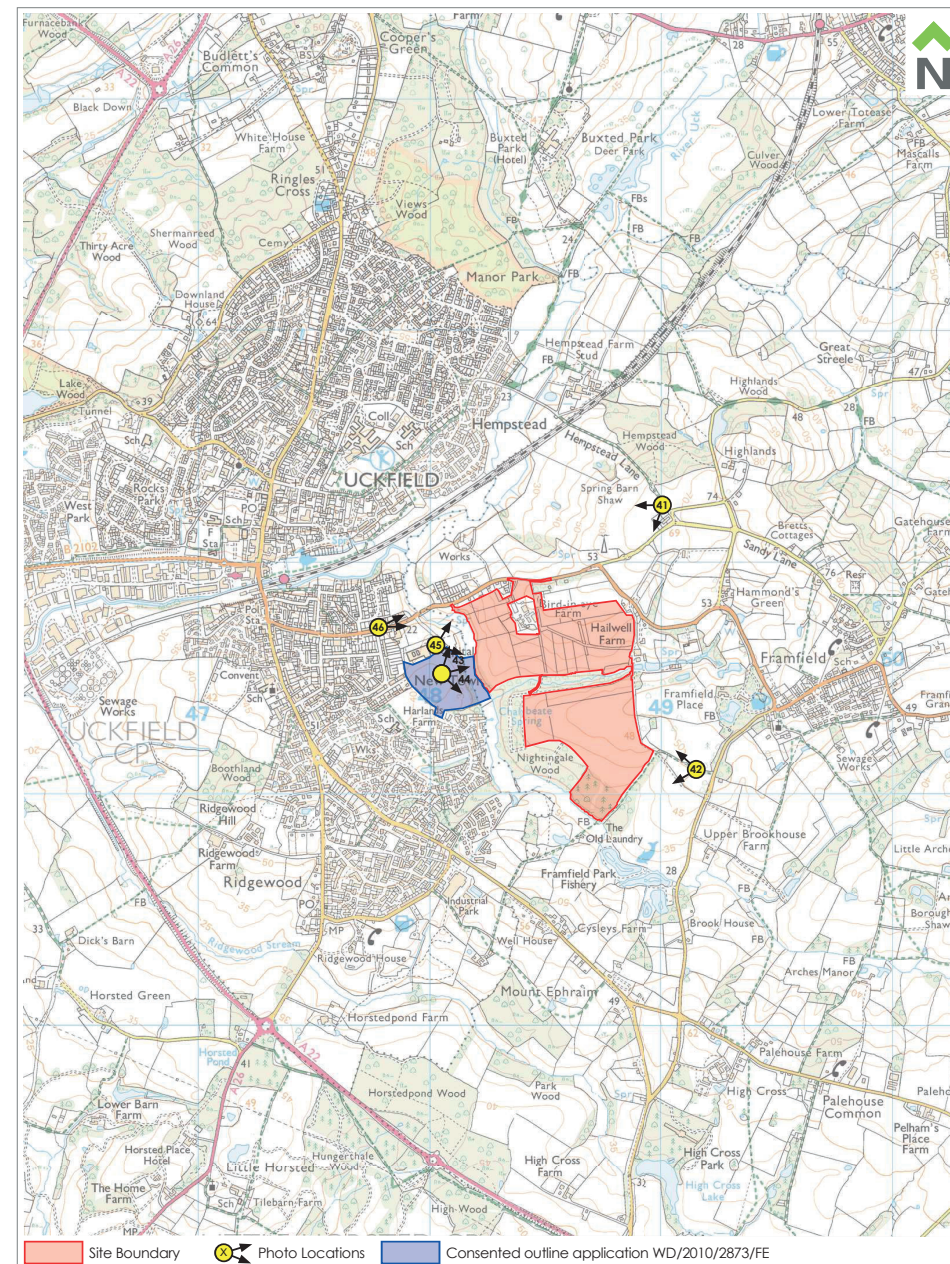


Appendices

Appendix A:	Site Location Plan
Appendix B:	Aerial Photograph
Appendix C:	Photographs
Appendix D:	MAGIC Map
Appendix E:	Summary of Landscape and Visual Effects
Appendix F:	Landscape Strategy
Appendix G:	Wealden Landscape and Settlement Character 2014
Appendix H:	Character Assessment and Development Option Evaluation Study 2009

Appendix A

Site Location Plan



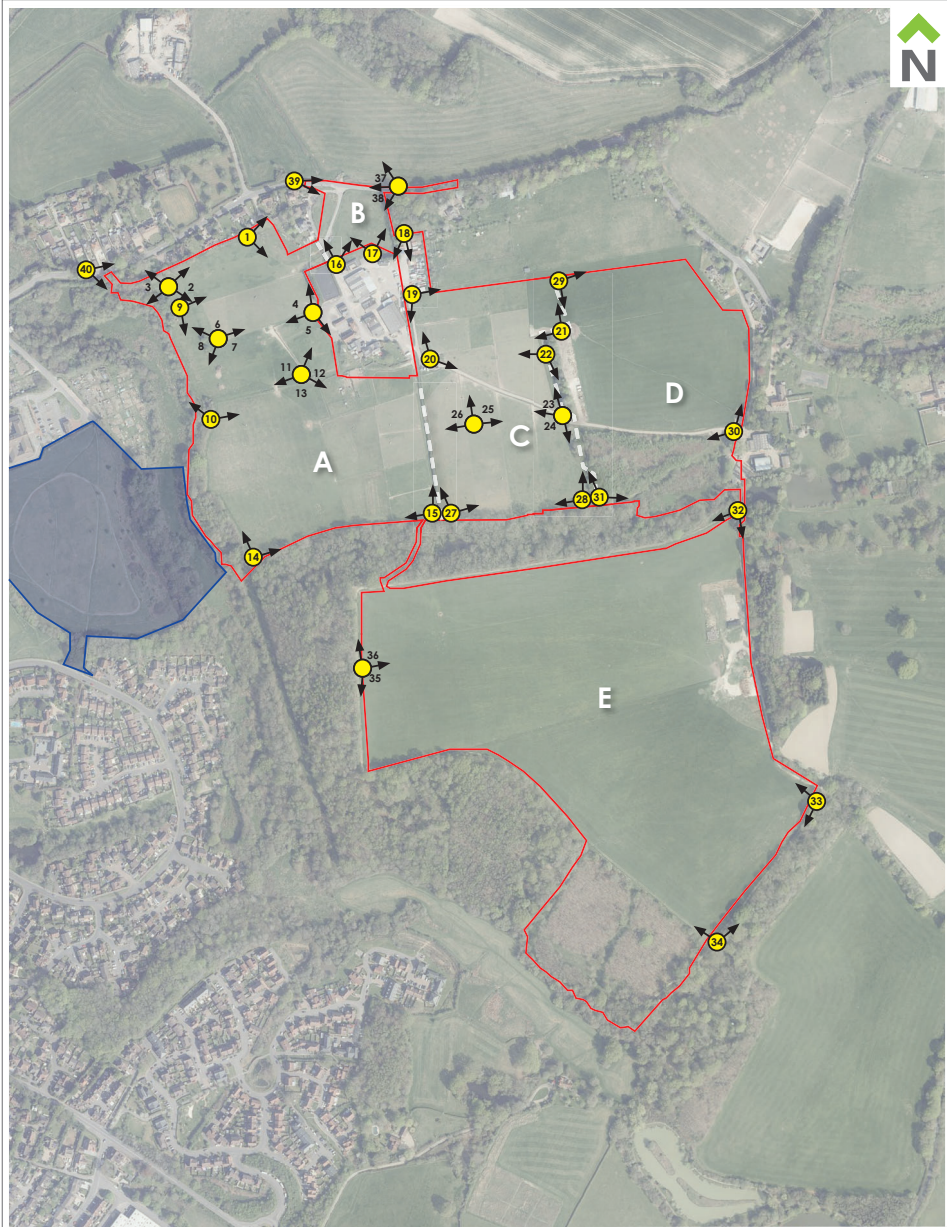
CSA
environmental

Dixies Barns, High Street,
Ashwell, Hertfordshire SG7 5NT
t 01462 743647
e ashwell@csaenvironmental.co.uk
w csaenvironmental.co.uk

Project	Bird in Eye Farm, Uckfield	Drawing No.	CSA/2646/100	Rev	8
Drawing Title	Site Location Plan	Scale @ A4	NTS	Drawn	AJ
Client	Croudance Homes Ltd	Date	June 2021	Checked	JJ

Appendix B

Aerial Photograph



Site Boundary Photo Locations Consented outline application WD/2010/2873/FE

<div>CSA</div> <div>environmental</div> <div>Dixies Bams, High Street, Ashwell, Hertfordshire SG7 5NT</div> <div>01462 743647</div> <div>ashwell@csaenvironmental.co.uk</div> <div>csaenvironmental.co.uk</div>	Project	Bird in Eye Farm, Uckfield	Drawing No.	Rev
	Drawing Title	Aerial Photograph	Scale @ A4	Drawn
	Client	Croudance Homes Ltd	Date	Checked
			June 2021	JJ

Appendix C

Photographs



Photograph 01 View from Area A within the Site, looking east



Photograph 02 View from Area A within the Site, looking east

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -



Photograph 03 View from Area A within the Site, looking west



Photograph 04 View from Area A within the Site, looking northwest

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -



Photograph 05 View from Area A within the Site, looking southwest



Photograph 06 View from Area A within the Site, looking north

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -

Buidlings within Bird in Eye Farm complex

Bird in Eye Shaw (Ancient Woodland)



Photograph 07 View from Area A within the Site, looking east

Allotments

Allotments



Photograph 08 View from Area A within the Site, looking southwest

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -



Photograph 09 View from Area A within the Site, looking east



Photograph 10 View from Area A within the Site, looking northeast

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -



Photograph 11 View from Area A within the Site, looking west-northwest



Photograph 12 View from Area A within the Site, looking northeast

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -



Photograph 13 View from Area A within the Site, looking south



Photograph 14 View from Area A within the Site, looking north east

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -

Buidlings within Bird in Eye Farm complex



Photograph 15 View from Area A within the Site, looking northwest

Property indented into Site's northern boundary



Photograph 16 View from Area B within the Site, looking north

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -



Photograph 17 View from Area B within the Site, looking north



Photograph 18 View from Area B within the Site, looking south

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -



Photograph 19 View from Area C within the Site, looking southeast

Buidlings within Bird in Eye Farm complex



Photograph 20 View from Area C within the Site, looking east

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -



Photograph 21 View from Area C within the Site, looking north west



Photograph 22 View from Area C within the Site, looking southwest

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -

Buidlings within Bird in Eye Farm complex



Photograph 23 View from Area C within the Site, looking northwest

Area E

Bird in Eye Shaw (Ancient Woodland)



Photograph 24 View from Area C within the Site, looking southwest

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -



Photograph 25 View from Area C within the Site, looking east



Photograph 26 View from Area C within the Site, looking west

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -

Buidlings within Bird in Eye Farm complex

Bird in Eye Shaw (Ancient Woodland)



Photograph 27 View from Area C within the Site, looking northeast

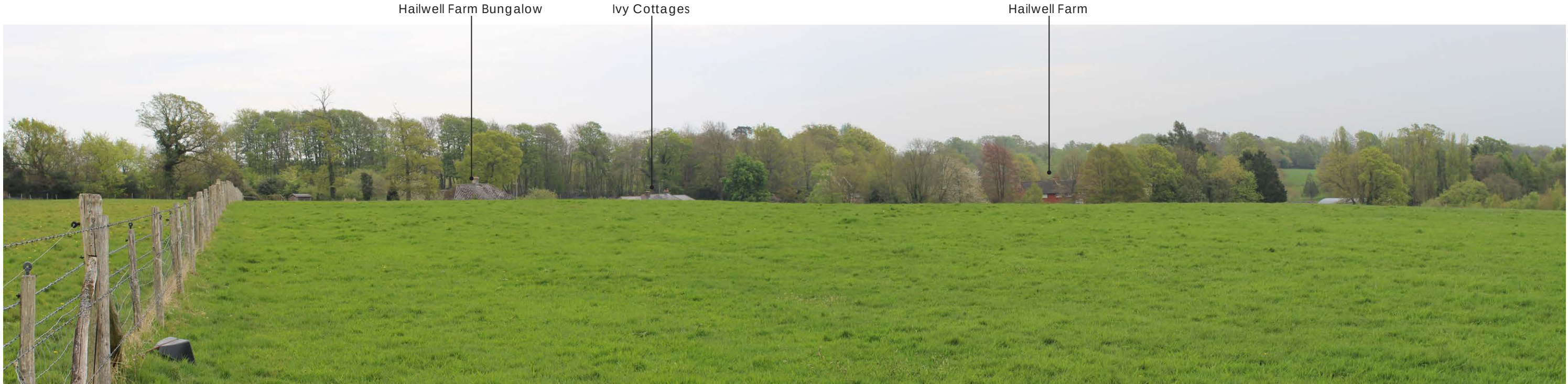
Bird in Eye Shaw (Ancient Woodland)

Buidlings within Bird in Eye Farm complex



Photograph 28 View from Area C within the Site, looking northwest

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -



Photograph 29 View from Area D of the Site looking southeast



Photograph 30 View from Area D of the Site looking northwest

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -



Photograph 31 View from Area D of the Site looking northwest



Photograph 32 View from Area E of the Site southwest

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -



Photograph 33 View from public footpath Framfield 65b looking west



Photograph 34 View from public footpath Framfield 65b looking north

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -



Photograph 35 View from edge of Area E, looking southeast



Photograph 36 View from edge of Area E, looking northeast

<div> <div>CSA</div> <div>environmental</div> </div>		<div> <div>Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT</div> <div> <div>t</div> <div>01462 743647</div> </div> <div> <div>e</div> <div>ashwell@csaenvironmental.co.uk</div> </div> <div> <div>w</div> <div>csaenvironmental.co.uk</div> </div> </div>		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -

Approximate extent of Site

Property indented into Site's northern boundary

Town of Uckfield on rising land to north



Photograph 37 View from Bird-In-Eye Hill (road), within Area B, looking northwest

Visualisation Type 1
Cylindrical projection
48% @ A3, 96% @ A1
20.03.2020, 12:57
Canon 1200D 1.6x, Canon EF-S 18-55mm
Hfov 90°
Looking direction: south west

<div><div>CSA</div><div>environmental</div></div>		<div>Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT</div> <div><div>t</div>01462 743647</div> <div><div>e</div>ashwell@csaenvironmental.co.uk</div> <div><div>w</div>csaenvironmental.co.uk</div>		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -

Approximate extent of Site

Properties indented into Site's northern boundary



Photograph 38 View from Bird-In-Eye Hill (road), within Area B, looking southwest

Visualisation Type 1
Cylindrical projection
48% @ A3, 96% @ A1
20.03.2020, 12:57
Canon 1200D 1.6x, Canon EF-S 18-55mm
Hfov 70°
Looking direction: north west

<div><div>CSA</div><div>environmental</div></div>		<div>Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT</div> <div><div>t</div>01462 743647</div> <div><div>e</div>ashwell@csaenvironmental.co.uk</div> <div><div>w</div>csaenvironmental.co.uk</div>
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Panorama 39 For context only



Photograph 39
View from Bird-In-Eye Hill (road) within Area B looking east at current entrance into Bird in Eye Farm

Visualisation Type 1
Planar projection
75% @ A3, 150% @ A1
20.03.2020, 12:59
Canon 1200D 1.6x, Canon EF-S 18-55mm
HfoV 40°
Looking direction: east

		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -

Approximate extent of Site

Properties along Bird in Eye Hill (road)



Photograph 40 View from Site's north western field entrance on Bird-In-Eye Hill (road) looking east

Visualisation Type 1
Cylindrical projection
48% @ A3, 96% @ A1
20.03.2020, 14:16
Canon 1200D 1.6x, Canon EF-S 18-55mm
HfoV 45°
Looking direction: west

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT <div><div>t</div>01462 743647</div> <div><div>e</div>ashwell@csaenvironmental.co.uk</div> <div><div>w</div>csaenvironmental.co.uk</div>
---	--	---

Approximate extent of Site



Panorama 41 For context only



Photograph 41
View from Hempstead Lane (public footpath Framfield 62) to northeast looking southwest

Visualisation Type 1
Planar projection
75% @ A3, 150% @ A1
20.03.2020, 15:37
Canon 1200D 1.6x, Canon EF-S 18-55mm
HfoV 40°
Looking direction: south west

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -



Photograph 42 View from public footpath Framfield 65b beyond the Site to the southeast, looking west with no view of the Site due to intervening vegetation

Visualisation Type 1
Cylindrical projection
48% @ A3, 96% @ A1
20.03.2020, 16:51
Canon 1200D 1.6x, Canon EF-S 18-55mm
HfoV 50°
Looking direction: west

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT <div><div>t</div>01462 743647</div> <div><div>e</div>ashwell@csaenvironmental.co.uk</div> <div><div>w</div>csaenvironmental.co.uk</div>
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Photograph 43 View from area of land with consent for 146 dwellings (currently with permissive access) south of hospital looking northeast

Visualisation Type 1
Cylindrical projection
48% @ A3, 96% @ A1
20.03.2020, 16:09
Canon 1200D 1.6x, Canon EF-S 18-55mm
HfoV 75°
Looking direction: east

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -

Buidlings within Bird in Eye Farm complex



Photograph 44 View from area of land with consent for 146 dwellings (currently with permissive access) south of hospital looking northeast

Visualisation Type 1
Cylindrical projection
48% @ A3, 96% @ A1
20.03.2020, 16:09
Canon 1200D 1.6x, Canon EF-S 18-55mm
Hfov 75°
Looking direction: south east

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT <div><div>t</div>01462 743647</div> <div><div>e</div>ashwell@csaenvironmental.co.uk</div> <div><div>w</div>csaenvironmental.co.uk</div>
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Photograph 45 View from Uckfield Hospital car park looking east

Visualisation Type 1
Cylindrical projection
48% @ A3, 96% @ A1
20.03.2020, 16:18
Canon 1200D 1.6x, Canon EF-S 18-55mm
HfoV 90°
Looking direction: east

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT <div><div>t</div>01462 743647</div> <div><div>e</div>ashwell@csaenvironmental.co.uk</div> <div><div>w</div>csaenvironmental.co.uk</div>
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Photograph 46

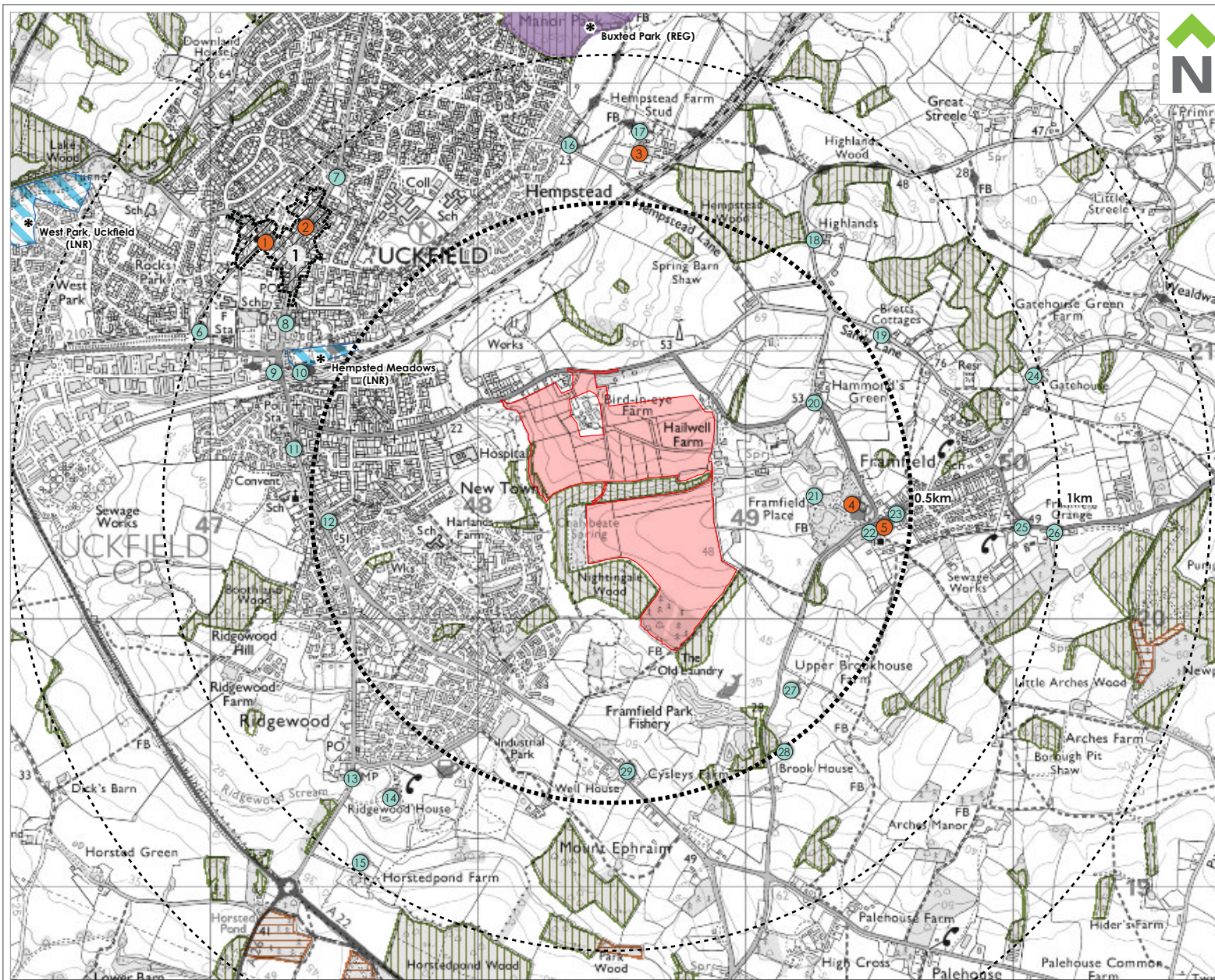
View from Framfield Road looking east

Visualisation Type 1
Planar projection
75% @ A3, 150% @ A1
20.03.2020, 16:27
Canon 1200D 1.6x, Canon EF-S 18-55mm
HfoV 40°
Looking direction: east

<div><div>CSA</div><div>environmental</div></div>		Dixies Barns, High Street, Ashwell, Hertfordshire SG7 5NT t 01462 743647 e ashwell@csaenvironmental.co.uk w csaenvironmental.co.uk		
Project	Bird-In-Eye, Uckfield	Drawing No. CSA/2646/103		
Drawing Title	Photosheets	Date March 2020		
Client	Croudace Homes Ltd.	Drawn PH	Checked JJ	Rev -

Appendix D

MAGIC Map



- Site Boundary
- Local Nature Reserve (LNR)
- Registered Park and Gardens (REG)
- Ancient Woodland
- Ancient Replanted Woodland
- Conservation Areas
- 1. Uckfield
- Grade II* Listed Buildings & Structures within 1.0km
 - 1. Copping Hall
 - 2. Hooke Hall
 - 3. Hempstead Manor Farmhouse
 - 4. Farmfield Place
 - 5. Becketts
- Grade II Listed Buildings & Structures within 1.5km
(Outside Conservation Areas)
 - 6. Bell Farm House
 - 7. Group of 7: Henley House, The Baptist Church, Rockville, Rock Hall, Butt's Cottage Cobweb Castle, 258-262 High Street & The Mount
 - 8. Olive's Cottage Victoria Wine
 - 9. Bridge Cottage
 - 10. Group of 2: Uckfield Mill & The Old Mill House
 - 11. Columbine Cottage Woodbine Cottage
 - 12. The Belfry, including gate piers and gates
 - 13. 18, 19, 19A Lewes Road
 - 14. Ridgwood House
 - 15. The Old Farmhouse Hostedpond
 - 16. Hempstead Mill
 - 17. The Oast House
 - 18. Highlands
 - 19. Thatched Cottage
 - 20. Hammonds Green
 - 21. The Stables to the north west of Framfield Place
 - 22. Group of 5: Vicarage Gate, Church Approach, Rose Cottage, Glebe Farmhouse, Parish Church of St Thomas A Becket
 - 23. Group of 4: Pump Cottage, Jessamine Cottage, Salem Cottages, Veterinary House
 - 24. Gate House
 - 25. Grange Farm House
 - 26. Farmfield Grange
 - 27. Upper Brookhouse
 - 28. Brookhouse
 - 29. Crisleys Farmhouse



Dixies Barns, High Street,
Ashwell, Hertfordshire SG7 5NT

† 01462 743647
e ashwell@csaenvironmental.co.uk
w csaenvironmental.co.uk

Project Bird in Eye Farm, Uckfield

Drawing Title MAGIC Map and Local Plan Extract

Client Croudance Homes Ltd

Date June 2021

Drawing No. CSA/2646/102

Scale @ A4 NTS

Rev A

Drawn AJ

Checked JJ

Appendix E

Summary of Landscape and Visual Effects

LANDSCAPE/TOWNSCAPE EFFECTS						
Direct effects on landscape features	Quality & Sensitivity	Existing Conditions	Impact and Mitigation	Magnitude of Change	Effect Year 1	Effect Year 15
Trees	Medium / High	There is a group of two trees which are classified as veteran trees (Category A) in the Tree Survey which accompanies the application. The group is close to the south eastern corner of Area D, east of the plantation woodland. A single tree, also classified as veteran (Category A), lies on the northern edge of Bird in Eye Shaw to the south of Area C outside the Site boundary, but with its buffer extending into the Site. There are a number of Category B trees and tree groups (moderate quality as classified in the Tree Survey), within and on the Site boundaries.	<p>An AIA which accompanies the application considers the changes to the arboricultural stock at the Site. Two individual trees (southwest within Area B for vehicular access) and two tree groups (one southwest of Area B for vehicular access and the other to centre west of the development parcel within Area A) will be lost as a result of the development. These are all classified as low quality trees and their loss can be mitigated through the proposed planting.</p> <p>Any development is set well back from the veteran trees, and these will be protected and their proposed buffers respected.</p> <p>Significant new tree planting within the public open space of the development and within the strategic SANG will compensate for the losses and will add to the age range and species diversity of the Site.</p>	Negligible	Negligible Adverse	Slight Beneficial as proposed planting establishes
Hedgerows	Medium	A mainly continuous hedgerow divides the paddocks between Areas A and C, and is classified as Category C (low quality) in the Tree Survey, but it is of landscape value by retaining the field structure. A section of <i>Leylandii</i> hedging lies between Area A and at the northern end of the western boundary with Bird in Eye Farm. There are a number of other hedgerows within the Site, mainly classified as Category C (low quality) in the Tree Survey.	<p>Short sections of hedgerows will be lost as a result of the development, all of which are classified in the Tree Survey as being low arboricultural quality. These comprise a short section the native hedgerow to the east of Area A to allow for vehicular access, and sections of the native hedgerow between Areas A and C to allow for vehicular access between the parcels.</p> <p>New planting within the public open space will more than compensate for these losses.</p>	Negligible	Negligible Adverse	Slight Beneficial as proposed planting establishes
Woodland	High	The section of Ancient Woodland which lies along the western Site boundary is classified as Category A (high quality). Bird	The Ancient Woodland along the western boundary within the Site will be protected, with any significant	Negligible	Negligible Adverse	Neutral as the

		<p>in Eye Shaw (Ancient Woodland) which adjoins the southern boundary of the northern part of the Site, Nightingale Wood (also Ancient Woodland), and the off-site woodland to the immediate east of Area B are classified as Category A, as are the areas of plantation woodland within Areas D and E.</p>	<p>excavation some distance from the woodland, apart from the requirement for a drainage outfall and piped connection from the attenuation basin, at the south western corner of Area A. Given that the route will be able to be taken through an area which is regularly cleared for overhead power lines, the effect on any woody material is considered in the AIA to be of minor potential impact. New planting of suitable native species can be undertaken in this area, provided they are shallow rooting.</p> <p>Similarly, the required linking route between the northern and southern parts of the Site can be managed to avoid any significant trees or roots, as the path will be aligned as closely as possible with a current route through the woodland and will comprise no dig construction.</p> <p>The AIA concludes that the required buffers for the Ancient Woodland have been provided and are respected by the proposed development.</p> <p>New planting along the northern edge of Bird in Eye Shaw will provide further protection for the woodland and add the species diversity of the Site.</p>			planting establishes
Watercourses	Medium	<p>A stream runs west-east through Bird in Eye Shaw, and the strip of land which links the northern and southern parts of the Site crosses over it, via a small bridge.</p> <p>Framfield Stream follows the western boundary of Area A and part of the south western boundary of Area E.</p>	<p>Any headwall which is required for the drainage outfall, will be of limited construction and would have no direct effect on the Framfield Stream.</p> <p>The current route through Bird in Eye Shaw, which has been retained to link the northern and southern parts of the Site, will be fenced to avoid dogs wandering, and an upgraded bridge provided. There will be no direct effect on this watercourse.</p>	Neutral	Neutral	Neutral
Public Rights of Way	High	<p>A public footpath runs alongside the south eastern boundary of Area E, outside the Site boundary.</p>	<p>There will be no direct effects on the public footpath.</p>	Neutral	Neutral	Neutral

		The rest of the Site is not publically accessible, and there are no other public footpaths.	The land immediately adjacent to it will be designed as a strategic SANG, and there will be opportunities for connectivity between the public footpath and the SANG routes which will link to the recreation routes through the public open space in the developed area.			
The Site (i.e. paddocks, hard standing, access roads, woodland and small farm buildings)	Medium	The Site comprises a number of paddocks used for horse grazing, an area of hard standing containing containers and caravans to the north, two farm buildings close to the eastern boundary and access roads and farm tracks through some of the areas, north of Bird in Eye Shaw. A finger of land, which extends along the current alignment of the path through Bird in Eye Shaw, links the northern and southern parts of the Site, and there are areas of plantation woodland to the east and southwest, and woodland along the western boundary along Framfield Stream.	New housing set within a strong landscape framework will replace the existing uses of the Site to the north and west. A large area set aside as strategic SANG will provide public access to the eastern and southern parts of the Site.	Moderate – residential part; Slight – rest of Site (Strategic SANG)	Moderate Adverse – residential part; Slight Beneficial – rest of Site (Strategic SANG)	Slight Adverse – residential part; Moderate Beneficial – rest of Site (Strategic SANG)
Heritage Assets e.g. Registered Park and Garden, Conservation Areas, Scheduled Monuments & Listed Buildings	N/A	There are no heritage assets contained within the Site.	There will be no direct effects on heritage assets.	Neutral	Neutral	Neutral
Indirect effects on landscape / townscape character	Quality & Sensitivity	Existing Conditions	Impact and Mitigation	Magnitude of Change	Effect Year 1	Effect Year 15
Landscape character of Site	Medium	The character of the landscape of the LLCT and LLCA in which the Site lies, as identified in the Wealden Landscape and Settlement Assessment is described in the study as a well wooded landscape of ridges and valleys, with numerous stream corridors running through the valleys, resulting in views being confined to opposite valley sides. The field pattern is small-scale and pastoral, interspersed with woodland, giving a wooded skyline, and areas away from settlement are considered in the study as tranquil and remote. In the document's assessment of Landscape Setting Area 2 in which the Site lies, it notes that views are localised, giving an intermittent sense of enclosure.	Development at the Site will result in the loss of a number of paddocks on rising land to the west of Uckfield. These will be replaced with a landscape-led scheme with approximately 75% public open space, and considerable new tree planting, which will add to well-wooded character of the area. The woodland which lies within and adjoins the Site will be protected and new public access will allow for wider enjoyment of it. In addition, the area of strategic SANG will provide a large area for recreation. This area, to the east and south of the development, will	Moderate – developable area; Neutral – area of Strategic SANG	Moderate Adverse – developable area; Negligible Beneficial – area of Strategic SANG	Moderate Adverse – developable area; Negligible Beneficial – area of Strategic SANG

		<p>Our assessment is that, while there are similarities to the descriptions of the LLCT and LLCA, there are also some distinctive differences, some of which are detracting features. The northern part of the Site is used as paddocks, there are a number of stables as well as barns now converted to small business units which the Site surrounds. A number of post mounted over-head wires also cross the Site. These elements all contribute to an edge of settlement character, and detract from the Site's overall landscape character. In addition, the town exerts a strong influence on the Site, as it rises up the opposite valley sides to the north, west and southwest. Given this presence, the northern part of the Site could not be considered tranquil or wild.</p> <p>By contrast, the southern part of the Site, which is surrounded by woodland is separated from the town, and from the wider landscape, giving it a more tranquil character, albeit in close proximity to the town.</p>	remain undeveloped land separating the area of development from the wider countryside.			
Townscape in the vicinity of the Site	Medium	Apart from the listed building within Bird in Eye Farm (see Heritage section below), the properties in the immediate vicinity of the Site comprises modern, 20th century residential buildings. The wider town contains buildings from a wide range of time periods, including modern, 21 st century development. It is pleasant, but undistinguished.	The new housing will be set back from the rear gardens of the properties which adjoin the Site, and will be set within a landscaped framework, which befits the edge of settlement character of the development.	Slight	Slight Adverse	Negligible Adverse as the new planting establishes
Wider Landscape Character	Medium	The wider landscape is closely undulating, with ridges, valleys and small watercourses. There are high levels of woodland cover, giving well wooded horizons and often screening settlements. The wider landscape in the vicinity of the Site is broadly typical of the LLCT and LLCA as identified in the Wealden Landscape and Settlement Assessment, but not a rare or unusual example of it.	Due to the closely undulating landscape, the woodland that bounds the southern part of the Site and bisects it, and the western / southwestern direction in which the proposed developed part of the Site lies, its effect on the wider landscape is limited to the near vicinity, with any potential longer distance views, where these are possible, seen in the context of the residential parts of Uckfield on rising land in close proximity to the town.	Slight	Slight Adverse	Negligible / Neutral Adverse as the proposed planting establishes
Heritage Assets e.g. Registered Park and Garden,	Medium / High	The Grade II Listed Oasthouse within Bird in Eye Farm is surrounded by converted	The effect of the development on heritage assets is covered in detail in	Negligible	Negligible Adverse	Negligible beneficial as the

Conservation Areas, Scheduled Monuments & Listed Buildings		<p>barns and stables, many of which are of low architectural merit.</p> <p>the Heritage Statement which accompanies this application.</p> <p>In relation to landscape, the proposed development has been carefully designed to include a viewing corridor to The Oast. This will highlight its importance within the farm complex, acknowledging its heritage value, and allow the wider public to see and enjoy its presence. New housing will be set back from the viewing corridor with planting designed to frame the view of the building.</p>			<p>proposed vegetation and buildings become settled in the landscape</p>
Other Effects					
Cumulative impacts	<p>The land to the west of the Site and south of Uckfield Hospital, known as land north of Mallard Drive (Persimmon Homes) has permission for 146 dwellings, and the reserved matters application for the site has been submitted (no decision has been taken by the Council).</p> <p>The effect of developing both the Site and land south of Uckfield hospital will be to further urbanise the local area to the east of the town. Given that the sites lie in close proximity on opposing sides of the valley, and the effect on the landscape character of developing the Site is contained to the local landscape character, development of both sides would be similar to the effect on the landscape at the Site, but experienced over a marginally larger area. By retaining and protecting the vast majority of the Site vegetation, including the Ancient Woodland along the western Site boundary, ensuring buffers to off-site woodland, and by setting the development into green corridors in the north western part of the Site, the cumulative effect on the landscape will be reduced. This will be further supported by the proposed strategic SANG, which will provide a significant new recreational resource on the eastern side of the town.</p> <p>Opportunities to view the two sites either from one location (combined views) or sequentially (when moving from one viewpoint to another) are limited. There will be combined views of the new developments in succession (requiring the head to be moved to see one site and then the other) when on the southern part of the access road to the hospital and from the hospital car park, as well as from the allotments to the immediate east of the hospital, partly filtered by intervening vegetation when at the allotments.</p>				
Lighting	<p>The Site is unlit, but there is ambient lighting from the buildings within Bird in Eye Farm surrounded by the Site, and from the housing along Bird in Eye Hill (road) which adjoins it. There is street lighting to and within the carpark of Uckfield Hospital, and ambient lighting from the residential properties on the rising land to the north, west and southwest, which are served with street lighting.</p> <p>The proposal is for a medium density residential development with associated lighting, contained to the north western and central northern part of the Site. The development is not anticipated to give rise to any abnormal night time effects and will result in a small increase in background lighting levels which will be seen in the context of existing lighting from the existing neighbouring residential and commercial properties.</p>				
Construction Phase	<p>There will be temporary landscape and visual effects arising from the construction phase of the scheme. These will include, amongst other things, stock piling of materials, temporary hoardings/fencing and vehicle and plant movements, both on Site and on the surrounding road network. It is not anticipated that the scheme will give rise to any abnormal landscape or visual effects above those that would be expected from a development of this nature. It is anticipated that the extent and timing of these effects will be controlled through a Construction Management Plan.</p>				

VISUAL EFFECTS						
Views	Sensitivity	Existing Conditions	Proposals and mitigation	Magnitude of Change	Visual Effect Year 1	Visual Effect Year 15
View from B2102, Bird in Eye Hill [photographs 29, 37, 38, 39 and 40]	Medium	<p>Views of the northern part of the Site at Area B for a short section of Bird in Eye Hill when close to the current entrance into Bird in Eye Farm; and a glimpsed view of the north western entrance into the Site to the west.</p> <p>As the B2102 continues to the east and southeast there is a short section of the road, near Hailwell Farm Bungalow, where a glimpsed view of Areas C and D is possible where the roadside vegetation allows.</p>	<p>Views of the new entrance will be possible when passing Area B. Views will be altered by the proposals, but the new housing will be set back into Areas A and C, which are not visible from the road. The entrance (the whole of Area B) will be landscaped with tree and hedgerow planting which will be in keeping with the current vegetated edge to the road further north of the entrance.</p> <p>Glimpsed views of the eastern edge of the development in Area C will be possible from the east near Hailwell Farm Bungalow. Proposed reinforcement of the tree belt between Areas C and D, as well as the planting within the strategic SANG will soften and filter views as it establishes.</p>	Moderate / Slight	Moderate / Slight Adverse	Negligible Beneficial as the planting at the entrance establishes
View from Framfield Road to the northwest of the Site (photograph 46)	Low	Framed view of the western side of the Site partly filtered by intervening vegetation as the road falls to the east, from just beyond its junction with Keld Avenue to the entrance to Mitchell & Cooper to the north of Uckfield Hospital.	<p>Framed view of new housing in the north western side of the development, seen rising up the slope towards Bird in Eye Farm, and in the context of existing residential properties on either side of the view.</p> <p>New planting within the open space will soften the view and assist in assimilating the new housing into its well wooded surroundings.</p>	Moderate	Slight Adverse	Negligible Adverse
View from Mallard Drive to the southwest of the Site (see reciprocal view in photograph 05)	Medium / Low	Partly filtered view of the Bird on the Eye Farm complex and a limited amount of the higher ground in Area A which adjoins it, for a short section of Mallard Drive when close to Harlands Community Primary School and Nursery.	Some views of the highest parts of the development within Area A will be possible from Mallard Drive for a short section as it passes Harlands Community Primary School and Nursery. Views will be seen in the context of the suburb from which the view is experienced.	Slight	Negligible Adverse	Negligible Adverse reducing to Neutral as the intervening vegetation grows up

View from public footpath Uckfield 12b to the southwest of the Site (see reciprocal view in photograph 05)	Medium (this footpath passes through the residential parts of Uckfield)	Partly filtered view of the Bird on the Eye Farm complex and a limited amount of the higher ground in Area A which adjoins it for a short section of the footpath as it passes through and around the grounds of Harlands Community School. Visibility is mainly screened by the hedgerow which runs along the north eastern side of the footpath. No other opportunities for views once the footpath extends through the residential area.	Where intervening vegetation allows, views of the highest parts of the development within Area A as it passes through and around the school grounds will be possible, although here the hedgerow alongside the footpath screens much of the view. Views will be experienced in the context of the suburban footpath. Beyond this part of the route, as it passes through residential streets, views of the new housing will not be available due to intervening built form.	Slight – where visible; Neutral for rest of route of footpath	Negligible Adverse – where visible; Neutral for rest of route of footpath	Negligible Adverse (where development is visible) reducing to Neutral as the intervening vegetation grows up; Neutral for rest of route of footpath
View from access road and car park of Uckfield Hospital (photograph 45)	Low	Views of the more open, western parts of the Site, and the woodland to the south filtered by intervening vegetation, seen from southern part of the access road to the hospital and from its carpark.	Views of the new housing in the western side of the development filtered by intervening vegetation. Extent of the public open space, including the viewing corridor, and the new planting within it, will soften views as it matures.	Moderate	Moderate Adverse	Slight Adverse as the new planting establishes
View from land with permissive public access to the south of Uckfield Hospital (photographs 43 and 44)	Medium	Views of the Site, including the woodland on and adjoining the Site, filtered by intervening vegetation, from much of the area of open land. Note: this area of land has outline permission for 146 dwellings and associated works under application no. WD/2010/2874/FE	Views of the new housing in the western side of the development filtered by intervening vegetation. Extent of the public open space, including the viewing corridor, and the new planting within it, will soften views as it matures. Once this land is developed, views of the development at the Site will be seen in the context of the development on this land. See Cumulative Effects above.	Moderate	Moderate Adverse	Slight Adverse as the new planting establishes
View from Hempstead Lane (public footpath Framfield 62) to the northeast of the Site (photograph 41)	High	No views of the Site due to intervening vegetation and falling landform.	Views of the new housing are prevented by intervening vegetation and falling topography.	Neutral	Neutral	Neutral
Views from public footpath Framfield 65b along the Site boundary and beyond to the east and west	High	On the Site boundary, views of the rising landform within Area E, contained by the woodland which surrounds the Area.	Views of the southern part of the strategic SANG will be possible from the footpath, with new planting visible along the route. The new housing will be screened by the intervening woodland of Bird in Eye Shaw.	Negligible	Negligible Beneficial	Negligible Beneficial

(photographs 33, 34 and 42)		Beyond the Site, views of the Site are unavailable due to the woodland which surrounds Area E.	There are no views of the new housing from the footpath beyond the Site, due to the well-wooded landscape and undulating topography.			
Views from the wider landscape to the north (see reciprocal views from photographs 16 and 17)	Medium	Views are possible from a limited number of open areas to the north of the Site, on the opposite side of B2102 Bird in Eye Hill, and beyond the town, but these are contained to private land.	Housing will be set into Areas A and C, on lower contours than that of Area B, and as the only change in Area B will be a new access and new planting this is unlikely to be able to be identified from the wider landscape.	Negligible	Negligible Adverse	Negligible Beneficial as the new planting establishes
Residential Views						
Views from Bird in Eye Farm (see reciprocal views from photographs 12, 15, 22, 23 and 26)	Medium / Low – commercial units and stables; High - dwelling	Views of the Site are possible from parts of the access road to the buildings and the outdoor areas around the stables. Many of the commercial buildings face into the farm complex, but there are some with upper floor windows which face the Site, from where views of the Site are possible. Views are possible from the dwelling in the southern part of the farm complex from rear upper and ground floor windows which face the Site.	The new housing will be set back from the farm complex behind landscaped corridors, apart from the north western parcel, which lies close to the complex, but this will be separated from it by the existing evergreen <i>Leylandii</i> hedge. As the land falls towards the watercourses, so will the housing which will reduce its visual presence. New planting within the landscaped corridors will soften the views.	Moderate – commercial units and stables; Substantial – dwelling	Moderate Adverse – commercial units and stables; Substantial Adverse - dwelling	Slight Adverse – commercial units and stables; Moderate Adverse – dwelling Each reducing as new planting establishes
Views from Lyecroft indented into the northern Site boundary (see reciprocal views from photographs 01, 02, 16, 17 and 36)	High	Views of the higher parts of Area A, and the northern part of Area B from upper and ground floor windows.	Views of the new entrance into the Site, and the new housing in the north western part of the Site set back from the boundary will be possible. Proposed planting at entrance into the Site and along the boundary will softened views as it matures.	Substantial	Substantial Adverse	Moderate Adverse as the new planting establishes
Views from properties to immediate north of Lyecroft (see reciprocal views from photographs 16, 17 and 38)	Medium	Oblique views of northern part of Area B and views of parts of the higher northern ground of Area A from upper floor windows.	Oblique views of the new entrance into the Site and parts of the new housing in the north western part of the Site set back from the boundary. Proposed planting at entrance into the Site and along the boundary will softened views as it matures. Views seen in the context of neighbouring properties.	Moderate	Moderate Adverse	Slight Adverse as the new planting matures.
Views from properties on southern side of Bird in Eye Hill (see reciprocal	Medium/ High	Views from rear upper and some ground floor windows, partly screened by boundary vegetation and fencing.	Views of the new housing in the north western part of Area A, set back from the northern boundary. New planting within the landscape	Moderate	Moderate Adverse	Slight Adverse as the new planting establishes

views from photographs 02, 04 and 06)			corridor will soften and further filter these views as it matures.			
Views from Hailwell Farm Bungalow and nos. 1 and 23 Ivy Cottage to the east of the Site (see reciprocal views from photograph 29)	High	Views from rear windows and the curtilage of gardens of Areas C and D, with the undulating landform of the Site preventing views of the other areas.	Strategic SANG in Area D will be visible in the foreground, with the potential for views of rooftops of the new housing in Area C and the car park for the SANG to be visible from upper floor windows. As the proposed strengthening of the tree belt along the edge of Area C establishes, as well as planting within the strategic SANG, any views will become well filtered.	Slight	Slight Adverse	Negligible Adverse as the planting establishes
Views from Hailwell Farm to the east of the Site (see reciprocal views from photograph 29)	Medium	Views from rear upper floor windows of the property associated with Hailwell Farm of Area D, partly filtered by intervening vegetation. The barns associated with the farm are well contained within woodland.	Strategic SANG in Area D will be visible from rear upper floor windows, partly filtered by intervening vegetation. As the new planting establishes, these views will become increasingly filtered.	Negligible	Negligible Adverse	Neutral as the new planting within the strategic SANG assimilates into the landscape
Views from property on A2102 southeast of Ivy Cottages (see reciprocal views from photograph 29)	Medium	Highly filtered views of Area D from windows which face the Site.	Limited change in view, with new planting adding to the already highly filtered view.	Negligible	Negligible Adverse	Neutral as the new planting within the strategic SANG assimilates into the landscape
Views from Uckfield Hospital to the west of the Site (see reciprocal views from photographs 04, 05 and 11)	Low	Views of Area A and the southern parts of Area C from windows which face the Site, parts of which are filtered by intervening vegetation.	Views of the new housing in the western side of the development partly filtered by intervening vegetation. Extent of the public open space, including the viewing corridor, and the new planting within it, as well as new planting within the development will soften views as planting matures.	Moderate	Slight Adverse	Negligible Adverse as the new planting establishes
Views from the allotments to the west of the Site (see reciprocal views from photographs 04, 05 and 11)	Low	Views of Area A from the allotments, filtered by the riparian vegetation along Framfield Stream.	Views of the new housing in the western side of the development filtered by intervening vegetation. New housing set back from the western boundary behind retained and new planting will soften views, increasing as planting establishes.	Moderate	Moderate Adverse	Slight Adverse as the new planting establishes

Views from residential properties on higher ground to the north, west and southwest of the Site (see reciprocal views from photographs 04, 05, 13, 16, 17 and 32)	Medium / High	Views, some oblique of the higher ground at the western side of the Site (Area A) are possible from properties facing the Site in the New Town and Ridgewood residential areas where they lie on higher land. Views of the northern part of Area B, partly filtered by intervening vegetation are possible from properties on rising ground to the north of the Site. Views of the highest parts of Area E are available for a limited number of properties on the south eastern edge of Ridgewood, from first and some ground floor windows.	New housing on the higher parts of Area A set within a landscape framework will be visible from properties within the town on higher land. Views will be mainly from upper floor windows, and some will be oblique. Views will be seen in the context of existing development on higher land within the town. New planting within the development and in the open space will soften these views as it matures. Little change in view for the properties on the south eastern edge of Ridgewood, as new planting will assimilate into the existing well vegetated view.	Slight – for views of Areas A and B; Negligible – for views of Area E	Slight Adverse – for views of Areas A and B; Negligible Beneficial – for views of Area E	Negligible Adverse as the new planting establishes – for views of Areas A and B; Neutral as the planting assimilates into the landscape
Seasonal Variation						
The above assessment is based upon an appraisal of winter/spring views. When the vegetation is fully in leaf, where visibility is filtered or restricted by vegetation, this will be more filtered and restricted.						

Appendix F

Landscape Strategy



Wildflower and meadow planting in open/clear land

Arterial grass

Longer grass

Native Succulent

Wildlife Pond

Recreational footpath

Proposed cycleway

Wildflower and meadow planting in open/clear land

Arterial grass

Longer grass

Native Succulent

Wildlife Pond

Recreational footpath

Proposed cycleway

Wildflower and meadow planting in open/clear land

Arterial grass

Longer grass

Native Succulent

Wildlife Pond

Recreational footpath

Proposed cycleway

Wildflower and meadow planting in open/clear land

Arterial grass

Longer grass

Native Succulent

Wildlife Pond

Recreational footpath

Proposed cycleway

Wildflower and meadow planting in open/clear land

Arterial grass

Longer grass

Native Succulent

Wildlife Pond

Recreational footpath

Proposed cycleway

Wildflower and meadow planting in open/clear land

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Wildflower and meadow planting in open/clear land

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Wildflower and meadow planting in open/clear land

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Proposed cycleway

Wildflower and meadow planting in open/clear land

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Proposed cycleway

Wildflower and meadow planting in open/clear land

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Wildflower and meadow planting in open/clear land

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Wildlife Pond

Recreational footpath

Proposed cycleway

Wildflower and meadow planting in open/clear land

Arterial grass

Longer grass

Native Succulent

Wildlife Pond

Recreational footpath

Proposed cycleway

Wildflower and meadow planting in open/clear land

Arterial grass

Longer grass

Native Succulent

Wildlife Pond

Recreational footpath

Proposed cycleway

Wildflower and meadow planting in open/clear land

Arterial grass

Longer grass

Native Succulent

Wildlife Pond

Recreational footpath

Proposed cycleway

Wildflower and meadow planting in open/clear land

Arterial grass

Longer grass

Native Succulent

Wildlife Pond

Recreational footpath

Proposed cycleway

Wildflower and meadow planting in open/clear land

Arterial grass

Longer grass

Native Succulent

Wildlife Pond

Recreational footpath

Proposed cycleway

Wildflower and meadow planting in open/clear land

Arterial grass

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Proposed cycleway

Wildflower and meadow planting in open/clear land

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Wildflower and meadow planting in open/clear land

Arterial grass

Longer grass

Native Succulent

Wildlife Pond

Recreational footpath

Proposed cycleway

Wildflower and meadow planting in open/clear land

Arterial grass

Longer grass

Native Succulent

Wildlife Pond

Recreational footpath

5.19 Landscape Setting of Uckfield

Settlement Profile

- 5.19.1 Uckfield is situated in the west of Wealden District, approximately eight miles to the southwest of Crowborough and eight miles to the west of Heathfield. It is one of the largest settlements in the District and serves as a local employment and shopping centre. Uckfield is situated in close proximity to the southern edge of the High Weald AONB.
- 5.19.2 Uckfield is a large linear town which has developed at the crossroads between two B roads running north-south, east-west. The town is bypassed by the A22 main road corridor which runs to the west of the settlement. Uckfield has experienced significant growth over the last decade, resulting in a pattern of several large-scale housing estates at the edges of the town.
- 5.19.3 The town centre provides the commercial core of the settlement with a variety of shops and offices which have developed in linear form along the High Street (the former A22). The historic core of Uckfield is situated at the northern end of the High Street, with a concentration of Listed Buildings resulting in a historic character. More recently the focus of shopping activity has shifted southwards at the bottom on the High Street, with a small shopping complex at Bell Walk and the large supermarket to the south of Luxford Field.
- 5.19.4 There are two main business/commercial centres within Uckfield, at Bellbrook and Ridgewood. These areas comprise modern business units and warehouses. There are several key areas of open space within the town, which provide a range of outdoor recreational facilities. There include Victoria Pleasure Ground, the New Road Recreation Ground at Ridgewood, Hempstead Lane, Luxford Field, New Barn Farm and at West Park.

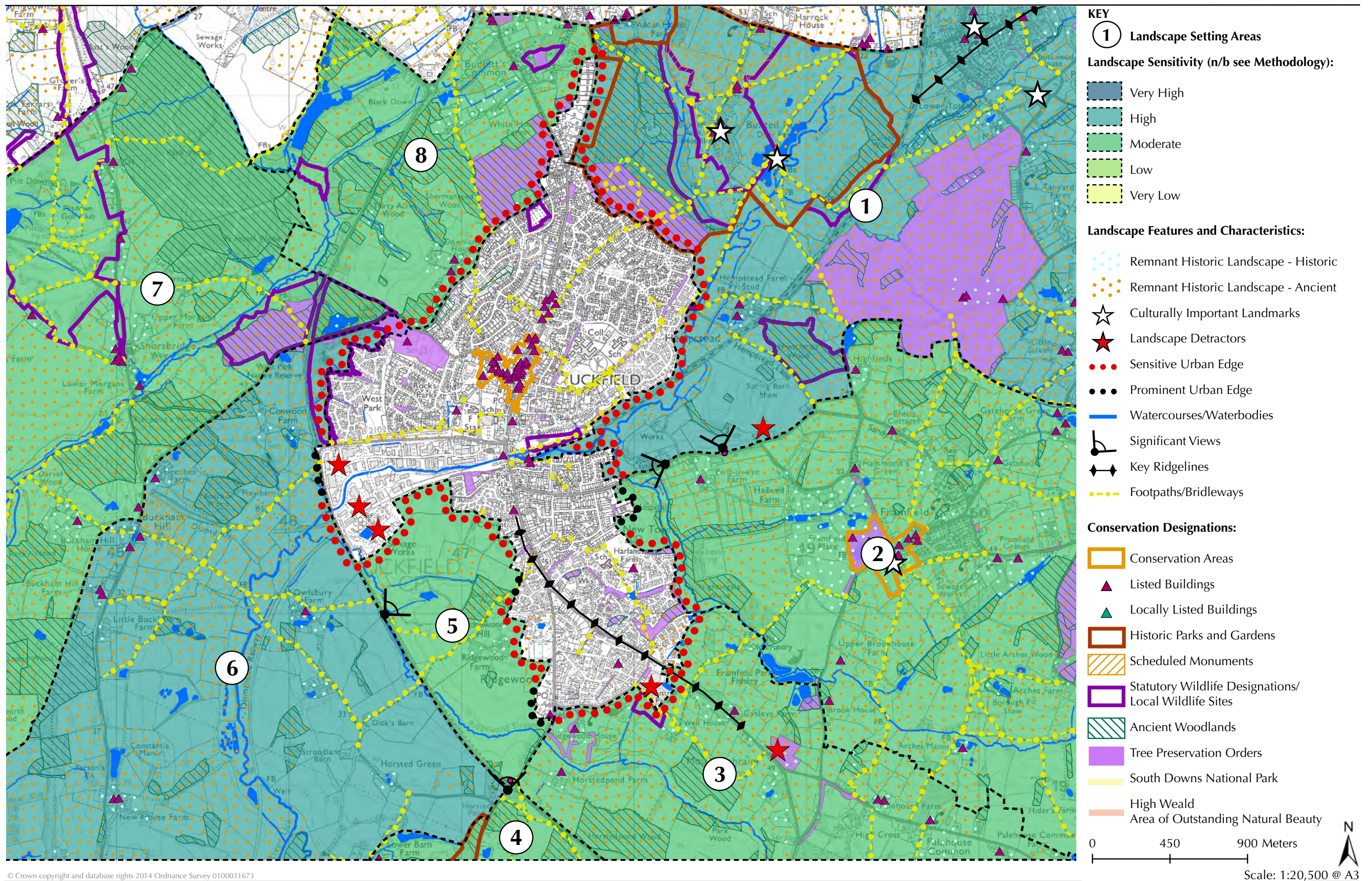
Landscape Character

- 5.19.5 The landscape surrounding the settlement falls within the following County Landscape Character Area(s):
 - Upper Ouse Valley (3) – see **Section 5.3** for details
 - Western Low Weald (14) - see **Section 5.3** for details
- 5.19.6 At the more local scale, the landscape surrounding the settlement also lies within the following Local Landscape Character Area(s):
 - A1: Fletching and Maresfield – see **Section 4.4** for details
 - A2: Budlett’s Common and Five Ash Down – see **Section 4.4** for details

- A3: Buxted – see **Section 4.4** for details
- A4: Blackboys and Framfield – see **Section 4.4** for details
- C1: Fletching and Piltdown – see **Section 5.4** for details
- C2: Uck Valley – see **Section 5.4** for details
- C3: High Cross – see **Section 5.4** for details

5.19.7 The key features and characteristics of the landscape around Uckfield are illustrated on **Figure 5.12** and summarised below:

- **Remnant Historic Landscapes:** Pockets of historic landscape within the setting of the town, comprising small-scale fields with intact boundaries, particularly to the northwest, west and southeast of the town. The historic field pattern is a mosaic, predominantly comprised of regular and irregular piecemeal enclosure, and cohesive and aggregate assarts. Historic parkland landscape, associated with Buxted Park to the northeast of the settlement and relatively large areas of Ancient Woodland, further contribute to the historic landscape within the periphery of the town.
- **Culturally Important Landmarks:** Buxted Park Hall(hotel), a culturally important historic landmark is situated to the northeast of the settlement and other important historic landmarks include the church at Framfield and listed buildings within the historic core of the town centre.
- **Landscape Detractors:** Several landscape detractors are present within the setting of the town, including industrial and commercial buildings at Ridgewood and Bellbrook Industrial estates.
- **Urban Edges:** The town is predominantly lined by sensitive soft edges and woodland, with a few pockets of exposed or prominent urban edges within the Bellbrook Industrial Area and at the eastern edge of the town, associated with the Hospital.
- **Watercourses/Waterbodies:** The key watercourse running northeast- southwest through the town, is the River Uck, set within its meandering valley. Several smaller tributary streams feed the main river system, including the Chalybeate Spring. There are also numerous small ponds within the setting of the town.
- **Significant Views/Key Ridgelines:** Key views of the edges of the town can be gained looking north-eastwards from the A22 road corridor and northwards from the Framfield Road.
- **Footpaths/Bridleways:** A network of footpaths and bridleways connects Uckfield to its landscape setting.



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5.19.8 Areas of distinctive landscape that have been identified around the settlement are shown on **Figure 5.12** as ‘Landscape Setting Areas’. The distinctive characteristics that define each Landscape Setting Area are highlighted within the table below:

Landscape Setting Area	Distinctive Characteristics
1	<ul style="list-style-type: none">Gently meandering corridor of the River Uck, which is lined in places by small linear woodlands;Buxted Park which is a key landscape feature, with its designed landscape elements and mature parkland trees
2	<ul style="list-style-type: none">A patchwork of woodlands, arable and pastoral fields which are often lined with mature hedgerows.Intermittent sense of enclosure.
3	<ul style="list-style-type: none">Gently meandering Ridgewood Stream corridor, with several adjacent blocks of mature woodlandA strong landscape structure of hedgerows and trees.
4	<ul style="list-style-type: none">A patchwork of Ancient Woodland and pastoral fields, lined with mature hedgerows.
5	<ul style="list-style-type: none">Topography slopes from south to north, forming the northern valley side of the Ridgewood stream.A patchwork of sloping, modern, arable and pastoral fieldsA22 road corridor forms the southern edge of the area and introduces a source of noise and movement.
6	<ul style="list-style-type: none">The southern section of the Uck River corridor which gently meanders through a fieldscape which is interspersed with patches of woodland;A22 road corridor forms the northern edge of the area and introduces a source of noise and movement.
7	<ul style="list-style-type: none">A strong sense of enclosure within this ancient landscape as a result of large areas of Ancient Woodland.
8	<ul style="list-style-type: none">A gently meandering tributary of the River Ouse which is lined with mature woodland, providing a strong sense of enclosure;Park Wood, to the west is a key landscape feature, further contributing to the enclosed feel.

Landscape Sensitivity

5.19.9 The inherent Landscape Sensitivity of each Landscape Setting Area, evaluated in line with the methodology set out within **Section 2.4**, is shown in the table below:

Criteria	Landscape Setting Area			
	1	2	3	4
Strength of Place				
Distinctiveness	Distinct	Distinct	Distinct	Distinct
Continuity	Ancient	Ancient	Ancient	Historic
Strength of Place	Strong	Strong	Strong	Moderate
Visibility				
Landform	Apparent	Insignificant	Insignificant	Dominant
Tree Cover	Intermittent	Intermittent	Intermittent	Intermittent
Visibility	Moderate	Low	Low	Moderate
Landscape Sensitivity				
Landscape Sensitivity	High	Moderate	Moderate	Moderate

Criteria	Landscape Setting Area			
	5	6	7	8
Strength of Place				
Distinctiveness	Distinct	Distinct	Distinct	Distinct
Continuity	Recent	Ancient	Ancient	Ancient
Strength of Place	Weak	Strong	Strong	Strong
Visibility				
Landform	Dominant	Apparent	Apparent	Apparent
Tree Cover	Open	Open	Enclosed	Enclosed
Visibility	Very High	High	Low	Low
Landscape Sensitivity				
Landscape Sensitivity	Moderate	High	Moderate	Moderate

Landscape Value

5.19.10 The Landscape Value of each Landscape Setting Area, evaluated in line with the methodology set out within **Section 2.4**, is shown in the table below:

Criteria	Landscape Setting Area							
	1	2	3	4	5	6	7	8
Landscape Value	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	High	High

Landscape Capacity

5.19.11 The indicative Landscape Capacity of each Landscape Setting Area to accommodate development, evaluated in line with the methodology set out within **Section 2.4**, is shown in the table below:

Criteria	Landscape Setting Area							
	1	2	3	4	5	6	7	8
Landscape Sensitivity	High	Moderate	Moderate	Moderate	Moderate	High	Moderate	Moderate
Landscape Value	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	High	High
Landscape Capacity	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate

5.19.12 **Landscape Setting Area 1** is considered to have Moderate Landscape Capacity as a result of its High Landscape Sensitivity and Moderate Landscape Value. The area is considered to have High Landscape Sensitivity as a result of the gently meandering corridor of the River Uck, with its pattern of small woodlands and the designed landscape of Buxted Park, which has strong character and identity. Whilst there are large areas of Ancient Woodland associated with Buxted Park, landscape to the south is considered to have less valuable landscape features, resulting in Moderate Landscape Value overall.

5.19.13 **Landscape Setting Area 2** is considered to have Moderate Landscape Capacity as a result of its Moderate Landscape Sensitivity and Moderate Landscape Value. There is recognisable strength of place as a result of the pattern of woodlands and fields, however views are localised, resulting in an intermittent sense of enclosure. Valuable landscape features include pockets of Ancient Woodland and mature hedgerows.

5.19.14 **Landscape Setting Area 3** is considered to have Moderate Landscape Capacity as a result of its Moderate Landscape Sensitivity and Moderate Landscape Value. This area is considered to have a strong landscape structure of hedgerows and trees and the Ridgewood Stream corridor is a key valuable landscape feature.

5.19.15 **Landscape Setting Area 4** is considered to have Moderate Landscape Capacity as a result of its Moderate Landscape Sensitivity and Moderate Landscape Value. This area is considered to have a strong landscape structure of hedgerows and trees, which contribute to Moderate Landscape Sensitivity. It also includes large areas of valued Ancient Woodland, which contribute to Moderate Landscape Value overall.

5.19.16 **Landscape Setting Area 5** is considered to have Moderate Landscape Capacity as a result of its Moderate Landscape Sensitivity and Moderate Landscape Value. Overall sense of remoteness and tranquillity is disturbed by the presence of the A22 road corridor, which also detracts from the value of the landscape. However this area is considered to have a strong landscape structure of trees and hedgerows, which are considered to be sensitive landscape features. Due to the prominent, sloping topography, this area is visible from surrounding Landscape Setting Areas.

5.19.17 **Landscape Setting Area 6** is considered to have Moderate Landscape Capacity as a result of its High Landscape Sensitivity and Moderate Landscape Value. Landscape Sensitivity is considered to be high as a result of the intricate, meandering river corridor and adjacent pastoral fields, which are interspersed with pockets of valued Ancient Woodland. These pockets of ancient woodland are valuable landscape features, however overall landscape value is diminished by the presence of the A22 road corridor.

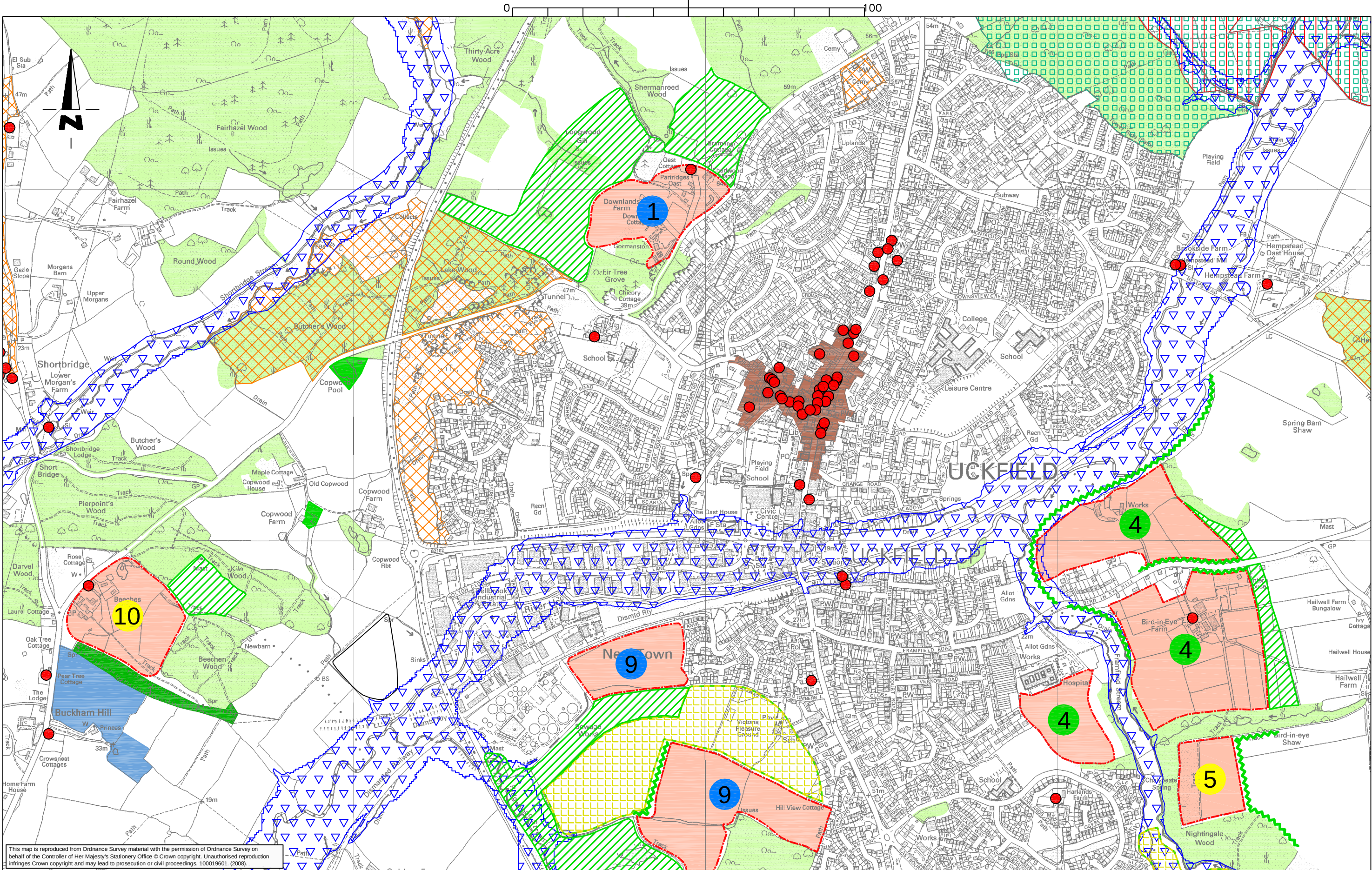
5.19.18 **Landscape Setting Area 7** is considered to have Moderate Landscape Capacity as a result of its Moderate Landscape Sensitivity and High Landscape Value. The large areas of Ancient Woodland are considered to have High Landscape Value and are sensitive landscape elements. The strong sense of enclosure also contributes to recognisable strength of place and Moderate overall Landscape Sensitivity.

5.19.19 **Landscape Setting Area 8** is considered to have Moderate Landscape Capacity as a result of its Moderate Landscape Sensitivity and High Landscape Value. The strong pattern of mature woodland is considered to be a highly valued landscape feature, and the meandering Ouse Tributary contributes to recognisable strength of place and landscape value. Overall Landscape Sensitivity is considered to be Moderate as a result of the presence of the tributary corridor, woodland lining the river and other blocks of woodland, which are considered to be sensitive landscape features.

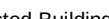
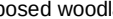
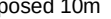
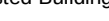
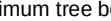
Appendix H

Wealden Landscape Character Assessment and Development Option

Evaluation Study 2009



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KEY:-										Potential Development Area Preference					
	Ancient Semi-Natural Woodland		Ancient Monument		RAMSAR		SSSI		Listed Building		Low		Proposed woodland buffer		Proposed 10m minimum tree belt
	Flood		Historic Parks & Gardens		SNCI		SAC		Potential Development Area		Medium		Existing woodland (already mapped)		Stream - flood area as part of green network
	AONB		Ashdown Forest Medieval Pale		SPA		Conservation Area		Landscape buffer retained as open space.		High		Existing tall hedge or tree belt		Urban Edge

WEALDEN HOUSING ASSESSMENT

Figure Title:
UCKFIELD
STAGE 2 - POTENTIAL DEVELOPMENT AREAS

Scale: 1:10000 @ A3

FIGURE 10



Dixies Barns, High Street, Ashwell,
Hertfordshire SG7 5NT
t 01462 743647
e ashwell@csaenvironmental.co.uk
w csaenvironmental.co.uk

Suite 1, Deer Park Business Centre, Eckington,
Persore, Worcestershire WR10 3DN
t 01386 751100
e persore@csaenvironmental.co.uk
w csaenvironmental.co.uk

Gallery 1, Citibase, 95 Ditchling Road,
Brighton BN1 4ST
t 01273 573871
e brighton@csaenvironmental.co.uk
w csaenvironmental.co.uk

Wealden District Council

Five Year Housing Land Supply Statement - as of 1st April 2022

December 2022

How to Contact Us

Planning Policy

Wealden District Council

Council Offices, Vicarage Lane, Hailsham, East Sussex BN27 2AX

Telephone 01892 602008

E-mail: planning.policy@wealden.gov.uk

Website: www.wealden.gov.uk

If you, or somebody you know, would like the information contained in this document in large print, Braille, audio tape/ CD or in another language please contact Wealden District Council on 01323 443322 or info@wealden.gov.uk

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1. Introduction

- 1.1 It is a legal requirement¹ that where planning policies identify an annual number of dwellings to be delivered in a district that this is set out in the Council's Authority Monitoring Report (AMR) for their current plan period (the adopted Wealden District Core Strategy Local Plan² runs until 2027). Furthermore, the National Planning Policy Framework (NPPF) (July, 2021) confirms that strategic policies should include a trajectory illustrating the expected rates of housing delivery over the plan period, and that all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Paragraph 74 of the NPPF states that local planning authorities:

'should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old³'.

- 1.2 The following housing land supply statement summarises the main outcomes of housing provision within Wealden District and provides the current position of Wealden District Council in relation to its housing requirement and land supply for the monitoring period, including its five-year housing land supply position as of the 1 April 2022 under the NPPF.
- 1.3 As such this document fulfils the following functions:
- It meets the NPPF requirement to annually monitor housing delivery;
 - It provides guidance to developers and other interested parties on the current supply of housing sites within district; and
 - It provides information on the anticipated delivery ('trajectory') of housing development in Wealden District.

2. Housing Land Supply and Housing Trajectory

Wealden's Current Housing Requirements

- 2.1 Policy WCS1 (Provision of Homes and Jobs 2006-2027) of the Wealden District Core Strategy Local Plan (February, 2013) sets a housing target of 9,440 dwellings over the period 2006 – 2027, which equates to 450 dwellings per annum (dpa). The Council accepts that the evidence base underpinning

¹ See the [Town and Country Planning \(Local Planning\) \(England\) Regulations 2012 under Regulation 34\(3\)](#).

² [Wealden District Core Strategy Local Plan \(adopted February 2013\)](#)

³ Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five-year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.

housing need within the adopted Wealden District Core Strategy Local Plan (February, 2013) is out of date. National planning policy states that Local Plans over five years old cannot be said to have up-to-date housing requirement policies.

- 2.2 Paragraph 61 of the NPPF (July, 2021) states that to determine the minimum number of homes needed within the local authority area, strategic policies should be informed by a local housing need assessment, conducted using the standard method in the planning practice guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. A five-year housing land supply position for Wealden District Council (as of 1 April 2022) has therefore been based on the ‘standard method’ for calculating housing need, given that the Council’s own adopted housing requirement policy is now considered out of date.
- 2.3 This calculation aligns with the planning practice guidance⁴ and sets a baseline using the 2014 Household Growth Projections between 2022 and 2032 for Wealden District, an adjustment to take account of affordability (using median workplace-based affordability ratio for Wealden District (2021) and a cap for a level of increase based on affordability. This calculation produces a housing needs requirement for Wealden District of **1,212** dwellings per annum (dpa) and is shown in full below.

⁴ See PPG – [Paragraph: 004 Reference ID:2a-004-20190220](#)

Figure 1 - Standard Method for Calculating Housing Needs within Wealden District (2022-2032)

Step 1 – Setting Baseline, 2014 Household Growth Projections

Year	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Household Growth Projections	73	74	75	75	76	77	78	79	80	81	81
Expanded Household Growth Projections	72773	73664	74551	75421	76302	77179	78050	78919	79767	80612	81431
Projected Annual Household Growth for Ten Year Period		891	887	870	881	877	871	869	848	845	819

Total Household Growth for Ten Year Period	8658
Projected Average Annual Household Growth over a Ten Year Period	866

Step 2 – An Adjustment to take Account of Affordability

Median Workplace-Based Affordability Ratio for Wealden District (2021)	13.76
Adjustment Factor	1.61
Adjustment Factor Multiplied by Projected Average Annual Household Growth	1,394

Step 3 – Capping the Level of any Increase

The Wealden District Council Core Strategy was adopted in February 2013 and is therefore considered out of date, so the following steps are applied.

Average Annual Household Growth over 10 years (Step 1)	866
The Minimum Annual Local Housing Need Figure (Step 2)	1394

The cap is set at 40% above the most recent average annual household growth figure (i.e. step 1) or at the minimum annual local housing need figure (i.e. step 2).

Average Household Growth Cap = $866 + (40\% \times 866)$	1,212.4
--	----------------

The capped figure is lower than the minimum annual local housing need figure and therefore limits the increase to the local authority's minimum annual housing need figure. Therefore, the minimum housing target for **Wealden District is 1,212 dpa**.

- 2.4 It should be noted that the Planning Practice Guidance (PPG)⁵ explains that the ‘standard method’ for calculating the housing needs requirement for local authorities already takes account of historic undersupply. It states that the affordability adjustment is applied to take account of past under-delivery. The standard method identifies the minimum uplift that will be required and therefore it is not a requirement to specifically address under-delivery separately.

Housing Delivery Test (HDT) Results

- 2.5 The Housing Delivery Test (HDT) was first introduced with the NPPF that was initially published in July 2018 and most recently revised in July 2021⁶. The mechanisms for the HDT were outlined within the revised NPPF and in the Housing Delivery Test Measurement Rule Book⁷ and has been applied across all local planning authorities in the country (with the exception of National Parks). This mechanism was introduced as a way to monitor whether local planning authorities are building enough homes to meet their respective housing requirements over a three-year period.
- 2.6 Paragraph 74 of the NPPF states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement as set out in their adopted strategic local plan, or against their local housing need requirements where the strategic policies are more than five years old. It notes that the supply of specific deliverable sites should in addition include a buffer (moved forward from later in the Plan period) of:
- 5% - the minimum buffer for all local authorities, necessary to ensure choice and competition in the market for land, where they are not seeking to demonstrate a five-year housing land supply; or
 - 10% - where the local planning authority wishes to demonstrate a five-year supply of deliverable sites through an annual position statement or recently adopted local plan, to account for any fluctuations in the market during that year; or
 - 20% - where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving planned supply⁸.

⁵ See PPG – [Paragraph: 011 Reference ID: 2a-011-20190220](#)

⁶ See paragraph 76 of the NPPF (July, 2021)

⁷ [Housing Delivery Test Measurement Rule Book \(July 2018\)](#)

⁸ Footnote 41 of the NPPF (July, 2021) confirms that this will be measured against the HDT, where this indicates that delivery was below 85% of the housing requirement.

- 2.7 The PPG⁹ states that for local planning authorities which deliver less than 85% of their identified housing requirement, a 20% buffer will be added to their housing land supply, with immediate effect from publication of the HDT results. Only a 5% buffer would apply where the local planning authority has results of at least 85% for its HDT and where they are not seeking to demonstrate a five-year housing land supply position.
- 2.8 Table 1 below outlines the sanctions and consequences for local planning authorities that do not deliver against their housing requirements.

Table 1: HDT Sanctions over Time

Date From	% delivered of annual housing requirement	Sanctions
November 2018 and onwards	< 95%	Action Plan
November 2018 and onwards	< 85%	20% land buffer
November 2020 and onwards	< 75%	Presumption in favour of sustainable development

- 2.9 The total number of homes delivered by Wealden District Council during the three-year period under the latest HDT measurement (2021) between 2018-19 and 2020-21 was 2,618 (net) dwellings, whilst the total number of homes required over the same period was 3,179¹⁰. Therefore, the HDT measurement for Wealden District Council in 2020 was 82%¹¹.
- 2.10 The implication of this result means that the Council is still required to use a 20% buffer for its five-year housing land supply position. Therefore, the Council can confirm that it's five-year housing land supply requirement, incorporating the 'standard method' under the NPPF (July, 2021) is as follows in Table 2 below.

⁹ See PPG – [Paragraph: 022 Reference ID: 68-022-20190722](#)

¹⁰ The first national lockdown for Covid-19, announced on 23 March 2020, was an unprecedented event which saw temporary disruption to local authority planning services and the construction sector. This was reflected by the Government's HDT measurement for 2020 that saw a reduction for all local authorities in the 'homes required' within the 2019-2020 year by a one month.

¹¹ [Housing Delivery Test: 2021 Measurement](#)

Table 2: The Five-Year Housing Land Supply Requirement under the ‘Standard Method’

Wealden District Council Five Year Land Housing Requirement – Standard Method	
Five Year Housing Requirement (i.e. 1,212 x 5)	6,060 (net) dwellings
20% buffer (20% of 6,060)	1,212 (net) dwellings
Five Year Housing Requirement including buffer	7,272 (net) dwellings

Five Year Housing Land Supply and Deliverable Sites

- 2.11 Wealden District Council is able to update its five-year housing land supply and delivery position for 1 April 2022. The NPPF requires that sites included in the five year supply calculation should be ‘deliverable’. This is defined in the glossary¹² as the following:

‘To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

- a. Sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans); and*
- b. Where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on sites within five years.*

- 2.12 Major development for housing is defined as:

‘development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more’.

- 2.13 The PPG¹³ confirms that sites that fall within the latter category, such as sites with extant outline planning permissions for major development, may require

¹² National Planning Policy Framework (NPPF) (July, 2021), Annex 2: Glossary

¹³ See PPG – [Paragraph 007: Reference ID: 68-007-20190722](#)

further evidence to be considered deliverable and this may include the following:

- current planning status - for example, on larger scale sites with outline or hybrid permissions, how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;
- firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;
- firm progress with site assessment work; or
- clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.

- 2.14 The components of the Council's five-year housing land supply position have been set out in the appendices to this five-year housing land supply statement. They set out the sites which are expected to deliver housing completions between 1 April 2022 and 31 March 2027.
- 2.15 Appendix 1 is a list of sites of 1-9 (net) dwellings that either have outline or detailed planning permission as of 1 April 2022. Those sites with 5 or more (net) dwellings have been detailed with a timeline for their completion in the next five-year period and also whether they have commenced works on the site (this is indicated by the paler green/blue colour for those sites which have commenced). Those sites with 4 (net) dwellings or fewer have simply been listed. The total number that falls into this category amounts to 941 dwellings (net).
- 2.16 Appendix 2 is a list of sites with 10 or more (net) dwellings which have detailed planning permission and/or are under construction as of 1 April 2022. Those sites which have commenced as of 1 April 2022 are outlined in a paler green/blue colour and incorporates the majority of sites in this category. The total number of net dwellings that falls into this category and are anticipated to be delivered within the next five-year period is 2,512.
- 2.17 It is Council's position that all sites in Appendix 1 and 2 should be considered deliverable as there is no clear evidence that those homes will not be delivered within the five-year period. This amounts to 3,453 (net) dwellings in total.
- 2.18 Appendix 3 sets out a list of sites which either have outline planning permission for major development or are subject to a resolution to grant planning permission (subject to a Section 106 Agreement), and where there is

clear evidence that the homes will be delivered within the next five-year period. The total amount of net dwellings that fall into this category and are expected to come forward within the first five-year period amounts to 2,129.

- 2.19 Appendix 4 sets out a list of sites that involves the proposed loss or gain in older person's accommodation (Use Class C2) that can now be taken into account for the Council's five-year housing land supply position. The PPG¹⁴ confirms that local planning authorities will need to count housing provided for older people, including residential institutions in Use Class C2, as part of our housing land supply. This contribution is based on the amount of accommodation released in the housing market and the average number of adults living in households that was 1.8 at the time of the 2011 Census. This is the figure that has been used to translate bed spaces to dwellings (Use Class C3) in line with planning practice guidance.
- 2.20 The total amount of net dwellings (equivalent) that fall into this category and are expected to come forward within the first five-year period amounts to 111. It should be noted that the scheme at Bircholt Retirement Home, Ninfield has resulted in the loss of 26 bed spaces (Use Class C2), or the equivalent of 14 dwellings and is only being replaced with 6 (net) dwellings (Use Class C3) so has resulted in a net loss overall. The second scheme at Little Mount Farm, Frant resulted in the gain of 146 bed spaces (Use Class C2) and the loss of a single dwelling. The remaining scheme at Land to the West of Stone Cross Garden Centre results in the gain 70 bed spaces (Use Class C2) equivalent to 39 (net) dwellings.

The Covid-19 Pandemic and Housing Delivery Rates

- 2.21 It should be noted that the Covid-19 pandemic has continued to have a lasting impact on the delivery rates on sites across Wealden District during the 2021/22 monitoring period. The national lockdown introduced on 23 March 2020, resulted in the complete closure of construction sites for the foreseeable future. The lockdown was lifted for the construction and manufacturing industry in mid-May 2020; however, the impact on housing delivery rates continues to be profound. This is largely due to the impact of lockdowns on global supply chains, which has helped to cause a significant shortage of some building materials and products required in the construction industry.
- 2.22 During the 2021/22 monitoring period, there were 685 (net) dwelling completions, which is marginally lower than the 722 net dwelling completions achieved in the 2020/21 monitoring period and significantly lower than the 1034 (net) dwelling completion achieved in the 2019/20 monitoring period. Table 3 above demonstrates that in comparison to previous years, the delivery rates on the district's largest sites has also fallen. For example, this is

¹⁴ See PPG – [Paragraph 035: Reference ID: 68-035-20190722](#)

clearly demonstrated for the Land East of Park Road, Hellingly site, which achieved 176 (net) dwelling completions in the 2019/20 monitoring but could only deliver 39 (net) dwelling completions in the 2020/21 monitoring period and has only risen to 75 (net) dwellings in the 2021/2022 monitoring period.

- 2.23 The government did seek to mitigate the impact of the Covid-19 pandemic on delivery rates in the construction industry for the 2021/22 period. The government subtracted four months from the 2021 HDT calculation for the 2020/21 period to account for potential fluctuations in construction output.
- 2.24 The government also introduced the Business and Planning Act 2020¹⁵, which resulted in the extension of most full and outline planning consents which were due to expire between 23 March 2020 and 31 December 2020, to the 1 May 2021. This has assisted developers by giving them additional time to implement schemes that had been delayed by the Covid-19 pandemic and lockdown.
- 2.25 The Council has continued to support developers throughout the Covid-19 pandemic and its aftermath in order to ensure that development is brought forward across the district and that the five-year housing land supply requirement is met in the future. The Councils' development management team effectively adapted to the working from home mandate, continuing to offer pre-application advice, as well as continuing to determine planning applications via virtual Planning Committees. During the 2021/22 monitoring period, the Council has continued to build on the experience during Covid-19 and has implemented agile and digital working whilst continuing to support developers in bringing appropriate development forward within the district

Economic Climate and Market Conditions

- 2.26 The health of the world economy has been detrimentally impacted by a number of factors throughout the 2021/22 monitoring period that will ultimately have a significant impact on the delivery of housing development within Wealden District and the UK as a whole. These issues include the global energy crisis, with much of the world facing shortages and increased prices in oil, gas and electricity markets, following the gradual opening up of the world economy after the Covid-19 pandemic. Furthermore, the UK economy has seen inflation rise rapidly during the 2021/22 monitoring period and beyond, thereby increasing the costs of materials and other products required to support the construction industry. These issues have been further exacerbated by the war in Ukraine, which has driven global energy prices and inflation rates higher following subsequent sanctions and restrictions on Russia.

¹⁵ [Business and Planning Act 2020](#)

- 2.27 The UK economy has been particularly impacted by the global economic downturn and faces nationally specific issues. These include the continuing impacts of Britain's exit from the European Union, higher levels of inflation in comparison to countries of a similar economic size, the weakening of the British Pound against the United States Dollar, the increased level of strikes across the workforce and the looming threat of a long recession. It is accepted that the economic impact of some of these factors on housing delivery rates is still uncertain, given they have occurred towards the latter end of the 2021/22 monitoring period.
- 2.28 The health of the economy and the strength of the housing market will always be a major factor for the supply of housing. In terms of the previous economic recession period (between 2008 and 2013), net housing completions actually rose substantially from an average of 367 dpa between 2007/08 to 2009/10 to an average of 667 dpa between 2010/11 to 2012/13. Following the adoption of the Wealden District Core Strategy Local Plan in February 2013 and the associated housing target of 9,440 dwellings between 2006 and 2027 (or 450 dpa), housing delivery rates have consistently exceeded this housing target, with an average delivery rate of 663 dpa between 2013/14 and 2021/22.
- 2.29 In general terms, the above figures illustrate that previous housing completion rates within the district have largely been resilient to downturns in the national economy and in the case of the years following the adoption of the Wealden District Core Strategy Local Plan, have been exceeding the locally adopted housing target planned for, even during the Covid-19 pandemic.
- 2.30 In terms of site viability, Wealden District Council has adopted the Community Infrastructure Levy (CIL) in 2015 (with the CIL Charging Schedule becoming effective on 1 April 2016), where it was considered by the Planning Inspectorate to provide an appropriate basis for the collection of the levy in the district and was set at a level that would not put the overall development of the area at risk. The Council, as part of the new Local Plan process, has commissioned a new financial viability study to consider the new policies within the Local Plan. This will incorporate both a review of the existing CIL Charging Schedule and local/national planning policies at that time (including affordable housing) to assess whether the plan as a whole would jeopardise the viability of identified housing sites in general terms. This study will seek to confirm that specific residential development sites in the district (including new housing allocations) are economically viable, given the obligations in place/proposed at that stage.
- 2.31 Despite the national economic issues raised above, evidence on housing delivery in the district does support the Council's assumptions with regards to the robustness of the sites included in the supply, including lead in times and past delivery rates and this is considered below.

Past Housing Delivery Rates and Lead in Times

- 2.32 In terms of recent housing delivery rates and lead in times, specifically from the determination of the initial outline planning application to the first housing completions, the Council has identified a number of sites with extant planning permissions that have commenced and yielded some housing completions at least by the 2021/22 monitoring period in Table 3 below. This is to demonstrate both the relatively short lead in times for major sites with outline planning permission, and moreover, historic delivery rates for larger housing sites within the district. A total of ten housing sites have been identified, split between sites with over 200 dwellings total and sites of between 100 dwellings and 200 dwellings total.
- 2.33 Table 3 below shows lead in times and actual delivery rates for four developments of over 200 dwellings (gross) within Wealden District. This includes two sites to the north of Hailsham, a single site in Stone Cross and a single site in Uckfield. The table also shows lead in times and actual delivery rates for six developments of between 100 and 200 dwellings (gross) within Wealden District. This includes two sites at Hailsham, two sites in Stone Cross and a single site in both Heathfield and Crowborough. All the developments were initially granted outline planning permission following the adoption of the Wealden District Core Strategy Local Plan in February 2013.

Table 3: Delivery Rates and Lead in Times for Large Sites within Wealden District
Sites with Extant Planning Permission of 200 dwellings +

Site Name	Initial Outline Planning Permission Granted	Total (Gross)	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22
Land West of Park Road, Hellingly	02/10/2013	240	0	0	0	47	86	28	33	20	7*
Land East of Park Road, Hellingly	30/04/2014	460	-	0	0	0	0	76	176	39	75
The Wells, Rattle Road, Stone Cross	28/10/2013	276	0	0	8	85	82	87	14*	-	-
Land West of Uckfield	24/03/2016	1,000	-	-	0	0	0	3	50	45	35

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Sites with Extant Planning Permission of between 100 and 200 dwellings

Site Name	Initial Outline Planning Permission Granted	Total (Gross)	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22
Land at Walsh Manor Farm, Crowborough	18/12/2015	160	-	-	0	0	0	5	65	31	59*
Land off Mill Road, Hailsham	01/06/2016	183	-	-	-	0	0	63	63	35	22*
Land Rear of Police Station, High Street, Heathfield	26/02/2014	115	0	0	0	0	20	57	38*	-	-
Land South of Rattle Road, Stone Cross	09/04/2013	120	0	0	0	0	53	51	16*	-	-
Land off Amberstone, A271, Hailsham	14/10/2016	110	-	-	-	0	0	31	62	17*	-
Land at Uplands Farm, Rattle Road, Stone Cross	14/04/2016	183	-	-	-	0	0	0	0	13	52

*The site has now completed.

- 2.34 Table 3 demonstrates that all ten housing sites, from when outline planning permission was granted, were able to deliver new homes within the first five years following an outline planning permission, with 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. This demonstrates that even the largest of sites in Wealden District, such as Land West of Uckfield (1,000 (net) dwellings) has seen dwelling completions just over three years after the initial outline planning application was determined. This shows that lead-in times are relatively short in Wealden District from the initial outline planning permission to the first housing completions on site, which typically takes between 3 and 5 years. This is in part due to the rural nature of the district and lack of previously developed land, with many housing development sites coming forward on greenfield land. It is therefore considered that sites with outline planning permission in Wealden District will come forward promptly, with some housing completions in the initial five-year housing land supply period, particularly in years 3, 4 and 5.
- 2.35 In terms of housing delivery rates, it is shown that three of the four sites of over 200 dwellings have exhibited delivery rates of 76 dpa and above (the highest rate recorded being 176 dpa at Land East of Park Road, Hellingly in the 2019/20 period). It should be noted that there was a clear downturn for the 2020/21 period, but this was expected given that the Covid-19 pandemic cause closures of construction sites in 2020 specifically. For the smaller sites of between 100 and 200 dwellings, all of the sites have exhibited delivery rates of over 50 dpa and above (the highest rate recorded being 65 dpa for Land at Walsh Manor Farm, Crowborough in the 2019/20 period). The Council has therefore sought to use delivery rates of 75 dpa for housing sites of 200 dwellings or over and delivery rates of 50 dpa for housing sites of between 100 and 200 dwellings as a guide for new housing development coming forward, unless evidence from previous years dictates a different figure.
- 2.36 It should be noted that each individual housing site below 100 dwellings and over 5 (net) dwellings have also been considered in terms of their lead in times and delivery rates. This will vary from site-to-site dependant on their scale and the type of permission granted (i.e. a full planning permission would normally be quicker than the outline planning permission and reserved matters process), but would be limited to 30 dpa for sites under 100 (net) dwellings, unless evidence from previous years dictates a different figure.
- 2.37 The monitoring of completion rates for individual housing sites each year may suggest that some housing developments should diverge from the delivery rates identified in order to reflect actual completion rates as they emerge. This is routinely reviewed each year and is updated in accordance with actual housing completions if necessary. It should be noted that the Council has a dedicated monitoring officer for both housing and employment development

who regularly checks new housing commitments and commencement notices, as well as visiting larger housing sites (i.e. 5 (net) dwellings or above) at least once a year to check published completion rates. This ensures that the Council's records are accurate in terms of delivery rates and lead in times on individual sites.

The Council's Five-Year Housing Land Supply Position

- 2.38 Given the above, the calculation of the five-year housing land supply position as of the 1 April 2022, in line with the NPPF as shown below.

Table 4: Wealden District Five Year Housing Land Supply Calculation for 1 April 2022 (with 20% buffer)

Housing Requirement and Supply for period between 1 April 2022 and 31 March 2027	
Five Year Housing Requirement	6,060 (net) dwellings
20% buffer (20% of 6,060)	1,212
Five Year Housing Requirement including buffer	7,272 (net) dwellings
Total Housing Land Supply (Projected Net Housing Completions)	7,697 (net) dwellings
Five Year Housing Land Supply (Projected Net Housing Completions)	5,693 (net) dwellings
Projected Completions above/below requirement	-1,579
Five Year Housing Land Supply against Requirement	3.92 years (or 78.3%)

- 2.39 It can therefore be seen that there are 5,693 (net) dwellings on identified sites that are considered available, suitable and available now for the five-year period, which is some 1,579 (net) dwellings less than the 7,272 (net) dwellings required to be deliverable (inclusive of a 20% buffer). This equates to 3.92 years of housing land supply, which is a modest improvement when compared to the 3.66 years supply as of 1 April 2021 that was previously reported.
- 2.40 It is therefore concluded that there is currently an insufficient supply of 'deliverable' housing sites to meet the Council's five-year housing land supply requirement in accordance with paragraph 74 of the NPPF (July, 2021).

- 2.41 As outlined in Table 4 above, 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.
- 2.42 As is highlighted in the above sections, in Wealden District, it normally takes between 3 and 5 years to deliver new homes following the granting of outline planning permission for major residential development. It is also noted that delivery rates on new housing sites rarely go beyond 100 dwellings per annum (dpa), meaning that some large housing sites will take a significant amount of time to deliver. It should be noted that there may be exceptions to this scenario where there are multiple housebuilders on a single large strategic site. The government is now actively monitoring the delivery of new homes, and this has become a more prominent issue for us following the first HDT test published in 2018.
- 2.43 The HDT measurement in 2021 for Wealden District Council was published on 14 January 2022, resulting in a measurement of 82% delivery against its housing requirement. This has resulted in a 20% buffer being applied to Wealden District Council's five-year housing land supply requirement. Furthermore, given the HDT result was below 95%, a Housing Action Plan was also required to be published. This document is intended to identify the reasons for under-delivery, explore ways to reduce the risk of future under-delivery and sets out measures the local authority intends to take to improve levels of housing delivery. The latest Housing Action Plan for Wealden was published in June 2022¹⁶.
- 2.44 Section 4 of the Housing Action Plan focuses on the intervention options open to the Council, recognising that a wide range of partners will need to be involved in helping to achieve the objectives of the Housing Action Plan, including landowners, developers, registered providers and development bodies, as well as infrastructure providers, to ensure that more new housing is delivered within Wealden District. This will in turn support the Council's objective of both gaining and maintaining a five-year housing land supply position in the future.
- 2.45 The appendices below provide detailed information on individual sites that are considered to make up the Council's five-year housing land supply position and provides a timeline for their development (with the exception of sites of 4 (net) dwellings or below that are simply listed).

¹⁶ [Wealden District Council Housing Action Plan \(June, 2022\)](#)

Appendix 1: Projected Delivery of Housing Developments with Planning Permission (small sites with 9 or less (net) units) as of 1 April 2022

Site Address	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32
60A Battle Road and Land to Rear, Hailsham	0	0	4	5	0	0	0	0	0	0
Abbey House and Garsmere, Framfield Road, Buxted	0	0	0	5	0	0	0	0	0	0
Balacava Inn, Cousley Wood Road, Wadhurst	0	0	6	0	0	0	0	0	0	0
Barns at Cider House Farm, Lewes Road, Blackboys	0	5	0	0	0	0	0	0	0	0
Beach Tavern, Sea Road, Pevensey Bay	0	4	4	0	0	0	0	0	0	0
Bishops Services Ltd, Hurtis Hill, Crowborough	0	9	0	0	0	0	0	0	0	0
Brolier House Paddock, Ingrams Farm, Bexhill Road	0	0	0	4	5	0	0	0	0	0
Cadence, Battle Road, Punnetts Town	0	5	0	0	0	0	0	0	0	0
Cherry Tree Nursery, Tubwell Lane, Crowborough	0	6	0	0	0	0	0	0	0	0
Cider House Farm, Lewes Road, Blackboys	4	0	0	0	0	0	0	0	0	0
Fairfield House, Deanland Road, Golden Cross	0	0	3	3	0	0	0	0	0	0
Former Golden Cross Inn Car Park, Chiddingly	0	0	5	0	0	0	0	0	0	0
Heatherlea, Newick Lane, Heathfield	5	0	0	0	0	0	0	0	0	0
Horam Park Golf Course, Chiddingly Road, Horam	0	0	4	5	0	0	0	0	0	0
Horselunges, Mill Lane, Hellingly	0	0	4	4	0	0	0	0	0	0
Kensington D A Ltd, Tilsmore Road, Heathfield	0	4	5	0	0	0	0	0	0	0
Land adjacent Craigmere Hall, Crowborough Hill, Crowborough	0	6	0	0	0	0	0	0	0	0
Land adjacent Reef Way, Hailsham	0	3	3	0	0	0	0	0	0	0
Land adjacent Shermans Oak, Coldharbour Road, Upper Dicker	0	3	3	0	0	0	0	0	0	0
Land adjacent to Recreation Ground, Blackboys	0	0	3	4	0	0	0	0	0	0
Land at 40 Brooklands Avenue, Crowborough	0	0	5	0	0	0	0	0	0	0
Land at Camberlot Stables, Camberlot Road, Upper Dicker	0	4	5	0	0	0	0	0	0	0
Land at Park Road, Swingate Cross, Hellingly	0	8	0	0	0	0	0	0	0	0
Land at Station Road, Hellingly	3	0	0	0	0	0	0	0	0	0
Land East of Nightingales, Crowborough	0	4	4	0	0	0	0	0	0	0
Land Rear of St Peter's R.C Church, St Peter's Mead, Rotherfield	0	0	4	5	0	0	0	0	0	0

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Site Address	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32
Land South of Gardner Street (A271) (Phase 1), Windmill Hill	0	5	4	0	0	0	0	0	0	0
Land South of Gardner Street (A271) (Phase 2), Windmill Hill	0	5	4	0	0	0	0	0	0	0
Land to the East of Robin Post Lane, Hailsham	0	0	0	5	0	0	0	0	0	0
Land to the South of the Kings Head, Lower Horsebridge	0	0	4	5	0	0	0	0	0	0
Mill House Farm, Maresfield	0	3	3	0	0	0	0	0	0	0
Mill View, Gun Road, Blackboys	0	5	0	0	0	0	0	0	0	0
Old Hartfield, Lewes Road, Halland	5	0	0	0	0	0	0	0	0	0
Royal Mires Garden Centre, Lye Green, Crowborough	0	0	5	0	0	0	0	0	0	0
The Horseshoe Inn, Windmill Hill	0	0	0	4	5	0	0	0	0	0
The Woolpack Inn, West End, Herstmonceux	3	0	0	0	0	0	0	0	0	0
Upper Horselunges, Park Road, Hellingly	0	0	9	0	0	0	0	0	0	0
White Gates, Regency Close, Uckfield	0	4	4	0	0	0	0	0	0	0
Willeys Farm, Muddles Green, Chiddingfold	0	4	3	0	0	0	0	0	0	0
Totals	39	158	194	86	20	0	0	0	0	0

Key
Dwellings in Five Year Housing Land Supply (Site not commenced)
Dwellings in Five Year Housing Land Supply (Site commenced)
Dwellings Outside of Five Year Period (Site not commenced)
Dwellings Outside of Five Year Period (Site commenced)

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Site name	Parish	Total Net Dwellings Committed
Old Cheadles Barn	Alciston	1
The Elms , West Street, Alfriston	Alfriston	-1
Wingrove, 1-2 High Street, Alfriston	Alfriston	-2
Atcost building, Wilbees Farm, Arlington	Arlington	1
Bedes School, Camberlot Road, Upper Dicker	Arlington	4
Cotswold Place	Arlington	1
Fox Acres, Wilbees Road, Arlington	Arlington	1
Land at Coldharbour Road & Michelham Priory Road	Arlington	3
Land at Coldharbour Road, Upper Dicker	Arlington	4
Old Barn Farm, Michelham Priory Road Upper Dicker	Arlington	1
Stables r/o Henties, Coldharbour Rd, Upper Dicker	Arlington	1
The Cottage, High Barn Road, Upper Dicker	Arlington	1
Wilbees Farmhouse, Wilbees Road, Arlington	Arlington	2
Flat 4, Berwick Stores, Station Road, Berwick	Berwick	1
Stonery Farm (1), Common Lane, Berwick	Berwick	3
Stonery Farm (2), Common Lane, Berwick	Berwick	2
Stonery Farm (3), Common Lane, Berwick	Berwick	2
George Rose Ltd., Queenstock Lane, Buxted	Buxted	2
Land at Millwood Lane, Five Ash Down, Uckfield	Buxted	1
New College Farm, Hurtswood Road, High Hurstwood	Buxted	1
Popeswood Barn, Buxted	Buxted	1
Redbrook House, Pound Green, Buxted	Buxted	1
Roundwood, Coopers Green Road, Uckfield	Buxted	1
Saxon Court, Pound Green, Buxted	Buxted	2
White Lodge, Church Road, Buxted TN22 4LT	Buxted	1
Ayrshire Farm, Darp Lane, Ripe	Chalvington with Ripe	4
Church Farm, Church Lane, Ripe BN8 6AU	Chalvington with Ripe	1
Curls Courtyard, Ripe Lane, Ripe	Chalvington with Ripe	1
Fmr. Blacksmiths Barn, Chalvington Rd, Chalvington	Chalvington with Ripe	1

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Mill Farm Cottage, Mill Lane, Ripe	Chalvington with Ripe	1
Roseneath Farm (1), Mill Lane, Ripe	Chalvington with Ripe	1
Roseneath Farm (2), Mill Lane, Ripe	Chalvington with Ripe	2
The Black Sheep, Darp Lane, Ripe, BN8 6BB	Chalvington with Ripe	1
Barn at Randalls Farm, Whitesmith, Chiddingly	Chiddingly	1
Blackbarn Farm, A22, Lower Dicker	Chiddingly	1
Friths Farm, Highlands Lane, Chiddingly	Chiddingly	1
Hawthbush Farm (B), Gun Hill, Chiddingly	Chiddingly	1
Marigolds Farm, Nash Street, Golden Cross	Chiddingly	1
Oakfield Farm, Golden Cross, Nr Hailsham	Chiddingly	1
Randalls Farm, Whitesmith, Chiddingly	Chiddingly	1
Ten Acres, Highlands Lane, Chiddingly	Chiddingly	1
The Orchard, Highlands Lane, Chiddingly, BN8 6HE	Chiddingly	1
Whitesmith Farm, Whitesmith Lane, Whitesmith	Chiddingly	1
1 & 2 Mardens Court, London Road, Crowborough	Crowborough	2
1 Beacon Road, Crowborough	Crowborough	1
1 Beacon Road, Crowborough	Crowborough	4
1 The Broadway, Crowborough	Crowborough	2
17 & 17A Harecombe Rise	Crowborough	2
1st Floor, 12 Croft Road, Crowborough	Crowborough	1
24A Simons Close, Crowborough	Crowborough	1
5 Blackness Road, Crowborough	Crowborough	1
5 Sandridge, Crowborough	Crowborough	1
7 - 8 Tanners Way	Crowborough	2
Beaongate & Burleigh	Crowborough	1
Buen, Crowborough Hill, Crowborough	Crowborough	2
Enterprise House, Station Approach, Crowborough	Crowborough	2
Ground Floor Flat, 1 Beacon Road, Crowborough	Crowborough	1
Land adj to The Bridge, Glenmore Road East	Crowborough	1
Land adj. Ruislip, Whitehill Road, Crowborough	Crowborough	1

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Land Adjacent to 33 Tollwood Park, Crowborough	Crowborough	1
Land around Stone House, Whitehill Rd, Crowborough	Crowborough	3
Land at Fir Tree House, Eridge Road, Crowborough	Crowborough	3
Land at Homestalls, Fielden Road, Crowborough	Crowborough	1
Land at Little Oaks and Kobek, Blackness Road, CRO	Crowborough	3
Land at Meadow House, London Road, Crowborough	Crowborough	2
Land at side of 2 Melrose Cottages	Crowborough	1
Land Opposite Norfolk Cottages, Walshes Road TN6	Crowborough	3
Land parcel west of The Broadway, Crowborough	Crowborough	3
Land r/o 1 Beacon Road, Crowborough	Crowborough	3
Land rear West Riseley, Melfort Road	Crowborough	1
Land south of High Broom Lane, Crowborough	Crowborough	1
Little Orchard, Crowborough Hill, Crowborough	Crowborough	1
Mackton, Blackness Road, Crowborough	Crowborough	1
Milton House, Whitehill Road, Crowborough	Crowborough	3
MMG House, Crowborough Hill, TN6 2DA	Crowborough	3
Robin Hill, Fielden Road, Crowborough	Crowborough	1
Scharlings, Fielden Road, Crowborough	Crowborough	1
South View Cottage, South View Road, Crowborough	Crowborough	1
Sussex House, Top Flat, Park Lane, Crowborough	Crowborough	1
The Downs, London Road, Crowborough	Crowborough	1
The Forge, Park Road, Crowborough	Crowborough	1
The Stables, Eridge Road, Crowborough TN6 2XA	Crowborough	2
The Welcome Stranger, Crowborough, TN6 2JL	Crowborough	3
Unit 18, Wealden IE, Farningham Road, Crowborough	Crowborough	1
West Ghyll Mead, Ghyll Road, Crowborough	Crowborough	1
1&2 Lilac Fruit Farm, School Lane, Chelwood Common	Danehill	2
3&4 Lilac Fruit Farm, School Lane, Chelwood Common	Danehill	2
Chapel Wood Manor, Chelwood Gate Road, Nutley	Danehill	1
Land West of Tanyard Lane & North of Baxters Lane	Danehill	4

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Latchetts Barn, Freshfield Lane, Danehill	Danehill	2
Latchetts Barn, Freshfield Lane, Danehill	Danehill	1
Richard Bertram House, Lewes Road, Danehill RH17	Danehill	1
Tanyard Fishery, Tanyard Lane, Furners Green	Danehill	1
The Yard, Tanyard Lane, Chelwood Gate RH17 7LX	Danehill	1
Land adj. The Old Parsonage, Eastbourne Rd, E Dean	East Dean & Friston	2
The Cottage, Lower Street, East Dean	East Dean & Friston	1
Upfolds, Old Willingdon Road, Friston	East Dean & Friston	1
23 High Street, East Hoathly	East Hoathly	1
Granary Crockstead Farmhouse, E bourne Rd, Halland	East Hoathly	1
Hesmonds Farm, Waldron Road, East Hoathly BN8 6QH	East Hoathly	1
Land at Buttsfield Lane, East Hoathly	East Hoathly	2
Staverton Nursery (B), Eastbourne Road, Halland	East Hoathly	1
1 & 2 Rose Cottage, Splaynes Green, Fletching	Fletching	1
Ashgrove, Goldbridge Road, Piltdown	Fletching	1
Black Ven Farm, Down Street, Nutley	Fletching	1
Flitterage Farm, Daleham Lane, Fletching	Fletching	2
Land adj. 4 Brewers Row, Church Street Fletching	Fletching	1
Little Barkham Farm, Goldbridge Road, Piltdown	Fletching	1
Little Sharpes, Sharpesbridge Lane, Piltdown	Fletching	1
Neva House, Goldbridge Road, Piltdown	Fletching	4
Piltdown Poultry Farm, Fairhazel Lane, Piltdown	Fletching	2
Site adj. Hawthorn Cotts, Goldbridge Rd, Piltdown	Fletching	1
Splaynes Green Farm, North Hall Lane, Fletching	Fletching	1
Steel Barn, Barkham Farm, Goldbridge Rd, Piltdown	Fletching	1
The Grange, r/o Peacock Inn, Shortbridge, Piltdown	Fletching	1
The Rose and Crown, High Street, Fletching	Fletching	1
Yorkshire Barn, Barkham Fm, Goldridge Rd, Piltdown	Fletching	1
11 Hartfield Road, Forest Row	Forest Row	1
Caravan 2 Brambletye Fruit Farm	Forest Row	1

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Gotwick Wood Farm, Holtye Road, Forest Row	Forest Row	1
Great Water Farm, Homestall Road, Ashurst Wood	Forest Row	0
Highgate Lodge, Tomtits Lane, Forest Row	Forest Row	1
Land adj. Sunnycroft, London Road, Forest Row	Forest Row	1
Oakfield Cottage, Hartfield Road, Forest Row	Forest Row	1
Pixton Hill Farm, Pixton Hill, Forest Row	Forest Row	1
The Clock House, Broadstone Farm, Wych Cross	Forest Row	1
The Dower House, Shovelstrode Lane, Ashurst Wood	Forest Row	3
The Oaks, Priory Road, Forest Row	Forest Row	1
Tylebrook Farm, Priory Road, Forest Row RH18 5HR	Forest Row	1
Allium Farm, Lewes Road, Framfield	Framfield	1
Branden Farm, Lewes Road, Framfield	Framfield	1
Cider House Farm, Lewes Road, Blackboys	Framfield	1
Danes House	Framfield	1
Framfield Children's Home, Blackboys Road, TN22 5PN	Framfield	4
Gate House, Gatehouse Lane, Framfield	Framfield	1
Hailwell House, Hammonds Green, Framfield TN22 5HB	Framfield	1
Highview, Sandy Lane, Framfield	Framfield	1
Land at 2 The Close, Star Lane, Blackboys	Framfield	1
Land at Simla, Framfield Road, Blackboys	Framfield	1
Land On The South Side, Terminus Road, Blackboys	Framfield	1
Palehouse Farm Barn	Framfield	1
Paygate Farm, Eastbourne Road, Uckfield TN22 5QY	Framfield	1
Pelham Place Farm, Palehouse Common, Framfield	Framfield	1
Pound Farm Cottage, Pound Lane, Framfield	Framfield	1
Redundant farm buildings at High Cross Farm	Framfield	2
ROC Bunker, Land off B2102, Framfield	Framfield	1
Squires Farm IE (2), Palehoused Common,	Framfield	4
The Old Steam Mill, Framfield Road, TN22 5RL	Framfield	2
Thistledown Farm, Framfield Road, Blackboys	Framfield	1

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Brickhouse Farm Granary, Tangiers Lane, T. Wells	Frant	1
Hargate House Plot 1, Tunbridge Wells	Frant	2
Hargate House Plot 2, Tunbridge Wells	Frant	1
Land at Manor Farm, Bells Yew Green Road, Frant	Frant	1
Reflex House, Bells Yew Green Road, Frant	Frant	3
The Surgery, High Street, Frant	Frant	1
Barn at Huggetts Farm, Stonehurst Lane, Five Ashes	Hadlow Down	1
Burnt House Farm Barns, Brick Kiln Lane, Hadlow Dn	Hadlow Down	3
Croust Farm Barns, Hadlow Down Road, Five Ashes	Hadlow Down	1
Five Chimneys Farm, Curtains Hill, Hadlow Down	Hadlow Down	2
Hadlow Down Village Hall, Hall Lane, Hadlow Down	Hadlow Down	3
Land adjacent The Oaks, School Lane, Hadlow Down	Hadlow Down	1
Lynx House Barn, School Lane, Hadlow Down	Hadlow Down	1
Wilderness Barns, Wilderness Lane, Hadlow Down	Hadlow Down	2
1 - 3 High Street, Hailsham East Sussex BN27 1AL	Hailsham	1
131 South Road, Hailsham	Hailsham	4
16 Bowley Road, Hailsham	Hailsham	2
167 South Road, Hailsham	Hailsham	1
2 / 4 Summerfields Avenue	Hailsham	2
2 Forest View, Hailsham, BN27 3ET	Hailsham	1
21 Station Road, Hailsham, BN27 2BN	Hailsham	4
28 Ersham Road, Hailsham	Hailsham	1
3 North Street, Hailsham	Hailsham	1
3 Swan Road, Hailsham BN27 2DG	Hailsham	1
38 Farne Close, Hailsham	Hailsham	1
39 Summerfields Avenue, Hailsham	Hailsham	1
43 Harebeating Crescent, Hailsham	Hailsham	1
5 George Street, Hailsham, BN271AD	Hailsham	2
9 Station Road, Hailsham	Hailsham	2
Amberstone Grange	Hailsham	1

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Barn Elms, Polegate Road, Hailsham	Hailsham	1
Ersham Farm, Ersham Road, Hailsham	Hailsham	1
Hamelsham Manor (1), 80 London Road, Hailsham	Hailsham	3
Land adj. 14 Portland Close, Hailsham	Hailsham	1
Land adj. 3 Sussex Cottages, New Road, Magham Down	Hailsham	1
Land adj. Peppers, Amberstone, Hailsham	Hailsham	1
Land adjacent 184 Battle Road, Hailsham	Hailsham	1
Land adjoining 41 Upper Horsebridge, Hailsham	Hailsham	1
Land at Mulbrooks, Summer Hill Lane, Hailsham	Hailsham	1
Land East of Waldernheath, Amberstone, BN27 1PJ	Hailsham	1
Land rear of 9 Station Road, Hailsham	Hailsham	2
Land to the side of 9 Paul Close, Hailsham	Hailsham	1
Land West of Waldernheath, Amberstone, Hailsham	Hailsham	2
Little Marshfoot Farm, Mill Road, Hailsham	Hailsham	1
Little Marshfoot, Little Marshfoot Lane, Hailsham	Hailsham	1
Lynton, A271 Amberstone, Hailsham	Hailsham	3
Mardon, 38 Hawks Road, Hailsham BN27 1NN	Hailsham	1
Poplar Cottage, Amberstone, Hailsham	Hailsham	1
Railway Crossing Cottage, Ersham Road, Hailsham	Hailsham	2
THE BRAMBLES, SUMMERHILL LANE, HAILSHAM	Hailsham	1
The Laurels, Amberstone, Hailsham	Hailsham	1
The Paddocks, South Road, Hailsham	Hailsham	3
Winton, Amberstone, Hailsham	Hailsham	2
Kentview, Hartfield Road, Cowden	Hartfield	1
Little Saxbys Farm, Hartfield Road, Cowden	Hartfield	1
Lower Holywych House	Hartfield	1
North Clays Farm, Butcherfield Lane, Hartfield	Hartfield	1
Perryhill Orchard, Edenbridge Road, Hartfield TN7	Hartfield	4
Primrose Cottage, Gallipot Hill, Hartfield	Hartfield	4
The Chestnuts, Edenbridge Road, Hartfield TN74JG	Hartfield	1

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Tye Farm, Edenbridge Road, Hartfield	Hartfield	2
14-18 High Street, Heathfield, TN21 8LS	Heathfield and Waldron	4
2 Station Approach, Heathfield	Heathfield and Waldron	1
Barklye Farm, Broad Oak, Heathfield TN21 8UR	Heathfield and Waldron	1
Barn at Satinstown Farm, Burwash Road, Broad Oak	Heathfield and Waldron	1
Bldgs north of Scallow Wish, Moat Lane, Waldron	Heathfield and Waldron	1
Broadridge, Mutton Hall Hill, Heathfield	Heathfield and Waldron	2
Bulls Eye Cottage, Burwash Road, Heathfield	Heathfield and Waldron	1
Cadence, Battle Road, Punnetts Town	Heathfield and Waldron	4
Coneyburrow Wood, Street End Lane, Broad Oak	Heathfield and Waldron	1
Eastlea, North Street, Punnetts Town	Heathfield and Waldron	1
EMILY HOUSE, LEWES ROAD, CROSS-IN-HAND	Heathfield and Waldron	2
Forest View, Mayfield Flat, Cross in Hand	Heathfield and Waldron	-1
Foxhunt Manor, Foxhunt Green, Waldron	Heathfield and Waldron	1
Friars Oak, Possingworth Close, Cross In Hand TN21	Heathfield and Waldron	1
Garage Block at Hemsley House, Heathfield	Heathfield and Waldron	1
Ghyll Park Farm, Little London Road, Horam	Heathfield and Waldron	1
Land adj. Woodbine Farm, Back Lane, Cross in Hand	Heathfield and Waldron	1
Land at Old Barklye, Swife Lane, Broad Oak	Heathfield and Waldron	2
Land at Silver Birches, Street End Lane, Broad Oak	Heathfield and Waldron	2
Land north of Whitehouse Lane, Waldron	Heathfield and Waldron	1
Land rear of Duncroft, Street End Lane, Broad Oak	Heathfield and Waldron	1
Land to the north of Upper Greenwoods Lane	Heathfield and Waldron	1
Laurel Cottage, Street End Lane, Broad Oak	Heathfield and Waldron	1
Little Bigknowle Farm, Bigknowle Hill, Broad Oak	Heathfield and Waldron	1
Lower Sandhills Farm, Sandhill Lane, Warbleton	Heathfield and Waldron	1
Magreed Farm, Magreed Lane, Broad Oak TN21 8TR	Heathfield and Waldron	2
Old Glebe, Waldron, Heathfield	Heathfield and Waldron	1
Olives Farm, Back Lane, Cross-in-Hand	Heathfield and Waldron	2
Pond Farm, Nettlesworth Lane, Vines Cross	Heathfield and Waldron	1

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Rutherford, Cross in Hand Road, Heathfield	Heathfield and Waldron	1
Star Lodge, Waldron	Heathfield and Waldron	1
Survey House, Streatfield Road, Heathfield	Heathfield and Waldron	1
The Barn, Upper Greenwoods Lane, Punnetts Town	Heathfield and Waldron	1
The Boiler House, Heathfield Park TN21 8RL	Heathfield and Waldron	1
The Implement Shed Broad Oak TN21 8UU	Heathfield and Waldron	1
The Old Dairy, Burwash Road, Broad Oak	Heathfield and Waldron	1
The Round House, Lewes Road, Cross In Hand	Heathfield and Waldron	1
Tilsmore Wood, Cross In Hand Road, Heathfield TN21	Heathfield and Waldron	4
Tottingworth Old Farm Barn	Heathfield and Waldron	1
Block E, Hellingly Hospital, The Drive, Hellingly	Hellingly	2
Bowhill (creche), The Drive, Hellingly	Hellingly	4
Caldicotts Farm, Caldicotts Lane, Lower Dicker	Hellingly	3
Fontmills Farm, North Street, Hellingly	Hellingly	2
Kings Head, Lower Horsebridge, Hailsham	Hellingly	1
Land opp Danecroft Place, Station Rd, Hellingly	Hellingly	2
Land rear of 11 New Road, Hellingly	Hellingly	3
Leyhurst Farm, North Street, Hellingly	Hellingly	1
Patchlands Farm, North Street, Hellingly, BN27 4DY	Hellingly	1
Perrylands Farm, Hackhurst Lane, Lower Dicker	Hellingly	2
South West of Bowhill BN27 4EP	Hellingly	3
Westenden Farm workshop, North Street, Hellingly	Hellingly	1
Barn at Conquerors, Stunts Green, Herstmonceux	Herstmonceux	1
Brent Farm, Under Road, Magham Down	Herstmonceux	1
Coopers Croft Nursery (C), New Road, Herstmonceux	Herstmonceux	3
Erreys, Stunts Green, Herstmonceux	Herstmonceux	1
Five Firs, Cinderford Lane, Hellingly	Herstmonceux	1
Hazeldene, Cricketing Lane, Herstmonceux BN27 1QL	Herstmonceux	1
Land adj. 1 Ferndale, Hailsham Road, Herstmonceux	Herstmonceux	2
Land adj. Higham Cottage, Gardner St, Herstmonceux	Herstmonceux	1

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Land to the rear of Dene House	Herstmonceux	1
Old Bakery (Maytyme), Gardner Street, Herstmonceux	Herstmonceux	2
Old Court Farm, Cowbeech Hill, Cowbeech	Herstmonceux	1
The Old Farm, Trolliloes, Cowbeech	Herstmonceux	1
The Welcome Stranger, Chapel Row, Herstmonceux	Herstmonceux	1
Unit 2, The Mews, R/O 4 Gardner St, Herstmonceux	Herstmonceux	1
West Terrace, West End, Herstmonceux	Herstmonceux	4
Land rear of Raybar, Denbeigh Road, Hooe	Hooe	1
Darganville, Chiddingly Road, Horam	Horam	1
Huggetts Farm, Marle Green, Horam	Horam	1
Karmala, Chiddingly Road, Horam	Horam	2
Orchard Leigh, Maynards Green Road, Maynards Green	Horam	2
Pick Hill Farm, Pick Hill, Horam	Horam	1
Site adjoining Hedgerows, Horam Road, Horam	Horam	1
The Blacksmiths, Nettlesworth Lane, Vines Cross	Horam	1
The Old Slaughterhouse, High Street, Horam	Horam	1
Wilmslow Barn, Nettlesworth Lane, Vines Cross	Horam	1
Beeches Fm, Beeches Farm Rd, Buckham Hill, Isfield	Isfield	1
Land at Brook Lodge Farm, Rose Hill, Isfield TN22	Isfield	1
Maple Barn, Beeches Farm Road, Buckham Hill	Isfield	1
Newhouse Farm, Buckham Hill, Isfield	Isfield	1
Old Rectory Farm, Buckham Hill, Isfield	Isfield	1
Rowebuck Stud (Tile Barn Farm) Isfield	Isfield	1
Rowebuck Stud, Station Road, Isfield	Isfield	1
Barn, Hammond Lodge Farm, Laughton	Laughton	1
Broyle Park Farm, Laughton BN8 6DB	Laughton	1
Cleavers Farm Barn, Mill Lane, Laughton	Laughton	2
Pilgrims Farm, Shortgate Lane, Laughton	Laughton	2
Randalls Barn, Broomham Lane, Whitesmith	Laughton	1
Redundant Agricultural Bldg, Darp Lane, Laughton	Laughton	1

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Shortgate Manor Farm, Terrible Down Road, Laughton	Laughton	1
Tom Thumb Barn, Lewes Road, Laughton	Laughton	1
Milton Gate Stables, The Green, Wilmington	Long Man	1
The Byre Milton Street Polegate East Sussex	Long Man	1
The Old Hides, Bayleys Lane, Wilmington	Long Man	1
Warren Farm, Thornwell Road, Wilmington	Long Man	1
1 & 2 Chestnut Cottages Fords Green TN22 3LL	Maresfield	-1
1 Central Parade, Straight Half Mile, Maresfield	Maresfield	1
Barnsgate Manor Vineyards, Herons Ghyll, TN22 4DB	Maresfield	1
Cobdown Farm, Cobdown Lane, TN22 3AR	Maresfield	1
Flitterbank Farm, The Drive, Maresfield Park, MFD	Maresfield	3
Flitterbanks Barn, The Drive, Maresfield TN22 3ER	Maresfield	2
Forest Cottage, The Drive, Maresfield Park	Maresfield	1
Furnace Bank House (A), London Road, Maresfield	Maresfield	2
Hillend View, Chelwood Gate Road Nutley	Maresfield	1
Hole and Alchorne Farm, Bell Lane, Nutley	Maresfield	2
Jades Farm, Horney Common Road, Maresfield	Maresfield	1
Jades Farm, Horney Common Road, Maresfield TN22	Maresfield	1
Land adj The Manor House, The Drive, Maresfield Pk	Maresfield	1
Land adj. Grey Timbers, The Drive, Maresfield Park	Maresfield	1
Land adjacent to 12 Parklands, Maresfield	Maresfield	1
Land North of Grey Timbers	Maresfield	3
Land rear 1-3 Mill House, London Road, Maresfield	Maresfield	1
Land south of Forest Ridge, The Drive, Maresfield	Maresfield	2
Lynton, Five Ash Down, Uckfield, TN223AH	Maresfield	2
Millwood, Millwood Lane TN22 3AS	Maresfield	1
Oakwood Park Bus Units, Oakwood Park, Maresfield	Maresfield	1
Priors Barn, Underhill, Maresfield	Maresfield	1
Red Thimbles, The Drive, Maresfield Pk, Maresfield	Maresfield	1
Woodlands Farm, Nursery Lane, Fairwarp	Maresfield	1

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Ye Olde Cottage, The Drive, Maresfield Park, Mfd	Maresfield	1
2 Mill House Farm, Coggins Mill Lane	Mayfield and Five Ashes	1
3 Mill Cottages, Fir Toll Road, Mayfield	Mayfield and Five Ashes	1
Cottingham House, High Street, Mayfield	Mayfield and Five Ashes	1
Cowden Farm, Mayfield Road, Five Ashes	Mayfield and Five Ashes	2
Cowmans Cottage, Witherenden Road, Mayfield	Mayfield and Five Ashes	1
Flower Place, The Avenue, Mayfield	Mayfield and Five Ashes	1
Glen Cottage Holders Lane Mayfield TN20 6BE	Mayfield and Five Ashes	1
Hawthorns, West Street, Mayfield	Mayfield and Five Ashes	1
Knowle Farm, Newick Lane, Mayfield	Mayfield and Five Ashes	1
Land adj. Airlie Cottage, Old Lane, Mayfield	Mayfield and Five Ashes	1
Land rear of 27+29 Queensmount, Five Ashes	Mayfield and Five Ashes	2
Little Bainden Farm Barn, Witherenden Rd, Mayfield	Mayfield and Five Ashes	1
Northover Barn, Meres Lane, Cross In Hand	Mayfield and Five Ashes	2
Northover, Meres Lane, Five Ashes	Mayfield and Five Ashes	1
Old Place Farm, Little Trodgers Lane, Mayfield	Mayfield and Five Ashes	2
R/O Mayfield Kit. Stu., Wellbrook Hill, Mayfield	Mayfield and Five Ashes	1
Springvale House, Station Road, Mayfield	Mayfield and Five Ashes	1
The Cedars, Old Lane, Mayfield	Mayfield and Five Ashes	1
Charlton House, The Green, Ninfield	Ninfield	1
Cold Store, Tanyard Farm, Hooe Road, Ninfield	Ninfield	1
Martins Farm, Hooe Road, Ninfield	Ninfield	1
Messens Fm, Potmans Ln, Lunsfords Cross, Ninfield	Ninfield	1
Moons Hill Farm, Moons Hill, Ninfield	Ninfield	1
The Piggery, Tanyard Farm, Hooe Road, Ninfield	Ninfield	1
164 Coast Road, Pevensey Bay	Pevensey	1
Land adj. 9 Eastbourne Road, Pevensey Bay	Pevensey	1
Land Adjacent to 189 Coast Road, Pevensey Bay	Pevensey	1
Priory Court Hotel, Castle Road, Pevensey	Pevensey	1
2 Shepham Lane, Polegate	Polegate	4

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5 Western Avenue, Polegate	Polegate	1
89 High Street, Polegate	Polegate	2
95-97 Station Road, Polegate	Polegate	1
Bay Tree Cottage, Bay Tree Lane, Polegate	Polegate	1
Bramley Farm, Bay Tree Lane, Polegate	Polegate	3
Junction Tavern, 99 Station Road, Polegate	Polegate	2
Land adj. 74 Brookside Avenue, Polegate	Polegate	1
Land at 60 Greenleaf Gardens, Polegate, BN26 6PQ	Polegate	1
Land rear of 9 Western Avenue, Polegate	Polegate	1
Plot 46, Twin Oaks Drive, Polegate	Polegate	1
Plots 47 & 48 Twin Oaks Drive, Polegate BN26 6GH	Polegate	2
Sayerland House, Sayerland Lane, Polegate	Polegate	1
Castle Hill Cottage, Castle Hill, Rotherfield	Rotherfield	-1
Cuckoo Barn, Douglas Road, Town Row	Rotherfield	1
Danesfield Farm, Eridge Road, Boars Head	Rotherfield	1
Dewlands Manor Golf Cse, Cottage Hill, Rotherfield	Rotherfield	2
Foot Tracks, Burnt Oak Road, Stone Cross, Crowboro	Rotherfield	1
Hamsell Wood Farm Barn, The Forstal, Eridge Green	Rotherfield	1
High Cross Hall	Rotherfield	1
Land adj. Catts Fm Cotts., T.Wells Rd, Mark Cross	Rotherfield	1
Land rear of Horsegrove House, Mayfield Road, RFD	Rotherfield	1
Outbuildings at Haywards Farm	Rotherfield	1
Owlsbury Farm, Hadlow Down Road, Crowborough	Rotherfield	1
Pinehurst Farm, Steep Road, Crowborough	Rotherfield	1
Redundant Farm Blds, Castle Hill Farm, Rotherfield	Rotherfield	1
Renby, Forge Road, Eridge	Rotherfield	1
Rumsden, Steep Road, Crowborough	Rotherfield	1
Seymours Yard, Catts Hill, Town Row	Rotherfield	2
St Peter's Mead, Rotherfield, East Sussex TN6 3TP	Rotherfield	4
Sycamore, Rotherfield Road, Rotherfield TN6 3HH	Rotherfield	1

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The Pines (3), Eridge Rd, Boars Head, Crowborough	Rotherfield	1
146a High Street, Uckfield	Uckfield	3
2 Mill Drove	Uckfield	1
29a High Street, Uckfield	Uckfield	2
30 Sycamore Court, Uckfield	Uckfield	1
39A New Town, Uckfield	Uckfield	2
4 Browns Close, Uckfield TN22 1UL	Uckfield	2
70 New Town, Uckfield	Uckfield	1
91 High Street, Uckfield	Uckfield	2
91a High Street, Uckfield	Uckfield	2
Charlwood Manor	Uckfield	4
Kings Court, Hempstead Road, Uckfield	Uckfield	3
Land at Pax, Nevill Green, Ringles Cross, Uckfield	Uckfield	3
Land west of Ridgewood Manor Lodge, Lewes Rd, Uck.	Uckfield	2
Malthouse Cottage, Olives Yard Uckfield	Uckfield	1
The Belfry, 6 New Town, Uckfield	Uckfield	1
The Cottage, Hempstead Road, Uckfield	Uckfield	4
The Farmhouse, 26 Harland Mews, Uckfield TN22 5JQ	Uckfield	1
The Malt House, Church Street, Uckfield	Uckfield	1
The Old Post Office, 75 High Street, Uckfield	Uckfield	2
The Old Post Office, 75 High Street, Uckfield	Uckfield	2
Uckfield Methodist Church, Framfield Rd, Uckfield	Uckfield	3
1 Walters Cottages, Lower High Street, Wadhurst	Wadhurst	1
85 Queens Cottages, Wadhurst TN5 6RN	Wadhurst	1
Bartley Mill Barn, Bells Yew Green	Wadhurst	1
Carambola, Turners Green Road, Wadhurst	Wadhurst	1
Church House, Church Street, Wadhurst	Wadhurst	1
Crittles Greengrocers, High Street, Wadhurst	Wadhurst	1
Farthings + The Winnats, Balaclava Lane, Wadhurst	Wadhurst	1
Former Nat West Bank, High Street, Wadhurst	Wadhurst	2

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Land @ Freestyle Dene Fm, Wadhurst Rd, Mark Cross	Wadhurst	1
Land adj. 26 Snape View, Wadhurst	Wadhurst	3
Land adj. Courthope Avenue, Wadhurst	Wadhurst	2
Lawn House, Dewhurst Lane, Wadhurst	Wadhurst	1
Lawn House, Dewhurst Lane, Wadhurst	Wadhurst	-1
Mill End, Townlands Road, Wadhurst	Wadhurst	4
Newnhams Farm, Buckland Hill Lane, Wadhurst	Wadhurst	1
Oak Cottage, Coombe Lane, Wadhurst	Wadhurst	1
Orchard House, Turners Green, Wadhurst	Wadhurst	1
Prendoran	Wadhurst	3
Seniab, Station Road, Wadhurst TN5 6DF	Wadhurst	1
St. Valentine, South View Rd, Sparrows Grn, Wdhrst	Wadhurst	1
Stone Cross Farm, Brinkers Lane, Wadhurst	Wadhurst	1
Swatland Farm, Whitegates Lane, Wadhurst	Wadhurst	1
The Cottage Buttons, Churchsettle Lane, Wadhurst	Wadhurst	1
The Creig (Greig), High Street, Wadhurst	Wadhurst	1
The Mill House, Partridges Lane, Wadhurst	Wadhurst	1
The Oast House, Best Beech Hill, Wadhurst	Wadhurst	1
The Office Unit, Homefield Fm, Tapsells Lane, WAD	Wadhurst	1
The Old Bakery, High St. Wadhurst	Wadhurst	1
The Stables, Wadhurst Park, Wadhurst	Wadhurst	-1
The Thatched Cottage, Best Beech Hill, Wadhurst	Wadhurst	1
Tunnel House, Durgates, Wadhurst	Wadhurst	2
Wadhurst Castle	Wadhurst	1
Wadhurst Post Office, High Street, Wadhurst TN5	Wadhurst	1
Combe Ash, Churches Green Lane, Heathfield	Warbleton	1
Conifers, The Causeway, Bodle Street Green BN274AU	Warbleton	1
Forest Farm Cottage, Three Cups, Heathfield	Warbleton	2
Land adj. Causeway Farm Barn, Bodle Street Green	Warbleton	1
Land north of Forest Lane, Punnetts Town	Warbleton	1

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Land to east of Spring Pastures, Punnetts Town	Warbleton	1
Oast Barn, Little Crouches Farm	Warbleton	1
Summerhill Farm, Chapmans Town Road, Heathfield	Warbleton	1
The Black Duck, Church Hill, Warbleton	Warbleton	1
Brooks Farm, Boreham Lane, Wartling	Wartling	1
Coopers Farm, Wartling Road, Wartling	Wartling	3
Dormers Fm Old Dairy, Nth End, The Strait, Win Hil	Wartling	2
Meridian Farm, Boreham Hill, Boreham Street	Wartling	1
Tara House, The Strait, Boreham Street	Wartling	1
Tyler Barn, Coopers Farm, Wartling Road, Wartling	Wartling	1
Tyler Barn, Wartling Road, Wartling	Wartling	1
52 & 54 High Street	Westham	2
Blenheim, Dittons Road, Stone Cross	Westham	1
Blenheim, Dittons Road, Stone Cross BN24 5ET	Westham	2
Brenchleys, Dittons Road, Stone Cross	Westham	1
Land adj. Uplands Cotts. Rattle Road, Sone Cross	Westham	1
Land in Dittons Road	Westham	1
Land w'in curtilage 25 Tillingham Way, Stone Cross	Westham	1
Merrilees, Dittons Road, Stone Cross, Pevensey	Westham	1
Uplands Farm, Rattle Road, Stone Cross BN24 5DT	Westham	4
Land adj. 172 Seven Sisters Raod, Willingdon	Willingdon and Jevington	1
Land to the rear of 20 Coopers Hill, Willingdon	Willingdon and Jevington	1
Duckings Farm (1), Withyham	Withyham	2
Duckings Farm (2), Withyham Road, Withyham	Withyham	1
Land adj. The Old House, Corseley Rd, Groombridge	Withyham	2
Lealands Farm, Station Road, Groombridge	Withyham	1
Pitfields Barn, Sussex Lane, Blackham	Withyham	1
The Crossways, Corseley Road, Groombridge	Withyham	1
The Oast House (Barnyard), Eridge Rd, Groombridge	Withyham	1
The Sussex Oak Inn	Withyham	2
Top Barn, Ham Farmhouse, Withyham TN7 4BJ	Withyham	1
Total		677

Appendix 2: Projected Delivery of Housing Developments with Detailed Planning Permission (major sites with 10 dwellings or more (net) within Wealden District as of 1 April 2022)

Site Address	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35
Brodricklands and Hamlands Farm Willingdon	75	75	75	61	0	0	0	0	0	0	0	0	0
Cuckoo Fields and Ersham Park, Land South of Hailsham	0	30	75	75	75	75	50	20	0	0	0	0	0
Deanland Wood Park, Deanland Road, Golden Cross	0	0	30	40	40	21	0	0	0	0	0	0	0
Dittons Farm, Dittons Road, Polegate	25	25	4	0	0	0	0	0	0	0	0	0	0
Golden Cross Caravan Park, Deanland Road, Golden Cross	29	0	0	0	0	0	0	0	0	0	0	0	0
Hedgerows, Horam Road, Horam	13	20	20	0	0	0	0	0	0	0	0	0	0
Land adjacent Lime Cross Recreation Ground, Herstmonceux	25	25	0	0	0	0	0	0	0	0	0	0	0
Land at Fern Close, Frant	6	0	0	0	0	0	0	0	0	0	0	0	0
Land at Ingrams Farm, Bexhill Road, Ninfield	20	20	15	0	0	0	0	0	0	0	0	0	0
Land at Old Marshfoot Farm, Marshfoot Lane, Hailsham	0	0	30	50	50	50	50	50	20	0	0	0	0
Land at Sussex Plants, Park Road, Hailsham	40	50	50	17	0	0	0	0	0	0	0	0	0
Land at Uplands Farm, Rattle Road, Stone Cross	50	50	18	0	0	0	0	0	0	0	0	0	0
Land East of Hadlow Down Road, Crowborough	0	0	0	13	13	0	0	0	0	0	0	0	0
Land East of Old Station Road, Wadhurst	5	10	6	0	0	0	0	0	0	0	0	0	0
Land East of Park Road, Hailsham	75	16	0	0	0	0	0	0	0	0	0	0	0
Land North of Eridge Road, Crowborough	10	25	30	30	24	0	0	0	0	0	0	0	0
Land North of Mallard Drive, Uckfield	40	40	37	0	0	0	0	0	0	0	0	0	0
Land North of Sunflower Lane, Polegate	0	0	0	9	9	0	0	0	0	0	0	0	0
Land North of Walshes Road, Crowborough	0	10	30	30	30	0	0	0	0	0	0	0	0
Land Off Manchester Road, Ninfield	10	30	30	10	0	0	0	0	0	0	0	0	0
Land South of Bloomery Way, Maresfield	6	0	0	0	0	0	0	0	0	0	0	0	0
Land South of Dittons Road, Stone Cross	0	25	25	25	0	0	0	0	0	0	0	0	0
Land West of Culpepper Close, Station Road, Isfield	4	4	0	0	0	0	0	0	0	0	0	0	0
Land West of Park Road, Hailsham	7	0	0	0	0	0	0	0	0	0	0	0	0
Land West of Uckfield	50	50	50	75	75	75	75	75	75	75	75	75	42
Oaklands, Ersham Road, Hailsham	0	0	20	50	50	49	0	0	0	0	0	0	0
Orchard View Park, Windmill Hill, Herstmonceux	0	0	15	16	0	0	0	0	0	0	0	0	0
Pixton House, Hartfield Road, Forest Row	0	0	7	8	0	0	0	0	0	0	0	0	0
Remaining Land North of Dittons Road, Polegate	3	0	0	0	0	0	0	0	0	0	0	0	0
Rose Mead Farm, Horebeech Lane, Horam	29	0	0	0	0	0	0	0	0	0	0	0	0
The Cart Barn, Burwash Road, Heathfield	0	7	7	0	0	0	0	0	0	0	0	0	0
The Coach House, Burwash Road, Heathfield	5	5	0	0	0	0	0	0	0	0	0	0	0
Water House, Porters Way, Polegate	0	0	6	6	0	0	0	0	0	0	0	0	0
Woodland View Touring Park, Horebeech Lane, Horam	7	0	0	0	0	0	0	0	0	0	0	0	0

Wealden District Council – Five Year Housing Land Supply Statement – 1 April 2022

Site Address	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32	2032/33	2033/34	2034/35
Oaklands, Ersham Road, Hailsham	0	0	20	50	50	49	0	0	0	0	0	0	0
Orchard View Park, Windmill Hill, Herstmonceux	0	0	15	16	0	0	0	0	0	0	0	0	0
Pixton House, Hartfield Road, Forest Row	0	0	7	8	0	0	0	0	0	0	0	0	0
Remaining Land North of Dittons Road, Polegate	3	0	0	0	0	0	0	0	0	0	0	0	0
Rose Mead Farm, Horebeech Lane, Horam	29	0	0	0	0	0	0	0	0	0	0	0	0
The Cart Barn, Burwash Road, Heathfield	0	7	7	0	0	0	0	0	0	0	0	0	0
The Coach House, Burwash Road, Heathfield	5	5	0	0	0	0	0	0	0	0	0	0	0
Water House, Porters Way, Polegate	0	0	6	6	0	0	0	0	0	0	0	0	0
Woodland View Touring Park, Horebeech Lane, Horam	7	0	0	0	0	0	0	0	0	0	0	0	0
Totals	534	517	580	515	366	270	175	145	95	75	75	75	42

Key
Dwellings in Five Year Housing Land Supply (Site not commenced)
Dwellings in Five Year Housing Land Supply (Site commenced)
Dwellings Outside of Five Year Period (Site not commenced)
Dwellings Outside of Five Year Period (Site commenced)

Appendix 3: Projected Delivery of Housing Developments with Outline Planning Permission (or Resolution to Grant Planning Permission) for Major Development within Wealden District as of 1 April 2022

Site Address	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32
Brook View, Land North of Walshes Road, Crowborough	0	0	25	35	35	35	0	0	0	0
Friday Street Farm, Oak Tree Lane, Stone Cross	0	0	50	50	50	50	50	0	0	0
Hesmonds Stud, Waldron Road, East Hoathly	0	25	50	50	50	30	0	0	0	0
Horeham Flat Farm, Chiddingly Road, Horam	0	0	15	15	6	0	0	0	0	0
Land adjacent Cuckoo Trail, Cuckoo Fields, Station Road, Hailsham	0	0	0	0	0	40	40	20	0	0
Land adjacent Walsh Manor Farm, Crowborough	0	0	11	30	30	0	0	0	0	0
Land adjoining 154 Station Road, Hailsham	0	0	0	6	6	0	0	0	0	0
Land at Burfield Valley, Hailsham	0	0	0	17	18	0	0	0	0	0
Land at Steel Cross, Crowborough	0	0	23	40	40	0	0	0	0	0
Land at Straight Half Mile, Maresfield	0	0	10	15	0	0	0	0	0	0
Land at Summerhill, West of Ersham Road, Hailsham	0	0	10	50	50	50	50	31	0	0
Land East of Hailsham Road and North of Peelings Lane, Stone Cross	0	0	30	30	30	0	0	0	0	0
Land East of North Street, Lower Horsebridge	0	0	25	40	40	25	0	0	0	0
Land North and South of Rattle Road, Westham and Stone Cross	0	0	25	75	75	75	68	0	0	0
Land North of Beacon Road, Crowborough	0	0	9	9	0	0	0	0	0	0
Land Off Bexhill Road, Ninfield	0	0	0	25	30	10	0	0	0	0
Land Off Eastbourne Road, Uckfield	0	0	30	30	30	0	0	0	0	0
Land Off Mill Road (North), Hailsham	0	0	30	50	50	50	40	0	0	0
Land South of Framfield Road, Blackboys	0	0	25	25	0	0	0	0	0	0
Land South of South Street, East Hoathly	0	0	10	20	20	5	0	0	0	0
Land to the East of Benhall Mill Road, Tunbridge Wells	0	0	20	40	40	40	19	0	0	0
Land West and South of Poplar Cottage, Amberstone, A271, Hailsham	0	0	5	20	20	0	0	0	0	0
Land West of North Street, Lower Horsebridge	0	0	0	0	20	20	15	0	0	0
Land West of Park Farm, New Road, Hellingly	0	0	25	50	50	50	50	50	50	45
Little Shepham, Shepham Lane, Polegate	0	0	30	30	30	17	0	0	0	0
Millbrook Garden Centre, Tubwell Lane, Crowborough	0	0	0	10	10	7	0	0	0	0
Orchid Riding Centre, Walshes Road, Crowborough	0	10	40	40	40	20	0	0	0	0
The Old Loom, Ersham Road, Hailsham	0	0	10	10	4	0	0	0	0	0
Totals	0	35	508	812	774	524	332	101	50	45

Wealden District Council – Five Year Housing Land Supply Statement – 1 April 2022

Key
Dwellings in Five Year Housing Land Supply (Site not commenced)
Dwellings in Five Year Housing Land Supply (Site commenced)
Dwellings Outside of Five Year Period (Site not commenced)
Dwellings Outside of Five Year Period (Site commenced)

Appendix 4: Projected Delivery/Loss of Use Class C2 Accommodation with Detailed or Outline Planning Permission (or Resolution to Grant Planning Permission) within Wealden District as of 1 April 2022*

Site Address	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30	2030/31	2031/32
Bircholt Retirement Home, Marlpits Lane, Ninfield	-12	4	0	0	0	0	0	0	0	0
Land at Little Mount Farm, Benhall Mill Road, Frant	0	0	40	40	0	0	0	0	0	0
Land to the West of Stone Cross Garden Centre, Dittons Road, Stone Cross	0	20	19	0	0	0	0	0	0	0
Totals	-12	24	59	40	0	0	0	0	0	0

Key
Dwellings in Five Year Housing Land Supply (Site not commenced)
Dwellings in Five Year Housing Land Supply (Site commenced)
Dwellings Outside of Five Year Period (Site not commenced)
Dwellings Outside of Five Year Period (Site commenced)

*As explained in paragraph 2.19 of this report, the PPG confirms that local planning authorities will need to count housing provided for older people, including residential institutions in Use Class C2, as part of our housing land supply. This contribution is based on the amount of accommodation released in the housing market and the average number of adults living in households that was 1.8 at the time of the 2011 Census. This is the figure that has been used to translate bed spaces to dwellings (Use Class C3) in line with planning practice guidance.

Published by
Wealden District Council
Council Offices
Vicarage Lane
Hailsham
East Sussex BN27 2AX
Tel: 01323 443322
Fax: 01323 443333
e-mail: planningpolicy@wealden.gov.uk
Website: www.wealden.gov.uk

ASSESSMENT OF WEALDEN DISTRICT COUNCIL'S FIVE YEAR HOUSING LAND SUPPLY POSITION

Prepared by:

S. Brown BSc Hons DipTP MRTPI

and

G. Ritchie BSc(Hons) MA MRTPI

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JANUARY 2023



Woolf Bond Planning
Chartered Town Planning Consultants

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DOCUMENTS

- HLS1** Hallam Land Management Ltd v Secretary of State for Communities and Local Government [2018] EWCA Civ 1808
- HLS2** East Northants Consent Order CO/917/2020) (7th May 2020)
- HLS3** Bedford Borough Consent Order (CO/164/2020) (2nd July 2020)
- HLS4** Appeal decision land north of Netherhouse Copse, Fleet, 6th October 2017 ref 3167135
- HLS5** Appeal decision for land east of Finchampstead Road, Wokingham, 25th August 2020 ref 3235572
- HLS6** Appeal decision for land north of Nine Mile Ride, Finchampstead, 9th April 2020 ref 3238048.
- HLS7** Appeal decision for land off Satchel Lane, Hamble -le-Rice.20th December 2018 ref 3194846
- HLS8** Appeal decision for land north of Dark Lane, Alrewas, Burton upon Trent, 13th February 2017 ref 2225799
- HLS9** Appeal decision for land at Deerlands Road, Wingerworth, 19th November 2018 Ref: 3192255
- HLS10** Appeal decision Little Sparrows, Sonning Common, 25th June 2021, ref 3265861
- HLS11** Appeal decision off Audlem Road/Broad Lane, Stapeley, Nantwich, 15th July 2020, ref 2197532 & 2197529
- HLS12** Appeal decision east side of Green Road, Woolpit, Suffolk, 28th September 2018 ref 3194926
- HLS13** Appeal decision Longdene House, Hedgehog Lane, Haslemere, 10th January 2019 ref 3165974
- HLS14** Appeal decision west of Cody Road, Waterbeach, Cambridge, 25th June 2014, ref 2207961

1. INTRODUCTION

Scope

- 1.1. This Statement has been prepared by Mr Steven Brown (BSc Hons DipTP MRTPI) and Mr Graham Ritchie (BSc Hons MA MRTPI) in relation to the appeal by Croudace Homes Ltd against the failure of Wealden District Council to determine an outline application proposing the erection of up to 290 dwellings, associated landscaping, informal open space and strategic SANGS, with access from the B2102 on land at Bird in Eye Farm, south of Bird in Eye Hill, Uckfield.
- 1.2. This Statement considers the five year housing land supply position in Wealden District for the period 1st April 2022 to 31st March 2027. Supporting documents are set out at **HLS1 to HLS14**.
- 1.3. At the outset, it is agreed between the Council and the Appellant that the Council is unable to demonstrate a five year supply of deliverable housing land at 1st April 2022.
- 1.4. The Council's position is set out in their Report titled "Five Year Housing Land Supply Statement – as of 1st April 2022" (**WB4**).
- 1.5. The acknowledged lack of a five year supply engages the presumption in favour of sustainable development.
- 1.6. As identified in *Hallam Land Management Ltd v Secretary of State for Communities and Local Government* [2018] EWCA Civ 1808 (**HLS1**), it is important to consider the extent of the shortfall when attributing weight to planning policy considerations.
- 1.7. In considering the five-year housing land supply position, the analysis sets out the position in relation to the Development Plan (which policies most important for determining the Appeal are out of date). It also addresses the content of relevant material considerations, including the National Planning Policy Framework ("NPPF" or the "Framework"), National Planning Policy Guidance ("NPPG"), relevant case law and associated appeal decisions.
- 1.8. Informed by that background, the housing requirement and deliverability of the Council's identified components of supply is assessed and thereafter we set out my

conclusion in relation to the five-year housing land supply position; where we concur with the Council that it is unable to demonstrate a five year supply of deliverable sites, although as outlined our position is that the extent of the shortfall is significantly greater.

Summary of Findings

- 1.9. Although the Council accepts that it cannot demonstrate a five year supply of deliverable housing land for the period 1st April 2022 to 31st March 2027 with a purported supply of 3.92 years and a substantial shortfall of 1,579 dwellings, it is our opinion that the extent of the deficit is significantly greater with a supply of only **3.35 years**. This amounts to a **deficit of 2,407 dwellings**.
- 1.10. Our assessment of the five year housing land supply position differs from the Council's, primarily due to the application of the definition of what constitutes a deliverable site from the 2021 NPPF, taking account the clarification provided by numerous appeal decisions.
- 1.11. The Council's case on housing land supply is set out in their "Five-Year Housing Land Supply" statement published in December 2022 (**WB4**). It includes reliance upon delivery from sites which were neither allocated nor had a planning permission at the base date for the assessment (31st March 2022) or are unsupported as a result of optimistic assumptions on delivery rates which are not supported by the necessary clear evidence (which also had to be available at 31st March 2022).
- 1.12. The respective positions are shown in Table 1 below.

Table 1 – The Respective Five Year Housing Land Supply Positions

	Council	Appellant
Requirement 1/4/2022 to 31/3/2027	7,272	7,272
Assessed deliverable supply	5,693	4,865
Extent of shortfall	-1,579	-2,407
No. of years supply	3.92yrs	3.35yrs

- 1.13. Having assessed the housing land supply position based upon the requirements set out in the NPPF, PPG and the approach adopted in numerous appeal decisions, we concur that the Council is unable to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11(d) of the NPPF.
- 1.14. Consequently, the presumption in favour of sustainable development is engaged as a result of the significant shortfall in supply.

2. THE PLANNING POLICY CONTEXT

Development Plan Context and Section 38(6)

- 2.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a requirement that planning applications are to be determined in accordance with the Development Plan unless other material considerations indicate otherwise. This represents the s.38(6) 'balance'.
- 2.2. In the context of considering the Appeal Scheme, The Development Plan for Wealden District comprises the following:
- Affordable Housing Delivery Local Plan (May 2016);
 - Wealden District Core Strategy (February 2013); and
 - Saved policies from Wealden Local Plan (1998)
- 2.3. Applicable policy considerations are set out in the overarching Planning Statement prepared for the Appeal (January 2023) and we do not seek to expand upon that here, save to reiterate that as the Plan which sets the District's housing requirement (the Core Strategy) was adopted more than 5 years ago. As such, the housing requirement is set through the derivation of Local Housing Need ("LHN").
- 2.4. The Council's Five Year Land Supply Statement details the derivation of the District's LHN and this confirms that the minimum requirement is 1,212dpa. This is agreed by the Appellant. The Council's Statement also summarises the sources of supply which the Council contends are deliverable, pursuant to the Glossary definition in the NPPF.
- 2.5. The sources of supply for the five year period April 2022 to March 2027 are listed in Table 2 below. As noted, the supply of 5,693 dwellings is insufficient to demonstrate a five year supply given the minimum requirement (including a 20% buffer) is 7,272 dwellings.

Table 2 – The Council's Sources of Supply (April 2022 – March 2027)

Source	Dwellings
Sites with permission (small sites with 9 or less dwellings) – listed in appendix 1	941
Sites with detailed permission (major sites – 10 or more dwellings) – listed in appendix 2	2,512
Sites with either outline planning permission or a resolution to grant permission (major sites – 10 or more dwellings) – listed in appendix 3	2,129
Class C2 accommodation with detailed or outline planning permission (or resolution to grant) – listed in appendix 4	111
Total	5,693

- 2.6. Table 2 indicates that a significant proportion¹ of the expected supply is from sites with either outline planning permission or a resolution to grant for major development. These need to be thoroughly assessed for their deliverability credentials having regard to the definition in the NPPF's Glossary, and the supporting advice in the PPG.

National Planning Policy Framework

- 2.7. The National Planning Policy Framework (NPPF) was published in July 2018; refined in February 2019 with further amendments in July 2021. It is a material consideration of particular standing in the determination of planning applications.
- 2.8. The content of the NPPF as it relates to the consideration of five year housing land supply matters is set out below.

Decision Making

- 2.9. In setting out the presumption in favour of sustainable development, paragraph 11 of the NPPF adds, in relation to decision-making at 11(c), that this means approving development proposals that accord with the development plan.
- 2.10. It adds at paragraph 11(d) that where there are no relevant development plan policies or the policies which are most important for determining the application are out of date (including where the LPA cannot demonstrate a five year supply of deliverable housing as is agreed for Wealden District as outlined in this statement), permission should be

¹ 2,129 / 5,693 which is over 37%

granted unless (i) policies in the NPPF provide a clear reason for refusing the development; or (ii) any adverse impact of doing so would significantly and demonstrably outweigh the benefits.

Delivering a Sufficient Supply of Homes

- 2.11. Paragraph 60 sets out the Government's objective of significantly boosting the supply of homes.
- 2.12. Paragraph 68 sets out the need to provide a five year supply of deliverable sites for housing. It also requires sites for years 6-10 and beyond. The definition of what constitutes a 'deliverable' site is set out in the glossary in Annex 2 on page 66 of the NPPF and this definition has been used, alongside that set out in the PPG², to inform the assessment of the Council's five year housing land supply position.
- 2.13. Paragraph 74 states that LPAs should maintain a minimum of five years' worth of housing, including an appropriate buffer of 5, 10 or 20% depending on the specific circumstances.
- 2.14. Based upon the Housing Delivery Test published on 14th January 2022 (see footnote 41 of the NPPF), the Council is a 20% Authority.
- 2.15. Whilst the acknowledged lack of a five year supply engages the presumption in favour of sustainable development, it is also noted that the Council's limited housing land supply is reliant on contributions from sites outside defined settlement boundaries. This is a further illustration of the out-of-date nature of these policies, irrespective of the lack of a five year supply.
- 2.16. This matter was considered in an appeal decision on land north of Netherhouse Copse, Fleet (Hart District)³ dated 6th October 2017 (**HLS4**). Paragraph 63 of the appeal decision states:

² See Housing Supply and Delivery section (ID 68-007-20190722)

³ PINS ref APP/N170/W/17/3167135

“Nevertheless, as the Supreme Court held in the case of Suffolk Coastal, the weight to be given to restrictive policies can be reduced where they are derived from settlement boundaries that in turn reflect out-of-date housing requirements. In that case the Inspector’s finding was consequential upon there being no five year housing land supply and on the basis that the Council could not deliver the housing to meet current needs. In the current appeal the Council argued that it can provide five years supply of housing land. However, this is a reflection of the Council granting a number of permissions for housing development outside of settlement boundaries identified in the LP in breach of Policies RUR2 and RUR3 in order to meet market and affordable housing needs and maintain a rolling five year land supply. Consequently it is not meeting current housing needs on the basis of the settlement boundaries in the development plan. I therefore find that Policy RUR1 is out-of-date and carries only moderate weight.”

2.17. This acknowledgement that sites outside of settlements had artificially boosted the supply was also recognised in two appeal decisions in Wokingham Borough. This was that for land east of Finchampstead Road, Wokingham (**HLS5**)⁴ and for land north of Nine Mile Ride, Finchampstead (**HLS6**)⁵.

2.18. In paragraph 29 of the east of Finchampstead Road appeal (**HLS5**), the Inspector concluded:

I have found later in my decision that the Council can demonstrate a five-year housing land supply. However, despite the views of the Council, it does rely on supply that falls outside of the currently set settlement boundaries. It is therefore clear to me that delivering a sufficient supply of housing cannot be done, whilst also meeting the requirements set out in Policies CP9, CP11 of the CS and CC02 of the MDD LP. They are therefore out-of-date.

2.19. This view is repeated in paragraph 26 of the north of Nine Mile Ride appeal (**HLS6**) where the Inspector states:

The scale and location of housing and the associated development limits were established to accommodate this lower housing requirement. However, as the Hurst Inspector observed, policy CP17 does not cap housing numbers and includes flexibility to bring land forward in identifying future land supply. Housing land supply is considered later in the decision, but the evidence is clear that this depends on some sites that are outside the development limits. The delivery of a sufficient supply of homes is a fundamental objective of the Framework but cannot

⁴ Appeal dismissed on 25th August 2020 – PINS ref APP/X0360/W/19/3235572

⁵ Appeal dismissed on 9th April 2020- PINS ref APP/X0360/W/19/3238048

be achieved through adherence to policies CP9, CP11 and CC02, which are all dependent on the development limits. These policies are therefore out-of-date. In this respect I disagree with the Hurst Inspector, but I note that there was no dispute about housing land supply in that case and therefore the evidence on which his conclusions were based was materially different.

- 2.20. The role of development contrary to the Plan in boosting supply is also highlighted in the appeal decision for land off Satchel Lane, Hamble -le-Rice (**HLS7**)⁶. In paragraph 18, the Inspector concluded:

As stated above the fact that the authority can clearly demonstrate a five year housing land supply is not relevant to the weight which should be accorded to development plan policies. However when considering the currency of a policy, it is relevant to have regard to the record of how it has been applied. In this case the Council has achieved the current supply position in part by greenfield planning permissions outside settlement boundaries – in some cases on sites which were within Strategic Gaps (an additional policy objection which does not apply in this case). I do not criticise the authority for any of these decisions but it is reasonable to infer that, in those cases, the Council either considered that the settlement boundary carried reduced weight or that the policy harm was outweighed by other considerations.

- 2.21. These appeal decisions demonstrate that when an Authority is reliant upon the inclusion of development sites contrary the development plan, the policies for the supply of housing are out of date.
- 2.22. Whilst Wealden District is unable to demonstrate a five year supply of deliverable housing land, the components of supply upon which they rely include permissions granted on sites beyond defined settlement boundaries. Even then there remains a substantial shortfall.
- 2.23. Recent decisions clarifying this position are included at **WB8**, **WB9** and **WB10**.
- 2.24. This limited weight is reinforced by the judgement in *Eastleigh Borough Council v Secretary of State for Housing Communities and Local Government* [2019] EWHC 1862 (Admin) (**WB21**) which followed the Satchell Lane appeal decision. In paragraph 54 of the judgement, it concludes:

⁶ Appeal allowed 20th December 2018 – PINS ref APP/W1715/W/18/3194846

As to the rationality of the Inspector's reasons, in my judgment, Mr Glenister has a complete answer. He submits that the Inspector's "consideration of the past application of the policy ... revealed that the current compliance with the 5YHLS was achieved "in part by greenfield planning permissions outside settlement boundaries – in some cases on sites which were within Strategic Gaps". This indicates that the development plan policies were not consistent with the NPPF, which goes to their "currency". Consideration of this was clearly rational". I agree.

- 2.25. This therefore reflects the appellants concerns over the Council's approach, including the allowances for sites in the countryside to boost the land supply, notwithstanding that a deficit is shown.

Weight to be Afforded to the Proposed Housing

- 2.26. The social need for affordable housing is an important material planning consideration and making social progress in tackling such needs is an important element of sustainable development running through the NPPF.
- 2.27. The importance of affordable housing as a material consideration has been reflected in a number of Secretary of State (SoS) and Planning Inspector decisions. A consistent theme is the significant amount of weight which is attached to affordable housing relative to other material planning considerations in the planning balance.
- 2.28. In an appeal determined by the Secretary of State with regard to land off Watery Lane, Curborough, Lichfield issued on 13th February 2017 (APP/K3415/A/14/2224354) (**WB23**), the Secretary of State's decision letter at paragraph 44 confirmed an existence of a five-year housing land supply.
- 2.29. Notwithstanding, the Secretary of State still attached "Very substantial weight" to the benefits of the provision of affordable and market housing (paragraph 53). As part of the planning balance and overall conclusion, the Secretary of State also gave modest weight to the landscape and visual harm from the development, considerable weight to the harm to the setting of heritage assets and considerable weight to the loss of veteran trees and ancient hedgerows (paragraph 54). Despite this, the Secretary of State at paragraph 55 concluded that the social and economic benefits of providing affordable and market housing were of such importance that they outweighed this environmental harm such that the proposal represented sustainable development.

2.30. This is a clear example of where the provision of housing, including affordable housing, despite the existence of a five year housing land supply, represented significant benefits and a weighty material consideration that outweighed environmental harms.

2.31. In the Secretary of State's decision in the appeal for 121 dwellings on land north of Dark Lane, Alrewas (**HLS8**), he concluded (paragraph 60):

“Weighing in favour of the proposal for the reasons given above he attaches substantial weight to the benefits of the provision of affordable housing and also attaches further significant weight to the benefits of market housing. In doing so he considers that the appeal proposal advances the social and economic roles identified in paragraphs 7 and 8 of the Framework which are not diminished owing to the Council now being able to demonstrate a five year supply.” (My underlining)

2.32. The clear benefits and significant weight attributable to both market and affordable housing is also reflected in the appeal for land at Deerlands Road, Wingerworth (**HLS9**). In paragraph 47 the Inspector states:

“The Council gave evidence as to how the authority has managed to achieve its current housing land supply position and the parties agreed that the Council can demonstrate a five year land supply. The Council's evidence was that there is a figure of 7.8 years, with the appellant evidencing a 7.2 year supply. Both parties agreed that there is no need to explore the reasons for this slight difference further. At the close of the Inquiry it was suggested by the Council that the figure is around 10 years on the basis of recently released data. However again there is no need to explore this further. Overall, despite the presence of significantly more than a five year supply, the provision of market and affordable housing weighs significantly in favour of the proposal, in the light of the national policy to significantly boost the supply of homes.”
(Our emphasis underlined)

2.33. The weight given to the provision of both market and affordable housing is also reflected in the Satchell Lane, Hamble-le-Rice decision (**HLS7**). In paragraph 64, the Inspector concludes:

“As agreed by the Council, the economic and social benefits of the proposal are worthy of significant weight. Given the national objective of significantly boosting the supply of homes, the provision of market and especially affordable housing carries significant weight. I appreciate the Council's point that the economic benefits related to short term construction jobs, and the longer term boost to local spending

power, could arise from any similar development. However that does not detract from the fact that this particular development offers these benefits, which I accord significant weight.” (Our underlining).

- 2.34. These decisions show that at least significant weight is associated with the provision of housing, even where a five year supply is available. Since this is not demonstrated in Wealden District, this reinforces both the benefits and weight attributable to the provision of housing as detailed in the next section of this statement.

3. ASSESSING THE FIVE YEAR HOUSING LAND SUPPLY POSITION IN WEALDEN DISTRICT

General

3.1. The assessment of the five year housing land supply position has been informed by the following tasks:

- (i) **identifying the requirement** to be met in the five year period (including in relation to the method to be applied in addressing any shortfall as well as the appropriate buffer to be applied),
- (ii) **assessing the deliverability** of the identified components of supply; and
- (iii) **concluding** on matters by subtracting (ii) from (i) to identify whether there is or is not a five year supply of deliverable housing land.

3.2. The Council's Five Year Housing Land Supply position as at 1st April 2022 was published by the Council in December 2022 and covers the five year period 1st April 2022 to 31st March 2027.

NPPF and PPG

3.3. Paragraph 74 of the NPPF requires LPAs to demonstrate a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies or against their local housing need where the strategic policies are more than five years old. The requirement should also allow for the application of a 5, 10 or 20% buffer associated with the Housing Delivery Test ("HDT").

3.4. For the purpose of this Appeal, the HDT results state that Wealden District is a 20% buffer Authority.

3.5. The PPG expands upon the definition of a deliverable site⁷, which references the definition at Annex 2 of the NPPF.

⁷ See Housing Supply and Delivery section (ID 68-007-20190722)

(i) Identifying the Housing Requirement

General

- 3.6. The agreed minimum requirement for the current five year period is 7,272 dwellings.
- 3.7. The starting point to calculating the five year requirement is the minimum **1,212 dwelling annual requirement** derived from the derivation of the district's LHN. This results in a 6,060 dwellings requirement.
- 3.8. As a result of the Housing Delivery Test ("HDT") results published in January 2022, it is agreed that it is appropriate to apply a 20% buffer to the requirement.
- 3.9. This results in an agreed minimum five year requirement of **7,272 dwellings for the five year period 1st April 2022 to 31st March 2027**. This equates to 1,454.4 dwellings per annum.

(ii) Assessing the Deliverability of the Identified Components of Supply

General

- 3.10. The NPPF Glossary definition of deliverable sites indicates that these are those that:

Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.

3.11. Alongside the NPPF definition the appellant refers to the Secretary of State's consent to judgement (CO/917/2020) (**HLS2**) in a case relating to an appeal within East Northamptonshire and the implications of this for determining whether a site is deliverable. The East Northamptonshire consent order was issued on 7th May 2020.

3.12. Paragraph B of the East Northamptonshire consent order states:

He concedes that he erred in his interpretation of the definition of deliverable within the glossary of the National Planning Policy Framework ("NPPF") as a 'closed list'. It is not. The proper interpretation of the definition is that any site which can be shown to be 'available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years' will meet the definition; and that the examples given in categories (a) and (b) are not exhaustive of all the categories of site which are capable of meeting that definition. Whether a site does or does not meet the definition is a matter of planning judgment on the evidence available

3.13. Since the East Northants consent to judgement, a further consent order by the Secretary of State has been issued with respect of an appeal decision within Bedford Borough (CO/164/2020) (**HLS3**) issued on 2nd July 2020.

3.14. Paragraph 5 states as follows:

"The First Defendant also accepts that Ground 2 is arguable, and the Inspector misinterpreted paragraph 74 of the NPPF 2019, because he has made no comment on the differences between the 2019 and 2012 test, the 'appropriate buffer', and any effect of the 5YHLS."

3.15. There has been a clear change in the definition of deliverable sites between the 2012 and 2019 editions of the NPPF⁸ which change was acknowledged in the Bedford Borough Consent Order.

3.16. The refined definition of a deliverable site within the current NPPF, together with the advice in the accompanying PPG on the quality and robustness of evidence⁹ indicates that the approach of the authority and its expectations of deliverability are not justified.

⁸ There is no change between 2019 and 2021 version of NPPF

⁹ See Housing Supply and Delivery section (ID 68-007-20190722)

- 3.17. Inspectors through other appeals have considered the implications of the additional guidance on how deliverability of sources/sites is to be appraised, including the nature and depth of evidence required pursuant to the versions of the NPPF issued since 2018.
- 3.18. One example is the appeal decision relating to land at Little Sparrows, Sonning Common allowed on 25th June 2021¹⁰. The nature and depth of evidence was assessed in paragraphs 20 and 21 of the appeal decision (**HLS10**) which state:

20 I have also had regard to the PPG advice published on 22 July 2019 on 'Housing supply and delivery' including the section that provides guidance on 'What constitutes a 'deliverable' housing site in the context of plan-making and decision-taking.' The PPG is clear on what is required:

"In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions."

This advice indicates to me the expectation that 'clear evidence' must be something cogent, as opposed to simply mere assertions. There must be strong evidence that a given site will in reality deliver housing in the timescale and in the numbers contended by the party concerned.

21. Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are there planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro-forma from a developer or agent does not in itself constitute 'clear evidence'. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward.

- 3.19. Taking account of the guidance in the 2021 NPPF and the conclusions of appeal Inspectors (including that at Sonning Common), the specific sites and sources where the contended delivery is not justified must be omitted especially as 'clear evidence' must be something cogent, as opposed to simply mere assertions.

¹⁰ PINS ref APP/Q3115/W/20/3265861.

3.20. Furthermore, in considering the detailed evidence with respect of the contended inclusion of sites, the Secretary of State in paragraphs 20 to 23 of his decision of 15th July 2020 allowing residential development off Audlem Road/Broad Lane, Nantwich (APP/R0660/A/13/2197532) (**HLS11**). They state:

20. The Secretary of State considers that the Inspector's assessment of housing supply at IR400-409 is now out of date given the new information that has been submitted by parties since the end of the Inquiry.

21. The Secretary of State has reviewed the information submitted by the parties, in particular the sites where deliverability is in dispute between the appellant and the Council. The Secretary of State agrees with the appellant that some of the sites identified by the Council, at the time the evidence was submitted, may not meet the definition of deliverability within the Framework. He considers that, on the basis of the evidence before him, the following should be removed from the supply: sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement; a site where there is no application and the written agreement indicates an application submission date of August 2019 which has not been forthcoming, with no other evidence of progress; and a site where the agent in control of the site disputes deliverability. He has therefore deducted 301 dwellings from the supply of housing figures.

22. The Secretary of State also considers that there are further sites where the evidence on deliverability is marginal but justifies their inclusion within a range of the housing supply figures. This group includes sites where the Council has a written agreement with an agent or developer and this indicates progress is being made, or where there is outline planning permission or the site is on a brownfield register and the Secretary of State is satisfied that there is additional information that indicates a realistic prospect that housing will be delivered on the site within 5 years. The Secretary of State considers that in total the number of dwellings within this category is 2,234.

23. Applying these deductions to the Council's claimed deliverable supply figure of 17,733, the Secretary of State is satisfied therefore, on the basis of the information before him, that the Council has a 5 year deliverable supply of between 15,198 dwellings and 17,432 dwellings. As the Secretary of State also considers that the Council has a total 5 year requirement of 13,211 dwellings, he is satisfied that the Council is able to demonstrate a supply of housing sites within the range of 5.7 years to 6.6 years. The Secretary of State has considered the Inspector's comments in IR423-425, and considers that in the light of his conclusion that there is a 5 year housing land supply, the presumption in favour of sustainable development does not apply in this case.

- 3.21. This reinforces the importance of clear evidence to support the contended deliverability of sites/sources within the supply. This is also noted that this appeal decision post-dates the two consent orders referred to above.
- 3.22. Therefore, having regard to the contents of the two consent orders together with the subsequent decision of the Secretary of State in the Nantwich appeal, for any site not included within the first category of sources detailed in the NPPF Glossary, it is essential that this is substantiated by the necessary evidence as outlined in the PPG¹¹.
- 3.23. This emphasises the importance of evidence to justify any assumptions on the deliverability of sites within the supply. This section of the PPG in considering “What constitutes a ‘deliverable’ housing site in the context of plan-making and decision-taking?” states:

In order to demonstrate 5 years’ worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions. Annex 2 of the National Planning Policy Framework defines a deliverable site. As well as sites which are considered to be deliverable in principle, this definition also sets out the sites which would require further evidence to be considered deliverable, namely those which:

- have outline planning permission for major development;**
- are allocated in a development plan;**
- have a grant of permission in principle; or**
- are identified on a brownfield register.**

Such evidence, to demonstrate deliverability, may include:

- current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;**
- firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers’ delivery intentions and anticipated start and build-out rates;**
- firm progress with site assessment work; or**
- clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful**

¹¹ See Housing Supply and Delivery section (ID 68-007-20190722)

participation in bids for large-scale infrastructure funding or other similar projects.

Plan-makers can use the Housing and Economic Land Availability Assessment in demonstrating the deliverability of sites.

- 3.24. Furthermore, it is essential that in including any sites/sources within the supply, it is essential to assess whether there is a realistic prospect that housing will be delivered on the site within 5 years.
- 3.25. It is clear from the PPG that for any site not included in the first category (A) of the NPPF Glossary for deliverable sites must be accompanied by clear and robust evidence to show deliverability.
- 3.26. This approach is the clear conclusion from the two consent orders together with the subsequent Nantwich appeal decision determined by the Secretary of State.
- 3.27. As explained, the need for robust evidence is reflected in the conclusions of Inspectors in other appeals including that at Sonning Common. It is within this context that the Council's housing land supply position is to be appraised.

Overview of sources

- 3.28. The Council's assessment of housing land supply for the period 2022-27 is set out in Housing Land Supply Paper. This suggests a deliverable supply of 5,693 dwellings.

Table 3 - Sources of supply relied upon by the Council for period Apr 2022-Mar 2027

Source	Dwellings
Sites with permission (small sites with 9 or less dwellings) – listed in appendix 1	941
Sites with detailed permission (major sites – 10 or more dwellings) – listed in appendix 2	2,512
Sites with either outline planning permission or a resolution to grant permission (major sites – 10 or more dwellings) – listed in appendix 3	2,129
Class C2 accommodation with detailed or outline planning permission (or resolution to grant) – listed in appendix 4	111
Total	5,693

Analysis of Deliverability

3.29. We have reviewed the various components of supply relied upon by the Council in their Housing Land Supply Paper. We disagree with their analysis of deliverability.

3.30. Our site assessment is set out below.

Sites with permission (small sites with 9 or less dwellings)

3.31. The Council expects 941 dwellings to be delivered within the five years from this source. We accept this position.

3.32. The respective positions in relation to this component of supply are as follows:

WDC: 941 dwellings
WBP: 941 dwellings
Difference: 0 dwellings

Sites with detailed permission (major sites – 10 or more dwellings)

3.33. The Council expects 2,512 dwellings to be delivered within the five years from this source. We accept this position.

3.34. The respective positions in relation to this component of supply are as follows:

WDC: 2,512 dwellings
WBP: 2,512 dwellings
Difference: 0 dwellings

Sites with either outline permission or resolution to grant permission (major sites – 10 or more dwellings)

3.35. The Council expects 2,129 dwellings to be delivered within the five years from this source.

3.36. For the reasons explained below, we dispute the delivery from several of the sites specified and discount the supply by 828 dwellings.

3.37. The respective positions in relation to this component of supply are as follows:

WDC: 2,129 dwellings
WBP: 1,301 dwellings
Difference: 828 dwellings

3.38. Our site analysis is set out below and includes our reasoning for discounting specific sites from this supply specified. Consistent with the conclusions of the Consent Orders and appeal decisions, where a site had an extant outline permission and a reserved matters application is submitted (including after the base date), this is taken as evidence of deliverability.

3.39. Our analysis applies the approach set out in the NPPF, PPG (see paragraph 3.23 above) and the aforementioned appeal decisions.

Brook View, land north of Walshes Road, Crowborough

3.40. Outline planning permission was granted for up to 130 dwellings on 23rd November 2021 (LPA ref WD/2020/0596/MAO). The site therefore falls within the second category of potentially deliverable sites. The applicant was Catesby Estates – a land promoter.

3.41. The second condition on the permission requires the submission of reserved matters to be submitted within 3 years of the decision. However, there is no evidence of when the necessary reserved matters application might be submitted, and equally important its determination and implementation. In the absence of this, taking account of the guidance in the NPPF, the PPG and the conclusions of Inspector's in other appeals, there is insufficient evidence to demonstrate that this site is deliverable.

3.42. We discount the 95 dwellings which the Council contends will be delivered on the site within the five years.

3.43. The respective positions in relation to supply within 5 years from Brook View, north of Walshes Road, Crowborough are as follows:

WDC: 95 dwellings
WBP: 0 dwellings
Difference: 95 dwellings

Friday Street Farm, Oak; Tree Lane, Stone Cross

- 3.44. Outline planning permission was granted for up to 250 dwellings on 14th July 2022 (LPA ref WD/2020/01391/MAO). At the base date for the land supply assessment, the site had a resolution to grant permission following the decision of the Council's Planning Committee South on 10th September 2020. The granting of planning permission is therefore after the base date. The applicant was Wates Developments Ltd – a land promoter.
- 3.45. The report to the Council's Planning Committee South notes that the site was recommended for approval as although it lay in the countryside, it accorded with the approach of the since withdrawn Wealden Local Plan. The report indicates that the site does not fall within any of the categories of potentially deliverable sites/sources listed in the NPPF.
- 3.46. Although the East Northamptonshire Consent Order noted that the list of deliverable sources is not closed, reflecting the approach in the Beford Consent Order and appeal decisions, it is essential that clear robust evidence is provided to demonstrate why this site at Friday Street Farm is nevertheless deliverable. It is not considered that this has been provided, especially as there is a need for the submission, determination and implementation of reserved matters. The Friday Street Farm site is not therefore considered deliverable.
- 3.47. We discount the 150 dwellings which the Council contends will be delivered on the site within the five years.
- 3.48. The respective positions in relation to supply within 5 years from Friday Street Farm, Oak Tree Lane, Stone Cross are as follows:

WDC:150 dwellings
WBP: 0 dwellings
Difference: 150 dwellings

Land adjacent to Walshes Manor Farm, Walshes Road, Crowborough

- 3.49. Outline planning permission was granted for up to 71 dwellings on 10th June 2021 (LPA ref WD/2019/0641/MAO). The site therefore falls within the second category of potentially deliverable sites. The applicant was Rydon Homes Ltd - a developer.

- 3.50. The second condition on the permission requires the submission of reserved matters to be submitted within 3 years of the decision. However, there is no evidence of when the necessary reserved matters application might be submitted, and equally important its determination and implementation. In the absence of this, taking account of the guidance in the NPPF, the PPG and the conclusions of Inspector's in other appeals, there is insufficient evidence to demonstrate that this site is deliverable.
- 3.51. We discount the 71 dwellings which the Council contends will be delivered on the site within the five years.
- 3.52. The respective positions in relation to supply within 5 years from Walshes Manor Farm, Walshes Road, Crowborough are as follows:

WDC: 71 dwellings
WBP: 0 dwellings
Difference: 71 dwellings

Land adjoining 154 Station Road, Hailsham

- 3.53. Outline planning permission was granted for up to 12 dwellings on 6th December 2022 (LPA ref WD/2020/01596/MAO). At the base date for the land supply assessment, the site had a resolution to grant permission following the decision of the Council's Planning Committee South on 16th December 2021. The granting of planning permission is therefore after the base date. The applicant was the owner of the site.
- 3.54. The report to the Council's Planning Committee South notes that the site was recommended for approval as although it lay in the countryside, it was not isolated and was adjacent to the larger scale urban extension. The report indicates that the site does not fall within any of the categories of potentially deliverable sites/sources listed in the NPPF.
- 3.55. Although the East Northamptonshire Consent Order noted that the list of deliverable sources is not closed, reflecting the approach in the Beford Consent Order and appeal decisions, it is essential that clear robust evidence is provided to demonstrate why this site adjoining 154 Station Road is nevertheless deliverable. It is not considered that this has been provided, especially as there is a need for the submission, determination

and implementation of reserved matters. The land adjacent to 154 Station Road site is not therefore considered deliverable.

- 3.56. We discount the 12 dwellings which the Council contends will be delivered on the site within the five years.
- 3.57. The respective positions in relation to supply within 5 years from land adjacent to 154 Station Road, Hailsham are as follows:

WDC:12 dwellings
WBP: 0 dwellings
Difference: 12 dwellings

Land at Burfield Valley, Hailsham

- 3.58. A detailed planning application for 35 dwellings was validated on 25th June 2018 (LPA ref WD/2018/0122/MAJ). The Council's Planning Committee South on 5th October 2020 resolved to grant permission, subject to the signing of a legal agreement and other matters. As the legal agreement remains unsigned, permission has not been issued. The applicant was Persimmon Homes Ltd – a developer.
- 3.59. The report to the Council's Planning Committee South notes that the site was recommended for approval as although it lay in the countryside, it was 'allocated' under the now defunct non-statutory Wealden Local Plan for 'community and residential purposes'. The committee report indicates that the site does not fall within any of the categories of potentially deliverable sites/sources listed in the NPPF.
- 3.60. Although the East Northamptonshire Consent Order noted that the list of deliverable sources is not closed, reflecting the approach in the Beford Consent Order and appeal decisions, it is essential that clear robust evidence is provided to demonstrate why this site at Burfield Valley is nevertheless deliverable. It is not considered that this has been provided, especially as the legal agreement required following the October 2020 committee decision remains unsigned over 2 year later. The land at Burfield Valley is not therefore considered deliverable.
- 3.61. We discount the 35 dwellings which the Council contends will be delivered on the site within the five years.

- 3.62. The respective positions in relation to supply within 5 years from land at Burfield Valley, Hailsham are as follows:

WDC:35 dwellings
WBP: 0 dwellings
Difference: 35 dwellings

Land at Straight Half Mile, Maresfield

- 3.63. Outline planning permission was granted for up to 25 dwellings and a community facility on 23rd June 2022 (LPA ref WD/2017/0694/MAO). At the base date for the land supply assessment, the site had a resolution to grant permission following the decision of the Council's Planning Committee North on 15th October 2021. The granting of planning permission is therefore after the base date. The applicant was Portman Homes – a developer.
- 3.64. The report to the Council's Planning Committee North notes that the site was recommended for approval as although it lay in the countryside the settlement boundaries around Maresfield should be given very limited weight. The report indicates that the site does not fall within any of the categories of potentially deliverable sites/sources listed in the NPPF.
- 3.65. Although the East Northamptonshire Consent Order noted that the list of deliverable sources is not closed, reflecting the approach in the Beford Consent Order and appeal decisions, it is essential that clear robust evidence is provided to demonstrate why this site at Straight Mile is nevertheless deliverable. It is not considered that this has been provided, especially as there is a need for the submission, determination and implementation of reserved matters. The land at Straight Mile is not therefore considered deliverable.
- 3.66. We discount the 25 dwellings which the Council contends will be delivered on the site within the five years.
- 3.67. The respective positions in relation to supply within 5 years from land at Straight Mile, Maresfield are as follows:

WDC:25 dwellings
WBP: 0 dwellings
Difference: 25 dwellings

Land east of North Street, Lower Horsebridge, Hailsham

- 3.68. Outline planning permission was granted for up to 130 dwellings on 27th August 2021 (LPA ref WD/2019/1575/MAO). The site therefore falls within the second category of potentially deliverable sites. The permission for 130 dwellings in application WD/2019/1575/MAO is an increase of 20 dwellings on the 110 units approved on the site in February 2019 (WD/2016/1948/MAO). The applicant was Muntham Estates Ltd – a land promoter.
- 3.69. The second condition on the permission requires the submission of reserved matters to be submitted within 3 years of the decision. However, there is no evidence of when the necessary reserved matters application might be submitted, and equally important its determination and implementation. In the absence of this, taking account of the guidance in the NPPF, the PPG and the conclusions of Inspector's in other appeals, there is insufficient evidence to demonstrate that this site is deliverable.
- 3.70. We discount the 105 dwellings which the Council contends will be delivered on the site within the five years.
- 3.71. The respective positions in relation to supply within 5 years from land east of North Street, Lower Horsebridge, Hailsham are as follows:

WDC:105 dwellings
WBP: 0 dwellings
Difference: 105 dwellings

Land off Bexhill Road, Ninfield

- 3.72. Outline planning permission was granted for up to 65 dwellings on 26th September 2022 (LPA ref WD/2021/2454/MAO). At the base date for the land supply assessment, the site had a resolution to grant permission following the decision of the Council's Planning Committee South on 2nd December 2021. The granting of planning permission is therefore after the base date. The applicant was Gladman Developments Ltd – a land promoter.
- 3.73. The report to the Council's Planning Committee South notes that the site was recommended for approval as although it lay in the countryside and **“would result in the loss of a field it would not appear in isolation and it would not result in**

unacceptable encroachment into the open countryside”. The report indicates that the site does not fall within any of the categories of potentially deliverable sites/sources listed in the NPPF.

- 3.74. Although the East Northamptonshire Consent Order noted that the list of deliverable sources is not closed, reflecting the approach in the Beford Consent Order and appeal decisions, it is essential that clear robust evidence is provided to demonstrate why this site off Bexhill Road is nevertheless deliverable. It is not considered that this has been provided, especially as there is a need for the submission, determination and implementation of reserved matters. The land off Bexhill Road is not therefore considered deliverable.
- 3.75. We discount the 55 dwellings which the Council contends will be delivered on the site within the five years.
- 3.76. The respective positions in relation to supply within 5 years from land off Bexhill Road, Ninfield are as follows:

WDC:55 dwellings
WBP: 0 dwellings
Difference: 55 dwellings

Land off Eastbourne Road, Uckfield

- 3.77. Outline planning permission was granted for up to 90 dwellings on 21st September 2021 (LPA ref WD/2020/0410/MAO). The site therefore falls within the second category of potentially deliverable sites. The applicant was Gladman Developments Ltd – a land promoter.
- 3.78. The second condition on the permission requires the submission of reserved matters to be submitted within 3 years of the decision. However, there is no evidence of when the necessary reserved matters application might be submitted, and equally important its determination and implementation. In the absence of this, taking account of the guidance in the NPPF, the PPG and the conclusions of Inspector’s in other appeals, there is insufficient evidence to demonstrate that this site is deliverable.
- 3.79. We discount the 90 dwellings which the Council contends will be delivered on the site within the five years.

- 3.80. The respective positions in relation to supply within 5 years from land off Eastbourne Road, Uckfield are as follows:

WDC:90 dwellings
WBP: 0 dwellings
Difference: 90 dwellings

Land south of South Street, East Hoathly

- 3.81. Outline planning permission was granted on appeal for up to 55 dwellings on 27th July 2021 (LPA ref WD/2019/1674/MAO & PINS ref APP/C1435/W/20/3257830). The site therefore falls within the second category of potentially deliverable sites. The applicant and appellant was Prime Crest Homes Ltd – a developer.
- 3.82. The second condition on the permission requires the submission of reserved matters to be submitted within 3 years of the decision. However, there is no evidence of when the necessary reserved matters application might be submitted, and equally important its determination and implementation. In the absence of this, taking account of the guidance in the NPPF, the PPG and the conclusions of Inspector's in other appeals, there is insufficient evidence to demonstrate that this site is deliverable.
- 3.83. We discount the 50 dwellings which the Council contends will be delivered on the site within the five years.
- 3.84. The respective positions in relation to supply within 5 years from land south of South Street, East Hoathly are as follows:

WDC:50 dwellings
WBP: 0 dwellings
Difference: 50 dwellings

Land to the east of Benhall Mill Road, Tunbridge Wells

- 3.85. A detailed planning application for 159 dwellings was validated on 6th February 2017 (LPA ref WD/2017/0143/MAJ). The Council's Planning Committee North on 17^h December 2020 resolved to grant permission, subject to the signing of a legal agreement and other matters. As the legal agreement remains unsigned, permission has not been issued. The applicant was Millwood Designer Homes – a developer.

- 3.86. The report to the Council's Planning Committee North notes that **"the site is not subject to any detailed housing allocation but this broad location was identified for growth of around 120 dwellings in the Core Strategy Local Plan 2013 under WCS2 and WCS4 (SD11) (CSLP). A net addition of 48 dwellings has already been secured by the approval of WD/2015/2675/MAJ on land to the West of the site in March 2017. Many of these houses are now approaching completion and some are occupied"**.
- 3.87. Although the Committee Report also states **"whilst lying outside of any development boundary, part of the site formed a landfill site which was capped off in the 1950s. The proposed development would secure remediation of this previously developed land – with the site now recovered on the ground by nature"**, the site is not included on the Council's brownfield register. Therefore, as it was not a specific detailed allocation, it is not within any of the categories of potentially deliverable sites/sources listed in the NPPF.
- 3.88. Although the East Northamptonshire Consent Order noted that the list of deliverable sources is not closed, reflecting the approach in the Beford Consent Order and appeal decisions, it is essential that clear robust evidence is provided to demonstrate why this site to the east of Benhall Mill Road is nevertheless deliverable. It is not considered that this has been provided, especially as there is no information on the timeframe for the signing of the legal agreement and the subsequent implementation of the proposal. The land to the east of Benhall Mill Road is not therefore considered deliverable.
- 3.89. We discount the 100 dwellings which the Council contends will be delivered on the site within the five years.
- 3.90. The respective positions in relation to supply within 5 years from land to the east of Benhall Mill Road, Tunbridge Wells are as follows:

WDC:100 dwellings
WBP: 0 dwellings
Difference: 100 dwellings

Land west of North Street, Lower Horsebridge

- 3.91. An outline planning application for up to 55 dwellings was validated on 14th September 2021 (LPA ref WD/2021/2056/MAO). The Council's Planning Committee South on 24th March 2022 resolved to grant permission, subject to the signing of a legal agreement

and other matters. As the legal agreement remains unsigned, permission has not been issued. The applicant was the landowner.

- 3.92. The report to the Council's Planning Committee South notes that **"the application site lies within open countryside as defined by the Local Plan and has therefore been advertised as a 'departure' application. Policies within the development plan 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 Wealden Local Plan 1998 but also in national guidance through the NPPF. The supporting text of Paragraph 5.91 to Policy DC17 sets out the range of special justifications for allowing development outside development boundaries. Outside of development boundaries, residential development is generally resisted in accordance with Policy GD2. 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 Core Strategy Local Plan 2013. The application site which lies in open countryside therefore conflicts with Policies GD2 and DC17"**. The committee report indicates that the site does not fall within any of the categories of potentially deliverable sites/sources listed in the NPPF.
- 3.93. Although the East Northamptonshire Consent Order noted that the list of deliverable sources is not closed, reflecting the approach in the Beford Consent Order and appeal decisions, it is essential that clear robust evidence is provided to demonstrate why this site west of North Street is nevertheless deliverable. It is not considered that this has been provided, especially as the legal agreement required following the Mach 2022 committee decision remains unsigned over 10 months later. Additionally, there is no information regarding the timings for the subsequent submission, determination and implementation of reserved matters. The land west of North Street is not therefore considered deliverable.
- 3.94. The respective positions in relation to supply within 5 years from land west of North Street, Lower Horsebridge are as follows:

WDC: 20 dwellings
WBP: 0 dwellings
Difference: 20 dwellings

Millbrook Garden Centre, Tubwell Lane, Crowborough

- 3.95. Outline planning permission was granted for the cessation of the land for a garden centre and demolition of associated buildings (except office) and the construction of up to 27 dwellings on 21st October 2022 (LPA ref WD/2020/2164/MAO). At the base date for the land supply assessment, the site had a resolution to grant permission following an officer's delegated decision on 27th October 2021. The granting of planning permission is therefore after the base date. The applicant was the garden centre.
- 3.96. The officer's delegated decision report (including the update of 21st October 2022 to accompany the decision notice) confirms that **"this application seeks outline planning permission for the cessation of use of land for a garden centre and demolition of all associated buildings and the construction of up to 27 dwellings with redesigned site access and closure of existing accesses and associated highway improvements. Details of access are submitted for consideration with all other matters reserved for future consideration. The application is accompanied by an illustrative layout plan. The scheme amounts to re-development of a brownfield site which lies just outside the Crowborough development boundary as defined by the Local Plan and has therefore been advertised as a 'departure' application."** A review of the Council's brownfield register indicates that Millbrook Garden Centre is not included as a site. The officer's delegated report therefore confirms that the site does not fall within any of the categories of potentially deliverable sites/sources listed in the NPPF.
- 3.97. Although the East Northamptonshire Consent Order noted that the list of deliverable sources is not closed, reflecting the approach in the Beford Consent Order and appeal decisions, it is essential that clear robust evidence is provided to demonstrate why this site at Millbrook Garden Centre is nevertheless deliverable. It is not considered that this has been provided, especially as there was a need for the submission, determination and implementation of reserved matters once outline permission was granted.
- 3.98. Whilst a reserved matters application for the development has been submitted (LPA ref WD/2022/3249/MRM) which was validated on 13th January 2023, this does not alter the appellant's view that the site is not deliverable as it is outside of any categories of deliverable land as detailed in the NPPF's Glossary.

- 3.99. The discounting of a site which is unsupported by evidence to indicate why it should be categorised as deliverable, notwithstanding its omission from any of the specified categories in the NPPF's Glossary reflects the conclusions of an Inspector who determined an appeal on land on east side of Green Lane, Woolpit allowed on 28th September 2018¹². In paragraph 67 of the Inspector's decision, he concluded that:

In my view the definition of 'deliverable' in the Glossary to the NPPF 2018 does not relate to or include sites that were not the subject of an allocation but had a resolution to grant within the period assessed within the AMR. The relevant period is 1 April 2017 to 31 March 2018.11 There is therefore a clear cut-off date within the AMR, which is 31 March 2018. The Council's supply of deliverable sites should only include sites that fall within the definition of deliverable at the end of the period of assessment i.e. 31 March 2018. Sites that have received planning permission after the cut-off date but prior to the publication of the AMR have therefore been erroneously included within the Council's supply. The inclusion of sites beyond the cut-off date skews the data by overinflating the supply without a corresponding adjustment of need. Indeed that is why there is a clear cut-off date set out in the AMR. Moreover, the site West of Barton Road, Thurston, should be removed from the supply as its permission postdates the cut-off for the relevant period of assessment.

- 3.100. Therefore, if the Council undertakes an update of its assessment of land supply so that the base date is after 21st October 2022, it can then include this an other outline permissions as potentially deliverable. However consistent with the Woolpit appeal decision any dwellings completed prior to that date alongside those permission which had expired, must also be omitted from the supply. This would ensure that a comprehensive robust appraisal was made. As no update has been made, the land at Millbrook Garden Centre is not therefore considered deliverable.

- 3.101. We discount the 25 dwellings which the Council contends will be delivered on the site within the five years.

- 3.102. The respective positions are as follows:

WDC:20 dwellings
WBP: 0 dwellings
Difference: 20 dwellings

¹² PINS ref APP/W3530/W/18/3194926

Summary

3.103. Table 4 below summarises the differences between the Council and the Appellant for the various sites listed in Appendix 3 of their Land Supply Assessment taking account of the review above.

Table 4: Review of deliverability (April 2022-March 2027)

Site location	Contended supply (Apr 2022 – Mar 2027)		
	WDC	WBP	Difference
Brook View, land north of Walshes Road, Crowborough	95	0	95
Friday Street Farm, Oak Tree Lane, Stone Cross	150	0	150
Hesmonds Stud, Waldron Road, East Hoathly	175	175	0
Horeham Flat Farm, Chiddingly Road, Horam	36	36	0
Land adjacent Cuckoo Trail, Cuckoo Fields, Station Road, Hailsham	0	0	0
Land adjacent Walshes Manor Farm, Crowborough	71	0	71
Land adjoining 154 Station Road, Hailsham	12	0	12
Land at Burfield Valley, Hailsham	35	0	35
Land at Steel Cross, Crowborough	103	103	0
Land at Straight Half Mile, Hailsham	25	0	25
Land at Summerhill, west of Ersham Road, Hailsham	110	110	0
Land east of Hailsham Road and north of Peelings Lane, Stone Cross	90	90	0
Land east of North Street, Lower Horsebridge	105	0	105
Land north and south of Rattle Road, Westham and Stone Cross	175	175	0
Land north of Beacon Road, Crowborough	18	18	0
Land off Bexhill Road, Ninfield	55	0	55
Land off Eastbourne Road, Uckfield	90	0	90
Land off Mill Road (North), Hailsham	130	130	0
Land south of Framfield Road, Blackboys	50	50	0
Land south of South Street, East Hoathly	50	0	50
Land to the east of Benhall Mill Road, Tunbridge Wells	100	0	100
Land west and south of Poplar Cottage, Amberstone, A271, Hailsham	45	45	0
Land west of North Street, Lower Horsebridge	20	0	20
Land west of Park Farm, New Road, Hellingly	125	125	0
Little Shepham, Shepham Lane, Polegate	90	90	0
Millbrook Garden Centre, Walshes Road, Crowborough	20	0	20
Orchid Riding Centre, Walshes Road, Crowborough	130	130	0
The Old Loom, Ersham Road, Hailsham	24	24	0
Total	2,129	1,301	828

3.104. Although the Council claims a supply of 2,129 dwellings from sites with outline permission or a resolution to grant, our position is that the supply should be reduced be 828 dwellings to 1,301 dwellings.

Delivery/Loss of Class C2 accommodation

3.105. The Council expects 111 dwellings to be delivered within the five years from this source. I accept this position.

3.106. The respective positions in relation to this component of supply are as follows:

WDC: 111 dwellings
WBP: 111 dwellings
Difference: 0 dwellings

Summary of Site Assessment

3.144. Based on our analysis of deliverability, we have deducted a total of 828 dwellings from the Council's assessment of supply.

3.145. The respective positions are summarised by source in Table 5 below.

Table 5: Summary of Site Assessment

Source	Council	WBP	Difference
Sites with permission (small sites with 9 or less dwellings) – listed in appendix 1	941	941	0
Sites with detailed permission (major sites – 10 or more dwellings) – listed in appendix 2	2,512	2,512	0
Sites with either outline planning permission or a resolution to grant permission (major sites – 10 or more dwellings) – listed in appendix 3	2,129	1,301	828
Class C2 accommodation with detailed or outline planning permission (or resolution to grant) – listed in appendix 4	111	111	0
Total	5,693	4,865	828

3.146. Having assessed the deliverability of the components of supply in the context of the approach set out above, we arrive at the conclusion that the Council's delivery assumptions are overly optimistic and do not satisfy the deliverability test set out in the NPPF (as amplified in the PPG and the consideration of the term 'deliverable' in a number of appeal decisions and the clarity provided in the Consents to Judgements).

Analysis

3.147. In setting out our analysis of housing site delivery, we wish to highlight two related points as follows:

- i. Firstly, and as confirmed in paragraph 74 of the NPPF, the maintenance of a 5 year supply is only a minimum requirement and provision above this reflects the Government's objectives in paragraph 60 of significantly boosting the supply of housing.
- ii. Secondly, is recognition that the Council's housing land supply must only include deliverable sites, as now defined in the NPPF (2021) taking account of the confirmation in the Consent Orders and the Nantwich appeal decision.

3.148. As confirmed in the appeal decision at Woolpit, the conclusions emphasise the importance of considering the evidence of deliverability of sites known (published) at the base date for assessing the robustness of housing land supply.

3.149. The base date for the current Appeal is 1st April 2022.

3.150. The importance of the base date for evidence also reflects the requirements of the NPPF (paragraph 74) to "update annually a supply of specific deliverable sites".

3.151. As highlighted in the Woolpit decision (**HLS12**), the reliance on inferences of developer's intentions for delivery after the base date, without confirmatory evidence published by the Authority is inconsistent with this requirement. Paragraph 70 states as follows:

"Furthermore, the Council has had to provide additional information to demonstrate that sites are deliverable as and when it has surfaced throughout the weeks and months following the publication of the AMR in an attempt at retrospective justification. It is wholly inadequate to have a land supply based upon assertion and then seek to justify the guesswork after the AMR has been published. The site at Union Road, Onehouse is one amongst others, which was only an allocation at the time the AMR was published. Although planning permission was granted 17 August 2018¹⁴ it does not alter the fact that the site was only subject to an allocation at the cut-off date but the Council did not have any clear evidence that it would provide housing within 5 years." (Our emphasis underlined)

3.152. This position reflects that taken by the Inspector in the appeal at Longdene House, Hedgehog Lane, Haslemere dismissed on 10th January 2019 (**HLS13**). In paragraph 39 of the decision, the Inspector states:

“I share some of the appellant’s concerns about the implications of changes in the *Framework* to the definition of ‘deliverable’ in assessing housing land supply, along with the requirement for ‘clear evidence’ required by the *Guidance*. The onus is on WBC, for sites with outline permission or allocated in a development plan, to provide clear evidence to demonstrate that housing completions will begin on site within 5 years. I am not convinced that the evidence adduced by WBC is sufficient to demonstrate deliverability for all the sites with outline planning permission. However, I do not discount sites where reserved matters applications were subsequently submitted, but which were shown to be deliverable at the base date by reason of progress made towards the submission of an application or with site assessment work.” (emphasis underlined)

3.153. As referenced above, I do not consider that the Council has adequately justified the inclusion of a number of sites/sources. The failure to provide the evidence of deliverability, rather than just developability as defined in the NPPF results in the appellant discounting a significant element of the Council’s contended supply.

3.154. My discounting of sites/sources without the requisite supporting evidence is reflective of the decision of the Secretary of State in the Nantwich appeal referred to above.

3.155. We have reviewed progress on sites relied upon by the Council in their Five Year Supply Report after the 1st April 2022 cut-off date. This is to consider the signing of the necessary S106 agreements to allow the inclusion of planning permissions, alongside updates for the other sources of supply could change the extent of any supply (nevertheless still a shortfall in my view). However, and without corresponding updates on the other elements of the calculations i.e. extent of any permissions that have lapsed or have been fully or partially implemented in the intervening period¹³, results in an incomplete review.

3.156. The importance of ensuring any appraisal of land supply (alongside the requirement) includes ALL relevant factors has been acknowledged in appeal decisions.

¹³ i.e. to omit any completions since 1st April 2022 as per paragraph 67 of the Woolpit appeal decision

3.157. The appeal for land to the west of Cody Road, Waterbeach¹⁴ allowed on 25th June 2014 (HLS14) is a long established decision that clearly establishes this fundamental principle, as confirmed in paragraphs 20-22 of the decision:

20. **The issue between the parties is whether the 5-year supply requirement should use a base date of 1 April 2013 or 1 April 2014. As a general rule I accept the Council's submission that a more recent base date is to be preferred but only where I can be confident that it captures information on actual progress over the previous year⁶. In this case I am concerned that I only have a partial data set rather than a full set of the figures for the full year, April 2013-March 2014. Amongst other things the "*March AMR update*" [Document 13] says the figure for housing completions records "*...predicted completions to 31/3/2014. These predicted completions are based on the housing trajectory in the plan where there is no better information and otherwise on what developers have told us are their actual completions and planned completions to 31/3/2014. This information was gathered between October 2013 and January 2014 for major sites and others down to sites of 9 homes*" [my emphasis]. In other words it is only for part of the accounting year and otherwise based on a prediction.**
21. **In cross-examination Mr Hyde referred to other ways in which the data set was incomplete by reference to Figure 4.7 of the February 2014 AMR. In particular the table records planning permissions granted for windfall sites between 1 April and 31 December 2013 rather than for the full year. These commitments have the effect of increasing the supply side but the flip side is that no account has been taken of any planning permissions that lapsed after 31 March 2013.**
22. **The base date of 1 April 2013 ensures the housing land supply requirement figure is based on known completions because the actual level of historic completions is published in the 2012-13 AMR. This is the most up-to-date figure of known completions and anything else is conjecture. Moreover the Appellant refers to Mr Roberts's Appendix DR44 to show the principle that the further ahead the projection, the less accurate it becomes. The Council's approach is therefore less robust since it projects further into the future. For these reasons I find the Appellant's approach is the most robust and reliable. (Our underlining)**

3.158. This supports our view that any assessment of supply can only be made having regard to the clear evidence of delivery (including developer's intentions) known at the base

¹⁴ PINS ref APP/W0530/A/13/2207961

date i.e. 1st April 2022. This reflects the correct approach taken by the Longdene Inspector (see last sentence of paragraph 39 quote above).

3.159. We apply the above approach to our assessment of deliverability.

(iii) The Respective Five Year Housing Land Supply Positions

3.160. Informed by the above, our view of the Council's supply position, when assessed against the obligations arising from the NPPF and associated guidance with respect of clear and robust evidence (acknowledged in the appeal decisions referenced above¹⁵), contends that the supply of deliverable housing land should be reduced by 828 dwellings in the five year period from April 2022 to March 2027.

3.161. Based upon the analysis I undertook; it is my position that the deliverable supply figure for the five year period is 4,865 dwellings.

3.162. The derivation of this compared to the assessment of the authority is illustrated in Table 6 below.

Table 6 – Comparison of deliverable land supply sources (1st Apr 2022-31st Mar 2027)

Source	Council	WBP	Difference
Sites with permission (small sites with 9 or less dwellings) – listed in appendix 1	941	941	0
Sites with detailed permission (major sites – 10 or more dwellings) – listed in appendix 2	2,512	2,512	0
Sites with either outline planning permission or a resolution to grant permission (major sites – 10 or more dwellings) – listed in appendix 3	2,129	1,301	828
Class C2 accommodation with detailed or outline planning permission (or resolution to grant) – listed in appendix 4	111	111	0
Total	5,693	4,865	828

3.163. Table 7 provides a breakdown of the components of supply where delivery is disputed between the parties.

Table 7 – Disputed Components of Supply within sites with outline permission or resolution to grant major development (1st Apr 2022-31st Mar 2027)

¹⁵ Includes Woolpit, Longdene and Sonning Common

Site location	Contended supply (Apr 2022 – Mar 2027)		
	WDC	WBP	Difference
Brook View, land north of Walshes Road, Crowborough	95	0	95
Friday Street Farm, Oak Tree Lane, Stone Cross	150	0	150
Land adjacent Walshes Manor Farm, Crowborough	71	0	71
Land adjoining 154 Station Road, Hailsham	12	0	12
Land at Burfield Valley, Hailsham	35	0	35
Land at Straight Half Mile, Hailsham	25	0	25
Land east of North Street, Lower Horsebridge	105	0	105
Land off Bexhill Road, Ninfield	55	0	55
Land off Eastbourne Road, Uckfield	90	0	90
Land south of South Street, East Hoathly	50	0	50
Land to the east of Benhall Mill Road, Tunbridge Wells	100	0	100
Land west of North Street, Lower Horsebridge	20	0	20
Millbrook Garden Centre, Walshes Road, Crowborough	20	0	20
Total	828	0	828

3.164. On the basis of the foregoing, Table 8 below provides a comparison between the housing land supply positions adopted by the Council and the Appellant as at 1st April 2022, covering the five year period 1st April 2022 to 31st March 2027.

3.165. As set out in Table 8 below, we identify a total supply of 4,865 dwellings which represents a supply of 3.35 years. This represents a shortfall of 2,407 dwellings.

Table 8 – The Respective Five Year Housing Land Supply Positions

	Council	Appellant
Requirement 1/7/2022 to 30/6/2027	7,272	7,272
Assessed deliverable supply	5,706	4,865
Extent of shortfall/surplus	-1,566	-2,407
No. of years supply	3.92yrs	3.35yrs

3.166. Based on the foregoing, it is our professional opinion that the housing shortfall we have identified should be afforded significant weight in the determination of this Appeal.

3.167. In addition to the conclusion that the Council is not able to demonstrate a five year supply of housing land at 1st April 2022, the extent of the shortfall is significantly greater than that acknowledged by the Council.

3.168. The site is controlled by Croudace Homes and they are committed to the early delivery of dwellings from the Appeal Site.

3.169. In the circumstances, we are of the view that the benefits of providing additional housing should be given substantial weight.

4. SUMMARY AND CONCLUSION

- 3.1. Whilst it is accepted that the Council is unable to demonstrate a five year supply of deliverable housing land, there is disagreement with the extent of the shortfall.
- 3.2. Based the analysis we have undertaken; we conclude that there is a clear lack of a five year supply of deliverable housing land and therefore the presumption in favour of sustainable development at paragraph 11(d) of the NPPF is engaged.
- 3.3. The Council's case on housing land supply relies upon sites which were neither allocated nor had a planning permission at the base date for the assessment (1st April 2022).
- 3.4. Having assessed the housing land supply based upon the requirements set out in the NPPF, PPG and the approach adopted in numerous appeal decisions, we concur that the Council is not able to demonstrate a five year supply of deliverable housing land, thus engaging the presumption in favour of sustainable development at paragraph 11(d) of the NPPF. However, as outlined, the extent of the shortfall is significantly greater than that acknowledged by the Council.

Neutral Citation Number: [2018] EWCA Civ 1808

Case No: C1/2017/3339

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MR JUSTICE SUPPERSTONE
[2017] EWHC 2865 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 July 2018

Before:

Lord Justice Davis
Lord Justice Lindblom
and
Lord Justice Hickinbottom

Between:

Hallam Land Management Ltd.

Appellant

- and -

**(1) Secretary of State for Communities and Local
Government**

(2) Eastleigh Borough Council

Respondents

Mr Thomas Hill Q.C. and Ms Philippa Jackson (instructed by Irwin Mitchell LLP)
for the Appellant

Mr Zack Simons (instructed by the Government Legal Department)
for the First Respondent

Mr Paul Stinchcombe Q.C. and Mr Ned Helme (instructed by Eastleigh Borough Council)
for the Second Respondent

Hearing date: 3 May 2018

**Judgment Approved by the court or handing down
(subject to editorial corrections)**

Lord Justice Lindblom:

Introduction

1. In deciding an appeal against the refusal of planning permission for housing development, how far does the decision-maker have to go in calculating the extent of any shortfall in the five-year supply of housing land? That is the central question in this appeal.
2. With permission granted by Lewison L.J. on 6 March 2018, the appellant, Hallam Land Management Ltd., appeals against the order of Supperstone J., dated 16 November 2017, dismissing its application under section 288 of the Town and Country Planning Act 1990 by which it had challenged the decision of the first respondent, the Secretary of State for Communities and Local Government, in a decision letter dated 9 November 2016, dismissing an appeal under section 78 of the 1990 Act. The section 78 appeal was against the refusal by the second respondent, Eastleigh Borough Council, of outline planning permission for a development of up to 225 dwellings, a 60-bed care home and 40 care units, the provision of public open space and woodland, and improvements to Hamble Station, on land to the west of Hamble Lane, in Hamble.
3. The site of the proposed development is about 23 hectares of pasture, on the Hamble Peninsula, between the Hamble River and Southampton Water. It is not within any settlement, nor allocated for development in the Eastleigh Borough Local Plan Review (2001-2011), adopted in 2006. The settlements of Bursledon, Netley and Hamble lie, respectively, to the north, the west and the south. Because it is in the “countryside”, the site is protected by policy 1.CO of the local plan. And because it lies within the Bursledon, Hamble, Netley Abbey Local Gap, it also has the protection of policy 3.CO.
4. An inquiry into the section 78 appeal was held by an inspector appointed by the Secretary of State on four days in June 2015. On 24 June 2015, the second day of the inquiry, the appeal was recovered by the Secretary of State, because it involved a proposal for “residential development of over 150 units ... , which would significantly impact on the Government’s objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities”. In his report, dated 26 August 2015, the inspector recommended that the appeal be dismissed. The Secretary of State subsequently received a large number of further representations, some of them in response to letters he sent to the parties on 15 April 2016 and 29 June 2016. In those representations the Secretary of State received the parties’ comments on two decisions of inspectors on appeals in which the supply of housing land in the council’s area had been assessed – first, an appeal relating to a proposed development of up to 335 dwellings on land at Bubb Lane, Hedge End, which was dismissed on 24 May 2016, and secondly, an appeal relating to a proposed development of up to 100 dwellings on land at Botley Road, West End, which was allowed on 7 October 2016. In his decision letter on Hallam Land’s appeal the Secretary of State largely agreed with the inspector’s conclusions and accepted his recommendation.
5. The challenge to the Secretary of State’s decision was made on four grounds. The first and second grounds went to his failure – unlawfully, it was said – to ascertain the extent of the shortfall against the five-year housing land supply in the council’s area, and to provide adequate reasons for his relevant conclusions. The third and fourth grounds asserted that his decision was inconsistent with the conclusions on housing land supply and the weight to be given to policy 3.CO in an inspector’s report, dated 25 August 2016, in an appeal relating to a proposed development of up to 680 dwellings on land at Winchester Road, Boorley Green. Supperstone J. rejected all four grounds.

6. The appeal before us raises two main issues:

- (1) given that the council could not demonstrate the requisite five-year supply of housing land under government policy in the first National Planning Policy Framework (“NPPF”), published in March 2012, whether the Secretary of State established the shortfall with sufficient precision, and whether his relevant reasons were adequate; and
- (2) whether the Secretary of State erred in law in deciding Hallam Land’s appeal without having regard to the inspector’s report on the Boorley Green appeal.

7. These issues raise no question of law that has not already been amply dealt with in a series of cases on the meaning of relevant policies in the NPPF, and on the importance of consistency in planning decision-making.

NPPF policy

8. We are not concerned in this appeal with the policies in the revised NPPF, which was published on 24 July 2018. I shall refer only to the policies in the first NPPF, as if they were still extant.

9. Paragraph 47 of the NPPF states:

“To boost significantly the supply of housing, local planning authorities should:

...

- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements ...
- ...”.

Paragraph 49 states:

“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”

Paragraph 14 contains the Government’s policy for the “presumption in favour of sustainable development”. It explains that:

“...

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.”

The inspector's report

10. In his report the inspector noted, under the heading “The Case for the Council”, that the council “acknowledge that they are not currently able to demonstrate a 5 year housing supply, as required by NPPF para 47” (paragraph 22). It was the council’s case, however, that “the proposal is contrary to development plan policies which are not out of date, and is not the sustainable form of development for which there is a presumption in favour”, and that “[even] if the presumption in NPPF para 14 was engaged, the negative aspects of the scheme, including the landscape impact and the loss of openness, would significantly and demonstrably outweigh the benefits” (paragraph 41).
11. Summarizing the case for Hallam Land, under the heading “The Case for the Appellants”, he referred (in paragraph 62) to the uncontested evidence of its planning witness, Mr Usher:

“62. The need for housing is demonstrated in Mr Usher’s proof ... , which has not been challenged by the Council, and which reflects the conclusions of the Local Plan Examination that the draft is unsound for failing to make adequate provision. The Council accept that they cannot demonstrate a five year supply, the level being shown by the appellants to be 2.92 years, or 1.78 years if the need for affordable housing is included.”

Because the council would “not be able to meet its housing land requirements without the loss of significant areas of countryside...”, it was “inevitable that there will be a change to the open and undeveloped character of such land”. This was “not, of itself, an adequate ground to resist the development when there is no 5 year land supply, nor an up to date development plan” (paragraph 65).

12. In his conclusions the inspector identified the “main issues” as being “i) the effect of the development on the character and appearance of the countryside and its role in separating settlements, and ii) whether any harm would be outweighed by the potential benefits of the development, including a supply of market and affordable housing, and the improvement of station facilities” (paragraph 88).
13. He said that “[the] proposal would not fall within any of the specified uses in Local Plan policy 1.CO ...”. He concluded that there was “no doubt that a development of this scale would diminish the Local Gap both physically and, to some degree, visually, contrary to policy 3.CO ...”, and that “[in] these respects it would not comply with the development plan” (paragraph 90). He went on to find that “there are grounds to conclude that policy 1.CO may be regarded as out of date, but that there is not justification for giving any substantial reduction to the weight applied to policy 3.CO” (paragraph 96).
14. Under the heading “The Benefits of the Proposal” he noted that Hallam Land had particularly emphasized “the supply of market and affordable housing to meet an acknowledged need, and the provision of facilities for Hamble Station” (paragraph 107). He continued (in paragraph 108):
 - “108. The Council acknowledge that they are not able to demonstrate more than a four and a half years supply of deliverable housing land, and it is the appellants’ view that the actual level is significantly less. It is not necessary for this report to carry out a detailed analysis of the housing land supply position, which is better left to the Local Plan

examination, where all the evidence is available to the inspector. However, it can be said that there is a material shortfall against the five year supply required by NPPF para 47, and that there is evidence of an existing need for affordable housing. In these circumstances, the provision of up to 225 homes, 35% of which would be affordable, would be a significant advantage arising out of the scheme. It is also the case that the new dwellings would meet sustainable construction and accommodation standards, and be of a mix to satisfy a wide range of housing needs. In these respects, the development would help meet the NPPF objectives of boosting significantly the supply of housing, and delivering a wide choice of high quality homes. ...”.

He accepted that “[the] choice of accommodation would also be boosted by the provision of 100 care and extra care spaces”, and that “such accommodation would be likely to release a supply of existing, under-used homes to meet the general housing demand” (paragraph 109).

15. Bringing his conclusions together under the heading “Sustainability and Overall Conclusions”, the inspector said (in paragraph 116):

“116. When assessed against the criteria in para 7 of the NPPF, the supply of market and affordable housing, along with care facilities, would make a significant contribution to meeting the social role of sustainability, complemented by the provision of public open space, although, in the latter case, at the expense of the loss of the rural character of the public footpath crossing the site. The additional population and employment opportunities would assist the economic life of the area, as would the supply of homes in an area with an acknowledged shortfall. There would be the environmental and community benefits arising out of the station improvements (but having regard to the Council’s alternative scheme), any spin-off advantages for traffic and pollution levels, from the off-site highway works, and the environmental and ecological aspects of the landscaping proposals.”

He accepted that “[on] balance, this is a reasonably sustainable location in terms of accessibility” (paragraph 117). His final conclusion, however, went against the proposal. He found that “the loss of the gap between the surrounding settlements, involving the physical intrusion into an area of countryside, and contributing to the coalescence of those settlements, and loss of independent identity” would be contrary to policy 3.CO of the local plan and corresponding policies in the NPPF; that “[the] countervailing benefits of the scheme, as well as compliance with other development plan policies ... would not outweigh the harm that this loss of separation would cause”; and that “[taken] as a whole, the proposal does not amount to the form of sustainable development for which there is a presumption in favour” (paragraph 118).

The decision in the Bubb Lane appeal

16. The inspector in the Bubb Lane appeal concluded (in paragraph 45 of his decision letter):

“45. The evidence before me does not support EBC’s view that it is ‘a whisker’ away from demonstrating a five year supply of deliverable housing land. Notwithstanding EBC’s considerable efforts to improve housing provision, something in the order of a four year supply at the time of this Inquiry indicates that EBC has a considerable way to go to demonstrating a five year supply of deliverable sites. There is no convincing evidence that measures currently taken have been effective in increasing the rate of housing

delivery. The scale of the shortfall is a significant material consideration in determining this appeal. The contribution that the appeal scheme would make to the housing supply, and particularly to affordable housing provision in the area in accordance with EBLP Policy 74.H, would be a significant benefit of allowing the appeal.”

Under the heading “Planning balance”, the inspector concluded that “some weight can be given to the conflict with EBLP Policy 2.CO, arising from the harm that would result from the proposal to the separation of settlements ...”, but that “this weight is limited because of the significant shortfall in housing supply, and the lack of convincing evidence that EBC’s efforts to address this are proving effective” (paragraph 52). He went on to say that, “[given] the current scale of the housing shortfall, the provision of additional market and affordable housing would be a significant benefit of the proposal” (paragraph 55). But he concluded, finally that “[in] my judgement, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole” (paragraph 57).

The decision in the Botley Road appeal

17. In the decision letter on the Botley Road appeal, the inspector stated these conclusions on “Housing land supply” (in paragraphs 18 and 19 of his decision letter):

- “18. In conclusion, the final calculation taking a requirement figure of 1,120dpa, or 5,602 dwellings over the 5 year period, there is a 4.25 years’ supply of housing land. Even on the Council’s most favourable calculations, taking the Council’s approach to the buffer and with its suggested contributions from all the disputed sites, the supply would still only be 4.71 years, but the evidence indicates that this is unlikely to be achievable.
19. There is therefore a significant shortfall in the amount of deliverable housing land, amounting to some 833 dwellings. The Leader of the Council gave evidence of the impressive efforts the Council had made to underpin housebuilding confidence following the recession, but this does not seem to have been translated into the provision of enough housing land. Net completions for the two years 2014/15 and 2015/16 amounted to less than one year’s requirement. Referring to recent outline approvals, the Council said that it was making progress towards improving housing supply; recent permissions might enable it to exceed the OAN to a degree this year. Even if that happens, it is still well short of the requirement for the year. There is a significant shortfall to be made up, and the evidence that the gap might be closing quickly enough is far from convincing. The Council is not, as it claims, on the cusp of achieving a 5 year supply of deliverable housing land.”

Under the heading “Effect on the countryside and the strategic gap”, he noted (in paragraph 27) that “planning permission has been granted for a number of sites which have included dwellings in the strategic gaps”, and went on to say:

- “27. ... But the Council’s argument that present needs can be met substantially within the land outside the gaps is wholly unconvincing; even with the permissions on gap land, there is still no 5 year housing land supply and without them, even on the Council’s unduly optimistic housing land supply calculations, there would only be 3.4 years’ supply of housing land. On the contrary, the evidence is that the gaps are a factor in limiting the choice of sites available for the provision of housing, and that breaches of

the strategic gap policy have proved necessary and will prove necessary to cater to meet current housing needs.”

In his “Conclusion” the inspector said (in paragraph 52):

“52. There is a significant shortfall in the supply of deliverable housing land for the next 5 years and no convincing evidence that the gap is diminishing to the extent that it will be made up within a reasonable time by identified deliverable sites. There is also severe under-delivery of affordable housing. The scheme would deliver up to 100 dwellings including up to 35% affordable homes and, although it is in the countryside and in a defined strategic gap, would cause little practical harm. In a situation where there is a pressing need for housing and affordable housing, and where both saved Policies 1.CO and 2.CO are out of date, the adverse impacts of the scheme to the landscape, the countryside and the strategic gap, and the other impacts of the scheme discussed above, would be slight and would not significantly and demonstrably outweigh the benefits. Indeed, even if saved Policy 2.CO were not accepted as being a policy relevant to the supply of housing, and not out-of-date, the considerable benefits of the scheme, weighed against the limited harm, would indicate a decision other than in accordance with that policy.”

The post-inquiry representations

18. The further representations made by Hallam Land and by the council after the inquiry largely concerned the status of policies 1.CO and 3.CO of the local plan for the purposes of NPPF policy, in the light of this court’s decision in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2016] EWCA Civ 168, which was handed down on 17 March 2016, and the weight to be given to those policies in the absence of a five-year supply of housing land.
19. In its further representations dated 15 April 2016, in response to the Secretary of State’s letter of the same date, the council asserted that it was now “able to demonstrate a 4.93 year supply” of housing land (paragraph 2.7.2(1)), and that “the action which has been taken to address the shortfall has been both considerable and effective” (paragraph 2.7.2(2)). In further representations dated 5 May 2016, Hallam Land rejected the council’s suggestion that it now had a housing land supply of 4.93 years (paragraph 5). On 11 May 2016 the council submitted additional representations, referring to the planning permissions it had granted for housing development since the inquiry (paragraph 2.8 and Appendix 5), and contending that Hallam Land had failed to recognize “the wide range of measures being taken by the Council to boost housing supply” (paragraph 2.9). Hallam Land responded to those representations with further representations of its own, dated 24 May 2016, and took issue again with the council’s argument that there was now a housing land supply of 4.93 years. That figure was “not based upon an up to date SHMA”, was “not tested”, and was “not reflective of unmet need in adjacent areas” (paragraph 8). Its case, it said, “had always been that there remains a substantial shortfall” and it “[continued] to rely upon its evidence and submissions as submitted to the inquiry” (paragraph 10). The council was “still unable to demonstrate a 5YHLS, even against its own target (which is not accepted to be correct)”. Also on 24 May 2016, the council sent the inspector’s decision letter in the Bubb Lane appeal to the Secretary of State, drawing his attention to it as a relevant decision.
20. On 17 June 2016 the council made yet further representations, “in order that the decision can be taken upon the best and most up-to-date information ...” (paragraph 1.1). It now resiled

from its previous concession that policy 3.CO was a policy “for the supply of housing”, and, in the absence of a five-year supply of housing land, “out of date” (paragraphs 2.4 and 3.1 to 3.5). It said it would shortly provide “an updated position in respect of its housing land supply reflecting further (recent) changes of circumstance, including its agreement for the purposes of another inquiry [in the Botley Road appeal] (and in the light of the conclusions of the Bubb Lane Inspector) that the full objectively assessed needs for Eastleigh should be taken to be 630 dwellings per annum” (paragraph 4.1). The council provided its promised “Update on Housing Land Supply” on 23 June 2016. This referred to the conclusion of the inspector in the Bubb Lane appeal that “the OAN for Eastleigh was 630dpa”, which had now been reflected in the statement of common ground for the imminent inquiry into the Botley Road appeal (paragraphs 2.1 and 2.2). The council’s evidence for that inquiry explained that “on its preferred approach [it] is able to demonstrate a 4.86 year supply” (paragraph 2.3). Its position therefore remained that although it could not demonstrate a five-year supply of deliverable housing sites, it was “very close to being able to do so” (paragraph 2.4).

21. In representations dated 19 July 2016, in response to the Secretary of State’s letter of 29 June 2016, Hallam Land attacked the council’s “volte face” on the status of policy 3.CO (paragraphs 4 to 12). It also made clear that it did not accept the council’s “latest attempt to revise its case on the extent of its 5YHLS ...”, and that it maintained the position it had taken in the representations it had submitted in May 2016 (paragraph 13).
22. In a letter dated 13 October 2016 to Mr Barber, the Secretary of State’s decision officer, Barton Willmore, on behalf of Hallam Land, asked him to draw to the Secretary of State’s attention the inspector’s decision in the Botley Road appeal, “in order that he is fully appraised of the recent approach of one of his senior Planning Inspectors ... in relation to a series of identical issues which he will now be considering when making a decision ...” in this case. Barton Willmore pointed out that the inspector had rejected “the proposition that [the council] can meet its housing land requirements without impinging upon land which is designated as gap”, and had concluded that policy 2.CO “is a relevant policy for the supply of housing”. They argued that an “identical conclusion” must follow for policy 3.CO in this case. They referred to “the principle often expounded by the Courts that it is desirable that there be consistency in planning decision-making”. It was therefore “highly important”, they said, that the Botley Road decision, “relating to a virtually identical issue”, was “formally before the Secretary of State” in this appeal. They also emphasized the fact that the inspector’s decision letter dealt directly with the issue of housing land supply, “exposing a significant shortfall in deliverable housing land, amounting to some 833 dwellings”. They quoted paragraph 27 of the decision letter in full, and also the inspector’s conclusion in paragraph 52 that “there is a significant shortfall in the supply of deliverable housing land for the next 5 years and no convincing evidence that the gap is diminishing to the extent that it will be made up within a reasonable time by identified deliverable sites”.
23. The council did not respond to those representations, but in an e-mail to the Secretary of State dated 3 November 2016, drew his attention to the inspector’s decision in an appeal relating to proposed housing development on a site at Hamble Lane – the Botley Road appeal – and, in particular, what he had said about policy 2.CO, “which also applies to Saved Policy 3.CO”. But it said it did not intend to provide further submissions on this point, and was drawing the inspector’s decision to the attention of the Secretary of State “in the interests of full disclosure”.

24. In his decision letter the Secretary of State said that he agreed with the inspector's conclusions, "except where stated", and his recommendation (paragraph 3).

25. He referred to the representations he had received after the inquiry, including those made in response to his letters of 15 April 2016 and 29 June 2016, in the light of the judgment of this court in *Hopkins Homes Ltd.*. He confirmed that those representations had been circulated to the parties (paragraphs 5 and 6). He then referred (in paragraph 7) to the further representations he had received in October and November 2016:

"7. The Secretary of State has also received representations from Barton Willmore dated 13 October 2016, and from Eastleigh Borough Council dated 3 November to which he has given careful consideration. The Secretary of State has also received other representations, set out at Annex A, to which he has given careful consideration. He is satisfied that the issues raised do not affect his decision, and no other new issues were raised to warrant further investigation or necessitate additional referrals back to the parties."

He said that, "[in] reaching his decision", he had "taken account of all the representations and responses referred to in paragraphs 5-7" (paragraph 8).

26. When he came to "The Policy Context" he concluded that policies 1.CO and 3.CO of the local plan were both "out-of-date" (paragraphs 14 to 16). But he went on to qualify this conclusion (in paragraph 17):

"17. The Secretary of State has considered carefully the Inspector's analysis at IR93-100 on the matter of whether Policy 3.CO would be out of date through no longer meeting the development needs of the Borough, and whether there is justification for reducing the weight applied to that policy. The Secretary of State acknowledges that its weight should be reduced because he has found it to be out-of-date, but taking into account its consistency with the Framework, its role in protecting the Local Gap and the limited shortfall in housing land supply, he concludes that he should still afford significant weight to Policy 3.CO."

27. As for "The Benefits of the Proposal", he said this (in paragraph 19):

"19. The Secretary of State notes the Inspector's comment (IR108) that at the time of inquiry the Council were not able to demonstrate more than a four and a half years supply of deliverable housing land, and that there is evidence of an existing need for affordable housing. Whilst the Secretary of State notes that the Council are now of the view that they are able to demonstrate a 4.86 year supply, he agrees with the Inspector that the provision of up to 225 homes, 35% of which would be affordable, would be a significant advantage arising out of the scheme, and it would help meet the objectives of the Framework by boosting significantly the supply of housing and delivering a wide choice of high quality homes. The Secretary of State notes too that the choice of accommodation would also be boosted by the provision of 100 care and extra care spaces (IR109)."

28. On the proposal's "Sustainability" he said (in paragraph 25):

“25. In terms of sustainability, the Secretary of State agrees with the Inspector’s conclusion (IR116) that, when assessed against the policies in the ... Framework taken as a whole, the supply of market and affordable housing, along with care facilities, would make a significant contribution to meeting the social role of sustainability, complemented by the provision of public open space (although he acknowledges that the latter is at the expense of the loss of the rural character of the public footpath crossing the site). Furthermore, he agrees that the additional population and employment opportunities would assist the economic life of the area, as would the supply of homes in an area with an acknowledged shortfall. In addition, he recognises, like the Inspector, the environmental and community benefits arising out of the station improvements identified at paragraphs 20-21 above. For the reasons given by the Inspector at IR117, the Secretary of State concludes that, on balance, this is a reasonably sustainable location in terms of accessibility.”

29. Under the heading “Planning balance and overall conclusion” the Secretary of State said (in paragraphs 29 to 36):

“29. For the reasons given above, the Secretary of State concludes that the proposal is not in accordance with the development plan policies 1.CO and 3.CO and is not in accordance with the development plan as a whole. He has gone on to consider whether material considerations indicate that the proposal should be determined other than in accordance with the development plan.

30. The Secretary of State notes that in their letter of 23 June 2016, the Council updated their position on the supply of deliverable housing land, now claiming to be able to demonstrate a 4.86 year supply. In the absence of a 5-year housing land supply, and having concluded that policies 1.CO and 3.CO are relevant policies for the supply of housing, the presumption in favour of sustainable development is engaged, meaning that permission should be granted unless any adverse impacts of doing so significantly and demonstrably outweigh the benefits.

31. He considers that the provision of market and affordable housing in an area with an acknowledged shortfall, along with care facilities in this case carries substantial weight in favour of the development. The additional population and employment opportunities would assist the economic life of the area, as would the supply of homes in an area with an acknowledged shortfall, to which he gives moderate weight. The environmental and community benefits arising out of the station improvements carry moderate weight in favour of the proposal.

32. Set against the identified positive aspects is the environmental and social damage which would arise out of the loss of the gap between the surrounding settlements, involving the physical intrusion into an area of countryside, and contributing to the coalescence of those settlements, and loss of independent identity. The Secretary of State considers that this would be contrary to those policies of the Framework which apply the principle of recognising the different roles and character of different areas, and this carries significant weight against the proposal. He further considers that the loss of “best and most versatile” agricultural land carries moderate weight against the proposal.

33. The Secretary of State also considers that the appeal site performs a function which is specific to its location and which would be permanently undermined by the development.
34. The Secretary of State considers overall that the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits.
35. The Secretary of State has taken into account the wide range of judgments and appeal decisions referred to in the inquiry and the post-inquiry representations but, having considered all the matters raised, he concludes that none is of such weight as to alter the balance of his conclusions.
36. Overall he concludes that there are no material considerations which indicate that he should determine the case other than in accordance with the development plan. The Secretary of State therefore concludes that your client's appeal should be dismissed.”

He therefore agreed with the inspector’s recommendation and dismissed the appeal (paragraph 37).

The Boorley Green appeal decision

30. In a decision letter dated 30 November 2016, about three weeks after he had issued his decision on Hallam Land’s appeal, the Secretary of State allowed the Boorley Green appeal. The inquiry into that appeal had taken place in May 2016. The inspector’s report, though dated 25 August 2016, was released only with the Secretary of State’s decision letter, in the normal way. Like the site in Hallam Land’s appeal, the Boorley Green site is in the “countryside”, protected by policy 1.CO of the local plan, and also within an area protected under policy 3.CO, the Botley-Boorley Green Local Gap.
31. The inspector in the Boorley Green appeal concluded that the supply of housing land in the council’s area was “very close to 4 years”, observing that this was consistent with the conclusion reached on this question by the inspector in the Bubb Lane appeal – that there was “something in the order of a four year supply” (paragraph 12.16 of the Boorley Green inspector’s report). He found that “the HLS is around 4 years”. He said that, at this level, it “falls well short of that required and has done for many years ...” (paragraph 12.45). He concluded that “the benefits of housing and AH, particularly where the supply is significantly below 5 years and the history of delivery is poor, warrant considerable weight ...” (paragraph 12.47). He described the shortfalls in land for housing and affordable housing as “substantial” (paragraph 12.55).
32. In his decision letter, under the heading “Housing supply”, the Secretary of State said (in paragraph 17):
 - “17. The Secretary of State has given very careful consideration to the Inspector’s analysis of the 5 year housing land supply position at IR12.10-12.20. He notes that it is common ground that the Council cannot demonstrate the 5 year housing land supply expected at paragraph 47 of the Framework (IR12.10); and agrees with the Inspector’s conclusions at IR12.21 that, on the basis of the information presented at the Inquiry and assuming that this decision is issued within the statutory timetable set, the housing land supply should be regarded as standing at around 4 years. The Secretary of State

also agrees with the Inspector's conclusion at IR12.22 that considerable weight should be attributed to the benefits to which the scheme would bring through delivering affordable housing."

33. Under the heading "Planning balance and overall conclusion", the Secretary of State concluded that "[the] proposal would make a significant contribution in terms of helping to make up the deficit against the 5 year housing land supply and the need for affordable housing" (paragraph 24). Agreeing with the inspector's recommendation, he allowed the appeal.

Did the Secretary of State establish the extent of the shortfall against the five-year supply of housing land with sufficient precision, and were his reasons adequate?

34. Before Supperstone J., and again before us, Mr Thomas Hill Q.C., for Hallam Land, argued that, in any case where there is a dispute as to the five-year supply of housing land, the Secretary of State, or his inspector, is obliged to establish the level of supply and the extent of any shortfall. This, Mr Hill submitted, was because the local planning authority's failure to demonstrate a five-year supply of housing land will bring into play the balancing exercise provided for in paragraph 14 of the NPPF, and the extent of the shortfall, if there is one, will influence the weight given by the decision-maker to the benefits of the proposed development, and to its conflict with the relevant restrictive policies of the development plan. He sought to strengthen this submission with observations made by judges at first instance – in particular, *Phides Estates (Overseas) Ltd. v Secretary of State for Communities and Local Government* [2015] EWHC 827 (Admin) (at paragraph 60), *Shropshire Council v Secretary of State for Communities and Local Government* [2016] EWHC 2733 (Admin) (at paragraph 28), and *Jelson Ltd. v Secretary of State for Communities and Local Government* [2016] EWHC 2979 (Admin) (at paragraph 13).
35. In this case, Mr Hill submitted, the Secretary of State had failed to make the planning judgments he needed to make. He noted, in paragraph 19 of his decision letter, that the council was "now of the view that [it was] able to demonstrate a 4.86 year supply". But he did not say whether he accepted that this figure was accurate. Nor did he deal with the material before him, including the decision letters in the Bubb Lane and Botley Road appeals, showing that the council was now able to demonstrate only a supply of 4.25 years or even less than that. This could not sensibly be described as a "limited shortfall" – the expression the Secretary of State used in paragraph 17. In fact, Mr Hill submitted, the Secretary of State had failed to reach any conclusion on this question. His decision was vitiated by that failure.
36. Supperstone J. rejected those submissions. He did not accept that one can find in the authorities relied upon by Mr Hill the principle that the decision-maker is required "to determine a workable [five-year housing land supply] or range" in every case. He accepted the argument of Mr Zack Simons, for the Secretary of State, and Mr Paul Stinchcombe Q.C., for the council, that in a case such as this, where there was "inadequate housing supply on either [side's] figures", the Secretary of State was "not required to fix a figure for the extent of that inadequacy" (paragraph 22). He went on to say that "[in] making judgments on the issues of housing requirements and housing supply the decision maker was not required to fix a figure for the precise extent of the Council's housing shortfall". In his view the "key question" was "whether the housing supply is above or below five years". This was what Lord Carnwath had called the "important question" in paragraph 59 of his judgment in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865 (paragraph

23). The tenor of relevant decisions at first instance was to the same effect – for example, the observation of Gilbert J. in *South Oxfordshire District Council v Secretary of State for Communities and Local Government* [2016] EWHC 1173 (Admin), at paragraph 102, that it is “not necessary to conduct a full analysis of requirements and supply in every case”, and “[whether] one has to do so depends on the circumstances”.

37. On the basis of the inspector’s conclusion in paragraph 108 of his report, having regard to “the updated material before him from the Bubb Lane [decision letter] and the Botley Road [decision letter]”, and Hallam Land having provided “no further evidence” on housing land supply since the inquiry, the Secretary of State was, said Supperstone J., “entitled to note the agreed shortfall, describe it as “limited” (DL17), and agree with his Inspector that the scheme’s contribution to the Council’s housing shortage would be “significant” (DL19)”. Nothing more was required (paragraph 29).
38. In his submissions to us, Mr Hill argued that the authorities on which Supperstone J. had based his conclusions did not deny the need for a decision-maker to establish the extent of a shortfall against the five-year supply of housing land when conducting the balancing exercise under paragraph 14 of the NPPF. Relevant parts of the judgment of the Court of Appeal in *Hopkins Homes Ltd.* – particularly paragraph 47 – which were effectively endorsed by Lord Carnwath in the Supreme Court, indicate that there is such a requirement. Detailed analysis may not always be necessary. A range or an approximate figure may be enough. But, submitted Mr Hill, the judge’s view that the crucial question is simply whether the supply of housing land exceeds or falls below five years was unduly simplistic. In this case there were several factors that made it imperative for the Secretary of State to define the shortfall: in particular, the size of the development – more than 150 dwellings – which had led to the appeal being recovered by the Secretary of State; the significance of the shortfall for the weighting of policies in the development plan that went against the proposal, which could be decisive, especially policy 3.CO of the local plan; and the fact that there were other relevant and recent appeal decisions in which the scale of the shortfall had been considered, and on which the parties had made representations. In the circumstances, Mr Hill submitted, it was not enough for the Secretary of State merely to describe the shortfall as “limited”, without resolving what it actually was by the time he made his decision.
39. Mr Hill also submitted that, in any event, the Secretary of State had failed to explain how and why he had reached a markedly different conclusion on housing land supply from the conclusions recently reached by the inspectors in the Bubb Lane and Botley Road appeals – in spite of the further representations he had received from Hallam Land in the light of them. Those two decisions were clearly relevant in this case. Yet the Secretary of State did not even refer to them in his decision letter. He said he had given “careful consideration” to the representations made after the inquiry, but in this important respect it is not clear that he had in fact done so. In both cases the decision-maker had identified a considerable shortfall against the required five-year supply materially greater than the council had conceded here. In the Bubb Lane appeal the inspector had found “something in the order of a four year supply” (paragraph 45) and had described the shortfall as “significant” (paragraph 52). In the Botley Road appeal the supply was found to be 4.25 years. And the inspector there had also described the shortfall – which amounted to “some 833 dwellings” – as “significant” (paragraphs 18, 19 and 52).
40. Those conclusions, and those descriptions of the shortfall, Mr Hill submitted, simply cannot be reconciled with the figure of 4.86 years’ supply put forward by the council in its “Update on Housing Land Supply” of 23 June 2016. An explanation of some kind was clearly called for in

the Secretary of State's decision letter. None was provided. Even if he did not have to resolve the precise level of the shortfall, the Secretary of State had fallen short of his duty to provide intelligible and adequate reasons for his conclusion on an issue crucial to the outcome of the appeal (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No.2)* [2004] 1 W.L.R. 1953, at paragraph 36). In the circumstances it was not enough for him simply to refer to the shortfall as "limited", without more.

41. Mr Simons and Mr Stinchcombe supported the judge's analysis. They submitted that it is not always, or generally, a decision-maker's task to determine the precise level of housing land supply. The critical question will always be whether or not a five-year supply of housing land has been demonstrated. Under NPPF policy, the degree of detail required in ascertaining housing need and supply is left largely to the decision-maker's planning judgment in the circumstances of the case before him – as Gilbert J. emphasized in *Dartford Borough Council v Secretary of State for Communities and Local Government* [2016] EWHC 649 (Admin) (at paragraphs 43 to 45), and in *South Oxfordshire District Council* (at paragraph 102). Mr Stinchcombe pointed to the recent decision of this court in *Jelson Ltd. v Secretary of State for Communities and Local Government* [2018] EWCA Civ 24 as lending support to this submission (see, in particular, paragraph 25). Mr Simons recalled Sir David Keene's warning in *City and District Council of St Albans v Hunston Properties Ltd.* [2013] EWCA Civ 1610 (at paragraph 26) about section 78 appeals descending into the kind of exercise appropriate only for the process of plan preparation.
42. In this case, Mr Simons and Mr Stinchcombe submitted, by the time the Secretary of State came to make his decision in November 2016, the evidence given by Hallam Land at the inquiry in June 2015 in contending for a housing land supply of between 1.78 and 2.92 years was stale. The Secretary of State did not have to go beyond his conclusions that the shortfall was now "limited", and that the provision of market and affordable housing in an area with an "acknowledged" shortfall merited "substantial weight". These conclusions were, in themselves, fully justified. The existence of a shortfall in housing land supply was not a "principal controversial issue" in this appeal, even if it was in the Bubb Lane and Botley Road appeals. The parties had drawn the Secretary of State's attention to the inspectors' decisions in those appeals. But that did not make it necessary for him to deal with those decisions in the reasons he gave for concluding as he did on the evidence in this case. The reasons he gave were sufficient to explain the decision he made.
43. Mr Hill's argument was persuasively presented, but I accept it only in part.
44. The Secretary of State's decision here was taken in the light of the judgment of this court in *Hopkins Homes Ltd.*, but before the Supreme Court had dismissed the subsequent appeals – though on the basis of a narrower reading of the policy in paragraph 49 of the NPPF. As this case shows, however, nothing turns on the difference between the so-called "wider" interpretation of paragraph 49, in which the phrase "policies for the supply of housing" embraces local plan policies that create and constrain the supply, and the "narrow" interpretation, which excludes policies that operate to constrain the supply but does not prevent the decision-maker from giving such policies reduced weight under the policy in paragraph 14 of the NPPF when five years' supply is not demonstrated. Either way, the consequences will, in the end, be the same. The weight given to a policy ultimately depends not on its status but on its effect – whether it enables the requisite five-year supply to be realized or acts contrary to that objective. Policies in a local plan are liable to carry less weight in the making of a decision on a proposal for housing development if – and because – their effect is to prevent a five-year supply of housing land (see the judgment of Lord Carnwath in *Hopkins Homes Ltd.*, at

paragraphs 59 and 61, followed in this court in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraph 22).

45. None of that is controversial here, nor should it be. As Lord Carnwath said in *Hopkins Homes Ltd.* (at paragraph 54), “the primary purpose of paragraph 49 [of the NPPF] is simply to act as a trigger to the operation of the “tilted balance” under paragraph 14”. And he went on to say (in paragraph 59) that the “important question” is “not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47”. If the local planning authority fails to demonstrate that supply, “it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies”. In such a case “[the] shortfall is enough to trigger the operation of the second part of paragraph 14”. As Lord Carnwath emphasized (in paragraph 61), a restrictive policy may not itself be “out of date” under paragraph 49, “but the weight to be given to it alongside other material considerations, within the balance set by paragraph 14, remains a matter for the decision-maker in accordance with ordinary principles”.
46. As this court said in *Hopkins Homes Ltd.* (in paragraph 47), the policies in paragraphs 14 and 49 of the NPPF do not prescribe how much weight is to be given to relevant policies of the development plan in the determination of a planning application or appeal. Weight is always a matter for the decision-maker (see the speech of Lord Hoffmann in *Tesco Stores Ltd. v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H) (paragraph 46). It will “vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a “green wedge” or of a gap between settlements”. The decision-maker must judge “how much weight should be given to conflict with policies for the supply of housing that are out-of-date”. This is “not a matter of law; it is a matter of planning judgment” (see the first instance judgments in *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin) (at paragraphs 70 to 75), *Phides* (at paragraphs 71 and 74), and *Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council* [2015] EWHC 1173 (Admin) (at paragraphs 87, 105, 108 and 115)).
47. The NPPF does not state that the decision-maker must reduce the weight to be given to restrictive policies according to some notional scale derived from the extent of the shortfall against the five-year supply of housing land. The policy in paragraph 14 of the NPPF requires the appropriate balance to be struck, and a balance can only be struck if the considerations on either side of it are given due weight. But in a case where the local planning authority is unable to demonstrate five years’ supply of housing land, the policy leaves to the decision-maker’s planning judgment the weight he gives to relevant restrictive policies. Logically, however, one would expect the weight given to such policies to be less if the shortfall in the housing land supply is large, and more if it is small. Other considerations will be relevant too: the nature of the restrictive policies themselves, the interests they are intended to protect, whether they find support in policies of the NPPF, the implications of their being breached, and so forth.
48. Relevant authority in this court, and at first instance, does not support the proposition that, for the purposes of the appropriate balancing exercise under the policy in paragraph 14 of the NPPF, the decision-maker’s weighting of restrictive local plan policies, or of the proposal’s conflict with such policies, will always require an exact quantification of the shortfall in the supply of housing land. This is not surprising. If the court had ever said there was such a

requirement, it would have been reading into the NPPF more than the Government has chosen to put there, and more than is necessarily implied in the policies it contains.

49. Several decisions at first instance were cited in argument before Supperstone J., including those in *Jelson Ltd.* (at paragraphs 2 and 13) – upheld on appeal, *Shropshire Council* (at paragraph 28), *South Oxfordshire District Council* (at paragraph 102), *Dartford Borough Council* (at paragraphs 44 and 45), *Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government* [2015] EWHC 1879 (Admin) (at paragraphs 42(ii) and 48) – upheld on appeal, and *Phides* (at paragraph 60). Mr Simons also referred to *Eastleigh Borough Council v Secretary of State for Communities and Local Government* [2014] EWHC 4225 (Admin) (at paragraphs 17 and 18). It is not necessary to explore the facts of these cases, or to set out the relevant observations of the judges who decided them. In summary, however, three main points emerge.
50. First, the relationship between housing need and housing supply in planning decision-making is ultimately a matter of planning judgment, exercised in the light of the material presented to the decision-maker, and in accordance with the policies in paragraphs 47 and 49 of the NPPF and the corresponding guidance in the Planning Practice Guidance (“the PPG”). The Government has chosen to express its policy in the way that it has – sometimes broadly, sometimes with more elaboration, sometimes with the aid of definitions or footnotes, sometimes not (see *Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government* [2016] EWCA Civ 1040, at paragraph 33; *Jelson Ltd.*, at paragraphs 24 and 25; and *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, at paragraphs 36 and 37). It is not the role of the court to add to or refine the policies of the NPPF, but only to interpret them when called upon to do so, to supervise their application within the constraints of lawfulness, and thus to ensure that unlawfully taken decisions do not survive challenge.
51. Secondly, the policies in paragraphs 14 and 49 of the NPPF do not specify the weight to be given to the benefit, in a particular proposal, of reducing or overcoming a shortfall against the requirement for a five-year supply of housing land. This is a matter for the decision-maker’s planning judgment, and the court will not interfere with that planning judgment except on public law grounds. But the weight given to the benefits of new housing development in an area where a shortfall in housing land supply has arisen is likely to depend on factors such as the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet.
52. Thirdly, the NPPF does not stipulate the degree of precision required in calculating the supply of housing land when an application or appeal is being determined. This too is left to the decision-maker. It will not be the same in every case. The parties will sometimes be able to agree whether or not there is a five-year supply, and if there is a shortfall, what that shortfall actually is. Often there will be disagreement, which the decision-maker will have to resolve with as much certainty as the decision requires. In some cases the parties will not be able to agree whether there is a shortfall. And in others it will be agreed that a shortfall exists, but its extent will be in dispute. Typically, however, the question for the decision-maker will not be simply whether or not a five-year supply of housing land has been demonstrated. If there is a shortfall, he will generally have to gauge, at least in broad terms, how large it is. No hard and fast rule applies. But it seems implicit in the policies in paragraphs 47, 49 and 14 of the NPPF that the decision-maker, doing the best he can with the material before him, must be able to judge what weight should be given both to the benefits of housing development that will reduce a shortfall in the five-year supply and to any conflict with relevant “non-housing

policies” in the development plan that impede the supply. Otherwise, he will not be able to perform the task referred to by Lord Carnwath in *Hopkins Homes Ltd.*. It is for this reason that he will normally have to identify at least the broad magnitude of any shortfall in the supply of housing land.

53. With those three points in mind, I do not think that in this case the Secretary of State could fairly be criticized, in principle, for not having expressed a conclusion on the shortfall in the supply of housing land with great arithmetical precision. He was entitled to confine himself to an approximate figure or range – if that is what he did. Government policy in the NPPF did not require him to do more than that. There was nothing in the circumstances of this case that made it unreasonable for him in the “Wednesbury” sense, or otherwise unlawful, not to establish a mathematically exact figure for the shortfall. It would not have been an error of law or inappropriate for him to do so, but if, as a matter of planning judgment, he chose not to do it there was nothing legally wrong with that.
54. But what was his conclusion on housing land supply? He obviously accepted, as the council had acknowledged, that the requisite five-year supply had not been demonstrated. In paragraph 30 of his decision letter he referred to the “absence of a 5-year housing land supply”. And in the same paragraph he made it plain that he was applying “the presumption in favour of sustainable development”, which, as he said, meant “that permission should be granted unless any adverse impacts of doing so significantly and demonstrably outweigh the benefits”. He went on, in the following paragraphs, to apply that presumption, in accordance with the policy in paragraph 14 of the NPPF. In the course of that balancing exercise, he referred, in paragraph 31, to the “acknowledged shortfall”, which went into the balance on the positive side. All of this is clear.
55. Not so clear, however, is whether the Secretary of State reached any concluded view on the scale of the “acknowledged shortfall”. His reference in paragraph 17 to “the limited shortfall in housing land supply” suggests he had not found it possible to accept Hallam Land’s case at the inquiry, as recorded by the inspector in paragraph 62 of his report, that the supply of housing land was as low as “2.92 years, or 1.78 years if the need for affordable housing is included”, or even the “material shortfall” to which the inspector had referred in paragraph 108, in the light of the council’s concession that it was “not able to demonstrate more than a four and a half years supply of deliverable housing land”. A “limited shortfall” could hardly be equated to a “material shortfall”. It would have been a more apt description of the shortfall the council had now acknowledged in conceding, or contending, that it was able to demonstrate a supply of 4.86 years – the figure to which the Secretary of State referred in paragraphs 19 and 30 of his decision letter.
56. On a fair reading of the decision letter as a whole, I do not think one can be sure that the Secretary of State did fix upon a precise figure for the housing land supply. It may be that, in truth, he went no further than to conclude that the supply remained below five years. He certainly did not adopt the figures put forward by Hallam Land at the inquiry, nor did he even mention those figures. And he neither adopted nor rejected the council’s position at the inquiry. Instead, he took care to say, in paragraph 19 of his decision letter, that he “notes” the inspector’s comment that at the time of the inquiry the council was not able to demonstrate more than four and a half years’ supply. He was equally careful not to adopt or reject the figure that was now put forward by the council – a supply of 4.86 years. In paragraph 19, again, he said merely that he “notes” the council was now of the view that it was “able to demonstrate a 4.86 year supply”. In paragraph 30, once again, he used the word “notes” when referring to the position the council had taken in its letter of 23 June 2016 – “now claiming to

be able to demonstrate a 4.86 year supply”. He was not, I think, unequivocally endorsing that figure, but rather was relying on it as proof of “the absence of a 5-year housing land supply”.

57. The Secretary of State’s conclusions on housing land supply are not said to be irrational on their face – nor could they be. If one leaves aside for the moment the decisions in the Bubb Lane and Botley Road appeals and what had been said about those decisions in the parties’ further representations, they make sense. To describe the shortfall in housing land supply as “limited”, as the Secretary of State did in paragraph 17, seems reasonable if he was assuming – though without positively finding – that the housing land supply now stood at or about 4.86 years. And there is nothing necessarily inconsistent between that conclusion and his later conclusions: in paragraph 19, that the amount of new housing proposed was a “significant advantage”; in paragraph 30, that the “presumption in favour of sustainable development” fell to be applied in this case; and, in paragraph 31, that the provision of housing in an area with an “acknowledged shortfall” carried “substantial weight in favour of the development”.
58. All of this is logical, as far as it goes. It may reflect an assumption on the part of the Secretary of State that he could rely on the figure of 4.86 years for the housing land supply, or at least on a range of between four and half and 4.86 years, and that this was sufficient to found his conclusions on the weight to be given to the benefits of the housing development proposed and to its conflict with restrictive policies in the local plan.
59. This reading of the decision letter may be overly generous to the Secretary of State, because it resolves in his favour the doubt as to what figure, or range, he was actually prepared to accept for the present supply of housing land in the council’s area. Assuming it to be correct, however, he can be acquitted of any misunderstanding or unlawful misapplication of NPPF policy. If he did adopt, or at least assume, a figure of 4.86 years’ supply of housing land, or even a range of between four and half and 4.86 years, his approach could not, I think, be stigmatized as unlawful in either of those two respects. It could not be said, at least in the circumstances of this case, that he erred in law in failing to calculate exactly what the shortfall was. In principle, he was entitled to conclude that no greater precision was required than that the level of housing land supply fell within a clearly identified range below the requisite five years, and that, in the balancing exercise provided for in paragraph 14 of the NPPF, realistic conclusions could therefore be reached on the weight to be given to the benefits of the development and its conflict with relevant policies of the local plan. Such conclusions would not, I think, exceed a reasonable and lawful planning judgment.
60. However, even if that assumption is made in favour of the Secretary of State, there is in my view a fatal defect in his decision in his failure to engage with the conclusions on housing land supply in the recent decisions in the Bubb Lane and Botley Road appeals. Here, it seems to me, Mr Hill’s argument is demonstrably well founded.
61. At least by the time the parties in this appeal were given the opportunity to make further representations, an important issue between them, and arguably the focal issue, was the extent of the shortfall in housing land supply. This was, or at least had now become, a “principal controversial issue” in the sense to which Lord Brown of Eaton-under-Heywood referred in *South Bucks District Council v Porter* (at paragraph 36 of his speech). A related issue was the weight to be given to restrictive policies in the local plan – in particular, policy 3.CO. These were, in my view, clearly issues that required to be properly dealt with in the Secretary of State’s decision letter, in the light of the representations the parties had made about them, so as to leave no room for doubt that the substance of those representations had been understood and properly dealt with. This being so, it was in my view incumbent on the Secretary of State to

provide intelligible and adequate reasons to explain the conclusions he had reached on those issues, having regard to the parties' representations.

62. There is no explicit consideration of the inspectors' decisions in the Bubb Lane and Botley Road appeals in the Secretary of State's decision letter, nor any reference to them at all, despite the fact that they had been brought to his attention and their implications addressed in the further representations made to him after the inquiry. The inspectors' conclusions on housing land supply in those two decisions, and the consequences of those conclusions for the weight to be given to local plan policies, clearly were material considerations in this appeal. They would, in my view, qualify as material considerations on the basis of the case law relating to consistency in decision-making (see the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P. & C.R. 137, at p.145, most recently followed by this court in *DLA Delivery Ltd. v Baroness Cumberlege of Newick and Secretary of State for Communities and Local Government* [2018] EWCA Civ 1305, at paragraphs 29, and 42 to 56). But leaving aside the principle of consistency, they would have been, it seems to me, material considerations if only on the basis that they represented an up to date independent assessment of housing land supply in the council's area, which had been squarely put before the Secretary of State. Yet he said nothing at all about them. Nor is there any explicit reference to the relevant content of the representations the parties had made. It is clear that the reference in paragraph 19 of the decision letter to the council's view that it was now able to demonstrate 4.86 years' supply of housing land was taken from the "Update on Housing Land Supply" that it produced on 23 June 2016. But he did not refer to the very firm and thoroughly reasoned conclusions of the inspector in the Botley Road appeal, which were reached in the light of that evidence.
63. So it is not clear whether the Secretary of State confronted the conclusions of the inspectors in the Bubb Lane and Botley Road appeals, and in particular the latter. Had he done so, he would have appreciated that the conclusions they had reached on the scale of the shortfall in housing land supply could not reasonably be reconciled with his description of that shortfall, in paragraph 17 of his decision letter, as "limited". The language used by those two inspectors was distinctly different from that expression, and incompatible with it unless some cogent explanation were given. No such explanation was given. In both decision letters the shortfall was characterized as "significant", which plainly it was. This was more akin to saying that it was a "material shortfall", as the inspector in Hallam Land's appeal had himself described it in paragraph 108 of his decision letter. Neither description – a "significant" shortfall or a "material" one – can be squared with the Secretary of State's use of the adjective "limited". They are, on any view, quite different concepts.
64. Quite apart from the language they used to describe it, the inspectors' findings and conclusions as to the extent of the shortfall – only "something in the order of four year supply" in the Bubb Lane appeal and only "4.25 years' supply" in the Botley Road appeal – were also substantially different from the extent of the shortfall apparently accepted or assumed by the Secretary of State in his decision in this case, which was as high as 4.86 years' supply on the basis of evidence from the council that had been before the inspector in the Botley Road appeal and rejected by him.
65. One is left with genuine – not merely forensic – confusion on this important point, and the uncomfortable impression that the Secretary of State did not come to grips with the inspectors' conclusions on housing land supply in those two very recent appeal decisions. This impression is not dispelled by his statement in paragraph 7 of the decision letter that he had given "careful consideration" to the relevant representations.

66. The significance of the parties' dispute over the extent of the shortfall in housing land supply was not confined to that issue alone. It also bore on the question of how much weight should be given to restrictive policies in the local plan – in particular, policy 3.CO – for the purposes of the balancing exercise required by the policy in paragraph 14 of the NPPF. A factor to which the Secretary of State attached some importance in determining that “significant weight” should be given to policy 3.CO was that the shortfall in housing land supply was, as he said in paragraph 17 of the decision letter, only “limited”. This was an important issue in itself, and potentially decisive in the planning balance.

67. In the circumstances I am driven to the conclusion that the Secretary of State's reasons were in this respect deficient, when considered in the light of the familiar principle in *South Bucks District Council v Porter*, and that Hallam Land was substantially prejudiced by the failure to provide intelligible and adequate reasons. The parties, and in particular Hallam Land, whose section 78 appeal was being dismissed after a protracted exchange of post-inquiry representations, were entitled to know why the Secretary of State had concluded as he did not only on the question of housing land supply but also on its consequences, in spite of two very fresh appeal decisions in which the question of supply had been decided in a materially different way. This was a matter on which proper reasons were undoubtedly called for, but were not given. In the absence of those reasons, one cannot be sure that the Secretary of State had come to his conclusion lawfully, having regard to all material considerations. It follows, in my view, that in failing to provide such reasons the Secretary of State erred in law and his decision is liable to be quashed for that error. I can see no basis on which the court, in the circumstances, could properly withhold an order to quash his decision. To do so, we would have to speculate as to the outcome of Hallam Land's section 78 appeal on the assumption that the Secretary of State had regard to all material considerations, including the decisions in the Bubb Lane and Botley Road appeals.

68. Having come to that conclusion, I can take the other main issue more shortly.

Should the Secretary of State have had regard to the inspector's report on the Boorley Green appeal?

69. The argument here is that the Secretary of State's conclusion in this case that the shortfall in housing land supply was “limited” is impossible to reconcile with the conclusion in his decision letter in the Boorley Green appeal, issued about three weeks later, that the supply of housing land in the council's area was “around four years”. This offended the principle that there is a public interest in planning decisions in like cases being consistent, and that, in cases of inconsistency, the decision-maker should explain that inconsistency (see the judgment of Mann L.J. in *North Wiltshire District Council*). Where relevant matters arose after the close of an inquiry, such as an inspector reporting to him on an appeal raising closely similar planning issues in the same area as the appeal in hand, it was incumbent on the Secretary of State to take reasonable steps to inform himself of those matters, and so avoid inconsistent decisions. The inspector's report in the Boorley Green appeal fell into that category. By the time the Secretary of State eventually came to make his decision on Hallam Land's appeal, he had had that report for almost three months.

70. Supperstone J. rejected this argument, on the simple basis that the Secretary of State's decision in the Boorley Green appeal had not yet been made when the decision in this case was issued, and “accordingly, it cannot have been a material consideration to which the principle of

consistency can apply”. Although the inspector’s report on the Boorley Green appeal had been submitted to the Secretary of State before he made his decision in this case, “the principle of consistency in decision taking has no application to Inspectors’ reports which are not decisions” (paragraph 33 of the judgment). The proposition that the Secretary of State must always have imputed knowledge of an inspector’s report in an undetermined appeal was incorrect (paragraph 35). So was the submission that it was irrational, and a breach of the principle recognized by the House of Lords in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1976] 3 W.L.R. 641 that a decision-maker must take reasonable steps to acquaint himself of relevant matters, for the Secretary of State not to take into account an unpublished inspector’s report in another appeal that was yet to be decided on its own, different facts (paragraph 38).

71. The judge also accepted the submission of Mr Simons and Mr Stinchcombe that there was, in fact, no material inconsistency between the two decisions. In both cases the Secretary of State had found that there was less than the requisite five-year supply of housing land, and that the consequences provided for by NPPF policy must follow. In his decision on the Boorley Green appeal the Secretary of State did not adopt the inspector’s description of the shortfall as “significant”. His conclusion in that case that the housing land supply “should be regarded as standing at around four years” was consistent with his corresponding conclusions in his decision in this case. And in both cases, given the shortfall, he gave significant weight to the provision of housing: “substantial weight” in this case, “considerable weight” in the Boorley Green case (paragraph 39). The Secretary of State’s application of policy 3.CO of the local plan in this appeal, the weight he gave to that policy, and his relevant reasons did not betray an inconsistent approach with his inspector’s or his own in the Boorley Green appeal (paragraphs 40 to 46).
72. I agree with the judge’s approach to this issue, and the conclusions he reached upon it, essentially for the reasons he gave.
73. The principle of consistency in planning decision-making is not a principle of law. It is a principle of good practice, which the courts have traditionally supported and the Court of Appeal has recently confirmed in *DLA Delivery Ltd.*.
74. The principle applies to decisions of planning decision-makers, and is exercised with a view to the public interest in planning decisions in like cases being consistent, or if inconsistency arises, a clear explanation for it being given in the second of the two decisions concerned (see *DLA Delivery Ltd.*, at paragraphs 28 to 30, 46 and 47). It does not apply, in the case of decisions on planning appeals made by the Secretary of State, to inspectors’ reports that have been submitted to the Secretary of State but on which his decision is still to be made at the time of the decision subject to challenge in the case before the court. The purpose and status of such a report is, essentially, that of advice given to the Secretary of State by his appointed inspector, which will inform the decision itself, but which the Secretary of State is not bound to follow and is free to reject, so long as he gives adequate reasons for doing so. It is an intermediate stage in the process of decision-making. The assessment and conclusions contained in the report do not constitute the Secretary of State’s decision, nor do they form any part of that decision unless and until they are incorporated into it, whether in whole or in part. Usually, as in the Boorley Green appeal, the inspector’s report is not published until the Secretary of State has made his decision. On occasions, however, it may be released by the Secretary of State with a view to inviting further representations or evidence from the parties to deal with a particular issue raised in it.

75. It would be a radical and unjustified extension to the principle of consistency to embrace within it unpublished inspectors' reports, whose conclusions and recommendations the Secretary of State may in due course choose to accept or reject. Indeed, this would not be an extension of the principle of consistency but a distortion of it, because the basis for it would not be consistency between one decision and another, but consistency between a decision and a non-decision, a decision yet to be made. That is not a principle the court has ever recognized, nor even, in truth, a meaningful principle at all.

76. In my view, therefore, this part of the appeal is mistaken, and I would reject it.

Conclusion

77. For the reasons I have given, I would allow this appeal on the first issue alone and on the basis I have indicated.

Lord Justice Hickinbottom

78. For the reasons given by Lindblom L.J., with which I entirely agree, I agree that the appeal is allowed on the first issue alone.

Lord Justice Davis

79. I also agree that the appeal should be allowed.

80. I would like to make some observations of my own on the first issue.

81. Clearly a determination of whether or not there is a shortfall in the 5 year housing supply in any particular case is a key issue. For if there is then the "tilted balance" for the purposes of paragraph 14 of the NPPF comes into play.

82. Here, it was common ground that there was such a shortfall. That being so, I have the greatest difficulty in seeing how an overall planning judgment thereafter could properly be made without having at least some appreciation of the extent of the shortfall. That is not to say that the extent of the shortfall will itself be a key consideration. It may or not be: that is itself a planning judgment, to be assessed in the light of the various policies and other relevant considerations. But it ordinarily will be a relevant and material consideration, requiring to be evaluated.

83. The reason is obvious and involves no excessive legalism at all. The extent (be it relatively large or relatively small) of any such shortfall will bear directly on the weight to be given to the benefits or disbenefits of the proposed development. That is borne out by the observations of Lindblom LJ in the Court of Appeal in paragraph 47 of *Hopkins Homes*. I agree also with the observations of Lang J in paragraphs 27 and 28 of her judgment in the *Shropshire Council* case and in particular with her statements that "...Inspectors generally will be required to make judgments about housing need and supply. However these will not involve the kind of detailed analysis which would be appropriate at a "Development Plan inquiry" and that "the extent of any shortfall may well be relevant to the balancing exercise required under NPPF 14." I do not

regard the decisions of Gilbert J, cited above, when properly analysed, as contrary to this approach.

84. Thus exact quantification of the shortfall, even if that were feasible at that stage, as though some local plan process was involved, is not necessarily called for: nor did Mr Hill QC so argue. An evaluation of some “broad magnitude” (in the phrase of Lindblom LJ in his judgment) may for this purpose be legitimate. But, as I see it, at least some assessment of the extent of the shortfall should ordinarily be made; for without it the overall weighing process will be undermined. And even if some exception may in some cases be admitted (as connoted by the use by Lang J in *Shropshire Council* of the word “generally”) that will, by definition, connote some degree of exceptionality: and there is no exceptionality in the present case.
85. In this case (and in striking contrast to the Bubb Lane and Botley Road cases) a sufficient evaluation of the extent of the shortfall did not happen. Instead, the Secretary of State, having “noted” the council’s updated figure of 4.86 year supply and without any express reference to the Bubb Lane and Botley Road cases, simply announced a bald conclusion that there was a “limited” shortfall in the housing land supply. Broad statements elsewhere in the decision letter to the effect that “the Secretary of State has taken into account” the post-inquiry representations do not overcome the defect of a demonstrable lack of engagement with the actual extent of the shortfall: thereby resulting in an absence of a reasoned conclusion on this material issue. Moreover, such a conclusion departs – again, for no stated reason – from the inspector’s statement in paragraph 108 of his report that “it can be said that there is a material shortfall against the five year supply...”.
86. Although it was submitted on behalf of the council that the result would still inevitably have been the same, even had the extent of the shortfall been properly addressed, I cannot accept that that is necessarily so. So the matter must be the subject of further consideration.
87. Thus I too would allow the appeal on this basis. I would reject the appellant’s arguments on the second issue, for the reasons given by Lindblom LJ.

IN THE HIGH COURT OF JUSTICE

Claim No. CO/917/2020

QUEEN'S BENCH DIVISION

PLANNING COURT

B E T W E E N

EAST NORTHAMPTONSHIRE COUNCIL

Claimant

-and-

SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT

Defendant

- and -

LOURETT DEVELOPMENTS LTD

Interested Party



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CONSENT ORDER

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UPON the parties agreeing to the terms hereof

BY CONSENT IT IS ORDERED THAT:

1. Permission is granted and the decisions of the Defendant, dated 24 January 2020 and carrying reference number APP/G2815/W/193232099, to allow the Interested Party's appeal under s.78

of the Town and Country Planning Act 1990, and to make a partial award of costs in favour of the Interested Party, are quashed pursuant to s.288 of the same Act.

2. The appeal is remitted to be determined de novo.
3. The Defendant pay the Claimant's costs in the amount of £8616.66

Dated: This 7th Day of May 2020

PARTICULARS

- A. These proceedings concern an application brought under section 288 of the 1990 Act by the Claimant against (1) the decision of the Defendant to allow the Interested Party's appeal against the decision of the Claimant to refuse planning permission for residential development at land to the west of numbers 7-12 The Willows, Thrapston, NN14 4LY and (2) the decision to make a partial award of costs against the Claimant in respect of that appeal.
- B. The Defendant has carefully considered the Inspector's decision and the Claimant's Statement of Facts and Grounds and Reply, and the evidence served in support. He concedes that he erred in his interpretation of the definition of deliverable within the glossary of the National Planning Policy Framework ("NPPF") as a 'closed list'. It is not. The proper interpretation of the definition is that any site which can be shown to be 'available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years' will meet the definition; and that the examples given in categories (a) and (b) are not exhaustive of all the categories of site which are capable of meeting that definition. Whether a site does or does not meet the definition is a matter of planning judgment on the evidence available.
- C. The Defendant therefore considers that it is appropriate for the Court to make an Order quashing the decisions and remitting the appeal to be determined de novo.
- D. The Interested Party agrees that the decisions should be quashed and the appeal remitted to be determined de novo.



Paul Bland
Head of Planning Services

.....
East Northamptonshire Council
Cedar Drive
Thrapston
Northamptonshire
NN14 4LZ



.....
Abby Bradford
For the Treasury Solicitor
Government Legal Department
102 Petty France
Westminster
London
SW1H 9GL
Ref: Z2003440/BYD/JD3



.....
Irwin Mitchell LLP
The Colmore Building
9th Floor, 20 Colmore Circus
Birmingham
B4 6AH

CO/164/2020

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

PLANNING COURT IN THE ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR LEAVE UNDER S.288 OF THE TOWN AND
COUNTRY PLANNING ACT 1990

BETWEEN:

CATESBY PROMOTIONS LIMITED

Claimant

-and-



(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL
GOVERNMENT

(2) BEDFORD BOROUGH COUNCIL

Defendants

CONSENT ORDER

Before the Honourable Mr Justice Jay

UPON the Claimant having applied for a planning statutory review pursuant to s.288 of the Town and Country Planning Act 1990;

AND UPON the First Defendant's acknowledgement of service indicating they do not intend to defend the claim;

AND UPON the Second Defendant not filing an acknowledgement of service, and indicating in an email that they do not intend to take part in proceedings;

AND UPON the court being satisfied the parties agreed final order should be made without a hearing, pursuant to CPRPD8C paragraphs 17.1 and 18.2;

IT IS ORDERED by consent:

1. Permission for statutory review is granted, and the Claimant's application for planning statutory review is allowed;
2. The decision of the Planning Inspector dated 9 January 2020 is quashed, for the reasons set out in the statement of reasons attached;

3. The First Defendant shall pay the Claimant's reasonable costs in the claim to date, subject to detailed assessment if not agreed.

Dated this February 2020

Eversheds Sutherland
(International) LLP
Eversheds Sutherland (International) LLP

1 Wood Street

London

EC2V 7WS

Tel: 020 7497 9797

Ref: NixonM/175442-000161

Solicitors for the Claimant

for the Treasury Solicitor

Government Legal Department

102 Petty France

London

SW1H 9GL

Tel: 0207 210 3135

Ref: Z2001091/DNH/JD3

Solicitor for the First Defendant

Dated 02 July 2020

Statement of Reasons

- (1) The Claimant, a developer of homes, challenges the decision of the First Defendant's Inspector dated 9 January 2020 to refuse outline planning permission for a development consisting of 90 residential dwellings. The right of appeal to the High Court arises under s288 of Town and Country Planning Act 1990 ('TCPA 1990'). The Claimant seeks that the decision is quashed and costs are awarded.
- (2) By way of background, the Claimant submitted an application for planning permission to the Second Defendant, a Local Planning Authority, in April 2019. The Second Defendant did not make a decision, enabling the Claimant to bring an appeal to the First Defendant under s78 of the TCPA 1990 in July 2019.
- (3) The appeal was determined by way of an Inquiry held on dates 12-15, and 21-22 November 2019. A decision was made on 9 January 2020, dismissing the appeal. The Claimant's claim for statutory planning review was issued on 20 January 2020, and served on the First Defendant on 21 January 2020.

- (4) A principal important controversial issue in the appeal was whether the Council would be able to demonstrate a 5 Year Housing Land Supply ('5YHLS') upon the adoption of the then-emerging (and now adopted) Bedford Borough Local Plan ('LP') (DL77-79). It was common ground that the Council could not demonstrate a 5YHLS judged against the standard methodology at the appeal (DL60). In short, the respective positions of the parties before the Inspector were:
- Bedford BC submitted that it would be able to demonstrate a 5YHLS once the LP was adopted because of the operation of paragraph 74 of the NPPF 2019[CB/10/342-345];
 - Catesby Promotions submitted (a) that paragraph 74 of the 2019 NPPF did not apply in this case because the appropriate buffer was not applied during the examination of the LP, the sites relied on in the LP to establish a 5YHLS were not judged against the 2019 NPPF definition of deliverability, and the Council did not inform the examining inspectors or the public that it intended to rely on the LP to establish 5YHLS under paragraph 74 of the 2019 NPPF; (b) that a finding of 5YHLS under the 2012 NPPF did not equate to a 5YHLS under the 2019 NPPF because of the different definitions of deliverability; and, (c) many of the sites relied on in the examination of the LP to establish a 5YHLS would not satisfy the definition of 'deliverability' under the definition contained in the 2019 NPPF [9/308-315].
- (5) After consideration of the grounds, the First Defendant accepts that Ground 1 relating to inadequate reasons is arguable, and the Defendant does not intend to defend the ground. The Inspector did not sufficiently grapple with the detailed arguments raised by the Claimant on the 5YHLS. The First Defendant also accepts that Ground 2 is arguable, and the Inspector misinterpreted paragraph 74 of the NPPF 2019, because he has made no comment on the differences between the 2019 and 2012 tests, the 'appropriate buffer', and any effect on the 5YHLS.
- (6) It follows that the claim is now academic. This consent order is without prejudice to the parties' positions as to any future determination of NPPF paragraph 74, whether for the Claimant or elsewhere.

Appeal Decision

Inquiry held on 18, 19, 24, 25, 26 & 28 July 2017

Site visit made on 28 July 2017

by Kevin Gleeson BA MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 October 2017

Appeal Ref: APP/N1730/W/17/3167135

Land North of Netherhouse Copse, Fleet, Hampshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an outline application for planning permission.
 - The appeal is made by Berkeley Strategic Land Limited against Hart District Council.
 - The application Ref 16/01651/OUT, is dated 24 June 2016.
 - The development proposed is outline application for up to 423 residential dwellings and a community facility. Associated vehicular, pedestrian and cycle access, drainage and landscape works, including the provision of public open space and sports pitches. Provision of country park/Suitable Alternative Natural Greenspace (SANG) as an extension to Edenbrook Country Park.
-

Decision

1. The appeal is allowed and outline planning permission is granted for the development of up to 423 residential dwellings and a community facility; associated vehicular, pedestrian and cycle access, drainage and landscape works, including the provision of public open space and sports pitches; and provision of country park/Suitable Alternative Natural Greenspace (SANG) as an extension to Edenbrook Country Park at Land North of Netherhouse Copse, Fleet, Hampshire in accordance with the terms of the application Ref 16/01651/OUT dated 24 June 2016, subject to the conditions in the schedule at the end of the decision.

Procedural Matters

2. The appeal was made on the basis of the Council's failure to determine the application within the prescribed period. Following the lodging of the appeal the Council indicated that they would have refused planning permission had they been in a position to determine the application. Seven putative reasons for refusal were identified with the first two relating to the location of the proposed development within a designated local gap and highway safety. In a Statement of Common Ground (SoCG) between the Council and the appellant it was agreed that putative reasons for refusal 3-7 were capable of being overcome through suitable legal obligations.
 3. The application was submitted in outline, with only access for determination at this stage. All other matters are reserved for future consideration. Except for those plans referred to in Condition 4, I have treated any submitted details concerning layout, appearance, scale and landscaping as being illustrative only.
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4. A draft agreement made pursuant to Section 106 of the Town and Country Planning Act, 1990 was discussed at the inquiry and a signed and dated agreement was provided following the inquiry. This contains obligations in respect of affordable housing, transport and highways works including a travel plan, educational contributions, play space and open space, a SANG and a community facility. There is also an obligation not to develop on land to the south of Netherhouse Copse. I shall return to these matters later in my decision.
5. Prior to the inquiry the appellant also submitted a SoCG which it had agreed with Hampshire County Council as highway authority.

Main Issues

6. In the light of the evidence presented at the inquiry I have modified the main issues as outlined at the start of the inquiry, which I now present as:
 - The effect of the proposed development on the Local Gap between Fleet, Church Crookham and Crookham Village, in physical and visual terms and its effect on the character and setting of the countryside and on public footpaths;
 - The effect of the proposed access on highway safety, with particular reference to the proposed southern site access roundabout; and
 - Whether there are any other material considerations which would justify the development being determined other than in accordance with the development plan.

Reasons

Planning Policy

7. The development plan includes the saved policies of the Hart District Local Plan (Replacement) 1996-2006 and the First Alterations to the Hart District Local Plan (Replacement) 1996-2006 (the LP). Policy RUR1 of the LP defines the areas covered by Rural Economy and Countryside (RUR) Policies. These include the open countryside outside of settlement boundaries.
8. Policy RUR2 of the LP establishes an in-principle restriction on development in the open countryside outside the defined settlement boundaries and restricts development unless it is specifically provided for by other policies of the LP. In addition, new development will not be permitted if it has a significant detrimental effect on the character and setting of the countryside. Policy RUR3 states that developments in the countryside which are provided for by other policies of the plan will be permitted where they meet a number of specified criteria.
9. The appeal site was identified as part of the West Fleet Strategic Location in the now withdrawn Local Plan: Core Strategy, 2011-2029. More recently the site was identified as part of a West of Fleet potential strategic site as part of the early consultation on the emerging Local Plan but is not allocated in the draft Hart District Local Plan, 2011-2032. The Council and the appellant agree that only very limited weight can be attached to the emerging Local Plan at this stage, a view I share.

10. Policy RUR1 provides the context for Policies RUR2 and RUR3 but, as acknowledged by the Council and the appellant, it is not in itself capable of being breached. As the appeal site is outside of the settlement boundaries of Fleet and therefore within the open countryside the proposed development would be contrary to Policy RUR2. It is also contrary to Policy RUR3 as it is not covered by the criteria of that policy.

Local Gap

11. The appeal site comprises predominantly agricultural land, grassland, hedgerows and woodland. It consists of two separate parcels of land to the west and east side of Hitches Lane. Hitches Lane links the northern part of Fleet with Crookham Village, to the south of the appeal site.
12. There are two public footpaths which cross the site. Footpath No. 6 runs in a southerly direction from Fleet to Crookham Village whilst Footpath No. 7 runs east-west extending beyond Hitches Lane. Footpath 502 passes along the eastern edge of the appeal site.
13. Policy CON21 of the LP states that development which would lead to the coalescence of, or damage the separate identity of, neighbouring settlements will not be permitted within identified Local Gaps. The eastern site lies within a defined Local Gap between Fleet and Crookham Village.
14. The appellant indicated that in 1998 when the LP Inspector considered the Local Gap he came to the view that it need only extend northwards as far as Netherhouse Copse to secure the separation between Fleet and Church Crookham. Nevertheless, in adopting the LP the Council confirmed the gap as denoted on the Proposals Map which includes the appeal site.
15. Policy CON21 is not breached by development within a Local Gap in itself. However, it is necessary to consider whether, as a consequence of the proposed development, the diminution of the Local Gap would result in the coalescence of, or harm to, the identity of neighbouring settlements. This judgment is concerned with the spatial relationship between places rather than the quality of the landscape.
16. The Council's assessment to determine the value of the gap identified a number of criteria beginning with distance. The existing gap extends approximately 1.25km north to south with the walk time between Fleet to the north and Crookham Village to the south estimated to be approximately eight minutes. The remnant gap between Netherhouse Copse and Crookham Village if the development were to take place would be approximately 400m and approximately 205m along Hitches Lane with housing occupying the central third of the gap. In terms of topography The Tump, which currently provides a distinctive landscape feature, would be re-profiled, while new housing would obscure much of the remaining form.
17. With open countryside replaced by built development the landscape character of the central part of the gap would change drastically whilst the character of Hitches Lane which borders the gap would become more urbanised with the introduction of additional street furniture. Roadside trees would also be removed to accommodate visibility splays and new accesses. New housing would incorporate the routes of footpaths across the site, changing their character. Moreover, the new housing edge would be more visually prominent

than the existing western edge of Fleet, at least until the new planting matures sufficiently to provide screening.

18. Currently it is not possible to see the northern edge of Crookham Village from the western edge of Fleet, at least in summer. However, there would be potential for the new housing to be seen from the edge of the village, across the gap at Hitches Lane, particularly in winter, notwithstanding the filtering effect of Netherhouse Copse. Currently there are very limited opportunities to see both edges of the settlements from a single point, but the proposed development would make this possible from Hitches Lane and from Footpaths 7a and 6.
19. The existing gap along Hitches Lane serves to create the perception of leaving one settlement before entering another. A strong sense of countryside is experienced, reinforced by the agricultural use. This sense of entering or leaving Crookham Village or Fleet would change as a result of the proposed development. The gap would be considerably reduced with a walk time of approximately two minutes and new housing would affect the character of Footpath 7b and the northern part of Footpath 6.
20. The proposals would result in development occupying approximately one third of the existing Local Gap. The remaining area would comprise an undeveloped northern part occupied by open space and the southern gap between Netherhouse Copse and Crookham Village. Notwithstanding the changes to the gap the absence of development between Netherhouse Copse and Crookham Village would result in no direct coalescence of these settlements.
21. At present views into the eastern site are possible from a number of locations on Hitches Lane. Furthermore, Netherhouse Copse with trees of varying heights and thickness, would not provide an impenetrable screen to prevent views of the proposed development from the south, because it does not extend across the full width of the gap. However, Netherhouse Copse and proposed vegetation between the village and the new housing would provide significant mitigation resulting in limited visibility between the proposed development and Crookham Village, including during the winter months.
22. Crookham Village derives its identity from being a settlement of rural character and appearance, largely surrounded by open agricultural land. It has numerous historic buildings, many of which are timber framed and part of the village is a conservation area.
23. The Council argued that even if the remnant gap did not result in direct coalescence, the separate identity of the village would be materially damaged. But as the identity of Crookham Village derives in part from its physical separation from Fleet I find that there would be no material harm to the separate identity of Crookham Village as a result of the proposed development. For these reasons I do not consider that Crookham Village would lose its sense of place or distinctive character notwithstanding the physical diminution of the Local Gap.
24. Through a planning obligation the appellant has committed for the land between Crookham Village and the development to be subject to restrictive controls. This would prevent further development within the remnant gap and would further ensure that Policy CON21 was not breached, notwithstanding that development in this location would be subject to planning controls.

- Nevertheless, this proposed obligation would add further limited weight to the protection of the remnant Local Gap.
25. Consequently, whilst the proposed development would be within the Local Gap it would not result in the physical and visual coalescence of settlements or the loss of individual identities and therefore I find no conflict with Policy CON21.
 26. Policy CON22 of the LP aims to prevent development which would adversely affect the character or setting of a settlement or lead to the loss of important areas of the development of open land around settlements. Development will not be permitted where it would have a serious adverse effect on the character or setting of the settlement. The supporting text to the policy also indicates that land immediately outside settlement boundaries may be important to the form and character of a settlement in providing opportunities for views.
 27. The visual impact of the proposed development would be experienced within the appeal site and its immediate surroundings but also from further afield, including from viewpoints to the west of Hitches Lane and from Pilcot Road. Landscape mitigation, particularly over the longer term, would in my judgment soften the negative impacts whilst not completely eliminating views of new development. Nevertheless, these adverse impacts need to be considered in the context of views of existing buildings in the area which form part of the landscape character.
 28. Whilst there will be glimpsed views of the proposed development when using Footpath 6, south of Netherhouse Copse and from Hitches Lane, I regard the appeal site as being largely outside of the setting of Crookham Village. This is because the visual envelope of Crookham Village extends as far as Netherhouse Copse but not beyond. From within the appeal site, Crookham Village is not experienced to any great degree and it is only when one moves south from the appeal site beyond Netherhouse Copse that the village setting is experienced. Proposed mitigation along Hitches Lane and to the south of Netherhouse Copse would add to the existing planting to reduce the urban character of development and preserve the setting and character of Crookham Village.
 29. Indicative drawings show The Tump, being developed for housing and regraded to reduce the impact of development. Even with this change views from the west of the development of the upper slopes of The Tump would still be apparent above roadside trees along Hitches Lane. Nevertheless, the effect of this change on the character of the landscape would be limited largely to the immediate surrounds or views from the west, where housing within trees is characteristic of the wider area. As a result there would be no serious adverse effect on the rural composition of existing views or the setting of Crookham Village.
 30. Paragraph 109 of the National Planning Policy Framework (the Framework) states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. The appeal site does not lie within a designated landscape but case law¹ indicates that a landscape does not have to be designated for it to be a valued landscape. Nevertheless, it does need to have characteristics which make it more than ordinary countryside. I heard during the inquiry how local people

¹ Stroud DC v Secretary of State for Communities and Local Government [2015] EWHC 488 Admin

value the area north of Netherhouse Copse for recreational and amenity value and as a special landscape, with The Tump providing a distinctive local landform.

31. The Council undertook an assessment of the landscape value of the site based on criteria set out in *Guidelines for Landscape and Visual Impact Assessment Third Edition* (GLVIA3). This confirmed that in landscape quality terms the appeal site is characterised by woodland and field boundary vegetation patterns which are intact and of reasonable condition, including rare ancient woodland, a range of conservation interests and a high recreational value. The assessment also found a high scenic quality provided by the woodland and tree cover and the distinctive form of the knoll and a sense of tranquillity. Taken together I consider that these elements establish the eastern site as a valued landscape. Nevertheless the main elements which contribute to its value, namely the woodland, vegetation and recreational use, would be protected and enhanced by the development to some extent.
32. The appellant sought to argue that as set out in paragraph 113 of the Framework a distinction may be drawn between designated sites so that protection should be commensurate with their status and appropriate weight should be given to their importance. As a result, the appeal site was described as 'off the bottom of the scale'. However, such an argument seems to me to suggest that sites with no designation cannot have value, which is contrary to the view in the Stroud case².
33. The Hart Landscape Assessment, 1997 identified the site as being within a Category C landscape which is the lowest category. This assessment was based on a methodology which has now been superseded by the GLVIA3 criteria and also failed to recognise recreational value. Accordingly I attach limited weight to its findings.
34. The much more recent Hart Landscape Capacity Study, 2016 identified a wide area to the west of Fleet (FL-01) including the appeal site as having a low capacity for development with a medium visual sensitivity, a medium to high landscape sensitivity and a high landscape value. The study acknowledged that the precise location and extent of development would depend on a closer study and evaluation and that the upper/middle section of Hitches Lane had urban characteristics following urban fringe development. I was also referred to the Strategic Housing Land Availability Assessment, 2016 which recognised the constraint provided by the knoll, but did not suggest that the landscape itself was a constraint.
35. The disagreement between the Council and the appellant about the effect of the scheme in landscape terms depends to some extent on the scope of the assessment. Focusing on the site itself, the effect on character would be major adverse according to the Council but considered in a wider setting the appellant assessed the effect as minor negative with those elements of higher value, including the adjacent ancient woodland retained and enhanced. I consider both of these assessments are reasonable. Nevertheless, the localised nature of the landscape impacts would reduce any harm to a limited effect.
36. The key test of Policy CON22 in this case is that development should not have a serious adverse effect on the character or setting of the settlement.

² Stroud DC v Secretary of State for Communities and Local Government [2015] EWHC 488 Admin

Notwithstanding the Council's assessment of the capacity of the appeal site for development, its visual and landscape sensitivities and landscape value there would not be a seriously adverse effect on the character or setting of Crookham Village. I therefore find that the proposal would not conflict with Policy CON22. Nevertheless, there would be limited conflict with the advice in paragraph 17 of the Framework, which states that planning should seek to conserve and enhance the natural environment, and limited harm to the character of the appeal site, which I consider to be valued in terms of paragraph 109 of the Framework.

37. Policy CON23 of the LP states that development will not be permitted which would seriously detract from the amenity and consequent recreational value of well-used footpaths in the countryside close to main settlements by reducing their rural character and detracting from significant views.
38. The illustrative plans indicate that there would be no change to the alignment of any public footpaths but clearly their character would change as a result of the proposed development from rural routes passing through or on the edge of countryside. In addition the perception of users of the footpaths would change. Consequently, although the impact would be localised, limited in extent and mitigated as far as possible, I conclude that there would be a breach of the policy tests such that the extent of the change would seriously detract from the amenity and recreational value. Consequently there would be conflict with Policy CON23.
39. For these reasons I conclude that the proposed development would not result in the physical or visual coalescence of neighbouring settlements or damage their separate identities by development within the Local Gap between Fleet/Church Crookham and Crookham Village. As a result I find there would be no conflict with Policy CON21 of the LP. The impact of development in landscape and visual terms would be localised and limited and would not have a serious adverse effect on the character or setting of settlements such that Policy CON22 would be breached, although I have found that there would be limited conflict with paragraphs 17 and 109 of the Framework. Additionally there would be some adverse impact on the amenity and recreational value of local footpaths which would seriously detract from those qualities resulting in conflict with Policy CON23 of the LP.

Highway Safety

40. The proposed access arrangements to the eastern site would comprise a priority junction at the north-western corner and a roundabout at the south-western corner. Each is proposed with 120m visibility splays which is representative of a Stopping Sight Distance for a 40 mph design speed as set out in the *Design Manual for Roads and Bridges* (DMRB). An additional access to the western site from the western side of Hitches Lane would serve the proposed country park. The proposals envisage the introduction of a 40 mph speed limit on Hitches Lane where the current speed limit is 60 mph. Approval for the revised speed limit would be sought separately through a Traffic Regulation Order.
41. The southern access is proposed as a 22m Inscribed Circle Diameter (ICD) compact roundabout which was confirmed as acceptable in the SoCG with the highways authority. However, that SoCG also commented that a larger 28m

- ICD, with the same visibility sight lines would provide a more robust solution to the access onto Hitches Lane.
42. By the end of the inquiry, the difference between the Council and the appellant concerned the design of the proposed access arrangements rather than whether safe access could be achieved. This largely related to two matters, namely visibility sight lines and roundabout size.
 43. The Council identified that Hitches Lane is a classified 'C' road with 85% of vehicles travelling at greater than 37.5 mph. Consequently, it argued that as set out in the *Hampshire Companion Document to the Manual for Streets*, the appropriate design standard was provided through DMRB. However, as Hitches Lane is neither a trunk road nor a strategic road, based on the guidance in *Manual for Streets 2* (MfS2) and as confirmed by the highway authority, regard should be had to local circumstances.
 44. With regard to visibility sight lines, the highways authority confirmed that a 120m splay would be acceptable whilst the Council's position was that 160m splays were required. The *Department for Transport Circular 01/2013* indicates that mean speeds and 85th percentile speeds are commonly used measures of actual traffic speed but mean speeds should be used as the basis for determining local speed limits. Moreover, as Hitches Lane will primarily serve as a local access road, in such situations Circular 01/2013 considers 40 mph speed limits to be appropriate.
 45. From the traffic surveys undertaken by the appellant and the Council, based on the existing 85th percentile speed of 47.2 mph southbound and 50.7 mph northbound a design speed of 85 kph was identified by the Council leading to a requirement for a forward visibility of 160m. It was also justified by the Council on the basis that the introduction of a reduced speed limit of 40 mph could not be guaranteed and existing speeds indicated that it would not be self-enforcing.
 46. The Council also argued that a 120m visibility splay when considered against the existing speed limit corresponded to two steps below the desirable minimum standard which represented a departure from the applicable standard in TD16/07 *Geometric Design of Roundabouts* which forms part of DMRB.
 47. However, the Council's traffic survey indicated that for northbound and southbound traffic 74% of the total flow was travelling below 45 mph with the mean northbound speed being 41.7 mph and the southbound mean being 41.9 mph. Taking account of three proposed access points in a relatively short stretch of road between two 30 mph sections, the associated road markings and signage, the entry width of the roundabout and single lane entry compact format, it appears likely to me that speeds would be predominantly below 40 mph in the future.
 48. The Council sought the introduction of a package of traffic calming features on Hitches Lane to achieve a satisfactory reduction of speeds and ensure that the 40 mph speed limit would be self-enforcing. However, having found that the speeds would be likely to reduce to below 40 mph and noting that the highway authority has not considered such a package to be necessary, I too conclude that such measures are not required.

49. Whilst it is for the appellant to pursue the formal 40 mph speed limit I consider that, on the basis that speeds would be reduced such that the 40mph limit would be largely self-enforcing, 120m visibility splays would be appropriate for both the northern access and the southern roundabout.
50. MfS2 emphasises that the guidance in TD16/07 is written specifically for trunk roads and where used in other situations should not be applied uncritically. MfS2 also advises that the recommended approach to the design of roundabouts is to make the overall diameter of the junction as compact as possible. The issue of the size of the proposed roundabout is determined in part by the relevant 'design vehicle' using Hitches Lane. In this case the design vehicle was determined through TD18/07 as a 15.5m articulated vehicle with single rear axle.
51. TD16/07 requires compact roundabout to have a minimum 28m ICD, being the smallest roundabout that can accommodate the swept path of the design vehicle. The traffic survey data recording the number of vehicles within the classification of the design vehicle is inconclusive but it is clear that, although the number is low, it could include daily movements. The numbers are likely to be suppressed because of the lack of such vehicles currently in use, the existing 7.5 tonne weight restrictions in the vicinity of the appeal site and the limited numbers of HGV vehicles using Hitches Lane.
52. MfS indicates that junctions should accommodate vehicles which regularly negotiate the junction rather than always designing for the largest legal articulated vehicle. The appellant demonstrated that the 22m ICD design can accommodate through movements of the design vehicle. However, the Council's evidence did indicate that the 22m ICD roundabout leaves no margin for driver error and the likelihood of drivers taking up the optimum position to achieve the through movement would be limited particularly because of the reverse curve nature of the manoeuvre and therefore there would be a risk of conflict with other road users.
53. The Council's preferred access solution would be a 36m ICD roundabout but this size of roundabout would not be required in terms of capacity. Moreover, a full standard roundabout with two entry lanes could lead to drivers not observing the deflection with the result that speeds would increase leading to other safety issues.
54. The Council also argued in favour of the 36m ICD roundabout on the basis of route consistency given that other roundabouts in Hitches Lane are larger. TD16/07 indicates that where several roundabouts are to be installed on the same route they should be of similar design in the interests of route consistency and hence safety. Roundabouts on Hitches Lane which might justify consistency are some distance away, were designed to have two lane entry approaches, have four arms and serve different levels of traffic, one having a dual carriageway entry and exit. Consequently a similar design approach would not be appropriate for the proposed roundabout and I see no reason for a 36m ICD roundabout. Accordingly, for the reasons given, I find that it is appropriate for the southern access to be configured as a 28m ICD roundabout.
55. Concern was raised by the Council that the entry path radius of the roundabout of 102m for northbound vehicles was excessive and would lead to inappropriate speeds through the roundabout. TD16/07 indicates that for a compact

roundabout within a 40 mph speed limit the entry path radius must not exceed 70m. Amendments to the design indicate that a 69m deflection is achievable for either the 22m or 28m ICD roundabouts and therefore the standard can be met. In addition the Council suggested that the northern approach alignment to the roundabout could result in swerving manoeuvres but based on the design proposed with warning signage, road markings and speeds of 40 mph I consider appropriate measures would be in place to limit such manoeuvres.

56. With regard to pedestrian movements, existing Footpaths 7a and 7b are located to the south of the proposed roundabout where there is no change in the alignment of Hitches Lane. The proposed roundabout would assist walkers to cross the road because vehicles speeds at the crossing would be low. Consequently, as the development will not materially change the safety or acceptability of the existing crossing point which is over 70m south of the proposed roundabout and no changes to pedestrian routes have been requested by the highway authority there is no need to introduce additional pedestrian crossing measures.
57. The second putative reason for refusal made reference to the absence of a Stage 1 Road Safety Audit. Whilst not submitted with the original application the appeal documentation did include safety audits. These demonstrated that there are no outstanding safety matters to be addressed. Nevertheless, further refinements of the design, including further safety audits would be undertaken as part of the highways agreement process.
58. In terms of entry angles, the Council's position was that the design is essentially a four-arm roundabout with a missing arm rather than a balanced three-arm roundabout accommodating the minimal realignment of Hitches Lane. However, based on the alternative approach angles put forward by the Council and the appellant and the lack of applicable standards governing such matters, I find no reason to conclude that the roundabout configuration should change.
59. For these reasons I find that the site can be accessed appropriately in terms of highway safety. Consequently I find that the proposed development would not conflict with Policy T14 of the LP which requires development proposals to make adequate provision for highway safety and access or Policy T15 which states that development requiring new access will not be permitted if it would adversely affect the safety and character of the non-strategic road network. Additionally I find no conflict with paragraph 32 of the Framework which requires decisions to take account of whether safe and suitable access to the site can be achieved for all people.

The Weight to be Attached to Development Plan Policies

60. The settlement boundaries associated with Policy RUR1 were based on development needs derived from the former Hampshire Structure Plan. The LP covered the period 1996-2006, was adopted in 2002 and therefore considerably pre-dated the Framework.
61. Paragraph 215 of the Framework states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework thereby establishing whether or not policies are out-of-date. The Council suggested that the judgment about whether a plan or policy is up-to-date or out-of-date is determined by whether, in the context of a particular

- planning proposal, the plan or its relevant policies remain fit for purpose, allowing the acceptability of the development to be assessed, having regard to the planning circumstances at the time of the decision. Among the relevant tests would be whether the policies in question are consistent with the Framework, whether they still serve a planning purpose and, if constraint policies, whether they preclude the meeting of needs that current circumstances require to be met.
62. Paragraph 211 of the Framework states that policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. The fact that the development plan covered the period 1996-2006 does not in itself render it out-of-date notwithstanding that the development strategy and allocations were to accommodate anticipated development within the plan period.
63. Nevertheless, as the Supreme Court held in the case of *Suffolk Coastal*³, the weight to be given to restrictive policies can be reduced where they are derived from settlement boundaries that in turn reflect out-of-date housing requirements. In that case the Inspector's finding was consequential upon there being no five year housing land supply and on the basis that the Council could not deliver the housing to meet current needs. In the current appeal the Council argued that it can provide five years supply of housing land. However, this is a reflection of the Council granting a number of permissions for housing development outside of settlement boundaries identified in the LP in breach of Policies RUR2 and RUR3 in order to meet market and affordable housing needs and maintain a rolling five year land supply. Consequently it is not meeting current housing needs on the basis of the settlement boundaries in the development plan. I therefore find that Policy RUR1 is out-of-date and carries only moderate weight.
64. Policy RUR2 is similarly dependent upon the out-of-date settlement boundaries of RUR1. Notwithstanding the Council's revised assessment that Policy RUR2 has a high degree of consistency with the Framework, and irrespective that it is negatively expressed, it relates to out-of-date settlement boundaries established by Policy RUR1 and therefore is also out-of-date. Policy RUR3 also relies on the out-of-date settlement boundaries associated with Policy RUR1 and therefore I attached moderate weight to these policies too.
65. For similar reasons I attach moderate weight to Policy CON21. In addition, it is out-of-date because it specifically recognises that Local Gaps will be the subject of review and protected only for the lifetime of the plan, that is up to 2006.
66. Policy CON22 adopts a blanket approach to landscape protection and does not comply with the hierarchical approach of paragraph 113 of the Framework or the valued landscape approach of paragraph 109. Consequently, notwithstanding the Council's revised assessment of the policy for consistency with the Framework, which changed its status from medium to high, the weight to be attached to the policy is also limited. In contrast I find that Policy CON23 of the LP has a high degree of consistency with paragraph 75 of the Framework which states that planning policies should seek to protect and enhance public rights of way.

³ *Cheshire East v Richborough Estates & Suffolk Coastal v Hopkins Homes* [2017] UKSC 37

67. The fourth bullet point of paragraph 14 of the Framework indicates that where relevant policies of the development plan are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole, or specific policies indicate development should be restricted. Having found that policies RUR1, RUR2, RUR3, CON21 and CON22 cannot be considered up to date, paragraph 14 is engaged in this case, notwithstanding that the policies serve various planning purposes.
68. The appellant also argued that the policies were out of date because of a claimed lack of a five year housing land supply, a point disputed by the Council. However, even if I were to conclude that the Council does have a five year supply of housing sites, my conclusion in respect of the applicability of paragraph 14 would not be different. It is not necessary for a plan to be in conflict with paragraph 49 of the Framework in order for paragraph 14 to be engaged as the Supreme Court held in the case of *Suffolk Coastal*⁴. Moreover, the existence of a five year supply of housing and the potential identification of a longer term housing supply does not mean that settlement boundaries cannot be out-of-date. Consequently, I have not considered the question of the housing land supply further.

Other Matters

69. Concern was expressed by many residents about the impact of the proposal in terms of traffic generation and highway capacity. Traffic data was provided by interested parties and the appropriateness of the appellant's transport modelling was questioned. Notwithstanding the suggestion that the highway authority had been inconsistent with regard to earlier advice relating to west Fleet, Hampshire County Council did not object to the proposed development subject to the imposition of appropriate conditions and an appropriate package of mitigation measures being secured.
70. Hart's transport consultant when asked to review the appellant's Transport Assessment to determine whether there was a reason to refuse the application on traffic generation grounds concluded that the vehicle trip rates were acceptable. Moreover, the Transport Assessment considered all committed development in the area as well as future year growth to 2022 and demonstrated that the traffic impact on local roads would not be significant and that predicted flows could be accommodated without adverse impact. The suggestion that the junction modelling of two roundabouts to the north of Hitches Land should have been modelled as one junction is addressed by the highway authority's acknowledgment that the capacity related to the proximity of the roundabouts, a view I accept.
71. The issue of car parking can be addressed at reserved matters stage whilst the provision of transport facilities as an alternative to the private car would be addressed through the implementation of a Travel Plan. Consequently I find that there is no reason to dismiss the appeal based on these further transport matters.
72. The Habitat Regulations 2010 require an assessment to be undertaken as to whether a proposal would be likely to have a significant effect on the interest

⁴ *Cheshire East v Richborough Estates & Suffolk Coastal v Hopkins Homes* [2017] UKSC 37

features of a protected site. The Thames Basin Heaths Special Protection Area (SPA) is such a protected site.

73. The assessment is required to ensure that development does not result in a likely significant effect upon designated sites. Taking account of the Habitat Regulations and Policies CON1 and CON2 of the LP it is necessary to demonstrate that all development either individually or in combination with other development which would increase the use of the Thames Basin Heath SPA for recreational and other purposes would not have a damaging impact on wildlife habitats or other natural features of importance. Policy NRM6 of the saved South East Plan requires adequate measures to avoid or mitigate any potential adverse effects on the SPA.
74. Natural England has indicated that on sites within 5km of the SPA, which includes the appeal site, additional residential development will have a significant effect on the SPA without adequate mitigation. Consequently, any such unmitigated proposal would be contrary to the Habitats Regulations. The Thames Basin Heath Delivery Framework enables the delivery of housing in the vicinity of the SPA without a significant effect on the SPA as a whole through avoidance measures which take the form of areas of Suitable Alternative Natural Greenspace (SANG).
75. The proposed development includes the creation of a SANG on the western part of the site as an extension to Edenbrook Country Park, which is an existing SANG. Natural England had reviewed the proposal and confirmed that, on the basis of the provision of SANG land, compliance with the SANG Management Plan to ensure its on-going management and maintenance in perpetuity and the making of appropriate Strategic Access Management and Monitoring (SAMM) contributions which would be secured through the Section 106 agreement, they do not object to the proposed development.
76. I heard from local residents that the proposed expansion of the Edenbrook Country Park to accommodate the SANG would fail to provide a suitable alternative to the existing countryside footpaths close to Crookham Village. It was suggested that the proposal would cause significant adverse effects on the SPA and that the condition of the existing SANG leads people to visit the SPA resulting in an adverse impact. However, based on the evidence before me including the SANG Management Plan I find that the proposed mitigation would adequately address the impacts of development and that the SANG is likely to be effective.
77. The proposal is therefore in accordance with the Council's Thames Basin Heath Avoidance Strategy, LP Policies CON1 and CON2 and Policy NRM6 of the South East Plan. Consequently I am of the view that the proposal would not have an adverse effect on the integrity of the SPA, either alone or in combination with other projects, and therefore would not be contrary to the Habitat Regulations.
78. Concerns were also raised about the effect of the proposal on ecology within the eastern site but the evidence before me indicates that the site does not have any particular significance in ecological terms. Furthermore, whilst the Framework states that the planning system should minimise impacts on biodiversity and provide net gains in biodiversity where possible, the lack of net biodiversity gain would not be a reason to dismiss the appeal because there is no necessity to secure a net gain.

79. Although the character of the footpaths within the appeal site would change they would still be available and I have no evidence that the mechanisms to create and manage the extended Country Park would not provide a suitable recreational facility. A number of other concerns raised relating to noise, disturbance and construction impacts as well as the effect of street lighting pollution are matters which can be addressed through conditions or at the reserved matters stage.
80. The risk of flooding and the tendency of Edenbrook Country Park to flood were also raised as concerns but I note that the Environment Agency has not objected to the proposal subject to the inclusion of a condition that development is carried out in accordance with the submitted Flood Risk Assessment. Comments about the design and layout of the proposed development can be addressed at the reserved matters stage.
81. It was suggested that the scheme would put a strain on local services but I consider that the site is well located in terms of access to local facilities and services which are available within Fleet town centre, less than a mile to the north east of the site. Furthermore, with the proposed contributions to community infrastructure the proposed development would not give rise to a material impact on community facilities and services. The effect of the proposed development on the Crookham Village and Dogmersfield Conservation Areas was highlighted whilst Ms ten Kate identified the possibility of traffic adversely affecting her Grade II listed building on Crondall Road. However, since I have found that the proposal would not adversely affect the setting of the village and I have no detailed evidence relating to the impact of the development on these heritage assets I find no harm in this respect.
82. The proposed development would contribute economic benefits to the local area both during construction and in the longer term as residents provide custom for existing shops and services. The Council accepted that such benefits would result from the scheme whilst acknowledging that they would apply in any location in the District where development of that scale took place. On that basis the Council apportioned moderate weight to them. However, on the basis of the scale of the benefits as described by the appellant, I afford them significant weight.

Planning Obligations

83. In the Section 106 agreement the appellant has undertaken to provide 169 units of affordable housing, out of a total of up to 423 units on site, with the remainder of the 40% contribution (0.2%) as a financial contribution of £24,500. This obligation is in line with the requirement of paragraph 50 of the Framework which supports the delivery of a wide choice of high quality homes and Policy ALT GEN13 of the LP which seeks the provision of 40% of new housing to be affordable.
84. The appellant has undertaken to provide land within the appeal site to the Council and to make a contribution of £501,207 towards the development of a community facility building. This would be provided as part of a wider contribution to provide leisure and open space facilities. It is also proposed to mitigate the demand for open play space through the provision of Local Areas of Play, Locally Equipped Areas of Play, a Neighbourhood Equipped Area of Play and a Trim Trail, together with a contribution towards their maintenance. Provision is also made for landscape and ecological buffers and southern

boundary planting and there is a commitment not to develop the land between the appeal site and Crookham Village. Such measures are in line with Policy GEN1 of the LP which addresses the need for infrastructure improvements.

85. Mitigation to address the potential effects of the development on the Thames Basin Heaths SPA comprises the creation of a SANG, including the transfer of land and associated contributions, as an extension to the Edenbrook Country Park. This would be in line with Policies CON1 and CON2 of the LP and Policy NRM6 of the South East Plan. The size and scale of the SANG and the SAMM contribution is fairly and reasonably related in scale and kind to the development site as it seeks to mitigate the additional impact of the development proposal on the SPA.
86. The agreement also makes provision for a financial contribution towards primary and secondary education including the transfer of land for the expansion of Calthorpe School. The appellant has undertaken to make a contribution of £4,287,810 which is the sum requested as part of an earlier application in 2014 plus £100,000 to reflect an increase in prices. This does not provide the full amount indicated by the County Council guidance *Developers Contributions Towards Children's Services Facilities*. However, the District Council considered that in the context of the overall contribution this amount was acceptable, a view which I share, and both the County and District Councils are signatories to the agreement.
87. A contribution of £1,429,284 would be provided to mitigate the transport impact of the development through a number of improvement schemes comprising junction improvements, improvements to cycle routes, pedestrian crossings and bus infrastructure. The agreement also makes provision for various off-site junction improvements which are required to ensure that the site can be safely accessed and for the implementation of a Travel Plan. The transport and highways provisions are in accordance with Policies T1, T14 and T16 of the LP which collectively support improvements to local transport infrastructure including developing a choice of transport modes.
88. I am satisfied that all of the provisions are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to the development and therefore consistent with Regulations 122 and 123 of the Community Infrastructure Regulations, 2010. I have therefore taken account of them in reaching my decision.

Planning Balance

89. Section 38 (6) of the Planning and Compulsory Purchase Act, 2004 requires applications for planning permission to be determined in accordance with the development plan unless other material considerations indicate otherwise. I find that because the appeal site is outside of the settlement boundary for Fleet the proposals are not in accordance with the development plan as a whole.
90. Nevertheless, the fourth bullet point of paragraph 14 of the Framework is relevant where the development plan is absent, silent or relevant policies are out-of-date. In this case I have found that Policies RUR1, RUR2, RUR3, CON21 and CON22 are out-of-date and I attach little weight to these policies. In such circumstances, paragraph 14 states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as

a whole, or specific policies in the Framework indicated that development should be restricted. No such restrictive policies apply in this case, bearing in mind my findings in respect of the SPA.

91. I have found that there would be some harm from development in the countryside and some harm to the valued landscape of the appeal site contrary to paragraph 109 of the Framework. In addition, harm would occur to the amenity and recreational value of footpaths crossing the site, contrary to Policy CON23 of the LP, to which I attach modest weight.
92. Balanced against the conflict with the development plan is the contribution to the supply of housing which the provision of up to 423 homes would make. This carries significant weight in the context of paragraph 47 of the Framework which states that local planning authorities should boost significantly the supply of housing to meet the needs for market and affordable housing.
93. The provision of 40% affordable homes would be in accordance with Policy ALT GEN13 of the LP and because of the substantial under delivery of affordable housing within the district over a number of years the provision of up to 169 new affordable homes carries significant weight. Other suggested social benefits including the promotion of sustainable transport, the provision of healthy communities and securing good design are generally requirements of local and national policies and therefore have a neutral effect.
94. I have attached significant weight to the economic benefits which the proposal would achieve. Other environmental benefits which the appellant highlighted, including meeting the challenge of climate change and conserving and enhancing the natural environment also have a neutral effect.
95. Taking all of this into account, including all other material considerations, I find that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework as a whole and that the proposal represents sustainable development. On this basis a decision, other than in accordance with the development plan is justified and therefore the appeal should be allowed.

Conditions

96. Planning conditions were discussed with the Council and the appellant at the inquiry. In considering conditions I have had regard to both the Framework and Planning Practice Guidance (PPG) in respect of the need for individual conditions and their precise wording.
97. Conditions relating to the submission of reserved matters and the timing of commencement are needed due to the outline nature of the application (Conditions 1, 2 and 3). I have imposed a condition specifying the relevant drawings with which the scheme should comply as this provides certainty (4). This specifies a number of parameter plans which it is necessary for the scheme to comply with to ensure a satisfactory development notwithstanding the provisions of the reserved matters. It is particularly important to address these matters now given my findings in terms of the impact of the scheme on the landscape. I have considered an alternative condition regarding access which was discussed at the inquiry but I conclude that it is not necessary in order to secure the accesses which I have found to be required.

98. A condition requiring a phasing plan to be prepared and for development to be undertaken in accordance with the approved plan is appropriate in order to ensure that the proposed development proceeds in a planned and phased manner (5). In order to protect the interests of nearby residents and in the interests of highway safety a condition requiring the submission and approval of a Construction Method Statement (CMS) is imposed (6).
99. Notwithstanding the provision of reserved matters I have imposed a condition requiring details of existing and proposed ground or floor levels to be approved prior to construction in order to ensure that the development does not have an overbearing impact on the landscape (7). Similarly conditions are imposed to require the submission of highways infrastructure (8) and access and parking arrangements (9) to ensure that satisfactory access to the development is provided. A condition requiring the provision of cycle parking is necessary in the interests of providing a choice of transport modes in support of sustainable transport aims (10) whilst a condition specifying how spoil or arisings generated by the development will be managed is necessary to protect the living conditions of local residents (11).
100. Conditions are required to ensure the satisfactory alleviation of flood risk (12) and in order to address the possible effects of land contamination on site (13). It is also necessary to impose conditions to ensure that there are no adverse impacts on protected species (14) and to ensure that the SANG is available for use prior to the occupation of the proposed dwellings (15) to avoid any significant effect on the SPA. Conditions are required to protect trees and other vegetation to benefit the appearance of the development and its surroundings (16) and to address the potential archaeological significance of the site (17 and 18).
101. A separate condition limiting the hours of construction is not necessary as this can be addressed as part of the CMS under condition 4. Similarly, it is not necessary to impose conditions requiring details and samples of external surfaces or landscaping at this stage due to the outline nature of the proposal. As I have found that 120m visibility splays would be acceptable based on a self-enforcing 40 mph speed limit it is not necessary to impose a condition to undertake traffic surveys to ascertain whether the introduction of traffic calming measures is required. Similarly, 'Condition 3' (ID30) is not necessary because I have found visibility splays of 120m to be appropriate.
102. I have considered the suggestion that a condition should be imposed to secure net biodiversity gain and this was discussed with the main parties. Whilst acknowledging the appellant's corporate objective to meet this requirement, because a condition to achieve this objective does not have the support of the Council and I am not convinced that such a condition would meet all of the tests in the Framework I have not imposed it.
103. PPG advises that care should be taken when using conditions which prevent any development authorised by the planning permission from beginning until the condition has been complied with. In this respect it is necessary for conditions 5, 6, 7, 8, 11 and 16 to be pre-commencement conditions because they are fundamental to the development permitted.

Conclusion

104. For the reasons set out above, and having taken into account all matters presented in evidence and raised at the inquiry, I conclude the appeal should be allowed.

Kevin Gleeson

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Michael Bedford QC,

Instructed by the Joint Head of Legal of Hart and Basingstoke Councils.

He called:

Christopher Cobbold
MA MBA MRICS

Director,
Wessex Economics Limited

Christopher Blamey
BSc (Hons) MSc (Eng) MCIHT

Director
Russell Giles Partnership

Jane Jarvis
BSc (Hons) DipLD MA CMLI

Principal Landscape Architect
SLR Consulting Limited

Christine Tetlow
MA MRTPI

Development Management Team Leader
Hart District Council

FOR THE APPELLANT

Christopher Boyle QC,

Instructed by Jonathan Lambert, MRTPI of Berkeley Strategic Land Limited

He called:

Andrew Smith
BSc (Hons) MSC CMLI

fabrik Limited,

David Wiseman
BA (Hons) MRTPI

Director
Stuart Michael Associates

Matthew Spry
BSc (Hons) Dip TP (Dist) MRTPI MIED FRSA

Senior Director, Lichfields

INTERESTED PERSONS

Max Clark

Co-Chairman, Face-It

Kerry ten Kate

Local Resident

Tony Gower-Jones

Co-Chairman, Face-It

Ed Dane

Local Resident

Michelle Hulse

Local Resident

Richard Hellier	Local Resident
Brian Whyatt	Crookham Village Speedwatch Co-ordinator
Cllr. Julia Ambler	Crookham Parish Council.

DOCUMENTS SUBMITTED AT THE INQUIRY

- ID1. Section: Viewpoint F to Housing on Knoll, submitted by the Council.
- ID2. Planning Application Representations, submitted by the Council.
- ID3. Opening Statement on behalf of the Council.
- ID4. Summary of Traffic Data for Crookham Village, submitted by Mr Whyatt.
- ID5. Vehicle Classifications, submitted by the Council.
- ID6. DRMB TD9/93, submitted by the Council.
- ID7. Notice of Appeal, submitted by the Council.
- ID8. Minutes of the Committee Meeting 14 December 2016, submitted by the Council.
- ID9. Traffic Survey 19 April – 27 April 2016, submitted by the Appellant.
- ID10. Amendment to ID1, submitted by the Appellant.
- ID11. Extracts from the Inspector's Report into the Hart (Replacement) Local Plan, submitted by the Council.
- ID12. Speaking Notes submitted by Mr. Clark.
- ID13. Comments by Ms ten Kate.
- ID14. Area of 7.5 Tonne (Except for Access) Restriction submitted by the Council.
- ID15. Roundabout Approach Angles submitted by the Council.
- ID16. Speaking Notes submitted by Mr Gower-Jones.
- ID17. Comments on the Site Visit Route, submitted by Mr Clark.
- ID18. Southern Roundabout Site Access Approach Lanes, submitted by the Council.
- ID19. Southern Roundabout Site Access Autotrack Swept Paths, submitted by the Appellant.
- ID20. Notes on Vehicle Classifications, submitted by the Appellant.

- ID21. Response to Comments on the Site Visit Route, submitted by the Appellant.
- ID22. Comments by Mr Hellier.
- ID23. Southern Roundabout Site Access Footpath Positions, submitted by the Appellant.
- ID24. Response to Third Party Highway Concerns, submitted by the Appellant.
- ID25. Draft Conditions, submitted by the Appellant.
- ID26. Draft Section 106 Agreement, submitted by the Appellant.
- ID27. Section 106 CIL Compliancy, submitted by the Council.
- ID28. Revised Southern Roundabout Access Drawings, submitted by the Appellant.
- ID29. Presentation by Councillor Ambler.
- ID30. 'Condition 3', submitted by the Appellant.
- ID31. Closing Submissions on behalf of Hart District Council.
- ID32. Closing Submissions on behalf of the Appellants.

DOCUMENT SUBMITTED FOLLOWING THE INQUIRY

- ID33. Signed Section 106 Agreement

SCHEDULE OF CONDITIONS

1. Details of the appearance, landscaping, layout and scale (hereinafter called the "reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: 13109/S101, 13109/C01S, 13109/C02S, 13109/C03S, 13109/C04S, 13109/C05S, 13109/C06S, 5463.051, 5463.053, 13109/C07S, 5463.017, 5463.018, 5463.019, 5463.020, 5463.021, 5463.022, 5463.030 and 5463.031.
5. Prior to the commencement of the development hereby approved, a phasing plan identifying all phases of development shall be submitted to and approved in writing by the Local Planning Authority. All phases of the development shall be completed and carried out in accordance with the phasing plan unless otherwise agreed with the Local Planning Authority.
6. Prior to the commencement of development a Construction Method Statement shall be submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall include details of:
 - i) The parking of vehicles of site operatives and visitors;
 - ii) Loading and unloading of plant and materials;
 - iii) Storage of plant and materials used in constructing the development;
 - iv) The erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
 - v) Wheel washing facilities and the dispersal of water;
 - vi) Measures to control the emission of dust and dirt during construction;
 - vii) Details of the site office / compound;
 - viii) A construction traffic management plan, to include details of how the site will be accessed and from which point(s), any works required to provide new access or upgrading of existing access routes, construction traffic routes, haul roads, parking and turning provision to be made on site, measures to prevent mud from being deposited on the highway and a programme for construction;
 - ix) Site waste management; and
 - x) Details of the control measures for air quality, biodiversity, waste management and lighting.
7. No development in any phase shall commence until plans showing details of the existing and proposed ground levels, proposed finished floor levels,

levels of any paths, drives, garages and parking areas and the height of any retaining walls within the application site have been submitted to and approved, in writing, by the Local Planning Authority for that part of the site. The development shall be completed and retained in accordance with the details so approved.

8. No development in any phase shall commence until details of the width, alignment, gradient and type of construction proposed for the roads, footways and accesses, including all relevant horizontal cross sections and longitudinal sections showing the existing and proposed levels, together with details of street lighting and the method of disposing of surface water from highways, and details of a programme for the making up of roads and footways for that part of the site have been submitted to and approved by the Local Planning Authority in writing before development in any phase commences. The development shall be completed in accordance with the details so approved.
9. No dwelling shall be occupied in any phase until all proposed vehicular accesses, driveways, parking and turning areas serving that dwelling in that phase have been constructed in accordance with details that have been submitted to and approved in writing by the Local Planning Authority.
10. No dwelling shall be occupied until the approved cycle parking serving that dwelling has been provided on site. The cycle parking shall be retained thereafter for its intended purpose.
11. No development shall take place in any phase until details of how it is intended to relocate any spoil or arisings caused by the development of that part of the site, either on or off site, have been submitted to and approved in writing by the Local Planning Authority. The works shall take place in accordance with the approved details.
12. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment & Drainage Statement (FRA) June 2016, 5463/FRA&DS Issue 01, produced by Stuart Michael Associates Limited and the following mitigation measures detailed within these documents:
 - a) No residential development will be located within Flood Zones 2 or 3.
 - b) There will be no net loss of floodplain storage within the SANG/Country Park.

The mitigation measure(s) in relation to each phase shall be fully implemented prior to occupation of that phase and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

13. Development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts 1-4 of this condition have been complied with. If unexpected contamination is found after development has begun, development must be halted on that

part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until part 4 has been complied with in relation to that contamination.

1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The developer shall submit the written report to the Local Planning Authority for approval prior to the works being undertaken and works shall not commence until approval has been received. The report of the findings must include:

a survey of the extent, scale and nature of contamination;

an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments;

an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

2. Submission of Remediation Scheme.

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared. The developer shall submit the detailed remediation scheme in writing to the Local Planning Authority for approval prior to the works being undertaken and works shall not commence until approval has been received. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

3. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

4. Reporting of Unexpected Contamination.

In the event that contamination is found at any time when carrying out the approved development that was not previously identified the developer shall undertake an investigation and risk assessment in accordance with the requirements of part 1. Where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of part 2, which the developer shall submit in writing to the Local Planning Authority for approval and works shall not continue until approval has been received.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which shall be submitted to and approved in writing by the Local Planning Authority in accordance with part 3 of this condition.

14. The development hereby approved shall be carried out for each phase in accordance with the methodology and mitigation measures in relation to that phase detailed in Chapter 9 (Ecology and Nature Conservation) of the submitted Environmental Statement (June 2016).
15. The Suitable Alternative Natural Greenspace (SANG) which shall serve the development hereby permitted will be made available for public use prior to the first occupation of the residential development hereby permitted and shall be maintained thereafter in accordance with the approved Management Plan.
16. Prior to the commencement of development in any phase details of the means of protection, including method statements where appropriate, for all trees, hedges, hedgerows and shrubs in that phase, unless indicated as being removed, shall be submitted to, and approved in writing by the Local Planning Authority. The trees, hedges, hedgerows and shrubs shall be retained and protected in accordance with the approved details for the duration of works on the site and retained for at least five years following occupation of the approved development. Any such vegetation immediately adjoining the site shall be protected on the site in a similar manner for the duration of works on the site. Any vegetation within the site which is removed without the Local Planning Authority's consent, or which dies or becomes, in the Authority's opinion, seriously damaged or otherwise defective during such period shall be replaced and/or shall receive remedial action as required by the Local Planning Authority. Such works shall be implemented as soon as is reasonably practicable and, in any case, replacement planting shall be implemented by not later than the end of the following planting season, with others of the same size, species, numbers and positions unless the Local Planning Authority gives consent in writing to any variation.
17. No works shall take place on land to which reserved matters relate in any phase until the applicant has secured the implementation of a programme of archaeological assessment in accordance with a Written Scheme of Investigation that has been submitted to and approved by the Local Planning Authority for that part of the site. As set out in paragraph 11.9.2 of Chapter 11 of the submitted Environmental Statement, the first phase of evaluation should consist of geophysical survey(s), followed by trial

trench investigations. The works shall thereafter take place in accordance with the approved details.

18. Following completion of archaeological fieldwork a report shall be prepared in accordance with an approved programme including where appropriate post-excavation assessment, specialist analysis and reports, publications and public engagement. The report shall be submitted in writing to the Local Planning Authority.



Appeal Decision

Inquiry opened on 10 March 2020

Site visits made on 9 (unaccompanied) and 10 (accompanied) March 2020

by Jonathan Manning BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25th August 2020

Appeal Ref: APP/X0360/W/19/3235572

Land East of Finchampstead Road, Wokingham, RG40 3JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Limited against the decision of Wokingham Borough Council.
 - The application ref: 190286, dated 31 January 2019, was refused by notice dated 25 April 2019.
 - The development proposed is up to 216 dwellings (including 40% affordable housing), landscaping, public open space, playing field and equipped play areas, surface water flood mitigation and attenuation, vehicular access from Finchampstead Road, pedestrian access from Luckley Road and associated ancillary works.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. It came to my attention before the Inquiry was due to open on 11 December 2019 that there was disagreement between the main parties over the proposed emergency access arrangements for the site. Having regard to the views of the main parties on this matter and the documentation supporting the proposal, I found that whilst I was content that the proposed emergency access arrangements through the neighbouring Luckley House School was always intended by the appellant, this was somewhat unclear in the planning application documentation. This had led to confusion and a misunderstanding of the proposed arrangements by the Council. I considered that this may also have been the case for other interested parties.
3. Given the circumstances, I considered that the most appropriate route forward, was to allow the appellant to undertake additional consultation akin to the original planning application. I am content that this was undertaken appropriately, and I have had regard to all of the comments provided by interested parties to the additional consultation and therefore no prejudice has been caused. The additional consultation resulted in the adjournment of the start of the Inquiry from 11 December 2019 to 10 March 2020.
4. The Inquiry formally opened on 10 March 2020 sitting for four of the scheduled seven days. On the morning of Tuesday 17 March, shortly before the Inquiry was due to resume, it was necessary to adjourn the Inquiry due to government advice, given on the evening of Monday 16 March 2020, setting

out that large events should not take place due to the Covid-19 pandemic. Consequently, it was agreed with the main parties that, as the accompanied site visit had already taken place on 10 March 2020 and the Inquiry had heard from all interested parties who had informed me that they wished to speak, a change of procedure to an enhanced written representation process would be appropriate to conclude the case.

5. The enhanced written process involved the main parties providing an additional written statement addressing matters that had arisen during the first four days of the Inquiry. Interested parties were provided with the opportunity to comment upon these and have therefore not been prejudiced. Further, I provided a list of written questions to the main parties, based on the outstanding subjects not already covered at the Inquiry and the additional written statements provided by the main parties. The Inquiry was closed in writing on 23 July 2020 following the receipt of written closing submissions and an agreed and executed Section 106 Agreement.
6. For the avoidance of any doubt, I have had regard to all comments provided during the Council's determination of the planning application, the appeal consultation, the additional appeal consultation associated with the emergency access arrangements and those provided to the enhanced written representation procedure following the adjournment of the Inquiry due to the Covid-19 pandemic.
7. The application has been made in outline, with full details in relation to access. Layout, scale, appearance and landscaping are to be considered at a later date, as reserved matters.
8. The additional consultation on the emergency access arrangements resulted in some revisions to the plans. As these were consulted upon, I am not of the view that any party has been prejudiced through their acceptance.
9. Further, at the same time some minor amendments were proposed by the appellant to the main site access through proposed drawing 19-286-009 Rev A. The Council did not raise any concerns with regard to this plan and I considered that it did not materially alter the scheme to an extent that would prejudice interested parties in terms of requiring additional consultation. At this time some further landscape plans were also provided, however, as landscape is a reserved matter, I have treated these as indicative. Nonetheless, interested parties were given the opportunity to consider these plans at the Inquiry.
10. In support of the appellant's proof of evidence on arboricultural matters some additional indicative tree retention plans were also included to provide clarity, although I have also treated these as indicative. For the avoidance of doubt, I have determined the appeal based on the following plans, as discussed at the opening of the Inquiry:
 - 6221-L-04 Rev D – Location Plan
 - 19-286-009 Rev A – Proposed Development Access on Finchampstead Road
 - 19-286-002 Rev D – Proposed Footway/Cycleway/Emergency Access to Luckley Road (Sheet 1)
 - 19-286-003 Rev E - Proposed Footway/Cycleway/Emergency Access to Luckley Road (Sheet 2)

11. I have also had regard to the following indicative plans:
- 6221-L-02 Rev K - Development Framework Plan
 - 6221-L-08 Rev A - Existing Situation Access Proposals (Vegetation)
 - 6221-L-09 Rev B - Proposed Landscaping Scheme Access Proposals
 - 6221-A-08 Rev D - Tree Retention Plan Main Access (November 2019)
 - 6221-A-09 Rev K - Tree Retention Plan Emergency Access (February 2020)
 - 6221-A-10 Rev K - Tree Retention Plan Emergency Access (February 2020)
 - 6221-L-10 - Proposed Tree Planting for Access Proposals
12. On 21 July 2020, the appellant provided a copy of a Secretary of State decision letter granting permission for appeal Ref APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529 at Land off Adlem Road/Broad Lane, Stapeley, Nantwich and Land off Peter De Stapeleigh Way, Stapeley, Nantwich respectively. I have added the decision letter to the Inquiry Documents list and allowed the Council the opportunity to comment and I have taken their response and the final comments from the appellant into account in reaching my decision.
13. I have received copies of an agreed and executed Section 106 Agreement (S106) dated 16 July 2020. I allowed this to be signed in counterpart due to difficulties in getting signatures, due to the Covid-19 pandemic, which constitute exceptional circumstances, in accordance with Paragraph N.5.5 of the Planning Appeals - Procedural Guide (July 2020). I am satisfied that certified copies of all the individually signed documents have been provided and therefore the S106 has been entered into by all relevant parties.
14. The S106 makes provision for: affordable housing; Thames Basin Heaths Special Protection Area (SPA) mitigation contribution; a bus service contribution; an employment skills plan contribution; on-site open space and play area along with their management; the layout, management and transfer of the separately permitted Suitable Alternative Natural Greenspace (SANG); and covenants associated with the proposed emergency access.
15. I am satisfied that the obligations meet the three tests set out in Paragraph 56 of the National Planning Policy Framework (the Framework) for planning obligations, which reflect those set out in Regulation 122 of the Community Infrastructure Levy (CIL) (2010). As a result, I have taken the S106 into account. I therefore consider that reasons for refusal 6, 7 and 8 that relate to securing affordable housing, securing an employment skills plan and providing appropriate mitigation for any potential harm to the Thames Basin Heaths SPA, have been overcome and I have not considered these matters any further in my decision.

Main Issues

16. As a result of the evidence before me and matters set out above, I consider that the main issues of the appeal are:
- whether the most important policies for determining the application are out-of-date;
 - the effect of the proposed development on the character and appearance of the area;
 - whether oak trees T1, T2, T7, T11 and T15 should be classed as veterans;

- the effect of the proposal on highway and pedestrian safety;
- whether the scheme would provide for a realistic choice in sustainable transport modes;
- whether the Council can demonstrate a five-year supply of housing land; and
- the weight to be afforded to the benefits of the proposal in the planning balance.

Reasons

Planning policy and its context

17. The parties agree that the development plan consists of: the Wokingham Borough Core Strategy Development Plan Document, 2010 (the CS); the Managing Development Delivery Local Plan, 2014 (the MDD LP); and Saved Policy NMR6 of the South East Plan, 2009 that relates to the Thames Basin Heaths SPA. Whilst there is an emerging Local Plan, this is at a relatively early stage of preparation and therefore can only be afforded little weight.

Most important policies

18. Paragraph 11 d) of the Framework sets out that for decision taking where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless: i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
19. The Framework does not provide a definition of what constitutes 'most important'. However, the wording makes clear that it is the policies most important to determining the application rather than the appeal that needs to be considered. Further, the word important rather than relevant is also significant. Relevant caselaw has established that the decision maker must consider whether the basket of most important policies as a whole is out-of-date.
20. The appellant and the Council are not in agreement over the extent of the most important policies. Both parties agree that Policies CP9 and CP11 of the CS and Policies CC01 and CC02 of the MDD LP are most important. The appellant also considers Policy CP17 to be most important. In addition, the Council consider that: Policies CP1, CP3, CP5, CP7 and CP8 of the CS; Policies CC03, TB05, TB08, TB21 and TB23 of the MDD LP; and Saved Policy NRM6 of the South East Plan are most important.
21. The difference between the parties is largely as a result of the appellant's view that a policy should only be considered most important if there is demonstrable conflict with that policy. However, to my mind, the most important policies for determining a planning application will depend on a number of factors, including: the nature of the scheme itself; its location; and the site's characteristics and constraints.

22. The appellant has set out that their view is supported by the manner in which the Nine Mile Ride Inspector¹ approached this matter, particularly coming to a view whether the basket of policies, as a whole, was out-of-date at the end of the decision in the planning balance. However, firstly, the Inspector in that case had already identified what the most important policies were at the start of the decision and secondly, whether or not the scheme conflicts with a policy does not affect whether it is consistent or otherwise with the Framework. Consequently, I am not persuaded by this suggestion.
23. Turning to the most important policies for this case, the scheme is located outside of any settlement boundary, so policies that relate to this matter are clearly important (Policies CP9, CP11 and CC02), as agreed by the parties. However, it is clear from these policies that there are several underlying reasons for seeking to limit development to within settlement boundaries. These include: the protection of the countryside; protecting the separate identities of settlements; and steering development to the most sustainable locations where there are accessible facilities and services. Consequently, I consider policies that address these matters are also most important to the determination of the application (CP1, CP3 and CP6 of the CS and Policies CC03 and TB21 of the MDD LP).
24. The appeal site is located within proximity to the Thames Basin Heaths SPA. Given the clear requirement for the decision maker to be able to conclude that there would be no significant adverse impacts on a site of European importance, this is clearly an important consideration for the scheme. Therefore, I consider that Policy CP8 of the CS and Policy NRM6 of the South East Plan are most important. In addition, the appeal site accommodates an area of Priority Habitat and would result in the removal of a significant level of trees and other vegetation. Consequently, I consider Policies CP7 of the CS and Policy TB23 of the MDD, which both relate to biodiversity, are also most important policies.
25. Finally, the proposal is for a considerable number of residential dwellings. Consequently, I agree with the Council that Policies CP5 of the CS (Affordable Housing) and Policies TB05 (Housing Mix) and TB08 (Open Space) of the MDD LP are also most important policies.
26. There is dispute whether Policy CP17 of the CS should be considered as most important. Policy CP17 sets out the housing requirement, which both parties agree is out-of-date, as it is based on the now revoked South East Plan. I am not of the view that this is a development control/management policy that plays a notable role in determining planning applications. Therefore, despite its obvious relevance to this scheme, I consider that it is not one of the most important policies. The Inspector's in the Nine Mile Ride and Hurst² appeal decisions both share my view, and this adds weight to my findings.
27. Having regard to all of the above, I consider that the most important policies to the determination of the application are: Policies CP1, CP3, CP5, CP6, CP7, CP8, CP9 and CP11 of the CS; Policies CC01, CC02, CC03, TB05, TB08, TB21 and TB23 of the MDD LP and Policy NRM6 of the South East Plan.

¹ Appeal Decision APP/X0360/W/19/3238048.

² Appeal Decision APP/X0360/W/18/3194044.

Whether the most important policies are out-of-date

28. Dealing firstly with Policies CP9 and CP11 of the CS and Policy CC02 of the MDD LP, I agree with the Nine Mile Ride Inspector that although not being one of the most important policies, Policy CP17 of the CS, nonetheless, has a bearing on whether these other policies should be considered out-of-date. As set out above, the housing requirement in Policy CP17 reflects that of the revoked South East Plan, which in itself makes it out-of-date. Further, given that the CS was adopted over 5 years ago, the Framework advises that the standard methodology for calculating Local Housing Need (LHN) should be used. This results in a need for some 844 dwellings per annum, which is markedly over the housing requirement of 723 dwellings per annum identified in Policy CP17.
29. I have found later in my decision that the Council can demonstrate a five-year housing land supply. However, despite the views of the Council, it does rely on supply that falls outside of the currently set settlement boundaries. It is therefore clear to me that delivering a sufficient supply of housing cannot be done, whilst also meeting the requirements set out in Policies CP9, CP11 of the CS and CC02 of the MDD LP. They are therefore out-of-date.
30. Policy CP5 of the CS sets out that residential proposals of at least 5 dwellings should provide 50% affordable housing where viable. This is not consistent with Paragraph 63 of the Framework and therefore is out-of-date.
31. Policy CC01 of the MDD LP sets out the presumption in favour of sustainable development. However, this does not reflect the wording in the latest version of the Framework. As a result, it is not consistent with the Framework and is out-of-date.
32. I have also had regard to whether Policies CP1, CP3, CP6, CP7 and CP8 of the CS; Policies CC03, TB05, TB08, TB21 and TB23 of the MDD LP and Policy NRM6 of the South East Plan are consistent with the Framework. Whilst there may be some minor inconsistencies, in their wording, including Policy CP3 in terms of ecology, on balance, when these policies are considered in their entirety, I am content that they are consistent with the Framework and not out-of-date.

Overall conclusion

33. I have found that 5 of the 16 most important policies to the application are out-of-date. It is therefore clear that the majority of most important policies are not out-of-date. As a result of this, I conclude that the basket of policies, as a whole, is not out-of-date.

Character and appearance

34. The appeal site is located on the southern edge of Wokingham and is approximately 15 hectares in size. There is adjoining housing to the west and school playing fields, including an area of woodland, and residential dwellings to the north. There is woodland on the southern boundary that would form part of the separately permitted SANG, with a golf course beyond. Finally, to the east there is an open area of land that would also form part of the SANG, with a railway line and open countryside beyond. A long narrow parcel of land also extends north from the main bulk of the appeal site that would form the emergency access and a foot/cycle path.

35. The appeal site itself is largely open in nature, with a mature hedgerow running through its centre. Despite this, it has enclosing boundaries due to existing development and mature vegetation, including areas of woodland. Once within the site, I observed that this creates a fairly contained character.
36. The appeal site is located adjacent to the settlement boundary of Wokingham and therefore, in policy terms, it is within the open countryside. Policies CP9, CP11 of the CS and Policy CC02 of MDD LP seek to restrict development outside settlement boundaries other than in a few limited circumstances. The scheme does not fall within any of these.

Landscape

37. The appeal site has no national, regional or local landscape designations and it is common ground that it is not within a valued landscape. The 2019 Landscape Character Assessment (LCA) identifies the appeal site as lying within Character Area N1: Holme Green Pastoral Sandy Lowland. This describes the overall landscape condition as of moderate value.
38. I consider that this is the case for the appeal site. Whilst the appeal site has an open and tranquil character being set back from the busy Finchampstead Road behind residential dwellings, there is none the less an urban influence within the site, with the long run of residential properties on the western boundary and visible built development to the north from properties in Luckley Wood and Luckley House School. It is, in my view, a clear transition point between the urban edge of Wokingham and open countryside to the south and east. The site therefore forms part of the rural setting of Wokingham.
39. The scheme would result in the removal of a significant number of protected trees, largely associated with providing the main vehicular access and the emergency access to the site, some of which represent good quality specimens that contribute positively to the character of the area. Whilst new planting is proposed by the appellant, which can be secured through reserved matters, in many cases it will take a considerable period of time to replace those that would be lost in terms of their amenity value.
40. The emergency access and foot/cycle path would run through an area of woodland. This would necessitate the loss of protected trees. However, in the large, the canopy of the woodland would remain and, in my view, the scheme would not materially alter the external appearance of the woodland.
41. The LCA sets out that the rural setting of Wokingham should be conserved. The development of the appeal site for a substantial residential development would cause harm to the rural setting of Wokingham at this point. However, the contained nature of the appeal site in the wider landscape should not be ignored. I consider that this softens the impact of the proposal on the wider landscape.

Visual impacts

42. There are no Public Rights of Way either within the appeal site or in close proximity to it. The proposal would only be visible from residential properties that are adjacent to the appeal site on Finchampstead Road, Hart Dyke Close and Luckley Wood. There will undoubtedly be visual impacts on these receptors who's views of the open and rural appeal site with further

countryside beyond would be replaced by a significant level of built development.

43. The properties on Finchampstead Road that border the site all have very long gardens with some having mature boundary vegetation that screen views. However, I observed on my site visit that some do have a more open relationship with the appeal site and views are freely available. Due to the depth of the gardens, I consider that the visual impact on these properties would be moderate adverse in significance.
44. Turning to the properties on Hart Dyke Close, there are numerous properties who have close range views over the appeal site, with some having fairly open boundaries and clear views. On this basis, I consider that the visual impact on these properties would be major adverse in significance.
45. In terms of the properties within Luckley Wood, the indicative masterplan shows an area of open space adjoining these properties. However, views across the built development of the proposal would be plain to see and therefore I consider the impact would be moderate to major adverse in significance.
46. The appellant has suggested that a landscaping scheme that would be secured at reserved matters could lessen the impact on residential receptors. However, having regard to the indicative development framework, built development is shown up to the boundaries with numerous properties along Finchampstead Road and Hart Dyke Close. The scope for additional planting appears to therefore be relatively limited and even taking into account that the gardens of the new dwellings would back onto those of the existing dwellings, the identified harm would not be reduced by any significant degree.
47. There would be some adverse visual impacts from the proposed main vehicular access on residential receptors on the western side of Finchampstead Road and the users of the road itself. The main proposed access, with its associated footways would be significantly wider than the existing access to the golf course that it would replace. This along with its lighting and loss of mature oak trees, would create a much more urban environment at this location. Despite the proposed planting along Finchampstead Road this would, in my view, result in visual adverse impacts of moderate significance. The impact of the proposed main access on the Green Route is considered further below.
48. The route of the emergency access and foot/cycle way would run adjacent to the grounds of Luckley House School. I observed on my site visit that the emergency access would be visible from within the school grounds. The scheme would introduce a significant urban feature that would be between 2 metres to 3.8 metres wide and would span a considerable distance. Along with the associated fencing and lighting this would change the internal character of the woodland considerably and would result in visual harm of moderate to major significance to the users of the school. The emergency footpath would not be largely visible from the properties that would back onto it along Luckley Wood due to the trees that would remain and the existing boundary treatments. Therefore, any visual impacts on these properties would be minor.

49. The appellant considers that any impacts on the users of the golf course would be minor in significance and I share this view, due to the considerable amount of vegetation that separates the two.
50. The proposal would also be visible to future users of the area of permitted SANG that would be delivered alongside the proposal to provide mitigation for potential impacts on the Thames Basin Heaths SPA. Whilst there would be some visual impacts, I am mindful that the SANG is not an existing receptor and delivery of the SANG does largely depend on this proposal being delivered. Further, the Council has not suggested that any visual impacts would result in the SANG being unable to fulfil its function in diverting recreational pressure away from the Thames Basin Heaths SPA. On this basis, I consider that any visual harm to the future occupants of the SANG would be minor.

Impact of the proposed main access on the Green Route

51. Finchampstead Road is identified as a Green Route in the MDD LP. These are defined as '*Roads into settlements that are lined with trees and other vegetation which make a significant contribution to character and environment of the area and contribute to the Borough's network of wildlife corridors*'. Policy CC03 of the MDD LP, amongst other things, sets out that proposals affecting such routes should protect and retain existing trees, hedges and landscape features.
52. It was evident from my site visit that, within the proximity of the appeal site, Finchampstead Road has a largely enclosed character with many large mature oak trees immediately adjacent to the road and its footpaths, whose canopies overhang the road creating a tunnel effect in numerous places.
53. When looking down the proposed main site access from Finchampstead Road, the proposed access would, at its closest part to Finchampstead Road, be 7.30 metres wide and flanked by a 3 metre footway/cycleway to the north and a 2 metre footway to the south. The proposed access would therefore be considerably wider than the existing access into the golf course that would be replaced. Further, it would include street lighting and this, along with its considerably greater width, would appear much more urban than the existing golf course entrance it would replace.
54. To ensure that suitable visibility splays and footpaths can be provided, three large oak trees (Ref T1, T2 and T7) would be removed, all Category A specimens, along with a smaller oak (T8) (Category B) and a stretch of existing hedgerow each side of the proposed main site access. To mitigate this loss the appellant has put forward an indicative planting scheme (Drawing 6221-L-09 Rev B) that would include the provision of 8 semi mature oak trees of approximately 5 metres in height adjacent to Finchampstead Road. It is also proposed to plant a new hedgerow each side of the proposed access to replace that which would be lost.
55. Whilst the new planting is acknowledged, I consider that it will take a considerable period of time for the semi-mature oak trees to provide the same visual amenity (particularly in terms of their canopy coverage) than would be lost from the removal of the existing oak trees (T1, T2, T7 and T8). Further, to accommodate wider footpaths and visibility splays the replacement trees and hedgerows on Finchampstead Road would be set further back than the

majority of the existing trees within the proximity of the proposed site entrance. I consider that this would not achieve the same level of enclosure that currently exists. Whilst I am mindful that further oak trees are proposed along the first stretch of the access, these would be located further away from Finchampstead Road and would not, in my view, alleviate the concerns raised above.

56. The scheme would also likely remove a section of the existing deep ditch to accommodate the proposed 2 metre pavement around the proposed main site access. This is a notable feature of the Green Route on the eastern side of Finchampstead Road and would add to the harm identified above.
57. Despite my findings above, it must also be borne in mind that the proposal would affect only a relatively small section of the Green Route along Finchampstead Road.

Separation of settlements

58. The appeal site is located on the eastern side of Finchampstead Road. There is already a continuous line of development along the western side of Finchampstead Road that joins Wokingham and Finchampstead North. The proposal would not extend built development any further south than the existing built development on the eastern side of Finchampstead Road. Further, due to existing vegetation to the south of the appeal site and that located in the permitted SANG area, there would be no or very little intervisibility between the proposed development and Finchampstead North. Consequently, I consider that there will not be any impact on the separate identities of Wokingham and Finchampstead North.

Overall conclusion

59. The scheme would result in harm to the landscape, including the rural setting of Wokingham and would result in numerous visual impacts, some of which would be moderate and major adverse. There would also be harm caused to the Green Route along Finchampstead Road, due to the increased urban appearance of the proposed main access and the loss of several protected mature oak trees. This harm would, however, be largely localised to the area immediately surrounding the appeal site. Overall, I consider that there would be a moderate level of harm caused to the character and appearance of the area.
60. The scheme therefore conflicts with Policies CP1, CP3, CP9 and CP11 of the CS, Policies CC02, CC03 and TB21 of the MDD LP and would not recognise the intrinsic character and beauty of the countryside as required by Paragraph 170 b) of the Framework.

Trees

61. I have taken into account the effect of tree loss within my findings above, in terms of the effect this would have on the character and appearance of the area. However, there are several other matters associated with trees that are of relevance to the appeal. There is dispute between the parties whether several protected trees (referenced as T1, T2, T7, T11 and T15) that would be removed by the scheme are veteran oaks and therefore benefit from the protection of Paragraph 175 c) of the Framework.

62. As set out above, several oak trees (including T1, T2 and T7) would need to be removed to facilitate the provision of the main vehicular access. These trees are listed in the Wokingham District Veteran Tree Association records (WDVTA). I understand that as such, they are also automatically listed in the Woodland Trust's Ancient Tree Inventory. However, I consider that it must be borne in mind that the entries into the inventory for these trees were in 2008, which was before the most recent guidance on this issue, namely '*Ancient and other veteran trees: further guidance on management*' by Lonsdale, 2013. I agree with the appellant that this offers the most comprehensive publication available on the subject and was produced collaboratively with contributions from relevant experts and bodies.
63. In addition, I understand that entries into the WDVTA are largely undertaken by volunteers, who although may have received training, are not qualified arboriculturists. Notwithstanding all of this, I have considered the merits of each relevant tree based on the evidence that is before me and against the most recent and relevant guidance.
64. The Framework defines ancient or veteran trees as: '*A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value. All ancient trees are veteran trees. Not all veteran trees are old enough to be ancient, but are old relative to other trees of the same species. Very few trees of any species reach the ancient life-stage*'.
65. *Ancient and other veteran trees: further guidance on management* by Lonsdale, 2013 (Section 2.2), advises that when seeking to recognise veteran or ancient oak tree surveyors should look for:
- a girth that is very large for the species, allowing for the local growing conditions;
 - extensive decay or hollowing in exposed parts of the central wood;
 - a crown structure that, for the species concerned, is characteristic of the latter stages of life; and
 - a crown that has undergone retrenchment, i.e. it has become smaller (owing to dieback and breakage) since maturity.
66. It is also advised that other key attributes (the more a tree has, the stronger the indication that it is a veteran) are: major trunk cavities or progressive hollowing; naturally forming water pools; decay holes; physical damage to trunk; bark loss; large quantity of dead wood in the canopy; Sap runs; crevices in the bark, under branches or on the rootplate sheltered from direct rainfall; fungal fruiting bodies (e.g. from heart-rotting species); high number of interdependent wildlife species; epiphytic plants (if these are abundant or include rare species); an old look; and high aesthetic interest. Attributes that can also apply are: a pollard form or other form indicating previous management; cultural/historic value; and a prominent position in the landscape.
67. In relation to girth, there was particular discussion about Fig 1.3 of '*Ancient and other veteran trees: further guidance on management*' by Lonsdale, 2013 and how it should be interpreted. The appellant is of the view that an oak tree with a girth of 4.7 metres or more is likely to be a veteran based on this guidance. However, the WDVTA disagree and consider that Fig 1.3 should be

interpreted in way that a girth of 3.7 metres results in an oak tree being considered a veteran. I accept that there is some ambiguity in Fig 1.3. However, when the guidance is read as a whole, particularly Page 27, which sets out that oak trees with a girth of 4.7 metres or more are especially valuable with respect to conservation, as opposed to girths of 3.2 metres being potentially interesting, I am more persuaded by the appellant's view.

68. Whilst I understand that David Lonsdale has seen the note provided by the WDVTA, I have not seen clear evidence that David Lonsdale fully endorses WDVTA's view on the interpretation of Fig 1.3.
69. None of the oak trees in question have girth sizes over 4.7 metres. It was, however, agreed at the Inquiry that trees T1, T2, T7, T11 and T15 are of an age and size that make them 'locally notable' and therefore could be considered as veterans depending on the condition and features of the tree itself.
70. In terms of T1 and T7, based on my observations on the site visits, I accept the appellant's assessment that these show very little features of a veteran tree, other than the presence of ivy. In relation to T2, whilst there is a knot hole that could be suitable for a bat roost identified in the Ecology Appraisal, I observed that it displays little in the way of any other veteran tree features, other than accommodating ivy. On this basis, T1, T2 and T7 are not, in my view, veterans.
71. I observed that T11 did have some crown dieback and larger quantities of dead wood in the crown than T1, T2 and T7. Further, the Ecology Appraisal does record a large branch tear out and overlapping branch cavities, although these did not appear to be major. However, in my view, it does not strongly exhibit any of the other veteran features as identified above, other than the presence of ivy. Further, the appellant has noted that T11 is located immediately opposite T14 which is sited on the western side of the golf course access road and that T14 is a dead early mature oak. I accept the appellant's view that it is plausible that both T11 and T14 were damaged sometime in the past, possibly due to construction of or modification to the golf course access which has contributed to their premature decline. For these reasons, I am also not of the view that T11 is a veteran.
72. Turning finally to T15, this does accommodate two entrances at ground level forming small basal cavities. Nonetheless, these did not appear to be significant from my own observations and not of such significance to be considered as major trunk cavities or extensive hollowing, nor do the branch socket cavities or woodpecker holes. I did observe a notable amount of deadwood in the canopy, some light ivy and some delaminating bark on the main stem at the base. However, overall, given the above and the lack of other common veteran features, I am not of the view that T15 is a veteran.
73. It should also be noted that I am not of the view that T1, T2, T7, T11 or T15 possess cultural/historic value or sit within such a prominent location in the landscape that is of sufficient significance to alter my conclusions set out above.
74. There has been dispute whether the loss of oak trees T11 and T15 has already been established by the permission for the associated SANG. It is clear from the appeal decision that no reference to the loss of these trees was made and

consequently, there remains significant doubt. On this basis, I have taken into account their loss within this decision. However, I have not found that either T11 or T15 is a veteran and therefore even if I was wrong to do so, it would not materially alter the overall outcome of the appeal.

75. Turning to other related matters, there has been some dispute in relation to whether oak tree T3, which lies along Finchampstead Road adjacent to T2 could be retained. The appellant has provided additional drawings to show that engineering works to facilitate the main site access would only encroach into the Root Protection Area (RPA) of T3 to a very limited degree (in the region of 1% of the RPA). Consequently, even if T3 was to be considered a veteran, I am satisfied that T3 would not be unacceptably affected by the scheme.
76. The appellant is proposing to construct the emergency access with low impact methods. I am content that this would ensure the retained trees and their RPAs would not be adversely harmed by the proposal, despite the minor changes in levels along its route. Further, I am also suitably satisfied that fencing and lighting posts can be placed at locations that would have minimal effect on the retained trees and their RPAs.

Highway and pedestrian safety

Modelling

77. The application was supported by a Transport Assessment (the TA), dated January 2019. The TA utilises the Wokingham Strategic Transport Model 3 (WSTM3) to model the increased traffic from the development on the surrounding local highway network. However, WSTM3 was replaced in July 2018 by the Wokingham Strategic Transport Model 4 (WSTM4). This provided updated assumptions on growth and traffic flows. The Council confirmed at the roundtable discussion that this includes updated assumptions on the traffic flows from the Strategic Development Locations (SDLs), which are significant developments.
78. The appellant has set out that there was not enough time to re-run the TA based on WSTM4 before the Inquiry was due to commence. I consider that there was a considerable period of time from the refusal of the application to the commencement of the Inquiry on 10 March 2020. This included a significant adjournment for the additional consultation set out above. It is therefore clear that the evidence in support of this appeal is not the most up-to-date available and this brings with it, significant doubts in relation to whether the impacts of the proposal on the local highway network have been appropriately assessed.
79. I acknowledge that the appellant has undertaken a 5% sensitivity test of the proposed mitigation at the Finchampstead Road / Sandhurst Road junction. However, I consider that there can be no guarantees that there would only be a 5% difference in traffic flows at the junctions between that modelled in WSTM3 and WSTM4. Further, this has only been done for one junction. The TA identifies on Page 31 that there are 3 junctions that operate above capacity, but the impact of the development is considered to be minimal. It is unclear what impact a 5% increase in traffic flows would have on these junctions and whether this might necessitate the need for junction mitigation.

80. The appellant has suggested that as a result of the Covid-19 pandemic there is a likelihood that more people will work from home and road congestion could decrease. However, at this stage, I consider that there is no firm evidence to suggest this will be the case.

Junction improvements

81. The TA proposes a junction improvement at the Finchampstead Road / Sandhurst Road junction, as set out in Appendix 9 of the TA. However, this is not supported by a Stage 1 Road Safety Audit (RSA) and therefore, I cannot be sure that the proposed mitigation would function safely or that a viable solution is available at this junction to mitigate the impacts of the development.
82. The appellant in setting out its case for the appeal, subsequently considered that mitigation is also required at another junction. This relates to the Finchampstead Road / Evendon's Lane junction. Whilst swept path analysis has been provided, a Stage 1 RSA has not and again, I cannot be sure that the proposed mitigation would function safely or that a viable solution is available at this junction to mitigate the impacts of the development.
83. It is clear that the impact of the proposal on the local highway network is an important one for local residents. Having regard to these concerns, at the roundtable discussion, I raised a matter with regard to the findings of the TA for the junction at Finchampstead Road/Molly Millars Lane. On the Finchampstead Road South arm the modelling on Page 26 of the TA shows an increase in queues of 28 vehicles (increase to 291 from 263) in the am peak as a result of the scheme. Further, for the Finchampstead Road North arm of the junction there would be an increase in queues of 24 vehicles (increase to 109 from 85) in the pm peak as a result of the scheme.
84. Given the high level of existing congestion at this junction, I consider these impacts to be material and not minimal as suggested in the TA. As a result, I am unable to conclude that without mitigation there would not be unacceptable impacts on this junction. The appellant noted that the modelling can be come unstable when queue lengths are so large. Whilst this is noted, it is nonetheless the best data that is before the Inquiry.

Access arrangements

85. The access arrangements for the scheme include a main vehicular access from Finchampstead Road for future residents of the proposed dwellings, along with users of the SANG and the golf course. Further, an emergency access would be provided from the northern part of the appeal site into the car park of the adjacent Luckley House School. This would also be used as a foot/cycle path, which would then also extend up to Luckley Road.
86. Living Streets - Highways Guide for Developer's in Wokingham, 2019 at Table A1 (Page 48) sets out a street hierarchy. I consider the proposed loop arrangement (that would connect to the emergency access) within the appeal site would constitute a tertiary street. This is defined as access to dwellings with no through movements. The maximum number of houses set out in the Table A1 is 200 (or 100 max cul de sac for emergency access). Given a separate emergency access is provided, the guide suggests that a maximum

figure of 200 dwellings would be acceptable in the arrangement proposed by this scheme.

87. Whilst the proposal would be over this at 216 dwellings, I accept the appellant's view that the document is a guide and 16 additional units is unlikely to result in any harm to highway safety. This is particularly the case as the TA shows the main access junction would operate well within capacity with an RFC value of 0.58 and very minimal queues. It is also still likely to do so, even if there was a material increase in traffic flows as a result of the more recent modelling in WSTM4. Consequently, I consider the principle of the access arrangements of the scheme to be acceptable.

Main vehicular access

88. As part of this appeal the appellant has provided a revised drawing that amends the proposed main vehicular access junction. Namely, it narrows each lane of traffic and the right-hand turn lane to 3 metres from the initial 3.5 metres. This was done to try and avoid the removal or any adverse impacts on oak tree T3. This raised concerns with regard to traffic being pushed closer to the footpaths and bus stops along the road. Whilst I accept that vehicles would travel marginally closer to the edges of the road, I am not of the view that this would result in highway or pedestrian safety concerns. The appellant has also provided evidence that shows the changes would not affect the findings of the Stage 1 RSA that was conducted on the original junction layout.
89. Interested parties have raised concerns with regard to the adequacy of the visibility splays provided at the main vehicular access. At the roundtable discussion, it was raised that the speed survey data was missing from the TA. This was subsequently provided. Whilst there was some disagreement over the exact distance that should be provided, based on the evidence before me and having regard to Drawing 19-286-009 Rev A, I am content that appropriate visibility splays can be provided at the junction, without unacceptable impacts on oak tree T3 or the need to remove any other significant vegetation. This could have been secured by a planning condition if I had been minded to allow the appeal.
90. The appellant is of the view that the existing golf course access is a simple priority junction and that, as a result of the scheme, right turning vehicles will be provided with a facility to execute that manoeuvre more safely and this results in an enhancement to highway safety. However, the main vehicular access would need to serve the considerable number of future residents of the scheme, which the current golf course entrance does not. I am therefore not of the view that this represents enhancement and is not a benefit of the scheme.

Emergency access and foot/cycle way

91. The adequacy of the emergency access has received much concern, both from the Council and interested parties. The emergency access would for the most part be 3.8 metres in width, in accordance with Manual for Streets and Living Streets - Highways Guide for Developer's in Wokingham, 2019. However, there would be a section that would be 3 metres in width that would conflict with the guidance in the above documents. The appellant has provided swept path analysis that illustrates that an emergency vehicle (fire engine) would

still be able to use the 3 metre section. Therefore, whilst I accept that the 3 metre section would not meet the above guidance, this would not in my view, result in adverse highway safety impacts.

92. Given the relatively straight alignment of the emergency access route, I am satisfied that there would be sufficient visibility for any pedestrians or cyclists using the emergency access route and an emergency vehicle to see each other, avoiding safety issues. Further, it is clear from the emergency access drawings that there would be sufficient room, in the majority of places, between the hardstanding and fence/bollards for pedestrians and cyclists to step a side to let an emergency vehicle through if necessary.
93. The emergency access would also run through the neighbouring Luckley House School car park. During the accompanied site visit, we visited the school at pick-up, one of the busiest times of the day. There was nothing to suggest that inappropriate parking was commonplace and would lead to conflicts with emergency vehicles trying to access the appeal site. Further, the school has entered into a S106 Agreement, which binds them to maintain a clear path of access, free from development and obstruction for emergency vehicles at all times, along the length of the route. This also includes providing means of unlocking the gates along this route. Whilst there could be three locked gates when the school is closed, with suitable means to open these, I am not of the view that this would delay emergency vehicles to an unacceptable degree.
94. I acknowledge the concerns of potential conflicts between pupils at the school and emergency vehicles. However, it must be borne in mind that the use of the emergency access would be dependent on the main site access being obstructed. Therefore, on the vast amount of occasions emergency vehicles would not need to use the emergency route. Consequently, the emergency access route is only likely to be used on incredibly rare occasions. Further, for there to be the potential for conflict, an emergency would need to occur during times where pupils would be within the car park, which would be drop-off or pick-up and to a lesser degree, lunchtime. The chances of this occurring are remote. Even if this was to occur, I observed that pick-up time was well organised and there were not significant numbers of children along the route that would be taken by an emergency vehicle through the car park. Further, emergency operatives are trained to recognise hazards. Given all of this and my observations on the accompanied site visit, I am not of the view that there would be an unacceptable risk to pedestrian safety within the school car park.
95. Interested parties have raised concerns with regard to local people buying master keys that emergency departments use on locked gates and therefore being able to access the emergency route into the school. However, I consider that this can be suitably overcome should any concerns arise, through the changing of locks or through other arrangements. Further, I do not consider that the arrangements would lead to safeguarding issues for the children and access can be gained to the school car park during the day from the main school entrances in any event.
96. Given all of the above, I am satisfied that in terms of allowing access for emergency vehicles to the appeal site, the proposed emergency access is acceptable.

97. There is also a 2-metre wide section of foot/cycle path that leads up to Luckley Road. This would only be used by pedestrians and cyclists. I accept the Council's view that this width is inadequate for cyclists and this was picked up in the Stage 1 RSA and has not been disputed by the appellant. The solution proposed is to have signage requiring cyclists to dismount for the 2-metre section of the foot/cycle path. However, this section of the route spans a considerable distance (in the region of 80 metres) and I have significant doubts whether all cyclists would regularly dismount and given that there would be insufficient room to safely pass one another, this could result in conflicts.
98. To add to my concern, there is a section of the path close to Luckley Road that traverses through several large trees and this results in a small 'chicane' in the foot/cycle path. This would affect forward visibility for both cyclists (who have not dismounted) and pedestrians either side of this section and could result in the potential for accidents. For these reasons, I consider that there could be feasible safety conflicts between pedestrians and cyclists.

Overall conclusion

99. Based on the evidence in the TA and that in support of the appeal, I have found that it has not been suitably demonstrated that the scheme will have no significant and severe adverse impacts on the local highway network. Further, whilst I have found that the emergency access and its arrangements would provide suitable access for emergency vehicles, the 2-metre section of the route could, in my view, feasibly lead to safety conflicts between pedestrians and cyclists.
100. The scheme therefore runs contrary to Policies CP1, CP3 and CP6 of the CS. The proposal also conflicts with Paragraphs 109 and 110 c) of the Framework. The Council's reason for refusal on this matter refers to Policy CC04 of the MDD LP, however, this appears to be of limited relevance to this matter.

Whether the scheme would provide for a realistic choice in sustainable transport modes

101. The CS sets out that the Borough has one of the highest rates of car ownership in England. There are several policies in the CS that relate to this matter. Policy CP1 sets out that development should demonstrate how it would reduce the need to travel, particularly by car. Policy CP3 notes that proposals should be accessible, safe, secure and adaptable. Finally, Policy CP6 requires development to be located where there are, or will be, available modal choices to minimise the distance people need to travel. The Framework at Section 9 also seeks to promote sustainable transport and opportunities to promote walking, cycling and public transport. Of relevance is the Framework's distinction between opportunities in urban and rural areas. Whilst, the appeal site is in policy terms in the open countryside, it is not, in my view, in an isolated countryside setting. I consider that this is important when considering what opportunities are available to maximise sustainable transport options.

Walking

102. The evidence of the parties includes various references to applicable guidance on acceptable walking distances. Manual for Streets notes that walking offers

the greatest potential to replace short car journeys, particularly those under 2 km. In addition, it suggests that walkable neighbourhoods are generally those where there are a range of facilities within a 10-minute walk from home, which equates to a distance of around 800 metres (although this is not an upper limit). I am mindful that similar guidance is provided in the National Design Guide.

103. The Institute of Highways & Transportation Guidelines for Providing Journeys on Foot (IHTC) takes the view that an acceptable walking distance is 800 metres with a preferred maximum of 1.2 km. Living Streets - Highways Guide for Developer's in Wokingham, 2019 also provides relevant guidance and includes Table 1 on Page 10, which sets out the distances for various local services and facilities by which the Council will consider whether there is high, medium or low accessibility. This in broad terms follows the IHTC guidance.
104. I consider that it is important to recognise that such distances are advisory, and I accept that there is likely to be residential dwellings in the surrounding area that are located further away from some services and facilities than the guidance suggests. Of particular relevance, is the IHTC guidance, which sets out that acceptability in terms of travel distance will depend on a range of considerations, including: the quality of the experience, the safety of the route; the mobility and fitness of the individual; the purpose of the journey; and the convenience of other options. I also accept the point raised by the appellant that a longer walk to a destination where the range of facilities is extensive could be preferable to a shorter walk to a small local shop with a limited offer.
105. Turning to firstly the distances to local services and facilities, it was agreed between the parties at the roundtable discussion that Evendon Primary School is located 1.1 km from the centre of the appeal site and the Two Poplars Public House is located 1 km away.
106. The Wokingham Family Golf Course is located some 550 metres from the appeal site and the Wokingham Equestrian Centre is within approximately 1 km of the appeal site. However, I consider that these are likely to appeal to a limited number of the future residents of the site and I am not convinced that many of the future residents of the appeal site would walk to the golf course carrying or pushing their golf clubs.
107. Luckley House School is located approximately 550 metres away. Although this is a private school. There is also a theatre within the school grounds that is open to the public, although I would not class this as a day to day facility.
108. Given the above, there are limited local services and facilities that future residents would rely on, on a day to day basis available within 1.2 km of the appeal site. In addition, the nearest secondary schools are both over 3 km away.
109. The closest shop is a Tesco superstore, which was agreed to be located 1.3 km from the centre of the appeal site. I accept that this offers an attractive destination, with a large selection of goods, along with a range of other facilities within it, including a pharmacy, mobile shop, travel money, Timpson, Costa, Krispy Kreme, Photoprint (plus wifi, cash machine and toilet facilities). I do not therefore consider that the distance itself would be a deterrent to walking to this location for future residents to fulfil their day to day

convenience needs. In addition, close to the Tesco superstore is the Molly Millar Lane Industrial/Employment area, which is also approximately 1.3 km from the appeal site at its closest point. Whilst I accept that this may offer future residents potential employment opportunities, these are not likely to be particularly significant.

110. Notwithstanding the above, the nature of the walking route must also be considered. As previously set out, the scheme would provide an emergency access to the north of the site which would also be used as a foot/cycle path linking to Luckley Road. This would be through an area of existing woodland. Whilst the route would be lit, it would be relatively narrow, particularly the 2-metre section closest to Luckley Road. There would also be bollards or some sort of fencing each side of the path that, along with the canopy of trees would, in my view, create a 'hemmed in' and claustrophobic atmosphere for large parts of the route.
111. There would not be any natural surveillance of substance, due to the woodland and existing boundary treatments of the properties that back onto it. It is also important to note that the foot/cycle path is of considerable length. Numerous local residents have set out that they would not feel safe or would have a perception of feeling unsafe using the proposed path and I accept and share this concern, particularly during the hours of darkness, which in the winter includes times where future residents could be going to or returning from work. Thames Valley Police also raised concerns with regard to the safety of the path.
112. Further, I have found above that the 2-metre width of the foot/cycleway section could feasibly lead to conflicts between pedestrians and cyclists, I consider that this is a further matter that could deter its use.
113. Given all of the above, I consider that the proposed emergency access and foot/cycle path would not be an attractive environment that would encourage future residents to walk to local services and facilities.
114. The alternative route to access the local services and facilities would be to utilise the main vehicular access and walk along Finchampstead Road. The main access road into the site would have footpaths on each side and would be lit. However, it would also pass through a large area of woodland and there would be no natural surveillance. I do not consider it would be an attractive walking environment that would feel safe, again particularly during the hours of darkness. In addition, I observed that Finchampstead Road is a very busy road and is heavily trafficked. In places the footpath is narrow, with vehicles passing in close proximity. There is also only patchy lighting. It is not an attractive walking environment.
115. Consequently, I consider that neither route offers an attractive walking environment to the local services and facilities, including the local schools.
116. Given the distance to the train station (2.4 km) and the town centre, I am not of the view that walking is likely to be an attractive option, particularly given my findings above in relation to the nature of the available routes.
117. The appellant has set out that at the point at which the emergency access route and foot/cycle path meets Luckley Road, the natural desire line of walking to the north and particularly to Tesco, would be via Tangley Drive. I

accept that this would be a more convenient, quieter and much more attractive route for pedestrians than Finchampstead Road which runs broadly parallel with it. However, it does not negate the need to first utilise the emergency access and foot/cycle path.

118. Having regard to all of the above findings, I consider that the scheme is highly unlikely to create a modal shift away from the use of a private car by future residents through walking. Further, I consider that the walking environments created by the main vehicular access and the emergency access and foot/cycle path do not represent good design.

Cycling

119. The use of a bicycle would, in solely distance terms, provide access to a much larger range of local services and facilities than on foot, including the secondary schools, the town centre, which provides parking facilities for bicycles and the train station, which also includes such facilities. The Tesco superstore would also be a 5 minute journey on a bicycle.
120. However, again the nature of the cycling environment to such facilities must be considered. I observed on my site visits, along with my journeys to and from the Inquiry, that Finchampstead Road and the roads leading into the town centre and train station are heavily trafficked at peak times, with significant congestion. For this reason, I consider that cycling to these services and facilities would only likely to be a real and feasible option for very experienced cyclists.
121. I accept that cyclists would have an alternative route via the emergency access and foot/cycle path. However, the fact that cyclists would have to dismount for an 80 metre stretch of the route would affect its convenience. The potential conflict between cyclists and pedestrians due to the narrow 2 metre section is also likely to affect the attractiveness of the route for cyclists. Further, to access the town centre and train station the use of Finchampstead Road cannot be entirely avoided, nor can the other congested roads leading into the town centre and train station.
122. The appellant is of the view that the proposal could offer a more pleasant cycling environment and allow cyclists travelling along Finchampstead Road to avoid the traffic by diverting through the appeal site. However, this would represent a sizeable detour and given the need to dismount for the 80 metre section, I consider such a scenario to be very unlikely.

Bus stops and their accessibility

123. There are bus stops located on Finchampstead Road. According to the appellant's evidence these are approximately 480 metres in distance via the main vehicular access and 580 metres via the emergency access route. IHTC guidance and the Council's Living Streets - Highways Guide for Developer's in Wokingham, 2019 both set out that 400 metres should be considered a maximum.
124. The appellant has provided an extract of a study 'How far do people walk?' by White Young Green, dated 2015. This concludes that outside of London the mean distance that people walked to a bus stop was 580 metres, and the 85th percentile walking distance was 800 metres. Whilst this is noted, the nature

of the walking route is also an important factor, along with the nature and siting of the bus stops themselves.

125. I have already found above that the walking environments of both routes that would be utilised to access the bus stops are unattractive. The bus stops at present do not have shelters and are located very close to the road on a narrow footpath southbound and a narrow verge northbound, with a large volume of passing traffic in close proximity, particularly at peak times. Both bus stops do not currently provide a pleasant place to wait for a bus.
126. During the roundtable discussion the appellant set out that shelters and improved lighting could be added to the bus stops to make them a more attractive and pleasant facility when waiting and that this could be secured by a planning condition. However, given the very narrow verge and footpath where the bus stops would be located, together with potential landownership constraints, I am not convinced that a meaningful shelter could be provided. Even if one could be, it is highly likely to still be in very close proximity to the busy road and not represent a particularly pleasant place to wait. Further, I am mindful that Finchampstead Road is a Green Route and I observed on my visit that having prominent street features such as bus shelters close to the road, would not be characteristic of the Green Route in this location.
127. The scheme would introduce a crossing point across Finchampstead Road to allow pedestrians to more easily access the northbound bus stop, which would be a welcome addition. Notwithstanding this, I consider that the unattractive nature of the walking routes and bus stops is likely to deter future residents from utilising the available bus service on Finchampstead Road.

Bus services and improvement contribution

128. The bus stops closest to the appeal site are served by the existing 125 bus service which runs between Wokingham and Crowthorne via the Finchampstead Road corridor. This currently provides two peak hour services and then two-hourly services throughout the day finishing in the early evening Monday to Friday. There is also a limited service on Saturday and no service on Sundays.
129. The CS sets out that a good public transport service is one that has 30 minute intervals during peak times, hourly intervals during off-peak hours and a service on Sundays. The existing 125 service therefore does not at the existing time constitute a good service in accordance with the CS and is not one that I consider would persuade residents to give up the use of a private motor vehicle.
130. The scheme includes a financial contribution of £500,000, secured through the S106 Agreement to improve the existing 125 service. It is anticipated that this would secure an additional hourly service, supported by the existing service at peak times for a period of up to 5 years. I am also aware that there is good potential for improvements to the bus service along Finchampstead Road as a result of the Arborfield SDL Public Transport Strategy. Although the extent of the potential improvements remains somewhat unknown.
131. The appellant's proposed improvements, as discussed with the operator, would include: a 30 minute frequency service during am and pm peak periods

(Monday to Friday); an hourly service during off peak periods Monday to Saturday finishing at 20.00 each evening, including a Saturday morning from 07.00; and an hourly service on a Sunday between 10.00 – 19.00.

132. However, there would not be a 30 minute service during the peak period on a Saturday between 07.00 and 09.00 and between 16.00 and 19.00. There would also not be a Monday to Saturday hourly service after 20.00 until 22.00. The service would not therefore meet the definition of good, as set out in the CS. However, I accept that it would come close and would be a considerable improvement on the existing 125 service.
133. The Council are of the view that it would not be appropriate to withdraw the service after 5 years and raised concerns about the longer-term viability of such improvements. However, even giving the benefit of the doubt to the appellant that this would be an appropriate amount of time and the improvements would remain viable in the long-term, including through increased usage by existing residents in the area, my concerns with regard to the nature of the walking environment to the bus stops and the nature of the bus stops themselves remain. I consider that these matters are significant deterrents to the use of the bus service by the future residents of the scheme, even if the proposed improvements are delivered to the existing bus service as proposed.

Train services

134. There are good train links available at Wokingham, with direct services to Reading and London, Waterloo. As set out above, I am not convinced that walking and cycling are attractive options to access the rail station, particularly during peak periods. The bus service is available to the train station. Again, I have already found that the walking route to the bus stops and the nature of the bus stops themselves are unlikely to be attractive to future residents.
135. There are car parking facilities available at the train station. Given this and the above, along with the increased flexibility the use of a car would have in terms of travel times, I consider that this is likely to be a much more attractive option than using the bus, even if the proposed improvements in terms of frequency were delivered and despite the costs of parking.

Other related matters

136. The appellant has noted that the lack of parking and its cost in the town centre is likely to put residents off the use of a private motor vehicle. However, this assumption is supported only by reference to an article and petition about saving one car park in the town centre. I am not of the view that this represents substantive evidence to support the view that there is a fundamental lack of parking or that it is unreasonably expensive. I am also mindful that this focuses solely on the town centre and it is important to look at the accessibility to local services and facilities as a whole.
137. I acknowledge that a Travel Plan has been provided in support of the planning application and a final version could be secured through a planning condition. This includes measures to encourage future residents of the scheme to utilise sustainable modes of transport, including the potential for subsidised public transport tickets and season tickets. However, having regard to all of my

findings above, I am not satisfied that the Travel Plan would overcome my concerns or would in itself secure a meaningful modal shift.

Overall conclusion

138. For all of the reasons above, I conclude that the scheme would not provide genuine travel alternatives to the use of a private motor vehicle to the future residents of the scheme for the majority of their journeys. As a result, the proposal runs contrary to Policies CP1, CP3 and CP6 of the CS and Section 9 of the Framework.

Five-year housing land supply

139. The housing requirement in Policy C17 of the CS was adopted more than 5 years ago and therefore the Framework establishes that housing need should be calculated using the standard method set out in national policy. The LHN for Wokingham is 4,022 dwellings. The Housing Delivery Test (HDT) shows that over the past 3 years against this requirement the Council's completions stand at 175%, resulting in the HDT being met. A 5% buffer therefore applies, resulting in an overall figure of 4,223 dwellings over the five-year period.
140. The parties agree that the relevant 5-year period is 1 April 2019 to 31 March 2024. The Council consider that it can demonstrate the delivery of 5,398 dwellings, a housing land supply of 6.39 years. In contrast, the Appellant's initial case was that the Council could only demonstrate a supply of 4.75 years.
141. I am mindful at this point that there is a highly relevant appeal decision for a proposal at Land north of Nine Mile Ride, Finchampstead³. In that Inquiry, the same witnesses were called and relied on the same or at the very least, substantially the same evidence as is before me. The Inspector in the Nine Mile appeal decision considered each aspect of the disputed supply in detail and found that notwithstanding any potential impacts of the Covid-19 pandemic, the Council's supply stood at 5.43 years. I have reviewed the findings of the Inspector in that case carefully and despite the concerns of the Council, in terms of the Nine Mile Ride Inspector's interpretation of deliverable, I see no reason to disagree with her findings.
142. The appellant in its response to my written questions following the change of procedure to enhanced written representations has accepted that, putting aside any potential impacts of the Covid-19 pandemic, the Council can demonstrate a 5.43 year housing land supply, in line with the findings of the Nine Mile Ride Inspector. However, a paper was also provided by the appellant's housing land supply witness Mr Good that considered the impacts of the Covid-19 pandemic afresh. This concluded that 404 dwellings should be removed from the supply, resulting in a housing land supply of 4.95 years.
143. Whilst noting the detailed reasons provided in the note from Mr Good, I am of the view that it is still very difficult at this stage in time to draw any firm conclusions on the potential impacts of the Covid-19 pandemic on housing land supply. This view is shared by the Nine Mile Ride Inspector and the

³ Appeal Ref: APP/X0360/W/19/3238048.

Inspector of an appeal decision at Land to the South of Lee Lane, Royston, Barnsley⁴, which has been referred to by the Council.

144. I am of the view that there can be little doubt that the Covid-19 pandemic is having, and will continue to have, an effect on housing land supply in the short term. However, I am mindful that the effects are likely to be time limited and we must look over a five-year period. It may be that some sites due to deliver in the next 6-12 months may deliver slightly later in the five-year period, but they are likely to still deliver nonetheless. Further, there is still a reasonable amount of time for sites anticipated to deliver towards the end of the five-year period to recover. As pointed out by the Nine Mile Ride Inspector (Paragraph 110) it is '*...possible that a bounce back will occur once the crisis ends. Indeed, it is reasonable to surmise that housebuilders and their suppliers will be keen to rectify losses if it is possible to do so*'.
145. The Council has also provided evidence to show that this could well be the case, with numerous construction sites associated with the SDLs now back open and operational and sales and marketing suits open. I am therefore not sufficiently convinced that the effects on supply will be as severe as set out by the appellant.
146. Given the uncertainties set out above, it is very difficult for me to establish a precise figure in terms of the Council's housing land supply. However, for the reasons given above, I consider that in all likelihood it is somewhere between 5 years and 5.43 years. As a result, I conclude that the Council can demonstrate a five-year housing land supply.
147. There was some debate whether the Council can demonstrate a five-year housing land supply without relying on sites located outside of settlement boundaries. Given the evidenced before me and my findings above, it is clear that the Council is dependent on sites located outside of existing settlement boundaries to deliver a sufficient supply of housing.

Other matters

148. Luckley Wood is identified as deciduous woodland, a priority habitat listed under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 as being of principal importance for the purpose of conserving biodiversity in England. At the roundtable discussion on trees, the Council raised concerns about the potential impacts of the emergency access and foot/cycle path on Luckley Wood.
149. The scheme would result in a notable number of trees being removed to facilitate the provision of the emergency access and foot/cycle path. However, in many cases these are non-native species and the native species that would be removed, could be replaced in the wider appeal site. Further, I accept that some minor clearing of the canopy could provide opportunity for glade establishment and by allowing additional light to penetrate the ground, it is possible that further species could colonise the area around the emergency access and foot/cycle path.
150. The emergency access route would be constructed via a low impact method, along an existing path which has been heavily compacted and is largely

⁴ Appeal Ref: APP/R4408/W/19/3242646.

devoid of vegetation. Whilst the emergency access and foot/cycle path would be wider, I consider that the impact on ground flora would be fairly limited.

151. I accept the appellant's view that low level directional lighting could be used to minimise potential impacts on existing fauna. In terms of disturbance, I am mindful that Luckly House School currently utilise the woodland for learning activities and I observed several tracks through the woodland on my site visit. Consequently, there is already a notable degree of disturbance within the woodland.
152. It must also be borne in mind that the emergency access and foot/cycle path would run along the very eastern edge of Luckley Wood and would therefore only affect a limited coverage of the woodland as a whole.
153. Overall, I consider that the scheme would not have any unacceptable impacts on the priority habitat or its nature conservation importance. The scheme therefore complies with Policy CP7 of the CS.
154. Interested parties have raised a large number of other concerns. However, as I am dismissing the appeal on other grounds, such matters do not alter my overall conclusion and have therefore not had a significant bearing on my decision.

Planning Balance

155. I have found that the Council can demonstrate a five-year housing land supply and that the basket of most important policies for the determination of the application is not out-of-date. Therefore, the 'tilted balance' set out in Paragraph 11 d) of the Framework is not engaged.

Identified harm

156. The appeal site is located outside of any settlement boundary and consequently, the scheme conflicts with Policies CP9 and CP11 of the CS and Policy CC02 of the MDD LP. I have, however, found that these policies are out-of-date. The key reason for this was that a sufficient supply of housing cannot be demonstrated whilst meeting the requirements of these policies. However, on the other hand, the Council do not need the appeal scheme to demonstrate a 5-year housing land supply. I therefore afford the conflict with these policies significant weight. This view was also taken by the Nine Mile Ride Inspector and adds weight to my findings.
157. I have also found that the scheme would cause harm to the character and appearance of the area and this carries a moderate level of weight against the scheme. I am unable to rule out that the proposal would cause significant and severe impacts on the local highway network, resulting in highway safety concerns. I have also found that there is the potential for conflicts between pedestrians and cyclists along the foot/cycle path. I consider that these together carry a significant level of weight against the proposal.
158. In addition, I consider that the scheme would not create feasible opportunities to create a modal shift away from the use of a private motor vehicle that future residents of the scheme are likely to be very reliant upon for most of their journeys. This also weighs significantly against the scheme.

159. Overall, the level of harm that would result from the scheme is very substantial.

Benefits of the scheme

160. The appeal scheme would deliver a considerable number of new market houses. The appellant has provided several appeal decisions, including some determined by the Secretary of State himself, where significant weight has been afforded to the provision of market housing even where the Council can demonstrate a 5-year housing land supply. However, I consider that it cannot be ignored that the scheme is not plan-led and notwithstanding the reliance on other sites outside of settlement boundaries, the Council are meeting their housing needs with a 5% buffer, without the need for this proposal. As a result, I afford a moderate level of weight to the benefits of the market housing.
161. The appellant has produced clear evidence to demonstrate an acute need for affordable housing. The scheme would make an important contribution to such needs that would be at the upper end of the requirement of Policy CP5 of the CS and is appropriately secured in the S106 Agreement. Whilst noting the efforts being made by the Council to address the need for affordable housing, I consider this benefit should carry very significant weight.
162. The scheme would generate some economic benefits in the form of construction jobs and expenditure from new residents that would support local jobs and businesses. I consider that these benefits carry moderate weight.
163. The appeal proposal would ensure the delivery of the separately permitted SANG adjacent to the appeal site. This would be open to existing residents as well as those that would live within the proposed dwellings. Whilst this is a benefit of the scheme, its fundamental purpose is to mitigate the impacts of the development on the Thames Basin Heaths SPA. Further, as acknowledged by the appellant, the SANG could be brought forward without the appeal scheme to offset the impacts of other new development in the area. Given this, I afford this benefit limited weight.
164. There would likely be some biodiversity enhancements within the appeal site to ensure a net gain, which carry a limited level of weight in favour of the scheme.
165. The appeal scheme would provide for on-site open space and a children's play area. However, this would be largely to serve the needs of future residents. Therefore, this benefit carries limited weight. The scheme would also provide an area of land for the adjacent Luckley House School to utilise as a playing field. However, the school is private and this would only be of benefit to a relatively limited number of people. Consequently, I afford limited weight to this benefit.

The balance

166. The scheme would conflict with numerous development plan policies, but it would also conform to many others. However, when looked at holistically, I consider that the scheme conflicts with the development plan.
167. I conclude that the benefits of the scheme do not outweigh the harm identified and the associated development plan conflict. Consequently, there

are not any material considerations that warrant a decision other than in accordance with the development plan.

168. Given that I am dismissing the appeal, there is no need to undertake an Appropriate Assessment. Nonetheless, it should be noted that a positive finding would not affect the overall planning balance or my overall conclusion.

Conclusion

169. For the reasons set out above and having regard to all other matters raised, I conclude that the proposal does not comply with the development plan as a whole and does not represent sustainable development in terms of the Framework. There are no material considerations which would warrant a decision other than in accordance with the development plan. The appeal is therefore dismissed.

Jonathan Manning

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Sasha White QC & Anjoli Foster
of Counsel

Instructed by Emma Jane Brewerton of
Wokingham Borough Council

They called:

Mark Croucher	Wokingham Borough Council (Planning)
Gordon Adam	Wokingham Borough Council (Transport)
Chris Hannington	Wokingham Borough Council (Landscape, Visual Impact and Arboriculture)
Ian Church	Wokingham Borough Council (Affordable Housing, Housing Land Supply and Policy)

FOR THE APPELLANT:

John Barrett of Counsel

Instructed by Kevin Waters of Gladman
Developments Ltd

He called:

Kevin Waters	Gladman Developments Ltd (Planning)
Simon Blinkhorne	Odyssey (Transport)
Helen Kirk	FPCR Environment and Design Ltd (Arboriculture)
Timothy Jackson	FPCR Environment and Design Ltd (Landscape and Visual Impact)
David Parker	Pioneer Property Services Ltd (Affordable Housing)
Matthew Good	Pegasus Group (Housing Land Supply)

INTERESTED PARTIES

Charles Margetts	Councillor and local resident
Julian McGhee-Sumner	Councillor and local resident
Emma Crewe	Local resident
Georgette Gray	Local resident
Professor Derek Steele	Local resident
Ellie Notley	Local resident

Peter Dennis	Town Councillor and local resident
Maria Gee	Councillor and local resident
Jeremy Crewe	Save Woodcray Countryside Campaign Group
Alison Griffin	Local resident and Wokingham District Veteran Trees Association
Sarah Kerr	Councillor and local resident
Darren Notley	Local resident
Dominic Bethencourt-Smith	Local resident
Clarissa Flynn	Save Woodcray Countryside Campaign Group
Peter Dunks	Local resident
Gary Meades	Local resident
Wendy Measures	Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

1. Draft Section 106 Agreement.
2. Scott Schedule.
3. Appellant's opening statement.
4. Council's opening statement.
5. Statement by Charles Margetts.
6. Statement by Julian McGhee-Sumner.
7. Statement by Emma Crewe.
8. Statement by Georgette Gray.
9. Statement by Ellie Notley.
10. Statement by Jeremy Crewe.
11. Statement by Maria Gee.
12. Statement by Alison Griffin.
13. Statement by Sarah Kerr.
14. Statement by Professor Derek Steele.
15. Statement by Peter Dennis.
16. Copy of High Court Judgement – Gladman Development Limited [2020] EWHC 518 (Admin).
17. List of draft planning conditions.
18. Note on aircraft noise from Peter Dunks.
19. Full copy of the Wokingham Landscape Character Assessment, November 2019.
20. Agreed Statement of Common Ground – Aboricultural matters.
21. Agreed Statement of Common Ground – Highways.
22. Agreed Statement of Common Ground – Affordable housing.
23. Note from Appellant on Veteran Trees.
24. Ancient Tree Inventory note on oak trees.
25. Full copy of Ancient and other veteran trees: further guidance on management, by Lonsdale.

- 26. Veteran trees: a guide to good management.
- 27. Speed survey data, provided by the appellant.
- 28. Email associated with bus service contribution, provided by the appellant.
- 29. Note on highway matters and supporting bundle of documents, provided by the appellant.
- 30. Statement by Darren Notley.
- 31. Statement by Dominic Bethencourt-Smith.
- 32. Statement by Clarissa Flynn.

**DOCUMENTS PROVIDED AFTER THE ADJOURNMENT OF THE INQUIRY
THROUGH THE ENHANCED WRITTEN REPRESENTATION PROCEDURE**

- 33. Additional written statement and appendices, provided by the appellant.
- 34. Additional written statement and appendices, provided by the Council.
- 35. Interested party comment on appellant's additional written statement from Paul King.
- 36. Interested party comment on appellant's additional written statement from Sarah Kerr.
- 37. Inspector's questions to the parties.
- 38. Appellant's response to Inspector's written questions.
- 39. Council's response to Inspector's written questions.
- 40. Copy of Appeal Decision - APP/R4408/W/19/3242646 - Land to the South of Lee Lane, Royston, Barnsley, provided by the Appellant.
- 41. Council's closing submissions.
- 42. Appellant's closing submissions.
- 43. Signed Counterpart copies of the Section 106 Agreement from the appellant.
- 44. Signed counterpart copy of the Section 106 Agreement from the Council.
- 45. Copy of a Secretary of State decision letter appeal refs APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529 at Land off Adlem Road/Broad Lane, Stapeley, Nantwich and Land off Peter De Stapeleigh Way, Stapeley, Nantwich respectively, along with comments provided by the appellant.

46. Council's reply to appellant's comments on Secretary of State decision letter appeal refs APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529.
47. Appellant's final comments in response to Council's reply on Secretary of State decision letter appeal refs APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529.

Appeal Decision

Inquiry held on 4-7 and 11-14 February 2020

Accompanied site visits made on 4, 13 February 2020

Unaccompanied site visit made on 14 February 2020

by Christina Downes BSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 April 2020

Appeal Ref: APP/X0360/W/19/3238048

Land north of Nine Mile Ride, Finchampstead, Berkshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Welbeck Strategic Land II LLP against the decision of Wokingham Borough Council.
 - The application Ref 181685, dated 11 June 2019, was refused by notice dated 29 March 2019.
 - The development proposed is the erection of up to 118 dwellings and associated parking landscaping and open space (outline) and change of use of part of the land to form a suitable alternative natural greenspace (SANG), incorporating an outdoor education area (full)
-

DECISION

1. For the reasons given below, the appeal is dismissed.

PROCEDURAL MATTERS

2. The appeal concerns a hybrid application. The residential development relates to the southern part of the site and was made in outline form with access to be considered at this stage. A further plan was submitted with the appeal to show the internal road layout in accordance with the provisions of the *Town and Country Planning (Development Management Procedure) (England) Order 2015*. The SANG relates to the northern section of the site and this part of the application was made in full.
3. At appeal stage the Appellant requested that the red line boundary be changed to omit the gypsy site on the southern part of the site and also a small area of land adjacent to the southern boundary. Minor revisions were also requested to the northern boundary of the SANG. As a consequence, the maximum number of dwellings would be 117. In addition, an uplift of affordable housing from 40% to 50% was proposed, along with the incorporation of 5% Self-Build and Custom-Build serviced plots into the scheme. The Council had no objections to these changes, and I am satisfied that they would not be prejudicial to any third-party interests. I have therefore determined the appeal on this basis.
4. During the inquiry the Appellant submitted a "proving layout". This sought to introduce a layout that provided a better relationship of houses to protected trees, especially on the south-western part of the site. The layout of houses

on this drawing is illustrative of how the site could be developed. Amended SANG Landscape Proposals and Indicative Masterplan drawings have been submitted that include the proving layout and the various boundary changes referred to in the preceding paragraph. For the avoidance of doubt, they are drawing numbers P16-1187_20 Rev F and P16-1187_01 Rev N respectively and I shall take them into account.

5. The proposal is supported by a Planning Obligation by Agreement (S106 Agreement) and a Planning Obligation by Unilateral Undertaking (UU). Due to the large number of signatories it was not possible to complete the Deeds before the close of the inquiry. I therefore allowed a short amount of extra time accordingly. However, due to the illness of one of the freehold owners, 3 of the land parcels could not be included. Both Deeds therefore include a covenant that development will not be commenced until a Confirmatory Deed with these owners has been entered into. I understand that the Council has no objection to this arrangement, and I am satisfied that it would ensure that the covenants would be enforceable.
6. During the inquiry the Appellant also put forward various measures to improve accessibility. These included the widening of the footway between the California Crossroads and Park Lane; the provision of shelters at the two nearest bus stops; and a new pedestrian crossing to Nine Mile Ride. The provisions are included in the UU and were discussed at the inquiry. The Council objected to them and the Appellant did not consider them necessary to make the scheme acceptable. The provisions are considered further below.
7. The application was refused for 10 reasons. 5 of these were not pursued by the Council at the inquiry. These concerned ecology and biodiversity; the Thames Basin Heaths Special Protection Area; archaeology; and the absence of a legal agreement relating to local employment skills and affordable housing.
8. Following the close of the inquiry I asked the main parties whether they wished to comment on any implications that the Coronavirus (Covid-19) pandemic may have in terms of their evidence on housing delivery. I have taken the responses into account accordingly. The Appellant also submitted a further recent appeal decision by the Secretary of State, which was also copied to the Council, relating to residential development at Long Melford Suffolk. I have had regard to its contents, but I am satisfied that it does not necessitate further comment by either party.

REASONS

Planning policy context

9. The development plan includes the *Wokingham Borough Core Strategy Development Plan Document* (the CS), adopted in 2010 and the *Managing Development Delivery Local Plan* (the MDD LP) adopted in 2014. Whilst the 2009 South East Plan has been revoked, policy NMR6 relating to the Thames Basin Heaths Special Protection Area was saved and is also relevant to this proposal. The Council is in the process of preparing a new Local Plan, but this is at a very early stage and has not yet been submitted for examination. It therefore has little weight at the present time.

10. There is no dispute that the appeal site is not within or adjacent to any designated settlement, including Finchampstead North. For policy purposes it is within the countryside.
11. At the inquiry there was a great deal of debate as to whether the most important policies for determining the application are out-of-date. Paragraph 11d) of the *National Planning Policy Framework* (the Framework) is precise in its language. Its reference to "application" rather than "appeal" means that it is those policies relating to the consideration of the whole scheme rather than those matters in dispute at the appeal that should be included. However, "most important" policies do not mean "all relevant" policies and it is a matter of judgement for the decision-maker to decide what these may be. Case law has determined that it is the basket of most important policies as a whole that is the relevant consideration.

The most important policies

12. There was no agreement between the main parties as to what constituted the most important policies in this case. Most of the policies in the reasons for refusal fall within this category although I consider that policy CP4 in the CS relating to infrastructure requirements and policy TB25 in the MDD LP relating to archaeology are relevant but not most important.
13. There is no dispute that the following policies should be considered most important:
 - CS: policies CP1, CP3, CP6, CP9, CP11
 - MDD LP: policies CC01, CC03, TB21, TB 23
 - South-East Plan: policy NRM6
14. There is dispute about the following policies:
 - CS: policies CP2, CP4, CP5, CP7, CP8, CP17, CP18
 - MDD LP: policies CC02, CC10, TB05, TB08, TB12, TB25
15. Although the following policies are relevant, I do not consider that they fall within the category of most important for the following reasons:
 - Policy CP2 has a number of social objectives that would be applicable to the development. However, the gypsy site is now outwith the application boundary.
 - Policy CP4 relates to infrastructure requirements, which would be addressed through the legal Deeds.
 - Policy CP18 is specific to the Arborfield Garrison Strategic Development Location (SDL), albeit that its future development would impact on the proposal particularly in respect of accessibility.
 - Policy CC10 relates to sustainable drainage, which could be addressed through a planning condition.
 - Policy TB12 requires an employment and skills plan. Although it was a reason for refusal it would be addressed through the S106 Agreement.

- Policy TB25 relates to archaeology but the appeal site is not in an area shown to be of high potential and the reason for refusal could be addressed through a planning condition.
16. Policy CP17 relates to housing delivery and sets out the CS housing requirement and how it will be addressed through the supply of sites from various sources. This is clearly relevant to a consideration of any housing proposal. However, I agree with the Inspector in a recent appeal decision relating to a residential scheme in Hurst¹ that it is not a development management policy that plays a significant role in determining planning applications. It is therefore not a most important policy in this case.
17. The most important policies to this application proposal are thus as follows:
- CS: policies CP1, CP3, CP5, CP6, CP7, CP8, CP9 and CP11
 - MDD LP: policies CC01, CC02, CC03, TB05, TB08, TB21, TB23
 - South East Plan: policy NRM6

Whether the most important policies are out-of-date

18. Whether development plan policies are considered out-of-date in terms of paragraph 11d) of the Framework will depend on their degree of consistency with its policies. There is no dispute that policies CP1, CP8, CC03, TB21, TB23, and NRM6 do not fall within this category. Policy TB08 is questioned by the Appellant but I am not satisfied that there is evidence that the open space standards on which it is based are other than relevant.
19. In the CS, policy CP3 has 10 general development control criteria against which proposals should be assessed. The provision setting out open space requirements is not based on a current assessment in accordance with paragraph 96 of the Framework. On the other hand, this is rectified by the more recent MDD LP policy TB08. The provision requiring no detrimental impact on important ecological and heritage features does not follow the wording or approach in paragraphs 175 and 194 of the Framework. However, this is a general policy and all but 2 provisions are agreed to be consistent with the Framework. I consider that it is important to take a sensible and proportionate approach and I conclude that policy CP3 is not out-of-date.
20. Policy CP5 includes a provision that residential proposals of at least 5 dwellings will provide 50% affordable housing where viable. Whilst this part of the policy does not apply to the appeal proposal due its size, it is not in accordance with paragraph 63 of the Framework and therefore is out-of-date.
21. Policy CP6 is a permissive criteria-based policy. It indicates that permission will be granted if road safety is enhanced, adverse effects on the network are mitigated and highway problems are not caused. It does not say that permission will necessarily be refused if these provisions are not met. I appreciate that the wording is different from paragraph 109 of the Framework but the way that it is worded does not make it inconsistent.
22. Policy CP7 relates to biodiversity and seems to me to generally follow the

¹ Appeal decision relating to the erection of 5 dwellings at Lodge Road, Hurst, dated 31 January 2020 (APP/X0360/W/18/3194044).

principles in paragraph 175 of the Framework relating to development management. Reference is also made to enhancement, but this is dealt with in accordance with paragraph 174 by policy TB23, which is also agreed by the main parties to be a most important policy and not out-of-date.

23. In the MDD LP, policy CC01 sets out the presumption in favour of sustainable development. Unsurprisingly it does not set out the wording changes introduced in the 2019 version of the Framework, perhaps most importantly referring to the consideration of relevant rather than most important policies. It is not therefore consistent with paragraph 11 of the Framework.
24. Policy TB05 relates to housing mix. It refers to the *Affordable Housing Supplementary Planning Document* within this context and not in relation to the trigger for affordable housing provision, which is dealt with in CS policy CP5 and referred to above. Policy TB05 is therefore not out-of-date.
25. For the reasons given above I do not consider that policy CP17 in the CS is a most important policy, but I do consider it to have relevance to the consideration of whether policies CP9 and CP11 in the CS and policy CC02 in the MDD LP are out-of-date. The housing requirement in policy CP17 was based on the now revoked South-East Plan and is clearly no longer fit for purpose. In any event, the Framework makes clear that as the strategic policies in the CS were adopted more than 5 years ago and have not been updated, local housing need should be calculated using the standard method set out in national planning guidance. There is no dispute that when applying the relevant 5% buffer the requirement is 844.4 dwellings per annum (dpa). This is significantly more than the 723 dpa in policy CP17.
26. The scale and location of housing and the associated development limits were established to accommodate this lower housing requirement. However, as the Hurst Inspector observed, policy CP17 does not cap housing numbers and includes flexibility to bring land forward in identifying future land supply. Housing land supply is considered later in the decision, but the evidence is clear that this depends on some sites that are outside the development limits. The delivery of a sufficient supply of homes is a fundamental objective of the Framework but cannot be achieved through adherence to policies CP9, CP11 and CC02, which are all dependent on the development limits. These policies are therefore out-of-date. In this respect I disagree with the Hurst Inspector, but I note that there was no dispute about housing land supply in that case and therefore the evidence on which his conclusions were based was materially different.

Conclusions

27. From the above, I have found that 5 of the 16 most important policies are out of date. However, a consideration of whether the basket itself is out-of-date and therefore whether the appeal scheme complies with the development plan as a whole is a matter to which I will return in my final conclusions.

The effect of the proposed development on the character and appearance the area, the landscape and trees

28. The appeal site comprises 17.6 hectares (ha) of land on the northern side of Nine Mile Ride, close to its junction with Park Lane. The residential element of

the proposal would occupy the southern part of the site, immediately adjacent to the existing built-up area. At this point there are detached residential properties along the main road frontage but also driveways leading to individual dwellings to the rear and more substantial private accesses serving small residential clusters at depth.

29. Policy CP11 in the CS seeks to restrict proposals outside development limits other than in limited circumstances. The nearest settlement to the appeal site is Finchampstead North and the appeal scheme does not fall within one of those provisions where development would be permitted under the terms of the policy. The policy purpose is to maintain the quality of the environment and protect the separate identity of settlements.

Separation of settlements

30. The appeal site is within the area between Finchampstead North and the Arborfield Garrison Strategic Development Location (SDL). On the Key Diagram to the CS there is a zigzag line and the key makes reference to policy CP19, which relates specifically to this SDL. It requires, amongst other things, measures to maintain separation from Finchampstead North. The wording clearly indicates that it is the development proposals for the SDL that must provide the appropriate measures. The map of development limits in the MDD shows the two developed areas but does not include any specific gap notation in between. Indeed, the Examining Inspector specifically addressed this matter and considered that additional policy protection over and above that in policy CP11 would be unsound.
31. Gaps are a spatial tool to prevent coalescence between built-up areas and have little to do with landscape character. None of the criteria in policy CP11 are specifically directed towards ensuring that the 2 settlements do not get closer together. To my mind it is a policy that is aimed towards countryside protection and, as the supporting text makes clear, seeks to protect the character and setting of settlements and direct development to them for reasons of accessibility. I do not therefore agree that any development within the space between the Arborfield Garrison SDL and Finchampstead North would be harmful to spatial separation as a matter of policy.
32. In any event, in this case the new houses would not extend further westwards than the Robinson Crusoe park homes or further north than existing development served by the western access. In such circumstances the appeal scheme would not have any adverse effect on the separate identity of the settlements.

Effect on the landscape and trees

33. The proposed housing area mainly comprises grassland and trees. It would be divided into two main sections that would be linked by a pathway for pedestrians and cyclists. The western part is about 1.5 ha in extent and the eastern part is about 3.7 ha. To the north of the latter is a large swathe of woodland with grassland on its eastern side and western edges, which is proposed to form the SANG. The north-eastern portion of this land comprises part of the Longmoor Bog Site of Special Scientific Interest (SSSI) and this adjoins a similarly designated area in the southern part of California Country Park.

34. The *Wokingham District Landscape Character Assessment* (2004) (WDLCA) places the appeal site within the Forested and Settled Sands landscape type, which covers the south-eastern corner of the Borough. In particular it is part of the Finchampstead Forested and Settled Sands landscape character area (LCA). This was originally part of the Royal Forest and its long straight roads follow the line of the historic rides that provided access to the royal hunting grounds. There is a strong linear pattern of mainly post-war detached housing within a woodland setting along with more recent estate infill.
35. The appeal site is representative of many of the key characteristics of the LCA. In particular, the influence of the adjacent built-up area is evident especially in the southern section of the site. The proposed access points link into the long, straight green corridor of Nine Mile Ride and woodland covers large parts of the site itself. The enclosure provided by the dense stands of trees creates a sense of remoteness and isolation. The SSSI is former heathland although it has been invaded with undergrowth and bracken.
36. The WDLCA records that this landscape is of high quality and generally good condition. The overall strategy is to conserve and actively manage the woodland, important wildlife habitats and recreational use. The LCA is considered to have moderate sensitivity to change overall. However, there are some aspects of higher sensitivity, including the influence of the long, straight historic rides, the forest, the ecological habitats and the perceptual qualities.
37. The proposed development would result in a substantial loss of trees. In total more than 1,000 protected trees would be removed. This would amount to about 8% of the total tree cover if the Appellant's assessment is correct². On the face of it this would seem to be a significant loss of one of the key characteristic features of this LCA. However, a numerical assessment is insufficient in itself for several reasons.
38. I observed at my site visits that the quality of some parts of the woodland on the northern part of the site was in poor condition. Some areas were overcrowded with young saplings competing for space. There were also many fallen, windblown or damaged trees. I noted a sense of neglect and this has arisen from a lack of proper management. This is private woodland and there is no reason why judicious stewardship should not take place independently of the development proposals. However, there is no evidence that such an eventuality is likely to happen. In the circumstances, the removal of trees in the interests improving the structure, condition and resilience of the woodland would have qualitative benefits to the LCA. I consider that the tree loss that is proposed for management purposes should not be seen to impact negatively in landscape terms.
39. The proposal would also include restoration of the SSSI, which it currently in unfavourable condition. The heathland habitat has been seriously diminished by the encroachment of undergrowth, in particular bracken, following a wildfire in 2011. The proposal is to clear the area of the invasive species in order for heather and other heathland habitats to re-establish. It emerged

² The Appellant's assessment was that the site contains about 12,000 trees. This did not include the stand of pine trees within the SSSI. It was agreed that the ecological evidence indicated these would be removed. However, the assessment that they amount to 350 trees was not agreed by the Appellant.

during the inquiry that a relatively dense stand of pine trees on the northern part of the SSSI would be felled in order to undertake this work. In terms of the landscape effects, the harm resulting from the removal of the trees has to be balanced against the ecological benefits to the SSSI. Heathland is a characteristic of the LCA along with the rich wildlife habitats, lakes and bogs. Restoration of these areas is part of the overall strategy in the WDLCA. For this reason, I do not consider that the loss of the pine trees would result in overall landscape harm.

40. However, a significant amount of tree loss would be necessary to enable the housebuilding and also to create the eastern access. The proving layout shows how 117 dwellings could be accommodated on the site. Whilst this is illustrative, it indicates that wherever possible housing would occupy the open grassland areas that immediately adjoin the existing built-up area. However, the Appellant's Tree Survey indicates that there would be significant tree clearance. Although there could be tweaks here and there, it is very clear that the residential development could not be accommodated unless a large number of trees were felled. Whilst it is appreciated that the 117 dwellings is expressed in the application as a maximum, there is no evidential basis for assuming a lower number would be built if planning permission were granted.
41. It is appreciated that the Appellant's objective has been to focus on removing the lower quality trees. However, it is relevant that they are all protected by a Tree Preservation Order and there is no evidence that the areas in question would need to be cleared for purposes of woodland management. Indeed, I saw no such indication at my site visit. Some of the trees are assessed in the Tree Survey to be of relatively low value. Nevertheless, they form part of the woodland edge that make an important contribution within the landscape between existing housing and the wider countryside.
42. Furthermore, a significant number of individual trees and tree groups within the area to be cleared are shown in the Tree Survey to be category B2, which BS 5837:2012 *Trees in relation to design, demolition and construction – Recommendations* (BS 5837) indicates have moderate quality with a remaining life expectancy of at least 20 years and collective landscape value. Furthermore, there are also some individual trees classified as category A2, which BS 5837 indicates have higher quality with a life expectancy of over 40 years and landscape importance even though this may be as part of a group.
43. Whilst post-war development and modern estate housing is a characteristic element within the LCA this is typically of a linear nature along the rides. Modern infill between the rides is prevalent in Finchampstead North. However, in the vicinity of the appeal site development has been of an ad hoc nature with low density housing extending behind the frontage housing in an irregular and unplanned way. It seems to me that this creeping urbanisation is one of the key issues that the WDLCA is seeking to rectify.
44. I appreciate that the Appellant considers that this would be a unique development with pockets of housing within a treed setting. Whilst I do not doubt that it would be a high-quality scheme, in my opinion it would essentially be a suburban estate of considerably higher density than its surroundings. New tree planting is proposed along the streets, in amenity spaces and in gardens, but the size and species would be likely to be dictated

by their residential context and the limited availability of space. The built development would not, in my opinion, be reflective of the LCA of which it would form a part and the significant net loss of trees to accommodate it would lead to unacceptable landscape harm.

45. A sense of remoteness and solitude is evident, especially in the woodland on the northern parts of the site. Whilst this cannot be publicly experienced due to the private ownership of the land it nevertheless is reflective of one of the key characteristics of the LCA. Whilst this is said to be a landscape of good public accessibility its very provision through the proposed woodland walks and the like, would undoubtedly diminish the qualities of isolation that are attributable to this particular landscape.
46. BS 5837 indicates that care should be taken to avoid misplaced tree retention or attempts to retain too many or unsuitable trees. None of the protected trees would be in private garden areas and the proposed layout demonstrates that it should be possible to avoid undue pressure from future occupiers to seek permission to fell or severely prune remaining trees. There would be some overhang of tree canopies on the parking bays shown on the southern side of the access road on the western section of the site. However, methods could be employed to avoid significant root disturbance. Some gardens would be overhung with tree canopies, but I am satisfied that there would be no excessive overshadowing. The Council highlighted instances where development in close proximity to protected trees had made requests to fell unavoidable. In this case I consider that the scale of tree removal would avoid a situation that could not be reasonably controlled.

Effect on the Green Route

47. Nine Mile Ride follows the route of one of the historic linear rides through the Royal Forest. This section has a typically green character being lined with trees and understorey planting, garden boundary hedges and soft verges. Frontage housing, which at this point is mainly on the northern side of the road, is set back behind generous sized front gardens. The frontage is punctuated by private driveways or narrow roads that serve the houses to the rear. Nine Mile Ride is shown as a Green Route in the MDD LP. This is defined as a road lined with trees and vegetation that makes a significant contribution to the character and environment of an area. Amongst other things, policy CC03 in the MDD LP requires proposals affecting such routes to protect and retain existing trees, hedges and landscape features.
48. The eastern access would be a 6 metre (m) wide roadway with a 2 m footway on the eastern side, a bell mouth and grass verges. The existing unmade driveway would therefore be replaced by a substantial engineered feature, which would lead into the site through a straight corridor some 12 m wide. A significant number of individual trees would be lost, including an English Oak and a Beech close to the road frontage. These are category B2 in the Tree Survey and of good quality with landscape value. The other trees to be felled along the new line of the road include English Oak, Sweet Chestnut and Silver Birch. Although these are category C and less visible, they do make a contribution to the green infrastructure that characterises the Green Route. It is appreciated that there would be a group of Scots Pine, Rhododendron and English Oak behind the felled trees. However, these would be in the garden of

the adjoining property and would not compensate for the significant loss of greenery described above.

49. Even though the new roadway would be flanked by new grass verges, I consider that it would be an incongruous urban element that would be very different in character to most other modest private roads and driveways. Whilst the corridor is not devoid of engineered features, including the existing hard surfaced frontage to Oak Tree Nursery, these are not typical of this stretch of Nine Mile Ride. Reference was made to the larger entrances to California Country Park and Nine Mile Ride Industry. However, these are a long established recreational and commercial facility respectively and neither is within the linear residential frontage.
50. At the inquiry proposals were put forward to enhance accessibility and they are discussed in the following section. However, of particular relevance to the Green Route is the potential widening of the footway to 2 m along the 2 kilometre stretch on the northern side of Nine Mile Ride between California Crossroads and Park Lane. There are mature trees close to the back edge of the footway and it is clear that the proposal would retain a narrower width in places so as to protect tree roots. Nevertheless, the work would remove the soft verges that currently exist between the edge of the footway and individual property boundaries in many places. Whilst these vary in quality, they do provide a soft and in places green edge to the footway. The footway widening would therefore be harmful to the character of the Green Route.

Visual effects

51. Public views into the site are relatively limited due to its location to the rear of established development and the intervening tree cover. It is doubtful whether pedestrians or drivers would see the new houses from viewpoints along Nine Mile Ride. The exception would be along the eastern access where I consider it likely that those walking along the footway would be aware of the houses at the southern end of the site. However, such a view would be at a distance and localised and the adverse effect would be of minor significance.
52. The trees would be retained along the side boundary of the western section of the site. When in leaf they are likely to provide an effective screen from viewpoints in Park Lane. In the winter months there would be greater visibility and the upper parts and roofs of the new houses would be seen. However, this would be at a distance and within the context of the Robinson Crusoe park homes and the lake in the foreground. Pedestrians using the footway, including those walking to Bohunt School or the new District Centre would be sensitive to the changes but overall, I consider the adverse impact would be of minor significance.
53. There is a pedestrian walkway within the southern part of California Country Park from where there are views into the site. At present these are restricted by the dense stand of pine trees at the northern end of the SSSI but as referred to above these are proposed to be removed as part of the ecological restoration work. Viewers within this area would be highly sensitive to change and would be able to see the northern edges of the development parcel on the eastern side of the site. Whilst there would be some remaining intervening trees and the view would be at a distance of some 300 m, it was agreed that the adverse impact would be of moderate-major significance. The landscape

proposals would include new tree planting within the open area of the SANG to the north of the houses. After 15 years when this becomes established the adverse impact would be likely to reduce to moderate.

Overall conclusion

54. Drawing together the above points, the proposed housing development would not adversely affect the separation of Arborfield Garrison SDL and Finchampstead North. Whilst the visual impact would be limited, the views of new housing development from California Country Park would result in an unwelcome intrusion to those enjoying that recreational facility. Just because something would not be widely seen does not necessarily mean that it would be acceptable. For the reasons given above, there would be an adverse effect on the character of the area, the Green Route and the landscape.
55. A large amount of woodland on the overall site would remain and in terms of the LCA as a whole the loss of trees to accommodate the housing would be relatively small. However, the trees in question are protected and have value as part of the woodland edge and also individually and in groups. Whilst housing is a key characteristic of the LCA, outside of Finchampstead North that is particularly attributable to the linear development along Nine Mile Ride. The housing to the rear is ad hoc in nature and relatively low in density. The appeal scheme would further push development northwards into the countryside and would introduce an estate of houses that would fail to integrate successfully with its surroundings. Indeed, such creeping urbanisation is a key issue that is referred to in the WDLCA.
56. There would be benefits, including woodland management, restoration of the SSSI to favourable status and public recreational access to the SANG. These matters will be further considered in the planning balance below. However, for the reasons I have given, I conclude that the proposed development would cause very substantial harm and would conflict with policies CP3, CP11 in the CS, policies CC02, CC03 and TB21 in the MDD LP and the Framework, in particular paragraph 170b.

Whether the site is within an accessible location, which would allow new occupiers a real choice about how they travel

57. The CS indicates that the Borough has one of the highest rates of car ownership in the country. The 2011 Census shows that only about 5% of households in the two wards local to the appeal site do not have access to a car. Policy CP1 in the CS includes a provision that development should demonstrate how it would reduce the need to travel, particularly by car. Policy CP3 includes general principles including that proposals should be accessible, safe, secure and adaptable. Policy CP6 requires development to be located where there are, or will be, available modal choices to minimise the distance people need to travel.
58. Section 9 of the Framework promotes sustainable transport and opportunities to promote walking, cycling and public transport. It also points out that sustainable travel solutions will vary between urban and rural areas, which should be taken into account. In this case the appeal site is within the countryside for planning policy purposes. However, it is not within an isolated

rural area and it is reasonable to bear this in mind when considering what opportunities are available to maximise sustainable travel solutions.

Walking

59. There was much debate at the inquiry about how a reasonable walking distance could be determined. *Manual for Streets* indicates that walking offers the greatest potential to replace short car journeys, particularly those under 2 kilometres (km). Whilst not an upper limit, it indicates that walkable neighbourhoods are typically those where there are a range of facilities within a 10 minute (800 m) walk from home. Similar guidance is provided in the *Borough Design Guide* and *National Design Guide*. *The Institute of Highways & Transportation Guidelines for Providing Journeys on Foot* (the IHTC guidelines) suggest that an acceptable walking distance is 800 m with a preferred maximum of 1.2 km.
60. It should of course be borne in mind that these distances are advisory and there are many examples of housing developments that are further away from local facilities than 800 m. Furthermore, the IHTC guidelines make clear that what is acceptable will depend on a number of factors, including the mobility and fitness of the individual, the purpose of the journey and the convenience of alternative options. The nature, attractiveness and safety of the route are also relevant matters to be taken into account.
61. The Appellant's evidence indicated that apart from the bus stops, Oak Tree Nursery and the Nine Mile Ride Industry, all existing facilities would be between about 1.2-2.2 km from the centre of each section of the site. The nearest existing local shops and facilities are at California Crossroads, which is about 2 km away. The pedestrian journey would be along the north side of Nine Mile Ride where the footway varies between about 1.2-2 m in width. The section between the western access and California Country Park has relatively poor surveillance due to the set-back of the houses and sporadic street lighting. *Manual for Streets* indicates that for lightly used residential streets the footway should have a minimum unobstructed width of 2 m.
62. Nine Mile Ride is not lightly trafficked and the footway between the site and California Crossroads is not ideal for comfortable pedestrian movement. This would not be a walk that I would judge to be pleasurable to undertake, particularly at peak periods when the road is busy, during inclement weather or in the dark. Whilst some would travel on foot, I suspect that most people who have the choice would use the convenience of their car, especially as there is available parking outside the shops.
63. The evidence suggests that existing students do walk in a westerly direction along Nine Mile Ride to Bohunt School. This is on the Arborfield Garrison SDL and a crossing has been provided over Park Lane to make this a safer journey. There is no reason to suppose that children from the new development would also not walk the 1.5 km distance to the secondary school, notwithstanding the limitations of the footway along the Nine Mile Ride section. There are primary schools at Gorse Ride and Avery Corner, which are 1.9-2.1 km away respectively. Both involve walking eastwards and children would therefore encounter the same issues as people walking to the shops. I appreciate that the CS indicates that primary school children should have access to a school within safe walking or cycling distance of 3-4km of their

home. However, in my experience this is a challenging distance to expect young children to walk and, in any event, this takes no account of the shortcomings of the walking route described above.

64. The Appellant is willing to widen the footway between California Crossroads and Park Lane to 2km where possible. This would be implemented by a financial contribution in the UU, which has been costed accordingly. However, it is recognised that it would not be possible to achieve the desirable width along the whole route without an unacceptable loss of trees. It would therefore be necessary to maintain existing narrower sections in places where trees are close to the footway edge. Whilst no detailed survey has been undertaken the Appellant considered that this would affect about 160 m of the 2 km route. This improvement would be the best that could be done but for the reasons given above, it would result in harmful environmental effects to the Green Route. In any event, apart from school journeys to Bohunt School, I am not convinced that the walking environment would be sufficiently improved to encourage a significant increase in walking trips especially in the direction of California Crossroads. Other issues including the length of the journey, poor street lighting and absence of surveillance would still act as a deterrent.
65. New facilities are planned at Arborfield Garrison SDL. This includes a new District Centre, and the approved Development Brief indicates that this will contain an anchor foodstore as well as other shops, facilities and services. The walking route once within the site is presently unclear but it seems likely that the District Centre would be about 1.5 km from the site. The legal agreement attached to the outline planning permission for the northern section of the SDL requires that reserved matters for the District Centre should be approved and 25% of it completed by the occupation of 1,000 dwellings. To date some 287 dwellings have been delivered. For the reasons given below, I consider it unlikely that the trigger point will be met in the next 5 years. However, even if it is, that would only require part of the District Centre to be built. It is thus unclear when the shops and facilities would become available. In any event it seems to me that many would not choose to walk from the site, especially if it entailed carrying heavy shopping.
66. Other proposed facilities at the Arborfield Garrison SDL include an extension to the Hogwood Lane employment area, a new primary school and a Local Centre. Reserved matters approval has been given for the Local Centre, which would be about 1.3 km away from the site. The information suggests that it would include two small shops but there is no clarity as to when these facilities would be provided.

Cycling

67. There are many facilities within a 5 km cycle distance of the appeal site. These include employment opportunities, schools, leisure facilities and shops. Crowthorne Station would also be accessible by cycle and it offers secure cycle parking facilities. However, the Council's Cycling Map indicates that the routes in question contain no dedicated cycling infrastructure, although parts of some journeys could be undertaken on what are termed "quiet routes". There is also a recently introduced route for cyclists between Finchampstead and Arborfield Garrison. Nevertheless, Nine Mile Ride and indeed much of the

local road network carries significant amounts of traffic. I observed on my journeys to and from the inquiry that at peak periods there is considerable congestion, especially along the roads that lead in and out of Wokingham. In the circumstances I consider that cycling would not be for the faint hearted, especially during peak periods.

Bus

68. The site benefits from bus stops close to the western access. The Chartered Institute of Highways and Transportation document *Buses in Urban Developments* provides relatively recent guidance that 300 m is now normally considered to be an acceptable walking distance to bus stops. However, it advises that this will depend on the characteristics of the route, the fitness and mobility of the traveller and the purpose of the trip. In this case the bus stop would be less than 300 m for those living on the western section of the site and 400 m or more for those living on the eastern section. Although the walk would be relatively level and quiet, the distance from the larger eastern residential area is likely to deter some from walking to the bus stops.
69. The CS refers to a "good" public transport service as one at 30 minute intervals during peak times, hourly intervals during off-peak hours and a service on Sundays. The site would be served by Route 3, which runs between Wokingham and Reading and currently provides an hourly service but no buses on Sundays. There are also buses between Shinfield and The Forest School and Bohunt School to convey pupils on Mondays to Fridays during term times. As things stand this is not a "good" level of service that would encourage many people to use it in preference to the convenience of the private car.
70. Improvements to bus services are planned through the *Arborfield SDL Public Transport Strategy*. This will provide an enhanced 30 minute service between Reading and Wokingham and a new hourly service between Reading and Bracknell. The evidence suggests that the improved services will be phased and dependant on the accumulation of sufficient financial contributions as development proceeds. However, the Council emphasised many times during the inquiry that good infrastructure provision was the main strength of focusing development at the strategic locations. In such circumstances it is reasonable to suppose that public transport delivery will be expedient.
71. The appeal proposal includes a financial contribution towards bus improvements, which I was told would be sufficient to fund 5 return journeys between Reading and Wokingham on Sundays for about a year. In such circumstances the future improvements to bus travel is a matter to be taken into account when considering the matter of accessibility.
72. At the present time the nearest bus stops are denoted by pole signs close to the western access to the appeal site. On the south side there is no footway and the bus stop is on the grass verge. The appeal scheme proposes to install a hard-surfaced area leading up to the south side bus stop and bus shelters on both sides. The north side stop would be relocated nearer to the western access to take account of the alterations to the entrance to Oak Tree Nursery. It seems to me that the bus shelters would help encourage new residents to use the enhanced bus service by making their waiting time more comfortable, especially in inclement weather. A similar style of shelter is provided outside

California Country Park. This seems to me to blend satisfactorily into the green environment along Nine Mile Ride. Whilst the Council has raised a number of concerns including the impact on tree roots, available width of verge and interference with sight lines, I am satisfied that a scheme could be designed to adequately address these matters.

73. The Appellant has also proposed a new crossing to allow pedestrians to safely access the southern bus stop. At present there are no other facilities that would require people to cross Nine Mile Ride at this point, not least because there is no footway along this side of the road. Although the plan appended to the UU shows a signal-controlled crossing, this is indicative and the Appellant made clear that a zebra crossing, for example, would be a possible alternative. The implications for interrupting traffic flow have not been assessed and no formal consultation has been undertaken. However, the evidence indicates that a formal crossing would be unlikely to be justified. Even if the modal shifts anticipated in the Framework Travel Plan were to be achieved, the Appellant estimated that only about 6 new residents would use the crossing to reach the southern bus stop in the morning peak and 4 in the afternoon peak. The bus stops outside the entrance to California Country Park provide a dropped kerb and tactile paving rather than a formal crossing and to my mind this would be sufficient in this case.

Train

74. There are direct rail services to Reading and London, Waterloo from Wokingham railway station, which is about 6 km from the appeal site. Crowthorne Station is about 4.5 km away and there is also a service to Reading where trains also run to London, Waterloo. Whilst there are secure cycle parking facilities at both stations, for the reasons given above, the routes are not particularly attractive, especially during peak periods. The bus stops at Wokingham station but although it is a relatively short trip the route is congested at peak times. Car travel would suffer from the same issue but would be more flexible in terms of times of travel and connections and could take advantage of the parking facilities at the station.

Travel Plan

75. The appeal proposal includes a Framework Travel Plan and a planning condition could be imposed to require a full Travel Plan to be agreed prior to first occupation of the development. The anticipated modal share targets would be challenging with a drop of 14% in car travel relying on a significant rise in pedestrian, cycle and bus travel. For the reasons given I do not anticipate that walking or cycling would be particularly popular and therefore such optimism seems unrealistic. However, I appreciate that final targets would be determined when the site became operational and that measures to encourage occupiers to use sustainable modes could include travel packs and free bus passes, for example.
76. The Council operate a Borough-wide travel plan initiative called MyJourney. This aims for a more co-ordinated approach through a dedicated team of officers and provides an alternative to travel plans by individual developers. It has the advantage of being able to apply economies of scale in terms of monitoring, promotions and marketing for each individual site. A cost of £450 per dwelling is charged and this was originally calculated for the SDLs where

the scheme originated. MyJourney is optional and the Appellant is content to provide the requisite contribution as well as fund a Travel Plan. However, there would be considerable overlap between the 2 approaches and requiring both would not pass the test of necessity.

Conclusions

77. The enhanced bus service that will be provided by the Arborfield Garrison SDL, the bus contribution from the appeal scheme, the proposed new bus shelters and the Travel Plan or MyJourney contribution would provide some opportunities for modal shift. However, for the reasons given I consider that this is a site where modal choice is and will remain relatively compromised. Those living on the development would therefore remain largely dependent on the convenience, flexibility and security of the private car for most of their journeys. The appeal scheme would thus conflict with policies CP1, CP3 and CP6 in the CS and with section 9 of the Framework.
78. A great deal of the Appellant's evidence was directed towards comparing the appeal site with others in terms of proximity to services and facilities. However, such an exercise needs to be treated with caution. Most of the sites referred to in the evidence are shown to be close to some facilities than the appeal site and further away from others. In most of the locations chosen it is to be expected that people will meet at least some of their needs through the use of a car. The important point is whether alternative choices are available for as many local journeys as possible.
79. In looking at different sites it is also important to compare like with like. Context is very important and in the grant of planning permission there are likely to be a number of considerations to balance. Also, accessibility is a relative term and depends on context rather than distance alone. For example, the quality of the walk, cycle route or bus journey will be an important factor and its convenience when compared with other modal alternatives. This means that in many cases the judgement will be site-specific. I have considered all of the examples that the Appellant has given but the comparison undertaken does not lead me to alter my conclusions on this issue.

Five-year housing land supply

80. The housing requirement in policy C17 of the CS was based on the now revoked *South East Plan* and is clearly no longer fit for purpose. In any event, the Framework makes clear that as the strategic policies in the CS were adopted more than 5 years ago and have not been updated, local housing need should be calculated using the standard method set out in national planning guidance.
81. There is no dispute that the relevant 5-year period is 1 April 2019 to 31 March 2024. The local housing need based on the standard methodology is 4,022 dwellings. Over the previous 3 years the 2019 Housing Delivery Test shows 175% completions against requirement meaning that the test is passed and that a 5% buffer is applied. This gives an overall figure of 4,223 dwellings. In its latest *Five-Year Housing Land Statement* (July 2019) (HLSS) the Council indicates that its deliverable supply is 5,398 dwellings and that it can demonstrate a 6.39-year supply. The Appellant disputes this and believes that

it is only 4.75 years. This is generally on the basis that delivery rates are overly optimistic, although in some cases the deliverability of the site is questioned.

82. The 2019 Framework includes a much more rigorous approach to the issue of deliverability. It makes clear that the site must be available and in a suitable location for development to take place now and that there should be a realistic prospect that housing will come forward on the site within 5 years. There are 2 closed categories, but the main dispute in this case relates to the second one. These are mainly the large strategic sites with outline planning permission, and it is the Appellant's case that the Council is overly optimistic as to the quantum of housing that will be delivered over the 5 year period.
83. The evidence clearly indicates that historically the Council's record of delivery has not been very good. In the 13 years between 2006/7 and 2018/19 the CS requirement has only been met in 4 years. However, it is relevant that this has improved recently and in the last 3 years the requirement has been exceeded by a significant amount³. This supports the Council's point that a large amount of the supply relies on the SDLs. Housebuilding here has often depended on the early delivery of significant infrastructure and this has meant that it was slower to come forward in the early years. The Council contends that developers are now keen to build at pace and it was pointed out that there are some 2,000 homes currently under construction in the Borough.
84. Nonetheless, the evidence suggests that the Council has often been overly optimistic with its forecasting and that performance has consistently lagged behind prediction. Even in the latest HLSS it is shown that only 35% of the predicted number of residential units were actually built. It is not unreasonable to surmise that in order to successfully function in a very competitive industry housebuilders may be tempted to talk-up delivery. In addition, it is understandable that they would wish to present a favourable picture to investors, shareholders and indeed the Council. However, the market can only absorb a certain amount of new housing and developers are unlikely to build houses if they think they will be standing empty for a long period of time. This is clearly an issue that is very dependent on the buoyancy of the local housing market but also the number of outlets competing for the same slice of the market. Those developers who offer a range of housing products or focus on a particular niche are likely to be able to sustain a higher output.
85. On the other hand, the Council has recently been putting more rigorous processes in place to ensure improved accuracy with assessing future delivery rates on individual sites. There is a specialist team of officers that now deals with SDL delivery with a dedicated officer for each one. Regular contact is maintained between the relevant developers and landowners and the information received is carefully scrutinised using empirical evidence, knowledge of the developer and specific site information. I was also told that the Council is adopting a more cautious approach to build-out rates, including moving sites further on in the trajectory or else removing some altogether if delivery seems to be in doubt.

³ 2016/17, 2017/18 and 2018/19.

86. The onus is on the Council to justify its forecast delivery for sites with outline planning permission. I acknowledge that in a number of recent appeals the housing land supply was not challenged. However, this may have been for a variety of reasons and not just because the appellants accepted that the supply was robust. Whatever the reason, the Appellant has challenged the supply in this case with detailed evidence. Whilst reference has been made to appeal decisions where housing supply was examined, any assessment will be a snapshot in time and depend on the evidence that has been presented. In the circumstances, I have reached my own conclusions on the evidence that I have been given.
87. Since the inquiry the world has been afflicted with the Coronavirus pandemic and this is likely to result in economic repercussions at least in the short term. Bearing all of this in mind I now turn to the disputed sites and my conclusions regarding their delivery.

The Strategic Development Locations

Arborfield Garrison SDL

88. In this SDL the delivery of homes has undoubtedly been much slower to get off the ground than anticipated. However, the development relies on the early provision of infrastructure and this is now well underway with the Nine Mile Ride Extension (north) completed and opened in 2017. Outline planning permission has been granted for 3,500 dwellings and the District Centre. A number of developers are involved, and reserved matters approval has been given on some of the parcels.
89. On the Hogwood Farm part of the SDL, the trajectory indicates that 240 dwellings will be delivered. There is reserved matters approval for 178 and the dispute is with the remaining 62 dwellings. The developer, Legal and General, has just obtained reserved matters approval for the southern extension to Nine Mile Ride and it is understandable that it is keen to deliver the rest of the houses. The Council's information is that a reserved matters application will be made in 2020 and I was told that this developer uses a modular system of housebuilding, which should allow faster delivery. The range of different housing products being proposed would also support the build out rates anticipated. Delivery would not be until the end of the 5-year period (2023/24) and from the evidence I am satisfied that the trajectory is robust.
90. On the northern part of the SDL there is reserved matters approval for all but 652 dwellings and of these 308 are included in the 5-year supply. There is a recent full planning permission for 70 dwellings leaving a disputed 238 dwellings. There are several developers operating on this site and the Council indicated that it has reduced their anticipated supply and so the 308 dwellings in the trajectory was cautious. However, there are no reserved matters applications and the evidence from Savills the marketing agent shows no developer interest in 14 of the 15 parcels. The one where there is a developer involved indicates that 44 dwellings are anticipated. However, Savills cautioned the forecasting as being subject to market conditions and not definite or fixed. There is insufficient evidence to be confident that any of these units will be delivered and the trajectory should be reduced by 238 dwellings.

91. The Appellant considers that the anticipated rate of delivery from Crest Regeneration, who are building out several parcels, is too high. Overall the trajectory shows 357 dwellings over the 5 year period, which averages at 71 dwellings per annum (dpa). This is considerably higher than the 50 dpa that the Council has adopted in its assumptions for larger sites with 2 or more developers. The Appellant considers that 107 of the dwellings should therefore be removed from the supply. However, the 50 dpa is an average rate across the Borough and I note that in 2018/19 Crest Nicholson delivered 63 dwellings from one parcel. Having considered all of the evidence, including the better communication initiated with individual developers and the different products on offer, I do not consider that the rate of delivery here is necessarily unrealistic.
92. The Appellant is also critical of the delivery rate from those parcels with reserved matters approval. This involves 1,059 dwellings and would result in an average delivery of 212 dpa. Whilst this is much faster than has happened in the past, housebuilding only commenced in 2016 and the expectation is that it will ramp up as a result of the completion of infrastructure. There are a number of different developers offering a range of housing products, including affordable housing and private rented accommodation. In the circumstances, there is insufficient evidence to justify the reduction in build-out rates suggested by the Appellant.
93. A condition on the outline planning permission for the northern part of the SDL only permits 1,000 dwellings to be delivered until 25% of the commercial floorspace in the District Centre has been completed. Progress is being made but there is no reserved matters application and the Development Brief does not give specific timescales. It is very difficult to be confident about when the District Centre will go ahead, especially with the present fluctuating retail market. The Council indicates that it could vary the condition. However, on the assumption that it was considered necessary when imposed it is far from certain that such steps would be acceptable. At present the northern part of the site is anticipated to deliver 1,119 dwellings in the 5 year period and only 713 remain to be built before the condition would be breached. Taking account of my conclusions in paragraph 90 above, this would leave 406 dwellings where delivery in the 5 year period is subject to doubt.
94. Drawing together all of the above points, 406 dwellings should be removed from the trajectory.

South of the M4 Motorway SDL

95. This SDL is one of the longer established strategic sites where delivery started in 2012/13. However, it was not until 2017/18 that it reached (and exceeded) the 250 dpa anticipated. This continued the following year and a total of 1,280 homes is forecast over the 5 year period. The Council's own evidence of delivery on 2 parcels⁴, where there were 5 housebuilders involved, was about 39 dpa. The number of active parcels is set to decrease from 10 to 4 by 2021/2022.
96. The land west of Shinfield is being delivered by 3 developers. Linden Homes

⁴ Land south of Croft Road (completed in 2018/19) and Land West of Shinfield (Phase 1) (275 of the 517 completed 2018/19).

have specifically indicated that it will be slowing delivery rates. Each parcel is indicated to deliver 75 dpa in the first 3 years of the trajectory but to significantly increase delivery on phase 2 in the last 2 years once phase 1 is completed. Although both sites are adjacent, the assumption that construction teams will be moved across to ramp up delivery on the phase 2 site does not seem to be based on evidence. In such circumstances I consider that the rates should remain consistent and that 73 dwellings should be removed from the trajectory.

97. Taylor Wimpey are active on 3 parcels and the trajectory shows a total of 346 dwellings being delivered over the 5 years. This indicates a rate of just short of 70 dwellings a year. The evidence on past rates for this developer on the south of Croft Road parcel show a delivery rate nearer the 50 dpa referred to in the HLSS. Overall, I consider that this is more realistic and that 96 dwellings should be removed from the trajectory.
98. I note that the Appellant considers that overall past delivery rates should be applied to this SDL going forward. Whilst as noted above Linden Homes have indicated a slowdown that does not necessarily apply to other housebuilders. It is not considered robust to adopt this approach, particularly when the evidence indicates that delivery has significantly improved since 2017/18.
99. Drawing together all of the above points, 169 dwellings should be removed from the trajectory.

North Wokingham SDL

100. This SDL has made slow progress and consistently failed to deliver in accordance with the trajectory until 2018/19. However, the evidence shows that matters are improving and that in 2019, 438 of the 827 dwellings anticipated over the 5 year period were under construction. The Council indicates that there is a likelihood that the 252 dwellings shown in the trajectory for 2019/20 will be delivered. There is evidence that delivery on the SDL is improving and that the increase shown in 2018/19 is likely not to have been due to a "spike" caused by pent up demand.
101. The trajectory shows that the number of outlets will decrease, but 3 developers remain active over the whole 5 year period. The Appellant's contention that a generic build-out rate of 100 dpa should be applied is based on historic rates and the evidence seems to me to be demonstrating that this SDL is now delivering, albeit after a slow start. In the circumstances I consider that no changes should be made to the trajectory.

Other sites

102. At Auto Trader House, Danehill it is understood that there was prior approval for 26 flats in March 2019 and this can be taken into account as part of the forward supply. On the other hand, there is no evidence that a development of 76 dwellings was being contemplated and indeed the Council refused permission for the scheme. Although this larger development was granted permission on appeal in June 2019 this was well after the base date of 31 March. In the circumstances the trajectory should be reduced by 50 dwellings.
103. At Stanbury House, Spencers Wood outline planning permission for 57 dwellings was granted on appeal in September 2018. It is appreciated that

part of the developer's case was that the site would assist the 5 year supply. However, from the evidence there has been no reserved matters application. The Council indicated it had sought an update from the developer but had received no response. Indeed, an application has now been submitted for 120 units on a larger site. The developer's intentions are thus far from clear. Even though delivery is shown to be in the last 2 years of the trajectory, the evidence does not show that housing completions will begin within the 5 year period. In the circumstances the trajectory should be reduced by 57 dwellings.

104. At Sonning Golf Club an outline planning permission was granted for 13 dwellings in July 2018. Apart from a reserved matters application relating solely to the access, no further approvals have been granted. Whilst this is a greenfield site, there are a number of pre-commencement conditions relating to such matters as contamination and archaeology that have not been discharged. It is understood that a pre-application meeting has been held with the housebuilder, Alfred Homes, but there is insufficient evidence that delivery will take place in the 5 year period. In the circumstances the trajectory should be reduced by 13 dwellings.
105. Outline planning permission was granted for 20 dwellings at Trowes Lane, Wokingham in February 2018. It is understood that a conditions application was approved in August 2018 but since then no further progress has been made. Cove Construction Ltd is the developer and the Council has indicated that the site is flagged on its website as "coming soon". However, the developer has not responded to the Council's enquiries and no reserved matters application has been forthcoming. Although this is a small site and has been placed in the final year of the trajectory, there is insufficient evidence that delivery will take place in the 5 year period. In the circumstances the trajectory should be reduced by 20 dwellings.

Windfalls

106. The small sites windfall allowance is not disputed. However, the Appellant contended that a large sites windfall allowance of 32 dpa from year 3 is not justified. The evidence of windfalls of 10 or more completions on previously developed land between 1999 and 2019 indicates an average of 44 dpa although there is considerable annual variation. The Council therefore consider that its rate is very conservative.
107. However, prior approvals would fall into the category of windfalls but there is no evidence that those identified specifically would all deliver in years 1 and 2. Similarly, there is no evidence that windfall sites with planning permission at the base date would deliver as quickly as the Council contends. In such circumstances I consider it likely that there is the potential for significant double counting. In the absence of any better evidence, the 96 dwellings comprising the large windfall allowance should be removed from the trajectory.

Conclusions

108. Drawing the above points together, I conclude that in my estimation 811 dwellings should be removed from the trajectory. This means that the Council can demonstrate a 5.43 year supply of deliverable sites.

109. The Covid-19 pandemic is likely to have implications for the housebuilding industry as with other sectors of the economy. The evidence indicates that a number of developers are temporarily closing their construction sites to protect employee and customer welfare. For those remaining open, the lock-down will impact on the availability of support services. Customer confidence is also likely to be reduced with a consequent effect on the buying and selling of property.
110. The Appellant has concluded that the effects would be felt for a 3 to 6 month period, which does not seem unreasonable. On that basis the conclusion is that a further 168 dwellings should be removed from the trajectory to take these factors into account. Whilst it is contended that this is an optimistic assessment, it is equally possible that a bounce back will occur once the crisis ends. Indeed, it is reasonable to surmise that housebuilders and their suppliers will be keen to rectify losses if it is possible to do so.
111. At this stage the economic effects of Covid-19 cannot be known. However, even if all of the impacts suggested by the Appellant are accepted, the Council would still be able to demonstrate about 5.2 years supply of deliverable sites.

Other matters

Affordable housing

112. Policy CP5 in the CS establishes a minimum requirement for 40% affordable housing on sites such as this, subject to viability. The *Berkshire Strategic Housing Market Assessment 2013-2036* (2016) identifies a need for 441 dpa. In the 6 years since 2013, 1,317 affordable dwellings have been delivered or an average of 220 per annum. This means that a backlog will accumulate year on year. If this were to be addressed over the next 5 years, delivery would have to amount to over 700 affordable dpa. This is not far off the total annual housing requirement, which demonstrates the scale of the issue and that the need is acute.
113. Wokingham is an expensive area in which to live and incomes are not keeping pace with price rises. The average house price to average income ratio now stands at 12:1. The evidence shows that there were 1,860 households on the Council's Housing Register on 1 April 2019 and that this had risen by 247 from the preceding year. In December 2019, 1,502 households were on the Help to Buy South Register, with 40 specifying a preference for a shared ownership dwelling in Finchampstead.
114. The proposed development would provide 50% affordable housing, which would amount to 59 units and be above that required by policy CP5 in the CS. The S106 Agreement indicates that the mix would be 66% social rented units and 34% shared ownership units with a mix of flats, bungalows and houses. Taking account of all of the above factors the affordable housing provision would clearly be an important benefit.

Self-build and Custom-build housing

115. Under the *Self Build and Custom Housebuilding Act* (2015) local authorities have a legal duty to keep a Register of those who wish to acquire serviced plots. The *Housing and Planning Act* (2016) requires local authorities to grant sufficient permissions to meet the demand on their Register on a rolling

programme of 3 years by the end of each base period. Paragraph 61 of the Framework indicates that the housing needs of different groups in the community should be assessed and reflected in planning policies. This includes people who wish to commission or build their own homes. As this is a relatively new provision, neither the CS nor the MDD LP include policies that relate to this issue. However, the emerging Local Plan does address this type of home provision and will be considered in due course by an Examining Inspector.

116. The evidence shows that in the first Base Period ending on 30 October 2019 there was an overprovision of permissions relative to demand. For Base Period 2 ending on 30 October 2020 the Appellant and Council disagree about the residual requirement is 83 or 62 dwellings. The Council referred to a community-led project of 21 dwellings on its own land, although no planning permissions appear to have been granted to date. The Appellant contends that the Council will fail to comply with its statutory duty within the current base period, on the basis of past provision rates and lack of available sites. That remains to be seen.
117. There is clearly a substantial demand for this type of development. The Council's own Register shows that about 35% of those in Base Periods 1 and 2 had a preference for a serviced plot in Finchampstead. The appeal proposal would help meet this demand through the 6 serviced plots that it proposes to include.

The SANG

118. The SANG is intended to provide mitigation against likely significant adverse effects on the Thames Basin Heaths Special Protection Area. Such impacts would include recreational pressure from the new population and the harm that would arise to the integrity of the interest features of this protected site.
119. It is clear that the size and quality of the SANG would exceed the above requirements. I have already referred to the management of the woodland and this would be secured through a Management Plan in the S106 Agreement. Within this area there would be woodland walks for the public to enjoy. Overall, the SANG would provide a significant recreational resource, not only for the occupiers of the new development but also for existing residents. Even though no parking area would be provided many would be able to walk or cycle from the surrounding area. There would be grassland areas with water features and areas that could be used for informal exercise. The S106 Agreement includes provisions for the future management of the SANG, including funding.

Highway safety and congestion

120. There is no dispute that the local road network, including Nine Mile Ride, is busy especially during peak periods. The indications are that this will get worse once the Arborfield Garrison SDL is built out. Local residents were particularly concerned about traffic impacts and pedestrian safety.
121. At present Nine Mile Ride is operating below a theoretical capacity of about 1,500 vehicles. However, once the Arborfield Garrison SDL comes on-stream it is anticipated that this will change, and that capacity will be exceeded in

peak periods depending on daily variations. This will also impact on California Crossroads where congestion occurs at busy periods around the 2 mini-roundabouts. The Appellant's Transport Assessment includes agreed trip rates and trip assignments. This shows 67 trips generated in the morning peak and 65 trips in the afternoon peak, which would be spread between the 2 access points. The evidence shows that the additional traffic that would be added from the appeal scheme would amount to less than one vehicle a minute and be insignificant when daily variations are taken into account.

122. I note the concern about the safety of the eastern access, which would be opposite a residential entrance on the south side of Nine Mile Ride. However, a Stage 1 Road Safety Audit has been undertaken at this access point and no safety issues were identified. Such arrangements are not uncommon and there is no evidence that this stretch of road is particularly dangerous or has a high accident rate.
123. Paragraph 109 of the Framework indicates that development should only be prevented or delayed if there would be an unacceptable impact on highway grounds or the residual cumulative impacts on the road network would be severe. The Council as Highway Authority has raised no objection to the appeal scheme on this basis. This is a matter of importance because it is the statutory authority responsible for highway safety on the local road network. Bearing all of these points in mind, I am satisfied that there would not be an unacceptable highway impact or that the cumulative effects would be severe.

Planning balance and overall conclusions

124. The appeal site is within a countryside location and outside the development limits for Finchampstead North and the Arborfield Garrison SDL. There would be harm to the character of the area, the Green Route and the landscape. In addition, notwithstanding improvements to the bus service, the opportunities for modal choice would remain limited and it is likely that most journeys would be undertaken by car. These harmful impacts are matters of very substantial weight and importance in the planning balance.
125. I have identified the most important policies for determining this application. Of these the proposed development would conflict with policies CP1, CP3, CP6, CP9 and CP11 in the CS and policies CC02, CC03 and TB21 in the MDD LP. Inevitably there are some with which the proposal would comply, policies CP5 in the CS and TB05 in the MDD LP relating to affordable housing and housing mix being obvious examples. Nevertheless, in my judgement the appeal scheme would conflict with the development plan when taken as a whole.
126. Paragraph 11 of the Framework establishes the presumption in favour of sustainable development. The "tilted balance" may be engaged in 2 circumstances. In relation to housing provision, I have concluded that the Council can demonstrate a 5 year supply of deliverable housing sites to meet its local housing need. In relation to the most important policies I have found that a few are out of date but not the majority. Overall, I consider that the basket of most important policies is not out-of-date in this case. For these reasons the "tilted balance" would not be engaged. Taking account also of my conclusion in paragraph 125 above, the presumption in favour of sustainable

development would not apply. I can also conclude that the proposal would conflict with policy CC01 in the MDD LP.

127. I have concluded that a few of the most important policies are not consistent with the Framework and therefore it is necessary to consider the weight to be attributed to the conflict. As the presumption in favour of sustainable development in policy CC01 is worded significantly differently to the Framework I consider that the conflict with it should be attributed limited weight. Policies CP9 and CP11 in the CS and policy CC02 in the MDD LP rely on the development limits that have been breached in several of the component parts of the 5 year housing land supply. On the other hand, the Council has been able to demonstrate sufficient deliverable sites without the need to include the Appellant's land. In such circumstances I attribute significant weight to the conflict with these policies.
128. The appeal proposal would include a number of social, environmental and economic benefits. Policy CP17 does not cap housing provision but the Council is providing sufficient deliverable sites to meet its local housing need plus a buffer designed to provide choice and competition in the market. Whilst it is not delivering housing wholly in a plan-led way, the appeal site would not be a plan-led proposal either. In the circumstances I give limited weight to the provision of market housing as a benefit in this case.
129. There is an acute need for affordable housing and this would be provided above the level required under policy CP5. The inclusion of 6 Self-Build and Custom-Build serviced plots would be a benefit that would clearly meet a local demand. In the circumstances I give substantial weight to these benefits.
130. The SANG would be a recreational resource for those living on the development and also residents within the local area. The SSSI would be restored to favourable condition and its biodiversity would be enhanced. I give significant weight to these benefits. An open area is proposed as an education area for Oak Tree Nursery. Whilst I have no doubt that this would enhance the facilities of the nursery, I am not convinced that the condition to secure it would be necessary in order for the appeal development to go ahead. In the circumstances I give this very limited weight as a benefit of the proposal.
131. The proposal would have a range of economic benefits. It would, for example, provide new jobs during the construction period and thereafter. There would be a contribution to economic growth and the generation of household expenditure would help support the local economy and provide local jobs. I attribute limited weight to these benefits.
132. Overall, I consider that the package of benefits should be given substantial weight in the planning balance. However, as I have identified above, there would also be very substantial harm. In my overall judgement the positive factors are insufficient to outweigh the negative ones, and do not indicate that the decision should be made otherwise than in accordance with the development plan.
133. In this case it is unnecessary for me to undertake an Appropriate Assessment as I am dismissing the appeal. However, if I had done so and a positive outcome had ensued it would not have affected the planning balance or my overall conclusions. I have considered all other matters raised but have found

nothing to change my conclusion that this would not be a sustainable form of development and that the appeal should not succeed.

Christina Downes

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Sasha White	Of Queen's Counsel
Ms Anjoli Foster	Of Counsel, both instructed by Ms E-J Brewerton, Solicitor to the Council
<i>They called:</i>	
Mr M Croucher BA(Hons) MSc	Principal Planning Officer at Wokingham Borough Council
Mr G Adam BA DipEcon MA FCIHT MILT	Principal Development Control Engineer at Wokingham Borough Council
Mr I Church BA(Hons) MA MRTPI	Team Leader at Wokingham Borough Council
Mr W Gardner BSc(Hons) MSc(Merit) CMLI	Landscape Architect at EDP
*Ms E-J Brewerton	Solicitor to the Council

FOR THE APPELLANT:

Mr Christopher Young	Of Queen's Counsel
Mr Oliver Lawrence	Of Counsel, both instructed by Mr A Meader, the Pegasus Group
<i>They called:</i>	
Mr D Ford MSc	Associate Director of Transport Planning Associates
Ms A Tamblyn MA(Oxon) MSc CEnv MCIEEM FRGS	Managing Director of The Ecology Partnership
Mr A Meader BSc(Hons) DipTP MRTPI	Senior Director (Planning) of the Pegasus Group
Mr J Atkin BSc(Hons) DipLM CMLI	Director (Landscape) of the Pegasus Group
Dr R Curtis BSc(Hons) PgDip PhD MArborA	Associate Director of Aspect Arboriculture Limited
Mr J Stacey BA(Hons) DipTP MRTPI	Director of Tetlow King Planning
Mr A Moger BA(Hons) MA MRTPI	Associate Director of Tetlow King Planning
Mr M Good BSc(Hons) MA MSc MRTPI	Director (Planning) of the Pegasus Group
*Mr B Naish	Solicitor with Osborne Clarke LLP
<i>*Took part in the Planning Obligations and/or the planning conditions sessions only</i>	

INTERESTED PERSONS:

Mr G Veich	Parish Councillor of Finchampstead Parish Council
Mr M Sheehan BEng MSc DIC	Local resident
Mr R Lewis	Local resident
Mr G Anderson	Local resident
Mrs J Joyce	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Appeal decision: *Land at Lodge Road, Hurst* (APP/X0360/W/3194044), submitted by Mr White
- 2 Oral statement delivered to the inquiry by Mr Sheehan and appended extract from TA 79/99
- 3 Clarification on the Council's position on benefits, submitted by Mr White
- 4 Extract from Assessment of Walked Routes to School, submitted by Mr Young
- 5 Summary of S106 planning obligations, submitted by Mr Young
- 6 Appeal decisions: *Land east and west of Parsonage Road, Takeley* (APP/C1570/W/19/3234530 and APP/C1570/W/19/3234532, submitted by Mr Young
- 7 Appeal decision: *Land off Meadow Lane/ Chessington Crescent, Trentham, Stoke-on-Trent* (APP/M3455/W/18/3204828), submitted by Mr Young
- 8 Plan showing application site, land at Wheatsheaf Close, Sindlesham, submitted by Mr Young
- 9 Statement of Common Ground on sustainability of location matters
- 10 Note on the *My Journey* initiative, submitted by Mr White
- 11 Consultation response from Thames Water on sewage disposal
- 12 Mr Gardner's position statement on landscape and trees, submitted by Mr White
- 13 Note on foul and surface water drainage strategies, submitted by Mr Young
- 14 *Suffolk Coastal District Council v Hopkins Homes Ltd and Another; Richborough Estates Partnership LLP and Another v Cheshire East Borough Council* [2017] UKSC 37, submitted by Mr Young
- 15 Note on the likely use of the proposed pedestrian crossing and its possible impact on traffic flow, submitted by Mr Young
- 16 Note concerning the Education Space S106 planning obligations, submitted by Mr Young
- 17 Confirmation of instruction date of Mr Moger, submitted by Mr Young
- 18 Woodland Management Plan, submitted by Mr Young
- 19 Refusal notice of the appeal application, submitted by Mr Young
- 20 Landscape and visual addendum by Mr Atkin, submitted by Mr Young
- 21 Note by Mr Adam on the proposed bus and pavement improvements, submitted by Mr White
- 22 Extract from the Panel Report into the RSS for South-East England, submitted by Mr Young
- 23 Arborfield Green District Centre development brief, submitted by Mr Young
- 24 Response to Mr Adam's note at Document 21, submitted by Mr Young
- 25 Draft list of conditions and Council's suggested wording for the construction method statement condition, submitted by Mr White
- 26 Progress on the Arborfield Green District and Local Centres, submitted by Mr White

- 27 Appellant's note regarding the delivery of Arborfield Garrison, submitted by Mr Young
- 28 Explanation of the SANG contingency sum and SAMM tariff guidance, submitted by Mr White
- 29 Arboricultural note relating to the proposed footway widening along Nine Mile Ride, submitted by Mr Young
- 30 Consents for work to protected trees at Barkham and Wokingham, submitted by Mr White

DOCUMENTS RECEIVED FOLLOWING THE CLOSE OF THE INQUIRY

- 31 *Written representation from Ms J Joyce (14/2/20)
- 32 *Written representation from Ms C Broad (14/2/20)
- 33 **Decision Notice, Minute (point 83) and Committee Report relating to the Nine Mile Ride extension, submitted by the Appellant.
- 34 ***Note and appeal decision: *Land to the south of Cutbush Lane, Shinfield* dated 10/3/20 (APP/X0360/W/19/3238203), submitted by the Appellant
- 35 Response of the Council to Document 34
- 36 Executed Planning Obligation by Unilateral Undertaking (dated 11 March 2020)
- 37 Executed Planning Obligation by Agreement (dated 12 March 2020)
- 38 Appellant's response to Inspector's question about the impact of COVID-19 on housebuilding
- 39 Council's response to Inspector's question about the impact of COVID-19 on housebuilding
- 40 Secretary of State appeal decision dated 1 April 2020: *Land off Station Road, Long Melford, Suffolk* (APP/D3505/W/18/3214377), submitted by the Appellant

*I agreed to receive representations from these 2 local residents during the inquiry and they were circulated to the main parties subsequently.

**I agreed to accept these documents after the close of the inquiry as they are factual matters, which the Appellant considered material. The Council confirmed it had no objection.

***I agreed to accept this decision after the close of the inquiry on the grounds that it is a relevant material consideration. The Council was given the opportunity to respond.

PLANS

- A/1-A/9 Application plans on which the Council made its decision (A/1-A/9)
- B Internal roads plan
- C Revised indicative masterplan (P16-1187_01 Rev:N)
- D Revised landscape proposals plan (P16-1187_20 Rev:F)
- E Facilities plan
- F Plan showing the built-up area in the vicinity of the appeal site
- G/1-G/6 Plan showing potential footway widening along Nine Mile Ride
- H Plan of potential bus stop improvements on Nine Mile Ride
- I Proving layout (illustrative)

Appeal Decision

Inquiry Held on 16, 17, 23, 24 October 2018

Site visit made on 24 October 2018

by Phillip J G Ware BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th December 2018

Appeal Ref: APP/W1715/W/18/3194846

Land at Satchell Lane, Hamble-le-Rice SO31 4HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr S Bull and Mr R Janaway against the decision of Eastleigh Borough Council.
 - The application Ref O/17/80319, dated 12 April 2017, was refused by notice dated 26 September 2017.
 - The development proposed is up to 70 dwellings together with associated access, public open space, landscaping and amenity areas.
-

Procedural matters

1. The application was submitted in outline, with only access to be considered along with the principle of the development. I have dealt with the appeal in this manner.
2. A Planning Obligation, dated 23 October 2018, was submitted during the Inquiry¹. I have taken account of this Obligation and will return to this below.

Decision

3. The appeal is allowed and planning permission is granted for a development of up to 70 dwellings together with associated access, public open space, landscaping and amenity areas on land at Satchell Lane, Hamble-le-Rice SO31 4HP in accordance with the terms of the application, Ref O/17/80319, dated 12 April 2017, subject to the conditions set out at the end of this decision.

Main issues

4. The application was refused by the Council for five reasons. By the time of the Inquiry three of these had been resolved and were no longer contested by the Council² (although some were still contested by third parties). These related to the detail of the access, drainage and developer contributions.
5. On that basis, there are two main issues in this case:
 - The effect of the proposal on the character and appearance of the area

¹ Document 11

² Details set out in Statement of Common Ground (SOCG) 1.5 – 1.11, together with Planning Obligation

- Whether the appeal site is sustainable in locational terms, having regard to the proximity of and accessibility to local services and facilities

Reasons

The site and the proposal

6. The appeal site is located on the inside edge of a curve in Satchell Lane, which is bounded by mature trees on either side. It is a grazing field around 3.6 hectares in extent. It slopes gently from the north-west corner to the eastern edge, where the land abuts the rear boundaries of properties fronting Satchell Lane. These rear boundaries are marked by a combination of hedgerows, timber fences and wire fences. To the west of the site, beyond a public footpath bounded by a sporadic hedge, is a large disused area of land which was once Hamble Airfield³.
7. The main part of Hamble-le-Rice lies to the south of the appeal site, with the railway station and educational and recreational facilities to the northwest. These are on the main road into the settlement from the M27 and the north.
8. The vehicle access would be in the north-eastern part of the site, onto Satchell Lane. The proposal is for up to 70 dwellings, with up to 35% affordable dwellings.
9. The site is within the 5.6 km buffer zone of the Solent and Southampton Special Protection Area and other designated areas.

Planning policy background and weight

10. The development plan includes the Eastleigh Local Plan Review 2001-2011 (LPR), adopted in 2006. All the policies relevant to this appeal were saved by the Secretary of State in 2008.
11. The site is outside, but directly adjacent to, the settlement boundary of Hamble-le-Rice as defined in the LPR. It is therefore in the countryside in policy terms. The key policy arising from this is LPR 1.CO (development outside settlement boundaries), which provides that planning permission will not be granted for development in the countryside unless it meets at least one of four criteria – none of which are argued in this case. There are also other LPR policies (18.CO, 20.CO and 59.BE) which follow on from the identification of the site outside settlement boundaries, and are essentially parasitic on LPR policy 1.CO.
12. The question of the weight to be accorded to these policies was the subject of considerable discussion at the Inquiry, and various potential reasons why the plan might be regarded as out of date and/or the policies might be accorded reduced weight were discussed. I can deal with a number of these matters briefly.
13. It is clear that the plan is not out of date simply because of its age (adopted some 12 years ago), nor because it predates even the first version of the National Planning Policy Framework (the Framework) 2012, nor because it made provision only until 2011. Nor, in the current situation where the parties

³ This is safeguarded for mineral extraction – as is the appeal site – in the Hampshire Minerals and Waste Plan (2013). No objection has been raised to the proposal on this basis.

- agree that there is a five year housing land supply, does that indicate any reduced weight to the policies.
14. What is important is the degree of consistency of a particular policy or policies with the 2018 Framework. This will depend on the specific terms of the policy/ies and of the corresponding parts of the Framework when both are read in their full context.
 15. The approach of LPR policy 1.CO. is clearly aimed at restricting development outside the urban edge unless certain criteria are met. These deal with agricultural and similar development where a countryside location is required, some outdoor recreational uses, some public services and developments meeting other policies in the plan.
 16. LPR policy 1.CO (and related policies) does not impose blanket protection in the countryside. However the approach clearly lacks the flexible and balanced approach towards the issue enshrined in the Framework. On that basis the policies should be accorded reduced weight.
 17. The question of the extent to which the weight should be reduced was canvassed at the Inquiry. Appeal decisions at various locations within the area were discussed⁴, but I am conscious that I do not know what evidence or arguments were advanced in those cases. Similarly a range of appeal decisions from elsewhere were considered, although these are of less relevance as the policy situation and the details of particular cases could be significantly different.
 18. As stated above the fact that the authority can clearly demonstrate a five year housing land supply is not relevant to the weight which should be accorded to development plan policies. However when considering the currency of a policy, it is relevant to have regard to the record of how it has been applied. In this case the Council has achieved the current supply position in part by greenfield planning permissions outside settlement boundaries – in some cases on sites which were within Strategic Gaps (an additional policy objection which does not apply in this case). I do not criticise the authority for any of these decisions but it is reasonable to infer that, in those cases, the Council either considered that the settlement boundary carried reduced weight or that the policy harm was outweighed by other considerations.
 19. In assessing the weight to be given to the settlement boundary and related policies the appellant accepted that a range from considerable/significant to full weight had been attributed in other cases. In this case, I find that although LPR policy 1.CO (and related policies) do not apply a blanket prohibition on development in the countryside they are out of step with national policy. I therefore attribute limited weight to the countryside policies.
 20. Finally the emerging Eastleigh Borough Local Plan 2016-2036 has been the subject of public consultation, and adoption is hoped for in mid-2019. At this stage a number of the draft housing allocations are proposed outside the LPR

⁴ Land off Bubb Land (APP/W1715/W/16/3153928), Land adjacent to The Mazells (APP/W1715/W/17/3173253), Land south of Mallards Road (APP/W1715/W/16/3156702), and Land adjacent to the Roll Call (APP/W1715/W/18/3194697)

settlement boundaries. However given the stage which the plan has reached it can be accorded only limited weight – as agreed by the parties.

The effect on the character and appearance of the area

21. The site, as described in summary above, is within the South Hampshire Lowlands National Character Area which is described as a low lying plain between the chalk hills and Southampton Water. It is a gently undulating lowland river landscape which supports pasture in small to medium sized fields, bounded by agriculturally managed hedgerows. The coastal plain, in which the appeal site lies, is described as being more open. In the County Council's Integrated Character Assessment (2012) references are made to the valley landform. In the more local Landscape Character Assessment (2011) for the Borough the site is within the 'Hound Plain' area which is a gently domed landform falling towards the coast and the wooded valleys.
22. These general descriptions accurately portray the wider area around the appeal site, but in more detail the site is strongly influenced by the proximity of the existing settlement. This can be appreciated as the site slopes gently down from the edge of the airfield plateau.
23. The parties agree that the landscape character of the wider area would not be materially affected. There is agreement that this is an "ordinary" landscape of "medium quality" – albeit not an unattractive one. It is also agreed that this is not a 'valued landscape' in terms of paragraph 170 of the Framework. I have no reason to disagree with the views of the parties.
24. Of considerable significance is the Council's own 2018 study which identified the site as being within an area having low sensitivity to residential development. This was defined as meaning that "development may be more easily accommodated without significant negative landscape or visual impact, with limited mitigation".
25. The site is well contained from the wider area by virtue of the existing trees and development along the eastern boundary. As I saw from my site visit it would be partially visible in long distance views from the public footpath along the eastern bank of the River Hamble. However this is a considerable distance away and it is hard to even identify the site from that direction. Closer to the site the properties which bound the land to the east and south east have variable views from rear windows and gardens, although some of these are filtered by the intervening vegetation. There are limited views of the site from the road itself, and clear views from the footpath which runs along the western side of the site.
26. Clearly the change from an open field to a housing development, even allowing for landscaping and planting, would have a permanently urbanising effect and a consequent change in the appreciation of the immediate landscape. This would cause some limited harm to the existing landscape character, although this would also be the case in relation to any greenfield development proposal.
27. There was also an argument advanced by the Council that the site would extend the built up area as viewed from the road or the footpath, and some debate as to the current extent of the settlement in view of the particular nature of the development on the opposite side of the road. However, the precise location of the current built up area is not a matter on which the

decision should turn, as it is clear that the proposal would extend the settlement into what is currently open countryside.

28. The Council also criticised the proposal as being development in depth which, it was alleged, would be out of keeping with this part of the settlement. Although I appreciate that the houses backing onto the site are arranged in a linear form there are examples of development in depth elsewhere in the immediate area – particularly on the opposite side of Satchell Lane. The proposal would therefore not be out of keeping with the general form of development in this part of the settlement.
29. I fully appreciate that the outlook from some of the adjoining houses would be significantly changed, even with a potential set back of the new development to limit the effect. However that is not a matter, in either landscape terms or in relation to outlook, which is of overriding significance.
30. At the Inquiry the Council suggested that there is a value in the local landscape in its context as a route to and from the settlement. However this is not identified in any policy or guidance and the views of the site as one approaches the settlement are restricted by high banks and vegetation. Some parts of the wider area are identified by the Council as having a particular function of separating settlements and providing an open gap. The appeal site is not within such an area and does not perform a function in either this respect or as a gateway to the settlement.
31. Other decisions which were drawn to my attention have attributed a range of weights to the landscape consequences of development in greenfield locations. This variety is inevitable given the importance of the particular location of the site.
32. Overall, this is medium quality landscape area with a low sensitivity to residential development. The effect of the proposal would be appreciated only from close views. That said, the proposal would be in the countryside and would cause limited harm to the character and appearance of the area and conflict with the policies summarised above (which themselves have limited weight).

Sustainability/accessibility

33. Many of the facilities in the settlement are located to the south of the appeal site, around the centre of Hamble-le-Rice. However there are other services to the north including Hamble Secondary School, a health centre and the railway station. Due to the layout of the settlement, these facilities can also be accessed by a southerly loop, either through a housing estate or along the main road. However the shortest journey is northwards along Satchell Lane.
34. As clarified at the Inquiry, the Council's sole objection on sustainability/accessibility grounds focused on one point. That was whether accessibility by walking along the northerly route on Satchell Lane to Hamble Secondary School, the health centre and other facilities was safe and acceptable. There was no objection related to accessibility to these facilities by other means of transport, most particularly cycling, or access to other employment, leisure, retail, social or primary school provision. In addition the railway station was accepted to be within acceptable walking and cycling

- distance along the southerly route. The appellant's evidence on these matters was not challenged.
35. The first matter to be decided is whether the northerly route is acceptable for those walking to school and other facilities. The appellant's expert evidence is that the route is already used by a limited number of children, that the proposal would generate few additional walking trips and that there is no record of pedestrian/vehicle accidents along the northern route over the past five years. None of these matters was contested by the Council, and I have no reason to disagree.
36. However the appellant's position was that the northern route was a safe walking route for those choosing to walk to the northern facilities. I have to disagree with that position. I walked the route, in both directions, on two occasions – once before the Inquiry and once at the conclusion of my formal site visit. The first visit was undertaken as dusk was falling. The road is unlit, possesses no footpaths for most of the route, and includes a number of tight bends. In many places there are steep banks which limit the ability of pedestrians to avoid oncoming traffic.
37. The agreed fact that a few children use the northern route as a route to school does not indicate that this is desirable or that it should be relied on as part of the accessibility credentials of the appeal site. I also appreciate that there are no recorded accidents, but this may simply be a function of the very limited number of people using what I regard as an unsafe route.
38. If the use of the northern part of Satchell Lane as a safe walking route to the facilities, especially the school, were a policy requirement and there was no alternative, I might have a very different view on this issue. However there is no such policy requirement and, in any event, alternative modes of transport and walking routes exist.
39. There is no necessity to use the northern route as access to the school because the southern routes (possibly including a short cut through a housing area) is within a reasonable walking distance. The shortest of these is within the distance considered acceptable for secondary school children by the education authority. As a further alternative, a pedestrian could start along the southern route and then take a bus from the end of Satchell Lane for the remainder of the journey.
40. I am conscious that there is an informal walking route across the former airfield, leading indirectly to the school and other facilities. However I place no reliance on this route as it does not appear to be legally established and its continuation is therefore uncertain. This route, leaving aside its legality, is unsurfaced and unlit, and is therefore unattractive and unwelcoming in inclement weather and certainly during the hours of darkness.
41. The Council's position in closing was that anyone "...attending the secondary school, health centre or the railway station will either have to risk walking along the northern route.....or navigate fields and unauthorised footpaths, or go by car." However this omits the southern walking route(s), the part walking and part bus option, and the agreed acceptability of cycling by either route.
42. Overall, there is no policy requirement that a specific walking route should be acceptable, especially when other routes and transport modes exist. Although

I disagree with the appellant concerning the safety of the northern route for pedestrians, the appeal site is sustainable in locational terms having regard to the proximity of and accessibility to local services and facilities. It complies with policy LPR 100.T.

Other matters – nature conservation

43. There are overlapping European nature conservation designations around the River Hamble and the Solent Estuary to the east of the appeal site. These are the Solent Maritime SAC, Solent and Southampton water SPA and RAMSAR. They are saltmarsh and mudflat habitats which are important for a number of flora and fauna species including breeding and overwintering waterbirds.
44. Since the application was originally considered by the Council there has been a Court of Justice of the European Union (CJEU) judgement⁵. That requires the decision maker, when considering the effect that a proposal may have on a European Site, to consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage.
45. The appellant has provided a Habitats Regulations Assessment Technical Note⁶ which builds on the material submitted with the Statement of Common Ground. The Council has agreed both these documents and provided an HRA Screening proforma.
46. Whilst the site is not within the designated areas, it is sufficiently close that the proposal has the potential to result in likely significant effects on the European sites, and accordingly an Appropriate Assessment is needed. The proposed mitigation measures which are included and detailed in the s106 Obligation are intended to avoid or reduce the effects. On that basis I consider that the proposed development will not have any adverse effect on the integrity of the European sites, either alone or in combination with other plans or projects drawn to my attention. In coming to this conclusion I have taken account of the CJEU judgement, the positive response from Natural England⁷ and the comments provided by both the appellant and the Council.

Other matters – housing land supply

47. The Council gave evidence as to how the authority has managed to achieve its current housing land supply position and the parties agreed that the Council can demonstrate a five year land supply. The Council's evidence was that there is a figure of 7.8 years, with the appellant evidencing a 7.2 year supply. Both parties agreed that there is no need to explore the reasons for this slight difference further. At the close of the Inquiry it was suggested by the Council that the figure is around 10 years on the basis of recently released data. However again there is no need to explore this further. Overall, despite the presence of significantly more than a five year supply, the provision of market and affordable housing weighs significantly in favour of the proposal, in the light of the national policy to significantly boost the supply of homes.

⁵ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

⁶ Document 14

⁷ Document 13

Conditions and planning obligation

48. A range of conditions was discussed and agreed (without prejudice) at the Inquiry. I have made minor amendments in the interest of precision.
49. Given the outline nature of the proposal, a number of reserved and other matters need to be submitted for approval, in general accordance with the Development Concept Plan. The number of dwellings needs to be limited to accord with the application and the illustrative material, and the approved plans need to be identified to avoid confusion. In the interests of highway safety a condition is necessary to ensure the provision of the agreed sightlines. (1 – 6, 23 – 24)
50. In the interests of the amenity of the area and the appearance of the development, landscaping and planting details need to be submitted for approval in line with the material already submitted. An Arboricultural Method Statement and other related matters are necessary to control the method of working and to protect existing trees. (7 – 12)
51. Both to minimise effects on the area and local residents, and in the light of the proximity of European sites, a Construction Method Statement and a Construction Environmental Management Plan need to be submitted for approval. (13)
52. Given the location of the site within and adjacent to an area of sand and gravel resource, conditions are needed to deal with material recovered incidentally from excavation work and with the relationship between the proposed development and the safeguarded site for mineral extraction at Hamble Airfield. (14 – 15)
53. Foul and surface water drainage need to be controlled in the interests of avoiding flooding and pollution. (16 – 17)
54. To avoid and remove contamination in relation to human health, a condition is needed requiring an updated risk assessment and control over imported materials. (18)
55. A site-wide green infrastructure strategy and a mechanism for the protection of breeding birds is necessary for ecological reasons (19 – 20)
56. A written scheme of investigation and a programme of archaeological work is required so as to investigate any heritage assets. (21)
57. In the interests of environmental sustainability, details of energy efficiency and water consumption should be submitted for approval. All homes on the site should be constructed to Lifetime Homes Standard. (22, 25)
58. So as to promote sustainable modes of travel, a Travel Plan is necessary. (26)
59. There are two conditions which were put forward at the Inquiry which I have not imposed. The first would require a noise mitigation scheme to address the impact of traffic noise. However the reason put forward was to protect the amenities of the occupiers of nearby properties, which is not understood or justified. If the condition were intended to protect the amenity of future residents of the development, I have been provided with no evidence that future residents would be subject to any high noise levels, and the condition is unnecessary. The second condition would control plant and equipment giving

rise to emissions. However no justification has been put forward and, in the context of a residential development, I do not consider this to be necessary.

60. The Planning Obligation, which is in unilateral form, makes a number of provisions, including:

- Contributions to a range of matters including air quality monitoring, the Solent Disturbance Mitigation Project, footpath works, and education contributions
- Affordable housing at no less than 35%
- On-site open space and play areas
- Arrangements for unallocated parking areas

61. The CIL Compliance Schedule⁸ sets out the detailed background and justification for each of the provisions in the Obligation in terms of their necessity, relationship with the appeal scheme, and their reasonableness. I have no reason to disagree with the Schedule in relation to any of these matters.

62. The provisions of the Obligation are directly related to the proposed development and are necessary to make the development acceptable in planning terms. Therefore, I consider that the Obligation meets the policy in paragraph 56 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. I have therefore given due weight to those provisions, especially related to affordable housing, which go beyond mitigation.

Planning balance and conclusion

63. Given that the proposal has been the subject of Appropriate Assessment the presumption in favour of sustainable development in paragraph 11 of the Framework does not apply. The appeal therefore falls to be considered on the basis of the s38(6) balance and the appeal should be determined in accordance with the development plan unless material considerations indicate otherwise.

64. As agreed by the Council, the economic and social benefits of the proposal are worthy of significant weight. Given the national objective of significantly boosting the supply of homes, the provision of market and especially affordable housing carries significant weight. I appreciate the Council's point that the economic benefits related to short term construction jobs, and the longer term boost to local spending power, could arise from any similar development. However that does not detract from the fact that this particular development offers these benefits, which I accord significant weight.

65. I have concluded that the proposal meets the relevant accessibility policy. However this matter is essentially neutral in the planning balance.

66. The key factor to be set against the benefits of the proposal is the conflict with the settlement boundary and related landscape policies. As set out above, I attach limited weight to these matters, and this harm is substantially outweighed by the benefits of the proposal.

⁸ Document 12

67. For the reasons given above I conclude that the appeal should be allowed.

P. J. G. Ware

Inspector

Conditions

RESERVED MATTERS

1. The development hereby permitted shall begin either before the expiration of;
 - a) two years from the date of this permission or
 - b) one year from the date of approval of the last of the reserved matters to be approved, whichever is the later
2. No development shall start until details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters"), have been submitted to and approved in writing by the Local Planning Authority. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than one year from the date of this permission. The development shall be carried out in accordance with the approved details.
3. The residential development hereby permitted shall comprise no more than 70 dwellings.
4. The development hereby permitted shall be carried out in accordance with the details shown on Site Location Plan CSA/3212/106; visibility plan drawing 17-004-035 rev D "Required landscaping to provide visibility".
5. The development hereby permitted shall be carried out in general accordance with the details shown on drawing CSA/3212/105 rev C "Development Concept Plan" and on drawing CSA/3212/108 "Illustrative Landscape Strategy" and no building shall be more than 2 storeys in height.
6. The development shall not be occupied until the works shown on drawing 17-004-035 rev D "Required landscaping to provide visibility" have been completed to the satisfaction of the Highways Authority.

LANDSCAPING & TREES

7. No development above slab level shall take place until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall cover all hard and soft landscaping, including new and replacement trees, ground level changes, boundary treatments, means of enclosure and landscaping to the SUDS to increase the aesthetic and biodiversity value of the site; and proposed and existing functional services above and below ground; and shall provide details of timings for the provision of all landscaping and future management and maintenance. The hard and soft landscape works shall be carried out in accordance with the approved plans and to the appropriate British Standard.
8. The landscaping shall be carried out no later than the first planting season following the completion of the development. If, within a period of 5 years after the date of planting, any tree, shrub or hedgerow (or its replacement) is removed, destroyed, damaged or dies, it shall be replaced in the same location during the next planting season with another of the same species and size.
9. The development must accord with the Tree Information report (reference 9415-KC-XX-YTREE-TreeSurvey-and-Impact Assessment) produced by Ian

Keen Ltd and drawing 9415-KC-XX-YTREE-TPP02Rev0 "Tree Protection Plan" produced by Ian Keen Ltd.

10. No development, or site preparation, shall commence until an Arboricultural Method Statement, prepared in accordance with BS5837:2012, is submitted to and approved in writing by the Local Planning Authority. This statement will include timings and the methodology for:
 - a) Installation of protective fencing and ground protection
 - b) Excavations and the requirement for specialised trenchless techniques where required for the installation of services.
 - c) Installation of new hard surfacing, including construction methods, materials, design constraints and implications for levels
 - d) Retaining structures to facilitate changes in ground levels
 - e) Preparatory work for new landscaping
 - f) Auditable system of arboricultural site monitoring including a schedule of specific site events requiring input or supervision

The approved Arboricultural Method Statement shall be adhered to in full in accordance with the approved plans.

11. No development, or site preparation prior to operations which have any effect on compacting, disturbing or altering the levels of the site, shall take place until a suitably qualified person appointed on behalf of the developer and approved by the Local Planning Authority has been appointed to supervise construction activity occurring on the site. The arboricultural supervisor appointed on behalf of the developer will be responsible for the implementation of protective measures, special surfacing and all works deemed necessary to ensure compliance with the approved arboricultural method statement and that all such measures to protect trees are inspected by the Local Planning Authority Arboricultural Officer prior to commencement of works and any vehicle movements on site related to the development. Where a no dig solution is specified to protect root protection areas the arboricultural supervisor shall ensure that this is installed prior to any vehicle movement, earth moving or construction activity occurring on the site and that all such measures to protect trees are inspected by the Local Planning Authority Arboricultural Officer prior to commencement of any vehicle movements/use of the proposed access road.
12. Following inspection and approval of the tree protection measures, no access by vehicles or placement of goods, chemicals, fuels, soil or other materials shall take place within fenced areas nor shall any ground levels be altered or excavations take place within those areas. The tree protection shall be retained in its approved form until the development is completed.

CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN

13. No development shall take place, including any works of demolition, until a Construction Method Statement and Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by the Local Planning Authority. The approved Statement and CEMP shall be adhered to throughout the construction period. The Statement/Plan shall provide for:
 - a) No construction, demolition, ground or earth works, deliveries to the site or any other construction-related activities during the

- construction period except between the hours of 0800 to 1800 Mondays to Fridays or 0900 to 1300 on Saturdays and not at all on Sundays or Bank Holidays
- b) Means of access for construction work
 - c) A programme and phasing of construction work, including roads, footpaths, landscaping and open space
 - d) Location of temporary site buildings, compounds, construction material and plant storage areas used during construction
 - e) The arrangements for the routing/turning of lorries and details for construction traffic access, including signage to the site, and restriction on deliveries during school pick-up/drop-off times
 - f) The parking of vehicles of site operatives and visitors
 - g) Provision for storage, collection, and disposal of recycling/waste from the development during construction period
 - h) Details of wheel washing and highway cleaning measures to prevent mud and dust on the highway during demolition and construction
 - i) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - j) Temporary lighting
 - k) Measures to control the emission of dust and dirt during construction; (having regard to the details contained in the "Best Practice Guidance – The Control of Dust and Emissions from Construction and Demolition", 2006 (London Authorities) and "Guidance on the assessment of dust from demolition and construction" 2014 (Institute of Air Quality Management)
 - l) No burning of waste material on site
 - m) A scheme for controlling noise and vibration from construction activities (to include any piling)
 - n) Safeguards for fuel and chemical storage and use, to ensure no pollution of the surface water leaving the site.
 - o) Diagrammatic and written details of construction drainage containing three forms of temporary filtration

MINERALS

14. Prior to the commencement of development a mineral recovery plan for the management of sand and gravel resource recovered incidentally from excavation work throughout the construction phase of the development shall be submitted to and approved in writing by the Local Planning Authority. The mineral recovery plan shall include details of methods for ensuring that all viable minerals excavated during the construction phase are put to beneficial use on site as part of the development. A method to record the recovery of minerals shall also be included within the plan. Records of the amount of recovered material shall be made available to the Minerals Planning Authority. The development must accord with these approved details.
15. Any reserved matters applications shall be accompanied by a report detailing how the relationship between the proposed development and the nearby safeguarded site for mineral extraction – Hamble Airfield – has been considered; taking into account impacts on the proposed design and layout of the development and how any potential significant impacts to and from the safeguarded site are to be avoided or mitigated.

DRAINAGE

16. No development shall take place until a drainage strategy detailing the proposed means of foul water sewerage disposal and an implementation timetable has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme and timetable.
17. No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate that the surface water run-off generated up to and including the 1:100 year event critical storm (plus 30% climate change allowance) will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented before the development is completed, and thereafter managed and maintained in accordance with the approved details. Those details shall include:
 - a) A technical note detailing any changes to the submitted Flood Risk Assessment, drainage design and the parameters used to demonstrate the design. The note shall be in accordance with the Indicative Surface Water Drainage Strategy plan ref: 17-004-017 submitted within the Flood Risk Assessment & Preliminary Surface Water Drainage Strategy dated April 2017 rev A, Appendix E
 - b) Detailed drainage drawings and calculations for a naturalised sustainable drainage system with 3 stages of natural filtration, and any swales, attenuation basins or watercourses to be designed to have sides no steeper than 1:4 gradient
 - c) Infiltration testing to BRE365
 - d) Plans and calculations showing exceedance routing in the event of blockages or storms exceeding design criteria
 - e) Information on water quality following the methodology in the Ciria SuDS Manual C753
 - f) Information about the design storm period and intensity, the method employed to deal with and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - g) Control measures to ensure no pollutants leave the site
 - h) A timetable for its implementation and
 - i) A management and maintenance plan for all elements of the drainage system for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its life to maintain greenfield rates water flows and operational water quality. This must also include information on how the drainage features will be protected during construction

CONTAMINATION

18. No work shall commence on site until the following has been submitted to and approved in writing by the Local Planning Authority:

- a) An updated risk assessment and supporting details to cover final site layout, changes to site levels and housing construction details
- b) A detailed discovery strategy for identifying and dealing with unexpected contamination encountered on site
- c) Specifications for imported soils, and reporting procedures to confirm materials imported are as agreed

BIODIVERSITY

19. The first reserved matters application shall include details of a site wide green infrastructure strategy detailing the extent and nature of the natural habitat, open space and corridors within the network. The network should incorporate all open space within the development and extend into the urban area via wildlife corridors and other enhancements. The strategy should be overarching, referencing all the species specific strategies and providing details relating to overall habitat connectivity within the network and any requirements above that provided for mitigation. The final green infrastructure should be multifunctional and provide gains for wildlife and the human population in line with national policy.
20. No tree/shrub clearance works shall be carried out on the site between 1st March and 31st August inclusive, unless the site is surveyed beforehand for breeding birds and a scheme to protect breeding birds is submitted to and approved in writing by the Local Planning Authority. If such a scheme is submitted and approved the development shall thereafter only be carried out in accordance with the approved scheme.

ARCHAEOLOGY

21. No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation and recording which has first been submitted to and approved in writing by the Local Planning Authority.

ENVIRONMENTAL SUSTAINABILITY

22. Prior to the occupation of any dwelling as built stage SAP data and as built stage water calculator for that dwelling confirming energy efficiency and the predicted internal mains water consumption to achieve the following shall be submitted to and approved in writing by the Local Planning Authority:
- a) In respect of energy efficiency, a standard of a 19% improvement of dwelling emission rate over the target emission rate as set in the 2013 Building Regulations
 - b) In respect of water consumption, a maximum predicted internal mains water consumption of 105 litres/person/day

The development shall not be carried out otherwise than in accordance with the approved details.

DESIGN AND APPEARANCE

23. No development above slab level shall take place until details and samples of the materials to be used in the construction of the external surfaces of the

development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

24. No development shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority:
- a) Plans including cross sections to show proposed ground levels and their relationship to existing levels both within the site and on immediately adjoining land
 - b) The width, alignment, gradient, sight lines and type of construction proposed for any roads, footpaths and accesses
 - c) The provision to be made for street lighting and any external lighting. Lighting shall be designed and located to minimise light spillage and avoid impacting on flight corridors used by bats
 - d) Details for the on-going management and maintenance of any roads, footpaths and accesses including any future plans for adoption
 - e) Any pumping stations and associated no build zone details
 - f) Crime prevention measures

Development shall be carried out in accordance with the approved details and the approved provision shall be retained and kept available.

LIFETIME HOMES

25. All affordable units to be erected on site shall be constructed to Lifetime Homes Standard.

TRAVEL PLAN

26. Prior to the occupation of the first dwelling within the development hereby permitted, a detailed Travel Plan shall be submitted to the Local Planning Authority and approved in writing. The Travel plan shall be designed to reduce dependency on the private car, including measureable and unambiguous objectives and modal split targets, together with a time-bound programme of implementations, monitoring and regular review and improvement; and be based on the particulars contained within the Charles & Associates Consulting Engineers Ltd's draft framework Travel Plan (17-004-015 Rev A) produced in support of the application for the development hereby permitted. The development shall be occupied in accordance with the approved details.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Stinchcombe QC	Instructed by the Legal Services Manager
He called	
Councillor K House	Leader of the Council, lead Member for planning policy, County Councillor for the appeal site, Board Member of Homes England
Mr P Armstrong MLI MUD Chartered Landscape Architect	Senior Associate, Hyland Edgar Driver Landscape Architects
Mr M Grantham BA MS (Transport Planning & Engineering)	Principal Transport Development Planning Officer, Hampshire County Council
Mrs L Harrison BA(Hons) DipTP MRTPI	Development Management Senior Specialist
S106 and conditions only Ms K Budden	Planning Officer

FOR THE APPELLANT:

Mr C Boyle QC	Instructed by Woolfe Bond Planning
He called	
Ms S Gruner B(Hons) (Landscape Architecture) CMLI	CSA Environmental
Mr G Charles BEng CEng MICE	Managing Director, Charles & Associates Consulting Engineers
Mr S Brown BSc(Hons) DipTP MRTPI	Principal, Woolf Bond Planning LLP
S106 and conditions only Mr B Ralph	Partner, Moore Blatch
Not called at the Inquiry Mr P McColgan	Associate Director, G L Hearn

INTERESTED PERSONS:

Mr S Gardiner	Local resident
Mr P Riley	Local resident
Ms J Austin	Local resident
Mr A Hamlett	Local resident
Ms A Jobling	Local resident, Clerk to the Parish Council

INQUIRY DOCUMENTS

1	List of persons present at the Inquiry
2	Email (15 October 2018) from Mr Brown on 5 year housing land supply
3	Pedestrian and cycle counts (Mr Charles)
4	Revised walking/cycling isochrones (Mr Charles)
5	Appeal decision (3097721) at Stanbury House, Spencers Wood
6	Mr Riley's statement
7	Hampshire County Council letter (undated) - education
8	Eastleigh Borough Local Plan policy HA3
9	Email (22 October) from Mr Charles re.walking distances
10	Schedule of sites granted planning permission after May 2017
11	Planning Obligation (23 October 2018)
12	CIL Compliance Schedule and related documents
13	Natural England response (22 October) to draft HRA
14	Revised Habitats Regulations Assessment technical note (October 2018)
15	Council's closing submissions
16	Appellant's closing submissions

CORE DOCUMENTS

CD1.1	Extracts of Adopted Eastleigh Borough Local Plan Review (2001-2011) (May 2006) and Proposals Map
CD1.2	Direction under Paragraph 1(3) Schedule 8 Planning and Compulsory Purchase Act 2004. Saved Policies Direction May 2009
CD1.3	Extracts of Submitted Eastleigh Borough Local Plan 2011-2029 and Proposals Map
CD1.4	Report on Examination into Eastleigh Borough Council's Eastleigh Borough Local Plan 2011-2029
CD1.5	Extracts of Emerging Local Eastleigh Borough Local Plan 2016-2036 and Proposals Map
CD1.6	EBC Planning Obligations SPD (July 2008)
CD1.7	EBC Planning Obligations SPD Background Paper (July 2008)
CD1.8	EBC Public Art Strategy 2015-2019 (February 2016)
CD1.9	EBC Landscape Character Assessment: Area 13 - Hound Plain
CD1.10	Extracts of Hampshire Minerals & Waste Plan 2013
CD1.11	HCC 'Integrated Character Assessment: Area 3D - Hamble Valley
CD1.12	HCC Integrated Character Assessment: Area 9D - Netley, Bursledon & Hamble Coastal Plain
CD1.13	Extract of Hampshire Rights of Way online maps
CD1.14	Solent Recreation Mitigation Strategy
National guidance	
CD2.1	Landscape Institute and The Institute of Environmental Assessment 'Guidelines for Landscape and Visual Impact Assessment' third edition (GLVIA)
CD2.2	National Character Area Profile NCA 126, South Coast Plain
CD2.3	Draft Planning Practice Guidance (March 2018)
CD2.4	Housing Delivery Test – Draft Measurement Rule Book (March 2018)
CD2.5	Planning Practice Guidance, as published, on annual local housing need figures

CD2.6	Independent Review of Build Out Rates – Draft Analysis (June 2018)
Planning History	
CD3.1	Z/18953/000 – Residential development – Land west of Satchell Lane and east of Hamble Airfield
CD3.2	Z/26999/000 – The erection of 2 detached houses – Land adjoining Folly's End, Satchell Lane
Relevant Appeal Decisions	
CD4.1	APP/W1715/W/15/3005761 - Land to the east of Grange Road, Netley Abbey, Southampton (14.12.15)
CD4.2	APP/W1715/W/15/3139371 - Land off Botley Road, West End, Hampshire (7.10.16)
CD4.3	APP/W1715/W/15/3130073 - Land to the north west of Boorley Green, Winchester Road, Boorley Green, Eastleigh, Hampshire (30.11.16)
CD4.4	APP/W1715/W/16/3153928 - Land off Bubb Lane, Hedge End, Hampshire (13.19.17)
CD4.5	APP/W1715/W/16/3156702 - Land to the south of Mallards Road, Bursledon, Hampshire (2.8.17)
CD4.6	APP/W1715/W/17/3173253 and APP/W1715/W/17/3178540 Land adjacent to 'The Mazels', Knowle Lane, Horton Heath, Southampton, Hampshire (11.1.18)
Relevant Judgments	
CD5.1	North Wiltshire District Council v Secretary of State for the Environment [1992] 65.P & C.R.137
CD5.2	Hunston Properties v SSCLG and St Albans City & District Council [2013] EWHC 2678
CD5.3	Fox Strategic Lane and Property Ltd. V SSCLG [2013] 1P. & C.R.6
CD5.4	Zurich Assurance Ltd v Winchester City Council & South Downs NPA [2014] EWHC 758 (Admin)
CD5.5	Bloor Homes East Midlands Ltd v SSCLG [2014] EWHC 754 (Admin)
CD5.6	Satnam Millennium v Warrington Borough Council [2015] EWHC 370
CD5.7	Oadby & Wigston BC v SSCLG & Bloor Homes Ltd [2016] EWCA Civ 1040
CD5.8	Gladman Developments Ltd v Daventry DC [2016] EWCA Civ 1146
CD5.9	St Modwen Developments Ltd vs. SSCLG & East Riding [2016] EWHC 968 (Admin)
CD5.10	Suffolk Coastal DC v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East BC [2016] EWCA Civ 168
CD5.11	Suffolk Coastal District Council v Hopkins Homes Ltd and another; Richborough Estates Partnership LLP and another v Cheshire East Borough Council [2017] UKSC 37.
CD5.12	Lichfield v SSCLG [2017] EWHC 2242 (Admin)
CD5.13	People Over Wind v Teoranta judgment by the European Court of Justice (C-323/17)
CD5.14	Phides Estates (Overseas) Limited v. Secretary of State for Communities and Local Government [2015] EWHC 827 (Admin)



Department for
Communities and
Local Government

Rachael Bibby
Planning Prospects
4 Mill Pool
Nash Lane
Belbroughton
Worcestershire DY9 9AF

Our Ref: APP/K3415/A/14/2225799

Your ref: Alrewas

13 February 2017

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
PLANNING APPEAL BY LIONCOURT HOMES LTD
AT LAND TO THE NORTH OF DARK LANE, ALREWAS, BURTON UPON TRENT,
STAFFORDSHIRE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mrs K A Ellison BA, MPhil, MRTPI, who opened a public inquiry on 7 July 2015 into your client's appeal against the refusal by Lichfield District Council ("the Council") to grant planning permission for a residential development of 121 dwellings together with associated access, parking, public open space and landscaping on land to the north of Dark Lane, Alrewas, Burton upon Trent, Staffordshire in accordance with application ref 13/01175/FULM, dated 1 November 2013.
2. On 27 May 2015, the Secretary of State recovered the appeal for his own decision because it involves a proposal for residential development of over 10 dwellings in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority; or where a neighbourhood plan has been made.

Inspector's recommendation and summary of the decision

3. The Inspector recommended at IR 12.80 that the appeal be allowed and planning permission granted subject to the conditions set out in Annex 1 of the Inspector's Report (IR). The Secretary of State agrees with the Inspector's conclusions (except where stated), and agrees with her recommendation. A copy of the IR is enclosed, and all references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

Philip Barber, Decision Officer
Planning Casework Division
Department for Communities and Local Government
3rd Floor, Fry Building
2 Marsham Street, London SW1P 4DF

Tel 0303 444 42853
Email pcc@communities.gsi.gov.uk

4. The Secretary of State has taken account of the Inspector's comment at IR1.4 that the scheme considered by the Council concerned a proposal for 140 dwellings, and that your client sought to reduce this to 121 dwellings at the inquiry. For the reasons given by the Inspector (IR1.5), the Secretary of State agrees that the proposed amendment would not prejudice the interests of any party. He has therefore determined the appeal on the basis of the amended scheme for 121 dwellings.
5. On 23 May 2016 the Secretary of State referred back to the parties to invite representations on: the five year land supply position; the Court of Appeal judgment in the cases of *Suffolk District Council v Hopkins Homes Ltd & Secretary of State for Communities and Local Government*; and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168; the adoption by Lichfield District Council of its Community Infrastructure Levy Charging Schedule on 19 April 2016, and the impact of the proposal on the integrity of the Cannock Chase SAC, alone or in combination with impacts from other development. The Secretary of State has taken the representations received (listed at Annex B) into account in reaching his decision. As these representations were circulated to the parties the Secretary of State does not find it necessary to reproduce them here. Copies may be obtained on written request to the address at the foot of the first page of this letter.
6. As part of this reference back exercise, the Secretary of State has taken into account the representations made by all the parties on this issue of whether there is a 5 year housing land supply, together with the Lichfield District SHLAA 2015 which updated the information available during the inquiry and shows the completions with the plan period from 2008. In September 2016, the Council published its Strategic Housing Land Availability Assessment 2016 and Five Year Housing Land Supply Paper 2016.
7. The Secretary of State has had regard to the representations of Lion Court Homes of 25 January 2017. As they relate to the proceedings of the Council have not impacted on his decision he has not found it necessary to circulate them or reproduce them here. Copies may be obtained on written request to the address at the foot of the first page of this letter.

Policy considerations

8. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case, the development plan consists of the saved policies of the Lichfield District Local Plan (1998) (LP) and the Lichfield District Local Plan Strategy 2008-2029 (2015) (LPS). The Secretary of State agrees with the Inspector that the policies most relevant to this appeal are those referred to at IR4.1 - 4.4.
10. With regard to the Inspector's remarks on the emerging Alrewas Neighbourhood Plan (eANP) at IR4.5, the Secretary of State observes that the eANP was formally withdrawn by Alrewas Parish Council on 11 February 2016. The Alrewas Neighbourhood Plan withdrawal statement makes clear that the further work envisaged includes revising the withdrawn eANP's policies; preparing more evidence to try to address the Examiner's concerns about the eANP; consultation on a resubmitted draft plan; and submission of the draft plan to an independent examiner.

11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') (2012) and the subsequent planning guidance ('the Guidance') (2014); as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended.
12. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas, as required by section 72(1) of the LBCA.

Main issues

13. The Secretary of State agrees with the Inspector that the main issues relevant to this appeal are those listed at IR12.1.

Implications for highway users

14. The Secretary of State agrees with the Inspector's analysis at IR12.2 – 12.20. He agrees with the Inspector (IR12.19) that whilst there is likely to be an increase in demand during those periods of greatest pressure for parking, and incidents of conflicting traffic movements are likely to be exacerbated, these periods seem to be short-lived and concentrated at key points such as in the vicinity of the village shop and surgery. The Secretary of State agrees with the Inspector that whilst traffic from the appeal proposal would add to this pattern, the evidence does not suggest that the impact would be unacceptable. The Secretary of State further agrees with the Inspector for the reasons given at IR12.20 that while there would be a modest increase in vehicle movements and on-street parking along those streets closest to the appeal site that the increased risk would fall well short of a severe adverse impact for which the development should be prevented or refused on transport grounds applying paragraph 32 of the Framework.

Heritage assets

Alrewas Conservation Area

15. The Secretary of State has had regard to s.72 of the LBCA, paying special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Having carefully considered the Inspector's analysis at IR12.22-12.27, he agrees with the Inspector (IR12.22) that as no built development is proposed for that part of the site located within the conservation area the main points at issue are whether there would be an adverse impact on the character and appearance of Alrewas Conservation Area as a result of the additional levels of traffic and parking associated with the proposed development and, if so, the extent of such an effect on the area's significance.
16. For the reasons given by the Inspector (IR12.22–12.27) and considering paragraphs 131 to 134 of the Framework, the Secretary of State agrees with the Inspector that even though there may be a perceptible increase in the presence of vehicles and in vehicular-related activity the overall effect would not be so noticeable as to materially impair the aesthetic value of the conservation area. Therefore, in agreement with the Inspector at IR12.28, the Secretary of State considers that there would be no adverse impact on the character and appearance of the Alrewas Conservation Area. In this regard, the

Secretary of State notes that English Heritage (now Historic England) offered no objection.

Other designated heritage assets

17. In accordance with section 66 of LBCA, the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess. Having carefully considered the Inspector's analysis at IR12.30-12.31 and applying paragraphs 131-134 of the Framework, the Secretary of State agrees with the Inspector (IR12.30) for the reasons given that the proposed measures would be sufficient to ensure that the existing setting of the Grade II listed No.25 Dark Lane would be preserved (IR12.30).
18. As to the development being seen in views from higher ground in the vicinity of the Grade II* listed St Leonard's Church Wychnor and the nearby Deserted Medieval Village (Scheduled Ancient Monument), the Secretary of State agrees with the Inspector's analysis that the dwellings, albeit visible, would be seen against the backdrop of the existing village so that they would not impinge on the current setting (IR12.31). For the reasons given by the Inspector (IR12.31) and having considered paragraphs 131-134 of the Framework, the Secretary of State agrees that the setting of the Grade II* listed St Leonard's Church Wychnor and the nearby Deserted Medieval Village (Scheduled Ancient Monument) would be preserved.

Undesignated heritage assets

19. Having regard to paragraph 135 of the Framework, the Secretary of State agrees with the Inspector's analysis for the reasons given (IR12.32) that the historic significance of the landscape would be preserved by means of the proposed archaeological scheme of investigation and report. The Secretary of State further agrees with the Inspector for the reasons given that the design of the proposal makes provision for the retention of field boundaries, thus preserving key elements of the historic landscape (IR12.32).

Living conditions

20. On behalf of the Council it was asserted that the level of impact upon amenity would be so severe as to amount to incompatibility with Article 8 of the ECHR (IR12.33). Impacts were identified in relation to car parking, road safety, heritage assets, risk of crime and loss of access to open space (IR 12.33).
21. For the reasons given by the Inspector (IR12.34), the Secretary of State is not persuaded that the highway impact would be so marked as to represent a material reduction in amenity. Turning to heritage assets (IR 12.35), the Secretary of State agrees with the Inspector that in view of his findings above concerning the lack of harm to the significance of designated and undesignated assets it follows that no appreciable harm would be caused to the amenity of those using or visiting those assets.
22. Although the site is easily accessible due to its permeability, like the Inspector (IR12.36), the Secretary of State considers that the dwellings themselves have been arranged and designed to ensure a good level of surveillance within and around properties, and this represents an appropriate design response sufficiently balancing any risk of crime associated with this level of permeability (IR 12.36). Moreover, the Secretary of State agrees with the Inspector that the permeability of the site would in part address those objections concerned with the loss of access to open space. While the Secretary of State notes, from the written representations and those made during the inquiry, that the appeal site forms part of the adjacent countryside, which contributes to local residents'

experience of their village, he agrees with the Inspector that as the appeal site has no formal status as recreational open space this does not weigh against the proposal in the planning balance (IR 12.37).

23. Overall, the Secretary of State agrees with the Inspector and concludes that it has not been demonstrated that the proposal would have an unacceptable impact on the amenity or living conditions of local residents (IR12.38).

Flood risk

24. The Secretary of State has carefully considered: the Inspector's analysis (IR 12.40-12.45); the evidence including the Flood Risk Assessment; parties' submissions on the issue; the views of the Environment Agency and Staffordshire County Council as lead local flood authority; and Section 10 of the Framework and the Flood Risk section of the Guidance. Having regard to the above, the Secretary of State agrees with the Inspector's conclusion (IR12.45) for the reasons given that the proposal makes adequate provision for flood risk.

The supply of market and affordable housing

25. The Secretary of State has given careful consideration to the Inspector's analysis on the supply of market and affordable housing at IR 12.46–12.69.
26. As part of the reference back exercise (referred to at paragraphs 5-6 above), the Secretary of State has also taken into account the representations made by all the parties on this issue listed in Annex B. He notes too that in September 2016, both the Lichfield District SHLAA 2016 and the Council's Five Year Housing Land Supply Paper 2016 were published by Lichfield District Council. He has taken all the above evidence and the Inspector's analysis into consideration in his assessment of the HLS position.

Housing Requirement

27. The Council has a recently adopted Local Plan, the Lichfield District Local Plan Strategy 2008-2029 ('LP'). The Secretary of State considers that the LP provides a robust housing requirement figure of 10,030 dwellings for the plan period, or 478 dwellings per annum (dpa).

Addressing shortfall

28. Since the beginning of the plan period (2008), the Council has accumulated a shortfall of 1,943 dwellings. This is set out within the Five Year Housing Land Supply Paper 2016. There is a need for this shortfall to be met in addition to the on-going requirement for housing in the area.
29. There are two commonly used methods for addressing an accumulated shortfall. The 'Liverpool approach' apportions the shortfall across the remaining years of the plan period, whilst the 'Sedgefield approach', seeks to make up the shortfall during the next five years. The Secretary of State has had regard to the Guidance which advocates the 'Sedgefield approach' stating that Local Planning Authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible.
30. However, he notes that this was an issue recently considered by the Local Plan Inspector who found, following rigorous examination, that the 'Liverpool approach' was more appropriate in the case of Lichfield notwithstanding the advice in the Guidance. The Local Plan Inspector's conclusion was reached having regard to past rates of

delivery in the district, including prior to the recession, and the requirement for completions far in excess of the highest levels ever achieved in the district if the 'Sedgefield approach' were adopted. The Local Plan Inspector highlighted that plans are required to be realistic as well as aspirational and that the Local Plan would likely fail if the Sedgefield approach was used.

31. The Secretary of State further notes that the Local Plan Inspector recognised the potentially critical impact of using either the Liverpool or Sedgefield approaches, and the Guidance, before reasoning that the required housing trajectory using the 'Sedgefield approach' was highly likely to prove unrealistic due to the serious doubt about the necessary high rate of delivery over five years would be attainable in market terms.
32. The Secretary of State has carefully considered the parties submissions in favour of the 'Sedgefield approach' being adopted. These are, in summary: That past rates of delivery were constrained by policy to direct development towards the urban area; That the Council has published increased housing projections; and That in the period since the LP Inspector considered this issue, it has become clear that the under-provision of housing in Birmingham will lead to increased housing demand in Lichfield (IR 12.50).
33. Having carefully considered these issues, the Secretary of State considers that these matters do not represent sufficient grounds to not follow the 'Liverpool approach' to addressing shortfall adopted within the LP following rigorous examination and, therefore, he agrees with the LP Inspector and the Inspector (IR 12. 51) that the shortfall should be apportioned across the remaining plan period.
34. Accordingly, the Secretary of State finds that addressing the shortfall over the remaining plan period would give an annual requirement of 627 dpa, or 3,135 over the 5 year period.

Buffer

35. Paragraph 47 of the Framework requires that an additional buffer of 5% be added to this figure (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery, it states the buffer should be increased to 20% for the same reason, and to provide a realistic prospect of achieving the planned supply. Having carefully considered the evidence and the parties' submissions on this issue, the Secretary of State agrees with the Inspector's analysis for the reasons given [IR 12.54-12.57] that a 20% buffer is appropriate in this case, given the historic under delivery of housing in the District and that the 20% buffer should also be added to the shortfall. This leads to a 5 year requirement of 3,762 dwellings or 752 dpa.

Supply

Windfalls

36. Paragraph 48 of the Framework and paragraph 3-24-2-140306 of the Guidance states that LPAs may make an allowance for windfall sites in the 5 year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. It states any allowance should be realistic having regard to the SHLAA, historic windfall delivery rates, and expected future trends. Having regard to the average historic delivery of windfall permissions in the District, as set out in the SHLAA 2016, the Secretary of State considers that a

windfall allowance of 50dpa is reasonable and consistent with paragraph 48 of the Framework.

Lapse rate

37. The Secretary of State considers that given the historic low rate of non-implemented permissions in the District, as set out in the 5 year HLS Paper 2016 that a 5% lapse rate is appropriate, for the reasons given by the Inspector (IR12.69).

Delivery

38. Having regard to the Inspector's analysis (IR 12.62- 12.68), footnote 11 of paragraph 47 of the Framework, the relevant paragraphs of the Guidance, and the parties' representations, the Secretary of State has gone on to consider the deliverability of the disputed sites in this matter.
39. The Secretary of State notes that the St John's Hospital site is currently under construction, and that the Tesco site benefits from full planning permission, and concludes, agreeing with the Inspector (IR 12.63 and IR 12.66), that 22 units for the Tesco site and 18 units for the St John's Hospital site should be retained in the supply figures.
40. Turning to Friarsgate, the Secretary of State notes that the site now has planning permission in place. Having regard to the planning permission and the Council's 2016 SHLAA and 5 Year HLS paper, the Secretary of State disagrees with the Inspector and concludes that it will deliver 95 residential dwellings within the next five year period.
41. For Tolsons Mill (IR12.65), the Inspector considered that as there is not any continuing interest in its development for residential purposes, there is no evidence to suggest that it will come forward in the next five years. However, the Secretary of State notes that the Council say (in their letter of 15 June 2016) that discussions with the landowner and developer on 19 January 2016 suggest that the site will be developed within five years, and agrees with the Council that the site should remain part of the housing land supply.
42. In regard to King Edward VI School, while the Secretary of State has taken account of the Council's representation of 15 June 2016, which states that pre-application discussions have been held regarding this site and the likelihood that it will come forward within 5 years, the Secretary of State concludes, in agreement with the Inspector (IR 12.67) that there is insufficient evidence to include the site within the Council's housing land supply, and therefore he removes the figure of 32 dwellings from his calculations.
43. The Secretary of State concludes that while dwellings on sites South of Lichfield (Dean Slade Farm) have been allocated in emerging or made Neighbourhood Plans, in the absence of extant planning permissions it is too early to conclude that 275 dwellings could be delivered over the five year period. He thus excludes them from his Housing Supply calculations.

Conclusions on five year HLS

44. The Secretary of State concludes that an annual target of 478 dpa leads to a 5 year requirement of 2,390 dwellings (478×5). Addressing the shortfall of 1,943 dwellings over the remaining plan period ($1,943 \text{ divided by } 13 = 149$) gives an annual requirement of 627 dpa ($478 + 149$), or 3,135 over the 5 year period.

45. To this, the Secretary of State has applied a 20% buffer to this figure, including the shortfall, for the reasons set out above, thus finding a total housing requirement of 3,762 over the five year period, or 752 dpa.
46. The Secretary of State notes from the 5 year Housing Land Supply Paper 2016 that the Council states it has 4,149 net deliverable capacity in the 5 year period. For the reasons given above, the Secretary of State has deducted 307 units from the net deliverable capacity for the disputed Dean Slade Farm and King Edwards School sites leaving a total of 3,842 net deliverable capacity.
47. As such, the Secretary of State finds that there is a surplus of 307 dwellings, or a 5.11 year housing land supply.
48. For the reasons set out above, the Secretary of State concludes in his judgement that the local planning authority can now demonstrate a 5 year supply of deliverable housing sites. In these circumstances, paragraph 49 of the Framework is not engaged and the Secretary of State concludes that the relevant policies of the development plan are up to date.

Affordable housing

49. The Secretary of State notes that since the inquiry closed, the Council's affordable housing requirement for the site has increased from 25% to 31%. The Secretary of State agrees with the Inspector for the reasons given (IR12.71) that the need for affordable housing in the district is acknowledged to be acute and, therefore, the affordable housing element of the scheme should carry substantial weight.

The development plan and sustainability

50. The Secretary of State agrees with the Inspector for the reasons given (IR12.72) that the proposal would not have an unacceptably adverse effect on the safety and convenience of highway users, nor would it give rise to harm to the significance of heritage assets or to the amenity of residents. He also shares the Inspector's view that the scheme makes adequate provision in relation to flood risk. In these respects, therefore, the Secretary of State agrees with the Inspector that there would be no conflict with LPS Core Policies 3, 5, 10 and 14 or with LPS development management policies ST1 and BE1 (IR12.72). He further agrees with the Inspector that the proposal would accord with the provisions of the LPS's settlement specific policies Alr1 and Alr2 and that it would satisfy saved policy C2 of the 1998 LP (IR12.72).
51. The Secretary of State agrees with the Inspector that the appeal site lies outside the settlement boundary for Alrewas as defined in the 1998 LP (IR12.74). Given his findings on 5 year HLS above, the Secretary of State considers that the settlement boundary policy is not out of date. He agrees with the Inspector that the relationship of the development to the village would not detract from its compact character, and that questions as to the permanence of the current boundary are raised by the terms of policy Alr4 which specifically refers to the possibility of sites beyond it (12.74). For these reasons, the Secretary of State attributes moderate weight to the conflict with that aspect of the 1998 LP.
52. Having carefully considered the Inspector's analysis at IR12.75-12.76, the Secretary of State agrees with the Inspector for the reasons given that there is no conflict with LPS Core Policy 1 or Alr 4.
53. The Secretary of State agrees with the Inspector (IR12.77) that although the proposal does not fully accord with the development plan in that the site lies outside the defined

development boundary, it accords in all other key respects. Accordingly, the Secretary of State considers applying the first limb of section 38 (6) of the Planning and Compulsory Purchase Act 2004, that the proposal is in accordance with the development plan as a whole.

Cannock Chase SAC

54. The Secretary of State has given careful consideration to the Inspector's analysis at IR10.1-10.4. As competent authority for the purposes of the Conservation of Habitats and Species Regulations 2010, the Secretary of State agrees with the Inspector and considers that he needs to carry out an Appropriate Assessment. This is at Appendix C to this letter and sets out his independent consideration of the relevant technical information. For the reasons set out in his Appropriate Assessment, the Secretary of State concludes that the mitigation measures will suffice to prevent any adverse effects from the proposal (including in combination effects with other plans or projects) on the integrity of the Cannock Chase SAC

Planning conditions

55. The Secretary of State has carefully considered the recommended conditions at Annex A, the Inspector's analysis at IR 11.1 - 11.4, paragraph 206 of the Framework, and the relevant Guidance. For the reasons given by the Inspector, the Secretary of State is satisfied that the agreed conditions comply with the policy test set out at paragraph 206 of the Framework and the relevant Guidance.

Planning obligations

56. The Secretary of State has carefully considered the signed and dated planning obligations submitted in this case, national policy set out at paragraphs 203-205 of the Framework, the relevant Guidance; and the CIL Regulations 2010 as amended.
57. Having carefully considered the terms of the Unilateral Undertaking in favour of Staffordshire County Council of 23 June 2016 and the s106A Supplemental Deed in favour of Lichfield District Council of 30 June 2016, the Secretary of State considers that the provisions are necessary to make the development acceptable and are fairly and reasonably related to the proposal and the requirements of paragraph 204 of the Guidance and Regulation 122 of the CIL Regulations are met.

Planning balance

58. In deciding this appeal, the Secretary of State has had regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In accordance with section 66(1) of the LBCA, the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess. In accordance with Section 72 of the LBCA 1990, the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with the development plan overall.
59. The Secretary of State has gone on to consider, applying the second limb of Section 38(6) of the Planning and Compulsory Purchase Act 2004, whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

60. Weighing in favour of the proposal for the reasons given above he attaches substantial weight to the benefits of the provision of affordable housing and also attaches further significant weight to the benefits of market housing. In doing so he considers that the appeal proposal advances the social and economic roles identified in paragraphs 7 and 8 of the Framework which are not diminished owing to the Council now being able to demonstrate a five year supply.
61. Weighing against the proposal for the reasons given above he gives moderate weight to the conflict with the settlement boundary, little weight to the impact of the proposal on highway users, and little weight to the impact on the amenity or living conditions of local residents.
62. He therefore concludes, in agreement with the Inspector (IR 12.80) and applying Section 38(6) of the Planning and Compulsory Purchase Act 2004, that the proposal is in accordance with the development plan as a whole and that there are no material considerations that indicate that the proposal should be determined other than in accordance with the development plan.

Formal Decision

63. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for a residential development of 121 dwellings together with associated access, parking, public open space and landscaping on land to the north of Dark Lane, Alrewas, Burton upon Trent, Staffordshire in accordance with application ref 13/01175/FULM, dated 1 November 2013 (as amended at the inquiry) subject to the conditions set out in Annex A.
64. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
65. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

Right to challenge the decision

66. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
67. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by Secretary of State to sign in that behalf

Annex A

Conditions attached to grant of planning permission 13/01175/FULM, dated 1 November 2013 (as amended at the inquiry).

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - (i) Site Location Plan (Drawing Reference 1425_202 T)
 - (ii) Site Layout Plan (Drawing Reference 1425_402)
 - (iii) Site Housetype Plan (Drawing Reference 1425_403)
 - (iv) Site Landscape Plan (Drawing Reference 1425_404)
 - (v) Low Loader Swept Path (Drawing Reference MID3117-055)
 - (vi) Construction Management — long vehicles (Drawing Reference MID3117-060)
 - (vii) Low Loader Entire Village (Drawing Reference MID3117-060)
 - (viii) Dark Lane Accesses (Drawing Reference MID3117-273)
 - (ix) 1425_301 A Alder Housetype
 - (x) 1425_302 Ash Housetype
 - (xi) 1425_302_3A Ash Housetype plots 16 and 86
 - (xii) 1425_303 Aspen Housetype
 - (xiii) 1425_304 A Beech Housetype
 - (xiv) 1425_305 A Birch Housetype
 - (xv) 1425_306 Bungalow
 - (xvi) 1425_307 A Cedar Housetype
 - (xvii) 1425_308 A Chestnut Housetype
 - (xviii) 1425_309 Elm Housetype
 - (xix) 1425_310 A Elm Plus Housetype
 - (xx) 1425_312 Hawthorn Housetype
 - (xxi) 1425_313 Hawthorn Plus Housetype
 - (xxii) 1425_314 Larch Housetype
 - (xxiii) 1425_315 Oak Housetype
 - (xxiv) 1425_316 Sycamore Housetype

- (xxv) 1425_317 Walnut Housetype
- (xxvi) 1425_318 Garages
- (xxvii) 1425_301-2 Alder Rendered
- (xxviii) 1425_302-2 Ash Rendered
- (xxix) 1425_305-2 Birch Rendered
- (xxx) 1425_307-2 Cedar Rendered
- (xxxi) 1425_309-2 Elm Rendered
- (xxxii) 1425_316-2 Sycamore Rendered

- 3) Before the development is commenced, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:
 - (i) Bricks to be used in the construction of the external walls;
 - (ii) Render, including colour, to be used on the external walls;
 - (iii) Exterior roof materials; and
 - (iv) External surfacing materials.

The development shall thereafter be undertaken in accordance with the approved details.

- 4) Before the development is commenced, full details of the finished floor levels, which shall be not less than 600mm above the 1:100 year flooding event and not less than 150mm above finished ground level, of the proposed dwellings, including their relationship to the levels of the highway, existing development and existing ground levels, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
- 5) Before the development is commenced, full details of the height, type and position of all site and plot boundary walls, retaining walls, fences and other means of enclosure to be erected on the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
- 6) Before the development is commenced, full details for the disposal of surface water and foul drainage shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
- 7) Before the development is commenced, a scheme for the offsetting of biodiversity impacts at the site shall be submitted to and approved in writing by the Local Planning Authority. The offsetting scheme shall include:
 - (i) A method for the identification of receptor sites;
 - (ii) The identification of receptor sites, including the part of the site to the west of the proposed dwellings;

- (iii) Details of the offset requirements of the development, in accordance with the recognised offsetting metrics standard outlined in the DEFRA Metrics Guidance dated March 2012;
- (iv) The provision of arrangements to secure the delivery of offsetting measures, including a timetable for their delivery; and
- (v) A management and monitoring plan, to include for the provision and maintenance of the offsetting measures in perpetuity. The management and monitoring plan is to include:
 - a) Description of all habitat(s) to be created/enhanced with the scheme including expected management condition and total area;
 - b) Review of the ecological constraints;
 - c) Detailed designs and/or working methods (management prescriptions) to achieve proposed habitats and management conditions, including extent and location or proposed works;
 - d) Type and source of materials to be used, including species list for all proposed planting and abundance of species within any proposed seed mix;
 - e) Identification of persons responsible for implementing the works;
 - f) A timetable of ecological monitoring to assess the success of all habitat creation/enhancement;
 - g) The inclusion of a feedback mechanism, allowing for the alteration of working methods/management prescriptions, should the monitoring deem it necessary.

The arrangement necessary to secure the delivery of the offsetting measures shall be executed prior to written approval by the Local Planning Authority. The offsetting scheme shall thereafter be implemented in accordance with the requirements of the approved scheme.

- 8) Before the development is commenced, the trees and hedgerows shown to be retained on the approved plans shall be protected in accordance with British Standard 5837:2012. No works shall continue on site until the approved tree protection measures are in place. The tree protection measures shall be retained for the duration of construction including any clearance works until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed from the site, unless otherwise agreed in writing with the Local Planning Authority. No fires, excavation, change in levels, storage of materials, vehicles or plant, cement or cement mixing, discharge of liquids, site facilities or passage of vehicles, plant or pedestrians shall occur within the protected areas.
- 9) Before the development is commenced, a detailed landscape and planting scheme, which shall include an area of woodland planting in the western section of the site, shall be submitted to and approved in writing by the Local Planning Authority. The approved landscape and planting scheme shall thereafter be implemented within the first available planting season, unless otherwise agreed in writing by the Local Planning Authority.

- 10) Before the development hereby approved is commenced, a written scheme of archaeological investigation ('the Scheme') shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall provide details of the programme of archaeological works to be carried out within the site, including post-excavation reporting and appropriate publication. The Scheme shall thereafter be implemented in full in accordance with the approved details.
- 11) Before the development is commenced, the site shall be subjected to a detailed scheme for the investigation and recording of any contamination of the site and a report shall be submitted to and approved in writing by the Local Planning Authority. The report shall identify any contamination on the site, the subsequent remediation works considered necessary to render the contamination harmless and the methodology used. The approved remediation scheme shall thereafter be completed and a validation report submitted to and approved in writing by the Local Planning Authority within 1 month of the approved remediation being completed, to ensure that all contaminated land issues on the site have been adequately addressed prior to the first occupation of any part of the development.
- 12) Before the development is commenced, full details of the accesses and traffic management works off Dark Lane and Micklehome Drive (indicated on drawing no. MID3117-053), shall be submitted to and approved in writing by the Local Planning Authority. The accesses and off-site highway works shall thereafter be constructed in accordance with a timetable to be submitted to and agreed in writing with the Local Planning Authority.
- 13) Before the development is commenced, full details of the 'temporary secure parking area for residents' shall be submitted to and approved in writing by the Local Planning Authority. The parking area shall thereafter be provided in accordance with the approved details prior to the commencement of development and retained for the duration of the construction works.
- 14) Before the development hereby approved is commenced, a Traffic Management Plan/Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The Plan and Statement shall include:
 - (i) Construction traffic access and routing
 - (ii) Delivery time restrictions
 - (iii) Provision for parking of vehicles for site operatives and visitors
 - (iv) Method of prevention of mud being carried onto highways
 - (v) Pedestrian and cyclist protection, with particular reference to Dark Lane and Micklehome Drive
 - (vi) Proposed temporary traffic restrictions
 - (vii) Arrangements for turning vehicles
 - (viii) Loading and unloading of plant and materials
 - (ix) Storage of plant and materials

The approved traffic management plan and construction management scheme shall thereafter be implemented prior to any works commencing on site and shall thereafter be retained and adhered to until completion of construction.

- 15) The development hereby approved shall be carried out in accordance with the approved Flood Risk Assessment and Drainage Strategy ref 5117802 V4 dated 19th January 2015. This shall include the following:
- (i) Limiting the rate of surface water run-off generated by the 1 in 100 year plus 30% critical storm, so that it will not exceed 17.8 l/s.
 - (ii) Provision of 115 cubic metre infiltration basin on the site to accommodate a 1 in 100 year plus 30% rainfall event;
 - (iii) No built structures to be provided or raising of ground levels within the floodplain of the River Trent.
 - (iv) Ensuring that any flooding occurring within the proposed development for up to and including the 1 in 100 year plus 30% event must be contained within the site boundary in a safe manner and allowed to discharge when downstream capacity permits; and
 - (v) A scheme for the maintenance of the surface water system for the lifetime of the development. The scheme shall include confirmation of the body responsible for its maintenance.

The mitigation measures shall be carried out in accordance with the timing/phasing arrangements embodied within the scheme.

- 16) Any tree, hedge or shrub planted as part of the approved landscape and planting scheme (or replacement tree/hedge) on the site and which dies or is lost through any cause during a period of 5 years from the date of first planting shall be replaced in the next planting season with others of a similar size and species.
- 17) No trees, shrubs or hedgerows planted or retained as part of the approved landscape and planting scheme shall be topped, lopped or cut down without the prior written consent of the Local Planning Authority.
- 18) No construction activities shall take place outside the hours of 07.30 to 19.00 Mondays to Fridays and 08.00 to 13.00 on Saturdays. There shall be no construction activities on Sundays and Bank/Public Holidays.
- 19) Details of a noise attenuation scheme and a timetable for its implementation shall be submitted to and approved in writing by the Local Planning Authority, in accordance with Section 5 of the report N005 prepared by Wardell Armstrong, dated January 2015. Development shall be carried out as approved before the development is first occupied.
- 20) The recommendations and mitigation measures within the following ecological reports and the protected/priority species reports shall be complied with in full:
- (i) Breeding Bird Survey (January 2015)
 - (ii) Wintering Bird Survey (January 2015)
 - (iii) Bat Survey Report (January 2015)
 - (iv) Badger Survey Report (January 2015)
 - (v) Extended Phase 1 Habitat Survey Report (January 2015)

The mitigation measures shall thereafter be retained for the life of the development, unless otherwise agreed in writing by the Local Planning Authority.

[ENDS]

Annex B – Schedule of representations

Representations received in response to the Secretary of State's letter of 23 May 2016

Party	Date
Bal Nahal, Solicitor, Lichfield District Council	3 June 2016
Brian G Hall	5 June 2016
Rachael Bibby, Associate Director, Planning Prospects Ltd	7 June 2016
Will Chapman, Vice Chair, Alrewas Neighbourhood Plan & DCLG Neighbourhood Planning Champions Network	7 June 2016
Antony Muller, Natural England	7 June 2016

Representations received in response to the Secretary of State's letter of 8 June 2016

Party	Date
Carol Davies-Lee	14 June 2016
Antony Muller, Natural England	14 June 2016
Rachael Bibby, Associate Director, Planning Prospects Ltd	15 June 2016
Bal Nahal, Solicitor, Lichfield District Council	15 June 2016
Roger Davies-Lee	15 June 2016
Anne Tasker, Alrewas Civic Society	15 June 2016

Annex C

RECORD OF THE HABITATS REGULATIONS ASSESSMENT UNDERTAKEN UNDER REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010

Project Title and Location:

Recovered planning appeal No. 13/01175/FULM, land to the north of Dark Lane, Alrewas, Burton upon Trent, Staffordshire

Project description:

121 dwellings together with associated access, parking, public open space and landscaping on land to the north of Dark Lane, Alrewas, Burton upon Trent, Staffordshire in accordance with application ref 13/01175/FULM, dated 1 November 2013.

Completion Date: 31/1/17

Introduction

1. The above project, being a 'recovered appeal', is to be determined by the Secretary of State for Communities and Local Government using his powers under section 78 of the Town and County Planning Act 1990. The Secretary of State is therefore the 'competent authority' for the purposes of the Conservation of Habitats and Species Regulations 2010.
2. This assessment has been prepared for the purpose of determining whether the proposed project would have any adverse effect on the integrity of the Cannock Chase Special Area of Conservation (SAC), either alone or in combination with impacts from other development.
3. An Appropriate Assessment was prepared by the Cannock Chase SAC Partnership to inform the Local Plan making process (November 2012). This concluded that, in order to prevent adverse effects on the integrity of the SAC, a package of mitigation measures was required for the purpose of all applications for new dwellings within the 15 km zone of influence.
4. The proposal was considered as part of the housing provision of the adopted Local Plan Strategy and by virtue of the current Guidance to Mitigate the Impact of New Residential Development March 2015.
5. During the course of the inquiry, the Council endorsed the Cannock Chase SAC Guidance to Mitigate the Impact of New Residential Development. The SAC Partnership acknowledges a 15 km Zone of Influence but requires financial contributions towards mitigation only from developments within 8 km. In completing this assessment the Secretary of State has given careful consideration to the mitigation measures which are referred to in more detail below.
6. He has also consulted Natural England in line with Reg 61(3) (7/6/16 & 14/6/16) and has taken to account their advice as summarised below. In producing their advice Natural England took into consideration:
 - The submitted transport assessment -Amended Transport Assessment – ss4.14-4.20 Trip generation and inward outbound trip assignment (JMP Consultants Ltd – Jan 2014)
 - Highways Agency traffic assessment guidance – Design Manual for Roads and Bridges – Volume 11 s4 – Assessment of implication on European sites
 - The Conservation of Habitats and Species Regulations 2010 – Regulation 62
 - Cannock Chase Special Area of Conservation Guidance to mitigate the impact of residential development

He has taken into account the Inspector's Report dated 21 March 2016 and subsequent representations from Lichfield District Council and the appellant.

7. The Secretary of State has also drawn on guidance contained in the NPPF, Circular 06/2005 and the EC publications 'Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC', and 'Assessment of plans and projects significantly affecting Natura 2000 sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC'.

Cannock Chase SAC

8. Part of the proposal site lies within 15km of the Cannock Chase SAC, an area protected because of its unique heathland habitat. (European dry heaths Annex 1 habitat). The Cannock Chase SAC is an area protected because of its unique heathland habitat. (European dry heaths Annex 1 habitat). Conservation objectives are to maintain:-
- dwarf shrub heath
 - broadleaved, mixed and yew woodland

Assessment

9. The Cannock Chase SAC experiences pressures through road traffic air pollution and disturbance or erosion caused by visitors and recreational users. These pressures are likely to increase as a result of population growth. In the absence of sufficient mitigation measures, the proposed project could be expected to contribute to increased road traffic air pollution and recreational use.
10. This assessment therefore focuses on whether the existing and proposed mitigation measures will be sufficient to prevent any adverse effects on the integrity of the Cannock Chase SAC arising from this proposal either alone or in combination with other plans or projects.
11. A set of Strategic Access Management Measures (SAMM) to prevent harm to the SAC from new housing development have been costed and agreed. The total cost of this mitigation strategy is now estimated at £1.97 million. The Cannock Chase SAC Partnership concluded that the SAMM will enable the delivery of the planned housing provision within the Local Plan Strategy within Lichfield District and the other local authorities within the SAC Partnership.
12. Existing mitigation measures include:
- Engagement of three of four key sectors: walkers and dog walkers; cyclists; horse riders.
 - Development of volunteering and education programmes.
 - An overarching strategy for visitors and nested strategies for car parking, track and footpath management and each visitor sector, plus a monitoring strategy
 - Physical management: improvement of paths and tracks
 - Implementation of parking plan; way marking and on-site interpretation panels Two aerial survey of paths and tracks,

- Ground truthing and targeted biological monitoring as necessary
- Two visitor surveys

13. Natural England provided advice (7 June 2016) was based on a 'source-pathway-receptor' approach taking into consideration the location, scale and distance of the appeal proposal site from the Cannock Chase SAC. Taking account of the transport assessment and the relevant Highways Agency traffic assessment guidance, Natural England concluded that the appeal proposal is unlikely to cause significant air quality effects on Cannock Chase SAC either alone or in combination with other development.
14. As such the Secretary of State concludes that the appeal proposal that there would be no adverse impacts on air quality either alone or on combination.
15. The Secretary of State has given careful consideration to the representations of Natural England (NE) dated 7 & 14 June 2016. In their letter of 7 June, NE states that the recreation impacts would have an adverse effect on the integrity of the SAC in the absence of mitigation. However, its 14 June representation further states that as the appeal proposal has been included in the housing numbers used when considering the local planning authority's contribution to the overall cost of the Strategic Access Management and Monitoring Measures (SAMMM) in respect of Cannock Chase SAC. Consequently NE states that no additional specific mitigation measures over and above those agreed as part of the Cannock Chase SAC Partnership SAMMM are needed for the appeal proposal.
16. An additional mitigation package for this proposal provides for a new visitor hub, including circular walks, car parking provision, cycleway provision, visitor information and interpretation and additional habitat creation. The Council considers that these measures will prevent any adverse impact on the integrity of the SAC. The Secretary of State agrees. The Appellant has agreed to this mitigation, if necessary, and a mechanism for contributions towards Strategic Access Management Measures (SAMMs) exists via the CIL Charging Schedule and the s106 agreement of 20 December 2016.

Conclusion

17. Having had regard to the above evidence, and in particular the evidence of Natural England on likely impact both alone and in combination with other projects, the Secretary of State concludes that the existing and proposed mitigation measures will prevent any adverse effects from the proposed project on the integrity of the Cannock Chase SAC either alone or in combination with other plans or projects, including the proposed development at Watery Lane.

Report to the Secretary of State for Communities and Local Government

by Mrs KA Ellison BA, MPhil, MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 1 December 2015

Town and Country Planning Act 1990

Lichfield District Council

Appeal by

Lioncourt Homes Ltd

Inquiry opened on 7 July 2015

Land to the north of Dark Lane, Alrewas, Burton upon Trent, Staffordshire

File Ref: APP/K3415/A/14/2225799

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File Ref: APP/K3415/A/14/2225799

Land to the north of Dark Lane, Alrewas¹, Burton upon Trent, Staffordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Lioncourt Homes Ltd against the decision of Lichfield District Council.
- The application Ref 13/01175/FULM dated 1 November 2013 was refused by notice dated 28 July 2014.
- The development proposed was residential development of 140 dwellings together with associated access, parking, public open space and landscaping but was amended to development of 121 dwellings together with associated access, parking, public open space and landscaping.

Summary of Recommendation: The appeal (as amended) be allowed, and planning permission granted subject to conditions.

1. Procedural Matters

- 1.1. The inquiry opened on 7 July 2015 and sat for 6 days. After hearing closing submissions, it was adjourned to await the outcome of an application to quash the Lichfield Local Plan Strategy 2015; to allow for further information as to the progress of the Alrewas Neighbourhood Plan; and for submission of a completed s106 Agreement in line with the Unilateral Undertaking provided to the inquiry.
- 1.2. The application to quash the Local Plan did not succeed so the inquiry was closed in writing on 4 August 2015. In line with my request at the inquiry, a copy of the Examiner's Report on the Alrewas Neighbourhood Plan was submitted following its publication in August. The parties were given the opportunity to comment on the implications of that report for the appeal proposal. Comments were received on behalf of Lioncourt Homes. A completed s106 Agreement with Lichfield District Council was received along with a Unilateral Undertaking in favour of Staffordshire County Council. These are addressed in the relevant sections of this report.
- 1.3. The appeal was recovered for decision by the Secretary of State for Communities and Local Government by a direction dated 27 May 2015. The reason for recovery was that the appeal involved residential development in an area where a qualifying body has submitted a Neighbourhood Plan proposal to the Local Planning Authority.
- 1.4. The scheme considered by the Council concerned a proposal for 140 dwellings (the 140 scheme). At the Inquiry, the Appellant sought to amend the proposal through a reduction in the number of dwellings to 121, to be achieved through the removal of residential development from that portion of the site within the Conservation Area (the 121 scheme). The nature of the amendments would bring the appeal scheme into line with a revised planning application for 121 units on

¹ With regard to pronunciation, the Parish Council helpfully provided Doc PC3, which notes that Alrewas is reputedly the only word in the English language that rhymes with 'walrus'

the site for which the Council had refused planning permission on 24 June 2015.

1.5. The Council expressed its preference that the inquiry should consider the 121 scheme. The letter of 15 June 2015 which gave notification of the Inquiry also referred to the 121 scheme. Alrewas Parish Council had no objection to the amendment other than that it should be understood that the strength of local objection to the principle of development was undiminished. I proposed, therefore, that the objections received from members of the public to the 140 scheme should be taken to apply in equal measure to the 121 scheme. Such an approach would be sufficient to ensure that the proposed amendment would not prejudice the interests of other parties to the appeal. The inquiry proceeded on the basis of the 121 scheme.

1.6. In its Statement of Case, the Council advised that it did not wish to pursue its fourth reason for refusal for the 140 scheme, which related to flood risk. This had not been a reason for refusal for the 121 scheme. However, the Parish Council and many local residents continued to express concerns in this regard.

1.7. On the opening day of the inquiry I identified the following main matters for consideration:

- (i) the level and pattern of traffic movements and parking demand likely to be generated by the development and the implications for the character and appearance of the Alrewas Conservation Area and for highway safety;
- (ii) the relationship of the proposed development to existing residential properties and the implications for the amenity of local residents;
- (iii) whether there would be any other identifiable adverse impacts including the relationship of the proposal to Alrewas village, particularly in terms of scale and location and whether the proposal would make adequate provision in relation to flood risk;
- (iv) the benefits associated with the proposal, particularly in terms of its contribution to the supply of market and affordable housing;
- (v) an assessment of the proposal against the Development Plan, the policies of the emerging Neighbourhood Plan and national planning policy, including whether a grant of permission would undermine the plan-making process and whether the presumption in favour of sustainable development is engaged.

2. The Site and Surroundings

2.1. The site is some 8.8ha in size and is linear in form. Its northern boundary leads on to open fields with the canal and river beyond. Dark Lane runs along most of the southern boundary of the site. The Trent and Mersey Canal and the River Trent lie to the west. The existing built form of the village lies to the south, with the A38 being beyond the site boundary further to the east. A path leads from the village to the canal and its associated towpaths. The western portion

of the site lies within the boundary of the Alrewas Conservation Area. No. 25 Dark Lane, a Grade II listed late C16 house is located just beyond the southern boundary. Alrewas village has a number of community facilities and services including a primary school, local shops and village hall. There are three secondary schools within 4 miles of the site. Dark Lane currently affords access to several properties before converting into a bridleway which leads on to Micklehome Drive.

3. The Proposal

- 3.1. The proposal concerns a residential development of 121 dwellings together with associated access, parking, public open space and landscaping. The scheme would be generally linear in form. The main access would be taken from Dark Lane although there would also be an access from Micklehome Drive which would mainly serve inbound traffic from the A38. There would be a mix of dwelling types and sizes, with 25% being affordable. Flood compensation works would be carried out within the site in the areas of open land to the north and west of the residential development. Footpath links to the surrounding countryside would be provided.

4. Planning Policy

- 4.1. The Lichfield District Local Plan Strategy 2008-2029 was adopted on 17 February 2015. Under Core Policy 1, Alrewas is identified as one of five Key Rural Settlements within the District's settlement hierarchy. A presumption in favour of sustainable development is set out in Core Policy 2. Core Policy 3 seeks to deliver sustainable development. Among the key issues which development should address are: protection of the amenity of residents, promotion of social cohesion including through the provision of affordable housing and assisting in the evolution of towns and villages. Core Policy 5 expects new development to widen transport choice, including by making provision for improving road safety. This is further developed through policy ST1, which seeks to secure more sustainable travel patterns by, amongst other things, only permitting traffic-generating development where it is compatible with the transport infrastructure in the area.
- 4.2. Provision for housing delivery is made within Core Policy 6, which expects approximately 440 dwellings to be delivered in the Key Rural Settlements during the plan period. Under policy CP10, new development should be designed to be integrated with surrounding communities. With regard to conservation areas, Core Policy 14 seeks to protect the built environment and requires new development to make a positive contribution to the local distinctiveness of the historic environment. Policy BE1 expects a high quality of development and encourages development which would have a positive impact on the significance of the historic environment.
- 4.3. In relation to Alrewas itself, policy Alr1 aims to maintain the high quality living environment and ambience of Alrewas including by careful traffic management. As Alrewas is a Key Rural Centre, policy Alr2 supports the improvement of facilities in the village. Housing

considerations are outlined in policy Alr4, which states that 90-180 homes should be provided, with details to be determined via the Local Plan Allocations document. It goes on to note that some sites beyond the village boundary may be needed. Smaller homes should be provided, to address downsizing need.

- 4.4. Some saved policies of the Lichfield District Local Plan (Adopted 1998) are still in force. Policy C2 seeks to enhance or preserve the character of conservation areas and does not permit development which would prejudice the ambience of an area. The appeal site lies outside the settlement boundary for Alrewas as defined in the 1998 Local Plan.

Emerging Planning Policy

- 4.5. The Alrewas Neighbourhood Plan was submitted to Lichfield District Council in February 2015. The Examiner's Report was published in August 2015. He concluded that, subject to his recommendations, the Plan meets the basic conditions and the requirements of the relevant legislation. The table below sets out those policies of particular relevance to the appeal and the Examiner's recommendations:

Table 4.1 Alrewas Neighbourhood Plan: submitted policies and Examiner's recommendations

Policy	Recommendation
Policy 2.1: impact of additional traffic on roads within the village	delete
Policy 3.1: protection of public access to the rural and canal side environment	change to support for protection and enhancement of publicly accessible open space and the canal side environment
Policies 4.1 4.2 and 4.4: high quality of design, especially within or immediately adjacent to the Conservation Area	change policy 4.1 to expect high quality design consistent with village character delete 4.2 and 4.3
Policy 4.6 designates two areas of Local Green Space. Part of Area 1 lies within the appeal site.	delete
Policy 5.1.1 prioritises small scale developments;	change to support for small scale infill development
Policies 5.2 and 5.2.1 refer to an established allocation of 90 dwellings and limit expansion of the village boundary to 30 dwellings in any single development	delete both policies
5.2.2 seeks to protect the village centre from traffic impact arising from expansion development	delete
Policy 5.2.3 criteria for expansion development	change to require that new residential development outside the existing built area must, among other things, respect its local context

Policy 5.2.5 expansion locations: not permitted to the north of the village	delete
Policy 5.3 Flood impact mitigation	delete
Policy 5.4.2 encourages provision of smaller properties (3 bedrooms or fewer)	change to support for types of properties to meet recognised need in the village
Policy 5.6 encourages good design	amend references to the Building for Life standards

5. Other Agreed Facts

- 5.1. The Council and Appellant were agreed that any ecology or bio-diversity issues, archaeological issues, landscape impact issues, flood risk or site drainage issues could be resolved or addressed by planning condition.
- 5.2. There is a Statement of Common Ground, Highways (SoCGH, CD34A) between the Appellant and Staffordshire County Council. This agreed all aspects of the Transport Assessment and Travel Plan, including trip rates, distribution and assignment of vehicles and consideration of congestion. It further agreed that there was no problem of road safety in the area. On-street parking in the Conservation Area would not increase as a result of the development and any which did occur would be unlikely to cause congestion or safety problems. It sets out the basis for a construction management plan and concludes that no mitigation measures are required to address the increase in traffic.
- 5.3. There is also a Highway Statement of Common Ground (HSoCG, CD34B) between the Appellant and Lichfield DC. It defines those streets under consideration and includes agreement as to the local highway context, accident records, parking surveys, traffic counts and journey times.

6. The Case for Lichfield District Council

Introduction

- 6.1. Whilst the issues between the parties have somewhat narrowed since the initial refusal decision, with common ground being agreed on a number of highways issues and the level of disagreement on the five year housing land supply falling, there remains significant disagreement. The Council has maintained the remaining reasons for refusal in evidence before this inquiry and submits that each remains as a valid reason to dismiss the appeal. In all regards the Appellant has overstated their case. There is little to no acknowledgement as to any possible downsides to the scheme whereas the reality is, as the Council's evidence has shown, that the negative planning consequences of the proposal are significant and warrant the appeal being dismissed.

Highways²

- 6.2. The disputes between the parties on highways matters can be split into three broad categories; trip generation; assignment; and parking. There is then the further and most pertinent issue, as to how these interact and the impact on highway safety.
- 6.3. The Appellant contends for and relies upon a trip generation rate produced using the TRICs system. By contrast the Council contends for a trip rate based on locally assessed data. Both witnesses produced rebuttal proofs primarily aimed at addressing criticisms levelled at each other in the main proofs of evidence. The Appellant's rebuttal proof responds to criticisms of the parameters used in the TRICs model. However, the Council's case to this inquiry was that this was to illustrate the validity of the concerns that the TRICs model simply wasn't able to incorporate many of the local characteristics.
- 6.4. For example, whilst there is disagreement as to car ownership figures (Appellant: 1.57 vs Council 1.7) both are beyond the range used in the TRICs model of 0.6 – 1.5 cars per dwelling. As the Appellant notes, a range of 1.6 to 2.0 would result in only one suitable site being presented. This demonstrates the Council's concerns about the use of TRICs in this case and supports the use of locally validated data. In responding to the Council's criticisms, the Appellant makes great play of using census data to show that whilst car ownership might be high in Alrewas, the largest commuting age group of 21-29 are under represented in the village. However, in XX Mr Bain stated that he did not place any particular reliance on this point to support his position on trip rates.
- 6.5. Mr Bailes' trip rates for the proposal are based solely on local data. They are drawn from two sources: first is the traffic count of Mellor Drive and Burway Meadow set out at Table 7.1 of the Highways Statement of Common Ground; the second is the traffic count at AB7 of his proof of evidence. Some concern was raised by the Appellant as to why the Wakefield Road count from this second traffic survey was not used as part of the trip rate calculation. Mr Bailes explained this quite simply as being due to the fact that it was a cul de sac inhabited primarily by retired people and was therefore not representative of the area. The Appellant does not provide any evidence to counter this.
- 6.6. Mr Bain was unable to comment fully on the reliability of the second traffic survey as he was not aware of the methodology by which it had been produced. However, he was willing to accept the principle that trip rates produced on the basis of two surveys rather than one (provided they were both properly produced) were capable of being more robust.

² Although the Proof from the Council's highway witness does not feature a professional attestation clause, Mr Bailes confirmed to the inquiry that his evidence was true and given in accordance with the guidance of his professional institution.

- 6.7. The parties' respective positions on trip rates and the associated trip generation are set out at Table 1 of Appendix AB2. The Council's rates are higher in the am peak period but lower in the 17:00 – 18:00 peak. Importantly, what Mr Bailes also shows is a peak in the 16:00 – 17:00 period. This becomes significant when considering the matter of parking and the interaction between the two.
- 6.8. Mr Bailes' evidence is based on locally observed data. He has used not simply one but two data sets to produce his trip generation rates. They are robust and more likely to take into account any local peculiarities than the Appellant's modelled data. Consequently Mr Bailes' evidence is to be preferred in this regard.
- 6.9. The next highways issue of dispute is assignment. Whilst distribution onto the network was agreed between the parties and forms part of the SoCG the local assignment could not be agreed. When considering the Appellant's position in this regard, the starting point has to be the Transport Assessment. The Appellant seeks to rely on the statement of common ground with the County Council in order to support their position and as confirmed by Mr Bain it is upon the Transport Assessment that this agreement is based.
- 6.10. Dealing first with inbound traffic, para 4.12 of the Transport Assessment asserts that 50% of the traffic travelling from the North, South and East will use the Main Street to Dark Lane access and 50% will use the Micklehome Drive access. Confusingly para 4.16 goes on to say that 75% will use Micklehome Drive and 25% will use Main Street to Dark Lane. Mr Bain clarified in XX that there was indeed an error here and in fact the correct position was the 75% v 25% split. If this is correct, then it appears that what the County Council have agreed to is the 75% v 25% split. This is not what the Appellant's evidence now contends.
- 6.11. Mr Bain in his proof of evidence and then again orally at the inquiry asserted that in fact all of the inbound traffic from the North, South and East would use the Micklehome Drive access. This is not a position that appears anywhere in the Transport Assessment and therefore cannot be something to which the County Council has agreed. Mr Bain's position in XX then became somewhat confused as he simultaneously seemed to be attempting to maintain that all inbound traffic would use the Micklehome Drive access but that some cars might also want to use the shops on their way back to the site. Both cannot be the case.
- 6.12. The 100% routing through Micklehome Drive is not agreed with the County Council and as a matter of common sense would seem to be unlikely to be correct as some drivers may well wish to use the shops. Mr Bailes instead contends for a split based on the distance from residences on the proposed layout to the different access points. This gives a 41% Micklehome Drive v 59% Dark Lane split. Whilst both highways witnesses accept that distance is not the only factor that influences route decision, it is a significant one and there is a clear logic therefore to Mr Bailes' division.

- 6.13. In relation to outbound traffic, both parties agree that all the traffic will have to pass through the conservation area. The Appellant contends for a 50% Exchange Road v 25% William IV Road v 25% Post Office road split. Again, this outbound assignment does not appear in the statement of common ground with the County Council and is therefore not an agreed position with them. There is no mention in the Transport Assessment of using Post Office Road and the only mention of William IV Road is at para 4.15 as follows: *“Drivers heading west are likely to use the Dark Lane exit and travel along William IV Road and Main Street to head directly to the A513.”* Mr Bailes raised concerns about any additional vehicles using William IV road as it is a single carriageway, meaning pedestrians must walk on the road. He also detailed that it is a route currently used by school children to walk to school, although that was disputed by Mr Bain.
- 6.14. Para 4.21 of the Transport Assessment says *“By way of a worst case scenario assessment JMP have assumed that all development traffic will be routed via the Exchange Road route.”* This is what the County Council agree should be assessed, this is what Mr Bailes says should be assessed and it is what should be assessed for the purposes of this inquiry.
- 6.15. The parking surveys are agreed between the two main parties. Both sides have sought to represent these visually using different methods. However, the Appellant does not seem to have given much consideration to the 16:00 – 17:00 period. Mr Bain in XX accepted that there was a peak in parking between 16:30 and 17:00. The extent of this peak is well illustrated in Mr Bailes’ stress heat map. It can be seen from the raw data that whilst the average parking stress through Alrewas is 28%, as accepted by Mr Bain, it is higher on Exchange Road where the average stress is 34%. Between 16:00 and 18:00 this rises further still. The consequence of this is that Exchange Road operates essentially as a one way road at certain times. This is well illustrated by the PM parking plan (at Appendix C of Mr Bain’s proof of evidence), which shows that currently there are times when all but two of the parking spaces on the eastern side of Exchange Road are in use. This reduces the operational width to less than 3.25m.
- 6.16. According to the Appellant, there will be around a 10% increase in parking demand associated with the development, which would equate to a single extra space being occupied at peak time. The Council accepts that this is very difficult to quantify but contends such a figure is too low. Much of the development is not within recommended walking distances for bus stops and the consequence of this will be an increase in car usage.
- 6.17. In XX Mr Bain whilst attempting to maintain that it was robust to route all the inbound traffic from the North, South and East up Micklehome Drive also stated that up to 10 vehicles could come to use the shops and stay for between 5 and 10 minutes each, depending on what it was they wanted to purchase. If 10 new cars need to use the shops for 10 minutes each over an hour period this would mean the demand would be for more than one new parking space.

- 6.18. Looking at Mr Bain's PM parking survey plan, if one additional car parking space on the eastern side of Exchange Road was taken up, this would extend the length over which it would essentially operate as a one way road. Alternatively if the car was to park on the west side of the road, it would create a situation where, as illustrated in the drawings at AB6, it would become very difficult for just one car to pass down the road.
- 6.19. The video surveys do not support the assertion that this is a problem free area. The week used is not a neutral one. Mr Bain in XX accepted that it was important to use a neutral week but his evidence was then that the guidance relied upon by Mr Bailes was simply not the relevant one. Even if this is the case, which is not accepted, it still illustrates the importance of using a neutral week. The week chosen for the video survey arguably fails in this regard due to its proximity to Easter.
- 6.20. In order to understand the full impact of these issues there is a need to have a proper understanding of the base conditions in the relevant areas. This is difficult in some regards, as in the Transport Assessment there is no assessment of the base flows down William IV Road. Mr Bain in XX attempted to explain this by saying that they were simply so low they did not need to be assessed. He also argued that as all salient junctions had been assessed and showed no problems this illustrated that the relevant road conditions were all within acceptable limits. However, if Mr Bain's assessment of route choices is preferred, the impact must be assessed without knowing the existing conditions on the road.
- 6.21. Mr Bain in his proof of evidence sought to use the Staffordshire County Council design guide as a proxy for the link capacity of Exchange Road giving 211 two way movements as the capacity. As a matter of mathematics, whoever's trip rates are used, in the AM peak if the development were to be approved there would be in excess of 211 movements on Exchange Road. In XX Mr Bain then sought to distance himself from this position arguing that this was not meant to be expressed as a maximum and that actually the theoretical capacity of the road was somewhere between 211 and 900 vehicles per hour.
- 6.22. In the AM there is a dispute as to how much traffic will flow down Exchange Road but, as per the Transport Assessment, what should be assessed is the assumption that all outbound traffic will travel on Exchange Road. This will result, on either set of trip rates, in roughly a 50% increase in traffic flow. In the PM there will be an increase in parking on Exchange Road. This will cause a restriction on the traffic flows on this road requiring more complex manoeuvring to be undertaken by drivers on the road. This will be coupled with an increase in vehicle numbers which will serve to accentuate these issues and will have a severe impact on highway safety and for this reason the appeal should be refused.

The Conservation Area

- 6.23. As agreed by Mr Hodgkinson in XX, the salient parts of the NPPF for the purposes of heritage issues are paragraphs 131 – 134. As he also

agreed, paragraph 132 requires that an assessment of the significance of the heritage asset in question is undertaken. This has simply not been done.

- 6.24. The Alrewas Conservation Area is predominantly made up of HUCA 3 which is scored as being of high importance in the Alrewas Extensive Urban Survey. Mr Hodgkinson could not point to anywhere in the Heritage Assessment that accompanied the application that recognised this. His proof fails to set out the significance of HUCA 3. If you have not assessed the significance of the asset you cannot have properly assessed the impact on it. As a result of this failing the evidence of Mrs Boffin on heritage impacts must be preferred.
- 6.25. It is also important to note in relation to the significance of the Conservation Area that it was first designated in 1970 and that it is one of 23 medieval towns and villages in Staffordshire.
- 6.26. The parties are agreed that there is very little guidance regarding assessing the impact traffic can have on a conservation area but it is not disputed by the Appellant that it is something that is capable of causing harm to a heritage asset. The salient local guidance that exists on the matter is paragraph 9.7 of the Alrewas Conservation Area Appraisal and Action 13 of the Conservation Area Management Plan 2011. The Appellant seems to rely on the fact that as nothing has been done in relation to Action 13 then there is not an existing problem. This is not in accordance with Mrs Boffin's evidence who in essence explained that the lack of action was essentially a question of resources and having other actions to work through.
- 6.27. The wording of paragraph 9.7 of the Appraisal appears plain: *"Traffic Management needs to be considered and a solution to parking issues in Main Street should be sought along with a solution to problems with traffic, particularly with regard to HGVs that use the Main Street."* Recognition of a need for traffic management in a conservation area appraisal would only logically arise if traffic was an issue that needed to be addressed. Mr Hodgkinson agreed that the Council thinks there is an existing problem and does not present anything by way of a baseline assessment to counter this.
- 6.28. On anybody's case there will be an increase in traffic through the conservation area. The issue is whether or not it is perceptible. In the AM peak there is a potential for an increase of 50% in traffic flows on Exchange Road. On any reading of the transport evidence, there would be a perceptible increase that would have a detrimental impact on the conservation area.
- 6.29. It is not contended by the Appellant that this increase in traffic will enhance the value of the conservation area. It is not entirely clear whether Mr Hodgkinson is of the view that there will be some less than substantial harm or whether there is no harm at all. This may be in part explained by the fact that he appeared to be of the understanding that there was a level of less than substantial harm that did not engage paragraph 134 of the NPPF. This was not a view shared by his own planning witness Mr Bateman. If there is harm that is not substantial

then, however insubstantial, it is less than substantial harm. In the context of Alrewas, it cannot be properly argued that an increase in traffic flows preserves the conservation area. The only proper conclusion that can be reached is that there is less than substantial harm.

6.30. With regards to the levels of less than substantial harm, the inspector and the Secretary of State will have to take a view as to whose evidence is to be preferred. Both witnesses accept that given the lack of guidance on how to assess the impact traffic can have on a heritage asset, then it is a matter for them to produce an assessment of the impact informed by their professional training and experience. However, as set out above, Mr Hodgkinson has not acknowledged the significance of the asset he is assessing and seems to have misunderstood paragraph 134 of the NPPF. Accordingly, Mrs Boffin's evidence must be preferred.

6.31. When there is less than substantial harm then paragraph 134 is engaged. The proper application of this test is informed by case law³.

This does not mean that an authority's assessment of likely harm to the setting of a listed building or to a conservation area is other than a matter for its own planning judgment. It does not mean that the weight the authority should give to harm which it considers would be limited or less than substantial must be the same as the weight it might give to harm which would be substantial. But it is to recognize, as the Court of Appeal emphasized in Barnwell, that a finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted. The presumption is a statutory one. It is not irrebuttable. It can be outweighed by material considerations powerful enough to do so. But an authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering.

6.32. It is clear from this that the statutory presumption against development that harms a heritage asset is a strong one. In fact, it is a rebuttable presumption that it should not be approved. Mr Wood in his proof of evidence acknowledges the benefits the proposal would bring. However, he relies upon the evidence of Mrs Boffin and concludes that permission should be refused. The Appellant has not rebutted the presumption against development that harms the Conservation Area and for this reason the appeal should be dismissed.

³ CD83: [2014] EWHC 1895 (Admin) R. (on the application of Forge Field Society) v Sevenoaks DC paragraph 49

Five Year Housing Land Supply

- 6.33. The Council's latest position on 5 year housing land supply is set out in CD 103. Before the issue of specific sites and allocations can be considered, there are three important points of principle to be resolved: whether the Liverpool or the Sedgefield approach should be applied; whether a 5% or a 20% buffer should be applied; and the timing at which the relevant buffer is to be applied. It is important to bear in mind that the Lichfield District Local Plan Strategy 2008 – 2029 was adopted by the Council on 17th February 2015, the Inspector's report which found the plan sound having been published on 16th January 2015. Between adoption and the end of this inquiry only 5 months have passed.
- 6.34. CD103 refers to the Planning Practice Guidance (PPG) which states⁴:
"The examination of Local Plans is intended to ensure that up to date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position."
- 6.35. On the Liverpool v Sedgefield question the only salient evidential change that has taken place between now and the Local Plan Examination is the publication of the 2014 SHLAA. Mr Bateman contends that this marks a significant change as in one year the LPA are aiming to build more than 1000 houses, whereas part of the reason the Inspector found that the Liverpool approach was appropriate was because the LPA had never managed more than 600 houses before. He further contends that the Liverpool v Sedgefield question was not given a proper airing at the Local Plan examination and it would therefore be appropriate for an alternative finding to be made at this inquiry.
- 6.36. Regarding the latter contention, it is clear from CD 42⁵ that the question of Liverpool v Sedgefield approach was before the Local Plan examiner. It was a question that he did have to come to a conclusion on and the conclusion that he made was that Liverpool was the appropriate approach. CD 42 Table 3 shows that on the basis of the 2013 SHLAA the Council was contending for a delivery capacity of 3,422. This would amount to more than 600 a year on average and the examiner was therefore aware that the Council was proposing to build at a higher rate than previously. In these circumstances the examiner still found the Liverpool approach was the appropriate one.
- 6.37. Mr Bateman in his proof of evidence at 7.30 states that it is important to have regard to NPPF's aim of targets being both realistic and aspirational. It is exactly for that reason that the examiner adopted the Liverpool approach, as set out at his report, paragraph

⁴ PPG Paragraph: 033 Reference ID: 3-033-20150327

⁵ CD 42: Local Plan Examination Matter 3: Assumed Delivery Rates

213: *"I consider therefore that the Liverpool approach would lead to housing supply figures which would be both realistic and aspirational."* That reasoning remains valid. There is nothing presented by the Appellant to this inquiry that would warrant a departure from the Liverpool Method.

- 6.38. Again the 5% v 20% was a live debate before the Local Plan examiner [as illustrated by CD 42]. Mr Bateman was in attendance at the examination and made submissions that a 20% buffer was appropriate. Again the only salient evidential change that has taken place is the publication of the 2014 SHLAA which provided details of completions against targets for one additional year.
- 6.39. A point is taken by the Appellants that upon reading paragraph 214 of the Local Plan report ⁶ the examiner does not appear to have regard to the 2013 SHLAA. As confirmed by Mr Jervis and evidenced by CD 42, the 2013 SHLAA was before the examiner for him to have regard to as he saw fit.
- 6.40. The Appellant through Mr Bateman contends that historically it has been easy for the Council to meet their targets as it has been based on a suppressed requirement. He points to the Council's own projections and where they have not met them to suggest that this is a more realistic indicator of the situation in Lichfield. Ultimately all the Council can and should be judged against is their actual targets, that is what the NPPF requires and that is what should be done. You cannot reach a target if the target doesn't exist.
- 6.41. There is no binding authority regarding the definition of persistent under delivery. It remains within the remit of the relevant decision maker. Here the examiner had information regarding delivery in a 12 year period. His approach was to take a longer period as the relevant period because "the longer period provides the more robust evidence as it takes better account of peaks and troughs in the housing market cycle". Having done so, he concluded that the Council did not have a record of persistent under delivery. He does not express concern or suggest that it was a finely balanced decision. The Council submits that the availability of one more year of data does not tip the balance into persistent under delivery.
- 6.42. The final issue of difference in approach is the stage at which the appropriate buffer is applied. Mr Bateman points to two appeal decisions where his approach is endorsed. Mr Jervis relies upon the inspector's letter from the Amber Valley Local Plan (CD104) to support his approach. Whilst it has to be accepted by the Council that this letter does not expressly endorse Mr Jervis' approach in the text, it would seem odd of the Inspector to follow this approach if he did not approve it. The point that follows from this is that there is again no definitive authority on the approach that should be followed and it is therefore entirely reasonable to adopt the approach used by Mr Jervis. The purpose of the application of the buffer as set out at NPPF

⁶ CD39

paragraph 47 is to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land. Applying the buffer before the surplus is added, as Mr Jervis has done, achieves this objective.

- 6.43. Having considered the basic differences in approach between the parties the next step is to consider supply issues. There is a dispute as to the appropriate level of discount that should be applied. The Appellant contends for a 10% rate and the Council a 5% rate. Mr Bateman submits that his 10% rate is appropriate as it considers a broad range of potential factors that can impact upon delivery. He points to numerous appeal decisions and a high court decision where it is accepted as a reasonable approach, but it is not the only approach and it is not an approach that has been specifically tailored to the circumstances of Lichfield. Mr Jervis' 5% discount rate is.
- 6.44. The evidence base for the 5% rate is clearly set out in the SHLAA⁷. It takes into account the very low lapse rate in Lichfield which, if the year 2010-2011 is excluded, stands at just 1.2%. The Inquiry has heard from multiple parties that in simple terms, the situation in Lichfield is if you build them they will come. Given that the evidence is available, it therefore must be more appropriate to use rather than simply applying a generic reduction rate and accordingly here the 5% rate should be used.
- 6.45. There are three sites where extant planning permissions exist that the Appellant argues should be removed from the 5 year supply figures. As Mr Jervis points out NPPF states sites with planning permission should be considered deliverable *"unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans."*⁸ Mr Bateman has stated his reasons why these three sites will not come forward but it is submitted that the information he has been able to provide does not amount to clear evidence that they will not be implemented and accordingly these sites should be included in the 5 year supply.
- 6.46. In particular, the evidence regarding Friarsgate is that a revised scheme with an additional 49 dwellings is to be submitted. The mere fact of this illustrates a clear intention by the developers to bring forward housing on this site. If anything the provision from this site should be increased rather than reduced.
- 6.47. Mr Bateman argues that the site at St John's Hospital cannot come forward at the moment as it would be in breach of Policy HSC-2 of the adopted Local Plan. However, Mr Jervis points out that the Tennis Club is no longer in operation and the intention of the developer is to bring forward housing on this site. The existence of the Tennis Club is not an automatic bar to development and, given that there has been an

⁷ CD 46: SHLAA 2014 paragraphs 6.20 – 6.22

⁸ NPPF footnote 11 to paragraph 47

indication there is an intention to bring it forward, it is not unreasonable to include it in the supply.

- 6.48. Mr Bateman submits that housing development at King Edward VI School simply isn't possible due to the level of need there is for the school to accommodate pupils. However, it is the case that it is the school which has proposed this as a site for potential development.
- 6.49. The Council relies in full on Mr Jervis' evidence regarding the Land off Burton Road.
- 6.50. If the Appellant's supply figure is accepted, the Liverpool approach is followed and a 5% buffer is applied after the shortfall is included, then the Council has a 4.96 year housing land supply. If the available supply is a mere 25 houses higher, then this would result in the Council having a 5 year supply. As such, if the Secretary of State finds in favour of the Council regarding the rate of discount or nearly any of the disputed sites, then this will result in the Council being able to demonstrate a five year supply.

Planning Matters

- 6.51. Reason for refusal one is that the application is premature with regards to the spatial strategy for Alrewas. Mr Wood in XX quite properly accepted that the allocations document is not yet in existence and that the Council is of the view there are fundamental flaws with the proposed Neighbourhood Plan. However, he remained of the view that to develop this site now would deprive local people of the ability to have any input into the allocation of housing in Alrewas.
- 6.52. Policy ALR-4 provides for 90-180 houses to be developed in Alrewas over the plan period. However, primacy is given to infill development. Mr Bateman identifies in the region of 75 houses being available by virtue of infill development in Alrewas. If all of those come forward and this development is approved now then this would result in 195 houses being delivered in Alrewas. Whilst it is accepted by the Council that the 90-180 figures are not a maximum, this gives an indication of the scale of this development in the context of Alrewas. Accordingly as maintained by Mr Wood to approve it now would be premature.
- 6.53. A couple of discrete points also need to be addressed. The parties' planning witnesses are at odds as regards to whether policy 134 of the NPPF is a restrictive policy. This is a matter of objective interpretation. Paragraph 134 tells us that unless the benefits of the scheme outweigh the harm to the heritage asset, it should not be approved. The starting point is therefore one of refusal. If the starting point is refusal then the consequence is that development is restricted by the policy. The further consequence of this is that footnote 9 is engaged and the presumption in paragraph 14 of the NPPF is not engaged.
- 6.54. Mr Bateman seeks to give particular primacy to the importance of housing development above other forms of the development. He draws this from the text of the foreword to the NPPF and the general tenor of the document. However, he has to accept that if one looks at

paragraph 17 of the NPPF where the core principles are set out, no such express primacy is given to housing provision.

Conclusion

6.55. The Council is able to demonstrate a 5 year housing supply. Bullet point 2 of NPPF paragraph 14 is not engaged and the appeal falls to be determined on the basis of compliance with the development plan. The Council maintains two specific reasons for refusal, highway safety and harm to the Alrewas Conservation area. As set out above, the evidence presented to this inquiry shows that for both of these reasons the appeal should be refused. Further, the proposed development is premature with regards to the spatial strategy for Alrewas and should be refused.

6.56. The final matter is that of amenity and impact on human rights and the Inquiry has heard from Cllr Marshall in this regard.

6.57. In light of the above the appeal should be dismissed.

7. The Case for Alrewas Parish Council and residents⁹

7.1. The Parish Council fully embraces the policies in the recently adopted Lichfield District Local Plan. It feels strongly that ALR4 clearly defines how the village should be developed. The appeal proposal fails to satisfy that policy for the following reasons:

- although the proposal falls within the range of 90-180 dwellings, the Local Plan Allocation Document which is to determine final numbers and locations has not been prepared;
- approximately 40 houses have so far been constructed leaving 50-140 to be delivered. This proposal represents 240% of the minimum and 86% of the maximum remaining range, for a Local Plan that still has 14 years to run. In the context of the village it is not small scale and does not represent modest or proportionate growth;
- this proposal is not infill, is beyond the current village boundary and has not been considered by the Local Plan Allocation Document;
- housing locations are expected to take into account information gathered by, and in conjunction with the local community but current information shows clear opposition to development on this site;
- whilst the proposal would meet the need for affordable homes, that need could be accommodated in other locations within the village. The proposal does not accord with the mix proposed in

⁹ Although Alrewas Parish Council did not seek Rule 6 status, I asked that it make a formal closing statement to the inquiry, in reflection of its involvement in the preparation of the emerging Neighbourhood Plan and its role in making known the views of residents. I have drawn on that statement and the other submissions in preparing this summary.

the South Staffordshire Housing Assessment or meet the requirement for suitable high quality houses to address downsizing for older residents which are addressed in the Neighbourhood Plan;

- 7.2. The Neighbourhood Plan has been in development for nearly 3 years. It should be given material consideration at this Inquiry. There has been a high level of participation. The Consultation Questionnaire achieved a 38% response rate. Consultation was also undertaken with businesses and developers, albeit Lioncourt did not get involved in that process.
- 7.3. The Neighbourhood Plan is pro-development and includes a housing target which falls within the range contained in the Local Plan. There are proposals within the Neighbourhood Plan as to how this target and the required housing mix should be achieved. The requirement for a Strategic Environmental Assessment (SEA) was questioned during the Inquiry. The Neighbourhood Plan is robust. An SEA is not necessary in view of the decision to follow policy NR7 from the Local Plan.
- 7.4. Key points from the Neighbourhood Plan include:
- Alrewas is by far the smallest Parish in Lichfield District by area. The village has boundary constraints of major roads, rivers and flood plains along with a medieval road structure within the Conservation Area. The fundamental approach of the Neighbourhood Plan is to meet the housing target, within this constrained area, whilst avoiding a high concentration of new development in any one location which would have an adverse impact on traffic flows within the Conservation Area and therefore reduce the sustainability of the village.
 - Due to the boundary constraints, this site is the only open land within ready walking distance of the village. It is an objective of the Neighbourhood Plan to meet the housing target whilst minimising development on this land, so that the bulk of it can be retained as an accessible green border to the village.
 - A number of other developers have already held pre-application planning meetings with the Parish Council to assess compliance with the emerging Plan.
 - Traffic is a significant issue in Alrewas. Any significant development which relies on traffic flow through the centre of the village would add to this.
- 7.5. The Parish Council has demonstrated that the evidence put forward by the appellant is subject to interpretation and doubt. Its own surveys and reports demonstrate that the impact of this development would be far greater than the appellant suggests.
- 7.6. Whilst the appellant's approach concentrates on peak traffic flows along with junction loading, it has not adequately addressed the more significant issue of the extent of constraints on the existing road system in this part of the village: namely double parking, properties in

the medieval street pattern with no offsite parking, roads with no footpaths and proximity to old/listed/vulnerable buildings. The video evidence submitted by the Appellant does not show the appropriate time periods to illustrate these issues.

- 7.7. The Surgery is located on Exchange Road and 50% of users live outside of the village, as do many of the customers of the village shops. Many people therefore have no option but to drive into the village centre and park on its narrow roads. For significant periods of the day, parking on Exchange Road and Main Street is on both sides, and often on footpaths, severely reducing the width of the road. HGVs frequently have difficulty passing and pedestrians and mobility scooter users often have to proceed along the road due to obstructed footpaths.
- 7.8. The other routes to and from the site, William IV Road and Post Office Road, suffer similar congestion with on-street parking and a lack of footpaths in some areas. There is a frequent need for cars to stop and reverse to allow others to pass or to manoeuvre blindly on the wrong side of the road¹⁰. The proposed development will exacerbate the current situation and the impact has not been adequately considered. This situation is reinforced by the Police who advised primary school children not to cycle to school as they consider the roads to be too dangerous. The National Cycling Route N54 has been rerouted to avoid Main Street and Exchange Road due to the identified danger to cyclists. An accident near the War Memorial in 2014 does not figure in the accident statistics. Development on the proposed site is therefore the most problematic from a traffic perspective. This has been a key consideration in the Neighbourhood Plan development when considering alternative sites.
- 7.9. There can be no doubt that the increased traffic will have a considerable detrimental impact on the amenity of existing residents and result in an increased risk to safety. In our view, this outweighs any perceived benefit the development might offer.
- 7.10. The Parish Council has demonstrated reasonable doubt with regard to the technical evidence base for the Appellant's flood mitigation approach. Current best practice guidance has not been used in this case, including an inappropriate flood and greenfield run off prediction method. The site suffers flooding well in excess of that predicted by the Environment Agency's current models. Areas supposedly only subject to 1 in 100 year events flood regularly. This local knowledge has not been taken into account.
- 7.11. The flood mitigation proposals rely on raising the ground level of the site by 0.6 metres and providing balancing ponds and other artificial interventions. This will not be an effective solution in the long term. It has the potential to increase the risk of flooding in other parts of the village during periods of high water levels. This approach to flood management will impact on views in this part of the village and is

¹⁰ See photographic evidence within PC04 and the letter from Mr Latham, ID09

inappropriate in such a sensitive setting. It is contrary to the NP policy 5.3 which was strongly supported by the Environment Agency in its response to the final NP. Furthermore NPPF clearly discourages development in areas where flooding is a risk¹¹. The sequential test has not been applied here. The Neighbourhood Plan identifies alternative sites which are not subject to flood risk. This alone should be enough to prevent this development.

- 7.12. There are doubts as to the proposed storm water drainage system as it relies on attenuation and outfalls which are unlikely to operate properly in times of high water. This will add to the already serious flooding on the site. This will not be properly assessed until development stage when water authority applications are made. In the last two years, insurers have begun to remove flood cover from existing residents adjacent to the site. There is a real risk that potential buyers of these houses may not be able to get insurance which will satisfy a mortgage lender.
- 7.13. The Environment Agency was supportive of the approach in the Neighbourhood Plan, stating: *"To the north and east of the parish, there are large areas of floodplain (Flood Zones 2 and 3) associated with the Rivers Trent and Tame. ...Any future proposals or planning applications will need to take account of this."* The Strategic Flood Risk Assessment for Lichfield District (2014) states that *"the importance of preserving this floodplain must be highlighted as any constrictions introduced in this area would have significant affects downstream"*. The Neighbourhood Plan recognises the need for new development to avoid floodplain areas and we have noted that community feedback recommends that *`new development should be avoided in areas adjacent to the existing floodplain boundary in order to mitigate additional risk of flooding in the village'*.
- 7.14. Sustainability is a key tenet of the NPPF. It requires the application of all NPPF policies, not a subjective interpretation based on location and adjacency to facilities as appears to be being applied by the appellant. Village infrastructure is at capacity. Our primary school is turning away pupils, our surgery patient list is full, our roads are congested, and the vast majority of our population commute elsewhere to work. No additional large scale expansion can be sustainable.
- 7.15. The Neighbourhood Plan aims to ensure that the scale of development is modest and in accordance with the Local Plan. Development must be gradual to enable facilities to expand and adapt; and spread around the settlement to minimise traffic impact. It must be well designed to blend in to the historic streetscape and be in accordance with NPPF Para 58 which requires a Neighbourhood Plan to ensure good design. Accordingly NP Policy 5.6 requires developments to reflect "Building for Life 12". This development falls well short of this standard.

¹¹ See paragraphs 94, 99, 100 and 101

- 7.16. The Local Plan is intended to have a fifteen year life. Spread over this timescale, the proposed housing allocation in the Local Plan is achievable, giving the village time to develop its infrastructure. To provide the balance of our entire maximum allocation via a single large development is unsustainable and against the policies of the Local Plan.
- 7.17. Local Environment - The Local Plan (para 17.28) cites the lack of open space in the north and east of the village. The land north of Dark Lane has for generations been used by the community as open amenity space, crisscrossed with formal and informal footpaths, dotted with mature hedgerows, water meadows and rich in flora and fauna. This is where the River Trent and the Trent & Mersey Canal converge in a rare river section.
- 7.18. This riverside location, with its bridges and weir is the jewel in Alrewas' crown and by far the most accessible rural open space. It is the point of arrival for canal boats, which is important to our aim to attract further visitors to the village and the National Memorial Arboretum. The Conservation Area itself, the views into and out of it and the adjacent fields are all deemed highly important in the Conservation Area Management Plan (para 2.20). The Parish Council consider that this application has a significant detrimental impact on the north of the village, the loss of valuable 'rural' but accessible space, huge negative impact on the views into and out of the area and a very significant impact on the amenity of Alrewas residents adjacent to the site and well beyond.
- 7.19. Alrewas has a long and valuable history being mentioned in the Domesday Book of 1086 and was the third Conservation Area designated in Staffordshire in 1968. Historically the village had three ancient meadows — only the one to the north remains and this would be lost under this development. The site remains an untouched open field system adjacent to the ancient Roman Road and at the junction of the ancient Salters Way/Dark Lane, it retains some remnants of Ridge and Furrow, but may contain significant potential archaeology as yet undiscovered.
- 7.20. The development would have an inevitable detrimental effect on the setting of listed buildings and those of recognised historic importance (as noted in the Conservation Management Plan) which surround the site. The traffic would further have a detrimental impact on the medieval road system, and potentially put a number of historic buildings at risk. This is highlighted in the Conservation Officer's report to committee where she states: "I still consider that the proposals will have an adverse impact on the character and appearance or significance of the Alrewas Conservation Area".
- 7.21. In the Staffordshire County Council Historic Environment Character Assessment Report for Lichfield District (Feb 2009), the Trent Valley flood plain north of Alrewas was scored as the second most important historic environment in the district, second only to Lichfield City's Historic Cathedral Core, and more important than the historic village centre itself (see page 28, table 5.2). The report states: "The areas to

the north and west of Alrewas have scored quite highly and any development in these zones would need to consider the historic environment as discussed in the individual LHECX reports". Inadequate consideration has been given to the historical importance this report gives to this site, as the second most important historic environment in the entire Lichfield District.

7.22. NPPF (Para 66) requires applicants to work closely with the community affected by their proposals. During 2011 there was a series of consultations relating to the Rural Master Plan. They were useful in providing an initial view of the key issues facing the village along with a number of potential solutions. Lioncourt carried out a single 4 hour public event on a Friday afternoon in July 2012. The appellant recorded the concerns raised at this event in its Consultation Statement, but failed to address them fully. There has been no subsequent consultation. Not only do we consider this to be clearly inadequate, but the proposal which the appellant presented at the event bears little resemblance to the current scheme. Most notably the initial scheme relied on two way traffic being instigated on the A38 slip road, identifying correctly that this was a necessity to avoid the traffic problems in the centre. This approach was rejected on highway grounds so the proposal was amended to rely on the existing road network regardless of the impact. Throughout the period from December 2012 to the current day, the Neighbourhood Plan Steering Committee have held numerous consultation and feedback sessions to garner and develop the views of the residents.

7.23. The Parish Council is strongly opposed to this proposal for the following reasons:

- It does not comply with the key policies in Adopted Local Plan.
- It does not comply with the policies in the Emerging Neighbourhood Plan.
- It does not adequately consider and offer solutions to the real traffic issues.
- The development is on an area prone to flooding. Data and remedies have been presented which are not considered reliable and viable.
- There are locally determined alternatives which will meet the housing requirements in terms of numbers and mix.

7.24. Finally the Parish Council would like to quote the Prime Minister from a recent BBC programme: "planning reforms would make it easier for communities to say they are not going to have big plonking housing estates landing next to the village which would endanger lovely countryside". We think that sums our position most eloquently.

8. The Case for Lioncourt Homes Ltd

Introduction

- 8.1. This application was made in accordance with the principles set out in **Bernard Wheatcroft Limited v Secretary of State for the Environment and Another (1982) 43P&CR233** and also follows the principles for amendment set out in Annexe M¹² of the Planning Inspectorate's Procedural Guide dated 1st April 2014.
- 8.2. Officers recommended that planning permission be granted in respect of both the scheme for 140 dwellings and 121 dwellings. Indeed, the policy advice was:

No policy objections to the principle of residential development at Alrewas. It is identified within the adopted Local Plan Strategy as a key rural settlement to take between a minimum of 90-180 homes within the plan period. This proposal is located adjacent to the settlement boundary and is within the range identified by the Local Plan Strategy.

- 8.3. Statements of common ground have been entered into with both the District Council and the County Council as the highway authority. The County Council is quite clear: there is no objection whatsoever due to highway safety or adverse impact upon the highway network either due to traffic movements or parking as a result of the proposed development. It is highly surprising that the District Council has sought to maintain the case based upon adverse impact on highway safety. The evidence in this regard is simply not credible.

Traffic and Parking

- 8.4. It is clear from the evidence, including the Statements of Common Ground with the Highway Authority and Lichfield District Council, that the roads in the vicinity of the appeal site which may be subject to development traffic have an extremely good safety record. That is unsurprising given the extremely low flows within the conservation area¹³:-
- For Park Road (between Dark Lane and Exchange Road) - 110 vehicles in the AM peak and 84 in the PM peak. That amounts to some 1.8 vehicles per minute and 1.4 vehicles per minute respectively;
 - For Exchange Road – 146 vehicles in the AM peak and 118 vehicles in the PM peak (being 2.4 vehicles per minute and 2.0 vehicles per minute in the respective peak hours)
 - For Park Road (between Exchange Road and Micklehome Drive) – some 52 vehicles in the AM peak and 54 vehicles in the PM peak (being 0.9 vehicles per minute in each peak);

¹² Para M2.2

¹³ As set out at Bain proof paragraph 3.23 and table 3.7

- Post Office Road (traffic entering and leaving at the Main Street junction) – 134 vehicles in the AM peak and 169 in the PM peak (amounting to 2.2 vehicles per minute and 2.8 vehicles per minute in the relevant peak hours).

- 8.5. There was some dispute as to the likely level of trip generation but, even so, the differences are minimal, with the Council's assessment producing an additional 5 vehicles in the AM peak and 11 fewer vehicles in the PM peak¹⁴. The Appellant's data indicates around one additional trip per minute through the conservation area in the morning peak and around two during the afternoon peak¹⁵. This would be only slightly more using the Council's figures¹⁶. On any realistic and proportionate basis, these represent a negligible or very minor impact so far as the operation of any of the roads in the conservation area are concerned. The County Council as Highway Authority did not object to this proposal¹⁷.
- 8.6. The Transport Assessment is robust. It used trip generation rates derived from TRICS, a nationally recognised source of data, as well as locally validated figures. It also used a correct data set having regard to car ownership in Alrewas parish¹⁸. The local validation shows that the TRICS rates are robust and higher than those from the locally generated trip rates¹⁹.
- 8.7. There is also dispute as to trip distribution and trip assignment. The distribution (showing the general direction of where traffic would go) showed the principal directions of travel as 70% going south towards Lichfield and Birmingham and around 20% going north to Burton and Derby²⁰. In agreement with SCC, the Transport Assessment adopts a worst case approach of assigning all traffic down Exchange Road. However, in reality traffic would be more likely to be distributed along Exchange Road, William IV Road and Post Office Road²¹. The result is to reduce the traffic experienced by any one road such that in the morning peak Exchange Road would experience one trip every 2.3 minutes, William IV Road every 4.1 minutes and Post Office Road every 4.1 minutes. In the evening peak Exchange Road would experience a trip every 4.2 minutes, William IV Road, every 7.1 minutes and Post Office Road every 7.1 minutes. As the time taken to drive down each of these streets is much less than a minute, during the majority of the

¹⁴ Appendix AB2, Table 1. Mr Bailes also posited a further "peak hour" of 4pm to 5pm, though that suggestion appeared to be without any material significance as was evident from the diagrams contained in his appendix AB8, which showed higher peak hour flows in the peak hour between 5pm and 6pm.

¹⁵ Bain proof, table 3.5, page 11

¹⁶ 1.3 additional vehicles per minute in the AM peak and 1.2 additional vehicles in the PM peak (5 till 6pm).

¹⁷ CD34A

¹⁸ See also Bailes proof paragraph 4.6, though this changed to a wider output area in the rebuttal proof.

¹⁹ Bain table 3.3, page 9 and ABN para 3.12

²⁰ Bain table 3.4, page 10.

²¹ Bain table 3.6

peak hours there would be little chance of seeing a vehicle arising from the development on any of these streets.

- 8.8. A similar picture would arise on the Council's assessment, which assigns all traffic down Exchange Road even though 70% of the traffic in the morning peak would be heading in a different direction, towards Fox Lane. That is highly suggestive both in terms of distance and time that there would be a split in assignment. However, even assuming this worst case, the road and the junction with Main Street both operate satisfactorily and very substantially within capacity.
- 8.9. Not all the trips entering the site would travel through the conservation area. Most would travel on the A38, through the A513/A38 roundabout and then along the service road to enter the site via Micklehome Drive. Some 94% of the traffic heading into the site or 47% of the total vehicle trips would not pass through the conservation area²².
- 8.10. Drawing MID3912/002²³ shows the various cross-sectional widths of all of the roads in question. Clearly none were designed with Manual for Streets (MfS) in mind. However, Exchange Road has a cross-sectional width of between 5.47 metres and 6.14 metres - a theoretical capacity of some 900 vehicles per hour according to DMRB. As an analogy, the SCC Residential Design Guide states that a street of 5.5 metres can serve up to 300 dwellings²⁴. The suggestion that Exchange Road falls below this theoretical capacity due to the amount of parking on it is irrelevant. The new roads within the proposed development will comply with the SCC Residential Design Guide and all of the roads with which it connects self-evidently have the requisite capacity to accept, with a very high margin, the proposed development traffic.

Parking

- 8.11. Parking does take place within the conservation area but both its extent and impact have been exaggerated. The parking survey commissioned by the Council shows that parking extends only to around 28% throughout the day, even through the peak hours of 8am to 9am and 5pm to 6pm (or indeed 4pm to 5pm)²⁵.
- 8.12. With regard to the impact of parking and traffic movements on the Conservation Area, there is no policy either national or local to assist the Council's position. Nor is there any guidance from any recognised or authoritative source to suggest this is a feature which, in principle, is harmful to significance. Indeed as Mr Hodgkinson explained²⁶ conservation areas exist in urban areas and are potentially subject to busy roads. However even if it were concluded that there was some in-principle objection, there is no properly founded evidence to justify the contention that the scale of change could fall within this heading.

²² See Bain 3.16 and 3.17

²³ Which was provided in large format to the Inquiry – see also Bain proof App D

²⁴ Bain para 3.26

²⁵ Bain Rebuttal proof App D

²⁶ XC

The numbers of potential additional movements generated by the development, even in the peak hour, are very small, amounting to only about 1 extra vehicle per minute. Whether or not this would be perceptible, no harm would thereby arise to the character or appearance of the conservation area so as to engage operation of paragraph 134 of the NPPF. It would be minor or negligible. A more accurate description of any harm simply becomes a matter of theoretical speculation. That is the position here.

- 8.13. The Council's commissioned parking surveys have formed a common base to this Inquiry. They demonstrate the very considerable surplus capacity for parking within the conservation area, with overall average use of some 28%. Even for Exchange Road it is clear that between 8am and 9am there is always very substantial spare capacity in terms of numbers of spaces. Parking spaces are, on the basis of this survey, always available.
- 8.14. It was further contended that the effect of that parking was to render Exchange Road a "one way street"²⁷. That suggestion is erroneous. All of the roads are two way streets that are fully able to accommodate all of the traffic upon those roads. One consequence, though, is that drivers proceed relatively slowly and demonstrate courteous behaviour.
- 8.15. As to speed, the average and 85th percentile speeds are set out in tables 3.1 to 3.5 of the Statement of Common Ground with Lichfield District Council. All of the speeds are low. Driver behaviour of giving way whilst making headway along any of these routes is evident, including from the video record²⁸.
- 8.16. There was some criticism from the Council that the video clips represented a "survey" and that they were potentially unrepresentative having been undertaken during a week following return to school in late April 2015. Neither criticism is justified. The video clips represent observations of actual driver behaviour both in terms of traffic movement and parking. They are not a survey to which the TAG guidance applies and have not been used in the Transport Assessment or other work. The video diary is, in essence, a reasonably comprehensive visual record of what drivers actually do. Neither the Council nor anyone else produced any alternative evidence or critique of those video recordings to suggest that they were otherwise unrepresentative. They certainly did not provide any alternative video material. In the circumstances, proper reliance can be placed upon them as providing a representative understanding of actual driver behaviour in the locality.

²⁷ AB, repeatedly XC

²⁸ set out in Bain: 13 CDs and supplementary proof explaining the driver behaviour; see also CD114, which suggests selected clips, though any other clips from those observations could be selected

Highway safety

- 8.17. Despite all of the attempts to paint a picture that the roads in the conservation area are either dangerous or likely to become dangerous as a result of the proposed development, those contentions are palpably erroneous. These roads enjoy a very good safety record. The Personal Injury Accident Records for 2005-2013 (the only official records and the only records provided to the Inquiry) are agreed with LDC²⁹. They show only 5 slight accidents, 2 of which occurred in 2005 and 3 in 2007. All occurred on Main Street³⁰. None show any pattern indicating any highway safety issue.
- 8.18. In short, there is no proper evidential basis whatsoever to conclude that the introduction of the appeal proposal will by reason of its traffic generation, trip distribution/assignment or additional parking demand give rise to any adverse impacts for safety (whether pedestrian, cyclist or vehicular); or for the operation of any road or junction. The impacts most assuredly could not be regarded as “severe” within the terms of paragraph 32 of the NPPF³¹.

Construction traffic

- 8.19. The issue of construction traffic and management is a matter that can be dealt with via the imposition of appropriate conditions. Almost all construction projects give rise to very short term and localised impacts but the approach identified³² demonstrates this can be minimised and conflict with existing road users avoided. The vast majority of construction traffic will use the route from the A38 and Burton Road, once the new access has been constructed.

Travel plan

- 8.20. The development, consistent with national policy, seeks to persuade future residents to make more sustainable travel choices. It was suggested the travel plan objectives of reducing use of the private car in favour of other transport modes had led to the trip generation figures being understated. That is erroneous. No alternative evidence to contradict that evidence was advanced on the part of the Council and there is no substantive challenge upon that point.
- 8.21. The site has very real advantages in terms of proximity and accessibility to facilities in Alrewas, making it unlikely that all shopping trips would be by car. The likely additional parking generation was calculated in proportion to the size of the existing settlement and by reference to constraints such as doctors opening hours³³. Given that the population of Alrewas parish is 2852³⁴ and that the proposed

²⁹ CD34B: Highways Statement of Common Ground

³⁰ See Statement of Common Ground table 5.1

³¹ The suggestion by Mr Bailes that the effects would be “severe” are palpably erroneous and simply underline the wildly exaggerated nature of the Council’s case upon this issue.

³² CD 113

³³ See supplementary rebuttal proof from Mr Bain, section 6

³⁴ 2011 census – Bain rebuttal paragraph 6.3

development of 121 dwellings would generate approximately 290 people³⁵ this would represent a 9.8% increase on the overall population of the parish. Making the reasonable assumption of the same shopping and travel patterns and drawing on the parking survey which showed that two parking spaces are used in front of the shops, this would give rise to a negligible increase in parking demand during the morning peak. Applying the 9.8% factor to the seven parking spaces used during the afternoon peak would result in a single extra parking space being occupied following the development of the appeal site. Use of the doctors surgery is estimated to amount to no more than three additional trips every five days, with a parking requirement of between 30 and 60 minutes per space. Given the availability of spaces, that would not prove problematic.

- 8.22. In addition, the journey distance plans³⁶ show that the appeal site is as well located in terms of walking distance to all of the facilities within Alrewas as the majority of the settlement and indeed fares better than a range of other locations to the west and south-west, a further indication of the robustness of the Appellant's traffic generation figures.

Heritage Impacts

- 8.23. This issue is solely directed to whether there is said to be an adverse impact on the character and appearance of the Alrewas Conservation Area by reason of the additional traffic and parking generated by the proposed development³⁷. No adverse impact upon any other heritage asset, including 25 Dark Lane, was relevant to the consideration of the proposal³⁸.
- 8.24. Alrewas Conservation Area was designated in 1970 and there is no dispute that it has heritage value by reason of that designation. However, that is not the point. The issue is whether there will be harm to the significance of that asset by reason of the proposed development. The Appellant maintains that there will not be any such harm.
- 8.25. There is no policy or national guidance, whether from the Secretary of State or from English Heritage (now Historic England), which suggests that the issue of either traffic or parking is a feature which gives rise to adverse impact in the meaning of either Section 66/72 of the Listed Buildings Act or paragraph 134 of the NPPF. Although the reason for refusal asserted that there would be substantial harm to the conservation area, that was not the view of Mrs Boffin (XX). Nor was it the view of Mr Wood (XX).

³⁵ Based on the average household occupancy in England of 2.4 people per household

³⁶ shown at Appendix F to Mr Bain's rebuttal proof

³⁷ Confirmed by Mrs Boffin XX

³⁸ DH agreed and his reference in paragraph XXXX was not to be considered as a discrete adverse impact which would fall for consideration under paragraph 134 of the NPPF – PG XC, QI

8.26. Further, Policy Alr4 of the Lichfield Core Strategy³⁹ specifically provides for Alrewas to take housing in the range of 90 to 180 dwellings. The process giving rise to that allocation is one that had been the subject of sustainability appraisal⁴⁰. That process did not suggest that there was a constraint on the quantum of housing development that Alrewas could accommodate due to the presence of its conservation area and any perceived difficulties with regard to either traffic or parking⁴¹. In fact the reverse, the SA of the local plan found that approach to be sustainable. Mrs Boffin confirmed (PG XX) that she was part of the process giving rise both to the local plan allocation and the sustainability appraisal of it. In consequence it is now simply illogical and inconsistent to suggest that there is any constraint on housing being located at Alrewas. As she accepted (PG XX) housing is allocated to Alrewas, the local plan inspector was not provided with any evidence to indicate that such an allocation was inappropriate or otherwise constrained by the conservation area. Any development at or around Alrewas will give rise to additional traffic. That again sits ill with the Council's now contended case that even one more vehicle movement through the conservation area would be harmful.

8.27. The Council sought to place some reliance upon the statement within the Conservation Area Appraisal concerning the need for a solution to parking issues in Main Street⁴². As Mr Hodgkinson identified (XX) this makes no reference to the remainder of the conservation area. Further, the Conservation Area Management Plan states that "*the Council will work in partnership with the county council over new schemes which will improve the control of traffic flow, parking and pedestrian access in the Alrewas Conservation Area without any detrimental impact on the conservation area*".⁴³ Mrs Boffin explained (XX) that no steps had been taken either by the Council on its own or in conjunction with any other body including the County Council to take any such matters forward. Nor had the Council pursued any restriction on parking in the conservation area. Not one single meeting had been held with the County Council in order to try and fulfil that aim. No proposals on how that should be fulfilled had been put forward by the Council nor had anything been done in respect of HGVs in Main Street. Other than the potential imposition of parking restrictions by reason of a Traffic Regulation Order, Mrs Boffin was unable to suggest any means by which the parking issues could be addressed.

8.28. The appeal proposal involves no alterations to any physical fabric within the conservation area and in no way alters the medieval street pattern of Alrewas. Instead, there is something of a freestanding expression of adverse impact on the conservation area. An impact that would arise, in any event, simply from the Council's own plans whether

³⁹ CD38

⁴⁰ PG XX Mrs Boffin

⁴¹ PG XX DB

⁴² CD57 paragraph 9.7

⁴³ CD58 Action 13

for infill development within Alrewas or any development on the periphery. Seemingly there has been no calibration of the harm attributable in this case. However, Mrs Boffin was clear that even within the category covered by “less than substantial harm” the same weight should not be attributed uniformly to all harm that fell within that category. Instead there would be a range from that nearer to substantial harm to that of or near negligible harm. Her response to an earlier amendment to reduce the number of proposed dwellings from 151 to 144 had been that this was “more finely balanced”. Given that the proposal now before the Secretary of State is one for 121 dwellings, the judgment must be more finely balanced still or alternatively it should tip in favour of the proposal.

8.29. It is notable that English Heritage has been consulted twice upon this proposal and has not objected. This was not by reason of some oversight or slip as it had specifically been brought to the attention of English Heritage⁴⁴. Mr Ian George of English Heritage had reiterated in a telephone conversation that he did not see that there was any ground for objection by reason of adverse impact on the conservation area due to either traffic or parking. The medieval street pattern will be left wholly unaffected by the proposal. Indeed even insofar as the contended impact upon aesthetic values, that movement (including movement of traffic) is specifically part of the aesthetic value of the conservation area⁴⁵.

Residential Amenity

8.30. Although Councillor Marshall sought to assert that there would be some adverse impact on amenity, no other Council witness was prepared to agree with that suggestion⁴⁶. In short there will be no adverse effect to the amenity of any existing residents by reason of the carrying out of the development that would not otherwise be capable of being adequately controlled by the imposition of appropriate conditions.

Scale and Location of development

8.31. As identified earlier, the Council’s officers did not suggest that there was any conflict with the development plan due to either the scale or location of the proposed development on the appeal site⁴⁷. Indeed, it falls within the modest and proportionate level of development anticipated by Policy Alr 4 and aligns with core policies 1 and 6.

Flood Risk

8.32. Appended to the proof of evidence of Mr Bateman is what is described as a “shadow proof” provided by Mr Chris Brown⁴⁸. This has dealt with all requisite issues relating to flood risk. It is to be noted

⁴⁴ As DB explained (PG XX)

⁴⁵ conceded by Mrs Boffin in XX

⁴⁶ including Mr Wood, who provided no support whatsoever

⁴⁷ particularly Mr Jervis, but also Mr Wood

⁴⁸ Mr Bateman Appx 22

that neither the Environment Agency nor Staffordshire County Council (as lead local flood authority) raise any issue in respect of the site being unsuitable for development by reason of flood risk.

8.33. The site is located in Flood Zone 1 and despite the anecdotal suggestions of flooding there is no proper evidence-based justification for consent to be withheld on this ground. Indeed it was accepted that the exercise with which the Inspector and the Secretary of State were concerned should be an objective and evidence-based exercise. Further, the Council had determined to withdraw its reason for refusal in relation to flooding on the basis that there was no justification for it and no professionally qualified expert witness could be found who would seek to maintain that reason⁴⁹.

8.34. In response to certain of the later concerns raised by residents, CD112 answers all of those queries. In short, there is neither a flood risk nor a drainage objection which may be sustained in respect of the proposed development.

Benefits of the proposal – especially market and affordable housing

8.35. The benefits of the proposed development extend beyond simply the provision of market and affordable housing. They include the economic value attributable to the process of construction, the economic spend provided by new residents of the development (both for the local economy in Alrewas and in the district), the New Homes Bonus, Council tax in subsequent years and the support that will be provided to local infrastructure and facilities (including schools) arising from the development.

Housing land supply

8.36. The Council does not have a 5 year housing land supply. The Council seeks to assert that it does and prays in aid its relatively recently adopted core strategy. However, that core strategy and its policies relevant to the supply of housing must be considered out of date in view of the failure to provide a 5 year housing land supply in accordance with paragraph 49 of the NPPF. A series of discrete issues fall to be considered.

Liverpool / Sedgefield

8.37. As is evident from the Council's case, the local plan inspector preferred the Liverpool method of assessment but this was due to the information before him at that time and which appears to have been incomplete. His report⁵⁰ anticipated that a rate of over 600 dwellings per annum would not be deliverable. In part that was based upon an examination of historic performance. However that was significantly influenced by the previous regional spatial strategy, which had a very firm policy approach to restrict development in the shire counties in

⁴⁹ Cllr Marshall (XX)

⁵⁰ CD39 paragraph 56

favour of Birmingham and Coventry⁵¹. Further, the figures given for districts such as Lichfield were maximum figures whereas those in the urban area were minima. Hence the LPA's record was one based upon previous historic constraint.

8.38. Secondly it is clear that Lichfield is a high demand area. If enough sites were provided, then the number that could be delivered could easily be 1000 dwellings per annum. The Council's own SHLAA figure fully expects delivery in the order of 1000 dwellings per annum⁵². The actual housing supply is a build-up of 3 figures: sites with planning permission (861 units in 2017/18; 693 units in 2018/19)⁵³, deliverable strategic development allocations (125 dwellings in 2017/18; 225 dwellings in 2018/19)⁵⁴ and deliverable SHLAA sites (286 units in 2017/18; 174 units in 2018/19)⁵⁵. That gives a total of 1272 expected completions in 2017/18 and 1092 units in 2018/19. There is no proper basis to consider that the plan would be otherwise than properly realistic and aspirational if it provided for a figure well in excess of the 600 in the local plan inspector's report⁵⁶.

8.39. In consequence, it is no longer the case that the market cannot be expected to provide that higher level of delivery. Indeed the reverse is the case. One can expect significantly more to be built and therefore the basis for selecting the Liverpool method has disappeared and the Sedgefield approach is to be preferred. That is also consistent with the government policy of the need for a significant boost in housing land.

8.40. Also, at the time of the local plan inquiry it was known that Birmingham would require more houses to be accommodated in locations outside the city area, including areas such as Lichfield. It is now known that Birmingham has a significant under-provision. As a result, the market demand will be higher in Lichfield⁵⁷. In consequence it is not just reasonable but desirable that the Inspector and Secretary of State in respect of this case adopt the Sedgefield rather than the Liverpool approach to dealing with the backlog.

Buffer – 5% or 20%?

8.41. As became clear during the course of the cross examination of Mr Jervis, the local plan Inspector's report at paragraph 214 simply cannot be read as identifying that he took any cognisance of any data after 2011/12. Otherwise, he could not have made the findings that he did of under-supply in 4 out of 5 years or 7 out of 11. With the benefit of the two further years of figures it is now clear that the Council has failed to meet even its own housing requirement for 6 out of the last 7 years. Upon any realistic basis that must be regarded as persistent. It

⁵¹ ACB specifically cited Policy CF3 of the regional strategy

⁵² CD47 pages 240 and 267

⁵³ CD47 page 267

⁵⁴ CD47 page 268

⁵⁵ CD47 page 271

⁵⁶ CD39 paragraph 56 or the annual requirement of between 581 and 653 homes referred to in paragraph 213

⁵⁷ Mr Bateman in answer to the Inspector

cannot be excused by having met previous requirements which had been deliberately restrained. Such a finding would be consistent with the approach of the inspector into the Warwick District Local Plan⁵⁸, where there had been under-delivery in each of the last 6 years and 7 out of the last 10. Indeed one may have expected that the Lichfield local plan inspector anticipated more housing provision than has been achieved. In addition, this higher buffer is not a penalty but is simply to assist authorities to provide the housing required⁵⁹.

- 8.42. A discrete issue arose as to when the calculation of the buffer should be undertaken. The Council appeared to contend that it should only be applied to the housing requirements and not any shortfall. That is not the approach accepted by inspectors elsewhere⁶⁰. It is clear that the buffer should be calculated having regard to both the Council's requirement and its shortfall. That approach is logical as the amount represented by the shortfall should, of course, have already been provided (had the Council by that stage met its own requirements). It is noted that the Council sought to pray in aid, by inference, the calculation undertaken by the Amber Valley local plan inspector⁶¹. However, there is no indication that the inspector accepted the Council's figures, which appear to have been derived from the Council itself. The matter was not the subject of any explicit consideration or reasoning by the inspector in that case. For that reason, that example does not avail the Council.

Housing sites still in contention

- 8.43. The Council have made a number of concessions via CD103, namely: a deduction of 18 dwellings having regard to Mr Bateman's paragraph 7.35; a deduction of 299 units in respect of the strategic development allocations, in response to Mr Bateman's paragraphs 7.40 to 7.47; and a deduction of 22 units in respect of the former HSBC Hire site at Streethay. The following further sites remain in contention:-

Site 1 - the Tesco Extra site. Although planning permission was granted and implemented in 2009, Tesco has evinced absolutely no intention of developing the housing component of that site. Indeed, the Appellant's information indicates Tesco's position as it never having been Tesco's desire to build dwellings on the site; that Tesco wishes to maintain the visibility of the site; and that the use for residential purposes of a part of its existing car park would be disadvantageous given how busy that car park gets. It is most unlikely that the residential element will ever be built.

Site 2 – Friarsgate. This site has been the subject of schemes dating back to 2006 which involve the demolition of an existing car dealership and multi-storey car park. At the last count there had been some 8 different applications. The largest single difficulty is viability as it

⁵⁸ CD100 paragraph 40

⁵⁹ Mr Bateman XX

⁶⁰ eg the Warwick local plan inspector CD100 paragraph 41; or the inspector in the Chard appeal

⁶¹ CD104 figure 14

relates to a retail proposal. It is correct that the latest scheme does show an increase in residential units but a final scheme is still to be submitted and it is far from clear that an acceptable scheme will ever emerge. As Mr Jervis accepted, the key issue is whether any development proposed is realistic and deliverable. In respect of this site, it is not. Also, there is no justification for the attempt to speculatively increase the number of potential units by 49 in respect of a scheme not yet submitted, let alone considered or granted planning permission.

Site 3 - Tolsons Mill. This is another site with a lengthy but unfulfilled planning history, in this case dating back to 2009. That planning permission has been renewed and is due to expire in October 2015. No application to renew has been submitted. Tolsons Mill is a listed building and houses some 20 businesses. There is no indication that those businesses are likely to relocate elsewhere at any time in the near future. Indeed there has been recent investment to include a coffee shop which does not indicate any intention for those uses to be discontinued in the short term. In the light of the above it is most unlikely that this scheme would be built within the relevant 5 year period.

Site 5 – St John's Hospital. These are old tennis courts. Unless provision was made for replacement courts, this would be contrary to Policy HSC2 and Local Plan paragraph 10.41. The Council was unable to identify that any exercise had been undertaken to identify where a replacement provision would arise. In consequence the release of this site in the manner proposed by the Council is not in accordance with its own plan policies and should be discounted from any housing land supply exercise.

Site 6 – King Edward VI School. This involved a putative inquiry by the school a number of years ago relating to the potential redevelopment of a building. However there is a shortage of secondary education provision in Lichfield and the loss of school classrooms would be at odds with the local plan strategy. If residential development were to take place here then the lost capacity would have to be found elsewhere. Further, what was not much more than an enquiry has become part of the Council's 5 year housing land supply. Given that the school is not master of its own destiny but is the responsibility of Staffordshire County Council it is pertinent to note that the County Council has not made public any intention whatsoever to release this site or any part of it.

10 % discount

8.44. The 10% discount figure goes beyond any lapse rate figure. It deals with the whole gamut of circumstances in which planning permissions do not come forward at the rate forecast. Mr Bateman's table 1 on page 65 indicates the marked variation between forecast and actual completions between 2006 and 2013/14 (the last full year upon which data is available). The divergence is substantially more than 10% and in consequence his allowance is if anything highly conservative and

certainly robust. That 10% discount approach has been accepted on numerous occasions by inspectors, the Secretary of State and the High Court⁶². This is a reasonable allowance to make here.

Calculation of housing land supply in light of the above

8.45. In light of the above it is clear that the Council does not have a five year housing land supply and in consequence policies for the supply of housing comprising CP1, CP6 and ALR4 are out of date⁶³.

8.46. An inspector and Secretary of State at appeal is at liberty to examine the issue of a five year housing land supply. That is the approach adopted by inspectors and the Secretary of State at other appeals⁶⁴. As regards whether this would represent a “rounded assessment”, as referred to at paragraph 26 of the Hunston Judgment in the Court of Appeal, that remark was made in the context of a need to potentially carry out a full objectively assessed need of housing⁶⁵. That is not a requirement here. What is clear is that it is perfectly reasonable to consider the most up to date information. The same approach was adopted by the inspector in the Chard decision letter⁶⁶ at paragraphs 46 to 49. Further, at the Lichfield local plan inquiry there was no in-depth consideration of 5 year supply. It amounted to no more than a half day examination of the deliverability of the main housing sites over the plan period, with little discussion of supply.

8.47. NPPF identifies a need to substantially boost the supply of housing and this is very important given the national failure to provide sufficient housing.

Affordable housing

8.48. There is no dispute between the parties that the district has an acute and longstanding shortage in respect of affordable housing⁶⁷. The Council has a future need derived from its 2012 SHMA update amounting to 377 houses per annum⁶⁸. The Council has delivered only 119 dwellings in the 6 years from 2008/09- 2013/14, an average of only 20 per annum, just 5% of the requirement. Within the Lichfield District North Sub Housing Market Area it is clear that delivery has also been similarly lamentable⁶⁹. The appeal proposal will provide 25% of the total dwellings as affordable housing – some 30 units. As Mr Wood acknowledged, the appeal site is not one likely to be affected by viability concerns so delivery of the full complement of affordable housing should be accorded substantial weight (XX). As well as meeting the social dimension of sustainable development, this will

⁶² references: Tetbury DLs, Droitwich DL and High Court – Cotswold v Secretary of State (regarding Tetbury DLs)

⁶³ Mr Bateman's answer to Inspector

⁶⁴ Tetbury, Droitwich among others

⁶⁵ Inspector's question

⁶⁶ CD108

⁶⁷ ACB proof section 8 (pages 79 to 80) and table 7

⁶⁸ CD52, table 1.1

⁶⁹ CF ACB para 8.5

make a very real contribution to meeting a need that has existed in the district for so long and where the district has been unable to make much progress in addressing it.

Development Plan

- 8.49. There is no conflict with the development plan. Similarly, Mr Wood concurred with Mr Jervis that the proposed development both aligns and accords with the spatial strategy of the adopted core strategy⁷⁰. In those circumstances, consistent with paragraph 14 of the NPPF, planning permission ought to be granted without delay. However, if a different view were taken regarding the extent to which there is or is not conformity with the development plan, there are a range of other considerations which weigh in favour of the development.
- 8.50. The first of these relates to housing land supply and also the deficiency in the provision of affordable housing, as dealt with above.
- 8.51. The proposals specifically align with Local Plan Strategy Core Policies 1 and 6 which look to accommodate housing development at or around a number of settlements including Alrewas. As Mr Jervis and Mr Wood both accepted, such development is not a minimum and is not to be constrained by settlement boundaries - development will have to occur beyond the existing built form⁷¹. Further, policy Alr 4 also anticipates this will occur and, whatever priority might be given to infill development or support for small-scale redevelopment, modest scale development such as the appeal proposal is to be anticipated. It was not suggested by any Council witness that the proposed scale and location of development was contrary to or inconsistent with these policies. Far from it, as Mr Wood agreed that the proposals align with these policies.

Prematurity and emerging plans (including the draft Neighbourhood Plan)

- 8.52. The Council's reasons for refusal contended that the proposals would be premature pending the Council's emerging Allocations Plan and the Alrewas Neighbourhood Plan. Upon scrutiny of these issues it became evident that the Council abandoned that argument via the evidence of Mr Jervis and Mr Wood. With respect those concessions were entirely correct.
- 8.53. There is no Allocations Plan in being, even in draft form. In consequence, consistent with paragraph 216 of the NPPF and section 21b-015 of the PPG there is no document to which the proposal can be said to be premature⁷².
- 8.54. Despite what was said in the reasons for refusal, an objection based upon prematurity pending the adoption of the Alrewas Neighbourhood Plan and reliant upon its current progress is not maintained by the District Council. Nor could it be. The emerging neighbourhood plan is

⁷⁰ PG xx

⁷¹ PG xx

⁷² Mr Jervis and Mr Wood explicitly both concurred with this view (PG xx)

subject to fundamental objections of the most serious kind going to its basic conditions⁷³. The reasons for objection by the District Council (and by other parties too, including the Appellant) are damning⁷⁴. The advice as to the need for an SEA was ignored. Perhaps more significantly is that, even if an SEA had been carried out, it would not have been sufficient to meet the fundamental objections which still remain. Given the fundamental objections, no expectation can exist that the neighbourhood plan can go forward to a referendum and be lawfully adopted. In those circumstances little if any weight can be attributed to it.

- 8.55. In addition, in the light of **Woodcock**⁷⁵ it is clear that a neighbourhood plan examiner cannot look at the appropriateness of allocations proposed in a neighbourhood plan and in the light of the learned judge's analysis, no prematurity in respect of the neighbourhood plan can arise in this instance⁷⁶.

Presumption in favour of sustainable development

- 8.56. The presumption in favour of sustainable development is engaged because there are no specific policies whereby development should be restricted. Paragraph 134 of the NPPF makes clear that planning permission is not restricted and does not indicate that planning permission should be refused. It is simply that a balance needs to be undertaken. In any event, the proposal is one that accords with the development plan, whereby planning permission should be granted. In addition benefits weigh greatly in its favour and are not significantly and demonstrably outweighed by any purported detriments.
- 8.57. The Council has sought to contend that the operation of the provisions within footnote 9 to the NPPF necessitated that the presumption in favour of sustainable development would not be engaged or apply in this instance. That view should be rejected. The second sub bullet point dealing with decision-making in paragraph 14 is directed only to circumstances where permission should be restricted. The NPPF is self-evidently cast in very positive terms and there are only a limited number of instances where the policy directs refusal (unless certain restrictive criteria are met). Hence, in respect of green belts and local green space, permission should be refused unless very special circumstances apply. In respect of development in an AONB for instance, paragraph 115 indicates that great weight should be given to

⁷³ These are set out in Mr Bateman's paragraphs 6.79 and 6.80, with the full text of the Council's objections set out at ACB appendix 26

⁷⁴ It is also to be noted that the advice of the Council is also shared by Natural England and English Heritage.

⁷⁵ ACB appendix 23 paragraph 132 to 134

⁷⁶ Following the Examiner's Report, the Appellant commented (doc ref):

The Neighbourhood Plan, as modified to meet the basic conditions, would result in a policy document that has a far more limited local influence in respect of directing the location and scale of residential development and planning decisions in general, placing greater emphasis on the policies contained within the recently adopted Lichfield District Local Plan. ... (W)e maintain the position that the Neighbourhood Plan does not represent a key material consideration in respect of this appeal, a position which we consider has been strengthened following receipt of Mr McGurk's report.

conserving landscape and scenic beauty. However, in respect of major development paragraph 116 requires that planning permission should be refused except in exceptional circumstances and where it can be demonstrated that they are in the public interest. Plainly, the former is not restrictive of development but the latter is.

8.58. Similarly, in respect of harm to heritage assets, if paragraph 133 is engaged (involving substantial harm) the policy is clearly restrictive. However, if paragraph 134 applies (which, by common consent, is the case here) the policy is not restrictive (it does not indicate that planning permission ought to be withheld, save in certain circumstances) but simply indicates the balance that would need to be achieved.

8.59. However, even if a different and more restrictive view were taken as to the proper application of paragraph 14 in the consideration of the appeal proposals, the substantial public benefits that arise in this case would clearly outweigh any perceived detriment said to be caused to the character and appearance of the Conservation Area due to increased traffic or parking.

8.60. In view of the inevitable consequence of the accepted accord with the strategy of the adopted development plan (and the absence of conflict with the policies of the development plan) planning permission should be granted, without delay. Further, as the Council is unable to demonstrate a five year housing land supply then the paragraph 14 presumption in favour of sustainable development exercise is also engaged and applies. That includes a consideration of whether the proposed development constitutes sustainable development and whether the positive attributes of the development outweigh the negative. That involves an eventual judgement on the sustainability of the development proposal⁷⁷.

Human rights

8.61. The objection to the proposed development, based upon some conflict with the Human Rights Act and the European Convention on Human Rights was difficult to understand and became no clearer during the inquiry⁷⁸. It appeared that it was not based on legal advice (whether internal or external to the Council). There was no identified feature that would arise from this development which would not be considered and dealt with by the conventional application of domestic planning law and policy (PG XX). In other words, the UK planning system had within it all of the requisite means by which any of the rights in question, pursuant to Article 8 of the Convention, could be appropriately considered and balanced for the purposes of anyone with a requisite human right which was said to be engaged or violated. Secondly, Councillor Marshall was giving evidence on behalf of the Council. The Council is an “emanation of the state”. Neither the state nor emanations of the state have any human rights: only persons have

⁷⁷ See paragraph 54 of *Dartford BC v Secretary of State* [2014] EWHC 2636 (Admin) (doc ref)

⁷⁸ evidence of Councillor Marshall, speaking on his own behalf and Councillor Strachan

such rights and no persons have asserted that such rights will be violated in this case. Thirdly, although Councillor Marshall was keen to speak of the human rights (it is inferred) of residents, it must be noted that similar rights also extend to the landowner, and which also have to be considered and protected.

8.62. Lord Justice Pill neatly summarises the position in **Lough v the First Secretary of State and Bankside Developments Limited [2004] EWCA Civ 905** at paragraph 43 and his conclusions at paragraphs 45 to 53 of that judgment. No discrete convention rights appear to arise in the circumstances of this case. If any do, it is open to the public authority to justify interference in accordance with Article 8 (2) of the Convention. When balances are struck the various competing interests must be considered and the public authority will be granted a certain margin of appreciation (which may be wide when implementing planning policies) when ensuring compliance with Article 8⁷⁹.

8.63. In light of the above no discrete human rights issue arises in this case.

Conditions

8.64. These are essentially agreed between the principal parties. As identified above, they specifically deal with the issue of construction management.

Section 106 Obligation

8.65. An executed section 106 obligation in unilateral form has been provided to the inquiry. It is understood that this meets all of the requirements of the relevant authorities. However, in order to assist the practical operation of the mechanisms contained in the obligation, it is intended that a planning obligation to which both the district council and county council will also be signatories will be provided.

Conclusions

8.66. The appeal proposals represent sustainable development adjacent to a settlement which is acknowledged by the Council to represent a sustainable location for development. There is nothing about the scale of the proposed development which materially alters that judgement. The Council does not have a 5 year housing land supply and the shortfall in both market and affordable housing is longstanding, acute and continuing. Further, the magnitude of the shortfall is neither marginal nor insignificant. Properly considered, the proposal is one that accords with the development plan and continues to benefit from the presumption in favour of sustainable development and there are clear and substantial benefits from the proposal that are economic, social and environmental. These are not outweighed by any of the alleged detrimental impacts and it is respectfully submitted that the appeal should be upheld and planning permission ought to be granted.

⁷⁹ Keene LJ briefly makes similar points in his concurring judgment at paragraphs 54 and 55

9. Written Representations

- 9.1. Several rounds of public consultation took place in relation to the 140 dwelling scheme as well as the 121 scheme. These produced a high volume of responses from neighbouring residents on each occasion. For example, there were 220 letters of objection to the first consultation on the 140 scheme and 194 to the 121 scheme. The general tenor indicates that the successive amendments did not address the underlying causes of local opposition, which generally concern matters of principle, a point emphasised by the Parish Council. The objections raised are reflected in the case for the Parish Council. Further details are summarised in the Committee Reports⁸⁰.

10. Cannock Chase SAC

- 10.1. Local Plan policy NR7 states that development that results in an increase in dwellings within a 15km radius of the Cannock Chase Special Area of Conservation (SAC) will be deemed to have an adverse effect on the SAC unless mitigation measures have been secured. The policy also notes that work is underway to develop a Mitigation and Implementation Strategy including contributions to a range of mitigation measures such as access management and visitor infrastructure. Part of the appeal site lies within 15km of the SAC.
- 10.2. The Cannock Chase SAC is essentially a heathland site and experiences pressures through road traffic air pollution and disturbance or erosion caused by visitors and recreational users. According to a strategic level Appropriate Assessment prepared by the Cannock Chase SAC Partnership⁸¹, these pressures are likely to increase as a result of population growth. The Partnership has published a range of documents relating to the SAC (February 2013) including a Mitigation Report. These strategic level documents set out that any proposals for a net increase in new dwellings within the 15km zone of influence will need to identify a package of mitigation, because of the potential significant effects on the SAC. This could take the form of a financial contribution and/or provision of suitable alternative natural green space (SANGS).
- 10.3. At the Inquiry, the Council advised that further work has now been undertaken, including agreement as to the costs of a set of Strategic Access Management Measures. These costs are to be met by contributions from developments within an 8km radius, since these have been identified as generating a significantly higher proportion of visitors. As the appeal proposal is beyond that distance, no contribution is required (CD110).
- 10.4. For the purposes of Regulation 61(1) of the Habitats Regulations 2010, it is likely that the appeal proposal would have an adverse effect on the integrity of the Cannock Chase SAC, in combination with other development, since it could be expected to contribute to increased road

⁸⁰ CD01 and CD02

⁸¹ Natural England and all Local Authorities within 15km of the SAC, including Lichfield District

traffic air pollution and recreational use. Nevertheless, arrangements have been put in place to address the 'in combination' impact of this and other developments. These arrangements are overseen by the Cannock Chase SAC Partnership, which has advised that it will not be necessary for proposals such as this, which are in the 8-15km radius, to include further specific mitigation measures.

11. Conditions and Obligations

- 11.1. The conditions set out in Annex 1 are based on those agreed between the Council and Appellant⁸², with some amendments in the light of discussions at the inquiry. They accord with relevant national policy and advice contained in NPPF and PPG. Should planning permission be granted, I recommend that they be imposed for the reasons set out below.
- 11.2. A condition to define the permission is necessary for the avoidance of doubt and in the interests of good planning (condition 2). Details of the external materials, boundary treatments and the landscaping scheme are all necessary to ensure the satisfactory appearance of the development and to safeguard the character and appearance of Alrewas and the Conservation Area (conditions 3, 5, 8, 9, 17 and 18). To ensure a satisfactory form of development, details of the finished floor levels, the means of drainage and the measures to manage flood risk are necessary (conditions 4, 6 and 15). A scheme for offsetting biodiversity impacts is necessary in the interests of nature conservation (condition 7).
- 11.3. Given the indications of heritage assets within the site, a scheme of investigation is necessary to safeguard any archaeological interests (condition 10). To safeguard the living conditions of future residents, schemes are necessary for the investigation of any contamination and for noise attenuation (conditions 11 and 19). Details of the accesses and the temporary parking area for residents are necessary in the interests of highway safety (conditions 12 and 13). A Traffic Management Plan/Construction Method Statement is necessary in the interests of highway safety and to safeguard amenity (condition 14). Controls over hours of construction are needed to safeguard the amenity of nearby residents (condition 18). The recommendations set out in the ecological reports should be implemented in order to ensure the protection of European Protected Species and in the interests of nature conservation (condition 20).
- 11.4. A further condition was suggested to limit permitted development rights for those plots bordering Dark Lane. However, given the degree of separation from existing properties, I consider that such a restriction would not be warranted (condition 21, contained in Annex 2).
- 11.5. Although a Unilateral Undertaking was provided while the Inquiry was in session, the Appellant was of the view that Planning Agreements with the County and District Councils would be preferable

⁸² CD115

so a timetable was agreed to allow for their submission. In due course the Appellant reported that, although an agreement had been reached with the District Council, it had not been possible to do so with the County Council. The Secretary of State therefore has the option of considering on the one hand the Unilateral Undertaking in favour of both Councils dated 15 July 2015 or, on the other, the s106 Agreement with Lichfield District Council and the Unilateral Undertaking in favour of Staffordshire County Council, both dated 18 August 2015. The key difference in relation to Lichfield is that the s106 Agreement specifies the use to which the monies for the indoor sports contribution will be put. For this reason, I consider that the 18 August obligations are preferable so they are considered here. However, the same matters are dealt with in both cases.

- 11.6. Within the Local Plan Strategy, core policy 4 and development management policy IP1 set out the overall basis for developer contributions to infrastructure and facilities necessary to create and support sustainable communities.
- 11.7. The s106 Agreement with Lichfield District Council provides for affordable housing, public open space and indoor sports. Local Plan Strategy policy H2 seeks up to 40% affordable housing, with the proportion being decided according to market conditions. Based on its monitoring work, the Council confirms that in current market conditions it regards the proposal to provide 25% affordable housing as being policy compliant. Policies HSC1 and HSC2 set out standards for various types of open space and for playing fields. Under the Agreement, on-site open space would be provided in accordance with the approved plans and a management company would be set up to ensure its maintenance. An Indoor Sports Contribution of £86,545 would be made, to be used for the provision of facilities at a leisure centre in Lichfield. This reflects the conclusions of the Council's Facilities Planning Model and its Swimming Pool and Sports Hall Feasibility Study 2013. The Council advises that such a contribution would comply with CIL Reg 123, as regards the pooling of contributions.
- 11.8. The Unilateral Undertaking in favour of Staffordshire County Council deals with the education contribution and the travel plan. The education contribution of £579,186 reflects the advice of the County Council as to the number and cost of additional educational provision for the 121 scheme⁸³. It would be used at a local primary school and academy, to meet identified demand expected to arise from the proposed development. Arrangements for the travel plan and its monitoring are to be agreed with the County Council and a sum of £6,300 provided for monitoring and review.
- 11.9. The Undertaking does not meet with the approval of the County Council because it does not bind the interests of individual owners or occupiers. This is said to be necessary because of the delayed trigger

⁸³ The basis for the assessment is set out in the County Council's representation dated 25 November 2014

for the education contribution (to be paid in two instalments, on completion of 30 and 75 dwellings respectively). Also, the Council would prefer the duty to implement the travel plan to have been placed on future residents.

11.10. The deed is clear that payment of the education contribution is the responsibility of the developer, reinforced by the link to completion of dwellings rather than occupation. As for the travel plan, it seems to me there could be difficulties holding individual residents to account in relation to any failure in its implementation so that the mechanisms to ensure its effectiveness should be contained within the plan. Consequently, I am not persuaded that the Undertaking is deficient in these respects.

11.11. Two other points are raised in relation to the education contribution: it has not been index linked; and the wording does not make adequate provision for any change in the name or type of school establishment. As the sum is not index-linked, there is a possibility that the payment would not meet in full the education need arising from the development. However, in such a strong local housing market it is not unreasonable to expect that the development would proceed in a timely fashion so that any shortfall is unlikely to be so extensive as to warrant withholding planning permission. As regards the named establishments, Schedule 2 includes the proviso 'unless otherwise agreed in writing ...' [Schedule 2 paragraph 1.1] which would appear to make reasonable provision for a change in the name or type of school.

11.12. The County Council points out that it has had only a limited opportunity to comment on the Unilateral Undertaking of 18 August, although the later obligation is presented in the same terms as that of 15 July.

11.13. All of the provisions are necessary to make the development acceptable and are fairly and reasonably related to the proposal. The requirements in NPPF paragraph 204 and Regulation 122 of the Community Infrastructure Levy Regulations 2010 are met, so that account should be taken of the s106 Agreement and the Unilateral Undertaking.

12. Conclusions

The figures in square brackets [] refer to relevant paragraphs in earlier sections of this report.

12.1. Drawing on the main considerations set out at [1.7] and in the light of the evidence presented, I consider that the main planning issues in relation to these appeals are:

- (i) the implications of the proposal for the safety and convenience of highway users
- (ii) the effect of the proposal on heritage assets, with particular reference to the impact on the Alrewas Conservation Area
- (iii) the effect on the living conditions of existing residents

- (iv) whether the proposal makes appropriate provision in relation to flood risk
- (v) the contribution of the proposal to the supply of market and affordable housing
- (vi) whether the proposal represents a sustainable form of development having regard to local and national planning policy.

(i) implications for highway users

12.2. There would be two points of access to the site. The main one, from Dark Lane, would serve both inbound and outbound traffic and would lead to the main road through the village, Main Street by one of three routes: Post Office Road, William IV Road or Exchange Road. The second access, onto Micklehome Drive, would be used mainly by vehicles arriving from the A38, since it would enable them to access the site without travelling through the village. However, as the route from the A38 serves inbound traffic only, vehicles exiting the site at this point would be most likely to travel down Exchange Road to Main Street⁸⁴.

12.3. Trip rates used in the Transport Assessment were arrived at on the basis of information taken from TRICS⁸⁵. The Council takes issue with this on the basis that the TRICS assessment relies on criteria which are not representative of the situation in Alrewas. For example, the parameter for car ownership rates was set at 0.6-1.5 whereas in Alrewas rates are thought to be higher – 1.57 according to the Appellant, 1.7 according to the Council. The Council also points out that the criteria set for population within 1 and 5 miles of the site were much higher than is actually the case for Alrewas (see Bailes PoE 4.6-4.8). As a result, the Council contends that the trip rates derived from TRICS underplay the impact of traffic on the surrounding network. In contrast, the Council presents trip rates derived from two surveys carried out in Alrewas in April and November 2014. The resulting figures are compared in the table below:

Period	Departures		Arrivals	
	Appellant	Council	Appellant	Council
08.00-09.00	55	59	18	19
16.00-17.00	27	28	43	49
17.00-18.00	31	22	54	52

12.4. The Council's analysis does indeed produce a higher predicted number of trips during the 08.00-09.00 peak, showing 59 departures

⁸⁴ See CD34B, Highways Statement of Common Ground with Lichfield DC for a detailed description of the local highway context

⁸⁵ a database of transport surveys which represents the industry standard system for assessing trip rate generation – see CD97

compared to 55, and 19 arrivals compared to 18. However in the evening peak, 17.00-18.00, it is the Appellant's figures which are higher, showing 31 departures to the Council's 22, and 54 as compared to 52 arrivals. The Council contends that there is actually a double peak in the afternoon, and that consideration should also be given to conditions during the period 16.00-17.00. The Council's analysis suggests a higher number of trips for this hour, with 28 departures and 49 arrivals compared to the Appellant's 27 and 43. [6.3-8, 8.5-6]

- 12.5. Whilst the respective assumptions applied by the Appellant and Council lead to some variations in the predicted volumes of traffic, the fact that the development is concerned with 121 dwellings means that the extent of this difference is not of a particularly significant order of magnitude, when looked at in the round. This becomes even more evident when considering the routes such vehicles are likely to take and the potential impacts on traffic flows and parking.
- 12.6. The roads to the north of Main Street currently serve a limited number of properties. Unsurprisingly therefore, traffic surveys undertaken in 2012 indicate a generally low volume of background traffic⁸⁶. In particular, the morning peak flow along Exchange Road was 146 vehicles, with 118 in the evening.⁸⁷ Observed 85th percentile vehicle speeds were some 20mph northbound and 22mph southbound⁸⁸. [8.4]
- 12.7. The Council contends that the proposal should be assessed on the basis of a worst case scenario – namely, that all outbound traffic would leave via Exchange Road. If that was so, this suggests an additional 70-80 vehicles could be travelling along Exchange Road during the morning peak. Exchange Road is a residential street with continuous footways on either side and on average is 5.5m in width. The Appellant draws attention to DMRB methodology, which suggests that a road of this width might have a design capacity of 900 vehicles per hour. More pertinently, the Staffordshire County Council residential design guide states that a street of this width could serve up to 300 dwellings which would yield an indicative capacity of 211 vehicles per hour⁸⁹. The worst case scenario, even using the Council's own estimates, would indicate a little over 220 vehicles in total would pass along Exchange Road during the morning peak. Whilst this would be marginally higher than the capacity estimated on the basis of the design guide, the difference would be unlikely to give rise to a materially different impact on safety. [6.21, 8.20]
- 12.8. In terms of inbound traffic, the Council suggests the Appellant has underestimated the proportion of trips which will be routed through

⁸⁶ CD19, Transport Assessment, Figs 4.1 and 4.2 and Bain p12 Table 3.7

⁸⁷ These are the standard morning and evening times of 08.00-09.00 and 17.00-18.00.

⁸⁸ CD34B: SCG(T) – L Tables 3.1-3.5

⁸⁹ For the Appellant, Mr Bain arrived at this figure by applying the trip rates for the appeal proposal to a nominal 300 dwelling scheme, producing an estimated peak flow of 211 vehicles. Whilst the Council then objected that the flow along Exchange Road using worst case assumptions would exceed this hypothetical figure, that further comparison is based on so many assumptions as to be of little assistance in assessing the likely impact of the appeal proposal.

Exchange Road. However, even on the Council's own figures, vehicle numbers during the afternoon peak are predicted to be 178, with 157 during 16.00-17.00, well within the notional capacity. [6.10-12, 8.4]

- 12.9. Outbound traffic leaving via Dark Lane would have the option of turning left then right onto Exchange Road or right then left either onto William IV Road or on to Post Office Road, in order to reach Main Street. Surveys indicate drivers would find little to choose from between Exchange Road and William IV Road in terms of time and distance to Main Street, so that route choice is likely to be based on personal preference⁹⁰. The Appellant suggests this may result in some 15 vehicle trips along William IV Road during the morning peak, or 8 in the evening⁹¹. William IV Road is a short, residential street containing a small number of dwellings and a public house. Although no survey data has been provided, I agree with the Appellant that other survey data indicates background flows are unlikely to be very high. Whilst characteristics of William IV Road such as the absence of footways or the presence of vegetation mean that pedestrians must often walk in the carriageway, traffic speeds are less than 20mph so that such limited growth in traffic is unlikely to materially affect current levels of safety. [6.13-14, 8.7-8]
- 12.10. Residents also raised concerns as to the implications of increased traffic flows through Micklehome Drive. This is a modern residential street mainly serving culs de sac although a small number of properties take direct access from the through route. Although it did not feature in the accident records, residents pointed to signs of repairs to a property boundary as evidence of a past accident and being indicative of a risk for the future. They also suggested vehicle speeds here tended to be higher, as most drivers took time to adjust to the lower speed limits after leaving the A38 dual carriageway. However, the proposed site access from Micklehome Drive would be located towards its eastern end. Since few inbound vehicles would be likely to travel the length of this road, I consider that there would be no appreciable impact on safety. [7.6, 8.9]
- 12.11. Although the streets which would serve the appeal site are residential in character, the data on trip generation and assignment does not suggest that the additional level of traffic movements associated with this proposal would impose unacceptable demands in terms of capacity.
- 12.12. The Council contends that particular consideration should be given to the interaction between the increase in traffic and the additional parking demand, particularly in the vicinity of the Exchange Road/Main Street junction. [6.2]
- 12.13. The local doctors' surgery is situated towards the southern end of Exchange Road on the opposite side of the road to, and slightly north of, the service access for the small parade of shops on Main Street.

⁹⁰ TA, CD19, pp 20-21

⁹¹ Bain PoE Table 3.6

The yellow lines on the Exchange Road/Main Street junction indicate that parking is already a problem. This is confirmed by the parking surveys, which indicate that vehicles are regularly parked on both sides of Exchange Road during the morning peak⁹², with parking stress being higher again in the afternoon. The effect of this, according to the Council, is to reduce Exchange Road to a one way road.

12.14. Clearly, as the traffic survey indicates, Exchange Road does not actually function in this way, in spite of the levels of parking which already occur. At the inquiry, some time and effort was devoted to assessing the increase in parking demand in this locality which might arise as a result of the appeal scheme. The Council's assessment is the more straightforward, being based on distance. However, this fails to recognise the range of influences on car use. To my mind therefore, the better estimate is that provided by the Appellant, which is based on an analysis of existing parking behaviour in the village and applies an increase in proportion to the likely increase in population. This suggests parking demand could well be almost 10% higher⁹³. This would represent the equivalent of one additional parking space being in almost constant use⁹⁴. [6.15, 6.18, 8.13-14]

12.15. From the evidence presented, it is clear that parking behaviour is a matter of considerable concern in Alrewas, a point reinforced by the representations from the Parish Council and many residents. It is also highlighted in the relevant Conservation Area documents. The interrelationship between parking associated with the shops and surgery, as it affects Exchange Road, is of particular concern⁹⁵. [6.15-18, 7.6-9, 8.11-13]

12.16. The Appellant draws attention to the video survey, which reinforces the point that traffic levels are generally low and indicates that drivers behave courteously, giving way to approaching vehicles as road conditions require⁹⁶. Whilst this may well be the case on the majority of occasions, I noted during at least one site visit that voices were raised when an incident of conflicting vehicle movements took some time to be resolved. Thus, whilst the quantitative data does not indicate there would be any material effect on traffic flows, it has to be acknowledged that there will be occasions where some residents may experience quite noticeable personal inconvenience. Thus, even an apparently modest increase of 10% could be regarded as sufficient to add perceptibly to the level of inconvenience experienced by road users. [6.19, 8.16]

⁹² CD34B: SCG(T) – L, Appendix C

⁹³ The Parish Council's estimate that 50% of users of the surgery live outside the village further suggests that the Appellant's estimate is reasonably robust

⁹⁴ The Council's further assessment that this must be an underestimate if vehicles were to be parked for 10 minutes at a time, appears to be entirely speculative and is of little assistance in assessing the likely impact.

⁹⁵ See, for example, the evidence of Mr Walton and Mrs Charnley

⁹⁶ In this regard, whilst the video survey evidence may have been carried out close to a holiday period, it nevertheless stands as a record of driver behaviour and the road conditions in Alrewas

- 12.17. Nevertheless, having regard to the characteristics of Exchange Road, the generally low vehicle speeds and the likelihood of a modest increase in parking demand, it has not been demonstrated that the proposal would give rise to an unacceptable adverse effect on safety in Exchange Road.
- 12.18. There are also other areas where on-street parking occurs, most notably that stretch of Park Road which connects to Micklehome Drive. However, overall numbers would be low, with probably less than 20 additional vehicles during peak times. Given that there is adequate visibility in each direction, I consider that there would be no unacceptable reduction in current levels of road safety.
- 12.19. There is some force to the Council's argument that if existing patterns of traffic movement and parking are reinforced as a result of the proposed development, there is likely to be an increase in demand during those periods of greatest pressure for parking and incidents of conflicting traffic movements are likely to be exacerbated. However, these periods are not due to lack of capacity in the road network. They seem to be short-lived and concentrated at key points such as in the vicinity of the village shop and surgery. It is clear that they are already experienced as causing inconvenience. Even so, whilst traffic from the appeal proposal would add to this pattern, the evidence does not suggest that the impact would be unacceptable.
- 12.20. In numerical terms, there would be a modest increase in vehicle movements and on-street parking along those streets closest to the appeal site. As a result, the development would probably add to the number of occasions when drivers need to negotiate with and give way to other road users, particularly during peak times and along those sections where more intensive roadside parking occurs. However, these are essentially residential streets where speeds are generally low and the resulting situation would not be untypical for such a setting. In such circumstances, I consider that although there would be some increased risk, it would fall well short of a severe adverse impact.

(ii) heritage assets

- 12.21. Although the main heritage concern related to the impact on the Alrewas Conservation Area, as expressed in the reason for refusal, the Parish Council and others also raised concerns in relation to a nearby listed building and other designated and undesignated assets.

Conservation Area

- 12.22. The conservation area is based on the historic settlement pattern of Alrewas and extends northwards as far as the River Trent and the Trent and Merseyside Canal. The western part of the appeal site lies within the conservation area but, as no built development is proposed for that portion of the site, the main points at issue are whether there would be an indirect impact on the conservation area as a result of the levels of traffic and parking associated with the proposed development and, if so, the extent of such an effect on the area's significance.

- 12.23. As regards the principle of there being any effect on significance, it has to be recognised that there is no formal guidance which directly addresses the impact of through traffic or parking on a heritage asset, where no change to the physical fabric is involved. The most relevant guidance can be found in Conservation Principles⁹⁷, which considers the ways in which a heritage asset can be valued. In particular, 'aesthetic' value derives from the sensory and intellectual stimulation which can be drawn from a place. To my mind therefore, it is possible in principle for the significance of this heritage asset to be affected. It would be necessary to show that a material increase in traffic flows would occur, to the extent that it would injure or diminish the capacity to appreciate its aesthetic value, even though there would be no change to its physical fabric. In this respect, I note that the Appellant's own heritage witness acknowledged that a conservation area could be affected by traffic flows if, for example, they led to excessive noise or congestion. [6.26, 8.25]
- 12.24. The Alrewas Conservation Area Appraisal⁹⁸ notes that the settlement's medieval origins and form of development can be discerned in the framework of streets and spaces. Further detail is provided as part of the Extensive Urban Survey (EUS). In terms of aesthetic value, this states that the integrity of the historic character of the planned medieval town is well preserved in this part of the conservation area, with the street pattern constituting one of the integral components of this character⁹⁹. This part of the conservation area is defined as being of high value, indicating a high sensitivity to change. [6.24-5, 7.19]
- 12.25. It stands to reason that a development of 121 dwellings which is to a substantial degree reliant on the conservation area as a route for vehicular access will lead to an increase in vehicular activity. Exchange Road is the area where any effects are likely to be most strongly felt. Taking the Council's assessment as being the worst case scenario, this part of the conservation area could see an additional 75 vehicles during the morning peak and 57 during the evening peak. There may also be an extra 61 vehicles during the 16.00-17.00 period¹⁰⁰. This would equate to somewhere in the region of one additional vehicle per minute. To this should be added the increased parking demand, especially around the shops and surgery. Numerically speaking, an increase there most certainly would be. Since passing vehicles must already give way due to the presence of parked cars, such incidents are also likely to increase, even though they may be difficult to quantify. [6.28-9]
- 12.26. Traffic is already identified as an issue in Main Street. This is reinforced by the representations from the Parish Council and residents, which make clear that some parts of the village, especially around Main Street, are seen to be car-dominated, especially at certain

⁹⁷ CD 62

⁹⁸ CD58

⁹⁹ CD68: Historic Urban Character Area 3 or HUCA3

¹⁰⁰ Albeit the Appellant estimates 38 vehicle movements in the evening peak - heritage assessment 7.23

times of the day. In all likelihood therefore, the additional traffic generated by the appeal proposal will accentuate that situation. This would be the case even on the basis of the Appellant's assessment. In the context of a street where the car gained greater dominance, the scope to appreciate the street's aesthetic value, as expressed through the harmonious juxtaposition of the form of the street and the associated plots and dwellings, would be diminished. Similar considerations would apply to Post Office Road and William IV Road. There would be some shift in the balance of street activity, as increased number of vehicles would bring additional obstructions and visual clutter to the street scene. [7.6-9]

12.27. However, it does not necessarily follow that this effect would be of such a scale as to amount to material harm to the significance of the conservation area. First of all, this is a conservation area based on a village core, where movement within and through it is part of its existing character and which might even be regarded as beneficial, since it would add to vitality. Even if the increased presence of vehicles was perceptible, there would be both positive and negative aspects to this impact. Secondly, the effects would be felt within a relatively small, albeit important, portion of the conservation area and over a limited period of time, probably around the weekday morning and afternoon peaks. Thirdly, the effect relates solely to the aesthetic value, with no effect having been identified in relation to its evidential, historical or communal value. [8.27-29]

12.28. For these reasons, it seems to me, even though there may be a perceptible increase in the presence of vehicles and in vehicular-related activity, the overall effect would not be so noticeable as to materially impair the aesthetic value of the conservation area. The effect of the proposal would be neutral. In this regard, it should be noted that after specific discussions on this question, English Heritage offered no objection.

Other designated heritage assets

12.29. No 25 Dark Lane is a Grade II Listed Building dating from the late C16 and has later alterations and additions. The Appellant's evidence records that it is an early example of the infilling of village burgage plots¹⁰¹. It goes on to note that the setting contributes to its significance, although the approach along Dark Lane does not do so. The Appellant expresses the view that this would result in some limited harm to its significance. On the other hand, the Council's witness confirmed at the inquiry that no objection was raised in relation to No. 25 Dark Lane.

12.30. I note that, within the proposed development, smaller house types would be used for that part of the site nearest to the listed building. In addition, these dwellings would be set further back from Dark Lane, so as to avoid undue encroachment. There would also be a small area of open space opposite. To my mind, these measures would be sufficient

¹⁰¹ Hodgkinson PoE #3.30

to ensure that the existing setting of the listed building would be preserved. [7.20, 8.25]

12.31. The Parish Council and residents also drew attention to that fact that the development would be visible in views from higher ground in the vicinity of St Leonard's Church Wychnor, a Grade II* listed building and the nearby Deserted Medieval Village, which is a Scheduled Ancient Monument. However, although the dwellings would be visible, they would be seen against the backdrop of the existing village so that in my opinion they would not impinge on the current setting.

Undesignated heritage assets

12.32. The Parish Council and residents draw attention to the findings of the Historic Environment Character Assessment, which provides an overview of the historic environment at a broad level by integrating historic landscape characterisation with historic environment records¹⁰². In particular, LHECZ 12 assesses the Trent Valley flood plain north of Alrewas. It notes the archaeological potential of the zone and that it is highly sensitive to change such as medium or large scale development. The Parish Council points out that LHECZ 12 achieved a score of 19 points, indicating it is an area of high importance within Lichfield District. However, the historic significance would be preserved by means of the proposed archaeological scheme of investigation and report. In addition, the design of the proposal makes provision for the retention of field boundaries, thus preserving key elements of the historic landscape. [7.21]

(iii) living conditions

12.33. On behalf of the Council, it was asserted that the level of impact upon amenity would be so severe as to amount to incompatibility with Article 8 of the ECHR¹⁰³. Impacts were identified in relation to car parking, road safety, heritage assets, risk of crime and loss of access to open space. However, it was not made clear how any of these matters would affect an individual's private and family life or home. As such, it has not been shown that there would be any interference with an Article 8 right. This section of the report therefore considers impact on amenity in relation to the matters raised and in the context of relevant planning policy.

12.34. With regard to car parking and road safety, I recognise that additional traffic may add to current levels of inconvenience experienced by other users of the highway. Concerns were also raised as to the need to restrict parking on Exchange Road during the construction period, in order to permit HGVs to exit the site. Provided a traffic management scheme was prepared, such restrictions would be in place for limited periods, thus causing low levels of disruption¹⁰⁴.

¹⁰² CD66 and PC04

¹⁰³ Article 8(1) sets out the right to respect for a person's private and family life and home. Article 8(2) sets out the basis on which such interference may be justified.

¹⁰⁴ See CD113 for further details

Overall, I am not persuaded that the highway impact would be so marked as to represent a material reduction in amenity

- 12.35. In view of my findings concerning the lack of harm to the significance of designated and non-designated assets, it follows that no appreciable harm would be caused to the amenity of users of, or visitors to, those assets.
- 12.36. The Police Architectural Liaison Officer commented that the permeability of the site would promote crime due to ease of access and egress. As the landscape plan shows, there would be several routes into the site from Dark Lane for those on foot, in addition to the two points for vehicular access. There would also be links to the proposed permissive footpaths through the areas of open space to the north and west. However, as the Design and Access Statement makes clear, the dwellings themselves have been arranged and designed to ensure a good level of surveillance within and around properties¹⁰⁵. To my mind, this represents an appropriate design response and is sufficient to balance any risk associated with this level of permeability. [6.56]
- 12.37. Moreover, the permeability of the site would in part address those objections concerned with the loss of access to open space. The informal recreational use of the open land to the north of the village and its importance as a route through to the canal and riverside was highlighted by the Parish Council as well as many residents. Indeed, during my site inspection my attention was drawn to tracks across the appeal site indicating the extent to which it was habitually used by residents. The recreational value of this area is further indicated by policies put forward through the Neighbourhood Plan¹⁰⁶. From the written representations and those made during the inquiry, it is clear that the appeal site forms part of the adjacent countryside which contributes to local residents' experience of their village. However, the site has no formal status as recreational open space. Consequently, any restriction on access arising from this development cannot be weighed against the proposal in the planning balance. [7.17-18]
- 12.38. It has not been demonstrated that the proposal would have an unacceptable impact on the amenity or living conditions of local residents.

(iv) flood risk

- 12.39. Although flood risk did not form a reason for refusal in relation to the 121 scheme, objections were maintained by the Parish Council and residents. [7.10-13, 8.32-34]
- 12.40. The Flood Risk Assessment (FRA) identifies three potential flooding sources: fluvial, surface water and sewers. It sets out the basis for a small scale floodplain compensation scheme to create a suitable

¹⁰⁵ CD12 3.4.5

¹⁰⁶ Albeit that the relevant policy is recommended to be deleted

boundary for the area of residential development.¹⁰⁷ This is the 'area for floodplain compensation works' denoted on the appeal plans. An assessment of greenfield run-off rates forms the basis of the surface water drainage strategy, based on SuDS (retention and infiltration) supplemented by a positive drainage system discharging into the River Trent¹⁰⁸.

- 12.41. The Parish Council and local residents emphasised that a number of incidents of flooding had been observed in and around the village¹⁰⁹. Whilst these anecdotes are acknowledged in the FRA, including the tale of canoes being used on Main Street, there is concern locally that the document does not take full account of local features. The Parish Council raised specific objections on the basis that the greenfield run-off assessment is flawed and that the proposed drainage works would not function in the manner indicated.
- 12.42. Greenfield run-off rates have been calculated using IH 124, Flood Estimates for Small Catchments. Drawing on expert advice received in relation to the Neighbourhood Plan, the Parish Council refers to a study indicating that the methodology in IH 124 underestimates run-off rates. It also points to advice from the Environment Agency that IH124 should be avoided for catchments of less than 50ha¹¹⁰. On that basis, the Parish Council contends that the FRA is flawed.
- 12.43. The Appellant accepts that the methodology in IH 124 would produce an underestimate of run-off rates¹¹¹. However, it is important to bear in mind the use which has been made of this assessment. The resulting figure of 17.8l/s has been used to set the maximum permitted discharge rate from the proposed development. Given that this is likely to be less than is currently generated from the site, it means that the development will, in effect, be required to operate to a lower rate of discharge than at present, with the site in its current greenfield state. In this respect therefore, the drainage scheme should be seen as being likely to reduce the level of flood risk downstream.
- 12.44. The Parish Council also takes issue with the design of the drainage scheme, raising detailed questions as to the efficacy of the infiltration basin at the western end of the site, the gradient of the collector pipe, the risk of the river encroaching up the drainage ditch and the effect on the current drainage arrangements for Dark Lane. Whilst these are all valid matters for the drainage scheme to address, the Appellant confirms that they have been taken into account in the scheme design. Thus, for example, the purpose of the positive outfall is to assist drainage during periods of high groundwater; the gradient of the collector pipe has been designed to satisfy the relevant standards; and valves would be in place to address the risk of inundation via drainage

¹⁰⁷ some 917m³ of floodplain would be created to replace an estimated loss of 380m³ – see CD30, Appx C, 5117802/002 RevB

¹⁰⁸ CD30: Appendix C, 5117802/006 Rev C

¹⁰⁹ see for example ID08A photographs attached to the representation from Alison Wright

¹¹⁰ Docs PC01, 02 and 04

¹¹¹ CD112 p1

ditches¹¹². It is also confirmed that the scheme would allow for the continued operation of the natural flow pathways from Dark Lane to the River Trent.

12.45. Given local knowledge as to flood events, it is understandable that there will be a high level of concern amongst residents and their elected representatives. The questions raised certainly suggest that careful thought has been given locally to the implications of the development. However, the technical response provided is sufficient to demonstrate that the proposal would make adequate provision for flood risk. Moreover, it should be noted that neither the Environment Agency nor Staffordshire County Council as lead local flood authority have taken issue with the findings of the FRA or the design of the drainage strategy.

(v) the supply of market and affordable housing

12.46. Although it was initially common ground that the Council was unable to demonstrate a five year supply of deliverable housing sites, the Council altered its stance in the wake of the publication of the Local Plan Inspector's report. According to the Council, the annual housing requirement stands at 572. Since the supply stands at 3382, this is more than sufficient to meet the requirement, including a 5% buffer to allow for choice¹¹³.

12.47. The Appellant takes issue with this on four counts: that the Council has taken the wrong approach to addressing the shortfall; that there has been persistent under delivery, thus justifying a 20% buffer; that there are sites within the identified supply which are not deliverable; and that the supply figure should be adjusted to allow for non-implementation.

12.48. Shortfall: Core Policy 6 sets a target of 478 new homes to be delivered each year. The SHLAA calculates a shortfall of 1413 for the period 2008-2014. The Council contends this should be made up over the remaining plan period to 2029 (the 'Liverpool' approach), resulting in a requirement of 572dpa. The Appellant contends the 'Sedgefield' approach should be taken, whereby the shortfall should be made up within the next five years. This would result in a requirement of 761dpa¹¹⁴.

12.49. The Council justifies its approach on the basis of the outcome of the Local Plan examination. The Local Plan Inspector acknowledged that the Sedgefield approach should be taken where possible but noted that this would result in some 754-825dpa being required over the first five years of the plan period, with a trajectory approaching 1,000dpa. Having already found that an annual figure of over 600dpa would not be realistic, he concluded in favour of the Liverpool approach as being both realistic and aspirational¹¹⁵. [6.35-37]

¹¹² CD112 p1

¹¹³ In CD 103, Table 2 the Council puts forward the figure of 2980, which includes a 5% buffer

¹¹⁴ CD99, Table 5; $761 \times 5 = 3805$

¹¹⁵ CD39, paragraphs 56 and 210-213; CD42

- 12.50. The Appellant commends the Sedgefield approach for three reasons: that past rates of delivery were constrained by the then policy to direct development towards the urban area; that the SHLAA itself expects delivery in excess of 1000 units as early as 2017/18; and that in the period since the Local Plan Inspector considered this question, it has become clear that under-provision of housing in Birmingham will lead to increased housing demand in Lichfield. [8.37-40]
- 12.51. Undoubtedly, the Secretary of State is at liberty to reconsider this issue, notwithstanding the recent conclusions of the Local Plan Inspector. However, I am not convinced these represent sufficient grounds to jettison the Liverpool approach so soon after it has been found to be appropriate as part of the Local Plan examination.
- 12.52. The main reason for this is that the annual housing requirement figure in the Local Plan plays a particular role in the current plan-led system. It is a key mechanism which enables a balance to be struck between the policy objective of significantly boosting the supply of housing on the one hand and working towards the other elements of sustainable development, as expressed in the remainder of the Plan and in NPPF paragraphs 18-219. If the requirement figure was set at an unrealistically high level, it would continually undermine the weight which could be accorded to other policy objectives. Thus, although the factors identified by the Appellant certainly point to a clear need for continued measures to boost the supply of housing in Lichfield district, they do not in my view provide convincing evidence that planning decisions should be based on the higher annual housing requirement at this relatively early stage in the plan period.
- 12.53. However, should the Secretary of State decide otherwise, an annual housing requirement of 761dpa would, on its own, produce a five year requirement of 3,805 dwellings so that the Council would have failed to demonstrate a five year supply of deliverable housing sites.
- 12.54. The buffer: as part of the strategy to boost significantly the supply of housing, NPPF paragraph 47 requires local planning authorities to provide five years worth of housing sites against their requirements, with an additional buffer of 5% or 20% where there has been a record of persistent under delivery. The purpose of the buffer is to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
- 12.55. The Council contends that the buffer should be set at 5%, pointing to the Local Plan Inspector's assessment of this question. Furthermore, the Council applies the buffer only to the annual housing requirement, not to the shortfall.
- 12.56. Having met the target in 7 out of the previous 11 years, the Local Plan Inspector concluded that a 5% buffer was appropriate. As the Appellant points out, this phrasing indicates that the Inspector's conclusions were based on the period up to 2011/12, notwithstanding that the information for 2012/13 had been provided. Taking this more recent data into account, along with that for 2013/14, the target would

have been met only in 7 out of the last 13 years, so that the rate of success is no longer so favourable.

12.57. Whilst the target in the early part of this period may have been a constrained one, it is nevertheless a matter of fact that it was met. However, other facts are that the target has been missed in 6 out of the last 7 years and the shortfall now stands at just over 1400 dwellings. To my mind, this points to a clearer pattern of under delivery. When viewed overall therefore, I consider that a 20% buffer is now justified.

12.58. The Council interprets the term 'housing requirement' in NPPF paragraph 47 as relating only to the annual housing requirement set out in the relevant policy – in this case, Core Policy 6. In support of this approach, attention is drawn to some comments provided by the Inspector running the examination of the Amber Valley Local Plan¹¹⁶. However, those comments could not have been the Inspector's final conclusions on the matter, as the correspondence itself is concerned with the suspension of the examination. Also, the more widespread approach, as the Appellant illustrates by reference to numerous other decisions, has been to apply the buffer both to the requirement and to the shortfall.

12.59. If this clause of paragraph 47 is read in context, it is clear that the purpose of the buffer is to help achieve the planned supply and to ensure choice and competition. I take the 'planned supply' to be a reference to the supply for the whole of the plan period to date as well as the next five year period. Otherwise, no margin at all would be in place to allow for choice and competition in relation to past under delivery. This would be inconsistent with the clear aim of according increased priority to delivery, choice and competition where there has been persistent under delivery in the past, as expressed in paragraph 47. Consequently, I consider that the 20% buffer should also be applied to the shortfall.

12.60. Using the Council's figures, this would result in the need for a buffer of 572 dwellings so that the five year requirement plus buffer would stand at 3432 dwellings. The identified supply of 3382 would be insufficient to meet this. [6.38-44, 8.41-42]

12.61. If the Secretary of State was to accept my conclusion in relation to under delivery, it would follow that the Council has been unable to demonstrate a five year supply of deliverable housing sites. However, for completeness I set out below my findings in relation to those other points made by the Appellant.

12.62. Deliverability: by the end of the inquiry, there was disagreement as to the deliverability of five sites which had been included within the Council's identified supply.

¹¹⁶ CD 104 - In that instance the Authority had taken the approach now promoted by the Council and the Inspector's response does not indicate any objection to the approach

- 12.63. Site 1 - Tesco Extra – 22 units: the Appellant suggests that the supermarket operator is unlikely to deliver these units, since they would affect the operation of the supermarket site. However, commercial considerations change and the planning permission is still live. Although the Appellant's evidence raises questions as to whether the site will come forward, it does not amount to clear evidence that it is not deliverable.
- 12.64. Site 2 – Friarsgate 95 units: this town centre site has a lengthy history of schemes, although none have yet come forward. The most recent scheme included a grant of planning permission for 46 units. The Council reports discussions are now underway for a scheme which would include 95 units. Whilst this continuing interest indicates that a scheme may well come forward within the next five years, it is insufficient reason to assume that the higher number of units will be delivered, as the Council has done. I consider that the supply figure should be reduced to 46 units, to reflect the planning permission in place.
- 12.65. Site 3 - Tolsons Mill – 100 units: a listed building housing some 20 businesses, this planning permission is due to expire in October 2015 and no approaches have been made for its renewal. In the absence of any indication of continuing interest in its development for residential purposes, I consider there is no longer sufficient evidence that it will come forward in the next five years so that the supply figure should be reduced by 100 units.
- 12.66. Site 5 – St John's Hospital – 18 units: the site of former tennis courts, the Appellant contends that this site will not come forward owing to a planning requirement to make replacement sports provision. However the Council advises the position on replacement is not so clear cut. It has not been shown that the policy on replacement provision would be fatal to the scheme so that these units should be retained in the supply.
- 12.67. Site 6 – King Edward VI School – 32 units: this site appears to have been included in the supply on the basis of an expression of interest from the school some years ago. In view of the lack of any evidence of continued interest, I consider there is insufficient basis for it to be included as a deliverable site so that these 32 units should be removed from the supply.
- 12.68. This would lead to the removal of 181 units from the Council's identified supply, resulting in a figure of 3201. [6.45-49, 8.43]
- 12.69. The Appellant then contends that a 10% discount should be applied, to allow for non-delivery. However, the Council advises that there Lichfield is an area of strong demand for housing. The SHLAA shows that there is a very low rate of lapsed permissions, being generally in the region of 1%, even during those years when house building rates were at their lowest¹¹⁷. On that basis, the Council has applied a non-

¹¹⁷ SHLAA 6.20-22; Jervis, Appendices pp34-36

implementation rate of 5%. I note that the discount is intended to allow for other causes of non-delivery and that 10% has been used in other localities. Nevertheless, I consider that 5% is not unreasonable in these circumstances. [6.43-44, 8.44]

12.70. In summary therefore, I consider that the supply of deliverable sites currently stands at 3201 units. The requirement stands at 2860 and a buffer of 572 should be allowed. The Council therefore has been unable to demonstrate a five year supply of deliverable housing sites. On that basis, particular weight should be attached to the contribution which this site would make to the supply of land for housing.

Affordable housing

12.71. The proposal would deliver 25% affordable housing, which would equate to 30 units. The need for affordable housing in the district is acknowledged to be acute and delivery has averaged just 20 units a year. As such, the affordable housing element of the scheme should carry substantial weight. [8.48]

(vi) the development plan and the matter of sustainability

12.72. On the basis of the evidence presented, it is my view that the proposal would not have an unacceptably adverse effect on the safety and convenience of highway users. Nor would it give rise to harm to the significance of heritage assets or to the amenity of residents. Also, it makes adequate provision in relation to flood risk. In these respects therefore, there would be no conflict with Core Policies 3, 5, 10 and 14 of the Lichfield District Local Plan Strategy 2008-2029 or with development management policies ST1 and BE1. The proposal would accord with the provisions of settlement specific policies Alr1 and Alr2. It would also satisfy saved policy C2 of the 1998 Local Plan. As regards the emerging Neighbourhood Plan, I do not identify any conflict with policies 2.1, 3.1, 4.1, 4.2 and 4.4.

12.73. The question remains, however, of the degree to which the proposal accords with the overall spatial strategy of the development plan and its expression in the emerging Neighbourhood Plan.

12.74. The appeal site lies outside the settlement boundary for Alrewas as defined in the 1998 Local Plan. However, in the context of this appeal that policy would amount to one for the supply of housing. In view of my findings on housing land supply, the policy cannot be regarded as up to date. Moreover, the relationship of the development to the village would not detract from its compact character and questions as to the permanence of the current boundary are raised by the terms of policy Alr4, which specifically refers to the possibility of sites beyond it. For these reasons, the conflict with that aspect of the 1998 Local Plan can carry only limited weight.

12.75. The settlement hierarchy set out in Core Policy 1 indicates that the Key Rural Settlements are expected to accommodate approximately 16% of the 10,030 dwellings to be delivered between 2008 and 2029. This would include 440 units to be allocated between these five

settlements through the Local Plan Allocations document. The indications are that about 75 dwellings could be accommodated on small sites within Alrewas. A further 121 on the appeal site would take provision in Alrewas above the upper end of the 90-180 range in Alr4. Moreover, as the Parish Council points out, Alrewas is one of the smaller Key Rural Settlements and, as the Appellant accepted, this is not a small scale site within the terms of the emerging Neighbourhood Plan.

12.76. As the Council accepted, there is not yet an emerging Allocations Plan so that a decision on the appeal site will not pre-empt such a plan. There is no certainty that all the other potential housing sites in Alrewas will come forward but, even if they did, Core Policy 1 and Alr 4 set a range for delivery rather than an absolute limit. In addition, there are clear indications that the pressure for housing in Lichfield District is upwards, as acknowledged by the Local Plan Inspector in his discussion of the situation with Birmingham¹¹⁸. Thus, in the event that housing provision in Alrewas was to exceed the range in Alr4, there is sufficient flexibility in the policies and demand in the housing market to indicate this would be unlikely to prejudice housing delivery in the other Key Rural Settlements. As regards the scale of the appeal proposal, although substantial in relation to the size of Alrewas, its design and layout would be sympathetic to the character of the existing village, so as to assist assimilation into the settlement. In the absence of any identifiable harm to the Conservation Area, there is no good reason to conclude it would detract from the character of the settlement in any other respect. As such, I find no conflict with Core Policy 1 or Alr 4. It must be acknowledged that the proposal would conflict with the housing policies of the draft Neighbourhood Plan (5.1.1, 5.2, 5.2.1, 5.2.3 and 5.2.5). However, given the Examiner's recommendations to amend or delete these policies, such conflict can carry little weight. [6.51-52, 7.14-16, 8.52-54]

12.77. The proposal does not fully accord with the development plan in that the site lies outside the defined development boundary. However, it accords in all other key respects. To my mind therefore, it should be regarded as being in accordance with the development plan as a whole. In the event that the Secretary of State reaches a different conclusion as to conformity with the development plan, it should be noted that the settlement boundary is that contained in the 1998 Local Plan whereas the Local Plan Strategy, adopted in 2015, indicates that boundary may no longer be appropriate. Moreover, a key aim of current national policy is to boost significantly the supply of housing. Whilst no aim is given primacy, that is nonetheless an important consideration. I consider that such material considerations would be sufficient to override the conflict with the defined settlement boundary. [6.55, 8.49-51]

12.78. Some time at the inquiry was also devoted to the question of whether the proposal should benefit from the presumption in favour of

¹¹⁸ CD39 paragraphs 17-23

sustainable development. If the Secretary of State agrees with either of the assessments in the preceding paragraph, such a question would have no bearing on the outcome. However, in the event the Secretary of State takes a different view, my understanding of the matter is set out here.

12.79. To my mind the presumption ought not to be applied to this proposal on the basis of its relationship with the Cannock Chase SAC. Since the site is within 15km of the SAC, it is deemed to have an effect on it in combination with other proposals, under the terms of Local Plan policy NR7. Although no contribution to the necessary mitigation measures has been required, the 'in-combination' effect is predicted to occur nonetheless. Paragraphs 10.1-10.4 constitute the information necessary for the Secretary of State, as the competent authority, to carry out the Appropriate Assessment in relation to this proposal. As such, NPPF paragraph 119 is brought into play (that the presumption in favour of sustainable development does not apply where development requiring Appropriate Assessment is being determined).

Recommendation

12.80. I consider that this proposal is in accordance with the plan as a whole. Consequently, I recommend that the appeal be allowed (as amended) and planning permission be granted, subject to the conditions set out in Annex 1.

K.A. Ellison

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Freddie Humphries, of Counsel

He called

Cllr Marshall
Patrick Jervis BA(Hons), MA,
MRTPI
Alan Bailes TPP, Dip Geog,
MSc, FCILT, FCIHT
Deborah Boffin BSc (Hons),
DipTP, MRTPI, DipBldgCons
(RICS), IHBC
Simon Wood BA(Hons), BTP,
MRTPI

Vice Chair, Planning Committee
Principal Spatial Policy and Delivery Officer
Lichfield District Council
Director, The Transportation Consultancy Ltd
Senior Conservation Officer, Lichfield District
Council
Regional Planning and Building Control
Manager, Urban Vision Partnership Ltd

FOR THE APPELLANT:

Peter Goatley of Counsel

He called

Alan Bain MSc, MA,
PGCertUD, MCIHT, MTPS
David Hodgkinson BA(Hons)
CIFA
Anthony Bateman
BA(Hons)TP, MRICS, MRTPI,
MCMI, MIOd, FRSA

Director, JMP Traffic Consultants
Technical Director for Heritage and the
Historic Environment, Wardell Armstrong
Managing Director, Pegasus Group

INTERESTED PERSONS:

Cllr Janet Eagland
Cllr Margaret Stanhope MBE

Member, Staffordshire County Council
Member, Lichfield District Council and local
resident

Richard Spedding
Will Chapman
Graham Slight
Jane Pegg
Brian Hall
John Walton
Ralph Seville
John Pegg
Michael Morriss

Alrewas Parish Council
Vice Chair, Alrewas Parish Council
local resident
local resident
local resident
local resident
local resident
local resident
local resident

INQUIRY DOCUMENTS

ID01	email from Alrewas Civic Society
ID02	letter from Mr JE Walton
ID03	letter from Mr BG Hall
ID04	email from Ms A Wright
ID05	letters from Mrs L Charnley
ID06	letter from Mrs J Wray
ID07	letter from Mr p Wray
ID08	letters from Ms A Wright
ID09	letter from Mr T Latham
ID10	letter from Mr JH Newall
ID11	letter from PE and JM May
ID12	Final submissions, Alrewas Parish Council
ID13	Closing submissions on behalf of Lichfield District Council
ID14	Closing submissions on behalf of Lioncourt Homes Ltd

Documents submitted by Alrewas Parish Council

PC1	FL 1-4, documents concerning flooding and flood risk
PC1a	extract from 'A survey and analysis of the Place-Names of Staffordshire'
PC2	Con 1-3, documents concerning Alrewas Conservation Area
PC3	Alrewas PC letter to Planning Committee, 29 June 2015 Note on place names
PC4	Flooding – note to inquiry
PC5	Correspondence between Alrewas PC and Staffordshire County Council, March/April 2015
PC6	Extract from SCC Historical environmental assessments HECA 13

Documents accepted after the last sitting day of the Inquiry

ID15	[2015] EWHC 2077 (Admin) IM Properties Development Ltd and Lichfield District Council
ID16	Alrewas Neighbourhood Plan Examiners Report August 2015
ID17	Letter on behalf of Appellant 1 August 2015
ID18	Unilateral Undertaking in favour of Staffordshire CC
ID19	s106 Agreement with Lichfield DC
ID20	Lioncourt Strategic Land letter 19 August 2015
ID21	Response from Staffordshire CC 21 August 2015

Core Document Reference	Document Reference
Information relevant to application 15/00120/FULM	
CD 01	Lichfield District Council Planning Committee Report reference 13/01175/FULM
CD 02	Lichfield District Council Planning Committee Report reference 15/00120/FULM
CD 03	Planning Application Decision Notice reference 13/01175/FULM
CD 04	Site Location Plan (drawing reference 1425_202 T)

CD 05	Site Layout Plan (drawing reference 1425_402)
CD 06	Site Housetype Plan (drawing reference 1425-403)
CD 07	Site Landscape Plan (drawing reference 1425-404)
CD 08	Low Loader Entire Village (drawing reference MID3117-060)
CD 09	Dark Lane Accesses (drawing reference MID3117-073)
CD 10	Housetype elevations and floor plans
CD 11	Planning Statement, January 2015
CD 12	Design and Access Statement, January 2015
CD 13	Noise Assessment, January 2015
CD 14	Phase 1 – Geo-environmental Desk Study Report, January 2015
CD 15	Heritage Assessment, January 2015
CD 16	Landscape and Visual Impact Assessment Addendum, January 2014
CD 17	Landscape and Visual Impact Assessment, October 2013
CD 18	Transport Statement and Travel Plan Update, January 2015
CD 19	Transport Assessment, v6 April 2014
CD 20	Travel Plan, October 2013
CD 21	Response to Ecology Comments, January 2014
CD 22	Arboricultural Report, January 2015
CD 23	Badger Survey Report, January 2015
CD 24	Bat Survey Report, January 2015
CD 25	Biodiversity Offsetting Report, January 2015
CD 26	Extended Phase 1 Update, January 2015
CD 27	Breeding Bird Report, January 2015
CD 28	Wintering Bird Report, January 2015
CD 29	Otter Report, October 2013
CD 30	Flood Risk Assessment and Drainage Strategy, January 2015
CD 31	Statement of Community Involvement, October 2013
CD 32	Desk Based Assessment, v3 October 2013
CD 33	Consultation Responses to application 15/00120/FULM
Appeal Documents	
CD 34	Agreed Statement of Common Ground
CD34A	Statement of Common Ground with Staffordshire County Council
CD34B	Highways Statement of Common Ground with Lichfield DC
CD 35	Appellants Rule 6 Statement with appendices
CD 36	Council's Rule 6 Statement
CD 37	Letter to Council re: Wheatcroft of appeal drawings
Other Relevant Core Documents	
CD 38	Adopted Local Plan Strategy
CD 39	Inspectors Final Report for the Local Plan Strategy
CD 40	National Planning Policy Framework
CD 41	Planning Practice Guidance
CD 42	Matter 3: Assumed Delivery Rates Hearing Statement - Lichfield District Council
CD 43	Representations made on behalf of Lioncourt Homes to the Local Plan Strategy
CD 44	Submitted Alrewas Neighbourhood Plan
CD 45	Representations made on behalf of Lioncourt Homes to the Emerging Neighbourhood Plan
CD 46	SHLAA 2014

CD 47	SHLAA 2014 Addendum
CD 48	The Implications of the 2011 based CLG Household Projections (NLP Housing Requirement Update)
CD 49	NLP Migration Scenario (Addendum to implications of the 2011 based CLG Household projections)
CD 50	ONS Statistical Bulletin Population and Household Estimates for the United Kingdom, March 2011
CD 51	Implications of the 2012 SNHP with regards to the housing OAN for Lichfield District
CD 52	Southern Staffordshire Districts Housing Needs Study and SHMA Update 2012
CD 53	Planning Reform Debate (page 77-79), Volume No. 573, Part No. 100 Parliamentary Debates (Hansard) House of Commons Official Report 8th January 2014
CD 54	Housing and Growth Ministerial Statement, CLG, September 2012
CD 55	Housing the Next Generation, Nick Bowles, MP, January 2013
CD 56	Estimated Housing Need, DCLG, November 2010
CD 57	Alrewas Conservation Area Appraisal, June 2008
CD 58	Alrewas Conservation Area Management Plan, June 2008
CD 59	Staffordshire Residential Design Guide, Staffordshire County Council, 2000
CD 60	Historic Environment Good Practice Advice in Planning Note 2 – Managing Significance in Decision Taking – March 2015
CD 61	English Heritage (2006) Streets for All, West Midlands
CD 62	English Heritage (2008) Conservation Principles, Policies and Guidance
CD 63	English Heritage (2004) Measuring Change in Conservation Areas
CD 64	English Heritage (2011) Understanding Place: Conservation Area Designation, Appraisal and Management
CD 65	Historic England (2015) Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets
CD 66	Staffordshire County Council (2009) Historic Environment Character Assessment: Final Report for Lichfield District Council
CD 67	Staffordshire County Council (2011) Conservation within the Highway: Structures of Historic Importance (Guidance Note)
CD 68	Staffordshire County Council (2013) Staffordshire Extensive Urban Survey: Alrewas Historic Character Assessment
CD 69	A Planning Guide to Residential Extensions SPD
CD 70	Manual for Streets
CD 71	Manual for Streets 2
CD 72	Street Design for All
CD 73	The Highway Code
CD 74	Health Social Trend 41 (ISSN 2040-1620)
CD 75	Traffic in Villages, Safety and Civility for Rural Road. A toolkit for communities.
CD 76	Guidance on Transport Assessments, Department for Transport 2007
CD 77	Sewers for Adoption, 7 th edition – original paper copy only
CD 78	C697 The Suds Manual, CIRIA, 2007
CD 79	Planning Policy Statement 25: Development and Flood Risk, DCLG, March 2010

CD 80	Planning Policy Statement 25: Development and Flood Risk: Practice Guide, DCLG, December 2009
CD 81	Flood Risk Standing Advice, Environment Agency
CD 82	Howell (2015) EWHC 539 (Admin)
CD 83	[2014] EWHC 1895 (Admin) R. (on the application of Forge Field Society) v Sevenoaks DC
CD 84	Lang (2013) EWHC 473 (Admin)
CD 85	Jay (2012) EWHC 4344 (Admin)
Relevant documents associated with application 13/01175/FULM (140 dwellings)	
CD 86	Site Location Plan (drawing reference 1425-202)
CD 87	Site Layout Plan (drawing reference 1425-201 Y)
CD 88	Site Landscape Plan (drawing reference 1425-204 Y)
CD 89	Housetypes Plan (drawing reference 1425-203 Y)
CD 90	Design and Access Statement, October 2013
CD 91	Planning Statement, April 2014
CD 92	Flood Risk Assessment and Drainage Strategy, October 2013
CD 93	Heritage Assessment, January 2014
Additional documents	
CD 94	not used
CD 95	Guideline for Planning for Public Transport in Developments (1999)
CD 96	Guidelines for Providing for Journeys on Foot (2000)
CD 97	TRICS Multi Modal Methodology 2014
CD 98	Planning Aid Flyer regard items of material concern and items of non-material concern for planning
CD 99	Appellant's Updated Housing Tables - comparison
CD 100	Warwick Local Plan Inspectors Letter, 1 st June 2015
CD 101	not used
CD 102	APP: note on differences 140/121 schemes and submissions on proposed amendment to appeal scheme
CD 103	LPA: Supplementary note on five year housing land supply
CD 104	LPA: Amber Valley Local Plan, Inspector's letter 12 May 2014
CD 105	LPA: consultation responses to (121) scheme
CD 106	LPA: note on car ownership figures
CD 107	LPA: note on walking distances
CD 108	APP: Appeal decisions APP/R3325/A/13/2209680 & 2203867, 3/6/2015 ('Chard')
CD 109	LPA: agreed conditions, amended scheme v1
CD 110	LPA: note on Cannock Chase SAC mitigation proposals
CD 111	APP: Unilateral Undertaking
CD 112	APP: flood risk technical note
CD 113	APP: Construction management plan
CD 114	APP: Video survey – further notes
CD 115	LPA: Revised agreed conditions
CD 116	LPA: Information on indoor sports contribution
CD 117	APP: [2004] EWCA Civ 905 Lough & Anr v First Secretary of State

Annex 1: Recommended Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - (i) Site Location Plan (Drawing Reference 1425_202 T)
 - (ii) Site Layout Plan (Drawing Reference 1425_402)
 - (iii) Site Housetype Plan (Drawing Reference 1425_403)
 - (iv) Site Landscape Plan (Drawing Reference 1425_404)
 - (v) Low Loader Swept Path (Drawing Reference MID3117-055)
 - (vi) Construction Management — long vehicles (Drawing Reference MID3117-060)
 - (vii) Low Loader Entire Village (Drawing Reference MID3117-060)
 - (viii) Dark Lane Accesses (Drawing Reference MID3117-273)
 - (ix) 1425_301 A Alder Housetype
 - (x) 1425_302 Ash Housetype
 - (xi) 1425_302_3A Ash Housetype plots 16 and 86
 - (xii) 1425_303 Aspen Housetype
 - (xiii) 1425_304 A Beech Housetype
 - (xiv) 1425_305 A Birch Housetype
 - (xv) 1425_306 Bungalow
 - (xvi) 1425_307 A Cedar Housetype
 - (xvii) 1425_308 A Chestnut Housetype
 - (xviii) 1425_309 Elm Housetype
 - (xix) 1425_310 A Elm Plus Housetype
 - (xx) 1425_312 Hawthorn Housetype
 - (xxi) 1425_313 Hawthorn Plus Housetype
 - (xxii) 1425_314 Larch Housetype
 - (xxiii) 1425_315 Oak Housetype
 - (xxiv) 1425_316 Sycamore Housetype
 - (xxv) 1425_317 Walnut Housetype
 - (xxvi) 1425_318 Garages
 - (xxvii) 1425_301-2 Alder Rendered
 - (xxviii) 1425_302-2 Ash Rendered
 - (xxix) 1425_305-2 Birch Rendered
 - (xxx) 1425_307-2 Cedar Rendered
 - (xxxi) 1425_309-2 Elm Rendered
 - (xxxii) 1425_316-2 Sycamore Rendered
- 3) Before the development is commenced, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:
 - (i) Bricks to be used in the construction of the external walls;
 - (ii) Render, including colour, to be used on the external walls;
 - (iii) Exterior roof materials; and
 - (iv) External surfacing materials.

The development shall thereafter be undertaken in accordance with the approved details.

- 4) Before the development is commenced, full details of the finished floor levels, which shall be not less than 600mm above the 1:100 year flooding event and not less than 150mm above finished ground level, of the

proposed dwellings, including their relationship to the levels of the highway, existing development and existing ground levels, shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.

- 5) Before the development is commenced, full details of the height, type and position of all site and plot boundary walls, retaining walls, fences and other means of enclosure to be erected on the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
- 6) Before the development is commenced, full details for the disposal of surface water and foul drainage shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
- 7) Before the development is commenced, a scheme for the offsetting of biodiversity impacts at the site shall be submitted to and approved in writing by the Local Planning Authority. The offsetting scheme shall include:
 - (i) A method for the identification of receptor sites;
 - (ii) The identification of receptor sites, including the part of the site to the west of the proposed dwellings;
 - (iii) Details of the offset requirements of the development, in accordance with the recognised offsetting metrics standard outlined in the DEFRA Metrics Guidance dated March 2012;
 - (iv) The provision of arrangements to secure the delivery of offsetting measures, including a timetable for their delivery; and
 - (v) A management and monitoring plan, to include for the provision and maintenance of the offsetting measures in perpetuity. The management and monitoring plan is to include:
 - a) Description of all habitat(s) to be created/enhanced with the scheme including expected management condition and total area;
 - b) Review of the ecological constraints;
 - c) Detailed designs and/or working methods (management prescriptions) to achieve proposed habitats and management conditions, including extent and location or proposed works;
 - d) Type and source of materials to be used, including species list for all proposed planting and abundance of species within any proposed seed mix;
 - e) Identification of persons responsible for implementing the works;
 - f) A timetable of ecological monitoring to assess the success of all habitat creation/enhancement;
 - g) The inclusion of a feedback mechanism, allowing for the alteration of working methods/management prescriptions, should the monitoring deem it necessary.

The arrangement necessary to secure the delivery of the offsetting measures shall be executed prior to written approval by the Local Planning Authority. The offsetting scheme shall thereafter be implemented in accordance with the requirements of the approved scheme.

- 8) Before the development is commenced, the trees and hedgerows shown to be retained on the approved plans shall be protected in accordance with British Standard 5837:2012. No works shall continue on site until the

approved tree protection measures are in place. The tree protection measures shall be retained for the duration of construction including any clearance works until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed from the site, unless otherwise agreed in writing with the Local Planning Authority. No fires, excavation, change in levels, storage of materials, vehicles or plant, cement or cement mixing, discharge of liquids, site facilities or passage of vehicles, plant or pedestrians shall occur within the protected areas.

- 9) Before the development is commenced, a detailed landscape and planting scheme, which shall include an area of woodland planting in the western section of the site, shall be submitted to and approved in writing by the Local Planning Authority. The approved landscape and planting scheme shall thereafter be implemented within the first available planting season, unless otherwise agreed in writing by the Local Planning Authority.
- 10) Before the development hereby approved is commenced, a written scheme of archaeological investigation ('the Scheme') shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall provide details of the programme of archaeological works to be carried out within the site, including post-excavation reporting and appropriate publication. The Scheme shall thereafter be implemented in full in accordance with the approved details.
- 11) Before the development is commenced, the site shall be subjected to a detailed scheme for the investigation and recording of any contamination of the site and a report shall submitted to and approved in writing by the Local Planning Authority. The report shall identify any contamination on the site, the subsequent remediation works considered necessary to render the contamination harmless and the methodology used. The approved remediation scheme shall thereafter be completed and a validation report submitted to and approved in writing by the Local Planning Authority within 1 month of the approved remediation being completed, to ensure that all contaminated land issues on the site have been adequately addressed prior to the first occupation of any part of the development.
- 12) Before the development is commenced, full details of the accesses and traffic management works off Dark Lane and Micklehome Drive (indicated on drawing no. MID3117-053), shall be submitted to and approved in writing by the Local Planning Authority. The accesses and off-site highway works shall thereafter be constructed in accordance with a timetable to be submitted to and agreed in writing with the Local Planning Authority.
- 13) Before the development is commenced, full details of the 'temporary secure parking area for residents' shall be submitted to and approved in writing by the Local Planning Authority. The parking area shall thereafter be provided in accordance with the approved details prior to the commencement of development and retained for the duration of the construction works.
- 14) Before the development hereby approved is commenced, a Traffic Management Plan/Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The Plan and Statement shall include:
 - (i) Construction traffic access and routing

- (ii) Delivery time restrictions
- (iii) Provision for parking of vehicles for site operatives and visitors
- (iv) Method of prevention of mud being carried onto highways
- (v) Pedestrian and cyclist protection, with particular reference to Dark Lane and Micklehome Drive
- (vi) Proposed temporary traffic restrictions
- (vii) Arrangements for turning vehicles
- (viii) Loading and unloading of plant and materials
- (ix) Storage of plant and materials

The approved traffic management plan and construction management scheme shall thereafter be implemented prior to any works commencing on site and shall thereafter be retained and adhered to until completion of construction.

- 15) The development hereby approved shall be carried out in accordance with the approved Flood Risk Assessment and Drainage Strategy ref 5117802 V4 dated 19th January 2015. This shall include the following:
- (i) Limiting the rate of surface water run-off generated by the 1 in 100 year plus 30% critical storm, so that it will not exceed 17.8 l/s.
 - (ii) Provision of 115 cubic metre infiltration basin on the site to accommodate a 1 in 100 year plus 30% rainfall event;
 - (iii) No built structures to be provided or raising of ground levels within the floodplain of the River Trent.
 - (iv) Ensuring that any flooding occurring within the proposed development for up to and including the 1 in 100 year plus 30% event must be contained within the site boundary in a safe manner and allowed to discharge when downstream capacity permits; and
 - (v) A scheme for the maintenance of the surface water system for the lifetime of the development. The scheme shall include confirmation of the body responsible for its maintenance.

The mitigation measures shall be carried out in accordance with the timing/phasing arrangements embodied within the scheme.

- 16) Any tree, hedge or shrub planted as part of the approved landscape and planting scheme (or replacement tree/hedge) on the site and which dies or is lost through any cause during a period of 5 years from the date of first planting shall be replaced in the next planting season with others of a similar size and species.
- 17) No trees, shrubs or hedgerows planted or retained as part of the approved landscape and planting scheme shall be topped, lopped or cut down without the prior written consent of the Local Planning Authority.
- 18) No construction activities shall take place outside the hours of 07.30 to 19.00 Mondays to Fridays and 08.00 to 13.00 on Saturdays. There shall be no construction activities on Sundays and Bank/Public Holidays.
- 19) Details of a noise attenuation scheme and a timetable for its implementation shall be submitted to and approved in writing by the Local Planning Authority, in accordance with Section 5 of the report N005 prepared by Wardell Armstrong, dated January 2015. Development shall be carried out as approved before the development is first occupied.

- 20) The recommendations and mitigation measures within the following ecological reports and the protected/priority species reports shall be complied with in full:
- (i) Breeding Bird Survey (January 2015)
 - (ii) Wintering Bird Survey (January 2015)
 - (iii) Bat Survey Report (January 2015)
 - (iv) Badger Survey Report (January 2015)
 - (v) Extended Phase 1 Habitat Survey Report (January 2015)

The mitigation measures shall thereafter be retained for the life of the development, unless otherwise agreed in writing by the Local Planning Authority.

Annex 2: Condition Not Recommended

- 21) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting the Order with or without modification), no windows, other openings or dormers shall be created in Plots 1, 16, 17, 22, 23, 80, 82 – 85 and 96 as shown on approved plan 1425-402 and on the approved listed on this decision notice, in addition to or as enlargements of any which may be hereby approved without the prior written permission of the Local Planning Authority.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.



Appeal Decision

Inquiry held on 14-17 and 21-24 August 2018

Site visit made on 24 August 2018

by Phillip J G Ware BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2018

Appeal Ref: APP/R1038/W/17/3192255

Land at Deerlands Road, Wingerworth

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Ripon Homes Ltd against the decision of North East Derbyshire District Council.
 - The application Ref 17/00268/OL, dated 3 March 2017, was refused by notice dated 14 December 2017.
 - The development proposed is a residential development of up to 180 dwellings, public open space, landscaping, highway and drainage works and associated infrastructure.
-

Procedural matters

1. The application was submitted in outline, with only access and scale to be decided along with the principle of the development. I have dealt with the appeal in this manner.
2. A Planning Obligation (31 July 2018) was submitted before the Inquiry opened, and I have considered its content below.
3. As anticipated at the Inquiry, amendments to Planning Practice Guidance (PPG) and updated household projection figures were published after the Inquiry. The views of the main parties were sought on these matters and the responses have been considered in this decision.
4. In October 2018 a consultation paper was issued regarding possible updates to national planning policy and guidance, including the standard method of assessing local housing need. This paper was raised by the Council on 31 October. The appellant was given the opportunity to comment on this matter, which they did on 7 November. This correspondence has been taken into account.

Application for costs

5. At the Inquiry an application for costs was made by Ripon Homes Ltd against North East Derbyshire District Council. This application will be the subject of a separate Decision.

Decision

6. The appeal is allowed and planning permission is granted for a residential development of up to 180 dwellings, public open space, landscaping, highway

and drainage works and associated infrastructure on land at Deerlands Road, Wingerworth in accordance with the terms of the application, Ref 17/00268/OL, dated 3 March 2017, subject to the conditions appended to this decision.

Main issues

7. The application was recommended for approval by officers but was refused by the Council on 14 December 2017. There were five reasons for refusal, three of which are no longer being defended by the authority. These related to the adequacy of the sewerage system, the need for social infrastructure and the effect on highway safety.
8. There are two main issues in this case, which reflect the Council's two remaining reasons for refusal:
 - The effect of the proposal on the character and appearance of the area
 - Whether the proposed development would be accessibly related to the settlement of Wingerworth

Reasons

The site and the proposal

9. The appeal site is an area of rough grazing land around 7 hectares in extent located northeast of Deerlands Road and east of Hockley Lane. There are trees and hedgerows along many of the site boundaries. The land rises up to the north from Redleadmill Brook at the south of the site towards Hockley Farm and other properties, including Wingerworth Hall Gardens. To the east of the site are further fields and large areas of woodlands.
10. To the south of the site, beyond the brook, is a recent housing development which was allowed on appeal (51 units) in August 2013¹. The planning history of this site (along with the previous history of the appeal site) is summarised in the Statement of Common Ground². This development is known as Spindle Drive.
11. The main built up area of Wingerworth lies to the west of the site, and in this area is typified by predominantly 1960's houses and bungalows. Wingerworth is a very large village (with a population of over 6,000) and is the largest second tier settlement in the District.
12. The proposal, as set out in the bullet points at the top of this decision, is in outline along with scale and access. The entrance would be taken from Deerlands Road by way of Spindle Drive and over Redleadmill Brook on a new bridge. The proposal, as judged by the submitted plans and the illustrative material, would include up to 180 homes with 40% affordable units (secured by the Planning Obligation), open space, and on-site storm water attenuation.

Planning policy background and weight

13. The development plan includes the North East Derbyshire Local Plan (LP) (2005) which was intended to operate until 2011. The site is outside the Settlement Development Limit (SDL) of Wingerworth, which is on the opposite

¹ APP/RR1038/A/13/2192646

² Section 2

side of Deerlands Road. For planning purposes the site is therefore agreed to be classified as open countryside.

14. Leaving aside the matters which are no longer being pursued by the Council, the remaining policies in the reasons for refusal are:
 - LP policies GS1, GS6 and H3. These deal with SDLs and development in the countryside.
 - LP policies GS1, H12 and T2. These deal with accessibility to local facilities.
15. The Wingerworth Neighbourhood Plan (NP) was made in June 2018, and is part of the development plan. This plan does not allocate any housing sites, and I will return to the role of the NP below.
16. The draft Local Plan (DLP) has been submitted for examination, and has attracted representations on a wide range of issues, including policies related to housing requirement and supply, settlement development limits and the overall development strategy. The Council did not place any reliance on the DLP at the Inquiry³ and, given the stage which it has reached and the existence of numerous representations, only limited weight could have been placed on it in any event.
17. Returning to the development plan, the parties are agreed that the proposal does not conform to the relevant spatial policies of the LP, most particularly in that the appeal site is outside the Wingerworth SDL and is open countryside in policy terms. In the context of the age of the LP, it is unsurprising that the question of whether the LP is out of date was raised in evidence and debated at length at the Inquiry.
18. The simple fact that the LP period was until 2011 does not mean that, as it is time expired, it should be disregarded. Nor does the fact that progress on the replacement DLP has been slow, emphasised by the Secretary of State's correspondence with the Council regarding possible local plan intervention⁴, mean that the LP is out of date. The important question is the extent to which the policies in the LP are consistent with the National Planning Policy Framework (the Framework).
19. The Wingerworth SDL, as set out in the LP, was stated in the officers' report to be out of date as it did not address the District's housing needs. This is clearly the case, and is unrelated to whether the Council can demonstrate a five year housing land supply – a matter to which I return below – as what matters in this instance is whether the saved policies still have a function in relation to housing need.
20. The SDLs were intended to address development needs up to 2011 and have little to do with the present position. The housing targets set out in the LP are out of date and this was confirmed in the Statement of Common Ground. The SDL and the related policies are inextricably interlinked, in that policies relating to the location of development and the delivery of housing lose much of their meaning if their spatial location is not set out and, conversely, the SDL is meaningless unless there are policies related to it.

³ Other than to note that the SDL for Wingerworth is not proposed to be changed

⁴ CD E38

21. In the Council's written evidence it was stated that the LP as a whole was up to date, but this position appeared to change at the Inquiry and it was accepted by the Council's witness that the plan was out of date. The Council's position in the closing submission was that the relevant policies were "mainly consistent" or have "some consistency" with the Framework. This confusing position is not helpful, but I prefer the clear evidence given by the Council's witness.
22. In addition, it was accepted by the Council that the authority has allowed developments which are inconsistent with the LP. Furthermore, the approach of my fellow Inspector in the Spindle Drive decision was that policy should be accorded limited weight as it was more restrictive than the (then) Framework. Although this decision was some time ago, nothing in the intervening period suggests that more weight should be given to the same policies.
23. In any event, as accepted by the Council at the Inquiry, the wording of LP policy GS1 is incompatible with the Framework as it includes an "overriding exceptional circumstances" test for development in the countryside. This is not, and has never been, part of national policy outside Green Belts or Areas of Outstanding Natural Beauty. Additionally LP policy GS6 gives the countryside a level of blanket protection which is inconsistent with national policy. All these additional matters clearly point to the LP being out of date.
24. I appreciate the Council's argument that the DLP does not propose a change to the Wingerworth SDL. However the emerging plan is of limited weight and there are apparently numerous representations to the spatial and housing policies. The emerging position regarding SDLs is therefore of very limited assistance.
25. Before concluding on the weight to be accorded to the LP, mention needs to be made of the recently-made NP. This plan makes no allocations and is therefore silent on housing needs. As was explained to me at the Inquiry, the original intention was for the NP to update the existing SDL. But, following discussions with the District Council, it was decided that the SDL should not be revised through the NP and this was left to the DLP. Overall, the NP does not address housing development needs, as this is reserved to the DLP. The Council accepted at the Inquiry that, if the NP were seen to be restrictive in its own right, then the NP itself would be out of date. I do not consider that to be the case and, in view of the perfectly proper relationship between the NP and the LP/DLP, I do not consider the NP to add anything of substance to the relevant policy base.
26. Overall the proposal does not conform to the relevant spatial policies of the LP, as the site is outside the SDL and is in the open countryside in policy terms. However, for reasons given above, the LP policies which are most important in determining the appeal are out-of-date. This does not mean that they can be ignored, but they have significantly reduced weight.

The character and appearance of the area

27. Part of the Council's composite first reason for refusal alleged negative environmental impacts in relation to visual prominence and the wider landscape/local topography.
28. In considering this matter, I am conscious that the Council did not call any landscape or design evidence to defend this aspect of the reason for refusal,

although it was briefly addressed by the planning witness. This is in contrast to the appellant, who produced a full Landscape and Visual Impact Assessment (LVIA) and who called landscape evidence.

29. The site falls within National Character Area 38 – the Nottinghamshire, Derbyshire and Yorkshire Coalfield. Regionally it is with the Wooded Slopes and Valleys Landscape Character Type. At the most detailed level it is within the Wooded Farmlands Landscape Character Type, which is typified by scattered ancient woodlands and hedgerow trees, dense tree cover along streams, small to medium irregular fields enclosed by mixed species hedgerows, curving lanes with irregular verges, scattered sandstone farmsteads and occasional hamlets.
30. Even allowing for the presence of Wingerworth, the last categorisation is a good description of elements of the appeal site, which is generally well enclosed by hedgerows and trees. There is no reason to doubt the appellant's statement that the majority of these would be retained in the detailed scheme design.
31. The Council suggested that the site is prominent, but this was persuasively contradicted by the appellant's detailed landscape evidence and by what I saw from the agreed viewpoints on my site visit. Although the site is visible at close range, when I visited the more distant locations, it was difficult in many cases to pick out the appeal site – so any future development thereon would have comparatively little effect. Subject to a height limitation applying to development on the upper part of the site, the proposal would not be unduly prominent or out of place.
32. The appellant's LVIA assessed the landscape and visual impact of the proposal and there is no dispute as to the methodology employed. In terms of the effects on landscape character, obviously the proposed replacement of fields by housing would introduce built form onto currently undeveloped land. However so would any built development on a greenfield site, and this would be set in the context of existing development to the south and west and, to a lesser extent, to the north. This limits the sensitivity, remoteness and tranquillity of the site.
33. The site is not in a valued landscape in terms of the Framework. The introduction of built form into the countryside beyond the settlement edge would have a minor adverse change to the landscape – but this would be appreciated only in localised views. The extent of this change is agreed between the main parties.
34. The parties debated the meaning of the appeal decision at Spindle Drive in relation to any consideration of the current appeal site. However this is not a particularly worthwhile exercise as, quite naturally, that Inspector was considering the site before him at that time, and it is not clear what evidence was presented to him in relation to the current appeal site.
35. For the above reasons the proposal would cause limited harm to the character and appearance of the area, and would thereby conflict with the relevant development plan policies (to which I attach significantly reduced weight) summarised above.

Relationship with Wingerworth

36. Wingerworth is a large village with a number of local amenities, including primary schools, public houses, places of worship, convenience stores and a number of other shops. There are several formal and informal public open spaces. The extent of the facilities is agreed between the main parties⁵.
37. Whilst I accept that, due to the proximity of Chesterfield and the good transport links to that town, Wingerworth functions to an extent as a dormitory for Chesterfield and beyond. Nevertheless it has a reasonable range of services and facilities.
38. The issue therefore revolves around how the appeal site relates to Wingerworth and the facilities beyond.
39. Dealing first with bus transport, there are bus stops around one minute's walk from the entrance to the site. I appreciate that it would take some while to walk from the furthest part of the site to the bus stop, but the distance is not such as would be likely to put many people off using the bus. Once at the stop, there are two services, providing around three services an hour, to Wingerworth, Chesterfield and Clay Cross. Interchange facilities to other destinations and other modes of transport are present especially in Chesterfield.
40. Turning to walking and cycling, I note that only three amenities fall within a 1 km walk, but the great majority of the remainder are within 2 kms. I agree with the Council's argument that accessibility must be considered against the situation on the ground, including gradient, as opposed to two dimensional plan form. From what I saw on site some of the routes are sufficiently steep or poorly surfaced as to put some people off walking or cycling. In particular the route north up Hockley Lane is potentially unattractive in inclement weather, or for those with children, or the infirm. However alternative routes exist the shortest of which is only around 150m longer, and offer easier walking or cycling routes.
41. In dealing with this issue, I am mindful of the conclusion of my fellow Inspector dealing with the Spindle Road appeal. The access point to that development and the current appeal site are all intents and purposes the same – although I accept that the distance across the current appeal site is greater than which he was considering. I have no reason to disagree with his conclusion which was that, having regard to the location of the site and the accessibility to local facilities and services, the development was satisfactorily related to the settlement of Wingerworth. Nothing has been put before me to suggest that matters have significantly changed on the ground since that time.
42. Development should be focussed on locations which are sustainable and which offer genuine choices of transport modes. I find that the proposed development would offer a choice of transport modes – including walking, cycling and public transport. It would comply with the LP policies summarised above.

Other matters – housing land supply

43. As accepted by the appellant, the presence or absence of a five year housing land supply is not the determinative factor in this appeal. However the

⁵ Statement of Common Ground Paragraph 3.6

absence of such a supply would be an important additional material consideration in favour of the proposal.

44. National policy, as set out in the Framework, is that the supply of homes should be significantly boosted and it is important that a sufficient amount and variety of land can come forward where it is needed. To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. The use of the standard method is now enshrined in the Framework, and the PPG has been amended to explain its application.
45. The most important difference between the parties relates to whether the standard method should be employed. The Council's position is that it can demonstrate a five year supply of housing land, with an OAN based on the standard methodology. The Council is content to rely on 266 dpa, which is the minimum figure derived from the new methodology and the 2014 household projection figures. This approach captures any under-delivery⁶. On the basis of the Standard Method, on any view of the details of the supply and other matters⁷, it is agreed that a five year housing land supply exists.
46. However the appellant's approach is that the standard method should not be used. Their requirement position, using the approach which existed before the standard method emerged, leads to a shortfall in housing land supply, as clearly demonstrated in their evidence.
47. The parties agreed at the Inquiry that, when the new standard methodology for assessing housing need was introduced, it was for the purpose of simplifying the process and making it more transparent. A number of matters have been put forward as potential exceptional circumstances which, it is contended, lead to the conclusion that the standard method should not be used in this case.
48. The appellant has suggested that the new household projections cast doubt on the standard methodology. It is clear that the recently produced 2016 projections may have a potentially significant effect on the national picture. However for North East Derbyshire the impact appears to be less pronounced. The methodology and the data underpinning it may well be changed, as was flagged up when the Framework and the revised PPG were published and as is illustrated by the recent consultation on draft changes to planning policy and guidance (including the standard method of assessing local housing need). However the fact that the government intends to review the methodology in the light of the 2016 population data is not a good reason for departing from the standard approach at this time. This position was clearly appreciated when the new methodology was introduced. As matters stand the national policy position is clear.
49. The transitional provisions in the Framework allow for emerging plans submitted up to January 2019 to be examined in accordance with the approach set out in the former Framework. That is the case in North East Derbyshire, and the Council is relying on a different OAN (330 dpa) at that examination to

⁶ Based on the new projections the Council states that the figure would be 234 dpa.

⁷ Appellant's supplementary statement Table 3.1

that which was put forward in relation to this appeal. However the DLP figure using the methodology of the previous Framework is as yet untested.

50. The appellant's concern is that this could lead to a perverse position in that this appeal decision and the DLP examination will occur at around the same time, and the results could be founded on different approaches. However the Framework is clear that that the transitional provisions apply to local plan examinations and not to s78 appeals, where the new Framework is immediately applicable. Whilst appreciating the argument, this eventuality will doubtless have been foreseen when the new Framework and revisions to PPG were produced.
51. Overall, the standard methodology was introduced to provide clarity and consistency, and with this background circumstances to justify departing from the new methodology would have to be truly exceptional. It is highly unlikely that this is the only instance where the determination of an appeal will occur around the time of a local plan examination, which will be considering the wider picture on a different basis. This does not represent a circumstance so exceptional as to justify a departure from the standard methodology.
52. There remain other matters in dispute between the parties, including the use of blended Experian and OBR or solely OBR figures, affordable housing uplift, and details of the supply. However, given my conclusion on the applicability of the standard methodology, it is not necessary to pursue these matters further as it is agreed that a five year housing land supply exists using the standard method approach.
53. Therefore the housing land position does not trigger the 'tilted balance' arising from paragraph 11 of the Framework. However it is important to note that the presence of a five year supply of housing land is not a ceiling and the provision of general needs housing is a significant material consideration in light of national policy to significantly boost the supply of homes.
54. In addition, the need for affordable housing is agreed by the parties to be acute and significant. The Council criticised some of the details of the appellant's approach towards consideration of affordable housing at the Inquiry, but it is clear that there is a very significant need for affordable housing in the District, and that there is very considerable doubt as to delivery. Even if one accepts the Council's position that there is a pipeline of affordable housing coming forward in Wingerworth - which is far from clear - the provision of 40% affordable housing in the appeal scheme is a benefit. This is a very significant material consideration weighing in favour of the appeal scheme.

Other matters – traffic, flooding/sewage, ecology, ownership

55. Residents are very concerned at the impact of construction traffic on highway safety, based on experiences with the Spindle Road development. I fully understand these concerns but, given the possibility of a condition related to a Construction Method Statement, I am confident that these issues can be significantly ameliorated.
56. Residents graphically explained the problems experienced in the area in relation to sewage issues. Whilst I sympathise with the concerns of local people, there is no technical evidence to support their fear that the proposal would worsen the existing position. Surface water would eventually drain to

the watercourse and only foul water flows would enter the sewer – but this would be downstream of the location of the majority of issues reported by residents.

57. In terms of ecology, I have nothing which persuades me to depart from the agreement between the main parties that there would be no detrimental impact, and that the proposal could provide a net gain in biodiversity.
58. There was a specific concern raised related to the ownership of a dry stone wall to the north of the site. However this is a land ownership issue and is not a matter on which this appeal should turn.
59. All these matters and others are agreed between the main parties, as set out in the Statement of Common Ground⁸. I have no substantial evidence to depart from that position.

Conditions and planning obligation

60. I have considered the conditions put forward, without prejudice, by the parties in the light of PPG.
61. Along with the submission of reserved matters, a number of other details (surface and foul water, levels, planting, play area, climate change, coal mining and biodiversity) need to be submitted prior to the development commencing, to ensure a satisfactory standard of development (1, 2, 12, 20, 21, 22, 23, 24, 25, 32, 33, 35). For the avoidance of doubt, a condition specifying the approved plans is necessary, as is a condition limiting the number of dwellings (3 and 4).
62. For heritage reasons, a condition relating to archaeology is necessary (5).
63. In the interests of the health of future occupiers, a series of conditions addressing potential contamination is necessary (6 – 11).
64. For ecological reasons, external lighting and the timing of the development needs to be controlled. A Construction Environmental Management Plan and a Landscape and Ecological Mitigation and Management Plan need to be approved and implemented (26, 27, 28, 31).
65. To encourage local construction employment, a condition is needed to require a scheme for local recruitment (34).
66. Various highway matters need to be approved and implemented in the interests of highway safety (13, 14, 15, 17). For this reason and in relation to the amenity of nearby residents a Construction Method Statement needs to be prepared and implemented and the hours of construction controlled (28, 29, 30).
67. In the interests of encouraging sustainable modes of transport a Travel Plan needs to be submitted to and approved by the Council, and subsequently implemented (16).
68. As discussed above, a condition is necessary to limit the height of the development in the most prominent part of the site, in the interests of the appearance of the scheme (18).

⁸ Section 8

69. A condition was put forward which would require the provision of public art as part of the development (19). Although no specific justification was provided, there is some policy support for this matter and it is agreed that this should be the subject of a condition.
70. A suggested condition regarding Biodiversity Metric Calculations is unnecessary as this should form part of the application for approval of details.
71. As noted above a Planning Obligation has been submitted. This provides:
- 40% affordable housing in accordance with LP policy H6 and the guidance in the Affordable Housing SPD.
 - A public art contribution in line with LP policy BE5.
 - Public open space and a Locally Equipped Area of Play (LEAP) in accordance with LP policy R5 and the Council's Recreational and Open Space SPD. The Obligation deals with provision and future maintenance. The proposal includes around 1.76 hectares of public open space, as well as the LEAP.
 - An education contribution. Evidence to justify the contribution has been provided by the County Council, including detailed information on the ability of local schools to accommodate the additional children arising from the development. Confirmation has been given that the number of contributions has not exceeded the CIL Pooling Regulations
 - Highways contributions related to improvements along the A61 corridor. Evidence has been submitted regarding the need for the contribution and its relationship with the proposal, along with confirmation that the number of contributions has not exceeded the CIL Pooling Regulations.
 - Healthcare contributions. This would be directed to the Wingerworth Medical Centre, and evidence has been provided to explain the amount of the contribution.
 - Travel Plan. A monitored Travel Plan is required in relation to LP policy T4.
72. The CIL Compliance Statement and other evidence demonstrate that the provisions of the Obligation are directly related to the proposed development and are necessary to make the scheme acceptable in planning terms. Therefore the Obligation meets the policy in paragraph 56 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. Some of the provisions are designed to mitigate the impact of the proposal and these elements therefore do not provide benefits in favour of the appeal. However other matters, most notably the provision of affordable housing, weigh in favour of the appeal.

Planning balance and conclusion

73. In conclusion the proposal does not conform to the relevant spatial policies of the LP, as the site is outside the SDL and is in the open countryside in policy terms. It would cause limited harm to the character and appearance of the area, as would any built development on a greenfield site. However the LP policies which are most important in determining the appeal are out-of-date and are afforded significantly reduced weight.

74. The location is sustainable and the proposal offers genuine choices of transport modes and complies with the relevant policies.
75. Although I have concluded that there is a five year housing land supply in the District, based on the standard methodology, this is not a ceiling and the provision of general needs housing is a significant material consideration in the light of national policy. In addition the provision of 40% affordable housing is a very significant material consideration weighing in favour of the appeal scheme.
76. There would also be some limited benefits arising from construction employment, indirect economic benefits, and increased local spend.
77. As explained above, the housing land supply position does not trigger the so called 'tilted balance' in paragraph 11 of the Framework. However, as accepted by the Council, this is triggered by the fact that the spatial strategy and settlement boundaries are out of date. Permission should therefore be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits. In this case the adverse impacts do not come close to outweighing the benefits.
78. For the reasons given above I conclude that the appeal should be allowed.

P. J. G. Ware
Inspector

CONDITIONS

- 1) Applications for approval of reserved matters are required before development can start and shall be made to the local planning authority before the expiration of three years from the date of this permission. The development hereby permitted shall be started within two years from the date of the approval of the last of the reserved matters to be approved.
- 2) Approval of the details of the layout, appearance of the buildings and landscaping of the site (called "the reserved matters") shall be obtained from the local planning authority in writing before any development is started.
- 3) The development hereby approved shall be carried out in accordance with the following plans: Location plan 2A; Draft general arrangement 02072-03F; Revised illustrative layout Rev B; Drawing 17.
- 4) The development hereby approved shall not exceed 180 dwellings.
- 5) No development shall take place until a Written Scheme of Investigation of archaeological work has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of the significance of the site, research questions and:
 - The programme and methodology of site investigation and recording
 - The programme for post investigation assessment
 - Provision for analysis of the site investigation and recording
 - Provision for publication and dissemination of the analysis and records of the site investigation
 - Provision for archive deposition of the analysis and records of the site investigation
 - Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation

No development shall take place other than in accordance with the archaeological Written Scheme of Investigation.

The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

- 6) Before the commencement of the development hereby approved a Phase I contaminated land assessment shall be undertaken and approved in writing by the local planning authority. The contaminated land assessment shall include a desk-study with details of the history of the site's use including:
 - the likely presence of potentially hazardous materials and substances
 - their likely nature, extent and scale
 - whether or not they originated from the site

- a conceptual model of pollutant-receptor linkages
 - an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments
 - details of a site investigation strategy (if potential contamination is identified) to effectively characterise the site based on the relevant information discovered by the desk study and justification for the use or not of appropriate guidance. The site investigation strategy shall, where necessary, include relevant soil, ground gas, surface and groundwater sampling/monitoring as identified by the desk-study strategy
- 7) The site investigation shall be carried out by a competent person in accordance with the current U.K. requirements for sampling and analysis. A report of the site investigation shall be submitted to the local planning authority for approval.
- 8) Before commencement of the development hereby approved, where the site investigation identifies unacceptable levels of contamination, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the local planning authority. The submitted scheme shall have regard to CLR 11 and other relevant current guidance. The approved scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 9) None of the dwellings hereby approved shall be occupied until the approved remediation works have been carried out in full in compliance with the approved methodology and best practice.
- 10) If during the construction of the development hereby approved any suspected areas of contamination are discovered, which have not previously been identified, then all works shall be suspended until the nature and extent of the contamination is assessed and a report submitted and approved in writing by the local planning authority and the local planning authority shall be notified as soon as is reasonably practicable of the discovery of any suspected areas of contamination. The suspect material shall be re-evaluated through the process described above.
- 11) Upon completion of the remediation works required by conditions above a validation report prepared by a competent person shall be submitted to and approved in writing by the local planning authority. The validation report shall include details of the remediation works and Quality Assurance/Quality Control results to show that the works have been carried out in full and in accordance with the approved methodology. Details of any validation sampling and analysis to show the site has achieved the approved

remediation standard, together with the necessary waste management documentation shall be included.

- 12) Before the commencement of any operations on site, a scheme for the disposal of highway surface water via a positive gravity-fed system, discharging to an outfall or public sewer, highway drain or watercourse, shall be submitted to and approved by the local planning authority. The development shall be implemented in accordance with these details.
- 13) Before the commencement of any operations on site, detailed designs shall be submitted to the local planning authority for written approval indicating the design and construction of the proposed access road bridge structure, the proposed works being completed in accordance with the approved scheme prior to the occupation of any dwelling hereby approved and maintained throughout the life of the development free from any impediment.
- 14) Before any other operations are commenced (excluding site clearance and the erection of the bridge to allow access), space shall be provided within the site curtilage for storage of plant and materials/site accommodation/loading and unloading of goods vehicles/parking and manoeuvring of site operatives and visitors vehicles, laid out and constructed in accordance with detailed designs to be submitted in advance to the local planning authority for written approval and retained throughout the contract period in accordance with the approved designs free from any impediment.
- 15) Before any other operations are commenced, (excluding condition numbers 11 - 13 above) a new estate street junction shall be formed to Spindle Drive located, designed, laid out, constructed and provided with 2.4m x 25m visibility splays in either direction, all as agreed in writing with the local planning authority, the area in advance of the sightlines being levelled, forming part of the new street constructed as footway and not forming part of any plot or other sub-division of the site.
- 16) No dwelling shall be occupied until a Travel Plan has been submitted to and approved by the local planning authority. The Travel Plan shall set out proposals (including a timetable), to promote travel by sustainable modes which are acceptable to the local planning authority, and shall be implemented in accordance with the timetable set out therein. Reports demonstrating progress in promoting sustainable transport measures shall be submitted annually, on each anniversary of the date of the planning permission, to the local planning authority for approval for a period of five years from first occupation of the development.
- 17) Throughout the entire period of construction, wheel washing facilities shall be provided within the site in a location and of a form that shall be submitted to and be approved in writing by the local planning authority before development commences.
- 18) The dwellings built within the area identified in purple on Drawing 17 shall be no taller than 1 and a half storeys in height.

- 19) Before the development hereby approved starts, a scheme for the provision of public art on the site, including a timetable for implementation of the scheme, shall be submitted to and approved in writing by the local planning authority. The public art shall thereafter be completed in full in accordance with the approved scheme and timetable and shall be retained as such thereafter.
- 20) Details of the existing ground levels, proposed finished floor levels of the dwellings and the proposed finished ground levels of the site, relative to a datum point which is to remain undisturbed during the development, shall be submitted to and approved in writing as part of the reserved matters approval. The development shall then be carried out in accordance with the approved details and the levels shall be retained as such thereafter.
- 21) All planting, seeding or turfing in the approved scheme of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 22) Before development starts, and as identified on the submitted indicative masterplan, a plan identifying a locally equipped area of play shall be submitted to and approved in writing by the local planning authority. As a minimum it shall include details of equipment to be erected, material used, including flooring and boundary treatments. The details as approved shall be built before more than half of the dwellings on site are occupied.
- 23) Before development starts a scheme for the provision of surface water drainage works, including details of any balancing and off-site works, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full before the occupation of the first dwelling and shall be retained as such thereafter.
- 24) Before development starts, a scheme for the provision of foul drainage works shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full before the occupation of the first dwelling and shall be maintained as such thereafter.
- 25) The site shall be developed with separate systems of drainage for foul and surface water on and off site.
- 26) No development shall commence until a detailed external lighting strategy has been submitted to and approved in writing by the local planning authority. Such approved measures shall be implemented in full and retained as such thereafter. No other lighting shall be constructed or implemented on the site.
- 27) No site clearance shall take place between 1st March and 31st August inclusive, unless a qualified ecologist has undertaken a detailed check of the site for active birds' nests immediately before work is commenced and provided written confirmation that no birds will be harmed and/or that there

are appropriate measures in place to protect nesting birds. Any such written confirmation should be submitted and approved by the local planning authority.

28) No development shall take place (including ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following incorporating the measures outlined within Section 4 of the ecological report:

- Risk assessment of potentially damaging construction activities
- Identification of biodiversity protection/buffer zones to include the Brook, hedgerows, woodland, trees other habitat as required
- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts on habitats and species during construction
- The location and timing of sensitive works to avoid harm to habitats and species
- The times during construction when specialist ecologists need to be present on site to oversee works
- Responsible persons and lines of communication
- The role and responsibilities on site of an ecological clerk of works or similarly competent person
- Use of protective fences, exclusion barriers and warning signs

The approved CEMP shall be adhered to and implemented throughout the construction period in accordance with the approved details.

29) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved by the local planning authority. The Statement shall provide for:

- Details of construction workers' accommodation
- The storage of plant and materials
- Parking and manoeuvring areas for vehicles
- Loading and unloading areas

The approved CMS shall be adhered to and implemented throughout the construction period in accordance with the approved details.

30) No construction work shall be carried out or deliveries made to the site outside of the hours of 0730 to 1800 hours Monday to Friday and 0730 to 1200 on Saturday. No construction work or deliveries shall be carried out/made at any time on Sundays or Public Holidays.

31) A Landscape and Ecological Mitigation and Management Plan (LEMMP) for all retained habitats within the development site shall be submitted to and be approved in writing by the local planning authority as part of any reserved matters application. The plan should incorporate the details provided in the ecological appraisals and the content of the plan should include the following:

- Description and evaluation of features to be managed/enhanced or created
- Ecological trends and constraints on site that might influence management
- Aims and objectives of management
- Appropriate management options and methods for achieving aims and objectives
- Timescales
- Prescriptions for management actions
- Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period)
- Details of the body or organization responsible for implementation of the plan
- Ongoing monitoring and remedial measures

The LEMMP shall be implemented in accordance with the approved details.

- 32) The details to be submitted to and approved in writing by the local planning authority as part of the reserved matters shall include a scheme for mitigating climate change through the sustainable design and construction of the dwellings including the provision of sources of renewable energy. Thereafter the approved climate change scheme shall be implemented in full and retained as such thereafter.
- 33) Prior to the commencement of development further investigation works with regard to the coal mining legacy shall be submitted to and approved in writing by the local planning authority. The works shall include the submission of a scheme of intrusive site investigation works. The works as approved shall be completed and a report of the findings submitted to the local planning authority for written approval. Any remedial works as agreed shall be implemented in full.
- 34) Before the development hereby approved starts a scheme for the recruitment of employees for the construction period of the development hereby approved shall be submitted to and approved in writing by the local planning authority. Thereafter the scheme shall be operated in accordance with the approved details.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Mitchell of Counsel	Instructed by the Council's Planning Manager
He called	
Ms L Chapman MSP Cert PLAP	Principal Planning Officer, Policy
Mr N Ireland BA(Hons) MTP MRTPI	Director, Icen Projects
Mr G Bradford BSc(Hons) MRTPI PGDipURP MA	Director, Planning and Environment Studio

FOR THE APPELLANT:

Mr C Young QC	Instructed by Mr P Hill
He called	
Mr R McWilliam DipLA CMLI	Director of Landscape, Barton Willmore
Mr A Moger BA(Hons) MA MRTPI	Tetlow King Planning
Mr M Nettleton BSc MCIHT	Joint Managing Director, Phil Jones Associates
Mr C Austin-Fell BA(Hons) MRTPI MTP	Associate RPS Planning and Development
Mr D Owen BA(Hons) MTPL MRTPI	EFM
Mr R Chalmers BSc ME MICE	Director of Engineering, RPS Group
Mr S Clyne LCP Dip SMS Cert Ed MAE	EFM
Mr P Hill BA(Hons) MA MRTPI	Director, RPS Planning and Development

INTERESTED PERSONS:

Mrs L Carter	Local resident
Mrs Y Piggott	Local resident
Cllr D Ruff	Chair, Wingerworth Parish Council
Mr K Boulden	Local Resident
Mrs D Nash	Local resident

INQUIRY DOCUMENTS

1	List of persons present at the Inquiry
2	CIL Compliance Statement
3	Mrs Piggott's statement
4	Mrs Nash's statement
5	Mr Boulden's statement
6	Mrs Carter's statement
7	Cllr Ruff's statement
8	Appellant's table on 2018 OBR Economic Activity Rates
9	Mr Winter's photograph of 2014 flooding

10	County Council Affordable Housing Completions (run 8/18)
11	Requirement/Supply Options summary
12	Correspondence related to Former Avenue Site
13	Extract from PPG on availability
14	Pioneer House affordable completions
15	Appeal decision (3180400) at Watlington Road, Benson
16	Appeal decision (3164961) at Langford Road, Henlow (and related decisions)
17	EWCA Civ 1146 [2016] Gladman Developments Ltd & Daventry District Council and SSCLG
18	Mr Bradford's note on the Planning Balance
19	Note by Mrs Carter from 2013 Inquiry
20	Response to residents by Mr Clyne
21	Response to residents by Mr Chalmers
22	Mr Nettleton's plan of routes to amenities
23	Response to residents by Mr Nettleton
24	Affordable housing clarification
25	Email from Mr Owen regarding ownership of dry stone wall
26	Note related to Mrs Piggott's letter on ecology
27	DLP Inset plan
28	Response to Council's affordable housing clarification note
29	Note on housing provision at Nethermoor Road
30	Requirement/supply options table (amended)
31	Clarification of minor sites dispute
32	Closing submissions by the Council
33	Closing submissions by the appellant
34	Council's further submissions on revised PPG and Household projections
35	Appellant's further submissions on revised PPG and Household projections

CORE DOCUMENTS

A	PLANNING APPLICATION DOCUMENTS, COMMITTEE REPORTS AND DECISION NOTICE
A1	Not used
A2	Covering Letter (03.03.17)
A3	Notice Letter 03.03.17 (Artisan and Mr. Needham)
A4	Application Forms 03.03.17
A5	AAH4960_01_D_Illustrative Masterplan;
A6	AAH4960_02_A_Location Plan;
A7	AAH4960_04_D_Illustrative Street Scene;
A8	0272-03-F General Arrangement;
A9	2000_REV2 Topographical Survey;
A10	Design and Access Statement Rev A (RPS);
A11	Building for Life 12 Assessment Rev A (RPS);
A12	JBB7419.C5050 Planning Statement, including Statement of Community Involvement and draft S106 Heads of Terms (RPS) 03.03.17
A13	2072_A Transport Assessment (Phil Jones Associates);
A14	2072_A Framework Travel Plan (Phil Jones Associates);
A15	Landscape and Visual Impact Assessment Rev 1 (Barton

	Willmore);
A16	OXF90695 Ecological Appraisal V3 (RPS);
A17	AAC5338 Flood Risk Assessment (RPS);
A18	JKK9312 Arboricultural Impact Assessment (RPS);
A19	JAC23051 Desk-Based Baseline Heritage Assessment (RPS);
A20	JER6605 Coal Mining Risk Assessment (RPS).
A21	Wingerworth Drainage Response (19 June 2017)
A22	Addendum Design & Access Statement (RPS) (July 2017)
A23	AAH4960_09_RevA_Revised Illustrative Masterplan (RPS) (July 2017)
A24	AAH4960_10_RevA_Revised Illustrative Layout (RPS) (July 2017)
A25	Covering Letter, 26 July 2017
A26	02675-P-001-P3 - Proposed Re-Alignment Long Section (PJA Engineering) (23 March 2017) ¹
A27	AAH4960_09_RevB_Revised Illustrative Masterplan (RPS) (July 2017) ²
A28	AAH4960_10_RevB_Revised Illustrative Layout (RPS) (July 2017)
A29	AAH4960_11_Rev- Illustrative Land Use Layout (RPS) (July 2017)
A30	OXF9065 Wingerworth Addendum Biodiversity Report V1 (RPS) (4 September 2017)
A31	NEDDC Planning Committee, 26 September 2017
A32	Geophysical Survey Report (SUMO Services Ltd) (April 2017)
A33	NEDDC Planning Committee, 26 September 2017 – Minutes
A34	NEDDC Planning Committee, 12 December 2017
A35	AAH4960_03_RevA_Illustrative Layout
A36	NEDDC Planning Committee, 12 December 2017 – Minutes
A37	NEDDC Decision Notice, 14 December 2017
B.	APPEAL DOCUMENTS
B1	Appeal Forms & Grounds of Appeal
B2	LPA Appeal Questionnaire
B3	LPA Statement of Case
B4	Appellant Statement of Case 22 December 2017
B5	Letter to NEDDC dated 7 March 2018 from RPS re clarification for Reason for Refusal 3
B6	Email from NEDDC withdrawing three of the reasons for refusal, 20 March 2018
B7	Letter dated 19 June 2018 from RPS to NEDDC relating to future Local Plan Examination
B8a	Letter dated 29 June 2018 from RPS to NEDDC regarding Condition 18
B8b	Drawing 17 Building heights and massing plan sent in conjunction as CD B8a letter regarding Condition 18
B9	Statement of Common Ground (July 2018)
B10	List of proposed planning conditions (July 2018) – To follow
B11	Section 106 Agreement (July 2018) – To follow
C.	GOVERNMENT GUIDANCE
C1	National Planning Policy Framework (2012)
C2	National Planning Policy Framework – Draft text for consultation (March 2018)
C3	(National) Planning Practice Guidance (Extracts)
C4	Draft Planning Practice Guidance – Draft updates to planning

	guidance which will form part of the Government's online Planning Practice Guidance (March 2018)
C5	Institution of Highways and Transportation – Guidelines for Providing for Journeys on Foot (2000)
C6	Housing White Paper 'Fixing Our Broken Housing Market', February 2017
C7	Guidelines for Providing for Journeys on Foot – Institution of Highways and Transportation (2000)
C8	Design Guidance - Active Travel (Wales) Act 2013.
C9	Manual for Streets
C10	Environment Agency (EA) Flood Risk and Drainage guidelines
C11	Environment Agency - Flood Zone Classification.
C12	Guidelines for Providing for Journeys on Foot (Institute for Highways and Transportation, 2000)
C13	Home to School Travel and Transport Guidance: Statutory Guidance for Local Authorities (Department for Education, 2014)
C14	Inclusive Mobility (Department for Transport, 2005)
C15	LTN 1/04 Policy, Planning and Design for Walking and Cycling (Department for Transport, N.D.)
C16	Local Cycling and Walking Infrastructure Plans Annex C (Department for Transport, 2017)
C17	Manual for Streets 2 (Chartered Institute of Highways and Transportation, 2010)
C18	Planning Policy Guidance 13: Transport (Communities and Local Government, 2011)
C19	PAS OAN & Housing Targets Technical Advice Note
C20	Neighborhood Planning Written Ministerial Statement December 2016
C21	Fixing the Foundations; Creating a More Prosperous Nation
D.	APPEAL DECISIONS AND COURT JUDGEMENTS
D1	Bishops Cleeve Secretary of State July decision, APP/G1630/A/11/2146206 & APP/G1630/A/11/2148635 (16 July 2012)
D2	The House of Lords Select Committee on Economic Affairs 'Building more homes' report, (July 2016)
D3	Horse and Jockey, Brackenfield Lane, Wessington. DE55 6DW, APP/R1038/W/17/3180085 (15 November 2017)
D4	Land at Gaydon Road, Bishop's Itchington, Southam, Warwickshire, APP/J3720/A/13/2202961 (29 January 2014)
D5	Land to the rear of 61-119 Nethermoor Road and opposite 15-21 Deerlands Road, Wingerworth (Phase 1), APP/R1038/A/13/2192646 (20 August 2013)
D6	Gladman vs Daventry District Council and Secretary of State for Communities and Local Government, [2016] EWCA Civ 1146 (23 November 2016)
D7	Marsh Green Estates Ltd. Land at the junction of Narrowleys Lane and Moor Road, Ashover, APP/R1038/W/15/3133527 (19 December 2016)
D8	APP EWHC827 Phides v Secretary of State for Communities and Local Government and Shepway District Council and David Plumstead (26 March 2015)
D9	APP/U4230/A/11/2157433, Burgess Hill Secretary of State

	Decision, (16 July 2012)
D10	Land north of Upper Chapel, Launceston, APP/D0840/A/13/2209757, (11 April 2014)
D11	Yate, Appeal Decision APP/P0119/A/12/2186546 (8 April 2013)
D12	Land adjacent to Cornerways, High Street, Twynning, Tewksbury APP/G1630/W/14/3001706 (13 July 2015)
D13	Appeal Decision: APP/R1038/W/15/3133527 – Narrowleys Lane, Ashover (19 December 2016)
D14	Appeal Decision: APP/R1038/W/17/3183949 – Egstow Street, Clay Cross (2 February 2018)
D15	Appeal Decision: APP/R1038/W/17/3189171 – Back Lane, Wessington (23 March 2018)
D16	Hunston Properties Ltd. vs. (1) Secretary of State for Communities and Local Government (2) St Albans City and District Council (5 September 2013)
D17	West Berkshire v (1) Secretary of State for Communities and Local Government (2) HDD Burghfield Common Ltd (16 February 2016)
D18	Oadby and Wigston Borough Council v (1) Secretary of State for Communities and Local Government (2) Bloor Homes Ltd (27 October 2016)
D19	Stratford on Avon District Council v Secretary of State for Communities and Local Government and (1) J S Bloor (Tewkesbury) Limited (2) Hallam Land Management Limited (3) Rase (Residents Against Shottery Expansion) (18 July 2013)
D20	City and District Council of St Albans v The Queen (on the application of) Hunston Properties Limited Secretary of State for Communities and Local Government and anr. (12 December 2013)
D21	(1) Gallagher Estates Limited (2) Lioncourt Homes Limited v. Solihull Metropolitan Borough Council (30 April 2014)
D22	Satnam Millennium Limited v Warrington Borough Council (19 February 2015)
D23	Kings Lynn West Norfolk v SSCLG (July 2015)
D24	Appeal Decision: APP/W0340/A/14/2228089- Land at Firlands Farm, Hollybush Lane. (6 July 2015)
D25	Appeal Decision: APP/V0728/W/15/3018546- Longbank Farm, Ormesby (9 March 2016)
D26	Appeal Decision: APP/C3105/A/14/2226552 Land at Sibford Road, Hook Norton (7 December 2015)
D27	Appeal 3171692, Land South of Marroway, Aylesbury, Bucks (30 November 2017)
D28	Secretary of State decision, Pulley Lane, Droitwich Spa (July 2014)
D29	Secretary of State decision, East Leake, Nottinghamshire (March 2008)
D30	Secretary of State decision, Sketchley House, Burbage (November 2014)
D31	Appeal decision, Campton Road, Shefford (2 September 2015)
D32	Appeal decision, Oving Road, Chichester (18 August 2017)
D33	Appeal Decision: APP/R1038/W/17/3188198 Land East of Fold House Farm (25 June 2018)

D34	Appeal Decision: APP/C3430/A/12/2189442 Land off Elmwood Avenue, Essington, WV11 2DH (11 April 2013)
D35	Appeal Decision: APP/D2320/A/12/2172693 Land to the north and west of Lucas Lane, Whittle-le-Woods, Chorley, PR6 7GY (19 September 2012)
D36	Appeal Decision: APP/D0840/A/13/2209757 Land north of Upper Chapel, Launceston PL15 7DW (11 April 2014)
D37	Appeal Decision: APP/A0665/A/14/2226994 Land at Fountain Lane, Davenham, Cheshire (3 September 2015)
D38	14/00766/OL Appellants Proof of Evidence- Statement of Common Ground for APP/R1038/W/15/3133527 – Narrowleys Lane, Ashover (19 December 2016)
D39	Dartford BC v SoS DLG 2014: EWHC 2636 (24 June 2014)
D40	Appeal Decision: APP/T2405/A/13/2193758 Land east of Springwell Lane, Whetstone, Leicestershire LE8 6LT (01 August 2013)
E.	LOCAL PLAN; EMERGING LOCAL PLAN; EMERGING NEIGHBOURHOOD PLAN; SUPPLEMENTARY PLANNING DOCUMENTS AND EVIDENCE BASE
E1	North East Derbyshire Local Plan Inspector's Report (2005)
E2	North East Derbyshire Local Plan 2001-2011 (November 2005)
E3	North East Derbyshire Local Plan Proposals Map Inset F (November 2005)
E4	Developer Contributions SPD (September 2007)
E5	Recreation and Open Space SPD (October 2007)
E6	Direction from the Secretary of State Letter of Karin Staples/Direction under Paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004/Schedule of saved Policies (November 2008)
E7	Access for All SPD (July 2008)
E8	Affordable Housing SPD (January 2008)
E9	Sustainable Buildings SPD (November 2011)
E10	North East Derbyshire Interim Sustainable Buildings Policy (May 2009)
E11	Successful Places SPD, A Guide to Sustainable Housing Layout and Design (December 2013)
E12	NEDDC Cabinet – Proposed Interim Housing Policy for New Housing Development in North East Derbyshire & Minutes (17 March 2010)
E13	Interim Planning Policy for New Housing Development in North East Derbyshire (March 2010)
E14	North East Derbyshire Core Strategy (Local Plan Part 1: Strategic Policies) (August 2012)
E15	North East Derbyshire Core Strategy: Spatial Portrait, Vision and Strategic Objectives (August 2012)
E16	North East Derbyshire Core Strategy: Green Belt Review (August 2012)
E17	Derbyshire County Council Developer Contributions Protocol (September 2012)
E18	North East Derbyshire Local Plan (2011-2031) Part 1 Initial Draft (Site allocations not included) (February 2015)
E19	Local Plan Position Statement (November 2016)

E20	North East Derbyshire Local Plan (2011-2033) Consultation Draft (February 2017)
E21	North East Derbyshire Local Plan (2011-2033) Consultation Draft Wingerworth Policies Map (February 2017)
E22	North East Derbyshire Local Plan (2014-2034) Consultation Publication Draft (February 2018)
E23	North East Derbyshire Settlement Development Limits Review (January 2018)
E24	Wingerworth Parish Draft Submission Neighbourhood Plan (July 2017)
E25	Wingerworth Neighbourhood Plan 2016 – 2033 – Referendum Version (April 2018)
E26	Cabinet Report and Examiner's Report re Wingerworth Neighbourhood Plan (11 April 2018)
E27	NEDDC Wingerworth Neighbourhood Plan: Decision Statement (2018)
E28	Wingerworth Neighbourhood Planning Referendum: Declaration of Result (14 June 2018)
E29	North East Derbyshire District Council, Settlement Hierarchy (December 2016)
E30	Settlement Hierarchy Study Update (December 2017)
E31	Not used
E32	Not used
E33	North East Derbyshire Local Development Scheme (LDS8) (18 January 2018)
E34	Derbyshire County Council Developer Contributions Protocol (2018)
E35	North East Derbyshire "Successful Places" Guidance (2013)
E36	North East Derbyshire 2011 HNMA Final Report 2012
E37	North East Derbyshire District Council Record of Decision Taken by the Chief Executive Officer 09 July 2018
E38	Letter from Secretary of State to NEDDC re Local Plan Intervention (23 March 2018)
E39	Wingerworth Neighbourhood Plan, Final Version (July 2018)
E40	Extract of Cabinet Report – North East Derbyshire Local Plan: Publication Draft and Proposals for Public Consultation followed by Submission to the Secretary of State (14 February 2018)
F	REGIONAL DOCUMENTS
F1	East Midlands Regional Plan (March 2009), Extract
F2	Derby and Derbyshire Joint Structure Plan (1991 – 2011)
F3	Strategic Housing Market Assessment, Objectively Assessed Need (November 2013)
F4	North Derbyshire and Bassetlaw Housing Market Assessment, Objectively Assessed Need Update (October 2017)
F5	Considering North East Derbyshire's OAN (GL Hearn) (February 2018)
F6	Derbyshire County Council Local Flood Risk Management Strategy (July 2015)
F7	Derbyshire County Council Preliminary Flood Risk Assessment (May 2011)
F8	Housing Need in the North Derbyshire and Bassetlaw HMA - Sensitivity Testing Analysis (March 2014)

G	HOUSING LAND SUPPLY INFORMATION
G1	Lichfields document Start to Finish How Quickly do Large-Scale Housing Sites Deliver? (November 2016)
G2	Housing Land Supply Completions (Major Sites)
G3	North East Derbyshire District Council, Five Year Land Supply (2017)
G4	NEDDC Housing Topic Paper (January 2018)
G5	NEDDC Housing Completions 2017-2018 and Housing Commitments at 31/03/2018 paper
G6	NEDDC, Five Year Housing Land Supply Statement (May 2018)
G7	Not used
G8	RTPI Research Report No. 1 - Planning for housing in England 2014
G9	OBR Fiscal Sustainability Report 2017
G10	SWDP Inspectors Report Interim Findings 2016
G11	Report on the Examination into the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (26 October 2017)
H	OTHER SUPPORTING INFORMATION
H1	Local Plan: Written Statement – HCWS254 (Local Plans) made by Savid Javid. 16 November 2017
H2	Guidelines for Landscape & Visual Impact Assessment 3rd Edition (April 2013)
H3	Sustainable Community Strategy for Chesterfield and North East Derbyshire 2009-2026
H4	NEDDC Housing and Economic Development Strategy 2015-2020
H5	NEDDC Corporate Plan 2015-2019
H6	NEDDC Growth Strategy 2014-2024 (2014)
H7	North Derbyshire Homeless Strategy and Homeless Review 2016-2021
H8	Census for Wingerworth Parish 20113
H9	HBF Housing Calculator4
H10	Council Tax Bands for NE Derbyshire for 2017-18
H11	Annual Monitoring Report (AMR13) (1 April 2016 – 31 March 2017) (February 2018)
H12	OPUN Design Review (19 June 2016)
H13	NEDDC's Green Belt Paper Topic Paper (Jan 2018)
H14	NEDDC's Settlement Role Update (December 2017)
H15	NEDDC' Local Development Scheme (November 2015)
H16	Local Plan Timetable (Updated June 2016)
H17	NEDDC website wording about stalled progress on the emerging NEDDC Local Plan (2011-2033) (22 November 2017)
H18	Not used
H19	North East Derbyshire Committee Report 20.03.18 concerning reasons 1 and 5 of the decision notice and minutes.
H20	CIRIA C753, Sustainable Urban Drainage Systems (SuDS Manual)
H21	3rd Party Representations to the Appeal
H22	BRE:365 soakaways infiltration rates testing (2007)
H23	Consultation responses to Outline Application
H24	Active Travel Wales Act 2013 Design Guidance Appendix B Walking Route Audit Tool (Welsh Government, 2013)
H25	The Avenue Area Strategic Framework (North East Derbyshire

	District Council, 2013)
H26	Not used
H27	North East Derbyshire Employment Land Review Update (2017) - Lichfields
H28	Employment Land Review Update - Economic Growth Analysis 2018 – Lichfields
H29	The Sheffield City Region Integrated Infrastructure Plan – Sectoral and Local Authority Distribution of SCR 70,000 Jobs Target, Assumptions Report FINAL REPORT (2015) - Ekosgen.
H30	North East Derbyshire Whole Plan Viability Assessment (2018) – Bailey Venning Associates Ltd.
H31	The Role of Land Pipelines in the UK Housebuilding Process (2017) - ChamberlainWalker and Barratt Developments PLC
H32	Duty to Cooperate Statement of Compliance

Appeal Decision

Inquiry Held on 27-30 April, 4-7, 11 and 12 May 2021

Site visit made on 10 May 2021

by Harold Stephens BA MPhil Dip TP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Appeal Ref: APP/Q3115/W/20/3265861

Little Sparrows, Sonning Common, Oxfordshire RG4 9NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Senior Living (Sonning Common) Limited and Investfront Ltd against the decision of South Oxfordshire District Council.
 - The application Ref P19/S4576/O, dated 12 December 2019, was refused by notice dated 30 June 2020.
 - The development proposed is a hybrid planning application for the development of a continuing care retirement community care village (Use Class C2) of up to 133 units with ancillary communal and care facilities and green space consisting of (i) A full planning application for 73 assisted living units within a "village core" building with ancillary communal and care facilities, gardens, green space, landscaping and car parking areas and residential blocks B1-B4; and (ii) An outline application (all matters reserved except access) for up to 60 assisted living units with ancillary community space, gardens, green space and landscaping and car parking areas.
-

Decision

1. The appeal is allowed and planning permission is granted for a hybrid planning application for the development of a continuing care retirement community care village (Use Class C2) of up to 133 units with ancillary communal and care facilities and green space consisting of (i) A full planning application for 73 assisted living units within a "village core" building with ancillary communal and care facilities, gardens, green space, landscaping and car parking areas and residential blocks B1-B4; and (ii) An outline application (all matters reserved except access) for up to 60 assisted living units with ancillary community space, gardens, green space and landscaping and car parking areas at Little Sparrows, Sonning Common, in accordance with the terms of the application, Ref P19/S4576/O, dated 12 December 2019, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. At the Inquiry an application for a partial award of costs was made by South Oxfordshire District Council (the Council) against the Appellant. This is the subject of a separate Decision.
3. The appeal follows the refusal of the Council to grant planning permission to a hybrid planning application for development at Blounts Court Road, Sonning Common. The planning application was determined under delegated powers

on 30 June 2020 and there were seven reasons for refusal (RfR) set out in the decision notice.¹

4. The application was supported by a number of plans, reports, and technical information. A full list of the plans on which the appeal is to be determined is set out at Appendix 4 of SoCG 4 Planning² which was agreed by the main parties. A full list of all documents forming part of the consideration of this appeal is set out at Appendix 3 of SoCG 4 which was agreed by the parties.³
5. I held a Case Management Conference (CMC) on 4 March 2021. At the CMC the main issues were identified, how the evidence would be dealt with at the Inquiry and timings. In the weeks following the CMC the main parties continued discussions on the appeal to ensure that matters of dispute were clear and that all matters of agreement were documented in either Statements of Common Ground or in draft Planning Conditions such that time on these matters was minimised at the Inquiry. The following Statements of Common Ground were submitted: SoCG 1 Landscape; SoCG 2 Transport; SoCG 3 Viability; SoCG 4 Planning and SoCG 5 Five Year Land Supply.
6. At the Inquiry a Planning Obligation was submitted.⁴ The Planning Obligation is made by an Agreement between Investfront Limited, Lloyds Bank PLC, Senior Living (Sonning Common) Limited, South Oxfordshire District Council and Oxfordshire County Council under s106 of the TCPA 1990. The Planning Obligation secures, amongst other matters, an off-site financial contribution in lieu of on-site affordable housing provision of £7,510,350. The s106 Agreement is signed and dated 26 May 2021 and is a material consideration in this case. A Community Infrastructure Levy (CIL) Compliance Statement⁵ and an Addendum to the CIL Statement⁶ were also submitted in support of the Planning Obligation. I return to the Planning Obligation later in this decision.
7. In relation to RfR7 (affordable housing), following discussions on viability, the Appellant reached agreement with the Council on the payment of an off-site financial contribution towards affordable housing that is secured through a s106 Agreement. Therefore, it is agreed that having regard to development viability, the appeal proposal would provide an adequate level of affordable housing provision and this matter is no longer in dispute.
8. The application was screened for Environmental Impact Assessment (EIA) prior to submission of the application and the Council determined that EIA was not required on 6 November 2019. I agree with the negative screening that was undertaken by the Council.

Main Issues

9. In the light of the above I consider the main issues are:

(i) *Whether the proposed development would be in accordance with the Council's strategy for the delivery of older persons accommodation throughout the district as set out in the development plan;*

¹ See Appendix A in CD H.1

² CD H.5

³ Ibid

⁴ INQ APP11

⁵ INQ LPA7

⁶ INQ LPA8

- (ii) *The impact of the proposed development on the landscape character of the AONB and the landscape setting of Sonning Common;*
- (iii) *The effect of the design of the proposed development on the character and appearance of the village;*
- (iv) *Whether the proposed development makes adequate provision for any additional infrastructure and services that are necessary, including affordable housing, arising from the development.*
- (v) *Whether, in the light of the criteria set out in paragraph 172 of the NPPF, there are exceptional circumstances to justify the proposed development within the AONB.*

Reasons

Planning Policy context

10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this appeal, the development plan comprises the following documents:
 - The South Oxfordshire Local Plan 2035 (Adopted 2020) (SOLP); and
 - The Sonning Common Neighbourhood Plan (2016) (SCNP).
11. The determination of the planning application, the subject of this appeal, took place against the background of a different development plan framework to that now in place. Although the SOLP has been subsequently adopted, the SCNP was based upon the Core Strategy which has been withdrawn, including the out of date housing requirements derived from the old Regional Strategy, significantly reducing the weight that can be afforded to it.
12. The development plan policies that are relevant to this appeal are agreed by the main parties and are set out in SoCG 4⁷ and INQ LPA6 provides an agreed schedule of the replacement policies for those cited in the decision notice.
13. The SCNP is currently under review. An initial public consultation was held between 29 February - 23 March 2020 but the Plan has not at this stage progressed further and there is as yet no agreed timetable. No weight can be given to that review.
14. SoCG 4 sets out the sections of the NPPF which are relevant in this case.⁸ It also sets out a list of Supplementary Planning Documents and Guidance⁹ which should be considered in this appeal and specific parts of the National Planning Practice Guidance (PPG)¹⁰ which are considered relevant.
15. The appeal site is located within the Chilterns Area of Outstanding Natural Beauty (AONB). The Chilterns AONB is a 'valued landscape' in respect of paragraph 170 of the NPPF. AONBs, along with National Parks and the Broads, benefit from the highest status of protection in relation to conserving and

⁷ Paragraph 3.3

⁸ Paragraph 3.5

⁹ Paragraph 3.6

¹⁰ Paragraph 3.7

enhancing landscape and scenic beauty. Section 85 of the Countryside and Rights of Way Act 2000 (CROW) places a duty on relevant authorities to have regard to the purpose of conserving and enhancing the natural beauty of an AONB. Paragraph 172 of the NPPF requires “great weight” to be given to those matters in decision making. It is common ground that the appeal proposal involves major development within the AONB and as such should be refused other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.

16. Paragraph 172 of the NPPF requires particular consideration to be given to:
(a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy; (b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and (c) any detrimental effects on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated. I deal with these matters under the main issues but at the outset it is important to address whether or not the Council has a five year supply of housing.

Five Year Housing Land Supply

17. Paragraph 73 of the NPPF sets the requirement for Local Planning Authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies or against their local housing need where the strategic policies are more than five years old.
18. Since 2018, Oxfordshire only needed to demonstrate a three-year supply of housing. However, on 25 March 2021 the Minister of State for Housing confirmed that a five-year housing land supply was again required. The Council produced a Housing Land Supply Interim Statement (IHLS)¹¹ setting out their initial position for the period 1 April 2020 to the 1 April 2025 which asserts a 5.35-year supply. However, at the Inquiry, the Council conceded that the supply had fallen on its own case to 5.08 years. The five-year supply requirement is a minimum requirement and it needs to be deliverable. The definition of deliverable is contained in Annex 2 to the NPPF.
19. The most up-to-date position as regards the difference between the main parties is summarised in the agreed SoCG 5. There is no disagreement as to the housing need (900 dpa) or the time period for the assessment (2020/21 to 2024/25). The five-year requirement including an agreed shortfall of 922 dwellings and 5% buffer is 5,693. The difference between the main parties comes down to the Council’s position that there is a 5.08 year supply of deliverable housing sites and the Appellant’s assertion that it is instead a 4.21-year supply. Table 3 of SoCG 5 contains a schedule of 15 disputed sites. I have assessed these disputed sites in the context of the test of deliverability set out in Annex 2 of the NPPF. This specific guidance indicates which sites should be included within the five-year supply.
20. I have also had regard to the PPG advice published on 22 July 2019 on ‘Housing supply and delivery’ including the section that provides guidance on

¹¹ CD: K.32 South Oxfordshire Local Plan Housing Land Supply Interim Statement 2021

‘What constitutes a ‘deliverable’ housing site in the context of plan-making and decision-taking.’ The PPG is clear on what is required:

"In order to demonstrate 5 years' worth of deliverable housing sites, robust, up to date evidence needs to be available to support the preparation of strategic policies and planning decisions."

This advice indicates to me the expectation that ‘clear evidence’ must be something cogent, as opposed to simply mere assertions. There must be strong evidence that a given site will in reality deliver housing in the timescale and in the numbers contended by the party concerned.

21. Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are there planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro-forma from a developer or agent does not in itself constitute ‘clear evidence’. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward.
22. It is not necessary for me to go through all of the disputed sites in Table 3 of SoCG 5. In my view, the Council was not able to provide clear evidence of delivery on most of the disputed sites which significantly undermines its position. For example, the Council suggests that 100 dwellings would be delivered at Site 1561: Land to the south of Newham Manor, Crowmarsh Gifford whereas the Appellant says 100 dwellings should be deducted. The comments set out by the Appellant for this site in Table 3 are compelling. Similarly, at Site 1009: Land to the north east of Didcot, the Council suggests 152 dwellings would be delivered whereas the Appellant says 152 dwellings should be deducted. The Appellant provides cogent evidence to support its case. Furthermore, at Site 1418: Land at Wheatley Campus, the Council agrees a deduction but only of 62 dwellings whereas the Appellant says the deduction should be 230. There is no clear evidence before me that would suggest that these sites or indeed most of the disputed sites would deliver the completions suggested by the Council in the next five years.
23. Overall, I consider that the Appellant’s assessment of supply set out in Table 2 of SoCG 5 is more realistic taking into account the test of deliverability set out in Appendix 2 to the NPPF and the PPG advice published on 22 July 2019. I am satisfied that the Appellant’s approach is consistent with national policy, case law, appeal decisions and informed by current housebuilder sales rates, assessment of the technical complexities of delivering development sites and experience of the housebuilding industry including lead-in times.
24. My conclusion on housing land supply is that there are a number of sites that together significantly reduce the Council’s five-year housing land supply. Many of the sites that the Council includes within the supply cannot be justified applying the current definition of deliverable. Following discussions between the main parties, deductions from the IHLS figure of 6,093 dwellings, have been identified and summarised at Table 1 of SoCG 5 and the impact which this has on the five year housing land supply is summarised at Table 2.

25. I consider that the Council's supply figure should be reduced to reflect the Appellant's position set out in Table 2 of SoCG 5. The Council's supply figure of 5,785 dwellings in Table 2 should be reduced to give a more robust total supply figure of 4,789 dwellings for the five year period. Although the Council maintains there is a 5.08 year supply, the evidence that is before me indicates a housing land supply equivalent to **4.21** years. The implications of not having a five-year housing land supply are significant. Not only is there a shortfall, but it also means most important policies for determining the application are automatically out-of-date. The Council accepts that means all the policies in the SOLP and the SCNP are out-of-date. It also means if the paragraph 172 tests in the NPPF are satisfied then the tilted balance applies.

First Issue - whether the proposed development would be in accordance with the Council's strategy for the delivery of older persons accommodation throughout the district as set out in the development plan;

The Need for Extra Care

26. The Council argues that the appeal proposal would be contrary to Policies H1 and H13 of the SOLP and due to its location in the AONB, outside but next to Sonning Common, brings into play Policies ENV1 and Policy H4 of the SOLP, and Policies ENV1, ENV2, H1, H2 and H2a of the SCNP. It is also claimed that the provision of 133 units of specialist housing for the elderly would be inconsistent with the proportionate growth in general housing planned for Sonning Common at both levels of the development plan.
27. Clearly the need for specialist accommodation for older people is recognised in the SOLP, which promotes the identification of suitable sites in the neighbourhood planning process and the inclusion of specialist accommodation on strategic sites,¹² and favours specialist housing for the elderly over conventional housing on unallocated sites.¹³ Although extra care housing is referred to in the supporting text,¹⁴ the SOLP does not prescribe particular levels of provision by type of accommodation, which allows flexibility in provision, adapting to what is an evolving sector. I note that no attempt is made to differentiate between types and tenure of specialist housing for older people, nor to address the need for each. No quantum for extra care accommodation is set out in the SOLP. Although Table 4f of the SOLP shows an outstanding requirement for 96 units over the plan period for Sonning Common it makes no reference to the needs arising from within existing households arising from their ageing.
28. Quantification of the need for open market extra care housing is not straightforward, in part because whether an owner-occupier moves to extra care housing is ultimately a matter of choice, in part because there is no prescribed or generally accepted methodology. The Government very clearly supports the identification and provision of extra care accommodation as a recognised form of specialist accommodation for the elderly.¹⁵ Moreover, it is important to bear in mind that the NPPF definition¹⁶ of 'older people' does not

¹² See CD: C.4 Policy H13(2), (3)

¹³ See CD: C.4 Policy H1(3)(ii)

¹⁴ See CD: C.4 paragraph 4.70

¹⁵ See paragraphs 59 and 61 of the NPPF

¹⁶ See Annex 2

exclusively mean the very frail elderly rather it embraces a wide range of people in that category both in terms of a very wide age range and significant variation in issues surrounding matters like mobility and general health.

29. Within the PPG on 'Housing for older and disabled people' it states that:¹⁷

"The need to provide housing for older people is critical. People are living longer lives and the proportion of older people in the population is increasing. In mid-2016 there were 1.6 million people aged 85 and over; by mid-2041 this is projected to double to 3.2 million. Offering older people a better choice of accommodation to suit their changing needs can help them live independently for longer, feel more connected to their communities and help reduce costs to the social care and health systems. Therefore, an understanding of how the ageing population affects housing needs is something to be considered from the early stages of plan-making through to decision-taking"

30. The Government plainly recognises that the need is 'critical' and the importance of 'choice' and addressing 'changing needs'. Offering greater choice means a greater range of options being offered to people in later life and that the range of options should at the very least include the categories the Government recognises in its guidance. This includes extra care. The PPG also advises what 'range of needs should be addressed'. It recognises the diverse range of needs that exists and states that:¹⁸

"For plan-making purposes, strategic policy-making authorities will need to determine the needs of people who will be approaching or reaching retirement over the plan period, as well as the existing population of older people".

31. Plainly, when compared with Government guidance, the development plan is left wanting in terms of addressing a need for extra care. There is no reference in Policy STRAT 1 to the PPG insofar as assessing the needs of older people. There is no reference in Policy STRAT 2 to the accommodation needs of those local residents who will make up more than a quarter of the total population of South Oxfordshire by 2035. Policy H13 in the SOLP expressly deals with specialist housing for older people. It covers all forms of specialist housing for older people, but it is completely generic as to provision. No attempt is made to differentiate between types and tenure of specialist housing for older people, nor to address the need for each. The needs of all older people are simply lumped together. Nor is there any engagement with the market constraints and viability considerations relating to specialist accommodation for older people evidenced by Mr Garside during the Inquiry.
32. Paragraph 3 of Policy H13 suggests that provision be made within strategic allocations. The strategic sites are mostly focused around Oxford or in the more northern part of the District. Only one such strategic site has planning permission – Wheatley Campus but no extra care is proposed. The Council want to see it on Ladygrove East. That is not a strategic allocation in the SOLP. But in any event the Council is seeking affordable extra care there and the developer (Bloor Homes) is resisting it. The Council conceded that the strategic sites do not really feature at all in its five-year housing land supply calculations. The Council also accepted that landowners and developers would achieve a better return if they build market houses.

¹⁷ See paragraph 001 Reference ID: 63-001-20190626

¹⁸ See paragraph 003 Reference ID: 63-003-20190626

33. Reference is made to encouraging provision through the neighbourhood planning process.¹⁹ However, without a more definitive district wide requirement it would be difficult for neighbourhood plan groups to assess the levels of provision required, which will vary; and neighbourhood plan groups generally lack the expertise to fully appreciate the requirements and the different housing models available and their viability and practicality.²⁰
34. The Appellant's primary evidence on need is given by Mr Appleton, the principal author of two key publications in this area: *More Choice: Greater Voice (2008)*²¹ and *Housing in Later Life (2012)*.²² Both of these publications seek to address how best to quantify the need for specialist housing for the elderly. They advocate a method which is based on the population and other nationally available data to look at the characteristics of an LPA area.
35. The PPG highlights the need to begin with the age profile of the population. I note that the proportions of people aged 65 and over within South Oxfordshire District currently sits above the national average.²³ Furthermore, there is presently a population of 15,000 in South Oxfordshire District, who are aged 75 years or older which is forecast to increase to 21,100 by 2035.²⁴
36. In terms of care needs, 4,019 people in this population have difficulty managing at least one mobility activity on their own at present, set to rise to 6,046 by 2035.²⁵ They are overwhelmingly owner occupiers, with 81.23% of people aged 75-84 and 75.25% aged 85 and over owning their own home compared with 13.74% and 17.42% respectively Council or social rented.²⁶ Importantly, South Oxfordshire sits significantly above the national trend toward owner occupation as the dominant tenure for older people.
37. For the Appellant it is argued that there is a significant under-supply of retirement housing for leasehold sale to respond to the levels of owner-occupation among older people in the District.²⁷ There is a total of approximately 1,641 units of specialist accommodation for older people. However, there is a very marked disparity in the availability of specialised housing for older homeowners compared with the supply available to older people in other tenures.²⁸ The current rate of provision favours those in tenures other than home ownership with nearly four times as many units available to them in sheltered, retirement and extra care housing than are currently available for their peers who are homeowners.²⁹ At present, it is submitted that there are 120 units of affordable extra care housing and 113 units of market extra care housing.³⁰
38. Mr Appleton sets out a provision rate for private extra care of 30 per 1,000 of the 75 and over population in the District based on a total provision of 45 extra care units per 1,000 (4.5%) across both the affordable and private sectors, but split on a ratio of one third for social rented and two thirds for

¹⁹ See CD: C.4 Policy H13 paragraph 2

²⁰ POE of Simon James paragraph 5.1.11

²¹ CD: K.44

²² CD: K.45

²³ See APP 2.3 Nigel Appleton Section 6

²⁴ See APP 2.3 Nigel Appleton Table One

²⁵ See APP 2.3 Nigel Appleton Table Five

²⁶ See APP 2.3 Nigel Appleton Table Twelve

²⁷ See APP 2.3 Nigel Appleton paragraph 9.2

²⁸ See APP 2.3 Nigel Appleton Table Fourteen

²⁹ See APP 2.3 Nigel Appleton paragraphs 9.7-9.9

³⁰ See APP 2.3 Nigel Appleton Table Fourteen

sale. This takes into consideration the research in "*More Choice: Greater Voice*" and revisions in "*Housing in Later Life*". I note that the 45 units per 1,000 is to be divided as suggested in order to bring supply into closer alignment with tenure choice among older people.³¹ That is 450 units now. Projecting forward, an indicative provision of 633 units of market extra care would be required by 2035.³² The Council refers to the Oxfordshire's Market Position Statement³³ which assumes a lower need figure for extra care housing but the focus there appears to be on social rented extra care housing. The Council also suggests that the SHMA³⁴ evidence is to be preferred. However, I note that it does not identify figures for extra care, nor does it relate to the present PPG.³⁵ In my view, Mr Appleton's provision rate is preferred and the need for more private extra care is overwhelming.

39. At present even a very modest level of provision of 30 units per 1,000 in the 75 and over population seems unlikely in South Oxfordshire District, especially as the SOLP now requires affordable housing to be provided, when previously it was not required. No other extra care market proposals are coming forward. The Rectory Homes proposal at Thame, refused on appeal for not providing an affordable contribution has been resubmitted but the s106 Agreement is not signed. Nor is Rectory Homes Ltd a provider of care.
40. In my view, there is a strong case that Mr Appleton's 45 per 1,000 overall, with 30 per 1,000 to market extra care, should be far more ambitious given not only the true tenure split in the District but also what it could mean for the ability to contribute towards addressing the housing crisis. Mrs Smith conceded that the figure of 30 per 1,000 was hardly ambitious and, if anything, was underplaying the scale of the potential need.
41. Turning to supply, with only 113 units of market extra care units of extra care housing existing in South Oxfordshire and a current need of 450 units this leaves a shortfall of 337. As to the existing pipeline, Mr Appleton analysed the same at Figure Two of his Needs Report, which was updated at INQ APP12. The total 'pipeline' supply of extra care not already included in Mr Appleton's tabulation of current supply are the proposed 110 units in Didcot and Wallingford, and the 65 units proposed at Lower Shiplake. This gives a total gain of 175 units. However, both Wallingford and Didcot sites have been confirmed as affordable extra care. The Council did not dispute the 175 figure and Mrs Smith accepted that she did not know if the 110 units in Didcot and Wallingford would be affordable or market. I consider that only 65 units can reasonably be considered as pipeline.
42. The pipeline needs to be set against the current shortfall of 337 which still leaves 162 units even if Didcot and Wallingford are included and 272 if they are not. That is a substantial unmet need now which will only further climb and in respect of which there is nothing in the pipeline and no prospect of any strategic allocated site delivering in the five year housing land supply.
43. There is plainly a very limited supply of extra care housing for market sale (leasehold) in South Oxfordshire. Adding further concern, it is of note that

³¹ See APP 2.3 Nigel Appleton paragraph 11.6

³² See APP 2.3 Nigel Appleton Table Seventeen

³³ See CD: K.27 Market Position Statement for Oxfordshire in relation to Care Provision and Extra Care Housing Supplement assumes a need for 25 units of extra care housing for every 1,000 of the population aged 75+ page 9

³⁴ See CD: 14 HOUS5 Oxfordshire Strategic Housing Market Assessment April 2014

³⁵ Ibid

from 2012 to date just 133 units have been delivered despite there being in the same period permissions for a net gain of 447 additional Care Home beds. This runs completely contrary to the policy set out in the Market Position Statement of reducing reliance on Care Home beds and increasing capacity in extra care. The case for more market extra care provision now is very clear. Furthermore, the need is set only to grow.

44. The Council sought to undermine the Appellant's need case with reference to earlier data from Housing LIN and the @SHOP tool. This on-line tool is highlighted in the PPG as a basis for calculating need. But the fact is it only provides a figure based on existing prevalence and then seeks to project that forward with a proportion increase based on the increase in the 75+ age group in the District. This is not a measure of need.
45. The Council provided a list of specialist accommodation for older people³⁶ most of which is not market extra care, but mostly affordable extra care. Oxfordshire County Council has two sites with market extra care, but those schemes are in Banbury and Witney and not in the District.³⁷ In short, the pipeline adds up to very little. I consider there is hardly any market extra care housing in the District. The stark fact is that choice is largely unavailable.

Policy Compliance

46. Plainly the proposed development would make a substantial contribution toward the provision of a more adequate level of provision for older homeowners looking for an environment in which their changing needs could be met. The fact that the need is proposed to be met at Sonning Common seems entirely appropriate. Sonning Common is one of just 12 larger villages where a need for extra care provision has been identified in the SCNP, and where there is the oldest 65 and over population in the County. The SCNP expresses support for a small scale development of extra care housing in Policy H2a but no site is allocated for such use. The Sonning Common Parish Council (SCPC) accepted that SCNP policies referred to in the RfR are out of date due to a lack of five year housing land supply. That includes Policies ENV1, ENV2 and H1, which is only expressed as a minimum.
47. Policy H13 (1) in the SOLP gives support to extra care on unallocated sites. This adds to the weight that can be given to the need case. Policy H13 is the key policy in respect of specialist accommodation for older people. Though the appeal site is not a strategic site, nor allocated in the SCNP, Policy H13 does not itself require it to be. I have already discussed the difficulties associated with any of the strategic sites coming forward with market extra care either within the five year housing land supply period or at all.
48. Policy H13 (1) is clear that encouragement will be given to developments in locations "with good access to public transport and local facilities." The Council accepted that public transport for staff on the site would be more likely to take the form of bus services and they would perhaps have no difficulty walking. For residents there is a choice and it depends on their mobility. I saw that most of the site is flat. It does have a gradual gradient to the west then a steeper gradient close to Widmore Lane. The presence of a hairpin in the proposed design is to deal with the gradient which requires a

³⁶ See Nicola Smith's Appendix 1

³⁷ CD: K.27 page 5

longer path to accommodate people with disabilities. I note that a minibus service is proposed which would take residents to the local supermarket. With regard to other trips, for example to the post office or to other facilities, residents could walk or take the minibus. Importantly, the core building has all facilities centrally. Residents could cook in their premises and meals would be provided on site. There would also be a small convenience shop on site and staff would be on hand to not only care for but also to assist people. Garden maintenance would be provided and there would be a wellbeing centre to help people's health and fitness. Overall, the facilities would take care of a considerable amount of day-to-day needs. In my view all of this would comprise "good access to public transport and local facilities."

49. With regard to matters of principle I accept that Policies ENV1 and STRAT 1 (ix) of the SOLP affords protection to the AONB and in the case of major development, it will only be permitted in exceptional circumstances and where it can be demonstrated to be in the public interest. I give these matters detailed consideration in other issues. The proposal fully accords with Policy H1 3ii) of the SOLP. With regard to Policy H4 of the SOLP, although the timeframe for review of the SCNP does not run out until December 2021 that does not bring the SCNP back into date. Whilst the review of the SCNP has commenced, it is at its earliest stage and no weight can be given to it. I conclude on the first issue that the appeal proposal would conflict with some but would comply with other elements of the Council's strategy for the delivery of older persons accommodation throughout the district.

Second issue - the impact of the proposed development on the landscape character of the AONB and the landscape setting of Sonning Common

50. SoCG 1 Landscape has been agreed between the parties and addresses landscape and visual matters. The appeal site is within the Chilterns AONB which is a 'valued landscape' in respect of paragraph 170 of the NPPF. The Chilterns AONB Management Plan 2019-2024³⁸ defines the 'special qualities' of the AONB and the most relevant to the appeal site and its context are summarised at paragraph 3.5 of SoCG 1.
51. In essence, the Council, supported by the SCPC, the Chilterns Conservation Board and others, consider that the proposed development would create a prominent and incongruous intrusion into Sonning Common's valued rural setting, relate poorly to the village, and cause material harm to the landscape character of the AONB. It is also claimed that the proposal would not conserve or enhance the landscape and scenic beauty of the AONB and would fail to protect its special qualities.³⁹ The policy context at the time of the decision notice referenced policies in the South Oxfordshire Local Plan 2011 which is now superseded by the adopted policies in the SOLP.⁴⁰ Policies ENV1 and ENV2 of the SCNP are also relevant. I note the illustrative Masterplan,⁴¹ the LVIA and the Landscape Appendix⁴² submitted by the Appellant.

³⁸ CD: F4 pages 10 and 11

³⁹ See RfR 2

⁴⁰ See LPA INQ6 which sets out the relevant SOLP policies including STRAT1 (ix), ENV1 and ENV5 and Design policies DES1, DES2, DES3 and DES5

⁴¹ See Appendix 4.3.1 of James Atkin Drawing reference 1618_L_01_01 Rev3

⁴² CD: A.9 and CD A.10 Landscape and Visual Impact Assessment and Landscape Appendix

52. To address these points, it is necessary to understand what the special qualities of the Chilterns AONB are and the extent to which those special qualities relate to the appeal site and its context. From the evidence that is before me and from my site visit, I do not consider the appeal site or its local landscape context to be representative of the special qualities as set out in the Chilterns AONB Management Plan. Where the appeal site does exhibit some such qualities, they are generic. In all other respects, they are entirely absent.
53. Planning policy and statute give equal protection to all parts of the AONB. However, it would be unrealistic to expect the appeal site and its immediate context to share all or even most of these special qualities. It is important to have a balanced interpretation of how such special qualities relate. To that end, Mr Atkin's Table 1⁴³ summarises that relationship, drawing together judgements on the landscape and the extent to which the appeal site is characteristic, or otherwise, of the AONB. In summary, Mr Atkin's analysis demonstrates that the appeal site does not reflect the majority of the special qualities and, where there is a connection, the association is limited. It seems to me that the appeal site is more typical of an agricultural landscape that is commonplace around many settlement fringes. Plainly the appeal site and its local landscape context is less sensitive than other parts of the AONB.
54. The core characteristic of the appeal site and its context, and the most relevant of the special qualities to it, is the extensive mosaic of farmland with tree and woodland cover. However, this is probably the broadest and most generic of the special qualities acting as a 'catch all' for the extensive areas of farmland across the area. Other parts of the AONB are more distinct. The ancient woodland of Slade's Wood is located off site, outside of the AONB designation, though it does form part of its setting. As to extensive common land, this is not representative of the appeal site. In its local landscape context, Widmore Pond is designated as common land but is not an 'extensive' area contrasting with other parts of the AONB.
55. At my site visit I saw that the appeal site, being directly adjacent to the relatively modern settlement fringe of Sonning Common, detracts from any potential tranquillity. This is particularly so due to the neighbouring JMTC complex and associated car parking. It is common ground that the JMTC is 'institutional in scale'. In terms of ancient routes, there is no formal access to the appeal site. In the local landscape context, the closest rights of way are the public footpaths to the north-west and east both of which give access to the wider landscape to the north and east of Sonning Common where the characteristics of the AONB are more readily apparent.
56. The Council agreed that new development can be accommodated in the AONB and as a matter of principle can be an integral component. Indeed, the SCNP allocates development within its boundaries. I saw that the AONB in this location already contains a significant amount of built development. That contrasts significantly with the deep, rural area of countryside within the AONB some of which is located to the north east of the appeal site where the road turns east down the valley bottom heading to Henley-on-Thames. There, there is no settlement or village, no industrial buildings or surface car parks

⁴³ See James Atkin's Appendix 4.1 pages 18-20

with 100 plus spaces. It is simply deep countryside with very limited urban development and is very attractive. That cannot be said about the appeal site.

57. Having considered how the special qualities of the AONB relate to the appeal site, I now consider the landscape character of it. The appeal site is partly located on an area of plateau between two valleys, within a landscape identified in the South Oxfordshire Landscape Character Assessment (2017)⁴⁴ as semi-enclosed dip slope, which in turn forms part of the broader Chilterns Plateau with Valleys Landscape Character Area (LCA10). The eastern part of the site is located above the 95m contour on the plateau area.⁴⁵ The southern and western parts of the site fall towards a shallow valley which contains neighbouring parts of Sonning Common. At a further distance to the north is a deeper valley which separates Sonning Common from Rotherfield Peppard.
58. The Landscape Assessment for the Local Plan 2033 for the semi enclosed dip slope LCT states:

"...this part of the Chilterns dip slope has a surprisingly uniform character, despite its irregular pattern of plateaux and valleys and its mosaic of farmland and woodland. This complexity is a consistent and distinctive feature of the area, and the most obvious differences in landscape character are between the very intimate, enclosed wooded landscapes and those which have a more open structure and character."

It is clear to me that there is a difference between the parts of the AONB in the dry valley and those on the plateaus.

59. What is distinctive about this part of the landscape and relevant to the landscape of the appeal site and its context is the uniformity across a larger scale area of the landscape characterised by a complex mosaic of farmland and woodland. It is this complex mosaic at the larger scale which is more closely aligned with the special qualities of the Chilterns AONB and not the appeal site itself. It isn't the loss of a part of this mosaic that is important, which in the case of the appeal site would be a relatively small agricultural piece of the mosaic; rather, it is the implications for the wider mosaic and whether that would be disrupted in terms of a reduction of its scale, or would result in the creation of a disbalance between particular parts of the mosaic.
60. SCPC referred to the Sonning Common Character Assessment and Design Statement 2013.⁴⁶ I accept that this formed part of the evidence base to the SCNP, but it appears to still be in draft form only many years later. Its main purpose was to provide comparative comment on sites identified for potential future development limited to only the shortlisted sites. It does not address the wider appeal site. I have also taken into account the Oxfordshire Historic Landscape Characterisation Project⁴⁷ and the various landscape capacity assessments cited by Mr Jeffcock that have looked at the appeal site.
61. As I perceive it, Sonning Common is very much part of the local landscape context, just as much as the adjacent agricultural land and the wider mosaic of the AONB. The appeal site performs a role of a brief transition and gateway between the suburban and rural environments. In its local context, the settlement fringes of Sonning Common, including the residential areas across the valley and on the plateau to the west and south are influential in terms of

⁴⁴ CD: D.23, section 15.

⁴⁵ See John Jeffcock's Appendix 1, Figs 2, 7, 8

⁴⁶ CD: C.7

⁴⁷ CD: I.5

the local landscape character, as is the prominent built form of the JMTC to the north. Adjacent to the appeal site is the JMTC car park which further erodes the sense of more 'remote' or rural countryside. To the south the settlement extends some distance along Peppard Road and there is a clear experience of entering the suburban character of the village, long before the appeal site is perceptible. There are specific locations where the settlement edge is less apparent notably along Blounts Court Road from the east and in this direction the more rural aspect of the site is more dominant.

62. The Council's LCA draws a very clear distinction between the character of development on the plateau and the character found in the dry valleys.⁴⁸ The landscape strategy set out there suggests that development on the plateau is in keeping whereas into the valley is a negative thing. It seems clear to me that Sonning Common has grown up developmentally on two plateaus either side of the dry valley.
63. It is common ground that, like any development anywhere, physical impacts on the landscape fabric will be limited to those which occur within the appeal site itself. However, landscape character impacts and the consequent effects would not be limited to the appeal site. It is agreed that there are not likely to be significant effects on the wider landscape or visual effects further afield than a localised area set out in the SoCG 1.⁴⁹
64. Although there would be localised losses of vegetation due to the access off Blounts Court Road and the proposed pedestrian connection to Widmore Lane, the proposed development would largely involve the loss of open agricultural land and the construction in its place the built development of the appeal proposals. On the most elevated part of the site, there would be a substantial, cruciform core building, 2.5 storeys (about 11.2m)⁵⁰ in height, with a footprint of approximately 3,900m², and four apartment blocks with ridge heights of between 10.3m and 11.2m, the largest two of which would have footprints of about 550m² each. However, the recent application submitted for the JMTC shows that the present buildings making up the complex are between 8.7m and 10.6m depending on ground levels with block 4 up to nearly 11m in height. I accept that there would be a physical loss to the mosaic, but in character terms, the appeal site is not essential to its character and the built elements of the scheme would be consistent with the settlement fringe.
65. There would be potential impacts arising from the 15m woodland belt along the southern and eastern edges of the appeal site. This would be beneficial in terms of moderating the effect of the development. It would also provide a green infrastructure link between Slade's Wood and the green infrastructure network in the surrounding landscape. This would have a positive impact on the 'wooded' aspects of the mosaic. The woodland belt would create a further 'layer' in the landscape which would physically and visually contain the site.
66. The overall consequence of this is that there will be a highly localised impact on the 'mosaic' in terms of agricultural land use, but not to a point where, given the scale of what makes this distinct, the mosaic is disrupted or undermined. At a local and wider scale, this would not constitute 'harm' to the Chilterns AONB. Only a small part of the mosaic would be impacted, and this

⁴⁸ CD: D18 page 572 which deals with Sonning Common at 9.10

⁴⁹ CD: H.02 SoCG 1 Landscape paragraphs 3.21-3.22

⁵⁰ See John Jeffcock's POE paragraph 4.3.3.

would not alter the overall character of the wider mosaic or the LCT. Plainly such limited impacts would not cause 'material harm' to the landscape character of the AONB, nor would it conflict with the aims of protecting its special qualities. The appeal site would, in being development on a plateau, be in keeping with the landscape character.

67. I accept that the appeal site and the immediate landscape context within the Chilterns AONB form part of a valued landscape⁵¹ this is primarily on the basis of the landscape designation and related less to the demonstrable physical attributes of the appeal site.⁵² Although the Appellant's LVIA determines landscape value to be 'high' with some localised variations, I consider that the appeal site in its local landscape context is of 'medium to high' value taking into consideration that it is in the AONB but also the site's own merits. There is, frankly, a considerable difference between this area and more typical, characteristic parts of the AONB.
68. As to landscape susceptibility, this can be appropriately described as 'low to medium' in the appeal site's local landscape. This is a medium scale enclosure that has capacity to accommodate some form of development across the majority of the site. The settlement of Sonning Common provides some reference and context for development and the presence of the JMTC in this part of the AONB reduces landscape susceptibility to new development. The landscape sensitivity is appropriately judged as 'medium' with the AONB designation having a high sensitivity. Mr Jeffcock considers that the appeal site has a high landscape value and high sensitivity to change. However, his assessment is overstated. In my view the appeal site has a medium to high value, and low to medium susceptibility with medium sensitivity overall.
69. The appeal site is located on the very fringe of the AONB, and Sonning Common is excluded from it. This is not a core part of the Chilterns AONB and its special qualities are largely absent. Of relevance is the mosaic of wooded farmland that characterises much of the plateau and dip slope. The appeal proposals would result in a change to this characteristic at a very localised level, with the loss of an open agricultural field to built development but balanced with the introduction of further woodland and green infrastructure. This would not disrupt, or unduly influence, the mosaic. I agree that the 'slight to moderate adverse' effect on landscape character would not represent a significant impact in respect of the Chilterns AONB.⁵³
70. As for visual effects, these would differ depending on the viewer and the viewpoint. The landscape witnesses provided a number of example viewpoints and I carried out an extensive site visit with the parties to see these and other views for myself. I have also taken into account the ZTV⁵⁴ and LVIA information provided by the Appellant.
71. SoCG 1 Landscape records that the physical impacts of the proposed development would be limited to the appeal site, and that consequent impacts on landscape character would be limited to a relatively small number of areas including viewpoints to the south (the route of the B481 Peppard Road); to the south west (Sonning Common village e.g. Grove Road); to the north

⁵¹ Within the meaning of paragraph 170(a) of the NPPF

⁵² See James Atkin's Table 2 POE pages 27-28

⁵³ See James Atkin's POE page 33 paragraph 6.48

⁵⁴ Zone of theoretical visibility

(footpath 331/16/20) close to the southern edge of Rotherfield Peppard); to the west (the settlement edge of Sonning Common) and to the east and north east (the routes of public right of way 350/11/20 and 350/10/10). Outside of these areas it was agreed there would not likely be any significant effects on the wider landscape or on visual receptors further afield.⁵⁵

72. In terms of visual amenity, the evidence demonstrates that potential views of the appeal proposals would be limited to a small envelope, largely related to the immediate context of the appeal site and not extending further into the Chilterns AONB landscape. This limited visibility reduces the perception of change to landscape character. The ZTV demonstrates that, aside from some locations very close to, or immediately adjacent to the appeal site, potential visibility from the wider landscape (and AONB) is limited. In my view this accords with the landscape character guidance which refers to the 'semi-enclosed dip slope' as having a 'strong structure of woods and hedgerows' which provide 'visual containment and results in moderate to low intervisibility'. This strong structure of woods and hedgerows provides containment in the landscape.
73. What is clear, is that only a small number of nearby locations would have direct views of the appeal proposals. This includes a very short section of Peppard Road, short sections of public footpaths to the east (350/11/20 and 350/11/40) and the approach to the settlement along Blounts Court Road. In each of these instances, impacts could be moderated by appropriate landscape works and particularly the inclusion of the woodland belt. The contained nature of the appeal site and the limited extent of landscape effects mean that the overall character of the semi-enclosed dip slope LCT would not be fundamentally altered and the effects on landscape character at this scale would not be significant. Plainly, the appeal proposals would not give rise to significant visual effects overall; either in the local landscape context of Sonning Common or in respect of the scenic quality of the Chilterns AONB.
74. The most relevant assessment is that of 'Year 15' once the tree planting proposals have had the opportunity to thrive. Those proposals are a specific and positive part of the proposed development which would deliver additional environmental functions to that of visual screening. It is common ground that the planting would be significant. It is reasonable to expect that the growth of native species would reach good heights in the medium term and mature heights that are comparable to the existing trees and woodland in the area. There would be glimpses of the built development through the perimeter planting. However, it would provide a substantial screen in the long term and help to integrate the appeal proposals into the landscape particularly when viewed from the east and from the south.
75. For the above reasons I conclude on this issue that the proposed development would have some localised landscape and visual effects, but these would not result in unacceptable impacts on the AONB or the landscape setting of Sonning Common. As such, in respect of this issue I consider the appeal proposal would conflict with Policies STRAT 1 (ix) and ENV1 of the SOLP together with Policy ENV1 of the SCNP. However, for the reasons set out above those adverse effects would be limited. I shall consider this further in the planning balance.

⁵⁵ CD: H.2 SoCG 1 Landscape paragraphs 3.21-3.22

Third Issue - the effect of the design of the proposed development on the character and appearance of the village

76. The Council's concerns about the design of the proposed development are based on RfR4 and are supported by the SCPC. In summary these are: (i) the development would not integrate with the village by reason of scale, massing, layout and character; (ii) it would result in a dominant and intrusive form of development having a significant urbanising effect on the settlement edge; and (iii) the layout and design would result in poor amenity for residents by virtue of the lack of access to private amenity space and publicly accessible green space, an overdominance of car parking and limited space for tree planting. I address each of these concerns in turn.
77. The main parties agreed a section on design within SoCG 4 Planning.⁵⁶ Amongst other matters it is agreed that: the detailed layout (Phase 1) is the proposed layout for that part of the site; the proposed masterplan is provided to demonstrate how the development could be laid out to respond to the physical and technical constraints and opportunities of the site; the layout for Phase 2 will be subject to future reserved matters (appearance, landscaping, layout and scale) and remain in the Council's control; the Council has no objection to the choice of building materials, detailing and hard landscape materials proposed; and the extent of existing tree retention and the selection of proposed plant species, grass, hedge and shrub planting is agreed.
78. It is also noteworthy that policies within RfR4 relate in the main to the previous South Oxfordshire Core Strategy 2012 and South Oxfordshire Local Plan 2011. The corresponding policies are set out at INQ LPA6. Policy D1 of the SCNP 2016, the South Oxfordshire Design Guide⁵⁷ and the NPPF (in particular paragraphs 127, 130 and 131) also apply.
79. I turn first to integration with the village in terms of scale, massing, layout and character. The Council and the SCPC are concerned that the scale and layout of the proposed development are being driven by operational requirements and the business model of the Appellant. Reference is made to the large apartment blocks and the village core which it is claimed are at odds with the more modest scale of development in Sonning Common. However, I consider it is important at the outset to understand the existing context and character of Sonning Common. At my site visit I saw that Sonning Common is not the archetypal Chilterns Village, and it clearly lies outside the AONB. It was developed in a more planned manner with the character being 'plotlands' and later infill housing termed 'estates'.
80. The local vernacular consists of a mix of building types, but the immediate neighbouring existing development is comprised of the estates typology - Churchill Crescent, Pond End Road and the northern edge of Widmore Lane. The existing context has a range of design components that help create its character. In particular, I note that Sonning Common: is primarily 2 storeys but with elements of 2.5 storeys; is primarily domestic in scale; has predominantly traditional architecture; is relatively verdant with trees and landscaping being visible within and as a backdrop to the streetscape; and has occasional larger built form such as the school or JMTC. Furthermore,

⁵⁶ CD: H.5 SoCG 4 Planning Section 6

⁵⁷ CD: C.8

Sonning Common has: brick walls; painted rendering on walls; clay roof tiles; chimneys; and a mix of gables, hipped roofs and porches.

81. The Design and Access Statement (DAS)⁵⁸ describes the appeal proposals as domestic in scale and character. I accept that the scheme is largely domestic in form and with detailing consistent with residential houses in the area.
82. In terms of *height*, the proposed buildings would reflect the heights of buildings within Sonning Common. Both plotlands and estate buildings include two storey buildings and two storey buildings with roof rooms. The proposed apartment buildings would be two storeys with the Village Core rising to two and a half storeys in places. The Village Core has accommodation in the roof space to keep the overall ridge height low. The height to the ridgeline from ground level of the Village Core Centre building is up to 2.5 storeys dropping to single storey on the eastern side. This must be seen in the context of the height of the adjacent JMTC, typically equivalent to 3 storeys, and groups of 2.5 storey dwellings on the northern side of Blounts Court Road to the west of the site. Most of the proposed development would be two storeys in height as is the overwhelming majority of built development in Sonning Common.
83. As to *massing*, the initial indicative sketch elevation demonstrates that the apartments and the Village Core would have the appearance of semi-detached buildings or groups of buildings combined into short terraces with a varying roofline which are reflective of the existing residential buildings in Sonning Common.⁵⁹ The massing of the apartments is derived from a variety of footprint depths which, when formed into larger blocks, allows for the scale and mass to be broken down into roof elements with simple breaks in the roofline. Appropriate equal roof pitches would give each apartment building an elegant scale. There would be elements of hipped roofs, and chimneys incorporated into the roof plane. The apartment buildings would have balconies, single and double gables further breaking down the overall mass. The Village Core would have accommodation in the roof space and the roof planes would be broken down with larger single gables, smaller double gables with a central gutter and small dormer windows.
84. In my view the *layout* of the proposed development would reflect the way existing 'plotlands' and 'estates' buildings in Sonning Common are orientated, with the arrangement of buildings fronting the main vehicular route with active frontages. A number of apartments would be arranged around the Village Core. Buildings fronting Blounts Court Road would be positioned so that they would replicate the linear street scenes typical of development within Sonning Common.⁶⁰ I note that the proposed building line would be setback some 15m-20m from the road edge to retain an element of openness along the streetscape allowing boundaries to be defined by planting and hard landscaping. This would reflect the layout of the 'plotlands' buildings within Sonning Common. Buildings along the main access route and internal streets would similarly front the street with setbacks from 6m-15m allowing boundaries to be defined by planting and hard landscaping. The setback for 'estate' residential buildings ranges from about 4m-14m. In my view, the proposals would be in a similar range.

⁵⁸ CD: A.31

⁵⁹ See Mr Carr's Appendix UD4

⁶⁰ See CD: C7 Sonning Common Character Assessment and Design Statement

85. The Council and SCPC argued that the appeal proposal could be smaller in scale. However, it was accepted that greater economies in scale could be achieved with larger retirement village developments with extensive communal facilities. It is noteworthy that the Appellant is proposing a development which is half the size of the optimum.⁶¹
86. With regard to *character* it is clear that the Council has no objection to the choice of building materials, detailing and hard landscape materials proposed, as recorded in the SoCG 4. In any event, the proposed development would accord with the local vernacular which consists of a mix of building types found within the key character areas. In summary, Sonning Common has predominantly traditional architecture and the proposed development would have traditional architectural detailing; it is relatively verdant with trees and landscaping being visible within and as a backdrop to the streetscape and the proposed development would have similarly substantial planting in the streetscape as well as proposed and existing large scale tree planting creating a tree lined backdrop. Sonning Common has also occasional larger built form such as the school or JMTC and the proposed development has a Village Core.
87. It is fair to say that Sonning Common has an eclectic architecture which is quite conventionally suburban. There is a significant amount of 1970s housing. It has a fairly bland architecture, evidenced by the images in the Sonning Common Character Assessment and Design Statement.⁶² Given that the site is within the Chilterns AONB, the design should not just duplicate Sonning Common, but use materials such as flint panels and dark stained boarding and design components that respond to the AONB setting.
88. In my view, the architecture would reflect a varied composition with gables, projections and porches. The proposed elevations would respect the traditional patterns, style and scale of buildings and the fenestration would be inspired by traditional Chiltern building with a solid wall area balanced with the window and door openings, relatively pitched roofs with a ridgeline, use of 'L' and 'T' building shapes, chimneys and prominent flint panels.
89. It is clear to me that the proposed new buildings would plainly add to the sense of place and local character and would 'belong' to the Chilterns. The proposed development would also create a soft edge to the countryside⁶³ and would not 'turn its back' on it; particularly given the lack of any rear garden fences defining the edge of the settlement.
90. I recognise that this is a hybrid application and there is therefore an outline element to the proposals. However, to demonstrate their commitment to provide the same level of detailing and materials as presently indicated, the Appellant has produced a Design Commitment Statement.⁶⁴ Importantly, this could be conditioned to provide reassurance and an additional way of ensuring that the future reserved matters keep to the quality required in this setting.
91. The Council contended that the proposal would be a dominant and intrusive form of development and it would have an urbanising effect on the settlement edge. I disagree. The apartments and cottages proposed as part of the appeal scheme would be largely consistent with a domestic form and would be very

⁶¹ See INQ LPA 2 page 13.

⁶² See CD: C7 page 16

⁶³ See CD: K4 Chilterns Building Design Guide principle item 3.16 page 25

⁶⁴ See Mr Carr's Appendix UD7

- similar in size and form to houses in Sonning Common and the wider AONB. It is logical to site the Village Core building where it is, on a predominately level area, avoiding any large man-made cuttings and embankments to facilitate it. Plainly having the core building on a level area is appropriate for residents in their later years of life who would want facilities to be very easy to access.
92. The NPPF emphasises the importance of making efficient use of land.⁶⁵ Clearly where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site. I accept that it is imperative that sites such as the appeal site are optimised when developed. However, optimising does not mean fitting in as much as you can regardless, but it does mean using land efficiently. As this would be an apartment based development then I accept that it would have a greater density than a conventional residential scheme.
93. The Council argued that the proposal would have an urbanising effect. However, the proposed development would be very different to an urban character. There would be a significant landscape setting breaking up the built form and the countryside edge, when read in the context of the proposed planting, would be assimilated in townscape terms. Much has been made of the AONB designation in which the appeal site falls; but this does not mean preservation without any change. The proposed development would in many ways be read as part of the evolution of the area's character.⁶⁶ In my view the proposed development would create an appropriate designed edge to the settlement and an appropriate robust transition with a managed landscape that is a better edge than the back gardens adjoining the settlement boundary that can be found at the settlement edge around parts of Sonning Common.
94. I turn now to the Council's concerns that the layout and design would result in poor amenity for residents by virtue of a lack of access to private amenity space. It is common ground that in policy terms, there is no private amenity requirement prescribed for a retirement community care village. Nonetheless, the proposed development would provide a total of 1,300 msq of private amenity space⁶⁷ comprising: private balconies totalling 0.03 hectare; and directly accessible private landscape and terraces totalling 0.1 hectare.
95. Over and above the private amenity space there would be an extensive amount of publicly accessible green space provided. Again, I note that there is no policy requirement for a retirement community care village yet there would be: landscaped space amongst and between the built form (including foot and cycleways) totalling 1.7 hectares; and a native tree belt and woodland buffer totalling 1 hectare. Combined with the private amenity space there would be 2.83 hectares of amenity land which would be ample given that the site totals 4.5 hectares. That is 62.8% of the appeal site and equivalent to 212.78 msq for each of the 133 units.
96. All of the above is in the context of extra care developments being very different to general housing. I accept that residents do not want the work of managing their own garden. In my view, the layout of the development would

⁶⁵ NPPF paragraph 123.

⁶⁶ See Michael Carr's POE paragraph 7.20

⁶⁷ See Appendix UD5 of Michael Carr's POE

be safe, attractive and inclusive with plenty of natural surveillance of the landscaped spaces which is important given the age restriction of the development and why people would choose to live there.

97. The appeal proposals include access to landscaped spaces and woodland opening up an area that would otherwise be inaccessible private land. This maximises the public benefit of the scheme and would positively contribute to the health and well-being of both residents and the community, to which weight is given in the NPPF as part of the social objective. The Council agreed that there may well be community integration and intergenerational activity through the facilities on site.
98. With regard to car parking, the appeal proposals have been designed to avoid what would otherwise be unplanned 'ad hoc' parking through a formal provision. This is not in one place, rather the design would disperse the necessary parking across the proposed development in a series of clusters. These would be set back and visibly screened from the main routes through the development and would avoid harsh urban parking courts. The proposed 15m woodland belt is a relevant consideration. The proposed planting would buffer and screen views of parked cars and both soften and integrate the parking areas so that they are read as designed landscaped courts. The Council raised concerns about the space available for tree planting. However, in my view there would be ample space on site to accommodate the tree planting the final details of which would be under the Council's control.
99. Overall, I consider the proposal would be in broad accordance with the SOLP policies including DES1, DES2, DES3, DES4 and DES5, SCNP policies D1 and D1a and other design guidance and the NPPF. I conclude on the third issue there would be no reason to dismiss the appeal due to the effect of the design of the proposed development on the character and appearance of the village.

Fourth Issue - whether the proposed development makes adequate provision for any additional infrastructure and services that are necessary, including affordable housing, arising from the development

100. This issue relates to the absence of a completed s106 Agreement to secure infrastructure to meet the needs of the development. At the time of the decision, agreement could not be reached with the Council on the requirements for a planning obligation. Since then, agreement has been reached and a s106 Agreement was submitted at the Inquiry. I have considered the s106 Agreement in the light of the CIL Regulations 2010, as amended, the advice in the NPPF and the PPG.
101. The NPPF indicates that LPAs should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.⁶⁸ Regulation 122 of the CIL Regulations, as amended by the 2011 and 2019 Regulations, and paragraph 56 of the NPPF make clear that Planning Obligations should only be sought where they meet all of the following three tests: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably related in scale and kind to the development.

⁶⁸ NPPF paragraph 54

102. The Council's need for additional infrastructure and services is set out in relevant SOLP policies which include H9 Affordable housing; INF1 Infrastructure; DES 1 Delivering High Quality Development; TRANS2 Promoting Sustainable Transport and Accessibility; TRANS4: Transport Assessments, Transport Statements and Travel Plans; and TRANS5: Consideration of Development Proposals. The Council's SPD (2016) is also relevant. Based on the SPD and the relevant policies, the appeal proposal should provide: (i) a financial contribution towards local primary health care (£73,735); (ii) a recycling and waste contribution (£24,738); (iii) a street naming contribution (£2,977); (iv) a District S106 monitoring fee (£2,686); (v) an affordable housing contribution (£7,510,350); (vi) a public transport services contribution (£117,000); (vii) a travel plan monitoring contribution (£2,040); and (viii) a County S106 monitoring fee (£1,500).
103. The primary care contribution is directly related to the development because it results from the additional pressure on local health services as a result of the future residents. It is fair and reasonable as the amount has been calculated based on the number of future residents. The recycling and waste contribution is necessary for the development to be served by waste infrastructure and the calculation is directly related to the bins needed for this development. It is necessary for the development to be served by street naming plates and the calculation is directly related to the name plates needed for this development. The completion of a planning obligation requires the Council to administer and monitor those obligations. The monitoring fee contribution is necessary to cover the Council's costs and is directly related to the nature of the obligation.
104. The proposal will deliver affordable housing which is required under Policy H9 of the SOLP. It will do so via a contribution in lieu of on-site provision. The s106 Agreement secures the payment of £7,510,350 to be paid by the owners. A financial contribution towards off-site affordable housing is necessary to equate with a 40% affordable housing provision under Policy H9. It is directly related to the development and fairly and reasonably related in scale and kind. The financial contribution has been calculated based on the open market value of a unit to be delivered on the site.⁶⁹ The s106 Agreement requires the total affordable housing contribution to be used towards the provision of off-site affordable housing within the District.
105. The relevant policies which support the transport contributions are set out in the CIL Compliance Statement.⁷⁰ A contribution is required to provide an improved bus service (service 25) for residents, visitors and staff associated with the proposed development as an appropriate and viable alternative to the use of private cars and to promote travel by public transport. The contribution required would be used towards increasing the frequency of the existing service operating between Sonning Common and Reading to every 30 minutes between 0600 - 2030, Monday to Saturday and an hourly service in the evenings (up to 2300) and on Sundays (0800-1800). The contribution is directly related to the number of residential units but excludes the proposed 16 high care units, as these residents are unlikely to use public transport. A

⁶⁹ INQ LPA7 provides the methodology for the calculation of the commuted sums based on the open market value of a unit to be delivered on the site.

⁷⁰ INQ LPA7 NPPF paragraphs 102, 103, 108 and 111; Connecting Oxfordshire: Oxfordshire County Council's Fourth Local Transport Plan (LTP4) 2015-2031 Volume 1 Policy and Overall Strategy Updated 2016 Policy 3 and Policy 34; Connecting Oxfordshire: Oxfordshire County Council's Fourth Local Transport Plan (LTP4) 2015-2031 Volume 2 Bus & Rapid Transit Strategy (2016) paragraphs 91, 93-95.

travel plan monitoring fee is required to monitor the implementation of the travel plan and an administration and monitoring fee is required to monitor the planning obligation.

106. In my view, all of the obligations in the Planning Obligation are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. Therefore, they all meet the tests within Regulation 122 of the CIL Regulations and should be taken into account in the decision. I conclude on the fourth issue that the proposed development makes adequate provision for any additional infrastructure and services that are necessary, including affordable housing, arising from the development.

Fifth Issue - whether, in the light of the criteria set out in paragraph 172 of the NPPF, there are exceptional circumstances to justify the proposed development within the AONB

107. There is no dispute that the appeal scheme would be a major development in the AONB. The tests relating to allowing such development are set out clearly in paragraph 172 of the NPPF. The relevant factors which must be considered are then listed in paragraph 172 a) to c) but it is not an exhaustive list. Great weight must be given to conserving and enhancing landscape and scenic beauty in AONBs and planning permission should be refused for major development other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.

The need for the development and the impact on the local economy

108. I have already discussed the need for the development in detail under the first issue. That discussion is not repeated in detail here, but it is plainly relevant to paragraph 172 a) of the NPPF. There is an immediate unmet need for extra care market housing. This arises not from some ambitious target for extra care. The target for need suggested by Mr Appleton is in fact very modest. It is just 4.5% of the District's population of people 75 years of age and over. It arises because there is hardly any of it available. There are only two schemes which have been built offering 113 units. The only future supply which is available is the market extra care that would be provided at Lower Shiplake for 65 units. Retirement Villages has now sold that site and want a larger site. Whether the Lower Shiplake scheme gets built is therefore uncertain. But even with it the supply of extra care that is available is only 178 units.
109. This against a need, based on a modest aspiration of 4.5% - that is 450 units across the whole District for an overall population of 15,000 in this age category, gives rise to an immediate shortfall of 272. The figure is 337 if the Lower Shiplake proposal is excluded. The stark fact is there is hardly any choice or to put it another way choice is largely unavailable.
110. I am in no doubt that the development of 133 units is needed. Firstly, it is needed to address the immediate shortfall in the five year housing land supply in the District which is only equivalent to some 4.21 years. Secondly, it is needed in this District where at present a population of 15,000 who are aged 75 years or older is forecast to increase to 21,100 by 2035. The demographic evidence indicates a 'critical' need for extra care housing in the District. In this case, the proposed development should be of sufficient size to support the communal facilities that are necessary to ensure an effective operation.

111. Thirdly, it is important to recognise the fact that extra care accommodation, together with all other forms of specialist housing for older people can assist in 'freeing up' existing family and other housing by allowing them to 'right size' by moving to more appropriate accommodation. This type of specialist housing could significantly contribute towards the easing of the present housing crisis in this District where under occupancy amongst older households is greater than for England as a whole. The sale of the 133 units in the appeal proposals would release 133 family houses of three bedrooms or more.⁷¹ The appeal scheme would be likely to free up 39 family dwellings locally but it could be as high as 64.⁷² Significant weight can be given to this.
112. Fourthly, the health and well-being benefits of the appeal proposal should also be recognised and given significant weight. Such benefits to elderly people are entirely obvious. I accept that such health and care benefits apply and also that they are separate from housing delivery. The benefits specialist housing for older people can bring include addressing concerns about suitable supervision, frailty, care, assistance, recreation, loneliness and isolation.
113. I do not consider the impact of refusing the proposed development would be seriously damaging to the local economy, there is no clear evidence to that effect. There is no requirement that has to be demonstrated. However, I do accept that the proposal would deliver economic benefits to the local economy and jobs as well.⁷³ The Appellant has also proposed a local employment and procurement condition which I accept is plainly relevant.⁷⁴ I am satisfied that there is a need for the development and that it is in the public interest.

The cost and scope of developing elsewhere or meeting the need in another way

114. With regard to paragraph 172 b) of the NPPF, the Council's case is that with Policy H1 and H13 the need for specialised housing for the elderly can be met outside of the AONB. The Council refers to the Oxford County Council's Market Position Statement Extra Care Housing Supplement 2019-2022 and to the SHMA. However, the Council does not quantify a need for extra care, albeit the SHMA does recognize it as a category of need and distinguishes between market and affordable extra care housing.⁷⁵ The Council also suggests that the need can be met in people's homes and that needs can be met by 2035. In my view, there is a specific need for extra care provision and market extra care housing. The needs which have been identified are modest and the idea that they be met at home is misplaced. The most relevant need is the immediate need and Mr Appleton's evidence demonstrates what this is.
115. I note that at both the application and appeal stages the Appellant relied upon a sequential assessment of alternative sites to show a lack of suitable sites. The Council questioned this assessment but never really suggested any alternative sites. At the Inquiry reference was made to 8 extra care sites in Mrs Smith's Appendix 1. However, all of those sites have been addressed by Mr Appleton and that information was updated during the Inquiry to reveal that there were no sites with planning permission in the pipeline other than

⁷¹ Paragraph 6.24 of Roland Bolton's POE

⁷² Paragraph 6.27 of Roland Bolton's POE

⁷³ See CD: A.6 Economic Benefits Assessment Report, it is calculated that operation of the site would provide up to circa 70 jobs (FTE). This does not include construction jobs, which are assessed to be of the order of 108 over a period of 4 years, although in practice this maybe higher dependent upon individual project needs.

⁷⁴ See *Verdin v SSCLG* [2016] EWHC

⁷⁵ See CD: D.14 Table 6 page 25

Lower Shiplake which is now uncertain. Therefore, it seems to me that the Council's own evidence supports the Appellant on the lack of alternatives.

116. Moreover, when the Appellant persuaded the landowner to agree to pay the full affordable housing contribution, that significantly strengthened the Appellant's case in respect of paragraph 172 b). That is because the appeal site stands alone as the only site in the whole of the District which can deliver extra care market housing and deliver the affordable housing contribution which the SOLP now requires for C2 uses. Mrs Smith accepted that there are no other sites in the District with planning permission for extra care market housing. The problem is a combination of land economics and SOLP Policy H9 which requires affordable housing on extra care housing schemes. Given this context the appeal proposal does connote rarity and uniqueness.
117. Extra care housing undoubtedly operates in a very different market. Mr Garside provided detailed evidence to the Inquiry how the market for land operates to the detriment of extra care operators. Extra care housing providers cannot compete with house builders or with other providers of specialist housing for older people because of the build costs, the level of the communal facilities and the additional sale costs including vacant property costs. The communal facilities must be provided before any units can be sold and sales tend to be slower.⁷⁶ However, I accept that extra care schemes can charge a premium for the specialist accommodation provided and also benefit from an income from deferred management fees.
118. It seems to me that these factors, all mean that age restricted developments and in particular extra care communities are less viable than traditional housing schemes. Ultimately, age restricted developers are less able to pay the same price for land as residential developers and it is much harder for age restricted developers, and in particular those seeking to deliver extra care, to secure sites for development and meet the housing needs they aim to supply.⁷⁷ Viability is clearly a relevant factor which supports the case under paragraph 172 b) of the NPPF. There is also a strong case for the appeal scheme given the lack of alternative sites in the light of Policy H9 of the SOLP.
119. I note that the SOLP does not allocate any sites for extra care housing, unlike for example in Central Bedfordshire. I also note that the need for extra care housing is recognised in the SCNP, which supports, as was agreed, extra care housing on unallocated sites due to Policy H2a. I am satisfied that the Appellant's need could not be met elsewhere or in any other way and that it would be in the public interest for this to happen on the appeal site.

Detrimental effect on Environmental, Landscape and Recreation opportunities, and the extent to which they could be moderated.

120. This factor has been considered in the second issue above. That discussion is not repeated here but it is plainly relevant to paragraph 172 c). Suffice it to say that I have concluded that there would only be localised landscape and visual effects on the AONB. These limited impacts would not cause material harm to the landscape character of the AONB, nor would they conflict with the aims of protecting its special qualities. I have concluded there would be localised landscape and visual effects on the AONB that could be moderated.

⁷⁶ See section 4 of Richard Garside's POE

⁷⁷ See paragraph 4.65 of Richard Garside's POE

Other Benefits

121. The scheme would deliver other benefits. In my view, these can also form part of the exceptional circumstances and public interest. It is the collective benefits and harms which are relevant to paragraph 172 of the NPPF. Both Mr James and Mr Garnett gave evidence as to numerous other significant benefits, individually and cumulatively, which should be weighed in favour of the proposals. These include contributing to the overall supply of housing which is under five-years; savings in public expenditure (NHS and adult care);⁷⁸ creating new employment and other economic investment (construction and operation);⁷⁹ providing new facilities and services further reinforcing the role and function of Sonning Common; and additional net revenues from Council tax and new homes bonus receipt. Mrs Smith accepted the economic benefits and that bringing facilities to the area, particularly for the older population would be a benefit. It was also accepted that there could be benefits in supporting existing facilities in that residents of Inspired Village sites having the option to support those businesses if they wanted to. No good reason was provided by the Council for discounting the benefits evidence by Mr James or Mr Garnett. The social and economic benefits are matters to which I attribute significant weight. There is a very strong case on exceptional circumstances and public benefits here.

Conclusion

122. Section 85 of the CROW Act 2000 seeks to conserve and enhance the natural beauty of an AONB and paragraph 172 of the NPPF states that great weight should be given to conserving and enhancing landscape and scenic beauty of the AONB. This is not the same as requiring that every development proposal engenders enhancement. Indeed, if that were the case it is difficult to see how major development in an AONB could ever be permitted. It is clearly a matter of balance, but in undertaking that exercise the NPPF makes clear that conserving and enhancing the designated resource is a matter of great weight. In this case I have given great weight to conserving and enhancing landscape and natural beauty of the AONB. The need for the development and the conclusion that there are presently no alternatives outside the designated area are also matters of substantial importance in the public interest. The social and economic benefits attract significant weight. Overall, the benefits would outweigh the localised landscape and visual effects to the AONB. For these reasons I conclude on this issue that exceptional circumstances are demonstrated and that the development would be in the public interest.

Other Matters

123. I have taken into account all other matters raised including the concerns raised by the SCPC, the Rotherfield Peppard Parish Council, the representations made by interested persons including those who gave evidence at the Inquiry and those who provided written submissions. I have already dealt with many of the points raised in the main issues.

124. The SCPC and others objected to the proposed development in the context of the neighbourhood planning process. However, the review of the SCNP has

⁷⁸ See paragraphs 6.16 to 6.33, PoE of Stuart Garnett. See also CD: K7, CD: K8 (Appendix 1 at page 20 onwards), CD: K12 (pages 2-3), and CD: K30 (pages 6, 12, 13, 20 and 24-26 in particular).

⁷⁹ See paragraphs 6.10 to 6.15, PoE of Stuart Garnett

been ongoing since around 2018 but there are no concrete proposals. It is suggested that the proposal is not small scale. However, site SON2 is in fact 3.3 hectares and broadly of the same scale.⁸⁰ The SCNP expressly supports extra care housing at Policy H2a albeit no site is allocated. The SCNP policies are now out of date because of the lack of a five year housing land supply to which I attach significant weight. The concerns about the neighbouring planning process are not sufficient to warrant dismissing this appeal.

125. A number of interested persons cited concerns over impacts on local services in particular the doctor's surgery and parking capacity within the centre of Sonning Common. With respect to impacts on local health services, Mr Garnett's evidence provides details of both operational efficiencies and associated social benefits of extra care, which includes the financial benefits arising from savings to the NHS and social care. I consider that extra care housing benefits elderly people in terms of health and wellbeing. The secure community environment and sense of independence can reduce social isolation and encourage greater fitness and healthy lifestyles. It is reasonable to assume that these factors would likely result in a lower number of visits to the GP, reduced hospital admissions and overall savings to the NHS. This is borne out in the research submitted to the Inquiry.
126. A number of objectors raised concerns over parking capacity within the centre of Sonning Common. However, the appeal site lies within an acceptable walking distance of a number of the facilities within the village centre. Trip generation associated with the proposals would not have a materially negative impact on the road network. I note also that a Travel Plan has been submitted in relation to the proposals.⁸¹ I consider that this matter is capable of being secured by means of an appropriately worded planning condition. In addition to the 'supported transport provision' that would be provided for residents, it would be reasonable to expect that a number of residents would use the existing footpath links to access the village centre.
127. A number of objectors also raised concerns over transport safety and the sufficiency of parking on the appeal site. I note that a number of matters are agreed between the Council and the highway authority in SoCG2 Transport. A new vehicular access would be constructed to the east of the existing access on Blounts Court Road. The proposed scheme would provide for off-site highway improvements comprising works associated with the proposed site access, proposed works to pedestrian facilities along the site frontage either side of the site access, widening of the carriageway and a gateway feature along Blounts Court Road, and provision of a zebra crossing on Widmore Lane. Provision would also be made within the scheme for 93 car and 58 cycle parking spaces (12 visitor, 10 staff and 36 resident) that would be provided in relation to the full aspect of the development. Notwithstanding the original RfR5 the highway authority raises no objection to the proposal subject to the agreed conditions and the contributions contained within the s106 Agreement. In my view the concerns raised about transport issues would not provide a reason for rejection of this appeal.
128. A number of objections relate to the impact on local ecology. The appeal site contains habitats of a lower biodiversity value, which are common and

⁸⁰ See CD: K.18 page 580

⁸¹ See CD: A.8

widespread throughout the District. The appeal scheme provides for a net increase in biodiversity across the site, specifically an increase of 51% for the detailed element. The Ecological Impact Assessment⁸² was accepted by the Council as demonstrating net benefit⁸³ and I attach significant weight to this.

129. At the Inquiry reference was made to numerous appeal decisions. I have taken these into account as appropriate in coming to my decision in this case.

Planning Balance

130. I have concluded that the appeal proposals would be a major development in the AONB where exceptional circumstances apply, and which would be in the public interest. I have given great weight to conserving and enhancing landscape and scenic beauty in the AONB. In terms of paragraph 172 a) of the NPPF I am in no doubt that there is a need this development of 133 units to address the immediate shortfall in the five year housing land supply; to address the critical need for extra care housing in the District; to assist in the freeing up of family housing within South Oxfordshire and to provide the health and well-being benefits to elderly people.
131. The Council argued that with Policy H1 and Policy H13 the need for specialist housing for older people could be met outside the AONB; could be met in people's homes and that needs could be met by 2035. However, I have concluded that there is a specific and immediate need for extra care provision and market extra care housing. From the up-to-date evidence provided at the Inquiry it is clear to me that there are no sites with planning permission in the pipeline other than the Lower Shiplake site which is now uncertain. The case under paragraph 172 b) has been met. That is because the appeal site stands alone as the only site in the whole of the District which can deliver extra care market housing and deliver the affordable housing contribution which the SOLP Policy H9 now requires for C2 uses. In my view extra care housing cannot compete with housebuilders or even other forms of specialist housing for older people because of the build cost, the level of communal facilities and additional sale costs including vacant property costs.
132. In terms of paragraph 172 c) I have concluded there would be localised landscape and visual effects, but these would be relatively small. Only a limited part of the mosaic would be impacted, and this would not alter the overall character of the wider mosaic of the LCT. Plainly such limited impacts would not cause material harm to the landscape character of the AONB, nor would it conflict with the aims of protecting its special qualities. In terms of visual impact, only a small number of nearby locations would have direct views of the appeal proposals where glimpses of the development would be filtered and moderated by perimeter planting and particularly by the woodland belt. Overall, I have concluded under paragraph 172 of the NPPF that the circumstances in this case are exceptional and that the grant of planning permission would be in the public interest.
133. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. In this case where the test in paragraph 172 of the NPPF

⁸² See CD: A32

⁸³ See PoE of Simon James Appendix 11

has been met it is difficult to see how a decision maker could nonetheless refuse to grant planning permission applying paragraph 11 of the NPPF. However, in terms of the development plan I accept that the proposal conflicts with some elements of the development plan, but it also complies with others. Policies in the SOLP are up-to-date and can be given full weight. The appeal proposal conflicts in part with the SOLP, in particular in terms of the overall strategy (STRAT1) and with relevant policies relating to the AONB (ENV1) However, there is partial accord with Policy H13 and full accordance with Policies H1 3ii, H4, H9, H11, DES1, DES2, DES3, DES4 and DES5.

134. With regard to the SCNP, this was made in 2016, against a different housing requirement albeit it is still within the grace period allowed by Policy H4(2) of the SOLP. The SCNP policies can only be given limited weight in the context of the NPPF as it was based on a Core Strategy which is now withdrawn, and it is out of date for that reason. Its policies reliant on the AONB are also out of date given the lack of a five year housing land supply. The proposal would conflict with Policy H1 in so far as the limitation of development is concerned but the policy is expressed as a minimum and the base target has been increased through the SOLP quantum of housing so the appeal scheme would contribute to that. There would be conflict with Policy ENV1 which aims to protect the AONB but there are exceptional circumstances here. There would be broad accordance with Policy H2a, D1 and D1a and ENV2 albeit that three storey development is an exception and must be justified. I conclude that the appeal proposal is in overall accordance with the development plan and there are no material considerations which indicate otherwise.
135. Even if I had decided that the proposal was in overall conflict with the development plan this is a case where there is no five year housing land supply and therefore the most important policies for determining the appeal are out of date.⁸⁴ As to which policies are out of date, it is agreed that the most important for determining the appeal are set out in the RfR. Thus, the tilted balance would be triggered by way of footnote 7 of the NPPF unless paragraph 11 d) i. is satisfied. In this case under paragraph 11 d) i. the adverse effects would not provide a clear reason for refusing the proposed development. It follows therefore that even if the appeal proposal was contrary to the development plan and the tilted balance under paragraph 11 d) ii. of the NPPF applied then the many and varied benefits of the proposals set out above would significantly and demonstrably outweigh any adverse effects. There is no reason to withhold planning permission in this case and I conclude that the appeal should be allowed.

Planning Conditions

136. The Council submitted a list of conditions which I have considered in the light of the advice in paragraphs 54 and 55 of the NPPF and the Government's PPG on the Use of Planning Conditions. The Appellant has agreed to all of the suggested conditions except for Condition 27 which relates to a Procurement and Employment Strategy. The Appellant has also given consent in writing that Conditions 7-27 may be applied as pre-commencement conditions.⁸⁵ Conditions 1, 4 and 5 relate to required time limits and Conditions 2 and 3 are necessary to determine the scope of the application and for the avoidance of

⁸⁴ NPPF paragraph 11 d) footnote 7

⁸⁵ See INQ APP14

- doubt. Conditions 6, 7 and 29 are necessary to secure net gains for biodiversity and Condition 8 is required to minimise the impacts of the development on biodiversity. Condition 9 is necessary to limit the local impact of construction work and Condition 10 is required to ensure that electric vehicle charging is provided. Condition 11 is required in the interests of highway safety and Condition 12 is necessary to ensure adequate car parking.
137. Condition 13 is required in the interests of sustainability and to encourage the use of cycling. Condition 14 on sample materials and Condition 15 on ground levels are required in the interests of visual amenity. Condition 16 is required to ensure adequate provision for the management of waste. Condition 17 is necessary to ensure high standards of sustainable design and construction. Condition 18 is necessary to protect the appearance of the area, the environment and wildlife from light pollution. Conditions 19 and 20 are necessary to ensure that the development is assimilated into its surroundings. Condition 21 is necessary to safeguard the trees which are visually important on the site. Condition 22 is required to safeguard heritage assets of archaeological interest. Condition 23 is necessary to prevent pollution and flooding. Condition 24 is required to ensure the proper provision of foul water drainage. Condition 25 is required to prevent pollution and flooding. Condition 26 is necessary to ensure that the development is not unneighbourly.
138. Condition 27 relates to a procurement and employment strategy. The Council considers that the condition would fail the test of necessity as there is no policy support for this requirement and there would be problems about enforcement. However, it seems to me that a local employment and procurement condition is plainly relevant following the Verdin judgment.⁸⁶ Employing local people and using local produce, to save miles travelled seems to epitomize the principle of sustainable development. Moreover, the strategy would put in place arrangements to ensure that the information was regularly provided to the Council to demonstrate the performance and effectiveness of the initiatives. The condition would not impose unreasonable or unjustified demands on the Council. The condition would meet the tests in the NPPF.
139. Condition 28 is required to ensure the provision of adequate pedestrian and cycle access to the site in the interests of highway safety. Condition 30 is necessary to ensure that sustainable transport modes are taken up. Condition 31 is necessary to avoid sewage flooding and potential pollution incidents. Condition 32 is necessary to ensure that the development is not unneighbourly or detrimental to highway safety. Condition 33 is required to protect the occupants of nearby residential properties from noise disturbance. Condition 34 is required to mitigate any impacts on air pollution.

Overall conclusion

140. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

Harold Stephens

INSPECTOR

⁸⁶ See INQ APP15 Verdin v SSCLG [2016] EWHC

SCHEDULE OF PLANNING CONDITIONS (1-34)

Time limit and approved plans relating to the full planning permission

Commencement – Full

- 1) The development subject to full planning permission, comprising the areas shown as shaded red and green on Drawing No. URB SC[08]00 01 D02 (Site Location Plan), [Phase 1] must be begun not later than the expiration of three years beginning with the date of this permission.

Approved Plans

- 2) That the element of the development hereby approved full planning permission, as shown within the areas shaded red and green on Drawing No. URB SC[08]00 01 D02 (Site Location Plan), [Phase 1] shall be carried out in accordance with the details shown on the following approved plans, except as controlled or modified by conditions of this permission:

URB SC [08] 00 01 Rev D02 (Site Location Plan)
URB SC [08] 00 03 Rev D04 (Proposed Block Plan)
02 Rev 03 (Landscape Plan)
03 Rev 03 (Hard Landscaping)
04 Rev 03 (Soft Landscaping)
URB VC [08] 70 01 Rev D02 (Village Core Elevations)
URB VC [08] 70 02 Rev D01 (Village Core Elevations)
URB VC [08] 70 03 Rev D01 (Village Core Elevations)
URB VC [08] 70 04 Rev D01 (Village Core Elevations)
URB VC [08] 00 01 Rev D02 (Village Core Ground Floor Plan)
URB B01 [08] 70 01 Rev D01 (Block 1 Elevations)
URB B02 [08] 70 01 Rev D01 (Block 2 Elevations)
URB B03 [08] 70 01 Rev D01 (Block 3 Elevations)
URB B04 [08] 70 01 Rev D01 (Block 4 Elevations)
URB B01 [08] 00 01 Rev D00 (Block 1 Floor Plans)
URB B01 [08] 20 01 Rev D00 (Block 1 Roof Plan)
URB B02 [08] 00 01 Rev D00 (Block 2 Floor Plans and Roof Plan)
URB B03 [08] 10 01 Rev D00 (Block 3 Floor Plan)
URB B03 [08] 00 01 Rev D00 (Block 3 Floor Plan)
URB B03 [08] 20 01 Rev D00 (Block 3 Roof Plan)
URB B04 [08] 00 01 Rev D00 (block 4 Floor Plans)
URB B04 [08] 20 01 Rev D00 (block 4 Roof Plan)
URB SS [08] 00 01 Rev D00 (Substation)
OX5025-11PD-004 Rev H – Road Carriageway Widening
OX5025-16PD-006 Rev A - Cross Sections of Proposed Widening along Blounts Court Road
OX5025-16PD-004 Rev C - Proposed Off-Site Improvements
OX5025-16PD-002 Rev C - Proposed Site Access Arrangements
OX5025-16PD-003 Rev D - Proposed Internal Layout
OX5025-11PD-007 Rev F - Review of Revised Masterplan (6 Metres Internal Carriageway)
OX5025-11PD-009 Rev F Proposed Zebra Crossing at Widmore Lane

Outline Plans

- 3) That the element of the development hereby approved outline planning permission, as shown within the areas shaded blue on Drawing No. URB SC [08] 00 01 D02 (Site Location Plan) shall be carried out in general accordance with the details shown on the following documents:

Illustrative Masterplan PW.1618.L.01 Rev 03
Design and Access Statement May 2020
Design Commitment Statement URB-SC A3 90 02-D00 April 21

Reserved matters and time limit relating to the outline planning permission

Reserved Matters

- 4) Within a period of three years from the date of this permission all of the reserved matters shall have been submitted for approval in writing by the Local Planning Authority. The reserved matters shall comprise: details of the layout, scale, appearance and landscaping of the development. All reserved matters for any one phase shall be submitted concurrently. No development shall commence within any one phase until there is written approval of all of the reserved matters for that phase and the development shall be carried out in accordance with all of the approved reserved matters.

Commencement – Outline

- 5) The site subject to outline planning permission, comprising the area shown as shaded blue on Drawing No. URB SC [08]00 01 D02 (Site Location Plan) [Phase 2], shall be begun not later than whichever is the later of the following dates:
- (i) 3 years from the date of this permission: or
 - (ii) 2 years from the approval of the final reserved matters application.

Biodiversity Enhancement Plan – Outline

- 6) Concurrent with the submission of any reserved matters application related to this outline planning permission, a Biodiversity Enhancement Plan (BEP) shall be submitted to and approved in writing by the Local Planning Authority. The BEP should be broadly in accordance with the outline details of habitat enhancements illustrated in Appendix 13 of the supporting Ecological Impact Assessment (Southern Ecological Solutions, 26/06/2020, Rev E). The BEP should include:
- (a) Details of habitat creation or enhancements (this could cross reference relevant landscape plans) and include suitably detailed drawings and cross sections as required.
 - (b) Details of species enhancements including relevant scale plans and drawings showing the location, elevation and type of features such as bat and bird boxes as appropriate.
 - (c) Selection of appropriate strategies for creating/restoring target habitats or introducing target species.

- (d) Selection of specific techniques and practices for establishing vegetation.
- (e) Sources of habitat materials (e.g. plant stock) or species individuals.
- (f) Method statement for site preparation and establishment of target features.
- (g) Extent and location of proposed works.
- (h) Details of a biodiversity metric assessment

Thereafter, the biodiversity enhancement measures shall be developed on site and retained in accordance with the approved details. All enhancements should be delivered prior to the final occupation of the relevant phase.

Pre-commencement conditions

Biodiversity Enhancement Plan – Full

- 7) Prior to the commencement of the development subject of full planning permission, a Biodiversity Enhancement Plan (BEP) shall be submitted to and approved in writing by the Local Planning Authority. The BEP should be broadly in accordance with the details of habitat enhancements illustrated in Appendix 13 of the supporting Ecological Impact Assessment (Southern Ecological Solutions, 26/06/2020, Rev E). The BEP should include:
- (a) Details of habitat creation or enhancements (this could cross reference relevant landscape plans) and include suitably detailed drawings and cross sections as required.
 - (b) Details of species enhancements including relevant scale plans and drawings showing the location, elevation and type of features such as bat and bird boxes as appropriate.
 - (c) Selection of appropriate strategies for creating/restoring target habitats or introducing target species.
 - (d) Selection of specific techniques and practices for establishing vegetation.
 - (e) Sources of habitat materials (e.g. plant stock) or species individuals.
 - (f) Method statement for site preparation and establishment of target features.
 - (g) Extent and location of proposed works.

Thereafter, the biodiversity enhancement measures shall be developed on site and retained in accordance with the approved details. All enhancements should be delivered prior to the final occupation of the relevant phase.

Construction Environmental Management Plan for Biodiversity

- 8) Prior to the commencement of any development (including vegetation clearance) a Construction Environmental Management Plan for Biodiversity (CEMP: Biodiversity) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following:
- (a) Update ecological surveys for relevant habitats and species, update surveys shall follow national good practice guidelines (badgers surveys shall be no older than 6 months).
 - (b) Risk assessment of potentially damaging construction activities.

- (c) Identification of biodiversity protection zones.
- (d) Practical measures (both physical measures and sensitive working practices) to avoid, reduce or mitigate the impacts on important habitats and protected species during construction.
- (e) The location and timing of sensitive works to avoid harm to biodiversity features.
- (f) The times during construction when specialist ecologists need to be present on site to oversee works.
- (g) Responsible persons and lines of communication.
- (h) Use of protective fences, exclusion barriers and warning signs.

Thereafter the approved CEMP (Biodiversity) shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

Phasing

- 9) Prior to the commencement of any development subject to full planning permission or submission of the first Reserved Matters for the development subject to outline planning permission, a phasing plan shall be submitted to and approved in writing by the Local Planning Authority. The development of the site shall thereafter be carried out in accordance with the approved phasing plan.

Electric Vehicle Charging

- 10) Prior to the commencement of each phase of development a scheme to provide that phase with Electric Vehicle Charging Points shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved Electric Vehicle Charging Points shall be implemented prior to the first occupation of that phase.

Estate Roads and Footpaths

- 11) Prior to the commencement of each phase of development, details of the estate roads and footpaths within that phase shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, before first occupation of any unit within that phase, the whole of the estate roads and footpaths (except for the final surfacing thereof) shall be laid out, constructed, lit and drained.

Car Parking Plan

- 12) Prior to the commencement of the reserved matters phase of the development plans showing car parking within that phase shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the agreed car parking provision shall be provided before first occupation of that part of the site and be retained as such thereafter.

Cycle Parking

- 13) Prior to the commencement of each phase of development, details of cycle storage, for that phase shall be submitted to and approved in writing by the

Local Planning Authority. The agreed cycle parking shall be provided before first occupation of that part of the site and be retained as such thereafter.

Materials

- 14) Prior to the commencement of each phase of development, details of all materials, including samples where required, to be used in the external construction and finishes of the development within that phase shall be submitted to and approved in writing by the Local Planning Authority. The development of the site shall thereafter be carried out in accordance with the approved details.

Site Levels

- 15) Prior to the commencement of any development, detailed plans showing the existing and proposed ground levels of that phase, together with the slab and ridge levels of the proposed development, relative to a fixed datum point on adjoining land outside of the application site, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

Refuse and Recycling

- 16) Prior to the commencement of each phase of development, details of refuse and recycling storage for that phase shall be submitted to and approved in writing by the Local Planning Authority. The refuse and recycling storage shall be implemented in accordance with the approved details prior to the occupation of the development in each phase and retained thereafter.

Energy Statement

- 17) Prior to the commencement of each phase of development, an Energy Statement demonstrating how the development within that phase will achieve at least a 40% reduction in carbon emissions compared with code 2013 Building Regulations, and details of how this will be monitored, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

External Lighting

- 18) Prior to the commencement of each phase of the development approved in full, and accompanying the first Reserved Matters application for the development approved in outline, a detailed lighting scheme (including street and pathway lighting) for that phase, including a programme for its delivery, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved scheme.

Landscaping

- 19) Prior to the commencement of each phase of development, a scheme for the landscaping of that phase including the planting of trees and shrubs, the

treatment of the access road and hard standings, and the provision of boundary treatment shall be submitted to and approved in writing by the Local Planning Authority.

The details shall include schedules of new trees and shrubs to be planted (noting species, plant sizes and numbers/densities), the identification of the existing trees and shrubs on the site to be retained (noting species, location and spread), any earth moving operations and finished levels/contours, and an implementation programme.

The scheme shall be implemented prior to the first occupation or use of that phase of development and thereafter be maintained in accordance with the approved scheme.

In the event of any of the trees or shrubs so planted dying or being seriously damaged or destroyed within 5 years of the completion of the development, a new tree or shrub or equivalent number of trees or shrubs, as the case may be, of a species first approved by the Local Planning Authority, shall be planted and properly maintained in a position or positions first approved in writing by the Local Planning Authority.

Landscape Management Plan

- 20) Prior to the commencement of the first phase of development, a maintenance schedule and a long term management plan for the soft landscaping works for that phase shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include those areas of the site which are to be available for communal use as open space. The schedule and plan shall be implemented in accordance with the agreed programme.

Tree Protection

- 21) Prior to the commencement of any site works or operations (including the removal of any vegetation or trees) required in relation with the full or outline planning permission, an arboricultural method statement to ensure the satisfactory protection of retained trees during the construction period shall be submitted to and approved in writing by the Local Planning Authority. The matters to be encompassed within the arboricultural method statement shall include the following:
- (a) A specification for the pruning of, or tree surgery to, trees to be retained in order to prevent accidental damage by construction activities.
 - (b) The specification of the location, materials and means of construction of temporary protective fencing and/or ground protection in the vicinity of trees to be retained, in accordance with the recommendations of BS 5837 'Trees in relation to design, demolition and construction' and details of the timing and duration of its erection.
 - (c) The definition of areas for the storage or stockpiling of materials, temporary on-site parking, site offices and huts, mixing of cement or concrete, and fuel storage.
 - (d) The means of demolition of any existing site structures, and of the re-instatement of the area currently occupied thereby.

- (e) The specification of the routing and means of installation of drainage or any underground services in the vicinity of retained trees.
- (f) The details and method of construction of any other structures such as boundary walls in the vicinity of retained trees and how these relate to existing ground levels.
- (g) The details of the materials and method of construction of any roadway, parking, pathway or other surfacing within the root protection area, which is to be of a 'no dig' construction method in accordance with the principles of Arboricultural Practice Note 12 "Through the Trees to Development", and in accordance with current industry best practice; and as appropriate for the type of roadway required in relation to its usage.
- (h) Provision for the supervision of any works within the root protection areas of trees to be retained, and for the monitoring of continuing compliance with the protective measures specified, by an appropriately qualified arboricultural consultant, to be appointed at the developer's expense and notified to the Local Planning Authority, prior to the commencement of development; and provision for the regular reporting of continued compliance or any departure there from to the Local Planning Authority.
- (i) The details of the materials and method of construction of the pedestrian and cycle access to Widmore Lane, which is to in part be of a 'no dig' construction method in accordance with the principles of Arboricultural Practice Note 12 "Through the Trees to Development", and in accordance with current industry best practice; and as appropriate for the type of surface required in relation to its usage.
- (j) A specification of the foundation design for the pedestrian and cycle access to Widmore Lane demonstrating absolute minimal soil excavation, soil compaction or soil contamination within the root protection area of the adjacent trees.

Thereafter the development shall be carried out in accordance with the approved details with the agreed measures being kept in place during the entire course of development.

Implementation of Archaeological work

- 22) Prior to any earth works forming part of the development or the commencement of the development (other than in accordance with the agreed Written Scheme of Investigation), a programme of archaeological mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority.

Ground Investigation

- 23) Prior to the commencement of each phase of development the results of an intrusive ground investigation, analysing the potential for dissolution features and mitigation measures shall be submitted to and approved in writing by the Local Planning Authority. The results shall then be implemented in accordance

with the approved programme and used to inform the surface water drainage design.

Foul Drainage

- 24) Prior to the commencement of each phase of development, a detailed foul water drainage scheme for that phase shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and no part of the development in the phase to which the scheme relates shall be occupied or used until the foul water drainage works to serve that phase have been completed.

Surface Water Drainage

- 25) Prior to the commencement of each phase of development, a detailed surface water drainage scheme relating to that phase shall be submitted to and approved in writing by the Local Planning Authority. This should be based on the principles contained within Flood Risk Assessment and Drainage Strategy reference 3424 Dec 2019 by Scott Hughes Design, sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development.

The scheme shall include:

- (a) Discharge rates.
- (b) Discharge volumes.
- (c) Catchment plans.
- (d) Maintenance and management of SUDS features.
- (e) Sizing of features – attenuation volume.
- (f) Site wide infiltration tests to be undertaken in accordance with BRE365.
- (g) Ground Investigation Report.
- (h) Detailed drainage layout with pipe/chamber/soakaway numbers & sizes.
- (i) Proposed site levels, floor levels and an exceedance plan.
- (j) Detailed network calculations to include the worst case 1:100 + 40% event.
- (k) SUDS features and sections.
- (l) Details of proposed Primary, Secondary and Tertiary treatment stages to ensure sufficient treatment of surface water prior to discharge.
- (m) Drainage construction details.
- (n) A compliance report to demonstrate how the scheme complies with the "Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire."
- (o) A range of SuDS techniques throughout the site to manage water quantity and maintain water quality.

The development shall be carried out in accordance with the approved details and no part of the development in the phase to which the scheme relates shall be occupied or used until the surface water drainage works to serve that phase have been completed.

Construction Method Statement

- 26) No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:
- (a) the parking of vehicles of site operatives and visitors;
 - (b) loading and unloading of plant and materials;
 - (c) storage of plant and materials used in constructing the development;
 - (d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - (e) wheel washing facilities;
 - (f) measures to control the emission of dust and dirt during construction;
 - (g) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - (h) details of measures for the control of noise during construction works;

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction methods.

Procurement and Employment Strategy

- 27) Prior to the commencement of development, a Local Employment and Procurement Strategy shall be submitted to, and approved in writing by, the Local Planning Authority. The Strategy shall include:
- (i) Details of recruitment within the development to achieve a minimum of 25% of village staff from within a 5 mile radius of Sonning Common;
 - (ii) Details of the use of local businesses, including purchase of food, beverage and other items to achieve a minimum of 50% of fresh produce (meat, bakery, dairy, fruit and vegetables) from within a 5 mile radius of Sonning Common;
 - (iii) The timing and arrangements for the implementation of these initiatives; and
 - (iv) Suitable mechanisms for monitoring the effectiveness of these initiatives.

All parts of the approved Local Employment and Procurement Strategy shall be implemented in full and retained thereafter.

Pre-occupancy conditions

Pedestrian and Cycle Access

- 28) Prior to occupation of any development subject to full or outline planning permission, details of the pedestrian/cycle access to the site from Widmore Lane, including a 3.5m wide combined pedestrian/cycle path through the site, associated street lighting facilities and a zebra crossing along Widmore Lane shall be submitted to and approved in writing by the Local Planning Authority. The details shall be based on those shown on plan OX5025-11PD-009 Rev F, subject to the tree protection measure shown in condition 21. The works shall

be carried out and completed in accordance with the approved details before occupation of any part of the site, and permanently retained as such thereafter.

Landscape and Ecology Management Plan

29) Prior to the first occupation of the development hereby approved, a Landscape and Ecology Management Plan (LEMP) for the whole site shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall include the following:

- (a) Description and evaluation of features to be managed.
- (b) Ecological trends and constraints on site that might influence management.
- (c) Proposals for ecological enhancements for habitats and species as agreed in the Biodiversity Enhancement Plan.
- (d) Aims and objectives of management.
- (e) Appropriate management options for achieving aims and objectives.
- (f) Prescriptions for management actions.
- (g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- (h) Details of the body or organization responsible for implementation of the plan.
- (i) Ongoing monitoring and remedial measures.

The LEMP shall include details of the legal and funding mechanism by which the long-term implementation of the plan will be secured by the developer with the management bodies responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The development shall be implemented in accordance with the approved details and management prescriptions implemented across the site for a timeframe to be agreed within the LEMP.

Green Travel Plans

30) Prior to the occupation of the first phase of the development hereby approved a full and detailed Travel Plan and Travel Information Packs shall be submitted to and approved in writing by the Local Planning Authority. These documents will be updated upon the submission of subsequent phases of the development. Thereafter, that part of the development shall be implemented in accordance with the approved documents and the associated Travel Information Packs issued to each resident upon first occupation.

Wastewater

31) No properties shall be occupied in any phase until confirmation has been provided that either:

- (i) All wastewater network upgrades required to accommodate the additional flows from the development have been completed; or-
- (ii) A housing and infrastructure phasing plan has been agreed with Thames Water to allow additional properties to be occupied.

Where a housing and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed housing and infrastructure phasing plan.

Service and Delivery Management Plan

- 32) No building shall be occupied until details of a comprehensive servicing and delivery management plan has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. Deliveries and service areas shall be managed in accordance with the agreed scheme.

Compliance conditions

Construction Hours

- 33) The hours of operation for construction and demolition works shall be restricted to 08:00-18:00 Monday to Friday and 08:00-13:00 on a Saturday. No work is permitted to take place on Sundays or Public Holidays without the prior written permission of the Local Planning Authority.

Air Quality

- 34) The air quality mitigation measures outlined in the Air Quality Assessment (Ref REP-10111755A-20191212) shall be carried out in accordance with the recommendations and specifications in the report and implemented prior to occupation of each unit. Thereafter, the mitigation measures shall be retained as approved and in accordance with manufacturer's instructions.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Robin Green of Counsel

Instructed by the Solicitor to South
Oxfordshire District Council

He called:

Mr John Jeffcock
BA (Hons) MA CMLI NZILA

Associate of Michelle Bolger Expert
Landscape Consultancy

Mr Julian Kashdan-Brown
B Arch (Hons) Dip Arch MSc MA RIBA

Architect and Urban Designer

Mrs Nicola Smith BSc (Hons) MSc

Principal Major Applications Officer

Mrs Emma Bowerman BA (Hons) MSc

Principal Major Applications Officer

FOR THE APPELLANT:

Mr Christopher Young QC
Ms Leanne Buckley Thompson of Counsel

Both instructed by the Appellant

They called

Mr Nigel Appleton MA (Cantab)

Executive Chairman of Contact
Consulting (Oxford) Ltd

Mr Stuart Garnett BSc Dip TP MRTPI

Planning Director Inspired Villages

Mr James Atkin BSc (Hons) Dip LM CMLI

Director (Landscape) Pegasus Group

Mr Michael Carr BA (Hons) Dip LA Dip UD
RUDP

Director (Design and Master
Planning) Pegasus Group

Mr Roland Bolton BSc (Hons) MRTPI

Senior Director, DLP Planning Ltd

Mr Richard Garside RICS

Director and Head of Development
Consultancy at Newsteer

Mr Simon James BA Dip TP MRTPI MIEMA

Managing Director DLP Planning Ltd

FOR SONNING COMMON PARISH COUNCIL:

Mr Ben Du Feu of Counsel

Instructed by the Parish Council

He called

Mrs Emily Temple BSc (Hons) MSc MRTPI

Director ET Planning Ltd

FOR OXFORDSHIRE COUNTY COUNCIL:

Mr Dave Harrison BSc (Hons) MSc CMILT M Inst TA	Senior Public Transport Planner
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Ms Judith Coats LLB	Infrastructure Funding Team Leader
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Interested Persons

Mr Tom Fort	Chairman of Sonning Common Parish Council
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Ms Julia Whitelaw	Local Resident
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Dr Kim Emmerson	General Practitioner
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Ms Georgina Forbes	Local Resident
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Mr Jonathan Berger	Acting Chair of the Rotherfield Peppard Parish Council
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Mrs Joanne Shanagher	Local Resident
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Dr Michael Stubbs PhD MSc MRICS MRTPI	Planning Adviser, The Chilterns Conservation Board
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DOCUMENTS SUBMITTED AT THE INQUIRY:

Local Planning Authority Documents

INQ LPA1	Opening Statement
INQ LPA2	Factsheet 6 Design Principles for Extra Care Housing (3 rd edition)
INQ LPA3	Proof of evidence Erratum sheet, Nicola Smith
INQ LPA4	Appendix 1 update, Nicola Smith
INQ LPA5	Five-year Housing Land Supply Erratum, Nicola Smith
INQ LPA6	Replacement Policies Schedule
INQ LPA7	CIL Compliance Statement
INQ LPA8	CIL Compliance Statement Addendum
INQ LPA9	Costs application
INQ LPA10	Conditions
INQ LPA11	Closing Submissions

Appellant Documents

INQ APP1	Opening Statement
INQ APP2	Summary and comparison of landscape and visual effects
INQ APP3	Correction sheet to JWA06
INQ APP4	Open letter to Boris Johnson
INQ APP5	Briefing Note Errata to Contextual Study of James Atkin
INQ APP6	Service Charges Note of Stuart Garnett
INQ APP7	References to height Johnson Matthey Planning Statement

INQ APP8 NPPF consultation document
INQ APP9 Mr Doyle email
INQ APP10 Extracts from Village News by Tom Fort
INQ APP11 s106 Agreement
INQ APP12 Nigel Appleton's Note
INQ APP13 Central Bedfordshire Policy H3 Main Modifications
INQ APP14 Pre commencement note
INQ APP15 Verdin Judgment
INQ APP16 Closing Submissions
INQ APP17 Appellant's response to the Costs application

R6 Party Documents

INQ PC1 Opening Statement
INQ PC2 Closing Submissions

Interested Persons Documents

IP1 Statement by Mr Tom Fort
IP2 Statement by Ms Julia Whitelaw
IP3 Statement by Dr Kim Emmerson
IP4 Statement by Ms Georgina Forbes
IP5 Statement by Mr Jonathan Berger
IP6 Statement by Mrs Joanne Shanagher
IP7 Statement by Dr Michael Stubbs



Ministry of Housing,
Communities &
Local Government

Patrick Downes
Harris Lamb Ltd
75-76 Francis Road
Birmingham
B16 8SP

Our ref: APP/R0660/A/13/2197532
APP/R0660/A/13/2197529

15 July 2020

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY MULLER PROPERTY GROUP
LAND OFF AUDLEM ROAD/BROAD LANE, STAPELEY, NANTWICH AND LAND OFF
PETER DE STAPELEIGH WAY, NANTWICH
APPLICATION REFS: 12/3747N AND 12/3746N**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC, who held a public local inquiry on 20-24 February 2018 into your client's appeal against the decision of Cheshire East Council to refuse your client's application for outline planning permission for Appeal A: Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works; and against the failure of Cheshire East Council to determine your client's application for Appeal B: Proposed new highway access road, including footways and cycleways and associated works, in accordance with applications 12/3747N and 12/3746N.
2. The Secretary of State issued his decisions in respect of the above appeals by way of his letters dated 17 March 2015 and 11 August 2016. Those decisions were challenged by way of an application to the High Court and were subsequently quashed by orders of the

Ministry of Housing, Communities & Local Government
Jean Nowak, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Tel: 0303 444 1626
Email: PCC@communities.gov.uk

Court dated 3 July 2015 and 14 March 2017. The appeals have therefore been redetermined by the Secretary of State following a new inquiry into this matter. Details of the original inquiry are set out in the 17 March 2015 and 11 August 2016 decision letters.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be allowed and planning permission should be granted.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeals and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. The Secretary of State notes that, prior to the opening of the Inquiry the appellant submitted a revised layout of the proposals which omitted the proposed access off Audlem Road and that this has necessitated an amendment to the description of development to reflect the changes (IR7). The Secretary of State also notes that the Inspector subsequently received comments on the revisions following consultation by the appellant. For the reasons given in IR7-8, the Secretary of State agrees with the Inspector that the proposed revisions should be taken into account in the determination of this case and he is satisfied that no interests have thereby been prejudiced.
6. The Secretary of State has noted that a reference to policy RG6 of the Cheshire East Local Plan Strategy (CELPS) in IR424 should refer to policy PG6.

Matters arising since the close of the inquiry

7. On 21 February 2019, the Secretary of State wrote to the main parties to afford them an opportunity to comment on:
 - The Written Ministerial Statement on housing and planning, issued on 19 February 2019.
 - The publication, on 19 February 2019, of the 2018 Housing Delivery Test (HDT) measurement by local planning authorities and a technical note on the process used in its calculation.
 - The Government's response to the technical consultation on updates to national planning policy and guidance, published 19 February 2019.
 - The revised National Planning Policy Framework, published on 19 February 2019.
 - Updated guidance for councils on how to assess their housing needs.

The representations that were received in response were circulated to the main parties on 11 March 2019. Further representations were subsequently received, including an assessment of the 5-year housing land supply submitted on 23 April 2019 by Harris Lamb on behalf of the appellant and the Cheshire East Annual Housing Monitoring Update Report (HMU) (Base Date March 2018) received on 24 April 2019 submitted by Cheshire East Council. Further representations were received in response to the HMU 2018.

Subsequently the Cheshire East Annual Housing Monitoring Update Report (Base Date March 2019) was submitted by Cheshire East Council on 8 November 2019. Representations received were circulated with the final correspondence received on 12 February 2020. All representations are listed at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

8. The 2019 Housing Delivery Test results were published on 13 February 2020. The Council's score was assessed as 230%, requiring no further action. The Secretary of State is satisfied that this does not affect his decision and does not warrant further investigation or a referral back to parties.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of the Cheshire East Local Plan Strategy 2010 – 2030, adopted July 2017 (CELPS), the Stapeley and Batherton Neighbourhood Plan, made in 2018 (S&BNP) and the saved policies from Crewe and Nantwich Replacement Local Plan (February 2005) (CNLP). The Secretary of State considers that relevant development plan policies include those set out in paragraph 5.1 of the Planning Statement of Common Ground (IR26).
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as those listed in IR28-29. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

Main issues

12. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR380-381.

Character and appearance

13. For the reasons given in IR382-387 and IR418 the Secretary of State agrees with the Inspector at IR388 that the proposals are in conflict with the letter and principles of Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policy GS1, H1 and H5 of the S&BNP. However, he also agrees that the appeal sites are now effectively bordered on three sides by existing and emerging development. The Secretary of State also agrees with the Inspector that the rural hinterland, anticipated by the plan vision has, in the circumstances of these cases, been extensively eroded. The Secretary of State agrees with the Inspector that the degrees of harm to visual amenity here, because of the very specific urbanised context of the site and the contribution green space makes to the scheme, would, in actuality, be limited in extent (IR418). Overall the Secretary of State affords the harm to character and appearance, and visual amenity, limited weight in the planning balance.

BMV Agricultural land

14. As set out in IR389-390 and IR419 the Secretary of State agrees with the Inspector that the proposed development would result in the loss of best and most versatile agricultural land and is contrary to Policy SE2 of the CELPS. The Secretary of State further agrees that the area of land is modest and predominantly at lower grade, and that its loss cannot be judged significant. He agrees it merits only modest weight against in the planning balance.
15. The Secretary of State notes that no other substantive harms have been identified and agrees with the Inspector that the other effects of the development can be effectively mitigated through the provisions of the section 106 obligations, thus rendering them neutral in the planning balance (IR419).

Highway safety

16. The Secretary of State acknowledges that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. For the reasons given in IR391–392 and IR416 the Secretary of State agrees with the Inspector that such concerns must be afforded no more than very limited weight.

Housing land supply

17. The Secretary of State has considered the Inspector's assessment of housing land supply at IR393-409 and has also taken into account the revised Framework, Housing Delivery Test (HDT) and material put forward by parties as part of the reference back processes set out in paragraph 7 of this letter. As part of this, the Council submitted their Annual Housing Monitoring Update Report (HMU) (base date March 2019) which concludes that the Council can demonstrate 7.5 years of housing land supply, assessed from 2019-2024. The appellant disagrees with this figure and concludes that the Council can demonstrate 4.72 years of housing land supply.
18. For the reasons given in IR393 the Secretary of State agrees that the basic housing requirement for Cheshire East Council is 1800 dwellings per annum (9000 over 5 years) and notes that this was agreed in a statement of common ground between the parties and was also set out in the CELPS. The shortfall to be addressed is now 3582 dwellings, which is set out in the Council's HMU 2019 and also referred to in the appellant's correspondence of 4 December 2019. The Secretary of State, therefore, uses this figure of 3582 dwellings as the shortfall rather than 5635 dwellings set out in IR393. For the reasons given in IR397-398, the Secretary of State agrees with the Inspector that any backlog should be made up within the first 8 years of the plan period as determined by the CELPS and the Examining Inspector, and that this 8-year period should not be rolled forward. As the 8-year period began on 1 April 2016, and concludes on 31 March 2024, the shortfall of 3582 should therefore be made up in the 5-year period on which the current HMU is based, with the housing requirement at this stage of the calculation being 12,582.
19. The Secretary of State notes that since the closure of the Inquiry the revised Framework and updated HDT 2019 figures have been published. The HDT figures mean that the Council is only required to add a 5% buffer in line with paragraph 73 of the Framework rather than the 20% buffer that was required at the time of the Inquiry. Including this buffer, the housing requirement is 13,211.

20. The Secretary of State considers that the Inspector's assessment of housing supply at IR400-409 is now out of date given the new information that has been submitted by parties since the end of the Inquiry.
21. The Secretary of State has reviewed the information submitted by the parties, in particular the sites where deliverability is in dispute between the appellant and the Council. The Secretary of State agrees with the appellant that some of the sites identified by the Council, at the time the evidence was submitted, may not meet the definition of deliverability within the Framework. He considers that, on the basis of the evidence before him, the following should be removed from the supply: sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement; a site where there is no application and the written agreement indicates an application submission date of August 2019 which has not been forthcoming, with no other evidence of progress; and a site where the agent in control of the site disputes deliverability. He has therefore deducted 301 dwellings from the supply of housing figures.
22. The Secretary of State also considers that there are further sites where the evidence on deliverability is marginal but justifies their inclusion within a range of the housing supply figures. This group includes sites where the Council has a written agreement with an agent or developer and this indicates progress is being made, or where there is outline planning permission or the site is on a brownfield register and the Secretary of State is satisfied that there is additional information that indicates a realistic prospect that housing will be delivered on the site within 5 years. The Secretary of State considers that in total the number of dwellings within this category is 2,234.
23. Applying these deductions to the Council's claimed deliverable supply figure of 17,733, the Secretary of State is satisfied therefore, on the basis of the information before him, that the Council has a 5 year deliverable supply of between 15,198 dwellings and 17,432 dwellings. As the Secretary of State also considers that the Council has a total 5 year requirement of 13,211 dwellings, he is satisfied that the Council is able to demonstrate a supply of housing sites within the range of 5.7 years to 6.6 years. The Secretary of State has considered the Inspector's comments in IR423-425, and considers that in the light of his conclusion that there is a 5 year housing land supply, the presumption in favour of sustainable development does not apply in this case.

Need for a mixed use development

24. The Secretary of State agrees with the Inspector at IR410 that the right approach is to consider the proposal as a whole, as to do otherwise would be to invite independent evaluation of the constituent elements across the board.

Distortion of the Council's spatial strategy

25. For the reasons given in IR411, the Secretary of State agrees with the Inspector that the development proposed here cannot be considered of such a magnitude as to distort the spatial vision. He therefore agrees with the Inspector that there is no breach of policies PG2 and PG7 of the CELPS.

The benefits of the scheme

26. For the reasons given in IR412 and IR421, the Secretary of State agrees with the Inspector that the proposal would bring economic benefits, in terms of direct and indirect

employment during its construction and expenditure into the local economy. The Secretary of State also agrees with the Inspector that the site is in a sustainable location and notes that Nantwich is one of the preferred locations for development in the CELPS. He agrees that these benefits should be afforded medium weight.

27. For the reasons given in IR413 and IR421, the Secretary of State agrees with the Inspector that there will be a number of social benefits including extensive areas of public open space embracing a new village green and an enlarged Landscape and Nature Conservation Area, the scope for the development of a further primary school and improvements to sustainable transport connectivity. He agrees that these would represent significant additional social benefits, not just to new occupiers of the development, but to those in the locality as well. He also agrees with the Inspector that these benefits should be afforded medium weight.
28. For the reasons given in IR414 and IR420 the Secretary of State agrees with the Inspector that the delivery of significant numbers of market housing in a sustainable location is a significant benefit. Whilst the Secretary of State has concluded that the Council can demonstrate a 5 YHLS, he has taken into account that nationally it is a government policy imperative to boost the supply of housing, as set out at paragraph 59 of the Framework, and he considers that this benefit should be afforded significant weight.
29. The Secretary of State also agrees with the Inspector at IR415 and IR420 that the scheme will include 30% affordable homes which will help meet the need in Cheshire East. The Secretary of State agrees that this is a tangible benefit and merits significant weight.

Planning conditions

30. The Secretary of State has given consideration to the Inspector's analysis at IR368-372, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.
31. Having had regard to the Inspector's analysis at IR373-378, the planning obligation dated 2 March 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR374-378 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

32. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with PG6, SD1, SD2, SE2 of the CELPS, Policy RES5 of the CNLP and Policies G5, H1 and H5 of the S&BNP and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

33. Weighing against the proposal, the harm to character and appearance, and visual amenity, is afforded limited weight and the loss of BMV agricultural land is afforded modest weight. Any concerns due to increase in traffic are afforded only very limited weight. No other substantive harms have been identified.
34. Weighing in favour of the proposal, the provision of market housing in a sustainable location is afforded significant weight. The provision of affordable housing to help meet a need in Cheshire East is also given significant weight. The economic benefits in terms of direct and indirect employment during its construction and expenditure into the local economy of the proposal are given medium weight. The social benefits, including extensive areas of public open space, the scope for the development of a further primary school and improvements to sustainable transport connectivity are given medium weight.
35. The Secretary of State has found that the Council can now demonstrate a 5 year housing land supply. However, having carefully taken into account the factors weighing for and against this scheme, he considers that the overall balance of material considerations in this case indicates a decision which is not in line with the development plan – i.e. a grant of permission for both proposals.
36. The Secretary of State therefore concludes that the appeals should be allowed and planning permission should be granted.

Formal decision

37. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeals and grants planning permission subject to the conditions set out in Annex B of this decision letter for Appeal A: Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works; and Appeal B: Proposed new highway access road, including footways and cycleways and associated works, in accordance with applications 12/3747N and 12/3746N.
38. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

39. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
40. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

41. A copy of this letter has been sent to Cheshire East Council, Stapeley and District Parish Council and Nantwich Town Council.

Yours faithfully

Jean Nowak

Jean Nowak

Authorised by the Secretary of State to sign in that behalf

Annex A – List of representations

Annex B – List of Conditions

Annex A

Representations received in response to the Secretary of State's Rule 19 letters of 12 April 2017 and 10 May 2017

Party	Date
Cheshire East Council	5 May 2017
Patrick Cullen	5 May 2017
John Davenport	8 May 2017
Stapeley & District Parish Council	9 May 2017
Hill Dickinson (on behalf of Muller Property Group)	19 May 2017
Patrick Cullen	7 June 2017
Muller Property Group	9 June 2017

Secretary of State's letter: 21 February 2019

Party	Date
Cheshire East Council	5 March 2019
Knights plc (on behalf of Muller Property Group)	6 March 2019

Circulation of responses of 11 March 2019

Harris Lamb (on behalf of Muller Property Group)	15 March 2019
Cheshire East Council	18 March 2019

Letter from Planning Casework Unit: 19 March 2019

Hill Dickinson	22 March 2019
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Letter from Planning Casework Unit: 27 March 2019

Harris Lamb	23 April 2019
Cheshire East Council	24 April 2019
Nantwich Town Council	23 April 2019

Circulation of responses: 30 April 2019

Cheshire East Council	1 May 2019
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Variation of timetable: 2 May 2019

Harris Lamb	29 May 2019
Cheshire East Council	29 May 2019

Circulation of responses: 4 June 2019

Hill Dickinson	6 June 2019
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Letter from Planning Casework Unit: 12 June 2019

Hill Dickinson	25 June 2019
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Circulation of Hill Dickinson letter: 26 June 2019

Cheshire East Council	4 July 2019
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Response to Cheshire East Council and circulation: 9 July 2019

Harris Lamb	11 July 2019
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Cheshire East Council	8 November 2019
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Circulation of documents received from Cheshire East Council 13 November 2019

Harris Lamb	4 December 2019
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Circulation of Hill Dickinson response: 9 December 2019

Cheshire East Council request for extension	10 December 2019
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Cheshire East Council	13 January 2020
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Circulation of Cheshire East Council response: 14 January 2020

Hill Dickinson	31 January 2020
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Circulation Hill Dickinson response: 4 February 2020

Hill Dickinson	7 February 2020
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Cheshire East Council	12 February 2020
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Note: Entries in bold indicate letters/circulation of information by the Secretary of State

Annex B

Schedule of Conditions

Appeal A

1. Details of appearance, access landscaping, layout and scale (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins, and the development shall be carried out as approved.
2. Application for approval of all the reserved matters shall be made to the LPA not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:

Mixed Use and Access Applications Diagram – dwg SK15 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK16 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK17 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK19 Rev D
(11 November 2017)

4. No development shall commence until details of a scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the LPA. The scheme shall make provision, inter alia for the following:
 - a. this site to be drained on a totally separate system with all surface water flows ultimately discharging in to the nearby watercourse
 - b. a scheme to limit the surface water run-off generated by the proposed development
 - c. a scheme for the management of overland flow
 - d. the discharge of surface water from the proposed development to mimic that which discharges from the existing site.
 - e. if a single rate of discharge is proposed, this is to be the mean annual run-off (Qbar) from the existing undeveloped greenfield site. For discharges above the allowable rate, attenuation for up to the 1% annual probability event, including allowances for climate change.
 - f. the discharge of surface water, wherever practicable, by Sustainable Drainage Systems (SuDS).
 - g. Surface water from car parking areas less than 0.5 hectares and roads to discharge to watercourse via deep sealed trapped gullies.

- h. Surface water from car parking areas greater than 0.5 hectares in area, to have oil interceptor facilities such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour.

The development shall not be occupied until the approved scheme of foul and/or surface water disposal has been implemented to the satisfaction of the LPA.

5. No development shall commence until a scheme for the provision and management of an 8 metre wide buffer zone alongside the watercourse on the northern boundary measured from the bank top (defined as the point at which the bank meets the level of the surrounding land) has been submitted to and approved in writing by the LPA. The scheme shall include:

- plans showing the extent and layout of the buffer zone
- details of any proposed planting scheme (for example, native species)
- details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

This buffer zone shall be free from built development other than the proposed access road. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA.

6. No development shall commence within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.
7. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
- a. the hours of construction work and deliveries
 - b. the parking of vehicles of site operatives and visitors
 - c. loading and unloading of plant and materials
 - d. storage of plant and materials used in constructing the development
 - e. wheel washing facilities
 - f. measures to control the emission of dust and dirt during construction.
 - g. details of any piling operations including details of hours of piling operations, the method of piling, duration of the pile driving operations (expected starting date and completion date), and prior notification to the occupiers of potentially affected properties

- h. details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint
 - i. control of noise and disturbance during the construction phase, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes
 - j. waste management: there shall be no burning of materials on site during demolition/construction.
8. No development shall take place on the commercial and retail element until a detailed noise mitigation scheme to protect the proposed dwellings from noise, taking into account the conclusions and recommendations of the Noise Report submitted with the application, shall be submitted to and agreed in writing by the LPA. The approved mitigation measures shall be implemented before the first occupation of the dwelling to which it relates.
9. Prior to the commencement of development:
- a. A contaminated land Phase 2 investigation shall be carried out and the results submitted to, and approved in writing by the LPA.
 - b. If the Phase 2 investigations indicate that remediation is necessary, a Remediation Statement including details of the timescale for the work to be undertaken shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with the submitted details.
 - c. Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.
10. No development shall commence until a scheme of destination signage to local facilities, including schools, the town centre and railway station, to be provided at junctions of the cycleway/footway and highway facilities shall be submitted to and agreed in writing by the LPA. The approved scheme shall be provided in parallel with the cycleway/footway and highway facilities.
11. No development shall commence until schemes for the provision of MOVA traffic signal control systems to be installed at the site access from Peter Destapleigh Way and at the Audlem Road/Peter Destapleigh Way traffic signal junctions, has been submitted to and approved in writing by the LPA. Such MOVA systems shall be installed in accordance with approved details prior to the first occupation of the development hereby permitted.
12. The Reserved Matters application shall include details of parking provision for each of the buildings proposed. No building hereby permitted shall be occupied until the parking and vehicle turning areas for that building have been

constructed in accordance with the details shown on the approved plan. These areas shall be reserved exclusively thereafter for the parking and turning of vehicles and shall not be obstructed in any way.

13. Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the LPA. The Travel Plan shall include, inter alia, a timetable for implementation and provision for monitoring and review. None of the building hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after or before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.
14. No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the LPA. The approved scheme shall be implemented and retained as operational thereafter.
15. Prior to first occupation of each unit, Electric Vehicle Infrastructure shall be provided to the following specification, in accordance with a scheme, submitted to and approved in writing by the LPA which shall including the location of each unit:
 - A single Mode 2 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kW charging.
 - 5% staff parking on the office units with 7KW Rapid EVP with cabling provided for a further 5% (to enable the easy installation of additional units).

The EV infrastructure shall be installed in accordance with the approved details and thereafter be retained.

16. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.
17. Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to and approved in writing by the LPA. The approved features shall

be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the LPA.

18. The reserved matters application shall be accompanied by a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated 2013 prepared by CES Ecology (CES:969/03-13/JG-FD). The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.
19. Prior to the commencement of each phase of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority.
 - a) The details shall include the location, height, design and luminance and ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.
 - b) The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
20. All trees with bat roost potential as identified by the Peter Destapleigh Way Ecological Addendum Report 857368 (RSK September 2017) shall be retained, unless otherwise agreed in writing by the Local Planning Authority
21. The first reserved matters applications shall include a Design Code for the site and all reserved matters application shall comply with provisions of the Masterplan submitted with the application and the approved Design Code.
22. Prior to the commencement of each phase of development a scheme for landscaping shall be submitted to the Local Planning Authority and approved in writing. The approved landscaping scheme shall include details of any trees and hedgerows to be retained and/or removed, details of the type and location of Tree and Hedge Protection Measures, planting plans of additional planting, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes and proposed numbers/densities and an implementation programme.

The landscaping scheme shall be completed in accordance with the following:-

- a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of

- the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.
- b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
 - c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BSD5837: 2005 Trees in Relation to Construction: Recommendations.
 - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
23. An Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations shall be submitted in support of any reserved matters application which shall evaluate the direct and indirect impact of the development on trees and provide measures for their protection.
24. No phase of development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the LPA. No building hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.
25. The Reserved Matters application for each phase of development shall include details of bin storage or recycling for the properties within that phase. The approved bin storage facilities shall be provided prior to the first occupation of any building.
26. Notwithstanding the details shown on plan reference no. BIR.3790.09D (September 2012) access to the development herein permitted shall be exclusively from Peter Destapeleigh Way as shown on plan reference no. dwg SK16 Rev C (11 November 2017)
27. Unless otherwise agreed in writing, none of the dwellings hereby permitted shall be first occupied until access to broadband services has been provided in accordance with an action plan that has previously been submitted to and approved in writing by the LPA.

Appeal B

1. The development hereby approved shall commence within three years of the date of this permission.

2. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
 - a. Site Location Plan reference no. BIR.3790_13
 - b. Site Access General Arrangement Plan reference no. SCP/10141/D03/Rev D (May 2015).
3. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping and replacement planting for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of those to be retained, also the number, species, heights on planting and positions of all additional trees, shrubs and bushes to be planted.
4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the LPA gives written consent to any variation.
5. Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction : Recommendations, which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority.
 - (a) No development or other operations shall take place except in complete accordance with the approved protection scheme.
 - (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
 - (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
 - (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
6. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.

7. Prior to development commencing, a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated MARCH 2013 REVISION) prepared by CES Ecology (CES:969/03-13/JG-FD) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.
8. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.
9. Prior to the commencement of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority. The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
10. Prior to the commencement of development, and to minimise the impact of the access road on potential wildlife habitat provided by the existing ditch located adjacent to the southern site boundary, the detailed design of the ditch crossing shall be submitted to and approved in writing by the LPA. The access road shall be constructed in full accordance with the approved details.
11. No development shall commence on site unless and until a Deed of variation under s106A TCPA 1990 (as amended) has been entered into in relation to the S106 Agreement dated 20 March 2000 between Jennings Holdings Ltd (1), Ernest Henry Edwards, Rosemarie Lilian Corfield, James Frederick Moss, Irene Moss, John Williams and Jill Barbara Williams (2), Crewe and Nantwich BC (3) and Cheshire County Council (4) to ensure that the Local Nature Conservation Area is delivered, maintained and managed under this permission.



Report to the Secretary of State for Housing, Communities and Local Government

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC
an Inspector appointed by the Secretary of State

Date: 14 January 2019

Town and Country Planning Act 1990

Appeals by Muller Property Group

Cheshire East Council

Inquiry Held on 20-24 February 2018

Land off Audlem Road/Broad Lane, Stapeley, Nantwich, Cheshire
Land off Peter Destapeleigh Way, Nantwich, Cheshire

File Ref(s): APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529

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List of Abbreviations

5YS	5 year housing land supply
appx	Appendix
AF	Adrian Fisher – 5YS witness for CEC
BMV	Best and most versatile agricultural land
b/p	bullet point
CEC	Cheshire East Council
Cllr	Councillor
CNRLP	Crewe and Nantwich Revised Local Plan 2006
DPD	Development Plan Document
FN	Footnote
FOI	Freedom of Information
GLVIA	Guidelines for Landscape and Visual Assessment (3rd edition)
HMU	Housing Monitoring Update 2017, published Aug 2017 with a base date of assessment at 31/3/17
JB	Jon Berry – landscape architect for Appellants
LCA	landscape character area
LCT	landscape character type
LDS	Local Development Scheme
LHA	Local Highway Authority
LP	Local Plan
LPA	Local Planning Authority
LPI	Local Plan Inspector – Stephen Pratt
LPS	Local Plan Strategy
LPpt2	Emerging Local Plan Part 2 – containing allocations and development management policy synonymous with the SADPPD
LVIA	Landscape and Visual Impact Assessment
MW	Matt Wedderburn – 5YS witness for the Appellant
NP	Neighbourhood Plan
NPPG	National Planning Practice Guidance
OAN	Objectively Assessed Needs (usually housing)
OPP	Outline Planning Permission
PD	Pat Downes – planning witness for Appellant
PoE	Proof of evidence
PP	Planning Permission
PTQC	Paul G Tucker QC – counsel for the Applicants
PPG	Planning Policy Guidance
ReX	re-examination
RfR	reason for refusal
rNPPF	revised National Planning Policy Framework
RJ	Reasoned Justification of the Development Plan
RM	reserved matters
RTQC	Reuben Taylor QC – counsel for LPA
RT	Richard Taylor – planning witness for the LPA
SADPD	the Site Allocations and Development Plan D (aka LP pt2)
SHLAA	strategic housing land availability assessment
SOCG	statement of common ground
SoS	the Secretary of State for the Ministry of Housing Communities and Local Government
SPB	Spatial Planning Board – CEC’s planning committee

SPD Supplementary Planning Document
TA Transportation Assessment – here undertaken by SCP
XC examination in chief
XX cross examination
XX'd cross examined
WB William Booker – the Appellant's highway consultant
WMS Written Ministerial Statement

Appeal A: File Ref: APP/R0660/A/13/2197532
Land off Audlem Road/Broad Lane, Stapeley, Nantwich,
Cheshire CW5 7DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant [outline] planning permission.
- The appeal is made by Mr Carl Davey, Muller Property Group against the decision of Cheshire East Council.
- The application Ref 12/3747N, dated 28 September 2012, was refused by notice dated 16 April 2013.
- The development proposed is Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

Appeal B: File Ref: APP/R0660/A/13/2197529
Land off Peter de Stapeleigh Way, Nantwich, Cheshire CW5 7HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Carl Davey, Muller Property Group against Cheshire East Council.
- The application Ref 12/3746N is dated 28 September 2012.
- The development proposed is Proposed new highway access road, including footways and cycleways and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

Procedural matters

1. The application to which Appeal A relates was submitted in outline form with all matters reserved except for access. The extent of development is set out in the Design and Access Statement (DAS). An agreed Schedule of Drawings is listed in the Statement of Common Ground (SoCG) appendix X. Appeal B was not determined but Council members resolved that it would have been refused because it would be unsustainable and result in a loss of habitat for protected species and part of an area allocated for tree planting, landscaping and subsequent management, contrary to various policies.
2. Section 106 Agreements were submitted under section 106 of the Town and Country Planning Act 1990 (s106) in respect of both applications. As agreed, signed and dated versions were submitted after the Inquiry closed. All parties had the opportunity to comment on an unsigned though otherwise identical

agreement during the Inquiry. I deal with the contents of the Agreement below.

3. The Inquiry sat for 4 days. I held an accompanied site visit held on 24 February. Evidence regarding housing land supply (HLS) was heard as a round table discussion on Thursday 22 February 2018.
4. This is a redetermination following the quashing of the previous decision of the Secretary of State in the HC.
5. Since the last determination of the appeals the Cheshire East Local Plan Strategy (CELPS) has been formally adopted (20 September 2017).
6. Also since the last determination of the Appeals the Stapley & Batherton Neighbourhood Plan (S&BNP) has also been made following Referendum in February 2018 and now forms part of the Development Plan.
7. Prior To the opening of the Inquiry the appellant submitted a revised layout of the proposals which omitted the proposed access off Audlem Road; this has necessitated an amendment to the description of development to reflect the changes. Whilst such amendments have been considered and accepted by the Council, acknowledged in the SoCG, they had not been the subject of formal consultation in accordance with standing regulations. After the close of the Inquiry this consultation was undertaken by the Appellant, comments collated and submitted to the Planning Inspectorate to an agreed timetable.
8. I have taken the subsequently received comments on the revisions into account whilst writing my report. Having considered the proposed revisions and the commentary on them I conclude that as they represent a diminution in the scope of the proposals and indeed address a number of previously expressed concerns on this aspect of the proposals, it would be appropriate for them to be taken into account in the determination of the appeals. I therefore recommend the Secretary of State duly take them into account in the determination of this case.
9. The revised National Planning Policy Framework (hereafter referred to as the rFramework) was published on the 24 July 2018. In light of the revisions contained therein parties were invited to comment on them insofar as relevant to both appeals. Their responses have been taken into account below.
10. There appear to be different ways of spelling Destapeleigh. I have adopted that used on the application form.
11. Although concerns over highway safety do not form part of the Council's case, given the degree of concern expressed on this matter by other parties at the Inquiry this issue is included in the main issues and is addressed in the reasoning that follows.
12. In accordance with the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 the Appellant was consulted on all the pre-commencement conditions provisionally considered at the Inquiry. They

confirmed in writing that they were content with the terms of each of such conditions and these are therefore included in the report.

The Site and its Surroundings

13. The site is 12.06 hectares of flat agricultural land located to the south of the main built up area of Nantwich. It principally comprises of two fields bounded by native hedgerows with some tree cover within them. There is a field ditch along the northern boundary. The land is currently in agricultural use, primarily arable and some grazing. It is bounded to the north by Peter Destapleigh Way (A5301) and the ecology mitigation/woodland landscape area for the Cronkinson Farm development although the obligations associated with the extant consent and s106 agreement have yet to be met.
14. To the west it is bound by residential properties accessed off Audlem Road, including an approved residential development for 11 dwellings and to the east by the recently constructed residential development. The upper floors and roofs of some of the new properties may be seen from the Appeal Site. The principal length of the southern boundary runs to the south of an existing hedgerow. Part of the site runs further south, adjoining existing residential development to the west.
15. To the north of Peter Destapleigh Way is the Cronkinson Farm residential development. This includes a small parade of five shops including a Co-Operative convenience store and a public house. Pear Tree Primary School and a community hall are also situated within this residential development. To the north of the Cronkinson Farm development is the railway line connecting Nantwich / Crewe / Chester and beyond, with the town centre to the north west.
16. Existing residential development in ribbon form is situated along Audlem Road. It comprises of a mix of properties from different eras. Within this housing is The Globe public house. Bordering the south west of the application site (and accessed off Audlem Road) is Bishops Wood housing development constructed in the 1970's. Audlem Road turns into Broad Lane south of the Bishops Wood cul-de-sac and has ribbon residential development along it as well as Stapeley Broad Lane Primary School further to the south.
17. London Road, an arterial route into Nantwich, is located to the east of the former Stapeley Water Gardens site and there is residential ribbon development to the south of that site. The land between the London Road and the Appeal Site has been infilled by residential development and open space. Further to the south along London Road are more dwellings together with Stapeley Technology Park, a small employment site with a mix of office uses based around the former Stapeley House.
18. There are a number of bus stops in close proximity to the site located off Audlem Road. These bus stops are served by the No. 73 and 51 bus service. These bus services provide direct connections to Nantwich bus station and rail station continuing on to Whitchurch.

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19. Nantwich train station is approximately 1.4 km to the north of the site, accessed via Audlem Way and Wellington Road. Nantwich Town Centre is approximately 1.3 km to the north-east of the site, to the north of Nantwich train station. Nantwich Town Centre provides a range of services, facilities and job opportunities. The site is, therefore, well served by a range of services, facilities and public transport opportunities, and comprises a location which is accessible to modes of transport other than the private car.
 20. The Appeal B site is approximately 1.71 hectares in size and comprises part of a single field which adjoins Peter Destaplegh Way to the north. The site comprises of a mixture of unmanaged semi-improved grassland, bramble / scrub and a drainage ditch. There are two existing ponds within the site and to the west and south east of the site are areas set aside for Great Crested Newt mitigation. This relates to the Cronkinson Farm development and to the Stapeley Water Gardens scheme.
 21. The western and southern boundaries of the site comprise hedgerows interspersed in places with trees. The eastern boundary of the site runs through the centre of the field and will follow the edge of the proposed new highway.
 22. Further to the east of the site is recently constructed residential development. To the north of the site beyond Peter Destaplegh Way is a predominantly residential area. To the west of the site are two fields, the built up edge of Nantwich and the A529 Audlem Road which is flanked by development on either side. To the south of the site is the site of the proposed mixed use led development subject to planning appeal APP/R0660/A/13/2197532.
 23. The site will connect to the Peter Destaplegh / Pear Tree Field signalised junction in the form of a fourth arm to the signalised junction. The spur for the fourth arm is already in place with signals, street lighting and tactile paving. It is agreed by the parties that this planning permission is, therefore, extant.
 24. Planning permission was granted on the 4th January 2001 for the "construction of new access road into Stapeley Water Gardens" (planning application reference: P00/0829). This permission allowed the construction of a carriageway on a north-south alignment similar to that now proposed in this planning application with a connection to the Peter Destaplegh Way / Pear Tree Field highway junction via a fourth arm.

Planning Policy

25. The revised National Planning Policy Framework (the rFramework) was published on the 24 July 2018. Paragraphs 7-14 and 59-76 of the rFramework, together with their attendant footnotes (as paragraph 3 affirms), are particularly relevant to HLS. The rFramework also sets out the position with regard to weight and conformity of existing development plan policies. The PPG confirms that any shortfall in HLS should be made up over the next 5 years.

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26. The Development Plan for Cheshire East comprises for the purpose of the appeals the recently adopted Cheshire East Local Plan Strategy 2010 - 2030, and the saved policies from Crewe and Nantwich Replacement Local Plan (February 2005). The relevant policies from each of the plans considered relevant are set out in the Planning SoCG¹.
 27. As a result of a Referendum held on the 15 February 2018 the Stapley & Batherton Neighbourhood Plan was approved and consequently is now considered 'made', and thus now forms part of the Development Plan.
 28. The Planning SoCG also identifies the following as material planning policy considerations: Interim Planning Statement: Affordable Housing (Feb 2011), Strategic Market Housing Assessment (SHMA), Strategic Market Land Availability Assessment (SHLAA), Article 12 (1) of the EC Habitats Directive and the Conservation of Habitats and Species Regulations 2010.
 29. High Court cases referred to include Suffolk Coastal Appeal Court Judgement², Suffolk Coastal Supreme Court³, St Modwen Appeal Court Judgment⁴, and the Shavington High Court Judgement⁵.

Planning history

30. The planning application for Appeal A scheme was submitted to the Council in September 2012 and it was registered on 9th October 2012. It was assigned planning application reference number 12/3747N. The application was determined at Committee on 3rd April 2013 and was refused planning permission by Members in accordance with the planning officer's recommendation⁶.
31. The original appeal was considered at a public local inquiry between 18th and 21st of February 2014 in association with Appeal B. Both appeals were recovered by the Secretary of State following the close of the public inquiry. The inquiry Inspector recommended in his report dated 18th June 2014 that planning permission be granted for both appeals but in his decision letter dated 17th March 2015, the Secretary of State rejected this Inspector's recommendation and refused both appeals. (The '**Original Decision**') The Original Decision of the Secretary of State was subject to an application to the High Court and was subsequently quashed by order of the court dated 3rd July 2015. The appeals were, accordingly, re-determined by the Secretary of State and he issued a new decision on 11th August 2016. (The '**Second Decision**').
32. In the Second Decision the Secretary of State refused planning permission Appeal A on two grounds, the first being that, '*the proposals would cause*

¹ Paragraph 5.1 ID2.

² CDQ1.

³ CD C12.

⁴ CDQ2

⁵ [2018] EWC 2906 (Admin) Case Number: CO/1032/2018.

⁶ CD K2

harm to the character and appearance of the open countryside, for the reasons at Paragraph 27 to 28 above. This harm will be in conflict with Paragraph 7 and the fifth and seventh bullet points of Paragraph 17 of the Framework. Having given careful consideration to the evidence to the inquiry, the Inspector's conclusions and the parties' subsequent representations, the Secretary of State considers that the harm to the character and appearance of the open countryside should carry considerable weight against the proposals in this case. He further considers that the loss of BMV land is in conflict with Paragraph 112 of the Framework and carries moderate weight against the proposals for the reasons given at Paragraphs 31 to 34 above.

33. *The Secretary of State concludes that the environmental dimension of sustainable development is not met due to the identified harm, especially to the character and appearance of the countryside. He concludes that the development does not deliver all three dimensions of sustainable development jointly and simultaneously, and is therefore not sustainable development overall.*
34. *For the reasons given above, the Secretary of State concludes that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies and the Framework taken as a whole.'*
35. The Second Decision was challenged by the Appellant and in a Consent Order issued by the High Court on 14th March 2017 the Second Decision was also quashed. In the letter of 12th April 2017 from DCLG confirming that the Second Decision had been quashed, the Secretary of State invited further representations in respect of the following matters:
 - a) Progress of the Emerging Cheshire East Local Plan Strategy;
 - b) The current position regarding the five year supply of deliverable housing sites in the Council's area;
 - c) Any material change in circumstances, fact or policy, that may have arisen since the decision of 11th August 2016 was issued and which the parties consider to be material to the Secretary of State's further consideration of this application.
36. Having requested that written representations be submitted in respect of these matters, the Secretary of State determined that, in the light of representations received the inquiry should be re-opened, by way of correspondence dated 3rd August 2017.
37. The purpose of the planning application for the Appeal B scheme was to provide access to the adjoining mixed use proposal that is subject to Appeal A. Originally, Appeal A had a separate access arrangement but it is now agreed between the parties that the Appeal Site A should be accessed solely from Appeal Site B and the original access arrangements suggested for Appeal Site A (via Audlem Road / Broad Lane) are no longer pursued. Thus, Appeal Site A falls to be determined on the basis that access will be achieved through Appeal Site B alone. The process by which this is to be achieved is explained in Section 3 below.

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38. The planning application for the Appeal B scheme was submitted to Cheshire East Council in September 2012. It was registered by the authority on 5th October 2012. The target date for the determination was 30th November 2012 but the application was not determined prior to the appeal being lodged.
39. The process by which the Appeal B scheme was determined by the Secretary of State is the same as for Appeal A above. The appeal will be heard alongside Appeal A. It is agreed that the merits of the two appeals stand or fall together.

The proposals

40. The details are confirmed in the Planning SoCG. The concept for Appeal A is also set out in the Design and Access Statement (DAS)⁷. Most of the houses would be on the western side of the site. On the eastern side, linking in with the new highway access road in Appeal B, would be land for employment, public open space including a new village green with an equipped play area, a local centre and a primary school. Allotments would back onto the existing houses to the west. The DAS confirms the amount of development as 189 dwellings at an average density of just over 30 dwellings per hectare with up to 57 affordable dwellings in a series of clusters.
41. These would comprise five elements as follows:
- Parcel 1 is on the northwest side of the site and could contain up to 51 dwellings.
 - Parcel 2 is located to its south and could have up to 62 dwellings.
 - Parcel 3 is to the south of the employment area could deliver 15 dwellings.
 - Parcel 4 is along the main southern boundary and could contain up to 36 dwellings.
 - Parcel 5 is on the eastern side of application site and could provide up to 25 dwellings.
42. The application proposals will be a mix of 2, 3, 4 and 5 bedroom dwellings. The affordable housing mix would be based on 2 and 3 bedroom homes, split between 35% intermediate tenure for sale and 65% social rented. The total affordable housing provision represents 30% of the total number of units. Parcel 5 forms part of a new village centre. Located around a village square and adjoining the village green, the residential element forms the eastern side of the village centre with the new primary school site and local centre forming the western side. The village green will have both general open space (with appropriate pathways and street furniture sited on the edges) and a children's equipped play area in the form of a LEAP. The primary school site will be reserved for future education expansion.
43. The local centre comprises of up to 1,800 sq m (19,375 sq ft) and would accommodate a range of uses. It is envisaged that the local centre will

⁷ CD H12.

comprise of 8 – 10 separate units with a single A1 unit of 1,000 sq m (10,764 sq ft) and the remaining floorspace split between units ranging from 50 sq m to 150 sq m (538 sq ft to 1,615 sq ft). The employment accommodation is situated adjacent to the local centre. Comprising of 3,700 sq m (39,826 sq ft) in total, it is envisaged this will be divided into units based on 100 sq m (1,076 sq ft). 2.7 Located on the south western side of the application site is an allotment area of 0.5 hectares. The allotments will be available to both new and existing residents. The provision of open space will be controlled by planning conditions.

44. In addition to the public open space there are two principal interlinked areas of green infrastructure. The first is along the northern boundary in the vicinity of the new village centre and the employment area. This will include the planting of a new hedgerow. At its western end, it connects to the second principal green infrastructure area which runs on a north-south axis to the east of residential parcels 1 and 2. This reflects an existing mature hedgerow.
45. The development would include a pedestrian/cycle network which, taken with its close proximity to the established community, would be intended to provide safe, direct, convenient and interesting routes through the site. The single vehicular access now proposed utilises the putative infrastructure already established on Peter Destapeleigh Way. This is now supported with linkages to the new realigned access road giving access to the greater site. This in effect comprises Appeal B, which differ from the extant and part implemented scheme previously granted planning permission⁸.
46. Appeal B proposes an access onto Peter Destapeleigh Way at its junction with the Pear Tree Field signalised junction in the form of a fourth arm to the signalised junction. The application subject to Appeal B is similar in nature to the approved scheme (P00/0829) for access on this site, albeit with some amendments. The spur of the fourth arm is already in place with signals, street lighting and tactile paving.
47. Planning permission was granted on the 4th January 2001 for the “construction of a new access road into Stapeley Water Gardens” (planning application reference P00/0829). This permission allowed the construction of a carriageway on a north – south alignment, similar to that now proposed as part of Appeal B. The spur of the fourth arm junction has been constructed so that the permission has been implemented. A copy of the correspondence from CEC which confirms this position is in the Core Document List (CD E2).
48. Appeal B is similar in nature to the extant scheme, albeit with some minor amendments. Appeal B realigns the road further east in order to create a direct route into the land to the south, subject to Appeal A. The position of the roundabout has also been relocated further south. A plan showing the road layout for the extant scheme, Appeal B and a composite plan showing Appeal B overlaid on the approved scheme is included in the appeal documents.

⁸ Planning application ref. P00/0829

Other matters agreed between the Parties

49. The parties have also agreed a Sustainability Analysis⁹ in relation to key facilities and services in the context of the site, which include:
- Primary Schools – Pear Tree Primary School, St Annes Catholic Primary School and Stapeley Primary School;
 - Secondary Schools – Brine Leas Secondary School;
 - Health Facilities – Kiltarn Medical Centre, a pharmacy and numerous dentists;
 - Retail – Morrisons Supermarket, Coop Convenience Store and numerous non-food retail units located to the south of Nantwich; and Public Transport Facilities – Nantwich Railway Station and numerous bus stops
50. The site has been assessed against the North West Sustainability Toolkit. Whilst some of the distances vary slightly between the Appellant's assessment, the Council concluded in the committee report to the original application that *'on the basis of the above assessment the proposal does appear to be generally sustainable in purely locational terms'*. The Council has reaffirmed this position in the report to committee of 22nd November 2017.
51. In terms of connectivity to higher order centres, Crewe lies 6.4 km (4 miles) to the north east of Nantwich and Newcastle-under-Lyme is 21 km (13 miles) to the east. These settlements have employment, advanced educational facilities, retail, leisure and entertainment venues. These settlements can be accessed via a variety of routes, which avoid the town centre. These include Broad Lane, London Road and Newcastle road.
52. In addition to the topics set out above further additional matters are agreed between the parties;
- The original planning permission in respect of appeal B is acknowledged as extant by CEC (P00/0829). It, therefore, represents a fall-back position.
 - Access to Appeal Site A will only be achieved through Appeal Site B if Appeal A is allowed.
 - Since it is no longer necessary to access the site via Audlem Road / Broad Lane, the masterplan and the red line area for Appeal A can be amended. This reduces the extent of Appeal Site A. The parties agree that updated plans L9 should now form part of the Appeal Scheme A if planning permission is granted.
 - It is agreed that 25% of the aggregated sites constitute best and most versatile land 6% of the site is grade 2 and 19% of the site is grade 3a.
 - It is agreed that there is no reason to resist the scheme in terms of ecology and that a suitable mitigation package can be provided as part of the proposed planning obligation under s.106.

⁹ 4.13 Planning SoCG ID2.

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- It is agreed that there are no technical reasons to resist a development in terms of highways, drainage, residential amenity and environmental health matters.
 - The Council's Landscape Officer does not consider that the proposals will have a significantly adverse landscape impact.
53. The Housing Land Supply SoCG also covers other significant areas of agreement. This advises that: the LPA's current position on 5 year HLS is set out in the Housing Monitoring Update published August 2017, base date 31st March 2017; the Housing Monitoring Update takes the housing requirement of 1,800 dwellings per annum set out in the Cheshire East Local Plan Strategy (LPS) as the relevant housing target for the calculation of 5 year HLS; The Housing Monitoring Update has a base date of 31st March 2017. The relevant five year period in HMU is therefore 1st April 2017 to 31st March 2022; that the backlog should be calculated over the plan period to date (1 April 2010 – 31 March 2017) and amounts to 5,365 dwellings and that in accordance with paragraph 47 of the first published version of the NPPF it is agreed that it is necessary to apply a 20% buffer, reflecting persistent under-delivery against the housing requirement.
54. Paragraph 73 of the rFramework revises the format of applying the buffer to the requirement, indicating a range of percentages to be applied in different scenarios. This matter is addressed in detail through each party's submissions in relation to the rFramework NPPF below.

The Case for the Muller Property Group

55. At the time that these proposals were submitted almost 5.5 years ago, there was no Local Plan Strategy in place, and CEC at the time undoubtedly couldn't demonstrate a 5YS. As matters stand now, whilst the LPS is now in place, the next part of the Local Plan, which considers the merits of non-strategic allocations and which will review settlement boundaries, is still a long way from adoption. Of more concern is that CEC are still lack a sense of urgency about the need to bring forward additional housing in sustainable locations now, despite two recent appeals which have concluded that a 5YS cannot be demonstrated. And despite the fact that even on its best case that CEC has only a marginally above 5 years supply. In fact for the reasons articulated in evidence by the appellant, CEC has significantly less than 5YS of deliverable housing, and this site is needed now.
56. Thus, residential development on this site was originally recommended for refusal but was refused by members at a time when there was no plan and no 5YS. Then, after appeal it was recommend for grant by an Inspector when there was no plan and no 5YS. It was refused by the SOS whose decision was then quashed, re-determined only to be quashed in the High Court again both when there was no plan and no 5YS. In the same month that the LPS was adopted instead of re-determining the appeal the SOS decided to reopen this inquiry. That was a disappointment to the Appellant, however ironically it has provided the opportunity for the SOS to determine the appeal based upon a properly robust scrutiny of CEC's housing supply. Back in July 2017 CEC were robustly contending that their assessment of 5YS had been

endorsed by the LPI who had concluded that CEC should have a 5YS on adoption, however his conclusions were caveated with the following warning:

"Much will depend on whether the committed and proposed housing sites come forward in line with the anticipated timescale and amended housing trajectory."

57. The essential reason why two Inspectors concluded that there was not a robust 5YS after two inquiries in 2017 was that the 2017 HMU, published at the end of August 2017 demonstrated that the anticipated delivery rates for last year (ie 2016/17) were significantly below those being put to the LPI, demonstrating a failure in the first year after the period being assessed by the LPI. Predictive exercises tend to become less accurate the further one looks into the future. Here the prediction being put forward by a combination of private sector evidence being put to the examination and the application of the LPA's standard methodology on lead in times and build rates has gone wrong immediately. Moreover there is strong evidence to conclude that has gone wrong in relation to 2017/18 as well.
58. It is notable that the LPI concluded that CEC should be able to demonstrate a 5YS on adoption. Had he known about the substantial under-delivery when compared to the trajectory he endorsed in the LP, then he would plainly have been far more circumspect. As was put in cross examination, based on what we now know to have been the actual delivery in 2016/17, then the supply position before the LPI was that CEC couldn't demonstrate a 5YS based on their own trajectory. It was for that reason that CEC sought to downplay the importance of the trajectory as predictive tool for assessing the overall realism of CEC's claimed supply (past and future). The problem with that is not only that it was based upon an erroneous understanding of the St Modwen case (see below), and that it is at odds with the role of a housing trajectory in national guidance and policy, but most importantly, it ignores the fact that the housing trajectory in CEC was the yardstick that the LPI uses to gauge whether or not the supply position in CEC is realistic.
59. Properly understood CEC cannot demonstrate a robust 5YS and their anticipated delivery rates claimed before the LPI are untenable. Yet instead of reacting to the recent appeals with an immediate reassessment of its standard methodology on build rates and lead in times and an immediate sense check of likely delivery from its various components of supply CEC has instead done a further trawl of agents/developers to try to make good its evidential deficit, it has sought to down play quite how wrong its LP trajectory was, and how implausible its HMU trajectory is. It now contends that the Park Road Inspector got the supply figure wrong by well over 1000 units.
60. This mixed use scheme brings benefits which are diverse and considerable – ie not simply the provision of much needed homes, but deliverable commercial development which will provide opportunities for local businesses and for the local population, which will result in a sustainable pattern of development, as well as a small local centre which will meet the needs of both the proposed housing and employment but also recently consented housing which is being constructed nearby. The reality of the position is that

the appeal proposals are a sustainable form of development and that the only objection to them is the in principle one that the proposals are an unjustified incursion into the countryside beyond the settlement boundary. Contrary to that position the development is plainly needed now, the tilted balance is engaged and there are no adverse effects which significantly and demonstrably outweigh the benefits.

5 year land supply

61. For the reasons explained in evidence the issue of 5YS is not a determinative one in relation to the outcome of this appeal. Even if the LPA were to be able to just demonstrate a 5YS then it is firmly submitted that the appeals should still be allowed, since on the LPA's best case the position is a marginal one given its substantial under-delivery compared to the position endorsed by the LPI.
62. However on the evidence, it is clear that CEC cannot demonstrate a robust 5YS and therefore paragraph 11 (by means of footnote 7) is triggered. Prior to the exchange of evidence the Appellant invited CEC to agree to this appeal being determined on the same basis as the Park Road Inspector ie that there is a range which is just above or just below 5 years but the LPA can't demonstrate a robust 5YS therefore the presumption is triggered. This was thought to be a proportionate course of action, mindful that consistency in decision making is a material consideration of considerable importance. CEC declined this invitation.

Planning Policy Guidance context

63. Before turning to the detail of the current land supply position in Cheshire East, it is worth setting out the correct approach to guidance covering the subject; the provisions in the PPG supplement the NPPF and, do not have the same status as NPPF policy. Of most relevance to this appeal are 3-031 and 3-03311. From those paragraphs the following points arise:
 - a. Deliverable sites include those with permissions in the LP, unless there is clear evidence that the site won't be implemented within 5 years. From this:
 - i. Once a site is included as deliverable then there remains a requirement to assess the likely yield from sites with permission or an allocation. It is simply wrong to say, as the Council does in closing at paragraphs 31 and 32, that an assessment of yield is not required. PPG 3-031 is clear the "robust, up to date evidence" is required on the deliverability – i.e. the yield. It is difficult to see how an assessment of supply can be undertaken if that an assessment of yield is not undertaken. On AF's approach the decision maker would be obliged to accept the LPA's judgments when assessing delivery from sites with an allocation or permission, absent contrary evidence. However this is no more than an approach to assessing yield which –without policy support– presumes that the Council is always right. Not only is that not supported in policy it belies the repeatedly experience of this particular LPA's predictive ability over many years.

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- ii. This means that sites with PP are presumed to be deliverable unless there is evidence to the contrary. It does not mean that if a site has planning permission, then there is a rebuttable presumption that its yield is whatever the Council says it will be.
 - iii. This approach does not include allocated sites with the presumption that they are to be treated as deliverable, but the PPG does. There may be an interesting question at some future point in time as to whether that makes any difference, but in this case there is almost no dispute as to which sites are the ones which are considered to be deliverable – the dispute revolves around the likely yield from those sites.
- b. When assessing whether a site should be included in the 5YS and the yield from that site, the decision maker must consider the time it will take to commence development (lead in time) and the build out rate.
 - c. The PPG makes clear (3-033, paragraph 2) that the yield of sites as well as the deliverability of sites forms part of the annual assessment of the 5YS that the LPA is required to conduct. It self-evidently points out to an authority that deliverability and then likely yield are two separate exercises.
 - d. If an LPA does the following, then it will be able to demonstrate a 5YS (from PPG 3-033):
 - i. A robust annual assessment;
 - ii. A timely annual assessment;
 - iii. Using up to date and sound evidence;
 - iv. Considering the proposed and actual trajectory of sites in the supply;
 - v. Considering the risks to a proposed yield;
 - vi. Include an assessment of the local delivery record;
 - vii. All of the above assessments must be realistic; and,
 - viii. The approach must be thorough.
64. Drawing all of this together, it is not right to suggest that Inspectors in the Park Road and White Moss cases were wrong and that there is no requirement on the Council that their assessment of the 5YS is robust. The questions seemed to be put on the basis that the word “robust” is not included in the NPPF. This cannot possibly be correct. The language of the PPG (as above) clearly indicates that the LPA must demonstrate a 5YS – within that the evidence must be sound and it must stand up to scrutiny. If the Council’s approach was right (which no Inspector has to our knowledge endorsed) then Appellants up and down the country have been wasting time and money arguing contrary land supply positions; provided the Council can show some sort of evidence that would suffice.
65. CEC advanced an argument that when trying to assess the yield from a site, that the correct test was the capability of the site to deliver the expected numbers, and not the probability. His basis for this argument was paragraph 38 of *St Modwen*. This is, simply put, wrong and counter to common sense.

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66. CEC fell into the trap that Lindblom LJ was warning decision makers of in paragraph 39 of the same judgment:

One must keep in mind here the different considerations that apply to development control decision-making on the one hand and plan-making and monitoring on the other. The production of the "housing trajectory" referred to in the fourth bullet point of paragraph 47 is an exercise required in the course of the preparation of a local plan, and will assist the local planning authority in monitoring the delivery of housing against the plan strategy; it is described as "a housing trajectory for the plan period " (my emphasis). Likewise, the "housing implementation strategy" referred to in the same bullet point, whose purpose is to describe how the local planning authority "will maintain delivery of a five-year supply of housing land to meet their housing target" is a strategy that will inform the preparation of a plan. The policy in paragraph 49 is a development control policy. It guides the decision-maker in the handling of local plan policies when determining an application for planning permission, warning of the potential consequences under paragraph 14 of the NPPF if relevant policies of the development plan are out-of-date. And it does so against the requirement that the local planning authority must be able to "demonstrate a five-year supply of deliverable housing sites", not against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing trajectory for the plan period".

67. CEC were unable to say whether or not they were identifying the "likely yield", the "possible yield" or the "almost certain yield" from the sites assessed. This from an apprehension not to give up the interpretation of the St Modwen case in which they failed to understand that the case revolved around the meaning of the term "deliverable"– a point which just doesn't arise in this case. This inability to explain the yield from sites within 5 years fundamentally undermines the utility of his exercise and means that it is not comparable to the appellant's approach to "probable yield". If CEC's position is merely what the site is "capable of delivering" then it is bound to be higher than what is probable and therefore betrays a fundamental error on the part of CEC which may explain why the LPA's predictive ability has proven to be wrong.

68. On the application of the above analysis, the following points are agreed:

- It is agreed that the requirement is 1800 dpa.
- The agreed five year period runs from 31 March 2017 (the base date of HMU) to 31 March 2022.
- The agreed backlog in delivery between 2010 and 2017 amounts to 5635 dwellings, which equates to 3 years of the overall requirement for the first 7 years of the plan.
- It is agreed that a 20% buffer applies in relation to paragraph 47 of the Framework and that 10% applies in relation to paragraph 73 of the rFramework, if appropriate.

69. From the examination of the sites claimed to be within the supply the following is clear:

- i. The appellant's assessment of the sites the Council seeks to include in the supply are identified in evidence. A number are drawn-out to illustrate the key arguments against the sites being included in the supply to the extent claimed by the Council:
- ii. LPS 1 and the Crewe opportunity area is not a "*specific deliverable site*" in NPPF§47 terms and should not be included within the supply.
- iii. The Appellant's assessment of lead in times to construction in Cheshire East (Appendix MW 6) the following should be applied – 1 year from submission to the grant of outline permission; 1 year to a reserved matters application; 6 months to determine the reserved matters application; and, one year to the completion of the first dwelling. This is a total lead in time of 3.5 years. This is vital to deciding what is in the supply as it allows for an assessment of yield. Unlike CEC's standard methodology for lead in times and build rates, MW's evidence is transparently evidenced and is palpably more reliable than CEC's "black box" approach. Thus, whilst MW accepts these conclusions on average lead in times can be rebutted by specific evidence, it requires sound, realistic and up to date evidence (see para 2.5(d) above and PPG 3-033). No such evidence was forthcoming from the Council. Instead the Council offered a partial assessment of lead in times from a self-serving data set in Mr Fisher's rebuttal proof of evidence (Appendix 2). Mr Fisher's assessment is partial as it completely fails to take into account sites started before the adoption of the LPS and the lead in times between application and between construction starting and the first unit emerging from the ground (conceded by Mr Fisher XX).
- iv. Despite the policy requirements in the Framework/rFramework and PPG (see paragraph 2.4 and 2.5 above), Mr Fisher thought it appropriate for the Council to make assumptions about sites being delivered by multiple builders without any supporting evidence. Whilst that may be a correct statement that doesn't mean it comprises evidence! The Secretary of State cannot as a matter of law (given the clear interpretation of policy and guidance above) adopt this approach when evidence not an aphorism is needed. If the Council cannot produce evidence to support their assumptions on build rates, yield or commencement timelines then the Secretary of State must prefer the reasoned and evidenced approach put forward by the Appellant, which precisely mirrors the concerns of the last 2 inspectors to consider this topic in detail. Indeed Mr Fisher continued to make unsubstantiated assertions – "*we increasingly see single builders doing 50+ units a year on a site*". The Council's own assessment of build out rates in the 2017 HMU (Appendix MW17) does not support Mr Fisher's statement. Statements such as this cannot be given any weight when the Council's only evidence does not support them.

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- v. The 'sense check' for the use of the LPA's standard methodology as to lead in times and build rates is what it has predicted will be delivered and what has actually been delivered. As noted below the prediction for 2016/17 in the LP trajectory of 2955 (presumably based on the optimism of those making representations to the hearing) has proven to be groundless, and this year looks set to be similarly wrong compared to the LP and the HMU trajectory.
- vi. MW and the Inspectors in the WMQ¹⁰ and Willaston¹¹ inquiries are in agreement on the yield from many of the sites. Mindful of the materiality of consistency of decision making, the SOS should be slow to deviate from those conclusions without the clearest possible evidence for so doing (the sites are noted in Appendix MW4), with respect AF asserting that he thinks that the Inspector's got it wrong is not a such a reason.
- vii. AF at one point made the bold point that both Mr Inspector Rose in the White Moss Quarry ("WMQ") inquiry¹² and Mr Inspector Hayden in the Willaston inquiry¹³ both fell into serious error by concluding that a 5YS could not be demonstrated having concluded that the supply was either just above or just below 5 years. Whilst the language used was that of 'precaution', in fact both Inspectors reached an orthodox conclusion with regard to paragraph 47¹⁴, having determined that the supply was within that range. Thus, the conclusion reached by those senior Inspectors was that they were unable to determine with confidence that the Council had a 5YS. That means no more than that they could not be satisfied that the LPA could demonstrate that it had a deliverable 5YS. Therefore they approached the evidence on the assumption that Framework paragraphs 49 and 14 were engaged – deciding those appeals using the tilted balance. Both Inspectors' reasons were impeccable.

It was notable by its absence in relation to the sites where MW allies himself with the conclusions of those previous Inspectors' that time and again the Council failed to bring forward evidence to rebut the Inspectors' conclusions, reached after an exhaustive analysis of the evidence before them, in those inquiries from 8 November 2017.¹⁵

Even if the Council is correct on their least attractive argument that they are not required by policy to rely upon "robust" evidence to demonstrate a 5YS, they nonetheless are forced to accept that these appeal decisions are material considerations. Furthermore they accepted in XX the fundamental importance of the consistency of

¹⁰ C.D29 Appendix MW1.

¹¹ CD D29 Appendix MW2 at [103].

¹² Ibid.

¹³ Ibid.

¹⁴ Subsequently paragraph 11 incorporating footnote 7.

¹⁵ CD29 / Appendix MW1 at [28] – [59] and Willaston - CD D29 / Appendix MW2 at [58]– [89]).

decision taking, and that the Secretary of State in this appeal would need to give reasons (and therefore have supporting evidence) for deviating from those decisions. Whilst this is trite law, it makes it all the more baffling that having accepted those principles, they failed to produce any evidence to properly rebut conclusions of the WMQ and Willaston Inspectors.

The Council has comprehensively failed on both counts – they have failed to produce robust evidence to demonstrate a 5YS; and, they have not produced any evidence to rebut the Inspectors' conclusions in the early appeals, either evidence arriving post those decisions or to explain why those Inspectors got it wrong. Instead they continue to rely upon the approach in the LPS, the same arguments that failed in the WMQ and Willaston inquiries.

viii. What is interesting is to consider the predictive confidence with which sites were said to be on the verge of progressing in the HMU in August 2017 and then again at inquiries in late 2017, but where there has been yet further slippage. Time and again sites where applications were on the verge of being made haven't resulted in applications (e.g. the promise in the Park Road inquiry made by AF that the Handforth Growth Village application would be lodged in January, when there is still not even a masterplan in the public domain in March let alone an application), and for sites where applications were on the verge of determination then they remain on the verge of determination (e.g. the reserved matters application on White Moss phase 1).

ix. The Council has adopted a hybrid "Sedgepool 8" approach to addressing its backlog. Mr Fisher sought to explain the approach as meaning that the 8 year period rolled forward throughout the plan period. This approach runs counter to the specific conclusions on the matter by the Local Plan Inspector¹⁶. The LP Inspector concludes at paragraph 72:

*"CEC therefore proposes to fully meet the past under-delivery of housing **within the next 8 years** of the Plan period ("Sedgepool 8"). This would require some 2,940 dw/yr (including buffer) over the next 5 years, which would be ambitious but realistic and deliverable, as well as boosting housing supply without needing further site allocations."*

It is plain from this part of the LP Inspector's report that he envisioned the Council meeting its under-delivery in the first 8 years of the Plan – i.e. by April 2024. As Mr Wedderburn made clear, Sedgepool 8 is not Sedgefield, it is unique to Cheshire East. In the absence of an accepted approach that everyone understands, Sedgefield or Liverpool, the words of the LP Inspector carry a great deal of significance as the only direction for how this unique

methodology should be applied. Had the Inspector wanted the 8 year period in Sedgpool 8 to have rolled forward, he would have explicitly said so. Not to do so in effect means that the backlog keeps getting rolled ever forward, at least on the Liverpool method the backlog has to be addressed within the LP period. Thus if Sedgpool 8 means rolling the shortfall forward over a perpetually rolling 8 year period then it will be a longer period than the Liverpool methodology, if it means doing so until the 8 years hits the end of the plan period then it is the Liverpool methodology by stealth – either way it is a distortion of the grace afforded by the LPI to deal with the shortfall within the next 8 years. It is of course recognised that the Park Road Inspector didn't agree with this argument – but his argument was based upon giving the Council some leeway in the early years after adoption of the plan. With respect that is not grappling with the issue properly, and the SOS is therefore respectfully invited to do so.

- x. Instead of the high delivery rates that were contended for as being realistic before the LPI (evidenced by the LP trajectory and noted by the LPI at paragraph 72 of his report) delivery rates thus far are well below those needed by CEC to plausibly claim a robust 5YS. To use a different metaphor, wheels have come off the Cheshire East Local Plan Strategy ("CELPs") in the first year after that assessed by the LPI. As at the base date of 1/4/17, it has under-delivered by 5365 units (equating to a deficit of 3 years of the requirement in the first 7 years of the plan), already.
- xi. The LP trajectory identifies that to secure a 5YS the LPA needs to deliver 2466dpa each year from 1/4/17. That figure is comparable under the HMU because the rolling Sedgfield 8 lets the LPA off the hook from not reducing a single unit from its shortfall last year (1796 – essentially equating the requirement but not eroding the shortfall at all – which is still then spread over the next 8 years). AF projects in his evidence that this year there will be delivery of 2000 units based on current information – which means delivery way below the ~2500 figure needed each year for the next 5 and pushing back meeting the shortfall by yet another year. In the real world this is woeful under-delivery and yet AF sought to argue it as if things were on-track.

Mr Fisher accepted that the LP Inspector put weight on the anticipated delivery described in the LP trajectory¹⁷. However, he somewhat inexplicably sought to argue against the 2955 figure being CEC's realistic prediction on the basis that there was no adopted plan during the first 3 years of the plan period – something the LP Inspector would have been well aware.

The only sensible conclusion is that the LP Inspector saw Sedgpool 8 as meeting the undersupply by 2024, and therefore having rolled the base date forward by one year the shortfall should be met within the

¹⁷ CD A40 paragraph 68.

next 7 years resulting in an annual requirement (including shortfall) of 2955. On this basis alone CEC cannot demonstrate a 5YS.

70. The yardstick of the LPA's judgment is of course its own predictive ability, and in this case it has been found wanting in the starkest possible terms within the first year of the period considered by Inspector Pratt. The figures could not be more telling, contrasting the case being put last year before Inspector Pratt and that being put this year at this inquiry. Thus comparing the trajectory at the end of the 2016 Housing Topic Paper, which might usefully be considered to be its 2016 HMU against the trajectory at the back of the HMU, the following obvious points can be made:
- (i) in the 2016 HMU, the LP predicted that its delivery for 2016/17 would be 2955, in fact it was 1762 (ie 40% less than it predicted and told Mr Inspector Pratt). Even if the target was 246617 as AF now maintains, that is still 27% below the level it should have been;
 - (ii) both AF and MW provide evidence which triangulates upon around 2000 units as the likely delivery in 2017/18, against a requirement of 2466 on AF's case or 2955, which is either 19% or 32% below where it should be. That is also 2 years out of the 5 years considered by Inspector Pratt where the prediction of the LPA has failed – one wonders at what point the LPA go back to re-read the serious caution that Inspector Pratt issued in paragraph 68 of his final report?
 - (iii) in the 2017 HMU it predicts that delivery in 2017/18 will be 3373, which is double that actually achieved in 2016/17 (1762), and is way above any trendline of delivery. It is also 33% higher than CEC were predicting would be delivered in 2017/18 in its 2016 HMU (which predicted 2549 being delivered). In fact it is likely to be around 2000 units. That difference alone should lead anyone to seriously question whether its predictive methodology is flawed;
 - (iv) other figures for the 5 year period under consideration at this inquiry (ie 5 years from 1/4/17) also vary wildly from the 2016 HMU to the 2017 HMU; for example in 2016 it was predicted that 2019/20 would deliver 3,501 but in 2017 it is predicted that it will be only 3032;
 - (v) both trajectories (the LP and the HMU 2017) reveal that in no year has the LPA ever achieved its requirement (1800 pa) in the seven years since the plan started (2010), which means that year on year the backlog has been increasing until it is now the equivalent of 3 years supply. Had delivery taken place as planned in 2016/17 the backlog would have reduced by 1155 units, as it is, it has increased and is not now proposed to be removed for a further 8 years despite it relating to need arising now;
 - (vi) to be blunt, both trajectories have an air of unreality to them since both are predicated on an immediate and dramatic upturn in delivery – ie they assume imminent delivery way in excess of past delivery rates for a decade after which delivery rates will once again fall back

to pre-2017 rates. The LPA's case was tough before the LPI but is now implausible. In order to achieve a 5YS now it needs to take a far more positive attitude to the release of deliverable sites without land use constraints in sustainable locations, and not to assume an ever more ostrich-like approach to what has actually taken place compared to its predictions since Inspector Pratt's assessment based on a base-date of April 2016.

(vii) Importantly, the failure of the LPA's predictive ability has been in the first year of delivery – if a plan fails that badly, this early the need for intervention is acute. There is no warrant to give the plan a bit more time to play out – the need for action is an immediate one and is overwhelming on the evidence. It is depressing that having been told that implicitly by two Inspectors that CEC are trying ever harder to man the bilge pumps on their own private Titanic that is their claimed 5YS.

71. The supply of housing land is not a ceiling and given the current state of affairs in this LPA, they should be actively searching out new sites with manageable planning harms to come forward. The Council's closing submissions (paragraphs 63 – 67) argues that permitting this site would reduce the allocations going forward to meet more local needs. This argument is wafer thin, and completely unsupported by any evidence provided at the inquiry. The figures contained in a local plan (including CELPS where this point is recognised at 8.73) are a floor and not a ceiling, and there is no support in policy or evidence to support this argument. Given there are no technical objections to this appeal site, its locationally sustainable and its intrinsic merits have already been endorsed by one Inspector (in the context of there being an immediate need), it is an obvious candidate to come forward now to help this Council meet its needs and to help to address its already significant under supply.
72. The Council's closing go on to say that if the SoS concludes that the LPA has failed to demonstrate a 5YS, then settlement boundaries will need to flex, but it contends that it should not be at this site (paragraph 153). This approach shies away from meeting an immediate problem. This approach has no founding in policy; it suggests that some sort of sequential test should be applied when a 5 year housing land supply problem arises. The appropriate approach is to consider whether or not the development being put forward to rectify the 5 year housing land supply problem is acceptable in planning terms and constitutes sustainable development. If it is, then it should be permitted. Sustainable sites should not be precluded from being developed when there is an immediate need on the basis that the Council thinks that there might be better sites to meet the need that it has denied, and based on evidence it has not presented! This is an abrogation of proper decision making.
73. The Council sought to argue that lapse rates shouldn't be applied, when it accepts that permissions do in fact lapse at a rate which is presently unknown. It's reasons for rejecting MW's approach in this regard is that it is said to duplicate the buffer – which it plainly doesn't – one relates to appraising supply, whereas the other relates to establishing the requirement.

CEC bases its argument on a fundamental misunderstanding of *Wokingham BC v SOSCLG* [2017] EWHC 1863 (Admin). When that case is examined correctly, the issue was whether the Inspector was right in law to apply a lapse rate despite no party raising it during the inquiry (at paragraph 55). When the judge went on to consider whether lapse rates could be law *per se*, he concluded (paragraph 69):

It is for the decision-maker to determine in the first instance whether or not the application of a "lapse rate" to the estimated five-year supply of deliverable housing to reflect the Council's "record of tending to over-predict delivery" involves an unwarranted adjustment, given an increase in the housing requirement by 20% "where there has been a record of persistent under delivery of housing", in each case in order "to provide a realistic prospect of achieving the planned supply.

Therefore, provided the issue is fully ventilated before the Inspector, as it was at this inquiry, then the conclusion can be made to add a lapse rate onto the requirement. Given this Council's history of under delivery and continuing over estimation of future performance, a lapse rate of 5% as proposed by the Applicant is entirely appropriate. Indeed, it will be a vital tool to pushing this Council to meeting its need to provide homes.

74. In conclusion, on both methodology and content, the evidence before this Inspector confirms the Appellant's case that the LPA can demonstrate at most 4.25 YS. If the Council's approach to Sedgemoor 8 is applied, the land supply position on the LPAs approach to yield goes to 4.42 years. It follows from such an outcome on the land supply position that paragraph 49 of NPPF is engaged (subsequently paragraph 11 if the rFramework through footnote 7) and the decision necessarily should be taken based upon the tilted balance therein. The SOS will undoubtedly be told by CEC that the recently adopted local plan can, and is, delivering the houses to meet the identified need. However, it is not that straightforward. One cannot say that simply because there is a recently adopted LP, that the land supply position is safe. The following points are of note:

- a. The Appellant is not seeking to "go behind" the conclusions of the LPS Inspector which were based upon an analysis of Housing Supply position as at April 2016. Rather this inquiry is charged with critiquing the 2017 HMU which has rolled the position forward by one year;
- b. AF at one point in his evidence seemed to run an argument that has repeatedly failed at inquiry – that the task of an inquiry is to review the position as it was known at the base date and then close one's mind to knowledge of what has come to light in relation to the various components of supply since the base date. With respect that position is wrong:
 - i. It is not the approach of the LPA in its 2017 HMU which relies on information which has come to its attention after the base date;
 - ii. It is not the approach of AF who also relied upon information which has come to his attention after the base date, and indeed he has

sought to gather more evidence after the LPA lost the 5YS argument at 2 previous appeals;

iii. It is not the approach of Inspectors in countless appeals across the Country;

iv. It is contrary to the approach required as a matter of law in the *Stratford on Avon DC v SOSCLG* [2013] EWHC 2074 (Admin);

v. It literally makes no sense – a decision maker is required to form a view on what the 5YS is on the evidence before him/her a s.78 appeal is not a form of quasi-judicial review to review the LPA's assessment at a point in time.

75. Inspectors in the White Moss and Willaston decisions¹⁸ both concluded that a precautionary approach should be taken to the 5YS issue and that the tilted balance should be engaged. It is just wrong to contend (as AF now seeks to) that the LPA was constrained in how it wished to put its case, or that there was a misunderstanding of the implications of the St Modwen case. To the contrary in both appeals there was no constraint on the information that the LPA was able to bring forward, noting that it had failed to provide much of the base information on which the 2017 HMU was predicated AND submissions on the St Modwen case were made by leading counsel for CEC in the latter case which followed the reporting of the decision of the Court of Appeal.

76. As noted above the St Modwen case is in any event something of a red herring. It deals with what should be the components of supply and essentially concludes that the footnote to the then paragraph 47 means what it says; but it says nothing about how to approach what is the expected yield that should be assessed from those components of supply, where the PPG requires robust evidence to be provided where PP is not in place.

77. The Inspector's decision in Shavington is being challenged, as the Council is eager to point out. The basis of challenge seeks, through the Shavington decision, to impugn the rational and unimpeachable approach to calculating 5YLS in the WMQ and Willaston decisions. This challenge is being robustly defended, by both the Secretary of State and the Land Owners. Until the claim is heard, those decisions stand and the approach to 5YLS they adopt should be followed – not just in the interests of consistency in decision making, but because it is the correct approach in law and a failure to do so would be unlawful. The presumption of legality applies, and the Inspector is invited to give precisely no weight to the fact of the challenge (just as was the case in relation to the local plan challenge which was live at the time of the White Moss Quarry and Park Road appeals). Moreover, insofar as some of the arguments raised in that challenge mirror the fallacious arguments being raised by CEC in this case then the Secretary of State is respectfully invited to have regard to the rejection of those self-same arguments being raised on his behalf by the Government Lawyers. It is apprehended that the challenge will

¹⁸ Ibid.

have long failed by the time that this decision is ultimately made by the Secretary of State in any event. It has of course not been welcome news to the LPA that it cannot demonstrate a robust 5YS, and as a professional one can have a degree of sympathy for the LPA which has gone through a very long process to secure adoption of the LPS only to discover that houses aren't being delivered sufficiently quickly to ensure a 5YS. However, what is startling is that rather than taking steps to remedy the position (e.g. advancing the pt2LP, and releasing more deliverable sites) the LPA has chosen instead to deploy its resources into defending the obviously indefensible. Based on a robust and objective assessment AF is wrong and the LPA cannot demonstrate a 5YS, and the deficit can only be made good in the short-term by the release of additional sustainable and deliverable sites without technical constraints such as this one.

Appellant's supplementary comments on revisions to the National Planning Policy Framework

78. Paragraph 73 of the revised Framework states:

"Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old".

79. The requirement to assess the housing supply as set out previously in NPPF para 47 therefore remains. In the case of Cheshire East the housing requirement is established in the Cheshire East Local Plan Strategy ("the LPS"). Policy PG 1 sets a housing requirement of 1,800 dwellings per annum. This plan was adopted on 27 July 2017 and is therefore less than 5 years old. In accordance with paragraph 73, this housing requirement should therefore form the basis of the assessment. The housing requirement set out in the LPS was used in the appellant's evidence heard at the Inquiry in February 2018 and indeed it was common ground at the Inquiry that this housing target should be applied. The appellant's approach is therefore considered appropriate with regard to the revised NPPF.

Identifying the Base Date and Five Year Period

80. The rFramework does not comment on the base date or the 5 year period to apply to the assessment. The appellant's evidence on 5 year HLS applied a base date of 31st March 2017 and a five year period of 1st April 2017 to 31st March 2022, which aligned with the Local Planning Authority's Housing Monitoring Update (published August 2017, base date 31st March 2017). This based date of 31st March 2017 was therefore agreed, and is contained within the Statement of Common Ground (SoCG). This approach is considered appropriate with regard to the rFramework.

The Appropriate Buffer

81. Paragraph 73 of the rFramework states:

"The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

- 5% to ensure choice and competition in the market for land; or*
- 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or*
- 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply."*

82. Footnote 39 of the rFramework explains that from November 2018 "significant under delivery" of housing will be measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement. At the time of writing, the relevant section of the PPG which may provide further guidance on this matter has not been updated to reflect the revised NPPF.

83. As above, footnote 39 is clear that the Housing Delivery Test will not be used to measure significant under delivery until November 2018 or thereafter. Paragraph 215 of the rFramework also explains that the Housing Delivery Test will apply from the day following the publication of the Housing Delivery Test results in November 2018.

84. Paragraph 73(b) advises that a 10% buffer can be applied by a LPA where it wishes to demonstrate a five year land supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market that year. The reader is then directed to footnote 38 which states:

"For the purposes of paragraph 73B and 74 a plan adopted between 1st May and 31st October will be considered recently adopted until the 31st October of the following year; and a plan adopted between the 1st November and the 30th April will be considered recently adopted until 31st October in the same year".

85. As set out in evidence at the inquiry, in the first seven years of the LPS plan period, net housing completions in Cheshire East had been on average 1,034 dwellings per annum, and did not reach the 1,800 target at any point. It was therefore common ground at the inquiry earlier this year that a 20% buffer be applied, reflecting persistent under delivery as identified in the Framework.

86. In respect of the implications of the rFramework, the Local Plan Strategy was adopted by Cheshire East on 27 July 2017. As such it qualifies as "recently

adopted” until 31 October 2018. Whilst the PPG has not been updated to provide detailed guidance upon this matter, the rFramework indicates that a 10% buffer to housing land supply is appropriate in any decision taken up to 31 October 2019.

87. From 1 November 2018, whether there has been a significant under delivery of housing will then be a matter for the decision maker to determine. Therefore the appellant maintains that a 20% buffer should apply from 1 November 2018 given the previous under delivery throughout the plan period.
88. It is also noted however that the Housing Delivery Test will then be used to measure significant under delivery from the day following its publication in November 2018. It is expected to use the national statistics for net additional dwellings, which have typically been published in mid-November over the last few years. Consequently, it seems likely to be later in November or thereafter before the Housing Delivery Test is in place.
89. The Framework is clear that the measurement of what amounts to “significant” under-delivery will be based upon the publication of the Housing Delivery Test that will be November 2018. In this case, the 10% buffer should apply as a minimum as the LPA have a recently adopted local plan in accordance with footnote 38 of the Framework. rFramework paragraph 73 gives flexibility to allow the decision maker to apply judgement as to whether or not criteria a) b) and c) applies based upon the evidence before them.
90. Whilst footnote 39 may not apply until November 2018, and because the Framework is silent on how one should determine what is “significant in the interim, it is considered that the 20% buffer should apply as until this time, the application of a 20% buffer is a matter for the decision maker to determine.
91. “Significant” under-delivery is defined as being below 85% of the annual housing requirement. It should be noted here that the transitional arrangement identified at paragraph 215 of Annex 1 only applies to the application of footnote 7 in terms of triggering the tilted balance of paragraph 11d of the Framework. It does not affect the determination of whether or not the 20% buffer applies. The appellant’s 5 year HLS calculation is therefore resupplied below showing both a 20% and also a 10% buffer to cover NPPF para 73b.

Addressing the under-provision

92. The rFramework does not specifically state how the backlog should be addressed, however it does set out the Government’s objective of “*significantly boosting the supply of homes*” (paragraph 59). Addressing the backlog as soon as possible would be consistent with this paragraph. The supporting Planning Practice Guidance (PPG) has not been updated at the time of writing. Paragraph 3-035 of the PPG: “*How should local planning authorities deal with past under-supply?*” provides the guidance that was set out in the evidence for the appeal. It states:

"Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the 'Duty to Cooperate'."

93. Consequently, the PPG is clear that Local Planning authorities should aim to deal with the backlog within five years. Whilst the PPG does appear to recognise that there may be circumstances in which this is not possible, it does not suggest that the backlog should be addressed over any other period in those circumstances. Instead it states that local planning authorities will need to work with neighbouring authorities under the 'Duty to Co-operate', presumably with adjacent authorities looking to help to address the backlog by making immediate provision.

94. A draft HLS section of the PPG was made available in association with the consultation on the draft rFramework. The draft PPG proposes to remove the reference to the Duty to Co-operate and replace it with reference to the plan making and examination process. It states (on page 14):

"Local planning authorities should deal with deficits or shortfalls against planned requirements within the first five years of the plan period. If an area wishes to deal with past under delivery over a longer period, then this should be established as part of the plan making and examination process rather than on a case by case basis on appeal".

95. This draft guidance is consistent with the appellant's position given in evidence and maintained at the inquiry. The appellant's position was to acknowledge that the matter of undersupply of housing delivery had been considered at the Local Plan examination and that the first year of the 'Sedgepool 8' period had elapsed. The appellant's position is that the LPA's "rolling" 'Sedgepool 8' approach would result in the shortfall continuing to be moved backwards and not actually be addressed at all, rather than being addressed within the 8 years as the LPS Inspector intended. The appellant's approach to addressing the under-provision therefore is considered appropriate with regard to the rFramework.

Assessing the Deliverable Supply

96. Paragraph 67(a) of the rFramework is particularly relevant to the appellant's 5 yr HLS case in this appeal. At the Inquiry, there were a number of sites contested at inquiry between the Council and the appellant over whether they should be expected to deliver housing within five years. The assessment of the parties and the supporting evidence was provided within the context of footnote 11 of paragraph 47 of the previous version of the NPPF where 'deliverable' was defined. That footnote was the subject of a number of Court Judgements, in particular the *St Modwen* judgement, which was discussed at the Inquiry. In the rFramework, the definition of "Deliverable" is set out in the Glossary at Annex 2, and this states:

"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five

years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years."

97. The definition of deliverable has now been clarified and sets out the expectations for both local planning authorities and others in assessing the supply of housing land. This change is significant in that it sets out separate tests for two categories of sites as follows:
- Category A - Sites that are not major development (i.e. 9 dwellings or less¹⁹) and sites with detailed planning permission: these should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (some examples are given as to what constitutes clear evidence).
 - Category B - Sites with outline planning permission, permission in principle, allocated in the Development Plan or identified on a Brownfield Register: these should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.
98. In summary, sites under Category A are to be considered deliverable unless the appellant, in challenging the LPA's 5 year HLS, provides clear evidence that those sites are not deliverable. Conversely sites in Category B should not be included in the five year housing land supply by the LPA unless there is clear evidence that housing completions will begin on these sites within five years. This is a significant change as the test has now been reversed for sites with outline permission or development plan allocations. Previously under footnote 11 sites were deemed to be deliverable unless there is clear evidence that they were not. Therefore, national policy now stipulates that these should no longer be included unless there is specific evidence that they are deliverable.
99. The appellant considers that this change in approach to considering whether a site is deliverable gives overall support to the appellant's position and undermines the Council's approach to the supply in the evidence before this appeal.
100. In general, it does not alter the appellant's position on the sites that were challenged in the appellant's evidence in this appeal. Without seeking to introduce new evidence or reopen the detailed consideration of sites undertaken at the inquiry, the appellant's approach at the inquiry was

¹⁹ As per the definition of "major development" within Annex 2 of the rFramework.

generally not to challenge whether sites should be considered deliverable, but to challenge whether sites had a realistic prospect of delivering of the number of units indicated by the Council within 5 years. The change in approach in the rFramework would add weight to our concerns for Category B sites, that the Council has not demonstrated (to quote the rFramework) with *"clear evidence that housing completions will begin on site within five years"* (and without seeking reopen the detailed consideration of sites undertaken at the inquiry it may also provide a reason to challenge further sites in the supply).

101. The appellant provided evidence disputing 41 sites and the majority of these were sites within category B. Of these sites, 34 were sites without planning permission, sites with outline planning permission or sites with outline permission subject to S106. In the case of these sites, the onus would now be on the Council to demonstrate in evidence why it should be considered that housing completions will begin on site within five years. A summary of the sites falling within Category A and Category B are set out in the table below.

Site Name/ Reference	Category A	Category B
LPS1 Central Crewe		✓
LPS2 Basford East Crewe (Phase 1)		✓
LPS4 Leighton West (part a)		✓
LPS5 Leighton		✓
LPS6 Crewe Green		✓
LPS8 South Cheshire Growth Village		✓
LPS10 East Shavington	✓	
LPS11 Broughton Road, Crewe		✓
LPS13 South Macclesfield Development Area		✓
LPS14 Kings School, Fence Avenue		✓
LPS15 Land at Congleton Road		✓
LPS16 Land south of Chelford Road, Macclesfield		✓
LPS17 Gaw End Lane, Macclesfield		✓
LPS18 Land between Chelford Road and Whirley Road		✓

LPS20 White Moss Quarry, Alsager		✓
LPS27 Congleton Business Park		✓
LPS29 Giantswood Lane to Manchester Road		✓
LPS33 North Cheshire Growth Village		✓
LPS36 Land north of Northwich Road and land west of Manchester Road, Knutsford		✓
LPS37 Parkgate Industrial Estate, Knutsford		✓
LPS38 Land south of Longridge, Knutsford		✓
LPS42 Glebe Farm, Middlewich		✓
LPS43 Brooks Lane, Middlewich		✓
LPS46 Kingsley Fields	✓	
LPS48 Land adjacent to Hazelbridge Road, Poynton		✓
LPS57 Heathfield Farm, Wilmslow		✓
LPS61 Alderley Park	✓	
1934 Land off Dunwoody Way, Crewe	✓	
2991 Land adjacent to 97 Broughton Road, Crewe	✓	
3535 Santune House, Rope Lane, Shavington	✓	
3574 Land west of Broughton Road, Crewe	✓	
3612 Land south of Old Mill Road, Sandbach		✓
2896 Land to the north of Moorfields, Willaston		✓
4302 Kings School, Macclesfield		✓
4752 Land off East Avenue, Weston		✓
4725 Abbey Road, Sandbach		✓
5672 Land off Church Lane Wistaston		✓
5709 Land off London Road, Holmes Chapel		✓
406 Victoria Mills		✓
3175 Chelford Cattle Marker and Car Park		✓

102. The change in approach to considering whether a site is deliverable does however run very much counter to the LPA's approach in this appeal with regard to assessing the deliverable supply. The Council's evidence to the appeal set out a number of observations on the *St Modwen* judgement and the consideration of whether a site is deliverable. The Council essentially suggested that the *St Modwen* Court of Appeal Judgement is a 'game changer' in that the threshold for calculating 5 year HLS had been lowered in some significant respect and contending that, given the strategic sites are allocated and these sites are 'capable' of having homes built on them, *St Modwen* obviated the need for the LPA to evidence that their yields in the 5 year period are 'realistic'. Clearly the rFramework now makes absolutely clear that Category B sites should no longer be included in the supply unless there is specific evidence that they are deliverable. It is therefore it is clear that robust evidence on delivery is needed, as was argued by the appellant.
103. In summary, the supply of deliverable sites must be determined within the context of the rFramework which is a material change from that in the superseded Framework. It is for this reason, and the test in paragraph 67A (and associated definition of what comprises a deliverable site provided within Annex 2) that means that the Appellant's housing land supply position should be favoured over the Councils.

Housing land supply calculation

104. The above comments in respect of the approach to 5 year HLS in the rFramework refer to each of the key stages of assessment. The final stage is to undertake the calculation itself. The appellant's calculation was set out in the Appellant's 5 year HLS Proof of Evidence in Table 16 entitled "Conclusions on 5 year land supply CEC / Appellant". At the end of the Inquiry on 23 February 2018 a revised version of this table was submitted at the Inspector's request, updated to reflect the concessions on supply made by both parties in the 5 year HLS Statement of Common Ground (SoCG).
105. It is considered that, given the reference to a 10% buffer in rFramework para 73(b), it may be of assistance to now provide a table showing the appellant's position updated to reflect the concessions on supply made by both parties in the SoCG with a 10% buffer applied.

Updated version of Table 16 of the Appellant's Proof of Evidence "Conclusions on 5 year land supply CEC / Appellant" to reflect the concessions on supply made by both parties in the 5 year HLS Statement of Common Ground in this appeal and also showing the calculation applying a 10% buffer

		Appellant's position when the 20% buffer is applied (supply addressed in 7 years) (updated to reflect SoCG on sites)	Appellant's position when the 10% buffer is applied (supply addressed in 7 years) (updated to reflect SoCG on sites)
A	Net annual requirement (2010 to 2030)	1,800	1,800
B	Housing requirement 1 April 2017 – 31 March (A x 5)	9,000	9,000
C	Shortfall 1 April 2010 - 31 March 2017	5,365	5,365
D	Shortfall to be addressed in 5 years	3,832	3,832
E	Requirement + shortfall (B+D)	12,832	12,832
F	Buffer (20% of E)	2,566	n/a
	Buffer (10% of E)	n/a	1,283.2
G	Requirement + buffer (E+F) = supply required	15,398	14,115.2
H	Assessment of Supply (updated)	13,101	13,101
I	Supply demonstrated (H/G x 5) in years	4.25 years	4.64 years

106. The table above sets out that, where the appellant's approach to supply is preferred, even if a 10% rather than 20% buffer is applied the Council's 5 year HLS figure remains below the requirement.
107. The appellant's position in the light of the rFramework therefore remains that the LPA cannot demonstrate a deliverable five year housing land supply, as was set out in evidence to this appeal and at the inquiry. Therefore, in accordance with paragraph 73 of the rFramework it remains the position of the appellant that the Council are unable to robustly demonstrate a 5 year supply of deliverable housing sites. Therefore, the tilted balancing exercise required by paragraph 11d of the rFramework is engaged as per footnote 7. The conclusions reached by the appellant in the evidence heard before the inquiry therefore remain valid in the context of policies contained within the revised Framework.

Landscape

108. The application site carries no designation, nor is anyone arguing that it is a valued landscape in rFramework terms. In local landscape policy terms

(SE4), the scheme is compliant for the reasons explained by Mr Berry. Moreover, it is clear from the proposed Landscape Strategy principles that the development will respond to the existing landscape with good legibility and a strong sense of place. Any marginal criticisms that have been raised over the course of the last 4 years have been fully taken on board in the latest revisions to the illustrative masterplan. In JB's view the appeal site is an unremarkable and ordinary parcel of land with no particular features that would set it out of the ordinary. Its relationship to the urban area, especially following recent planning permissions granted to the east and west and illustrated on JB's appendix 1, drawing SK19, underscore the site's obvious capacity to accommodate the proposed development. Importantly, that capacity has only increased since the application was first refused (contrary to officer's recommendations) as a result of the adjacent development (especially the DWH land to the east which will have been evident on site); and also as a result of the scheme no longer proposing its own dedicated access to the south, but through an access from the north of the site, the junction with Peter Destapeleigh Way already having been completed.

109. Given that CEC have never refused this application on landscape grounds and have never raised a freestanding landscape impact case against the proposals either at this inquiry or its precursor, one might legitimately ask why the Appellant has sought to present a fully articulated landscape case. Indeed, Mr Gomulski CEC's landscape architect who is habitually called at housing appeals in this borough reiterated his advice back in November 2017 that there would be no significant adverse landscape and visual impacts (after mitigation) and that a landscape reason for refusal could not be substantiated.

Local Plan considerations

110. The Council's case is in essence that there is no need for additional housing and that there are breaches of the recently adopted Local Plan Strategy ('CECLP') whose policies should be treated as not out of date and therefore the application must be refused. To put it mildly, that is an oversimplification of the situation of the task that is before this Inquiry, and takes a myopic view of the actual position that CEC finds itself. Unarguably, in accordance with s.38(6) of the 2004 Act the SOS must determine this appeal in accordance with the development plan unless material considerations indicate otherwise. As PD pointed out in his evidence, whether the policies of the development plan remain relevant and up to date is a material consideration that must be taken into account. Further, the question of whether or not the appeal proposal is in accordance with the relevant policies of the development plan is not simply a yes or no question the answer to which determines the outcome of this appeal. The degree of conflict is plainly relevant and an essential question to consider. Similarly, the actual land use consequence of a policy breach has to be interrogated.
111. That is particularly important here when the alleged harm is the principle of development beyond settlement boundaries, and not any particular significant land use harm, such as landscape, ecology, drainage etc, other than the loss of an area of BMV agricultural land (which is agreed not to be a determinant issue in any event). However the loss of BMV is not significant

and the site is not currently farmed. As recorded in the note submitted to the Inquiry by the Appellant, and not disputed by the Council, only 17% of the appeal site A is BMV (sub-grade 3a). As set out in appendix 2 to PD's POE (the POE of M J Reeve on BMV for the original inquiry at para 6.1), the site "would primarily use one of the few areas dominated by poorer non-flooding land on the margins of Nantwich, so meets the requirements of the NPPF to use poorer quality land in preference to that of a higher quality. The LP at policy SE.2 requires that BMV is "safeguarded". It is agreed that the site will result in the loss of BMV it is a small amount (2.6ha in total across Appeals A and B) and that this loss is not determinative (see SoCG). Taking these points together, in the context of a county where most of the land is of similar grade (see RT PoE at 6.33), the poor quality of the other land in site A and that the parties agree that the loss of BMV is not determinative, the loss of BMV must accord no more than limited weight (as PD concludes in his POE at page 60). Furthermore, if the SoS concludes that the Council cannot demonstrate a 5YHLS, then greenfield sites will need to be delivered and he should reach the same conclusion as the original inspector at paragraph 12.1626 that in those circumstances the release of the BMV on this site to development causes no harm.

112. The starting point for considering whether the relevant policies are up-to date and the weight to be afforded to any breaches of them is a consideration of the basis upon which the plan was adopted. It is agreed by both of the main parties planning witnesses that the settlement boundaries used in the CECLP are those from the previous Crewe and Nantwich local plan. PD explained that the LP settlement boundaries that were set in 2006 were only ever intended to last until 2011, by which time there would have been expectation that they would have been reviewed.
113. The only modifications that were made to these boundaries during the recent LPS process was to incorporate the strategic allocations into them. This did not constitute a review of the boundaries and it is agreed by both planning witnesses that there is therefore a need for the boundaries to be reviewed as part of the next stage of plan preparation SADPPD/LPpt2, which will also consider allocating additional sites so as to meet CEC's needs, for a plan whose plan period started back in 2010. This was acknowledged by the LPI in his report at paragraph 111 and is expressly acknowledged in Policy PG 6 itself along with its supporting text²⁷.
114. As a matter of sensible planning, as a matter of logic and as a matter of mere common sense the geographical extent of these settlement boundaries are therefore obviously "out of date", even if the text of the policies themselves correspond to the approach of the rFramework – a distinction which goes unremarked in the LPA's evidence. This is further evidenced, by the number of dwellings that have been granted planning permission by the Council and at Appeal over the last 5 years and in the overall approach adopted in the LPS itself that involves very significant development outside of settlement boundaries of the saved Local Plan – thereby underscoring it's out of datedness. In a situation where it is acknowledged that development will be required outside of adopted boundaries to meet identified development needs it is nonsensical of the Council to argue that those boundaries are up to date.

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115. One final point is that the position is not altered by the making of the NP. That is because Inspector Jonathan King in emasculating the draft NP rewrote the housing chapter of the NP to mirror the settlement boundary in the saved LP and the NP expressly notes that the boundaries will be reviewed as part of the Ppt2. It follows that policies RES-5 and Policies PG-6 are out of date in their geographical extent and this must reduce the weight to be attached to them and the weight to be attached to any breaches of them. This is precisely the approach of the Park Road Inspector who at paragraph 16 observed:

"Whilst, for the time being, the settlement boundaries and extent of the Open Countryside in the CNRLP as amended continue to carry weight as part of the development plan, there is clearly an acceptance in Footnote 34 and the CELPS Inspector's report that they will be subject to further change. This may be to accommodate non-strategic sites allocated for development as part of the SADPPDP or where planning permissions have been granted for development beyond existing boundaries or in the light of other criteria yet to be defined. To this extent the current boundaries cannot be considered to be fully up to date."

Thus, it is accepted by the Appellant that these policies are breached but as the Appellant correctly contends the extent of that breach has to be assessed to determine what weight to be attached to the breach. The appeal site lies in the defined open countryside but is in no way an isolated or irregular intrusion into the open countryside. It is an obvious extension to the settlement of Nantwich with development on three sides. Importantly, other than the fact of the breach, the Council does not identify any land use harm arising from the breaches of policies RES-5 and PG-6. That there is no land use harm that arises from the breach of these policies must reduce still further the weight to be attached to these policy breaches.

116. There is an allegation within the RfR as well as RT and AF's proof that to allow the appeal proposals would somehow place the Spatial Vision of the LPS 'out of whack'. That is founded upon the proposition that Nantwich has already delivered the amount of housing that was anticipated as part of the LPS spatial distribution. The point is however nonsensical and belied by the words of the LPS itself, since policy PG7 sets out figures for each settlement that are expressly said to be "neither a ceiling nor a target". And yet RT purports to interpret PG7 in precisely that way, at one point even alleging that there was a conflict with the policy (despite it not being cited in the RfR). Moreover, the table following paragraph 8.77 in the LPS is expressed to be an 'indicative distribution'. Thus whilst it may be that CEC could contend that it would be a powerful material consideration against a scheme which was grossly out of kilter with the overall distribution of the LPS, it is an abuse of the express language of the plan to contend that there is a breach of policy PG7 as RT alleges.
117. However, to arrive at that point one has to come to the view that the proposals would indeed be sufficiently at variance with the indicative distribution to be said to result in a land use distribution contrary to the objectives of the LPS. In White Moss Quarry, Inspector Rose seems to have

arrived at the conclusion albeit for a much bigger proposal close to a much smaller settlement. However, merely being a little above the indicative figure of 2050 when that figure is not a ceiling nor a target does not lead to the inexorable conclusion of an offence against the distribution contended for by RT.

118. Moreover, RT was unable to answer the “so what?” point – i.e. even if there is development in excess of the notional distribution, if there is an immediate need for more housing in CEC there are no land use consequences identified which arise as a result why is there a consequence which even weighs into the ‘harmful’ side of the scales. In XC it was argued that the position is directly analogous to the White Moss Quarry appeal – however that decision bears close reading, since the Inspector there was dealing with an argument that the proposals (which were much bigger than those proposed here close to a much smaller settlement) would give rise to harmful out-commuting– whereas here no such allegation is made.
119. As RT was at pains to emphasise in his proof, PG-7 does not identify maximum limits on housing numbers in any location, nor does it identify targets. For a breach of PG-7 to arise it cannot simply occur as a result of a numbers game, there has to be a consequence of that number of housing units coming forward in the location in question. Here there has been no attempt at all to identify any such harm. Thus there was no alleged (unmitigated) infrastructure harm to Alsager and there was no harm to social cohesion, further there is therefore no technical justification for withholding consent.
120. It is all well and good to allege that a proposal is contrary to the spatial strategy of the development plan but in order for such an allegation to be credible the proposal in question must actually be contrary to the spatial strategy and even if it is there must be some consequence of that. Here, the appeal proposal is not contrary to the spatial strategy because the numbers identified in PG-7 are not maxima, and harm has not been shown if panning permission is granted.
121. The appeal proposal should be decided in accordance with the development plan unless material considerations indicate otherwise. When looking at the development one looks at whether the proposal is in overall accordance with the development plan. The appellant accepts there are some breaches of development plan policies, but these are limited³⁰, where the breaches arise as a result of settlement boundaries the geographical extent of these policies are out of date and when harm is considered, there is none. This proposal does not give rise to harm to the spatial strategy, gives rise to not meaningful land use harm and comprises sustainable development. Consequently, regardless of the 5yrHLS situation the appeal proposal should be approved.

Other considerations

Deliverability

122. In something of an unexpected turn of events CEC ran a surprising and misguided case against the appeal proposals, namely that even if panning permission was granted that the proposals would not deliver very much within the plan period in any event.
123. The first attack was both an attack “ad hominem”, or in modern parlance, the LPA sought to play the man and not the ball. AF presented 3 examples of where consents had been granted to the Appellant but where delivery had not come forward as expected. However, in XX he readily accepted that he had presented a deeply partial picture and had identified only those sites which had under-delivered and that he had said nothing at all about sites where the Appellant had brought forward sites which had readily delivered units. That of itself should have compromised AF’s credibility. However, he also failed to point out that the third of the sites that he cited (Old Mill Sandbach) hadn’t delivered because of a land dispute with the Council, where the latter (as landowner) were essentially holding-out for ransom value for land which had been compulsory purchased as part of a highway scheme but was never needed. The picture painted was a disingenuous and partial one.
124. The argument was then put that based upon MW’s delivery rates, and assuming that the SOS wouldn’t issue his decision quickly that the delivery rates for the site would be low. AF’s picture painted in his proof of a dilatory land-banking strategic land company is with respect ludicrous;
- (v) agents have been appointed as PD explained in XC and the likely purchaser for part of the residential component will be DWH, who are building homes rapidly next door – this will be a continuation of that site, resulting in obvious benefits in terms of lead in time as well as evidencing a clear local market;
- (vi) there is clear evidence of a demand for the employment units – see letter from RWR Walker Surveyors - 15 March 2018.
125. There is no basis for the pessimism expressed by AF (which may be contrasted with gross over-optimism elsewhere), there is compelling evidence that this site will deliver within the 5 year period.

Neutral outcomes and Benefits

126. The Transport Assessment concludes without challenge from the highway authority that the existing road network has the capacity to readily accommodate the traffic anticipated from the scheme. There would therefore be neither severe adverse effects nor deleterious impacts on the safety of other road users. This matter therefore, despite the recognised apprehension of local people, would be rendered neutral in the planning balance. If permitted this scheme will bring forward much needed market and affordable homes. The delivery of these homes will provide employment opportunities.

The employment site will provide employment opportunities and strengthen the local economy generally. The services such a site will be a benefit in terms of those services and by reducing trips.

127. The provision of a site for a primary school represents a potential long term benefit of the proposal which could be provided as and when future development requirements for Cheshire East are assessed.

128. The scheme includes extensive areas of open space and landscaping (see CD L9), including habitats with biodiversity benefits. 7.3.4 The section 106 agreement provides, in addition to the affordable housing, for an education contribution and a highways contribution to improve public transport facilities.

Overall Conclusions

129. It is the Appellant's case that the LPA can demonstrate at most 4.25 YS (with a 20% buffer. If a 10% buffer is applied the land supply is 4.64 years. If a more critical view on delivery post-rFramework is factored-in the supply drops further²⁰. On any of the outcomes above, the Council cannot demonstrate a 5YS as required by rFramework paragraph 11 (footnote 7). Therefore the consequences flow from this and the tilted balance in NPPF in paragraph 11.

130. Even if it was concluded that the LPA's optimism was well founded and that it could (just) demonstrate a 5YS, then that does not mean that the appeal should necessarily be dismissed:

- a. on its best case, at 5.45 years the LPA is only just able to demonstrate a 5YS, and even that based upon heroic assumptions about future delivery;
- b. the settlement boundaries were established in the C&NLP over ten years ago and have not been reviewed, save for account being taken of strategic allocations since then;
- c. the settlement boundaries will need to be reviewed and updated as part of the CELPpt2 which is still not even at the earliest stage of preparation;
- d. there is no technical objection to the appeal proposals, including any allegation that there is no capacity to meet infrastructure requirements; and,
- e. the existence of a 5YS is not a ceiling nor is it a proper basis to withhold consent for otherwise sustainable development, especially

²⁰ These account for the revised figures submitted after the revisions to the Framework have been accounted and differ from the Appellant's assessment in closings after the Inquiry.

when as at 1/4/17 there has been an under-delivery of over 5300 homes or more than 3 years of the adopted LP requirement. Indeed even the figures in the CELPS are firmly expressed as not being maxima, and it would be perverse to treat them as such in the manner implicitly asserted by CEC.

131. The scheme complies with the settlement hierarchy by locating in a Key Service Centre. Furthermore, the scheme complies with the terms of the Neighbourhood Plan as it provides important residential development next to the existing boundary of Nantwich, as the plan envisions (despite the revisionist approach now being taken to interpretation). The Council's arguments in closing (paragraph 156) that this scheme, if permitted, would skew the strategy for Nantwich simply ignores that the CELPS directs residential and employment development to Nantwich as a Key Service Centre. Therefore if the Council has failed to demonstrate a 5YS, then Nantwich would be a prime candidate for flexing settlement boundaries to deliver the homes that are being held up by this Council.
132. Furthermore, the Council's claim that permitting this site would lead to housing provision of 18% above the level identified as appropriate in terms of spatial distribution in the CELPS is misleading. The 18% is presumably (the Council conveniently don't show their working) arrived at by taking the 2246 allocated plus the 189 on this site, giving 2434. This equals 18.7% more than the 2050 in policy PG7. What the Council fails to mention is that as 2246 has already been allocated, CEC has shown they are happy to go over the 2050 and are already over it by 12%. Therefore the percentage increase on the allocated sites (2246) of this proposed scheme (189) is 8.4%. So the Council is not only misleading in paragraphs 61 – 65, but they have also got their arithmetic wrong.
133. The Scheme also provides significant employment, housing and social benefits set out in Mr Downes' evidence. Despite the Council's protestations in closing, there is no policy requirement that weight should not be given to economic proposals if they are not accompanied by a clear indication of the occupier, that would stifle development across the UK were the proposition to have any force. The Appellant has made a planning application and there is no reason to suggest that development will not be forthcoming, indeed it is understood that correspondence has been provided by the landowner in response to the latest consultation exercise from a local commercial agent which demonstrates exactly this point. There is therefore no reason not to place significant weight to the benefit of the economic aspect of the scheme.
134. A section 106 agreement has been concluded providing for affordable housing, education, public open space and transportation.
135. Given there are no identified harms that could significantly and demonstrably outweigh the benefits of this scheme, the Inspector is respectfully invited to recommend to the Secretary to (finally) allow the appeal and to grant permission to these applications which propose a sustainable form of development in the context of clear evidence of need.

The case for the Council

The Starting Point

136. The starting point for any decision in the present case is, of course, section 38(6) of the 2004 Act. This requires assessment of whether the proposed development accords with the Development Plan.

137. The Development Plan consists of:

- a. Saved Policies of the Crewe and Nantwich Plan 2011;
- b. The Stapeley and Batherton Neighbourhood Plan adopted in February 2018; and
- c. The Cheshire East Local Plan Strategy 2017 ("the CELPS").

138. The CELPS was, of course, only adopted in July 2017 and sets out the strategy to meet the needs of this area including housing needs. The Examination Inspector concluded:

"I consider the Overall Development Strategy for Cheshire East, including the provision for housing and employment land, is soundly based, effective, deliverable, appropriate, locally distinctive and justified by robust, proportionate and credible evidence, and is positively prepared and consistent with national policy." (Examination Inspector's Report p21 para 78)

139. In reaching that conclusion the Examination Inspector considered a wide range of objections including a number presented by housing developers and their advisors. They raised wide-ranging concerns including those relating to:

- a. Lead-in times; and
- b. Deliverability of sites.

140. After a lengthy and detailed consideration of those concerns and after considering the views of all stakeholders in the Local Plan process, the Examination Inspector rejected them. He concluded that:

"CEC has undertaken much detailed work in establishing the timescales and delivery of these sites, including setting out the methodology for assessing build rates and lead-in times, using developers' information where available and responding to specific concerns [PS/B037]. Although there may be some slippage or advancement in some cases, I am satisfied that, in overall terms, there are no fundamental constraints which would delay, defer or prevent the implementation of the overall housing strategy...

I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5-year supply of around 5.3 years." (Examination Inspector's Report p19 para 69)

Subsequent appeal decisions

141. Since then matters have moved on. The Council has been party to a number of planning appeals not least those relating to Sites at White Moss and at Willaston. The Inspector's in those appeals reviewed the evidence presented to them and concluded that there was a range of realistic views. That range, they said, straddled the five-year housing land boundary.
142. They then both adopted what they described as a precautionary approach. We submit that there is no policy guidance which supports this. There is nothing in the NPPF or the NPPG that indicates that where the realistic range of deliverable sites falls either side of the five-year supply line the decision maker should assume that there is no five-year housing land supply.
143. The Inspectors in these decisions both dismissed the appeals and refused to grant planning permission. As a result, the Council was not a person aggrieved and could not challenge the lawfulness of the approach adopted to five year housing land supply issues.

A Precautionary Approach is Unlawful

144. In the Claim relating to the Shavington Appeal, the Council contends that the adoption of a precautionary approach is unlawful. The reasons why are set out in the Statement of Facts and Grounds but are summarised below.
145. Paragraph 14 of the NPPF explains that the presumption in favour of sustainable development means for decision taking:
- "where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted."
146. Thus, in order to apply the tilted balance, a decision maker must conclude that the development plan is absent, silent or relevant policies are out of date.
147. As Lord Carnwath explained in ***Hopkins Homes v Secretary of State for Communities and Local Government*** [2017] 1 W.L.R. 1865 at paragraph 59:

"The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14. As the Court of

Appeal recognised, it is that paragraph, not paragraph 49, which provides the substantive advice by reference to which the development plan policies and other material considerations relevant to the application are expected to be assessed”.

148. It is submitted that, as a result of the words of paragraph 14 and **Hopkins Homes**, in order to apply the tilted balance, the decision maker has to determine that relevant policies in the development plan are out of date. In order to do that by reference to five-year housing land supply considerations, a decision maker must conclude that there is currently no five-year housing land supply of specific deliverable sites.

Determining Deliverability

149. The decision in ***St Modwen Developments Ltd. v Secretary of State for Communities and Local Government*** [2017] EWCA Civ 1643 was delivered by the Court of Appeal on the 20th October 2017. It provides significant clarification as to the approach to adopt to the consideration of what is meant by a deliverable site within the NPPF.
150. Paragraph 47 of the NPPF provides that local planning authorities are to “identify and update annually a supply of specific deliverable sites sufficient to provide five-years’ worth of housing against their housing requirements...”
151. Footnote 11 of the NPPF then explains what a “specific deliverable site” is as follows:

“To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, **unless there is clear evidence that schemes will not be implemented within five years**, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”

152. Further guidance is provided in the National Planning Practice Guidance:

“What constitutes a ‘deliverable site’ in the context of housing policy?

Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within 5 years.

However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the 5-year supply.

Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out.

If there are no significant constraints (eg infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5-year timeframe”.

153. The size of sites will also be an important factor in identifying whether a housing site is deliverable within the first 5 years. **Plan makers will need to consider the time it will take to commence development on site and build out rates to ensure a robust 5-year housing supply.**” (emphasis added)

154. In **St Modwen**, Lindblom LJ explained at paragraph 38:

“The first part of the definition in footnote 11 – amplified in paragraphs 3-029, 3-031 and 3-033 of the PPG – contains four elements: first, that the sites in question should be "available now"; second, that they should "offer a suitable location for development now"; third, that they should be "achievable with a realistic prospect that housing will be delivered on the site within five years"; and fourth, that "development of the site is viable " (my emphasis). Each of these considerations goes to a site's capability of being delivered within five years: not to the certainty, or – as Mr Young submitted – the probability, that it actually will be. The second part of the definition refers to "[sites] with planning permission". This clearly implies that, to be considered deliverable and included within the five-year supply, a site does not necessarily have to have planning permission already granted for housing development on it. The use of the words "realistic prospect" in the footnote 11 definition mirrors the use of the same words in the second bullet point in paragraph 47 in connection with the requirement for a 20% buffer to be added where there has been "a record of persistent under delivery of housing". Sites may be included in the five-year supply if the likelihood of housing being delivered on them within the five-year period is no greater than a "realistic prospect" – the third element of the definition in footnote 11 (my emphasis). This does not mean that for a site properly to be regarded as "deliverable" it must necessarily be certain or probable that housing will in fact be delivered upon it, or delivered to the fullest extent possible, within five years.”

155. Thus, to be included in the supply side of the five-year housing land assessment, a site needs to be one where there is a realistic prospect of housing coming forward within the 5 year period. Lindblom LJ then went on to contrast that approach with the approach required to produce a housing trajectory “of the expected rate of delivery”:

“One must keep in mind here the different considerations that apply to development control decision-making on the one hand and plan-making and monitoring on the other. The production of the "housing trajectory" referred to in the fourth bullet point of paragraph 47 is an exercise required in the course of the preparation of a local plan, and will assist the local planning authority in monitoring the delivery of housing against the plan strategy; it is described as "a housing trajectory for the plan period " (my emphasis). Likewise, the "housing implementation strategy" referred to in the same bullet point, whose purpose is to describe how the local

planning authority "will maintain delivery of a five-year supply of housing land to meet their housing target" is a strategy that will inform the preparation of a plan. The policy in paragraph 49 is a development control policy. It guides the decision-maker in the handling of local plan policies when determining an application for planning permission, warning of the potential consequences under paragraph 14 of the NPPF if relevant policies of the development plan are out-of-date. And it does so against the requirement that the local planning authority must be able to "demonstrate a five-year supply of deliverable housing sites", not against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing trajectory for the plan period".

156. Thus, a housing trajectory is undertaking a different task from the exercise that must be undertaken when looking at deliverable sites for purposes of a 5 year housing land supply assessment.

157. **St Modwen** has been applied in an important Inspector's decision in the East Riding of Yorkshire. In that decision an Inspector, in the light of St Modwen explained:

"the decision maker has to have clear evidence to show that there is not simply doubt or improbability but rather no realistic prospect that the sites could come forward within the 5-year period."²¹

158. **Accordingly, St Modwen** clarifies that the test to be applied to sites with planning permission or which are allocated is whether there is clear evidence to show that there is no realistic prospect that a site would come forward (see footnote 11 and the NPPG guidance set out above).

159. **Assuming** that both the Inspectors in the White Moss and Willaston appeals applied to the correct approach to identifying the realistic number of units that sites are capable of delivering over 5 years, there appears to be no basis for asserting that sites are incapable of delivering at the top of the range. i.e. the top of the range must be realistic since it is included in a range which sought to identify what sites were capable of delivering on that basis. It follows necessarily that the White Moss and Willaston Inspectors both reached a conclusion which must mean that a five-year housing land supply of specific deliverable sites was demonstrated.

160. **The Framework** does not state anywhere that a precautionary approach to the identification of a 5 year housing land supply is to be applied. Such a proposition cannot be inferred from the indication that the policy intention is to significantly boost supply since that intention is fulfilled by the inclusion of a 20% buffer in the housing requirement.

161. It is submitted that the application of a precautionary approach was thus unwarranted on the basis of the policy set out in the Framework and unjustified on the evidence. It is submitted that to adopt the same approach

²¹ Appeal Ref: APP/E2001/W/16/3165930 Land north and east of Mayfields, The Balk, Pocklington, East Riding of Yorkshire YO42 1UJ paragraph 12)

as the Inspectors in the White Moss, Willaston and Shavington decisions would be to err in law.

162. Instead, what must be undertaken is an appraisal of the sites at issue on the basis identified in St Modwen. Where the site has planning permission or is allocated then the approach that the Council has adopted (which was accepted by the Examination Inspector) should be accepted unless the Appellant has proven that there is no realistic prospect that the site would come forward.

Robust Evidence

163. The Inspector in the Willaston appeal also made another material error and this too was adopted by the Shavington Inspector. He adopted the position that the local planning authority had to present “robust and up to date” evidence as to the likely contribution that a particular site would make to five-year housing land supply. This was based upon a misreading of the NPPG and a failure to apply the words in the Framework.
164. Footnote 11 and the NPPG make it clear that sites which have planning permission or are allocated are to be included in the 5 year supply unless there is clear evidence that there is no realistic prospect that they be implemented within 5 years. The emphasis is on realism. Thus, a different approach to that adopted by a local planning authority can be adopted when there is clear evidence that the Council’s approach to sites with planning permission or with an allocation is unrealistic (see the East Riding of Yorkshire case).
165. The part of the NPPG that the Willaston Inspector relied upon as the foundation of his test for “robust and up to date evidence” is not dealing with sites with planning permission or with an allocation as Mr Wedderburn properly accepted in XX – if it were it would contradict the approach set out in the previous earlier paragraph in the NPPG and also footnote 11 of the Framework. Accordingly, the Willaston Inspector approached the sites on the basis that the Council had to adduce robust and up to date evidence to justify its approach to sites with planning permission and/or which were allocated when this was not the case.
166. The Appellants would have you reject all of the above in favour of an approach that there is some two tiered test:
- Whether a Site is specifically deliverable – the Appellant appears to content that the test of whether a Site would realistically contribute to the 5 year housing land supply position is to be applied here simply to identify the pool of sites examined in the second test.
 - If so, the Appellant contends that the second test is what is the likely number of units a site will contribute to housing land supply within the five-year period.

You and the SofS would err in law if you were to accept this position since it is found upon a grievous misinterpretation of National Planning Policy.

167. Mr Wedderburn in his evidence described the second-tier test as “the more central issue” in housing land supply cases (see Wedderburn p26 footnote 19). He adopted the position that the evidence to support the yield produced by a local planning authority has to be robust and up date.
168. The first point to note is that Mr Wedderburn was totally unable to identify where his second-tier test was addressed in National Planning Policy. If the approach really were “the more central issue” and really did form part of National Planning Policy in such an important area it is submitted that it would be set out in the Framework; it is not and Mr Wedderburn accepted that it is not. It must be remembered that the guidance in the NPPG is just that; the NPPG does not contain planning policy and must not be applied as if it does.
169. The second point is that the Appellant’s approach is totally logically inconsistent.
170. It applies the same test to sites with planning permission and with an allocation as those without either. This conflicts with the Framework which makes it plain that the evidential burden in relation to sites with planning permission and which are allocated is reversed – they are included unless there is no realistic prospect of them coming forward.
171. It is not logical to include a site with planning permission/allocation if there is not clear evidence that it will not be implemented only to then apply a test which requires robust and up-to-date evidence to prove it will actually yield any development.
172. If that were the intent of Policy, there would only be a need for a single test namely, is there robust and up-to-date evidence that a site will yield housing within the 5 year period. However this is not what the Framework actually says.
173. Indeed, as can be seen from the analysis above, to apply the Appellant’s approach thus subverts the intent of the Framework and footnote 11 – it renders the presumption specifically contemplated by Policy in respect of deliverability of housing from sites with planning permission/allocation wholly otiose.
174. The third point is to have in mind why the Framework would include such a presumption in the first place. The answer is obvious. It is included in order to reduce the scope for debate in determining five-year housing land supply in relation to Sites with planning permission/allocation. The adoption of the Appellant’s approach would have precisely the opposite consequence. It would mean that the yield from every single site (whether one with planning permission/allocation or not) would have to prove in every single case. The administrative burden that this would create for local planning authorities

and the Inspectorate cannot be underestimated and cannot have been the intention behind the Framework.

175. The only approach to sites with planning permission/allocation which is consistent with the words of the NPPF, St Modwen and the NPPG is that presented by the Council in this Appeal, namely is there clear evidence that there is no reasonable prospect of the yield identified by the local planning authority being delivered.
176. Mr Wedderburn's assessment of the likely contribution of sites is thus flawed since he applied an incorrect test based upon a fundamental misunderstanding of National Planning Policy. His site appraisal conclusion must therefore be rejected; at the very least his appraisal of individual sites must be approached with great caution lest one draws conclusions similarly contaminated by an error of law.

Additional Evidence

177. A further difference in the present appeal to previous appeals has been the fact that Mr Fisher has produced evidence which was not available to the previous Inspectors. In particular the material produced to the CELPS Inspector has been produced and further and updated evidence has been given in relation to specific sites.
178. It is submitted that, as a result of all of the matters above, the Secretary of State is entirely free to reach a different conclusion of five-year housing land supply to that reached by his Inspectors in recent months. Indeed, the Council submits that, if the appraisal of sites undertaken by the White Moss and/or Willaston Inspectors were accepted given that the top end of the range must be taken to be a realistic figure, the only conclusion, once their error regarding a precautionary approach is jettisoned, must be that they should have concluded that there is a five-year supply of housing sites.

THE CONFLICT WITH THE DEVELOPMENT PLAN

Policy PG6 of the CELPS

Policy RES5 of the CNLP and Policy PG6 both seek to restrict housing in the "open countryside".

179. Policy PG6 defines the Open Countryside as the area outside of any settlement with a defined settlement boundary. The Appeal scheme lies outside of the settlement boundary and is within the Open Countryside.
180. Policy PG6 provides that within the Open Countryside only development that is essential for the purposes of agriculture, forestry, outdoor recreation, public infrastructure, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted. The appeal scheme does not fall within this paragraph.

181. PG6 also goes on to reference to a number of exceptions that might enable development in the open countryside to proceed. None apply to the proposed development. The Appeal scheme is thus contrary to Policy PG6.

182. In considering Policy PG6 (Although it was then referred to as Policy PG5), the Examination Inspector explained:

“Policy PG5 seeks to provide for development required for local needs in the open countryside to help promote a strong rural economy, balanced with the need for sustainable patterns of development and recognising that most development will be focused on the main urban areas. The “open countryside” is defined as the area outside any settlement with a defined settlement boundary; a footnote confirms that such boundaries will be defined in the SADPDPD, but until then, settlement boundaries defined in the existing local plans will be used, as now listed in Table 8.2a. Issues about the detailed extent of specific settlement boundaries can be addressed in the SADPDPD. This is an appropriate and effective approach, given the strategic nature of the CELPS. ” (Examination Inspector’s Report p28 para 111)

He concluded:

“Consequently, with the recommended modifications, the approach to the Green Belt, Safeguarded Land, Strategic Green Gaps and the Open Countryside is appropriate, effective, positively prepared, justified, soundly based and consistent with national policy.” (Examination Inspector’s Report p29 para 113)

Policy RES.5 of the CNLP

183. Policy RES.5 of the CNLP is the sister policy to PG6. It provides:

“Outside settlement boundaries all land will be treated as Open countryside. New dwellings will be restricted to those that:

- A) meet the criteria for infilling contained in policy NE.2; or
- B) are required for a person engaged full time in Agriculture or forestry, in which case permission will not be given unless...”

The Policy then lists a series of exceptions.

184. The proposed development is located in the “open countryside” as defined for this policy also. It does not fall within Part A (i.e. it is not infilling as referred to in Policy NE.2) and it does not fall within Part B. the proposed development is then contrary to Policy RES.5 of the CNLP.

185. Although not considered by the Examination Inspector, the policy approach set out in RES.5 is wholly consistent with the approach in PG6 that he found to be “appropriate, effective, positively prepared, justified, soundly based and consistent with national policy”

Policies PG2 of CELPS

186. Policy PG2 defines the settlement hierarchy of the newly adopted CELPS. It creates four tiers. Nantwich lies within the Key Service Centres tier in respect of which Policy PG2 states:

“In the Key Service Centres, development of a scale, location and nature that recognises and reinforces the distinctiveness of each individual town will be supported to maintain their vitality and viability.”

187. The Examination Inspector explained at paragraph 79:

“This settlement hierarchy recognises the size, scale and function of the various towns, as well as their future role in the development strategy. In my earlier Interim Views (Appendix 1), I considered the proposed settlement hierarchy is appropriate, justified and soundly based, and no new evidence has been put forward since then to justify any further changes to the settlement hierarchy as set out in Policy PG2.”

188. At paragraph 82 of his report the Examination Inspector concluded:

“the Settlement Hierarchy and Visions for each town and settlement are appropriate, effective, locally distinctive, justified and soundly based, and are positively prepared and consistent with national policy.”

Policy PG7 of CELPS

189. Policy PG2 needs to be read alongside Policy PG7 of the CELPS which defines the spatial distribution anticipated by the CELPS. Whilst the nature of settlements in Cheshire East is diverse, each with different needs and constraints, Policy PG7 sets indicative levels of development by settlement. These figures are intended as a guide and are expressly neither a ceiling nor a target. The explanatory text explains that provision will be made to allocate sufficient new sites in each area to facilitate the levels of development set out in the policy.

190. The explanatory text to Policy PG7 (paragraph 8.75) makes clear that the distribution of development between the various towns of the borough is informed by the Spatial Distribution Update Report. This has taken into account a large number of considerations including Settlement Hierarchy, various consultation stages including the Town Strategies, Development Strategy and Emerging Policy Principles, Green Belt designations, known development opportunities including the Strategic Housing Land Availability Assessment, Infrastructure capacity, Environmental constraints, Broad sustainable distribution of development requirements.

191. Indeed, the distribution also takes into account the core planning principles set out in the Framework, which states that planning should take account of the varied roles and character of different areas, and actively manage patterns of growth to make the fullest possible use of public transport,

walking and cycling and focus significant development in locations that are or can be made sustainable.

192. The Examination Inspector considered Policy PG7 (then known as Policy PG6) and explained that it is

“a key policy setting-out the spatial distribution and scale of proposed development at the Principal Towns, Key Service Centres, Local Service Centres and Other Settlements & Rural Areas. In my Further Interim Views (Appendix 2), **I considered that the revised spatial distribution of development represents a realistic, rational and soundly-based starting point for the spatial distribution of development; it is justified by a proportionate evidence base and takes account of the relevant factors, including the crucial importance of the Green Belt and the outcome of other studies undertaken during the suspension period. It is also based on sound technical and professional judgements and a balancing exercise, which reflects a comprehensive and coherent understanding of the characteristics, development needs, opportunities and constraints of each settlement.** Since that time, there is no fundamental or compelling new evidence which suggests that these conclusions should be reviewed.” (Examination Inspectors Report para 83 – Emphasis added)

193. The Examination Inspector’s overall conclusion in relation to the Spatial Distribution contained in the CELPS at paragraph 92 of his report was:

“Consequently, with the recommended modification, I conclude that the Spatial Distribution of Development and Growth to the various towns and settlements is **appropriate, effective, sustainable, justified with robust evidence and soundly based, and fully reflects the overall strategy of the Plan.** I deal with specific issues relating to particular settlements on a town-by-town basis, later in my report.” (emphasis added).

194. The text of Policy PG7 explains in respect of Nantwich this level would be in the order of 3 hectares of employment land and 2,050 new homes.

195. Appeal Site A was considered during the plan process as a potential site for meeting this requirement but was rejected. This decision was upheld by the Examination Inspector who concluded that (paragraph 252 Examination Inspector’s Report):

“Some participants argue that more housing development should be allocated to Nantwich, given the absence of other new sites and its close relationship to Crewe. However, Nantwich has seen significant new housing development in the recent past and, with existing commitments and future proposals, is well on the way to meeting its overall apportionment. Further development would almost inevitably involve additional greenfield sites, which could adversely affect the character and setting of the town and the adjoining Strategic Green Gap. The Plan

already provides some flexibility in housing provision (6.4%) and no further sites are needed to meet currently identified housing needs.”

196. The result of the adoption of the CELPS is that 2246 units have been allocated over the plan period. In addition, there is currently provision for 4.15 ha of employment land. It follows, as Mr Taylor explain in his evidence (paragraph 6.25), that there is then no requirement to allocate further sites to meet employment or housing needs through the SADPPDP.
197. Thus, the Appeal Scheme would radically and significantly reduce the allocations going forward to meet more local needs elsewhere within the Council’s administrative area in the remaining plan period.
198. The Appeal scheme if permitted would add 189 units and 0.37 ha of employment space to the land already allocated/committed for housing an employment needs. In other words this would lead to housing provision of 18% above the level identified as appropriate in terms of spatial distribution in the CELPS and would add some 10% to the appropriate employment floorspace required resulting in employment provision some 50% above the appropriate requirement.
199. These are very significant levels of unplanned growth. It is so significant that it must necessarily undermine the careful balance between employment growth and housing that forms the basis of the strategy for Nantwich within the CELPS.
200. The only reasonable conclusion is that the proposed development would significantly undermine the settlement hierarchy and spatial distribution set out in the CELPS. It is contrary to Policies PG2 and PG7.

Best and Most Versatile Land

201. Paragraph 112 of the NPPF states:

“Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.”

202. CELPS Policy SE2 provides that the loss of BMV should be minimised.

203. It is submitted that the policy approach requires consideration of:

- a. Whether there is a need for the development proposed?
- b. If so, has it been demonstrated that development of BMV is “necessary” i.e. that there is no area of poorer quality agricultural land to locate the development upon?

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204. The Council submits that, since it has a five-year supply of specifically deliverable housing sites, it cannot be contended that the housing element of the proposed development is needed.
205. So far as the commercial element is concerned, some 0.37 ha of commercial floorspace is proposed. Mr Taylor has explained and was not challenged that 3ha of employment land was identified as required for Nantwich in the CELPS. 4.15 ha is already anticipated to come forward. The grant of Appeal Scheme would mean some 4.52 ha would come forward i.e. 50% provision over and above the CELPS expectation. Mr Downes in XX accepted that he was not contended that there was a local need for additional commercial floorspace in this location.
206. Remarkably, the Appellant is seeking planning permission for some 3600 sq m of commercial floorspace on a greenfield site which includes BMV in the open countryside without any justification whatsoever.
207. It follows that it has not been established that the proposed development is needed.
208. Even if this is rejected, however, the next stage in applying policy is to ask whether it has been established that the development could not be accommodated on poorer quality agricultural land.
209. The Appellant, as Mr Downes confirmed in XX, has presented no evidence on this point. There has been no study undertaken. No assessment has been made. In short, no attempt whatsoever to show that the development could not be accommodated elsewhere on poorer quality agricultural land.
210. This is particularly important in respect of the commercial element of the proposed development; there has been no attempt to examine whether that could be provided on poorer quality agricultural land within the Borough.
211. It is submitted that as a result of the above it has not been established that it is necessary to develop the BMV that would be permanently lost to the proposed development. Nor that development needs could not be met by utilising poorer quality agricultural land.
212. The proposed development is contrary to paragraph 112 of the NPPF and to Policy SE2 of the CELPS.

Neighbourhood Plan

213. The most recently adopted element of the statutory development plan is the Stapeley and Batherton Neighbourhood Plan adopted in February 2018.
214. Policy GS1 can only be sensibly construed as preventing development in the open countryside unless it falls within the exceptions delineated in paragraphs (a) to (i). The proposed development does not fall within any of those paragraphs as an exception. Accordingly, it is contrary to the Stapeley and Batherton Neighbourhood Plan.

215. In terms of housing, the Neighbourhood Plan sets out in policy H1 and H2 the kinds of housing that accords with the Plan. The proposed development does not fall within the scope of the development that is supported and is thus contrary to these policies.

216. There was an attempt to suggest that the proposed development accords with Policy H5. This policy provides:

“Subject to the provisions of other policies in the Neighbourhood Plan, the focus for development will be on sites within or immediately adjacent to the Nantwich Settlement Boundary, with the aim of enhancing its role as a sustainable settlement whilst protecting the surrounding countryside.

Outside the settlement boundary any development is subject to the Cheshire East Local Plan Strategy Countryside Policy PG 6 and other relevant policies of this Plan.”

217. The proposed development is outside the settlement boundary. As such as Policy H5 provides it is subject to Policy PG6 and “other relevant policies of this Plan”. Since there is conflict with Policies GS1, H1 and H2 of the Neighbourhood Plan then the proposed development cannot accord with Policy H5 either.

THE WEIGHT TO BE GIVEN TO THE CONFLICT WITH POLICY

218. Mr Downes properly accepted that the overall aims and objectives of these policies are broadly consistent with the aims and objectives of the Framework (Taylor p17 para 5.3). Indeed, given the conclusions of the Examination Inspector he could hardly do otherwise.

219. Nevertheless, it appears to be the Appellant’s case that, notwithstanding the adoption of the CELPS only last year and the Neighbourhood Plan only a few weeks ago, the policies addressed above should all be given “very limited weight” (see Downes XX and Taylor Proof p 18 para 5.6). This is a remarkably brave contention.

220. In summary, the Appellant contends that:

- a. the Council cannot demonstrate that it has a 5-year housing land supply of deliverable sites;
- b. the settlement boundary must flex in order to bring sites forward in order to provide a 5-year housing land supply of deliverable sites;
- c. the settlement hierarchy similarly must flex in order to enable sites to come forward to provide a 5-year housing land supply of deliverable sites;
- d. Accordingly, in order to meet 5-year housing land supply needs these policies must be given very little weight so that the appeal scheme

can come forward to assist in providing the 5-year housing land supply which is required.

A 5 Year Housing Land Supply

221. As already outline above, the Examination Inspector considered a wide range of evidence on housing land supply from numerous parties. This included points raised relating to the methodology used in relation to build out rates and lead in times.

222. Mr Fisher explained to the Inquiry the work undertaken to inform the Examination on these issues. The Council has looked at every application over a 10 year period, looking at thousands of sites. Further, in terms of delivery, the Council had contacted and obtained information from the land owners/developers of all of the strategic sites.

223. The Examination Inspector explained at paragraph 65:

“Housing land supply was not covered in my earlier Interim Views, since the latest figures and assessments were not available. This issue was discussed regularly throughout the examination hearings, with developers, housebuilders and local communities challenging the deliverability of specific sites, particularly the larger strategic sites. **By the end of the hearings, CEC had undertaken a considerable amount of work to establish the timescale and deliverability of its housing land, including those strategic sites proposed in the CELPS-PC.**” (emphasis added)

224. In this same vein, the Inspector continued at paragraph 69:

“**CEC has undertaken much detailed work in establishing the timescales and delivery of these sites, including setting out the methodology for assessing build rates and lead-in times, using developers’ information where available and responding to specific concerns [PS/B037]. Although there may be some slippage or advancement in some cases, I am satisfied that, in overall terms, there are no fundamental constraints which would delay, defer or prevent the implementation of the overall housing strategy.** The monitoring framework also includes specific indicators related to housing supply with triggers to indicate the need for review. I deal with site-specific issues later in my report on a town-by-town basis. On the basis of the evidence currently available, **I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5-year supply of around 5.3 years.**” (emphasis added)

225. It is very important to note that the Appellant in the present case has not contended that any of the triggers in the monitoring framework referred to by the Inspector are engaged.

226. At paragraph 76 the Examination Report, the Inspector concluded:

“On the basis of the evidence before me, I conclude that the CELPS-PC, as updated and amended, would provide a realistic, deliverable and effective supply of housing land, to fully meet the objectively assessed housing requirement, with enough flexibility to ensure that the housing strategy is successfully implemented. Similarly, CEC should be able to demonstrate that there is at least a 5-year supply of housing land when the CELPS is adopted.”

227. He concluded in terms that the provision for housing and employment land within the CELPS including the 5-year housing land supply position “is soundly based, effective, deliverable, appropriate, locally distinctive and justified by robust, proportionate and credible evidence, and is positively prepared and consistent with national policy.” (Examination Inspector’s Report p21 para 78)

The Inspector’s Decisions

228. The approach adopted in the White Moss, Willaston and Shavington decisions was wrong in law for reasons set out above. The approach set out in those decisions must not be followed in this one. The proper approach is:

- a. In respect of sites with planning permission/allocation is to ask whether there is clear evidence that there is no realistic prospect of the Site delivering housing as assessed by the Council;
- b. In respect of sites without planning permission/allocation is to ask whether there is robust and up to date evidence that there is a realistic prospect of the Site delivering housing as assessed by the Council.

229. It is also submitted that there is no policy requirement for the Council to demonstrate that it has a “robust” five-year housing land supply. Nor is there any policy requirement that a “precautionary approach” should be adopted to five-year housing land supply considerations.

The Housing Monitoring Update August 2017

230. The Council’s Housing Monitoring Update August 2017 sets out in detail a re-appraisal of the position. The Housing Monitoring Update which shifts the base date to 31 March 2017 utilises the same methodology employed in the CELPS Examination process. This methodology was described by the Examination Inspector as resulting in a “robust, comprehensive and proportionate assessment” housing delivery (Examination Inspector’s Report p19 para 69).

231. The HMU reveals that completions have increased to a level more than double that delivered in 2013/14 and for the fourth year in a row. In addition, there has been a net increase in commitments of some 3157 units compared to the position in March 2016 – a 19% increase on the position in March 2016. Indeed, the level of planning permissions granted/resolutions to approve in the last 12 months stands at 5269 units. Thus, not only have completions increased since March 2016 but also the pool of planning

permissions to enable additional housing to come forward has increased very substantially.

232. It is submitted that this demonstrates that the pool of deliverable sites has increased since March 2016 and not decreased as the Appellant contends.

The Appellant's Case on Housing Land Supply

233. The 'big picture issues' between the parties are as follows.

Backlog

234. Mr Wedderburn contended that the "Sedgpool 8" method of addressing backlog adopted by the Council and accepted by the Examination Inspector is to be applied so that the period it relates to shrinks year on year i.e. in the second year it is to be applied to a 7 year period in the third a six year period and so on until it shrinks to no period at all.

235. Mr Wedderburn has got this badly wrong. It is well established that the Sedgfield approach to backlog is a rolling approach and there is no reason not to apply this approach to the backlog in Cheshire East. He produced no appeal decision which supported the approach of a gradually shrinking period over which backlog should be applied.

236. Further and more significantly, Mr Wedderburn's point was taken and rejected in the Willaston appeal where the Inspector concluded (document D30 para 45):

"The Sedgpool 8 method was agreed by the examining Inspector for the CELPS on the basis that the backlog would be met within the next 8 years of the plan period from 1 April 2016. I note the appellant's concern that applying Sedgpool 8 from April 2017 effectively rolls the backlog forward another year. However, the CELPS Inspector agreed to vary the Sedgfield method because delivering the backlog over 5 years in Cheshire East would result in an unrealistic and undeliverable annual housing requirement. Dealing with a shortfall in housing delivery since the start of the plan period is a rolling requirement in the calculation of the 5 year housing requirement at any point in the plan period. The Council has factored the backlog for 2016-17 into the calculation of the current 5 year requirement. It would be unreasonable at such an early stage in the life of the new CELPS to depart from the Sedgpool 8 approach, given the basis for it in Cheshire East. To do so would in effect impose a further variant of the Sedgfield and Liverpool methods outside of the local plan examination process."

237. The Council submits that there has been no relevant change in circumstances since that decision. It continues to be unreasonable to adopt a different approach outside of the Plan process. The Appellant's case in this regard must be rejected.

Build Rates

238. Mr Wedderburn's position accepted the build rates on sites adopted by the Council (which reflected the approach accepted by the Examination inspector) other than on larger sites. On these larger sites he explained that he only accepted a 50 dpa yield where there is specific evidence to show that two builders would be on-site. In other words, he relies upon an absence of evidence to prove there would be two builders on site rather than any assessment of the realism of the assertion that two builders on site would not be realistic.
239. This is a perfect example of an approach at odds with the Policy position in the Framework. The policy compliant approach (as set out above) in relation to sites with planning permission/allocation is to ask whether there is clear evidence that there is no realistic prospect of two builders on site. Mr Wedderburn produced no evidence on this whatsoever.
240. Indeed, it is entirely unclear what evidence he would accept. For example, in relation to his approach to site LPS4 he explained that evidence from site promoters cannot be relied upon. If the evidence of the likely manner of build out of a site from those promoting a site cannot be relied upon, it is difficult to see how a local planning authority could evidence justify an assumption that two builders would actually come forward.
241. The evidence presented by Mr Fisher (rebuttal p13 table below paragraph 68), however, was that in practice the build rate is frequently significantly higher than the Council's methodology assumed in many cases by a factor of more than 100%. Even a small increase in the build rate over all of say 10% would produce an increase of supply of 1295. It cannot be said that there is no prospect of an increase in overall build rate of 10% or more than the Council has assumed.
242. It is submitted that Mr Wedderburn's evidence on this issue should be rejected. Only where there is specific evidence that there is no reasonable prospect of a large site being developed out by two builders should an assumption of anything less than 50 dpa be adopted.

Lead-In Times

243. Mr Wedderburn also attacked the Council's approach to examining sites by reference to a study of lead-in times he had undertaken. This examined some 70 sites through the planning process (see his appendix MW6). He then applied timings for various stages of the planning process to sites in the future i.e. he applied timings from the past and assumed they would be comparable in the future; his approach is flawed.
244. Firstly, 20 sites out of his 70 (29%) were sites which obtained planning permission on appeal. That was because prior to the adoption of the CELPS there were considerable issues relating to the principle of development on sites within Cheshire East. This gave rise to much argument, many appeals and many delays.

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245. With the adoption of CELPS, the basis for these in principle arguments has been removed. The whole point of adopting a Local Plan is, after all, to provide a reliable basis for decision making which minimises scope of in principle disagreement. Indeed, Mr Wedderburn accepted in XX that he would not expect the same proportion of appeals going forward as had been experienced in his sample of sites.
246. As Mr Fisher explained in his rebuttal evidence (page 7 paragraph 35), the circumstances are very different now. Virtually all sites in the supply are either committed or are allocated. Accordingly, the number of appeals has also reduced – with no further residential inquiries programmed after the current one. Further, Local plan adoption not only resolves the principle of development (a major stumbling block previously – hence the number of appeals) – but it also assists in agreement on matters of detail (education, highways, landscaping etc) as all now relate to clear adopted policies. Added to this the Council has also adopted SPD on design guidance (May 2017), which again makes the position on detailed layouts clearer. In addition, the s106 process is assisted since the planning obligations are now linked to adopted policies (e.g affordable housing).
247. These are all reasons why the timing adopted in the past in relation to particular stages of the planning process are unlikely to be continued in the future. Thus, pointing to the past, as Mr Wedderburn has, does not establish that the approach adopted by the Council to lead in times is clearly unrealistic.
248. Indeed, they cannot be viewed as such given that the lead-in times utilised in the Council's evidence were accepted by the Examination Inspector as appropriate. That Inspector has the evidence now present in the present appeal and had the benefit of representations from all stakeholders, not just Mr Wedderburn. The lead-in times presented were the product of discussion with those stakeholders. In confirming that the lead-in times utilised were appropriate the Examination Inspector would have been aware of the points relating to the effect of adoption of CELPS and timings.
249. To reject the lead-in times adopted by the statutory plan process via the s78 appeal process is a radical step. It wholly undermines the basis on which the CELPS housing land supply was calculated and found sound. In other words, it undermines the strategic basis for the CELPS at its core. It would leave the man in street wondering how a Local Plan can be sound one month and then some 9 months later be found to have been adopted on a basis which can no longer supported. What a colossal waste of public resources it would be to have promoted a Plan which is then effectively jettisoned less than a year later?
250. It is submitted that great care needs to be taken to ensure that such a significant step is not taken lightly or else it will bring national planning policy and the planning system as a whole into disrepute. It must only be a rare case indeed, when a methodology accepted at Examination a few months before is deemed inappropriate a few months later only on the basis of the sort of generalised evidence presented by Mr Wedderburn. The time for consideration of that generalised evidence was in pursuit of objection to the

CELPS at Examination when all stakeholders involved could have their views aired and considered and not subsequently in a s78 appeal where other stakeholders views are not provided.

251. But of course, unlike Mr Wedderburn, the Council's appraisal is not simply reliant upon the application of generic time periods from a study of 70 sites in the past.
252. Mr Fisher set out in his evidence an exercise which sought to look at the lessons to be learned from recent post adoption data. He analysed major applications that commenced between 1 April and 31 December 2017. He considered that he had obtained a decent but not comprehensive sample of what is currently taking place.
253. His evidence showed that for the 16 Major developments that have started by Q3 of 2017/18 the median timeline between the date of detailed consent and the start of construction is 0.43 years – or just over 5 months. A similar picture applies to both larger and smaller developments. For those applications that featured an outline the median timeline between the date of outline consent and the start of work is 1.47 years. Once again, the picture is similar for both larger and smaller applications. This data is set out in Appendix 2 to Mr Fisher's rebuttal.
254. The most up to date information reinforces the timelines employed in the standard methodology and demonstrates that sites can commence and deliver initial units within relatively short timescales. Whilst not every site may deliver in this way, those starting in 2017/18 follow this pattern.
255. The data also reveals that of the sites of 100 units or more, 44% of sites have started ahead of the timescales in the HMU. It is submitted that this illustrates the reasonableness of the Council's approach and that sites are not only capable of meeting the timescale in that approach but also of improving upon them. It is submitted that this provides a good indicator of what will happen in future. It demonstrates that sites are fully capable of delivering to the timescales anticipated by the Council and that those timescales are realistic.
256. A further and important point to note from Mr Fisher's analysis of this data is that full applications (as opposed to reserved matters) were made on more than 50% of the sites. This includes half of the sites over 100 units. This shows that on allocated sites, companies are willing to use the greater certainty that the development plan provides to proceed straight to a detailed application.
257. By contrast Mr Wedderburn confirmed in XX that he had assumed that all sites without planning permission would come forward as outline applications. The evidence that Mr Fisher has adduced demonstrates that this assumption is not realistic. As a result timescales are applied to sites on a basis that an outline planning permission will be obtained when the evidence shows that for a large proportion that will not be the case. The result is that Mr Wedderburn's approach is seriously unrealistic.

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258. Further, the Council has relied upon site specific evidence and has specifically contacted site owners and promoters. Such site-specific evidence must constitute better evidence than the generalised approach of Mr Wedderburn.
259. In particular, there may be a number of site specific reasons why a site would come forward faster or slower. In looking at the position, it is submitted that site owners/promoters must be in the best position to advise on a number of factors including, the likely phasing and thus timing of reserved matters applications since phasing is often tied to funding issues. They have knowledge of timing issues arising out option agreements which no other party knows and which can include the need for certain stages to be met by certain dates. They also have access information relating to construction including implications for financing, and labour supply and materials.
260. These are all matters known by site owners/promoters and no-one else. Yet Mr Wedderburn's approach was to ignore this. He negated all of this by asserting that statements by promoters were not reliable. Admittedly caution has to be applied to statements made prior to the adoption of a Local Plan which allocates sites, since there may be a desire for some to present a rosier picture of deliverability of their site in order to secure allocation. Indeed, this point is crucial because it undermines any reliability in the exercise conducted by Mr Wedderburn (his rebuttal page 5 paragraph 4.7) looking at outturn against comments. The comments he examined were all made prior to the adoption of the CELPS and the allocation of the sites concerned.
261. It is the case, however, that after allocation that motivation is simply removed. Indeed, Mr Wedderburn struggled to identify why post allocation a site owner/promotor would make unreliable statements regarding the yield of units from their site in XX.
262. All of these matters point to a single conclusion; there is no basis for accepting that there is clear evidence that there is no realist prospect of the lead-in times adopted by the Council and accepted by the Examination Inspector coming about. The reality here is that there is ample evidence to establish that they are robust, up to date and realistic.
263. It is submitted that the approach advocated by the Appellant must be rejected and the approach that lies behind the recently adopted Local Plan and utilised by Mr Fisher in his appraisal must be accepted.

5% Discount

264. Mr Wedderburn adopted an approach in which he was entirely alone; no other planning consultant in any of the appeals post-adoption of CELPS has contended that a percentage discount to the total supply should be applied to take account of planning permissions which expire. He is a lone voice in this. The reason why is that it is a thoroughly bad point.
265. Firstly, his figures were miscalculated even if it were right to apply the discount. He had applied it to permissions that were already implemented;

once implemented a planning permission cannot expire. Mr Wedderburn agreed that his discount should not be applied to implemented permissions.

266. Secondly. Mr Wedderburn has identified his 5% figure by reference to data from the Council which contained an error. Mr Fisher explained in his rebuttal evidence that the consequences of that error meant that a figure of 5% expiry could not be supported from the data; rather a figure of 4% (Fisher rebuttal paragraph 45). But this is before an allowance is made for sites which obtain a new planning permission after expiry. Mr Wedderburn allowed 1% for this. That would get one to a 3% discount figure.
267. However, Mr Wedderburn had made no investigation of the extent to which the sites where consent had lapsed in the past had obtained planning permission post expiry. Mr Fisher explained that in practice many sites regain consent in short order and are subsequently developed. This illustrates that even if a site lapses it is capable of development. Further, the NPPG indicates that where there is robust evidence a site without planning consent can be included in the supply. Where planning consent has been given in the past and there are no significant physical impediments, it is in line with national guidance to include sites within the deliverable supply.
268. As Mr Fisher explained in his rebuttal at paragraph 47 the Council only employs 63% of commitments within its 5-year supply. It is very far from counting every last house from consent. There is plenty of scope for other commitments to deliver better than expected.
269. Even more significantly, however, Mr Wedderburn's approach if adopted would result in a double counting. The effect of applying a lapse rate to a housing requirement is that additional sites need to be found to make up the shortfall. However, the housing requirement in Cheshire East already includes a 20% buffer. Paragraph 47 explains that the purpose of the 20% buffer is to "to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land". Thus the 20% buffer rate is already applied in order to achieve the objective of Mr Wedderburn's discount. There is no reason to both increase the housing requirement and to decrease to pool of available sites for the same purpose. To do so results in double counting.
270. Mr Wedderburn was unable to identify any coherent reason why in the circumstances pertaining to Cheshire East both a 5% discount and a 20% buffer should be applied when he was questioned on the point in cross-examination.
271. The dangers of applying a discount for the decision maker can be seen in the case of **Wokingham Borough Council v Secretary of State** [2017] EWHC 1863 where the High Court quashed an Inspector's decision for failing to explain why in a 20% buffer context it was appropriate to apply a discount lapse rate. Indeed, in that case reference is made to a decision of the Secretary of State in respect of a proposed development in Malpas, Cheshire. In that case the Secretary of State agreed with the Inspector's reasoning on certain points including these. The Inspector considered the objective of the 20% "buffer" was to provide a realistic prospect of achieving the planned

supply and to ensure choice and competition in the market and that “the buffer figure thereby allows for some uncertainty and slippage in the delivery of some sites”. He added:

“there is no evidence to support the arbitrary 6 month or 12 month slippage rate assumed by the Appellant across all developments. To apply such an assumption, or the alternative 10% discount (which is equally arbitrary), would result in double counting in that the 20% buffer would also allow significant slippage or non-implementation.”

272. The same reasoning applies to the present case. For all these reasons Mr Wedderburn’s suggested 5% lapse rate must be rejected.

Windfall

273. Mr Wedderburn has adopted an inconsistent approach to windfall. He included an allowance for windfall in areas not including Crewe. There was no rational reason for this and this needs to be taken into account when looking at the “allocation” for windfall for the Crewe area.

A Comparison between Trajectory and Actual Delivery

274. The Appellant has placed significant emphasis on a comparison between the actual delivery of housing and that which was anticipated in the housing trajectory. A number of annotated graphs were produced on behalf of the Appellant to illustrate the points being made. These points were put forward as a basis for suggesting that the Council’s identification of housing land supply is suspect in some way. The comparison in fact does not such thing.

275. As the Court of appeal emphasised in *St Modwen*, paragraph 49 of the NPPF requires a local planning authority “demonstrate a five-year supply of deliverable housing sites”. This is not the same things as comparing against the requirement that the authority must “illustrate the expected rate of housing delivery through a housing trajectory for the plan period” as part of Plan preparation. A housing trajectory is undertaking a different task from the exercise that must be undertaken when looking at deliverable sites for purposes of a 5 year housing land supply assessment. Accordingly, the comparative exercise undertaken is of only very limited utility in a decision taking context.

276. Further, it has to be remembered that the issue here relates to the delivery of houses over a five-year period. As the Examination Inspector recognised there will inevitably be slippage or advancement of some sites in reality compared with any forecast. However, over a five-year period this effect is, absent particular evidence relating to a particularly significant and large strategic site, likely to even out. For example, a site where delivery slips will simply deliver in the next year. Thus, overall delivery in the next year is likely to be higher than anticipated unless units in that next year have come forward in an earlier year in significant number. That is why the Council’s trajectory in the HMU for next year increases; that is entirely logical and indeed an obvious consequence of slippage in the year to 1 April 2017.

Conclusion on Housing Land Supply

277. For the reasons set out above, the Appellant's case on housing land supply must be rejected. If the White Moss and Willaston Inspectors had applied the correct legal approach and not the unlawful "precautionary" one that they did, they would have concluded that the Council had a 5-year housing land supply. Mr Wedderburn's attempt to argue that the position is far worse than these Inspectors identified must be rejected.
278. The reality here is that the CELPS was only found sound because there was accepted to be a five-year housing land supply. To find the opposite but a few months later as a result of adopting a different approach to that accepted by the CELPS examination Inspector without any material change in circumstances is to fall into error and worse to undermine the public's faith in the plan led system; what is the point of communities accepting the loss of greenbelt land in order to produce a Plan if the basis of that Plan is undermined by s78 Appeal decisions but a few months later? It is submitted that the public's faith in the planning system will be wholly undermined if section 78 decisions conclude so lightly that a five year supply is lost so soon after plan adoption. It submitted that the conclusions of an Examination Inspector that a methodology is robust and that there is a five-year housing land supply must be treated as of significant weight. Those conclusions should only be undermined if there is strong evidence to demonstrate that there has been a fundamental change of circumstances in the intervening period. There is not such evidence and no such change of circumstances in the present case. The only reasonable conclusion in this appeal is that the Council has demonstrated that it has a five-year housing land supply of deliverable sites.

Flexing the Settlement Boundaries

279. Since the Council has a 5-year housing land supply of deliverable sites, there is no policy imperative to "flex" the settlement boundaries and the Appellant's contention in that regard must be rejected. Indeed, Mr Downes accepted in XX that if there is a five-year housing land supply the settlement boundaries must be up to date.
280. It is incorrect to assert, as the Appellant has done, that the settlement boundaries are out of date in any event since their review is foreseen in the CELPS itself. As Mr Taylor explained, the CELPS anticipates a review of boundaries in order to facilitate development later in the plan period; the settlement boundaries right now are up to date.
281. Indeed, the Examination Inspector himself necessarily considered the question of whether the settlement boundaries were up to date. He must have, since a number of policies depend upon them and could not be sound unless the boundaries were up to date. Further, he considered numerous objections including those of the Appellant in relation to the Appeal site that sought to change the settlement boundaries. Since he concluded that the Council had a 5 year supply of housing, he must have concluded that, with the adjustments proposed, the settlement boundary was up to date.

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282. It is submitted that, if you conclude that the Council has demonstrated that it has a five-year supply of deliverable housing sites, you must conclude that the settlement boundary is up to date.
283. On the other hand, if you conclude that the Council has not demonstrated that it has a five-year supply of deliverable housing sites, then logically it must be the case that settlement boundaries must flex somewhere in order for further housing to come forward. In such circumstances, Policies PG6 and RES.5 must be given reduced weight; what has not been established, however, is that they must flex here in order to allow the Appeal scheme to come forward given its location and position in the settlement hierarchy.

Flexing the Settlement Hierarchy and Spatial Distribution

284. There is no evidence that the settlement hierarchy and spatial distribution anticipated in the CELPS has to flex in the absence of a five-year supply of deliverable housing sites. If you conclude that there is a five-year supply of deliverable housing sites then there can be no basis for such "flexing".
285. If there is a need for further sites to meet 5 year housing needs in the short term, it is obviously preferable that these are met at sites which do accord with the settlement and spatial distribution hierarchy; to accept otherwise is to subvert the newly adopted CELPS and the plan led system.
286. As set out above, the Appeal Scheme is contrary to Policies PG2 and PG7. The Appeal scheme if permitted lead to housing provision of 18% above the level identified for this part of the District as appropriate in terms of spatial distribution in the CELPS and would add some 10% to the appropriate employment floorspace required resulting in employment provision some 50% above the appropriate requirement. These are very significant levels of unplanned growth. It is so significant that it must necessarily undermine the careful balance between employment growth and housing that forms the basis of the strategy for Nantwich within the CELPS.
287. It is submitted that even if there is no 5-year housing land supply of deliverable sites, Policies PG2 and PG7 of the CELPS should be given significant weight.

The Planning Balance

288. In order to assist in undertaking the planning balance these submissions address the planning balance on two alternative bases:

If there is a five-year housing land supply; and

If there is no five-year housing land supply

There is a Five-Year Housing Land Supply

289. If there is a five-year housing land supply then the policies in the development plan are up to date. There is then no basis for applying the tilted balance. Instead paragraph 14 of the NPPF requires the development to

be assessed against the policies in the Development Plan. The significant conflict with the development plan has been identified in above. In a context where the development plan is up to date, the breaches of policy identified above must be given full weight.

290. Section 38(6) of the 2004 Act falls to be applied. This indicates that given the breach of development plan policy planning permission should be refused unless material considerations indicate otherwise.
291. The development would provide market and affordable housing. However, as set out above, the Council is in a position where a 5-year supply can be demonstrated and the Council is meeting its market housing needs and has made the necessary strategic provision for the future. Therefore only limited weight can be given to this benefit, particularly given that the CELPs have addressed Nantwich's housing needs, including through the strategic allocations at Kingsley fields and Snow Hill.
292. The provision of affordable housing is a benefit of the proposed development and would result in 57 affordable properties being provided based on a 189 house development. However, affordable housing is required to be delivered by all housing developments. As set out above, the appeal scheme is not needed in order to secure a five-year supply of housing, and the Examination Inspector concluded that the CELPS, by delivering its planned housing numbers, appropriately meets affordable housing needs. Nevertheless, given local housing need, it is accepted that the delivery of affordable housing in an accessible location is an important benefit of the scheme.
293. Overall the proposal would also provide social and economic benefits. These would include employment opportunities generated in construction, spending within the construction industry supply chain and indirectly as a result of future residents contributing to the local economy. There would also be a boost to the local economy through additional spending and support for existing facilities and services.
294. Although economic benefits from the construction of the site would be limited as these would cease upon completion of the development. Indeed, it has not been established that the economic benefits here would be additional to those which would arise in any event. For example, if the construction workers were not on this site, it is likely they would be employed elsewhere.
295. The appeal site (A) proposes a package of development in addition to the housing. This includes a local centre incorporating a convenience store with 7 other small shop units, a potential new primary school and the provision of employment units. However, there is no commitment to these actually being provided and no evidence that they would be. Accordingly, it is submitted that only limited weight should be attributed to the benefits arising from the proposed local centre.
296. So far as the new employment provision is concerned, the evidence has established that there is no commitment to delivering this aspect of the scheme. Further, there is already substantial overprovision of employment

land in Nantwich. The benefits associated with this element of the scheme are also to be given only limited weight.

297. Subject to a suitable Section 106 package, the proposed development would provide adequate public open space and highways improvements. However, these are not considered benefits of the development as they are required to make the development acceptable in planning terms. Therefore, whilst these factors do not weigh against the proposal they also do not weigh in favour.
298. In the light of the above, in a context where it is accepted that there is a 5-year supply of housing sites, the proposed development would lead to a very significant breach of the Development Plan. That breach must be given substantial weight against the grant of planning permission. Whilst there would be some benefits of granting planning permission these are of the kind that would arise from any housing scheme. There is nothing particular about the material considerations associated with the Appeal scheme which is of such particular benefit that it can be considered to outweigh the breach of the Development Plan.
299. As a result, the only reasonable conclusion is that, applying section 38(6), planning permission must be refused.

No Five Year Housing Land Supply

300. If, contrary to the Council's case it is concluded that there is no five-year housing land supply, then policies which are policies for the supply of housing are out of date and the tilted balance must be applied.
301. It is submitted that none of the policies identified above as being in breach by the proposed development are policies for the supply of housing in the narrow sense identified in Hopkins Homes. However, in Hopkins Homes it was recognised that the weight of policies that would operate to constrain development to meet housing needs could be affected by a conclusion that there is no five-year housing land supply; otherwise the policy objective of meeting housing needs might be frustrated.
302. It is then necessary to carry out an exercise of:
- Examining harm against benefits in order to apply the tilted balance; and
- Undertaking the exercise required by section 38(6) of the 2004 Act.
303. The appeal scheme will have material economic and social benefits as set out above. I also acknowledge that the actual delivery of housing to meet needs within 5 years in a context where there is no 5-year supply of housing is a factor to which weight should be given. How much weight depends upon the extent to which the proposed development is likely to deliver housing within this time-scale. In the present case there are a number of factors that are likely to mean that the actual contribution towards the current five-year supply will be very limited.

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304. There is likely to be a substantial delay in the decision-making process given the time taken for decisions to be made previously in this case. Following the Public Inquiry held in February 2014 the appeals were not dismissed by the Secretary of State until 17th March. Subsequent to the quashing of this decision by the High Court on 3rd July 2015, the appeals were re-determined by the Secretary of State with the decision issued on 11 August 2016.
305. As set out by Adrian Fisher when applying the Council's assumed lead-in times, a site with outline planning permission of the size of the appeal proposal would start on site at 2 years with 15 dwellings being completed that year. A completion rate of 30 dwellings/year would be assumed for years 3, 4 and 5. With this in mind, if the Secretary of State was to allow this appeal, say, twelve months on from this Inquiry, the site would at best, on the Council's lead in times contribute 45 completions to the 5 year supply.
306. However, if Mr Wedderburn's approach to standardised lead-in times followed there would be even less of a contribution made to supply within five years. The additional year's delay that that approach would deliver would reduce the Appeal scheme's contribution to just 15 homes in the five-year period (see Taylor proof paragraph 6.58). Thus, whilst the development might make some contribution towards the five-year housing land supply it is likely to be small, and at best 45 dwellings but likely less.
307. It is on this point that the Appellant's evidence performs a remarkable volte face; instead of applying the standard approach to sites with outline planning permission that Mr Wedderburn applied to every other site, the Appellant adopts a bespoke timetable which results in a much faster rate of delivery. It is even more remarkable that the Appellant should do this in the face of Mr Wedderburn's evidence that decision makers should be wary of site owners/promoters overselling the rate of delivery from their sites. The Appellant's wholly inconsistent case must be rejected in this regard.
308. Whilst the Appeal scheme would deliver a limited number of homes to meet five-year housing land supply needs, it would remain housing that is not justified spatially. For reasons set out above, the conflict with the settlement hierarchy should still be given significant weight. In addition, the conflict with development plan policies seeking to protect the loss of BMV should also be given significant weight since it has not been established that needs could not be met on less valuable agricultural land.
309. In relation to affordable housing, the position here is the same as set out above. Against this it is necessary to weigh the benefits of the proposed development. The benefits associated with the provision of a local centre are to be given only limited weight for the reasons set out above. In addition, it is to be noted that no need for a local centre has been asserted or established by the Appellant. In relation to the employment, as set out above, there is no established need for the employment aspect of the proposed development. The benefits associated with it are to be given limited weight as already explained. As a consequence, the additional benefits compared to the situation where there is a five-year housing land supply only change by reference to the weight attributable to the actual contribution the

proposed development would make supply, which is likely to be limited for reasons set out above.

Impacts

310. It is acknowledged that in the absence of a five-year housing land supply the geographic extent of the settlement boundaries can be regarded as out of date, but nonetheless the proposals would harm the Policy objectives of recognising the intrinsic character and beauty of the open countryside for the reasons set out above.

311. The Secretary of State has considered the extent of that harm previously and there has been no material change in circumstances which means that a different conclusion should be reached. The decision letter of August 11th 2016 concludes:

“Weighing against the proposals, the Secretary of State considers that the proposals would cause harm to the character and appearance of the open countryside, for the reasons given at paragraphs 27-28 above. This harm would be in conflict with paragraphs 7 and the 5th and 7th bullet points of paragraph 17 of the Framework. Having given careful consideration to the evidence to the Inquiry, the Inspector’s conclusions and the parties’ subsequent representations, the Secretary of State considers that the harm to the character and appearance of the open countryside should carry considerable weight against the proposals in this case. He further considers that the loss of BMV land is in conflict with paragraph 112 of the Framework and carries moderate weight against the proposals, for the reasons given at paragraphs 31-34 above.” (para. 46).

312. It is important to remember that much of this harm is likely to be caused by housing that would not contribute to 5-year housing supply and thus would not contribute to any identified shortfall in that supply. In addition, no justification for the local centre or employment provisions has been proffered as Mr Downes accepted in XX. Thus, granting planning permission would result in adverse impact upon the open countryside from housing which is not required to meet any 5-year housing land supply needs and from other development which is not required to meet retail/employment floorspace needs. As a result, it is submitted that the weight to be given to such adverse impacts from unjustified development in the open countryside, on BMV and in a location which conflicts with the adopted settlement hierarchy is very substantial.

313. As explained above, the proposed development will result in the loss of BMV for a scheme which is not necessary since the greater part of it is not required to meet any identified need. Further, there has been no assessment which has established that the part of the scheme which may be needed (the small number of housing units that might come forward to meet five-year housing needs) cannot be accommodated on less valuable agricultural land.

314. Overall, it is submitted that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed

against the policies in the Framework taken as a whole. It is thus submitted that the proposed development is not sustainable development and is not supported by the NPPF.

315. So far as the section 38(6) exercise is concerned, it is submitted that the proposed development would give rise to significant breaches of the Development Plan. Where there is no five-year housing land supply however, it is necessary to identify the appropriate weight to give to those policies.
316. The Court of Appeal in the Suffolk Coastal case, in a passage which is not affected by the Supreme Court decision gave some guidance as to factors which are relevant to a decision makers consideration of the weight to give to policies in this context at paragraph 49:

“One may, of course, infer from paragraph 49 of the NPPF that in the Government’s view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a “green wedge” or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment (see paragraphs 70 to 75 of Lindblom J.’s judgment in *Crane*, paragraphs 71 and 74 of Lindblom J.’s judgment in *Phides*, and paragraphs 87, 105, 108 and 115 of Holgate J.’s judgment in *Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council* [2015] EWHC 1173 (Admin)).”

317. It is then relevant to consider;

- The extent to the shortfall;
- The action being taken by the local planning authority to address that shortfall; and
- The particular purpose of a restrictive policy.

318. In this context, to the extent that a shortfall can be identified, it must be very small indeed. As Mr Fisher explained the next stage of the development plan is for the identification of additional housing sites. Any shortfall now is

likely to be addressed very shortly, and in all probability before the Appeal Scheme is likely to deliver any housing units.

319. So far as the particular purposes of the relevant restrictive policies are concerned, the protection of the open countryside and of the best and most versatile land are objectives wholly supported by the Framework. In addition, the sustainable distribution of development via appropriate settlement hierarchy is supported by the Framework.
320. Accordingly, in a context where there is no 5-year housing land supply, the relevant restrictive policies cannot be given full weight, however they can be given weight at a level just below that since any shortfall identified will be very small, is likely to be addressed very quickly indeed and before the Appeal Scheme could contribute units and seek to achieve objectives supported by the Framework.
321. Against this the benefits of the scheme must be weighed. These have been addressed above. In essence, the Appeal scheme would only deliver a very limited number of units to meet five-year housing land supply needs. The remaining housing units, the local centre and the employment use proposed would not meet any identified need and are wholly unjustified. In this context, the harm that they would cause and the breach of development plan policy they give rise to is not justified by reference to any public interest need for them.
322. As a result, it cannot be the case that there is a justification for the proposed development. The Council submits that even where there is not five-year housing land supply, the conflicts with the development plan identified above are not outweighed by any material considerations. Thus, it must be concluded that planning permission should be refused and the appeal dismissed.

Supplementary evidence submitted following the publication of the revised National Planning Policy Framework

STATUS OF THE DEVELOPMENT PLAN

323. The rFramework does not change the statutory status of the development plan as the starting point for decision making. Planning law requires that applications for planning permission be determined in accordance with the development plan. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted (paragraph 2, 12 and 47 of the rFramework). The adopted development plan for Cheshire East currently comprises of the following documents:

- The Cheshire East Local Plan Strategy (adopted 27 July 2017) (CELPS)
- The saved policies of the Borough of Crewe and Nantwich Replacement Local Plan (adopted 17 February 2005) (CNLP)

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- The Stapeley and Batherton Neighbourhood Plan (made on the 15th February 2018).

324. These plans were adopted prior to the introduction of rFramework. Paragraph 213 confirms that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

CONSISTENCY OF ADOPTED POLICIES WITH THE NPPF

Spatial Strategy

325. The CELPS sets out the overall vision and planning strategy for the Borough. It is an up-to-date plan that provides a positive vision for the future and provides a framework for addressing housing needs and other economic, social and environmental priorities in accordance with paragraph 15 of the rFramework. The plan clearly sets out an overall strategy for the pattern, scale and quality of development, and makes sufficient provision for housing to meet the objectively assessed needs of the area. Policy PG1 states that sufficient land will be provided for a minimum of 36,000 new homes over the 20 year plan period, in accordance with rFramework paragraph 20. It should be noted that this figure is significantly higher than that previously published by MHCLG in its indicative assessment of housing need of 1,142 dwellings per annum (22,840 over 20 years). The CELPS therefore seeks to significantly boost housing supply, having regard to paragraph 59, providing a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development.

Settlement hierarchy

326. The CELPS establishes a settlement hierarchy for development. In essence, this ensures that the majority of development takes place close to the borough's Principal Towns and Key Service Centres to maximise use of existing infrastructure and resources and to allow homes, jobs and other facilities to be located close to one another. The plan therefore plays an active role in guiding development towards sustainable solutions having regard to paragraph 7 of the rFramework. As at the 31.3.2017, some 37,196 dwellings were committed, completed or allocated, leaving a small residual requirement to be addressed through the subsequent Site Allocations and Development Policies Document (SADPD) which will be published for consultation in September 2018. It should be noted that through existing allocations, completions and commitments, sufficient deliverable and developable land and sites to meet the housing requirement of 36,000 homes has already been provided. The additional allocations identified through the future SADPD will therefore serve to provide for local housing needs in particular settlements.

Open countryside

327. The Council's evidence demonstrates that the development will result in harm to the intrinsic character and beauty of the open countryside. This harm was acknowledged in the previous decision letter of the Secretary of State. The appeal proposal conflicts with Policy PG6 of the CELPS and Policy RES5 of the CNLP. These policies are considered to be consistent with Paragraph 170 of the rFramework which states that planning policies and decisions should contribute to and enhance the natural and local environment by:

'recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland'.

Best and Most Versatile Agricultural Land

328. CELPS Policy SE.2 encourages the re-use/ redevelopment of previously developed land and also seeks to safeguard natural resources, including high quality agricultural land. The supporting text advises that agricultural land is a finite resource which cannot be easily replicated once lost. Policy SD2 (v) also states that the permanent loss of areas of agricultural land quality 1,2 or 3a should be avoided unless the strategic need overrides these issues. These policies are considered to be consistent with the rFramework as they recognise the economic and other benefits that are derived from best and most versatile land. Furthermore, the Council has recognised through Policy SD2 that there may be occasions where a strategic need may override such loss.

329. These policies are considered to be consistent with the rFramework. Paragraph 170(b) of the rFramework states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland. Best and Most Versatile Land is also relevant to plan making. Paragraph 171 states that plans should allocate land with the least environmental or amenity value, where consistent with other policies in the Framework. Footnote 53 advises that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

Stapeley & Batherton Neighbourhood Plan

330. The Stapeley and Batherton Neighbourhood Plan forms part of the development plan. Where a planning application conflicts with a made neighbourhood plan, planning permission should not normally be granted in accordance with Paragraph 12 of the rFramework. At Paragraph 29, the rFramework states that neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan.

Neighbourhood plans can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development (paragraph 125).

331. The Stapeley Neighbourhood Plan was made on 15th February 2018 and is a recently adopted plan that includes local policies which seek to ensure that the special qualities of the area are recognised in the planning system. The plan contains notable policies on the landscape and open countryside, housing and design that should influence planning decisions, ensuring that development is appropriate to the area. The Neighbourhood Plan does not preclude residential development but rather it sets out the circumstances in which development will be permitted in order to ensure that it is commensurate with the character of the Parish and avoids intrusion into the open countryside.
332. As submitted in evidence, the appeal proposal clearly conflicts with adopted policies GS1, Policies H1 and H2. These policies are considered to be consistent with paragraphs 77 – 79, 83, 125 and 170 of the rFramework and full weight should therefore be given to them.

THE WEIGHT TO BE GIVEN TO ANY CONFLICT WITH POLICY

333. The appellant's case is that the Council cannot demonstrate a 5 year supply of deliverable housing sites. In these circumstances, footnote 7 and paragraph 11 of the NPPF apply. The NPPF states that where the policies that are most important for determining the planning application are out of date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. As submitted in evidence, the Council has demonstrated that a sufficient 5 year supply of housing sites to meet identified requirements can be demonstrated. Any implications from revised NPPF on matters of housing requirements, delivery and supply are identified below.

The Cheshire East Local Plan Strategy

334. Paragraph 74 of the rFramework states that a five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan which:
- a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and
 - b) incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process.
335. As submitted in evidence, the CELPS was adopted on the 21 July 2017. Therefore it should be considered a recently adopted plan having regard to paragraphs 73 & 74 and footnote 38. The Cheshire East housing requirement and the five year supply of housing sites were subject to lengthy and thorough examination, involving engagement with those stakeholders that

have an impact upon the delivery of sites. The adopted plan incorporated the recommendations of the Secretary of State. Upon adoption, the Inspector concluded that the Local Plan would produce a five year supply of housing, stating that:

'I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5 year supply of around 5.3 years'.

336. Full weight should therefore be given to the CELPS as a recently adopted plan in accordance with paragraph 74. It should also be noted that the 5 year supply of specific deliverable sites considered by the Examining Inspector incorporated within it the maximum possible buffer – 20% (see Paragraph E.9, Appendix E of the CELPS). This buffer is double that now required to be applied to recently adopted plans having regard to paragraph 73(b) of the NPPF. If a 10% buffer had been applied to the Cheshire East 5 year housing supply requirement at the point of the adoption, this would have the effect of reducing the overall 5 year requirement by some 1,235 dwellings.

337. The intention of the rFramework guidance appears to be to try and limit endless debates over 5 year housing supply, most particularly where the Secretary of State has recently ruled on the matter. This can be done either through the new annual assessment process or through the adoption of a local plan. National Policy now weighs heavily against attempts in S78 planning appeals to re-examine housing supply where a definitive conclusion has been reached through the Local Plan process. The NPPF sets clear time limits on the currency of those conclusions. In the case of Cheshire East, it is evident that a 5 year supply can be demonstrated up to 31 October 2018 based on the recent Local Plan adoption.

338. The Council therefore respectfully requests that the Appeal Inspector and Secretary of State follows rFramework guidance in this regard and concludes that a 5 year supply can be demonstrated for the purpose of this appeal.

The housing requirement

339. Paragraph 60 of the rFramework states that strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach. As submitted in evidence, the adopted CELPS housing requirement for Cheshire East over the plan period is some 36,000 homes, equivalent to 1,800 per annum. This is significantly higher than that previously published by MHCLG in its indicative assessment of housing need of 1,142 dwellings per annum. By adopting a significantly higher figure, the Council has clearly not shirked its responsibilities to significantly boost housing delivery within the Borough.

340. The Council's 5 year housing land supply assessment is based on a very generous assessment of need compared to the standard approach. The purpose of having a specific 5 year deliverable supply of housing sites is to ensure that sufficient land is available to enable homes to be built to meet housing need. In using a significantly higher figure than that produced by

standard methodology, even if the calculated supply was exactly 5 years (or as in this case, that supply exceeds the 5 year requirement), it would fully achieve the objective of ensuring that there is sufficient land available to meet housing need.

Presumption in favour of sustainable development

341. Paragraph 11 and footnote 7 concerns the application of the presumption in favour of sustainable development to both plan making and decision taking. For decision-taking, the presumption in favour of sustainable development means:

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

342. Footnote 7 explains that for the purposes of d) that out of date policies includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.

343. As submitted in evidence, the appeal proposal does not accord with the adopted development plan. The CELPS is a recently adopted plan having regard to Paragraph 73 & 74 and footnote 38. Its adoption established a 5 year supply of specific deliverable housing sites with the maximum buffer. The Council has submitted detailed evidence to the Inquiry to demonstrate that a continued 5 year supply of deliverable housing sites can be demonstrated since the adoption of the CELPS.

The Housing Delivery Test

344. The Housing Delivery Test (HDT) will apply from the day following the publication of the Housing Delivery Test results in November 2018 (see paragraph 215 of the rFramework). The HDT result will have a number of implications for decision-taking, including the circumstances in which the presumption in favour of sustainable development applies as explained at footnote 7. Under transitional arrangements, delivery of housing considered to be 'substantially below' the housing requirement will equate to delivery below 25% of the housing required over the previous three years.

345. The accompanying Housing Delivery Test Measurement Rule Book provides the methodology for calculating the HDT result. The Housing Delivery Test is effectively a percentage measurement of the number of net homes delivered against the number of homes required, over a rolling three year period. The number of net homes delivered is taken from the National Statistic for net additional dwellings over a rolling three year period, with adjustments credited for net student and net other communal accommodation. The national statistics are published annually in November.

346. The number of net homes required, will be the **lower** of the latest adopted housing requirement (excluding any shortfall)³ **or** the minimum annual local housing need figure. Under transitional arrangements, for the financial years 2015-16, 2016-17 and 2017-18, the calculation of the minimum annual local housing need figure is to be replaced by household projections only. This is shown below.

Year	Adopted annual CELPS Requirement	Household projections (annual average over 10 year period)⁴	Net additional dwellings
2015/16	1800	1,100	1573
2016/17	1800	1,100	1763
2017/18	1800	900	1509 dwellings
TOTAL	5400	3,100	4,8457

347. What is clearly evident from the above table is that net additional dwellings over the three year period already comfortably exceeds the housing requirement calculated using 2012 and 2014 household projections. When the housing delivery test is applied against the completions data set out in the Council's proof of evidence, it is evident that the test is met and exceeded by a significant margin (1,745 homes) even without the full year data for 2017/18.

348. While the Council has not yet published its annual housing monitoring update for 2017/18, as submitted in evidence, completions continue to show a positive direction of travel and it is likely that the final total of completions for the year ending 31 March 2018 will exceed that of previous years. However based simply on the evidence before the Inquiry, the November 2018 HDT result, using the formula in the published rule book, will show that housing delivery significantly exceeds the minimum number of net homes required.

The buffer

349. Paragraph 73 requires that Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need

where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

- a) 5% to ensure choice and competition in the market for land; or
- b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or
- c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply

350. Footnote 39 advises that from November 2018, the requirement to apply a 20% buffer will be measured against the Housing Delivery Test result, where this indicates that delivery was below 85% of the housing requirement.

351. As submitted in evidence, net completions over the past three years have continued to increase in Cheshire East. For the monitoring years 2015/16 and 2016/17, net completions have exceeded the household projections result by as considerable margin.

When the CELPS was adopted, it should be noted that the Council applied the maximum possible buffer to its calculation of the 5 year housing land supply requirement and with this buffer, the Examining Inspector confirmed that a 5 year supply could be demonstrated. The 20% buffer was also applied to the 5 year supply of deliverable sites identified in the subsequent Housing Monitoring Update (base date 31 March 2017). Evidence submitted to the Inquiry robustly demonstrates that a continued five year supply including the maximum buffer can be identified. It goes without saying, that if the buffer was to drop to 10 or 5 per cent, taking account of delivery over the past three years, the 5 year housing land supply requirement would also drop significantly.

Definition of deliverable

352. As per earlier guidance, the rFramework definition retains the previous requirement for sites to be available, suitable and achievable with a **realistic** prospect that housing will be delivered on the site within 5 years. As submitted in evidence, the relevant test is whether there is a realistic prospect of a site coming forward, i.e. is the site capable of being delivered within 5 years rather than it being absolute certainty that it will be delivered. The revised definition makes a distinction between sites that are small or have full planning permission and those that have outline planning permission or are allocated in a development plan or otherwise have planning permission in principle or identified through a brownfield land register. For small sites (less than 10 dwellings) and all sites with full planning permission should be considered deliverable until the permission expires, unless there is clear evidence that they will not come forward. For those sites with outline planning permission or planning permission in principle, allocated in the development

plan or sites identified in the brownfield land register. These can be considered deliverable where there is clear evidence that housing completions will begin within five years.

353. The Council has submitted detailed evidence not only through the recent examination of the Local Plan Strategy, particularly in relation to strategic allocations but also to the Inquiry. A considerable body of evidence has been submitted on the deliverability of sites to respond to the very the detailed scrutiny of sites undertaken by the appellant. The Council's evidence has been fully revised and updated, looking afresh at the latest position on key sites and the housing sector generally and this included evidence on many sites including those with outline planning permission and allocated through the CELPS. The evidence submitted included an updated 5 year housing land supply assessment, taking into account a small number of concessions made following the Park Road, Willaston appeal decision. It should be noted that evidence was submitted both in relation to the current appeal and a second appeal, APP/R0660/W/17/3176449: Land to the West of New Road, Wrenbury, which has now reported and a copy of the Inspector's Decision Letter is appended. Based on the latest available evidence, the Inspector concluded that a deliverable 5 year supply was in place.

354. Therefore the Council remains of the view that in light of the revised NPPF, a deliverable supply of housing sites to meet the five year requirement can be demonstrated.

355. To conclude:

- Adopted development plan policies are up-to-date and consistent with the rFramework
- The appeal proposal conflicts with up-to-date policies and full weight should be given to the findings of the Inspector who confirmed that upon adoption, a five year supply could be demonstrated. In accordance with the rFramework, the CELPS should be considered recently adopted until 31 October 2018. In line with NPPF paragraph 74 this shows that a 5 year supply of can be demonstrated at the time of writing. The rFramework effectively settles the matter.
- In addition, to the above, a considerable body of updated evidence has been submitted to the Inspector on the specific supply of deliverable sites. The Council has demonstrated that a five year supply of housing sites can be demonstrated. This view is collaborated by the recent findings of the Inspector in 'Land to the West of New Road, Wrenbury'. The Inspector and Secretary of State therefore has all relevant information to enable the determination of the appeal.
- The five year housing requirement built in the maximum possible buffer. The rFramework indicates that a lower buffer of 10% should be used where the local planning authority wishes to demonstrate a five year supply of deliverable sites through a recently adopted plan.
- Housing completions over recent years have shown a continued positive direction of travel. Delivery over the last 3 years is likely to exceed by some margin, the local housing need requirement established through the Housing Delivery Test in November 2018.

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- The applicable buffer to be applied to the 5 year supply requirement will reflect the HDT result from November 2018 onwards. It is very unlikely that given past performance over the last 3 years, that a 20% buffer will be applied.
 - Notwithstanding any changes that may take place in the future to the buffer, in submitting evidence to the Inquiry, the Council has robustly demonstrated that a five year supply of deliverable sites can be demonstrated with the maximum 20% buffer.
 - Very detailed evidence has been submitted in relation to the supply of specific sites to support the conclusions reached about 5 year supply.
 - Having regard to the rFramework and the matters outlined above, the Council remains firmly of the view that a 5 year supply of deliverable housing land can be demonstrated and as such paragraph 11d is not engaged.

Overall Conclusion

356. The Council submits that where there is a five-year housing land supply or not, the application of section 38(6) of the 2004 act results in the conclusion that planning permission for the proposed development must be refused and the appeal dismissed.

The Case for the Interested Parties

The material points are:

357. Councillor Mathew Theobold, Chairman of Stapeley & District Parish Council²², seeks to emphasise the newness of the Stapeley and Batherton Neighbourhood Plan, it having been Made on the 15 February 2018. After setting out the relevant policies of the plan, Councillor Theobold goes on to identify the key areas of conflict the proposals have with these policies. Whilst accepting that Policy H5 directs development to within or directly adjacent to the Nantwich Settlement Boundary (where the proposed development is proposed), such proposals also have to be considered 'subject to the provisions of other policies of the Plan'. When the proposals are considered against the provisions of Policy H1 that can be held to be in clear conflict with all criteria contained in the policy (criteria H1.1- H1.4)
358. Councillor Theobold goes on to identify further concerns over the provision of local facilities, specifically the absence of a formal mechanism to secure their delivery, and shortcomings in the Appellant's Air Quality Document and Acoustic Planning Report. The Council also made further submissions on the contents of the draft section 106 agreement. Concerns were expressed over the potential conflict of ecological provisions and community based aspirations for publicly accessible community orchards, an aspiration of the plan.

²² ID10 and ID32.

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359. Mr Patrick Cullen²³, a local resident, also expressed concerns in relation to the section 106 agreement and the effect of cumulative local housing development on local infrastructure. Concerns relating to the 106 agreement covered the outstanding commitments on land within the appeal site (Appeal B) and the desire of the community to secure a Community Orchard on the land to reflect local preference. Evidence relating to local housing development draws attention to the number and scale of housing sites currently under construction and draws attention to the effect such will have on local infrastructure and services.
360. Mr Philip Staley also submitted evidence to the Inquiry in respect of levels of traffic in the locality and the effect of further housing development on these levels and on the extend of public transport provision adjacent to the appeal sites. He also presented a short video in addition to a written submission.²⁴ Mr Staley suggests that traffic congestion on Peter de Stapeleigh Way at peak times (0800-0900hrs and 1500-160hrs) is sever, and quotes an Inspector's conclusions in respect of this issue in relation to a dismissed appeal on Audlem Road²⁵. The cumulative effects of this and other proposals will cause harm to the local area and to local residents. Mr Staley also advised that sense the submission of the Appellant's evidence local bus services in the vicinity of the site had bed reduced, limiting the local service to only 4 journeys each way during normal shop hours. The provisions of the draft section 106 agreement to fund an increase in local bus services for a specified period would therefore have limited effect in mitigating the increased demand for such local services.
361. Ms Gilian Barry also made representations to the Inquiry supporting the statements in respect of the effects traffic generation by the proposed development²⁶. She also made objections on the grounds of adverse effect on air quality, the prospect of flooding on the site, loss of habitat, including trees and hedgerows, and the effects of the development on public safety.

Written Representations

362. There is a large body of correspondence in respect of the initial applications and the subsequent appeal, the body of which has been set out in the previous Reports to the Secretary of State.
363. Most correspondence came from objectors. They were particularly concerned with increased traffic, including the access, on adjoining road and at nearby level crossings, and the effects on the open countryside, the proposed loss of trees, recently felled trees, planned wildlife mitigation, lack of medical, dental and other facilities, shortage of school places, loss of privacy at the proposed roundabout, noise, air and light pollution, poor house design, and the potential for much more development.

²³ ID11.

²⁴ ID12.

²⁵ APPEAL ref: APP/R0660/W/15/319474.

²⁶ ID13.

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364. There themes are repeated in the written responses to the current appeals, though they also refer to the adoption of the current local plan and the establishment of a five year land supply inherent in that and the advanced state of the Stapely and Batherton Neighbourhood Plan.
365. Further correspondence has been received in respect of the current appeals and, following the advertisement of amendments to the scheme during the Inquiry, further representations made in respect of these matters.
366. Mr Paul Tomlinson states the appeals are flawed due to 'flawed' traffic data as a result of being based on material over ten years old. Mr Andrew Hale states that the commercial units proposed in Appeal A would not contribute to the local economy or culture. He also states the proposals would fail to make use of the existing access to Peter de Stapeleigh Way. Mr David Wall refers to the site being within the Green Belt and expresses concerns over the ability of emergency services being able to access the site. Ms Jane Emery states there is a need for the development to mitigate the effects it will have on local infrastructure.
367. Mr D Roberts and Mrs H S Thompson Also raise objection on the basis that the traffic assessment is flawed and that the proposals represent a considerable risk to the safety of highway users²⁷.

Conditions

368. A discussion was held as to the suitable wording of, and reasons for, any conditions on 23 February with reference to the tests for conditions in the *Framework*. Following these discussions, with only a few exceptions which I set out below, in the event that the appeals are allowed, the conditions in the attached Schedule should be imposed, for the reasons set out below. Some conditions have been adjusted from those suggested in the interests of precision, enforceability or clarity.

Appeal A

369. As well as the standard conditions 1-3, control is required over matters in the other conditions for the following reasons:
- 4, 5 & 9: flood risk reduction, contamination mitigation and ecological enhancement, including concerns raised by the Parish Council
 - 6: protection of archaeological remains
 - 7, 8 & 10: residential and visual amenity and sustainability
 - 11, 12, 13 & 27: highway safety and sustainability
 - 14 & 15: sustainability
 - 16-20: protected and other species mitigation
 - 21-25: reserved matters clarification and implementation

²⁷ ID34.

370. For clarity and for the avoidance of doubt, condition 26 establishes the sole vehicular access to the site will be through the junction with Peter Destapeleigh Way.

Appeal B

371. As well as the standard conditions 1& 2, control is required over matters in the other conditions for the following reasons:

- 3-6: the visual amenity and landscape quality of the area
- 7-10: protected and other species mitigation and public amenity

372. Condition 11 is necessary in order that the Local Conservation Area is appropriately delivered, maintained and managed under the terms of this planning permission. This is all the more the case in view of Mr Cullen's concerns for its future management and the challenges to ensuring this identified in the previous report to the Secretary of State.

Planning Obligations

373. The draft s106 agreement was discussed at the Inquiry during the same sessions as the conditions. A final signed and dated versions were submitted, as agreed, after the Inquiry closed. The agreement makes provision for the revocation of previous obligations in respect of the previous applications and also, in conjunction with condition 11 in relation to Appeal B, makes a commitment to the submission of a scheme for the Local Nature Conservation Area (LNCA) should the appeals be granted. The Council, in support of their request for financial and physical contributions to local infrastructure, have presented a detailed Community Infrastructure Levy Regulations 2010 Compliance Statement which evidences their necessity in relation to the regulatory requirements and the expectations of the rFramework. The agreement submitted by the Appellant reflects these requirements.

374. Firstly the agreement confirms that 30% of the proposed homes will be affordable which is policy compliant. The agreement also sets out the mix of tenure types reflecting local need in the area. Such a contribution therefore fully accords with the regulations and expectations of the rFramework and may be taken into account.

375. A further obligation facilitates contributions to secondary special needs education in the area. Again this recognises that future families occupying the development will place demand on local education facilities that will require mitigation. This is also calibrated through established formulae and is thus proportionate, related to the development and necessary to make it acceptable in planning terms. It too therefore may be taken into account.

376. For related reasons there is also an obligation securing open space and children's play areas, justified on the basis of the increased numbers of people anticipating use of such facilities. These provisions are also justified against policy, calculated to agreed formulae and proximate to the site. This too may therefore be taken into account.

377. A key obligation securing an enlarged LNCA is also presented which also makes provision for its ongoing management. Not only, given the ecological interest of the site, is this provision necessary to make the development acceptable in planning terms, it addresses one of the key concerns of interested parties who have made representations in respect of both appeals. On all counts therefore it may properly be taken into account.

378. There are a further three obligations securing funding for an additional pedestrian crossing of Peter Destapleigh Way, two additional bus stops and a subsidy for the local bus service. The first enhances the safe pedestrian connectivity of the development, the second brings it within ready access to a sustainable transport service whilst the latter enhances that service for residents. All are necessary to make the development acceptable in planning terms, are proportionate and are directly related to the site. They may also therefore be taken into account.

Inspector's Conclusions

379. I have reached the following conclusions based on all of the above considerations, the evidence and representations given at the Inquiry, and my inspection of the appeal sites and their surroundings. At the beginning of each topic for consideration the relevant paragraphs of the respective parties are identified to assist in an understanding of the reasoning set out therein.

Main considerations

380. In respect of Appeal A these are:

- a) The effect of the development on the character and appearance of the area with particular regard to the open countryside and policies PG6, SD1 and SD2 of the Cheshire East Local Plan Strategy (CELPS); policy RES.5 of the Borough of Crewe and Nantwich Replacement Local Plan (BCNRLP) and Policies GS1, H1 and H5 of the Stapeley & Batherton Neighbourhood Plan (S&BNP) and;
- b) the loss of BMV agricultural land and;
- c) the effect of the development on the safety of highway users and;
- d) whether or not the Council can demonstrate a 5 year HLS and the implications of this with regard to policy in the rFramework.

381. In respect of appeal B these are the effects of the proposals on:

Its effect on the character and appearance of the area with regard to policy PG6 of the above.

Character and appearance

The relevant preceding paragraphs for the Appellant are 108-109.

The relevant preceding paragraphs for the Council are 310-312 & 327-329.

The relevant preceding paragraphs for the other parties are 357-359.

382. Policy PG6 explains that 'open countryside' is defined as the area outside of any settlement with a defined settlement boundary. It goes on to established that within such designations, development will be restricted to that essential for the purposes of agriculture, forestry, recreation and infrastructure, though with exceptions listed in 6 criteria. The supporting justification for the policy also confirms inter alia that ...'the intrinsic character and beauty of the countryside will be recognised'.
383. The proposals as presented in Appeal A, as a mixed use scheme, are both outwith the Nantwich settlement boundary as currently defined, and do not conform with any of the types of exceptional forms of development identified in the criteria. The proposals are therefore, as the Council maintain in conflict with policy PG6 of the CELPS and with sub- paragraph b) of paragraph 170 of the rFramework.
384. In common with the conclusions of the Secretary of State in his previous (now quashed) decision, set out in his letter of 17 March 2015, the Council also assert the proposals would result in harm to the intrinsic character and beauty of the open countryside. This view is supported, perhaps more in relation to natural habitat, by other representations made by local residents.
385. Although the degree to which the site as an element of countryside may be considered open, its character is nevertheless agrarian and naturalistic in character. The construction of the proposals, with its mix of uses (notwithstanding the areas of open space and areas of habitat) would certainly change this established agrarian character, transforming it into an urban enclave – an extension of the settlement. Insofar as this would result in the loss of an element of countryside of intrinsic character, this would cause a degree of harm to that character, compounding the technical breach of the policy.
386. Insofar as they would also fail to protect or enhance the natural environment, they would also conflict with criterion 14 of Policy SD1 and, the same reasons, it may be held to conflict with Policy SD2 (criteria ii and iii thereof) of the same. Policy RES.5 of the CNLP, as sister policy to PG6 also relates to the restriction of development in the open countryside. For the same reasons therefore the proposals presented in Appeal A may also be considered in conflict with it.
387. It is the case that Policy H5 of the S&BNP acknowledges that 'the focus for development will be on sites within or immediately adjacent to the Nantwich settlement boundary' and as a consequence of the proposed development being so adjacent garners some support from this element of the policy. However, this is a narrow reading of the policy, as its prefix makes clear that such an expectation will be subject to the provisions of other policies of the S&BNP. This clearly engages Policy H1, which, inter alia, anticipates (at H 1.1) development being 'limited infilling in villages or the infill of a small gap with one or two dwellings in an otherwise built up frontage'. Neither does the proposed development conform to the other exception criteria of the policy nor with Policy GS1, which only permits development in the countryside in

limited circumstances. Moreover, as the plan explains these policies follow 'a consistent theme around conserving and maintaining the character of the Neighbourhood Area'.

388. It may quickly be concluded that the proposals are in conflict with the letter and purpose of these Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policies GS, H1 and H5 of the S&BNP. However, the specific circumstances of the site and its context do need to be taken into account. The fact of the matter is that the appeal sites are now effectively bordered on three sides by existing and emerging development. Whilst the purpose of the policies is to maintain character it is evident that the rural hinterland anticipated by the plan vision has, in the circumstances of these cases, been extensively eroded. Such circumstances necessarily calibrate the actual harm to existing countryside character accordingly. Nevertheless, the proposals remain in breach of the policies and this needs to be accounted for in the final planning balance.

BMV agricultural land

The relevant preceding paragraphs for the Appellant are 111.
The relevant preceding paragraphs for the Council are 201-212, 312-314 & 328.

389. The proposed development would result in the loss of 2.6 hectares of the best and most versatile agricultural land (25% of the aggregated site is designated as such, 6% being Grade 2, 19% being 3a). Accordingly such a loss would render it contrary to Policy SE2 of the CELPS which expects development to safeguard high quality agricultural land. The rFramework, through paragraph 171, and specifically through footnote 53, makes clear that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred.
390. Although technically in breach of policy SE2, the area of land is modest and predominantly at lower grade. Moreover, the engagement of the consideration of the rFramework is contingent on the loss of such designated land being significant. By any reasonable measure the loss identified here cannot be judged as such. Moreover, in the light of the conclusions below in relation to the supply of housing land, it is inevitable that the use of BMV will become a consideration in help correcting supply. Nevertheless the breach of policy and the loss of such land does represent a harm, though in light of the above, one meriting only modest weight in the planning balance.

Highway safety

The relevant preceding paragraphs for the Appellant are 126-128.
The relevant preceding paragraphs for the other parties are 359-361.

391. It was clear from the representations made at the Inquiry that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. Both written and video evidence was presented at the Inquiry to support the notion

that any development on this site would exacerbate already challenging highway usage in the locality.

392. Video evidence of peak-time congestion in any given area is inevitably compelling; who has not experienced the frustration of not being where we want to be at any given time in a car? Be that as it may, the expression of such frustration does not equate to a robust argument or justification, as paragraph 109 of the rFramework requires, for the rejection of the proposals as they are presented. None of the detailed evidence of the appellant, nor the considered acceptance of it by the Council, is convincingly rebutted by the heartfelt, though non-empirical submissions of those opposing the scheme. In the absence of such substantial rebuttal, such concerns must inevitably be afforded no more than very limited weight. Moreover, the mitigation through transport infrastructure provision and the creation of enhanced pedestrian and cycle routes through the site for the use of residents, workers and others further increase the opportunities for non-car transport modes.

Housing Land Supply

The relevant preceding paragraphs for the Appellant are 55-107.

The relevant preceding paragraphs for the Council are 149-178, 218-278 & 333-355.

The Requirement

393. A statement of common ground (SoCG) on housing land supply (HLS) (thus HLSSoCG) was submitted by the appellant at the inquiry²⁸. It confirms as a starting point that the housing requirement for Cheshire East Council is 1800 dwellings per annum. Elsewhere it is common ground that the five year period runs from the 31 March 2017 to 31 March 2022. Such agreement extends also to the extent of the backlog in delivery between 2010 and 2017, which stands at 5635 dwellings, equating to three years of the overall requirement for the first seven years of the plan.
394. It is also agreed in the HLSSoCG that, reflecting a pattern of historic under delivery, a 20% buffer also applies to the aggregated numbers. This consensus reflects the position of parties in two key previous appeals referred to in evidence²⁹.
395. Paragraph 73 of the rFramework, replacing paragraph 47 of the previous addition, requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing supply. This number should include a buffer of either:
- a) 5% to ensure choice and competition in the market for land; or
 - b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or

²⁸ CD3.

²⁹ White Moss Quarry and Park Road, CD29 & CD30.

recently adopted plan, to account for any fluctuations in the market during that year; or

- c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.

396. The Council predicts in its submissions in relation to the revisions to the framework that after November 2018 and the initiation of the Housing delivery Test it is unlikely that a 20% buffer will be required as a result of increased housing delivery. Indeed, in their further representations they set out variations of the supply position referencing the 5% and 10% scenarios, each of which correspondingly indicate and increase in the supply: 6.11 years @5% and 5.38 years @10%. Even if the Council's expectations in relation to the Housing Delivery Tests were to be met, it remains apparent that in the first seven years of the LPS plan period housing completions within Cheshire East have averaged 1,034 dpa, considerably below the expected, 1800 target. Under the terms of the third bullet point of paragraph 73 of the revised Framework therefore, there would still be a compelling case to apply the 20% buffer. Be that as it may, that is in the future. For current purposes, both parties agree in the HLSSoCG that a 20% buffer should be applied. Notwithstanding this point, the appellant maintains, again in light of the evidence before the Inquiry, that even if the scenario b) of a 10% buffer were applied in this case, the Council would remain unable to demonstrate a five year supply of housing land, indicated as being 4.64 years.

397. Thus the net annual requirement, plus the shortfall (including that to be met in the first five years) in addition to the 20% buffer, in both the Council's and the Appellant's 'Sedgpool8' methodology agreed and applied by the CELPS Examining Inspector, both equate to a requirement of 14,842 over the supply period. The Appellant also goes on to model a scenario whereby the agreed eight year delivery period is not rolled forward (ie the supply period remains fixed and diminishes as time moves forward), the requirement increases. The net figure is increased by 574 dwellings, which in turn impacts on the final supply figure.

398. The Council interpret the 'pool' element of the calculation to facilitate the rolling forward of the backlog in the calculation, thus allowing the number of units to be made up over the greater part of the plan period. However, this runs counter to the current position set out in the rFramework and the PPG which anticipates that any backlog should be made up within the first five years of the plan period (or in this case the 8 year period as determined by the CELPS and the Examining Inspector)³⁰. This has to be the right approach unless where express circumstances dictate otherwise³¹. Whilst such an approach would not be consistent with that applied in Park Road Appeal³² it is consistent with the expectations of the Local Plan Inspector, who anticipated that the Council fully

³⁰ CD40 Examining Inspector's Report paragraph 72.

³¹ PPG/NPPF ref.

³² Ibid.

meet past under-delivery within the next 8 years of the plan period³³. Whilst not supported by the Wrenbury decision³⁴, a rolling deferment of meeting the shortfall beyond the anticipated eight year cycle is at variance with the Government's policy commitments to boost significantly the supply of new homes.

399. The difference in the calculation of backlog delivery of 574 dwellings is a significant number, in the view of the appellant contributing to a depleted five year supply figure of 4.24 years. However, even if the Councils calculation is preferred, in combination with anticipated delivery rates, the Council's five year supply position stands at just 5.37 years or as advised in their last submissions 5.35 years. That said, as in the two other recent appeals³⁵ the greater divergence of view in respect of the supply position is focused on the delivery of housing sites that will help meet the anticipated trajectory. The Council's assessment of supply (recalibrated after the round table discussion at the Inquiry) 15,908 over the defined period, whilst the Appellant calculates a number of 13,101 (again recalibrated) applying the Sedgemoor methodology, a difference of 2,807 dwellings. These respective positions are reached on the one hand by standard methodology (previously referred to as the 'in principle' approach)³⁶ and more specifically though narrow analysis by the Council, and a detailed exploration of a wider range of larger sites (previously defined as above as 'performance') by the appellant. These matters are now considered below.

Supply

400. With regard to the 'in principle' differences between the parties, the Council applies a standard methodology to predict the lead in times for site delivery and build rates for strategic and non-strategic sites, basing these on past experience. For strategic sites without planning permission, the standard methodology anticipates an average of 2.5 years to the point of completion of the first dwellings. These are calibrated by applying information from site promoters or agents where evidence supports a site coming forward more quickly or the reverse.

401. The Examining Inspector was clear that a lot depends on whether the committed and proposed sites come forward in line with the anticipated timescale in the housing trajectory. Since March 2016 it is evident there has been slippage in the anticipated timescales for delivery of a number of the strategic sites when the March 2017 HMU and the March 2016 position are compared. Delivery in 2016/17 of 1,762 dwellings also fell short of the anticipated trajectory of 2,955 dwellings and in 2017/18 the target of 3,373 dwellings looks like being short by approximately 130 units. Although the CELPS is only two years old, and inertia caused by such factors as the absence of the plan and the unpredictabilities of appeal-based permissions are no longer present, thus potentially hastening delivery, it is difficult to

³³ Paragraph 72 Local Plan Inspector's Report (CD A40).

³⁴ Appeal Ref: APP/R0660/W/17/317649.

³⁵ Ibid

³⁶ CD29, Paragraph 13 White Moss Appeal.

escape the conclusions of the two previous Inspectors³⁷ that the assumed delivery rates of the housing trajectory have in fact failed.

402. Although there are positive signals that delivery is picking up, also recognised in the two previous appeals, it is inevitably perhaps in the light of their wider conclusions the Council also presents an analysis of 16 specific sites to demonstrate that on-the-ground delivery is in fact meeting or exceeding the expectations of the trajectory.
403. The evidence here is initially compelling. The Council suggest a commencement period post-detailed consent averaging around 5 months and for those with outline consent around 1.47 years. Such evidence suggests that just under half the chosen sites have started ahead of expectations in the HMU (the 'in principle' expectation time of 2.5 years), an indicator, the Council suggest, of likely commencement rates in the future. This evidence is also supported by feedback from developers and promoters, offering a site specific record of particular circumstances. With the 'in principle' figures consolidated by these accelerated lead-in times delivering above expectation numbers, the Council maintain a 5 supply of 5.35 years with a 20% buffer and 5.83 years with 10% buffer applied, as identified in their post rFramework submissions.
404. However, by the Council's own admission this assessment, though 'decent' was not 'comprehensive'. Indeed, numbering just 16 sites, and without a transparent methodology for selection, it is difficult to avoid the conclusion offered by the appellant that there may have been an element of inadvertent self-selection in the process, and that such evidence does not, of itself, convincingly establish a significant upward trend in delivery. Moreover, this, and the 'in principle' evidence, needs to be considered against that presented (and recalibrated following the round table discussion at the Inquiry) in the context of the site specific evidence presented by the appellant, covering a total of 41 sites within the district. Without reference to each detailed site-specific analysis the sum of the appellant's conclusions on lead in time to construction anticipates 1 year from submission to grant of outline consent; 1 year to reserved matters application; 6 months to their determination and 1 year to the completion of the first dwelling, a total lead-in time of 3.5 years. Such an analysis, as the appellant points out, correlates with the broad conclusions of both Inspectors in the White Moss and Park Road cases, with the Park Road Inspector identifying an average of between 3 and 4 years for strategic sites without planning permission to first completion³⁸.
405. With such lead-in times applied to the 41 sites identified in the appellant's case and the commensurate reduction in the number of units accounted), the broad slippage in delivery previously identified repeated, the appellant identifies a 4.25 year supply with the 20% buffer applied and a 4.64 year supply with the lower 10% buffer used. Even if one were to add the 5% of the total discounted by the appellant to account for lapsed planning permissions as the Council advise (or any part lesser %), this would still not achieve the five year supply threshold, even with a 10% buffer applied.

³⁷ Those who determined White Moss and Park Road.

³⁸ Paragraph 51, APP/R0660/W/17/3168917.

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406. Moreover, and notwithstanding the various submissions to the Inquiry, paragraph 67 of the revised Framework clarifies the definition of the term 'deliverable' in relation to the supply of housing, setting this out in Annex 2 therein. In summary the definition applies to two categories of sites; those lesser sites and those with planning permission, which should be considered deliverable and; sites without planning permission in principle or allocated in development plans. These should now only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. This represents a significant shift in emphasis from the previous Framework position; now the latter sites are no longer to be included unless there is specific evidence that they will indeed deliver within the five year period. These clarifications effectively supersede interpretations around the St Modwen case³⁹ that preoccupied the evidence on housing delivery heard at the Inquiry.
407. 34 of the 41 sites identified by the appellant were those without planning permission, those with outline planning permission or those also subject to section 106 commitments. Whilst the Council, on notification of the revisions to the Framework, chose not to address these sites in any detail, it is clear that by default, those within the latter category, without the clear evidence that completions will begin within five years, must now be at risk of dropping out of the calculation. This being so, to Council's position of asserting a 5.35 year supply with a 20% looks to be increasingly untenable, whilst that of the appellant's assessment of 4.25 years, and even that of 4.64 years with a reduced 10% buffer, looks the more robust. Whilst the conclusions reached by the Inspector in the Wrenbury case⁴⁰ take a contrary view on the 5 year land supply position, this appeal was determined prior to the publication of the Framework and the weight to be conferred it is very significantly reduced as a result.
408. Even if the most generous conclusion is reached, there has to be reasonable doubt that the Council is able to demonstrate a five year supply of housing land. Thus the precautionary approach taken by the two Inspectors in the White Moss and Park Road decisions may equally and rightly apply here. Whilst such a conclusion may not only be viewed as consistent with the previous approach, it also now enjoys the support of the High Court in the form of the dismissal of the Shavington case⁴¹ (previously advised of by the Council) which had sought to demonstrate, by proxy reference to White Moss and Park Road, that the 'precautionary approach' adopted by the two previous Inspectors, and as is applied here, was unlawful. Such a view was comprehensively rejected by the Court. This case however also predated the publication of the revised Framework and the editing-out of paragraph 49 of the former document making reference to the requirement for Councils to demonstrate a five year supply of housing sites. However this changes little beyond the structure of the document. Paragraph 11 at sub paragraph d) though footnote 7 makes clear

³⁹ St Modwen Developments Ltd v Secretary of State for Communities and Local Government [2017] EWCA Civ 1643.

⁴⁰ APP/R0660/W/17/3176449 appended to the Council's NPPF revisions submission IDXX.

⁴¹ [2018] EWHC 2906 (admin). Case No. CO/1032/2018.

that where a local authority cannot demonstrate a five year supply of deliverable housing sites policies most important for determining the application can be considered out-of-date. The delegation of the need to identify a supply to a foot note does not diminish the status of the policy as paragraph 3 of the rFramework makes clear; 'The Framework should be read as a whole (including footnotes and annexes).

409. On the basis of the evidence presented, the Council is unable to demonstrate a five year supply of housing sites. In accordance with paragraph 11 of the rFramework therefore, the policies most important for determining these applications are out-of-date. Their status as such will thus need to be taken into account in the final planning balance.

Need for a mixed use development

The relevant preceding paragraphs for the Appellant are 110-112.
The relevant preceding paragraphs for the Council are 279-283.

410. The Council argue in closing that disaggregating the employment component of the scheme and accounting for it in the context of employment floor space would add some 10% to the appropriate employment floor space required by policy. This would amount the Council suggest to 'very significant levels of unplanned growth'. However, the supply of employment land, over and above development plan targets or otherwise, has hitherto not formed part of the Council's case, that application having always been viewed as a mixed use scheme, led by the significant residential component that has always remained the focus of the Council's and the Secretary of States considerations. This is the right approach as to do otherwise would be to invite independent evaluation of its constituent elements across the board. The Secretary of State is invited to consider the proposal as a whole and against the substantive policy issues hitherto set out.

Distortion of the Council's Spatial Vision

The relevant preceding paragraphs for the Appellant are 112-121.
The relevant preceding paragraphs for the Council are 284-287 & 325-326.

411. The Council argue that as Nantwich has achieved target numbers identified in the CELPS and to allow further development above that number would serve now only to distort the spatial vision of the strategy in conflict with its broad strategic policies PG2 and PG7. However, the numbers set out therein are expressed as neither a ceiling not a target to be reached. Moreover, the supporting material for the policy advises such numbers as being an indicative distribution, and no more. Whilst a development of a scale reaching way beyond these aspirational targets may well be seen as distorting the spatial vision, in the context of the phrasing characterised above, the development proposed here cannot be considered of that magnitude. Indeed, it also remains consistent with the policies of the rFramework in paragraphs 59 and 60, which continue to emphasise the imperative of significantly boosting the supply of homes, and in so doing, determining the minimum, not the maximum number of homes needed in differing circumstances. There is therefore no breach of

policies PG2 and PG7 of the CELPS, and therefore no policy-based harm to consider in the planning balance in this regard.

The benefits of the scheme

The relevant preceding paragraphs for the Appellant are 126-128.

The relevant preceding paragraphs for the Council are 291-294 & 303-322.

412. The construction of new housing would create jobs, and support growth, as would new space for employment development. Notwithstanding the Council's view that the employment component of the scheme is not required, such provision, in close proximity to services, new residential property and transport links is likely to prove an attractive offer, and would readily therefore contribute to the growth of the local economy. Nantwich is also one of the preferred locations for development in the CELPS and there is no dispute that in locational terms at least, the site is in a sustainable location. Such recognised benefits garner a medium measure of weight.
413. The provision of a new primary school site to meet future educational provision, the children's play area, and extensive areas of public open space including a new village green and an enlarged LNCA would represent significant additional social benefits, not just to new occupiers of the development but to those in the locality as well. There would be contributions towards new bus stops and an extensive service linking with the town centre and railway station in addition to new path and cycle path networks offering alternative transport modes to the town and its services. Beyond necessary mitigation, these are also measurable social benefits that weigh in favour of the proposals.
414. In both the local and national context the delivery of significant numbers of market housing in a sustainable location is a significant benefit. Nationally, it is a government policy imperative to boost the supply of housing and this is given fresh emphasis in the recently published rFramework. Locally, although the Council fear the final yield of the site within the five year supply period may be curtailed this is rebutted convincingly by the appellant, and the site will in all probability make a contribution to housing numbers within the anticipated part of the plan period. This has all the more value given the identified shortfall in delivery. In both contexts therefore the delivery of market housing merits substantial weight being afforded in favour of the scheme.
415. The proposal would not provide affordable housing above that anticipated by policy, nor would it be above the level expected on other sites. However, such provision would be a tangible benefit when judged against the identified need in the district. Nor is there a suggestion that the contribution, if lost, would be made up from other developments. In light of the above, this contribution to affordable housing also merits significant weight.
416. It was clear from the representations made at the Inquiry that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. However, such apprehension does not have the support of technical evidence that would convincingly rebut the appellant's view, not challenged by the

Council, that no severe highway harms would result from the scheme. Such concerns therefore carry the most minimal of weight.

Planning balance

417. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Such a consideration of importance is the presumption in favour of sustainable development set out in paragraph 11 of the rFramework. The question of a 5 year housing land supply in relation to these appeals is very finely balanced. It is therefore recommended, in accordance with reasoning adopted in the White Moss and Park Road appeals, and as now endorsed by the Shavington case⁴², that a precautionary approach is applied, taking the worst-case position within the range on housing land supply presented, and apply the 'tilted balance' in sub-paragraph d) of paragraph 11 of the rFramework in the determination of these appeals. This makes clear that where the policies most important for the determination of the proposals are out-of-date, permission should be granted unless other policies of the rFramework dictate otherwise, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
418. In terms of the adverse impacts of the proposal, the appeal sites form part of the Open Countryside on the borders of Nantwich. As such the development is in clear conflict with the letter and purpose of Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policies GS, H1 and H5 of the S&BNP. However, the degrees of harm to visual amenity here, because of the very specific urbanised context of the site and the contribution open green space makes to the scheme, would, in actuality, be limited in extent.
419. It is also the case that the proposals would result in the loss of BMV and again this would be in conflict with Policy SE2 of the CELPS. No other substantive harms have been identified and other effects of the development can be effectively mitigated through the provisions of the section 106 obligations, thus rendering them neutral in the planning balance.
420. Set against these identified harms the development would deliver up to 189 dwellings. In the context of the national imperative to significantly boost the supply of homes, the identified shortfall in housing delivery over the plan period, and supported by the indicators that it may come forward to the market relatively quickly, this is a clear benefit meriting significant weight in favour of the scheme. This is the more so in light that the site the scheme would also include up to 30% affordable homes, secured through the S106 agreement. Given that there is an undisputed need for affordable housing in Cheshire East, which the appeal scheme would help meet, this is again a benefit meriting significant weight in favour of the proposals.

⁴² Ibid.

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421. The development would also bring economic benefits in terms of direct and indirect employment during its construction phase, expenditure into the local economy and sustain further enterprise through the mixed uses on offer. Moreover, there are other social benefits in terms of the open space, improvements to sustainable transport connectivity and the scope for the development of a further primary education facility. These latter benefits would accrue not only to occupiers of the residential development proposed, but to others within the vicinity as well. Taken together these positive attributes can be afforded a medium degree of weight.
422. The Secretary of State will be mindful that both the CELPS and the S&BNP are relatively new components of the development plan, each of which has seen the subject considerable investment in terms of local resource and commitment and are which both relatively recently adopted and made. Moreover, there are also incipient signs that delivery of housing sites may indeed pickup more in accordance with expectations later in the plan period. The policies of the development plan should not therefore be set aside lightly. However, against the conflict with these policies, for which there is a presumption development shall be determined in accordance with, there are some material considerations of considerable importance and weight to consider.
423. The first is that despite the conflict with countryside policies, the degree of harm to visual amenity is in fact limited, and reflected in the Council's position on the proposals from the outset. More significantly however, the Council has been found unable to demonstrate a five year supply of housing land and this, in accordance with paragraph 11 of the rFramework and its attendant foot note 7, triggers the presumption in favour of sustainable development heralded therein on the basis that policies most important to the determination of the cases are out-of-date. The policies referred to above (PG6 and SE2 of the CELPS, Policy RES5 of the CNLP and Policies GS1, H1 and H5 of the S&BNP) have to be viewed as being the most import of policies for the determination of these proposals as they are critical to the permitting of residential development in open countryside and immediately adjacent to settlement boundaries. It must follow therefore that in light of the supply position they are out of date, thus diminishing the weight to be afforded them in the planning balance.
424. Moreover, it might be right that the aims and purposes of Policy RG6 remain consistent with those of the rFramework (as the Council maintain). However, in the absence of a five year supply of housing land it has to be considered somewhat Canute-like to argue that the settlement boundaries drawn to reflect the past aspirations of the former local plan (2006-2011) can still be held to be not-out-of date. This is a conclusion all the more compelling given the evidence of appeals being allowed and the Council granting planning permission for development outwith these boundaries in years subsequent to their anticipated utility in order to meet supply. Neither does it come as a surprise that the LP Inspector for the CELPS anticipated that such boundaries would have to be reviewed in the future allocations component of the plan. This position is again reflected in the reasoning of the Inspector in the Park Road Appeal⁴³.

⁴³ Ibid, paragraph 16 thereof.

425. All of these weighty considerations combine to reduce the weight to be applied to these policies in the light of the very particular supply situation identified in this case. Whilst there remains conflict with the policies of the development plan, these proposals would bring forward substantial benefits. These benefits are such that they are not significantly or demonstrably outweighed by the lesser harms identified. The proposals, presented in both appeals, therefore constitute the sustainable development for which the rFramework presumes in favour of.

Recommendation

426. I recommend that both appeals should be allowed and planning permission granted subject to the attached Schedules of Conditions.

David Morgan

INSPECTOR

Schedule of Conditions

Appeal A

1. Details of appearance, access landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins, and the development shall be carried out as approved.
2. Application for approval of all the reserved matters shall be made to the LPA not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:

Mixed Use and Access Applications Diagram – dwg SK15 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK16 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK17 Rev C
(11 November 2017)

Mixed Use and Access Applications Diagram – dwg SK19 Rev D
(11 November 2017)

4. No development shall commence until details of a scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the LPA. The scheme shall make provision, inter alia for the following:
 - a. this site to be drained on a totally separate system with all surface water flows ultimately discharging in to the nearby watercourse
 - b. a scheme to limit the surface water run-off generated by the proposed development
 - c. a scheme for the management of overland flow
 - d. the discharge of surface water from the proposed development to mimic that which discharges from the existing site.
 - e. if a single rate of discharge is proposed, this is to be the mean annual run-off (Q_{bar}) from the existing undeveloped greenfield site. For discharges above the allowable rate, attenuation for up to the 1% annual probability event, including allowances for climate change.
 - f. the discharge of surface water, wherever practicable, by Sustainable Drainage Systems (SuDS).
 - g. Surface water from car parking areas less than 0.5 hectares and roads to discharge to watercourse via deep sealed trapped gullies.
 - h. Surface water from car parking areas greater than 0.5 hectares in area, to have oil interceptor facilities such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour.

The development shall not be occupied until the approved scheme of foul and/or surface water disposal has been implemented to the satisfaction of the LPA.

5. No development shall commence until a scheme for the provision and management of an 8 metre wide buffer zone alongside the watercourse on the northern boundary measured from the bank top (defined as the point at which the bank meets the level of the surrounding land) has been submitted to and approved in writing by the LPA. The scheme shall include:

- plans showing the extent and layout of the buffer zone
- details of any proposed planting scheme (for example, native species)
- details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

This buffer zone shall be free from built development other than the proposed access road. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA.

6. No development shall commence within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.
7. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
- a. the hours of construction work and deliveries
 - b. the parking of vehicles of site operatives and visitors
 - c. loading and unloading of plant and materials
 - d. storage of plant and materials used in constructing the development
 - e. wheel washing facilities
 - f. measures to control the emission of dust and dirt during construction.
 - g. details of any piling operations including details of hours of piling operations, the method of piling, duration of the pile driving operations (expected starting date and completion date), and prior notification to the occupiers of potentially affected properties
 - h. details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint

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- i. control of noise and disturbance during the construction phase, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes
 - j. waste management: there shall be no burning of materials on site during demolition/construction.
8. No development shall take place on the commercial and retail element until a detailed noise mitigation scheme to protect the proposed dwellings from noise, taking into account the conclusions and recommendations of the Noise Report submitted with the application, shall be submitted to and agreed in writing by the LPA. The approved mitigation measures shall be implemented before the first occupation of the dwelling to which it relates.
9. Prior to the commencement of development:
- a. A contaminated land Phase 2 investigation shall be carried out and the results submitted to, and approved in writing by the LPA.
 - b. If the Phase 2 investigations indicate that remediation is necessary, a Remediation Statement including details of the timescale for the work to be undertaken shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with the submitted details.
 - c. Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.
10. No development shall commence until a scheme of destination signage to local facilities, including schools, the town centre and railway station, to be provided at junctions of the cycleway/footway and highway facilities shall be submitted to and agreed in writing by the LPA. The approved scheme shall be provided in parallel with the cycleway/footway and highway facilities.
11. No development shall commence until schemes for the provision of MOVA traffic signal control systems to be installed at the site access from Peter Destapleigh Way and at the Audlem Road/Peter Destapleigh Way traffic signal junctions, has been submitted to and approved in writing by the LPA . Such MOVA systems shall be installed in accordance with approved details prior to the first occupation of the development hereby permitted.
12. The Reserved Matters application shall include details of parking provision for each of the buildings proposed. No building hereby permitted shall be occupied until the parking and vehicle turning areas for that building have been constructed in accordance with the details shown on the approved plan. These areas shall be reserved exclusively thereafter for the parking and turning of vehicles and shall not be obstructed in any way.
13. Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the LPA. The Travel Plan shall

include, inter alia, a timetable for implementation and provision for monitoring and review. None of the building hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after or before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.

14. No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the LPA. The approved scheme shall be implemented and retained as operational thereafter.
15. Prior to first occupation of each unit, Electric Vehicle Infrastructure shall be provided to the following specification, in accordance with a scheme, submitted to and approved in writing by the LPA which shall include the location of each unit:
 - A single Mode 2 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kW charging.
 - 5% staff parking on the office units with 7kW Rapid EVP with cabling provided for a further 5% (to enable the easy installation of additional units).

The EV infrastructure shall be installed in accordance with the approved details and thereafter be retained.

16. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.
17. Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to and approved in writing by the LPA. The approved features shall be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the LPA.
18. The reserved matters application shall be accompanied by a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated 2013 prepared by CES

Ecology (CES:969/03-13/JG-FD). The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.

19. Prior to the commencement of each phase of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority.
 - a) The details shall include the location, height, design and luminance and ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.
 - b) The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
20. All trees with bat roost potential as identified by the Peter Destapleigh Way Ecological Addendum Report 857368 (RSK September 2017) shall be retained, unless otherwise agreed in writing by the Local Planning Authority
21. The first reserved matters applications shall include a Design Code for the site and all reserved matters application shall comply with provisions of the Masterplan submitted with the application and the approved Design Code.
22. Prior to the commencement of each phase of development a scheme for landscaping shall be submitted to the Local Planning Authority and approved in writing. The approved landscaping scheme shall include details of any trees and hedgerows to be retained and/or removed, details of the type and location of Tree and Hedge Protection Measures, planting plans of additional planting, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes and proposed numbers/densities and an implementation programme.

The landscaping scheme shall be completed in accordance with the following:-

- a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.
- b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces).

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- c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BSD5837: 2005 Trees in Relation to Construction: Recommendations.
 - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
23. An Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations shall be submitted in support of any reserved matters application which shall evaluate the direct and indirect impact of the development on trees and provide measures for their protection.
24. No phase of development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the LPA. No building hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.
25. The Reserved Matters application for each phase of development shall include details of bin storage or recycling for the properties within that phase. The approved bin storage facilities shall be provided prior to the first occupation of any building.
26. Notwithstanding the details shown on plan reference no. BIR.3790.09D (September 2012) access to the development herein permitted shall be exclusively from Peter Destapeleigh Way as shown on plan reference no. dwg SK16 Rev C (11 November 2017)
27. Unless otherwise agreed in writing, none of the dwellings hereby permitted shall be first occupied until access to broadband services has been provided in accordance with an action plan that has previously been submitted to and approved in writing by the LPA.

Appeal B

1. The development hereby approved shall commence within three years of the date of this permission.
2. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
 - a. Site Location Plan reference no. BIR.3790_13
 - b. Site Access General Arrangement Plan reference no. SCP/10141/D03/ Rev D (May 2015).
3. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping and replacement planting for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of those to be retained, also the number,

species, heights on planting and positions of all additional trees, shrubs and bushes to be planted.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the LPA gives written consent to any variation.
5. Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction : Recommendations, which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority.
 - (a) No development or other operations shall take place except in complete accordance with the approved protection scheme.
 - (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
 - (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
 - (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
6. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
7. Prior to development commencing, a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated MARCH 2013 REVISION) prepared by CES Ecology (CES:969/03-13/JG-FD) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.
8. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are

found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.

9. Prior to the commencement of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority. The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution; Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.
10. Prior to the commencement of development , and to minimise the impact of the access road on potential wildlife habitat provided by the existing ditch located adjacent to the southern site boundary, the detailed design of the ditch crossing shall be submitted to and approved in writing by the LPA . The access road shall be constructed in full accordance with the approved details.
11. No development shall commence on site unless and until a Deed of variation under s106A TCPA 1990 (as amended) has been entered into in relation to the S106 Agreement dated 20 March 2000 between Jennings Holdings Ltd (1), Ernest Henry Edwards, Rosemarie Lilian Corfield, James Frederick Moss, Irene Moss, John Williams and Jill Barbara Williams (2), Crewe and Nantwich BC (3) and Cheshire County Council (4) to ensure that the Local Nature Conservation Area is delivered, maintained and managed under this permission.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Reuben Taylor of Queen's Counsel

Instructed by the Solicitor to
Cheshire East Council

He called:

Mr Richard Taylor BA (Hons) BTP MRTPI

Mr Adrian Fisher BSc MTPL MRTPI

FOR THE APPELLANT:

Mr Paul Tucker of Queen's
Counsel

instructed by Patrick Downes, Harris
Lamb on behalf of Müller Property
Group

Assisted by Mr Philip Robson
of Counsel

He called:

Mr Jonathan Berry BA (Hons) Dip LA CMLI AIEMA M ArborA

Mr Patrick Downes BSc (Hons) MRICS

Mr Matthew Weddaburn BSc MA MRTPI

Mr William Booker BSc (Hons)

INTERESTED PERSONS:

Councillor M Theobald

Stapeley & District Parish Council

Mr P Cullen

Resident

Councillor P Groves

Cheshire East Council

Mr P Staley

Resident

Ms J Crawford

Resident

Ms G Barry

Resident

Mr K Roberts

Resident

Councillor A Martin

Councillor

INQUIRY DOCUMENTS (IDs)

1. Appearances – Appellant
2. Planning SoCG
3. Housing SoCG
4. Draft s106
5. Revised plans – Appellant
6. Revised Appendix 14 (Mr Fisher) – Council
7. Openings – Appellant
8. Openings – Council
9. Statement Councillor Groves
10. Statement Councillor Theobald
11. Statement Mr Cullen
12. Statement Mr Staley
13. Statement Ms Barry
14. Amended red line drawing
15. Strategic sites list with references
16. Wokingham High Court Decision – Council
17. E mail site LPSA 2
18. Map – LPS 27
19. Appendix E CELPS (Housing trajectory)
20. Appellant's housing evidence amended table 17
21. CD of Traffic issues – Mr Staley
22. Extract PPG paragraph 26
23. Accident Record of area (map) – Appellant
24. Aerial photograph highway improvements – Appellant
25. Bus timetables – Appellant
26. List draft conditions
27. Agricultural land analysis – Appellant
28. Stapley and Batherton Neighbourhood Plan
29. Amended landscape condition
30. CIL compliance schedule
31. Updated s 106
32. Councillor Theobald comments on s106
33. Amended housing supply table – Appellant
34. Letters/email from D Roberts/H Thompson

DOCUMENTS RECEIVED AFTER THE ADJOURNMENT OF THE INQUIRY

- 1a Final list of Core Documents
- 2a Closings Appellant
- 3a Closings Council
- 4a Grounds for Claim to High Court (Shavington case) – Council
- 5a Comments on rFramework – Appellant
- 6a Comments on rFramework – Council
- 7a Final comments on Council's submissions - Appellant

CORE DOCUMENTS

Background (A)	
	National Planning and Ministerial Statement
A9	The Plan for Growth (2011)
A10	Supporting Local Growth (2011)
	Local Plan Policy and Guidance
A11	Extracts of Adopted Crewe and Nantwich Replacement Local Plan (2005) ("CNRLP")
A12	Secretary of State's Direction (Saved Policies) February 2008
A13	Removed
A14	Removed
A15	Removed
A16	Interim Planning Policy on Release of Housing Land (February 2011)
A19	Extract of the Draft Nantwich Town Strategy
	Emerging Local Plan Background Documents
A20A	Extracts from the Cheshire East Local Plan Strategy 2010 – 2030 ("LPS")
A24	Extracts of Cheshire East Strategic Housing Market Assessment (2010)
A25	CEC Strategic Housing Land Availability Assessment (March 2012)
A26	CEC Strategic Housing Land Availability Assessment Letter (4 th December 2013)
A27	Letter of representation from The Home Builders Federation to the SHLAA update methodology (January 2014)
A28	Letter from Muller Property Group to the SHLAA update methodology (January 2014)
A35	Extract from Annual Monitor on Affordable Housing Provision
A36	Stapeley and Batherton Neighbourhood Plan, Referendum Version (SBNP)
A37	Stapeley and Batherton Neighbourhood Plan Examiner's Report
A38	Council Decision on report of SBNP
A39	Cheshire East Local Plan Strategy 2010 – 2030 July 2017
A40	Report on the Examination of the Cheshire East Local Plan Strategy Development Plan Document, 20 June 2017
A41	Inspector's Views on Further Modifications Needed to the Local Plan Strategy (Proposed Changes), 13 December 2016
A42	Inspector's Interim Views on the legal compliance and soundness of the submitted Local Plan Strategy, 6 November 2014
A43	Inspector's Further Interim Views on the additional evidence produced by the Council during the suspension of the examination and its implications for the submitted Local Plan Strategy, 11 December 2015
A44	Cheshire East Local Plan: Nantwich Town Report, March 2016
A45	Crewe and Nantwich Replacement Local Plan, 2011

Technical Papers (B)	
B3	Extract of Manual for Streets 2 – Wider Application of the Principles (CIHT, 2010)
B4	Extract of Manual for Streets (2007)
B17	Transport for Statistics Bulletin
B18	Walking in Britain
B19	South Worcestershire interim conclusions on the South Worcestershire Development Plan
B20	LDC initial findings report (Sept 2013)
B21	Strategic Housing Land Availability Assessment and the development plan document preparation

B22	Cheshire East Council Housing Supply and Delivery Topic Paper (August 2016)
B23	Cheshire East Council Housing Monitoring Update (published August 2017, base date 31st March 2017)

High Court and Supreme Court Cases (C)	
C11	High Court Judgement West Lancashire vs Secretary of State for Communities and Local Government (Neutral Citation Number: [2017] EWHC (Admin))
C12	Supreme Court Judgement Carnworth, Suffolk Coastal District

Appeal Cases (D)	
	Ministerial Appeal Decisions
	Inspector Appeal Decisions
D29	Planning Inspectorate appeal reference: APP/R0660/W/17/3166469. White Moss, Butterson Lane, Barthomley, Crewe CW1 5UJ. 8 th November 2017
D30	Planning Inspectorate appeal reference: APP/R0660/W/17/3168917. Land to the south of Park Road, Willaston, Cheshire. 4 th January 2018
D31	Planning Inspectorate appeal reference: APP/M4320/W/17/3167849. Land to the south of Andrews Lane, Formby L37 27H. 5 th December 2017

Relevant Applications (E)	
E1	Decision Notice for the extant permission - construction of a new access road into Stapeley Water Gardens" (planning application reference P00/0829)
E2	Letter from CEC confirming that planning application reference P00/0829 is extant
E3	Cronkinson Farm Schedule 106 Agreement 2000

Landscape Documents (F)	
F1	Extract of the Guidelines for landscape and Visual Impact Assessment, 3rd Edition The Landscape Institute and IEMA 2013
F2	Extract of the Landscape Character Assessment – Guidance for England and Scotland – Scottish Natural Heritage and the Countryside Agency (2002)
F3	Site Context Plan (2064/P01a JB/JE January 2014)
F4	Site Setting (Aerial Photograph) (2064/P04 JB/JE January 2014)
F5	Extract from the Countryside Agency (now Natural England), Character Area 61 Description
F6	Extract of Cheshire Landscape Character Assessment SPD – Type 7: East Lowland Plain
F7	Extract of Cheshire Landscape Character Assessment SPD – ELP 1: Ravensmoor
F8	Munro Planting Scheme – Appeal B
F9	Tyler Grange Winter Photographs (January 2014) (2064/P03 JB/LG January 2014)
F10	Winter viewpoint locations (TG Ref: 2064/P03)

Ecology & Arboricultural Documents (G)	
G1	Extract of English Nature Great Crested Newt Mitigation Guidelines 2001
G2	Extract of Natural England LPA Standing Advice Species Sheet Great Crested Newts
G3	Extract of Bats {Natural England LPA Standing Advice Species Sheets}
G4	Extract of Badger {Natural England LPA Standing Advice Species Sheets}
G5	Extract of Birds {Natural England LPA Standing Advice Species Sheets}
G6	Extract of Water Vole {Natural England LPA Standing Advice Species Sheets}

G7	Extract of Natural England Advice Note European Protected Species & The Planning Process Natural England's Application of the 'Three Tests' to Licence Applications
G8	Extract of Cheshire East Borough Council (Stapeley – the Maylands, Broad Lane) Tree Preservation Order 2013

APPEAL A

Appeal A - Application Documents (H1)	
H1	Covering Letter September 2012
H2	Application Forms
H3	Site Location Plan
H4	Site Setting (Aerial Photograph)
H5	Indicative Masterplan
H6	Archaeological Report
H7	Transport Assessment
H8	Framework Travel Plan
H9	Statement of Community Involvement
H10	Retail Statement
H11	Nantwich Housing Market Assessment
H12	Design and Access Statement
H13	Planning Statement
H14	Arboricultural Implications Assessment
H15	Movement and topography
H16	Landscape Character Plan
H17	Index to views
H18	Viewpoint Location Plan
H19	Viewpoints
H20	Landscape Visual Impact Assessment
H21	Flood Risk Assessment
H22	Phase 1 Contamination Report
H23	Protected Species Impact Assessment and Mitigation Strategy (2012)

Consultee Responses (I)	
I1	Environmental Health (Noise / Air / Light)
I2	Cheshire Wildlife
I3	United Utilities
I4	Network Rail
I5	Public Rights of Way
I6	Natural England
I7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
I8	Nantwich Town Council
I9	Reaseheath College
I10	Highways
I11	Arboricultural
I12	Design
I13	Landscape

Documents submitted after the initial submission (J)	
J1	Revised Arboricultural Impact Assessment Phase 2 – Report Ref NWS/11/10/AIA P2 25 th May 2012

J2	Revised Air Quality Assessment – Report Ref AQ0310 Dec 2012
J3	Tree Plan – Drawing No. NWS/SP/03/12/01 – 12 th March 2013
J4	Tree Constraints Plan Tile 1 – Report Ref NWS/11/10/TCA/01 – 9 th November 2011
J5	Tree Constraints Plan Tile 2 – Report Ref NWS/11/10/TCA/02 – 9 th November 2011
J6	Tree Constraints Plan Tile 3 – Report Ref NWS/11/10/TCA/03 – 9 th November 2011
J7	Tree Constraints Plan Tile 4 – Report Ref NWS/11/10/TCA/04 – 9 th November 2011
J8	Great Crested Newt Survey
J9	Noise Assessment
J10	9.1.13 – SCP Technical Note
J11	11.1.13 – SCP Technical Note – Response to Parish Council
J12	14.1.13 SCP Technical Note – Sensitivity Test
J13	11.3.13 – SCP Technical Note

Reporting and Decision (K)	
K1	Planning Officers Report to Planning Committee
K2	Formal Decision Notice
K3	Secretary of State First Decision letter 17/03/15
K4	Original Inspector's Report
K5	Consent Order 3/07/15
K6	Secretary of State Second Decision letter 11/08/16
K7	Consent Order
K8	DCLG letter of 12/04/17, inviting further representations
K9	DCLG letter of 03/08/17 relating to the re-opening of the inquiry
K10	Updated Officer's Report to Cheshire East Council Strategic Planning Board of 22/11/17
K11	Strategic Planning Board Report on applications 12/3747N and 12/3746N, 31/1/18

APPEAL B

Appeal B - Application Documents (L)	
L1	Covering Letter September 2012
L2	Application Forms
L3	Site Location Plan
L4	Site Access
L5	Transport Statement
L6	Protected Species Impact Assessment and Mitigation Strategy (2012)
L7	Design and Access Statement
L8	Planning Statement
	Updated Application Documents Appeals A and B
L9	Updated Masterplan Documents and Access Drawings
L10	Land Research Letter – BMV – 25/9/17
L11	Redmore Environmental – Air Quality Assessment 29/9/17
L12	Shields Arboricultural Impact Assessment – 26/9/17
L13	RSK Ecological Addendum Report Sept. 2017
L14	Betts Hydro – Flood Risk and Drainage Addendum 26/9/17
L15	SCP – Transport Technical Note 3/10/17
L16	Landscape and Visual Technical Note 26/9/17
L17	Lighthouse Acoustics – Acoustic Note 29/9/17

Consultee Responses (M)

M1	Environment Agency
M2	Environmental Health
M3	Natural England
M4	Public Rights of Way
M5	Nantwich Town Council
M6	Reaseheath College
M7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
M8	Highways
M9	Arboricultural
M10	Cheshire Wildlife
M11	Affordable Housing

Documents submitted after the initial submission (N)

N1	Flood Risk Assessment
N2	Great Crested Newt Survey (Revised November 2012)
N3	SCP Technical Note - 11.01.13
N4	Arboricultural Implication Assessment Phase 2
N5	Protected Species Impact Assessment and Mitigation Strategy (March 2013)

Reporting and Decision (O)

O1	1 st Planning Officers Report to Planning Committee
O2	2 nd Planning Officer's Report to Planning Committee
O3	Strategic Planning Board Meeting - 19/6/13 Notes of Planning Application 12/3746N

Supreme Court Judgements (P)

P1	Removed
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Appeal Court Judgements (Q)

Q1	Suffolk Coastal Appeal Court Judgement
Q2	St Modwen Appeal Court Judgment



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Appeal Decision

Inquiry held on 31 July, 1, 30 and 31 August 2018

Site visit made on 2 August 2018

by Harold Stephens BA MPhil DipTP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 28th September 2018

Appeal Ref: APP/W3520/W/18/3194926

Land on East Side of Green Road, Woolpit, Suffolk IP30 9RF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Landex Ltd against the decision of Mid Suffolk District Council.
 - The application Ref 2112/16, dated 2 May 2016, was refused by notice dated 6 September 2017.
 - The development proposed is the erection of 49 dwellings (including 17 affordable dwellings) and construction of a new access.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 49 dwellings (including 17 affordable dwellings) and construction of a new access at Land on East Side of Green Road, Woolpit, Suffolk IP30 9RF in accordance with the terms of the application, Ref 2112/16, dated 2 May 2016, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. The application was supported by a number of reports and technical information including a Design and Access Statement (DAS), a Planning Statement, a Revised Transport Assessment, a Planning Statement, a Contamination Report Part 1 and Part 2, an Ecology Report and Skylark Survey, a Flood Risk Assessment, a Foul and Surface Water Drainage Strategy, an Archaeological Report and a Landscape and Visual Appraisal.
3. At the Inquiry, a S106 Unilateral Planning Obligation was submitted by the Appellant.¹ This addresses all of the matters sought by the District and County Council in connection with the provision of community and other services arising from the development. The Planning Obligation is signed and dated 29 August 2018 and is a material consideration in this case. A Community Infrastructure Compliance Statement has been submitted by Suffolk County Council (SCC).² I return to the Planning Obligation later in this decision.
4. In addition, the Appellant submitted an Agreement with Flagship Housing Group Limited, conditional upon planning permission being granted, to enter into a Deed of Easement³ to secure pedestrian and cycle access to the north

¹ APP8

² INQ5

³ APP7

via Steeles Close. I shall return to the proposed easement later in the decision.

5. Statements of Common Ground (SoCG)⁴ between the Appellant and SCC were agreed and have been signed by both parties in respect of: (i) Archaeology Matters; (ii) Drainage Matters; (iii) Early Years and Education Matters; and (iv) Highways and Transport. An additional SoCG on Planning Matters including Housing Land Supply was agreed between the Appellant and Mid Suffolk District Council (MSDC).
6. The main parties confirmed the List of Drawings on which the appeal should be determined and this is set out at Document APP1. The List of Drawings includes the House Types (1-9), a Site Location plan PA33, a Site Layout Plan PA31 Rev H and an Offsite Highways Works Plan 112/2015/04 - Rev.P2.
7. The revised National Planning Policy Framework (NPPF 2018) was published on 24 July 2018 shortly before the Inquiry opened and was addressed by participating parties both during the event and in closings. I have taken it in to consideration in my conclusions.⁵
8. Following the close of the Inquiry I sought the views of both main parties in respect of the revisions made to the PPG⁶ on 13 September 2018 on Housing and economic land availability assessment. The comments received have been taken into account in my consideration of the appeal proposal.

Main Issues

9. In the light of the above I consider the main issues are:-
 - the effect of the proposed development on highway and pedestrian safety;
 - the impact of the proposed development on designated heritage assets including the setting of listed buildings and the character and appearance of the Woolpit Conservation Area; and
 - whether the Council is able to demonstrate a five-year supply of deliverable housing sites sufficient to meet the full objectively assessed need (OAN) for housing and the implications of this in terms of national and local planning policy.

Reasons

The proposed development and appeal site

10. The appeal proposal is for 49 dwellings including 17 affordable dwellings (35%) together with a new access to be constructed to serve the development of Green Road. The dwellings would have associated garages and parking areas and pedestrian access from the site onto Green Road and pedestrian/cycle access to Steeles Close. There is a dedicated on-site play area proposed as well as extensive on-site open space and linking footpaths.

⁴ INQ3

⁵ Paragraph 212 Annex 1: Implementation

⁶ Planning Practice Guidance

11. Woolpit is the third largest village in Mid Suffolk and has a good level of local services and infrastructure including health care, education and two business parks/employment sites and is designated as a Key Service Centre in the Council's settlement hierarchy. The appeal site is located on the southern edge of Woolpit village, to the south of its centre but with access to facilities which are in close proximity – a primary school, health centre, village shops and services are within walking distance.
12. Whilst, for planning policy purposes, the site is located in the designated 'countryside', its northern and eastern boundaries adjoin the defined settlement boundary for the village in the Mid Suffolk Local Plan 1998 (Woolpit Village Inset Map). There is existing residential development on the eastern side of the site on Steeles Road and immediately adjacent to the north lies Steeles Close and the main body of the village; on the opposite side of Green Road, but at the northern end of the appeal site lies residential development in the form of Priory Cottage, a Grade II Listed Building. There is therefore residential development on two sides of the appeal site. Land to the south and west comprises open agricultural land.
13. The appeal site comprises a total site area of about 2.3 hectares. It consists of a rectangular shape block of land which is part of an agricultural field. It is enclosed with an existing tree/hedge line on three sides. The appeal site is broadly level but there is a gentle slope west to east. There is an existing tree/hedge line to a part of the site's Green Road frontage and there are trees to the northern boundary which separate the site from Steeles Close. A public footpath passes north to south along the site's eastern boundary. This footpath connects to the southern part of the village and then to the wider countryside to the south.
14. There is a designated Conservation Area in Woolpit Village its nearest boundary being located about 250m to the north from the appeal site at the junction of Drinkstone Road and Green Road. The appeal site is not within the boundary of a protected landscape and there are no designations which apply to it. No Listed Buildings about the application site but the listed Grade II, 17th century, Priory Cottage is situated on the west side of Green Road opposite the north-west corner.

Planning policy

15. The statutory development plan includes the following documents:
 - (i) The Mid Suffolk District Local Plan 1998 (MSDLP) which was saved in accordance with the Secretary of State's Direction dated 14 September 2007;
 - (ii) The Mid Suffolk District Core Strategy 2008 (CS), as adopted in September 2008 covering the period until 2025; and
 - (iii) The Core Strategy Focused Review 2012 (CSFR) as adopted on 20 December 2012 covering the period until 2027.
16. The Council is in the course of preparing a new Joint Local Plan with Babergh District Council which will replace the CS and will be used to manage development in both districts up to 2036. The Councils have published the Joint Local Plan for consultation (Regulation 18) but the emerging Plan is in its very early stages and thus carries limited weight in the context of this appeal.

A Neighbourhood Plan is currently being prepared for Woolpit. It too is in its very early stages and draft policies have not yet been published so no weight can be attached to the Neighbourhood Plan.

First Issue - Highway and pedestrian safety

17. SCC, as Highway Authority, does not object to the proposal subject to conditions being attached to a grant of planning permission. The Council did not refuse the proposal on the basis of highway and pedestrian safety grounds because a highway improvement scheme at the pinch point on Green Road was proposed as part of the development and was to be secured by means of a planning condition. Rather, the Reason for Refusal (RfR) indicates that the proposed development would increase vehicular traffic in the village centre and require the provision of highway works to the north of the site in the vicinity of a number of unspecified listed buildings and within the Conservation Area. The Council then argues firstly, that the nature of the works and the increase in traffic would neither preserve or enhance the character of this part of the Conservation Area and secondly, would not preserve or enhance the setting of the unspecified listed buildings causing less than substantial harm to both.
18. The areas of debate at the Inquiry comprised:
- Increase in vehicular traffic through pinch point
 - Increase in pedestrian flow through pinch point
 - Personal Injury Accidents (PIA) Analysis
 - Accessibility

Increase in vehicular traffic

19. North of the appeal site between Drinkstone Road and just beyond Mill Lane, Green Road narrows significantly to about 4.3m creating a pinch point about 60m long. On the western side there is no footway as the buildings and fences are hard against the edge of the road. On the eastern side there is a narrow footway measuring less than 1m in width, reducing to only 0.85m in parts. This road width is insufficient for two vehicles to pass with pedestrians on the footway being vulnerable to being hit by vehicles. The footway at this width is insufficient to allow pedestrians to pass each other without stepping into the road. It is also too narrow for wheelchair users and pram use so the only alternative for many is to walk along the road.
20. The footway here is also vulnerable to being driven over by vehicles as the kerbed separation is too low to offer sufficient protection. The kerb upstand is between 20mm and 60mm – this does not prevent or deter vehicles from driving over the kerb onto the footway. The Parish Council and others are concerned that at times Green Road can become congested. Both highway experts agree that Green Road is relatively lightly trafficked but this does not mean at times it cannot become congested.
21. I see no reason to doubt the underlying validity of the Appellant's Traffic Assessment (TA) as considered by the Highway Authority. The TA estimated that the proposed development would generate, overall, 33 vehicular trips in the AM peak hour and a total of 38 trips in the PM peak hour which would give

rise to 295 additional trips over a 24 hour period. The majority of this traffic would travel northbound through the pinch point to the transport links and facilities in the village beyond. Based on these TA figures, two-way traffic on Green Road would increase by 15% in the AM peak and by 16% in the PM peak as a result of the development traffic. This equates on average during the AM and PM peak hours to an additional vehicle passing through the pinch point every 2 minutes. In my view this represents at worst, a very modest increase in vehicular traffic through the pinch point.

Increase in pedestrian flow

22. The Council has assessed the additional pedestrian flows associated with the development: an additional three pedestrians walking northwards in the AM peak and 2 in the PM peak and an additional one pedestrian walking southwards in each of the AM and PM peak hours. The Council's assessment determines the theoretical likelihood of a northbound vehicle, a southbound vehicle and a pedestrian negotiating the pinch point together at any one time during the peak hour for both the existing scenario and that with the proposed development. It concludes that such events would increase threefold with the development in place, which equates to ten additional pedestrian injury risk events per year. These figures were accepted by the Appellant.
23. I appreciate that the Council's assessment is a theoretical risk analysis and that the ten additional pedestrian injury risk events compared to the baseline is relatively small – not even one per month. Nevertheless that increase is significant when considered over time, and it is noteworthy that any conflict between vulnerable road users (pedestrians) and motor vehicles will often result in an injury requiring hospital attention, even allowing for the slight reduction in vehicle speeds through the pinch point. In my view there would be a modest increase in the number of pedestrian injury risk events.

Personal Injury Accidents (PIA) Analysis

24. The TA demonstrates that there is no recorded accident data for Green Road itself, but there were four accidents which led to injury in the period between 2010 and 2015 (Appendix I). The Appellant accepted that when considering accident data, it is relevant to look more widely than the road on which the development is proposed, and that it is not just about the overall number of accidents but the details of them. Two of the accidents involved pedestrians being struck by passing cars (on The Street and on Heath Road) and that in one of those accidents the narrow width of the road was recorded as a causation factor by the police. Another accident involved a driver striking a line of cars in The Street during the hours of darkness. In my view the circumstances of the accidents which have occurred in the wider area are not inconsistent with a highway safety concern.

Accessibility

25. I accept that the proposed pedestrian and cycle link via Steeles Close and Steeles Road is likely to be used for a good percentage of pedestrian trips to give access to village services. It would be used for: (i) dropping off and collecting children from the primary school and pre-school as well as after school clubs; (ii) to access childcare services in the grounds of the primary school, such as a "Holiday Club" during school holidays; (ii) attending health appointments; (iv) picking up prescriptions from the dispensary; (v) shopping

at Costcutter Convenience Store with its extended opening hours (0600-2230 hours) and (vi) accessing the Brickfields Business Park, where around 25 companies are based. Moreover, the proposed easement to the north⁷ would be entirely adequate for the purposes of guaranteeing access at all times. The terms on which it is granted make it entirely enforceable and I cannot foresee any circumstances which would lead to the grantor being in a position to restrict or prevent its use.

26. Nevertheless, it is noteworthy that the proposed development provides a footpath link from the Green Road access on the west of the appeal site which links to the pavement outside Vine Cottage. Anyone seeking the shortest route to walk to the village centre, to access facilities including the village shop (Co-op), the post office within it, the bus stops, the village pubs, the bakery, the tea room, the hairdressers, the Village Hall, the Church and the petrol filling station would have to negotiate the pinch point and the increased traffic going through it. Even with the Steeles Close access, anyone using it to take the shortest route to the village centre would still travel through the pinch point on Green Road. Use of the access via the Greenway at the south east of the site onto the public footpath would be far from desirable for anyone accessing facilities in the village centre.
27. Taking all of these matters into account I consider that the increase in vehicular and pedestrian traffic from the new development having to negotiate the pinch point on Green Road would exacerbate highway dangers unless appropriate safety improvements can be made. I conclude on the first issue that the off-site highway works specified in Drawing 112/2015/04 Revision P2 are necessary to mitigate the increased safety risk as a result of the development. If an appropriately worded planning condition(s) is imposed to secure the off-site highway works then there would be no unacceptable residual highway or pedestrian safety impact arising from the proposed development.

Second Issue - Heritage Assets

28. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBA) requires that special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the LBA requires special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
29. Paragraph 193 of the NPPF 2018 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
30. Whilst there is no statutory protection for the setting of conservation areas, paragraph 194 of the NPPF 2018 requires that consideration be given to any harm to or loss of significance of a designated asset, which includes conservation areas, from development within its setting. The main parties confirmed that no harm would be caused to the setting of the Conservation

⁷ APP7

Area in this case and I agree.

Woolpit Conservation Area

31. The Woolpit Conservation Area Appraisal (2012) tells us that the Conservation Area covers the historic core of the village and was first designated by the Council in 1972. The Appraisal notes that the built form is marked by a variety of dates, architectural styles and building materials including a variety of roof finishes. The Conservation Area includes the Grade I listed Church of St Mary with its flint and stone chequered flushwork. The remaining listed buildings, the majority being Grade II, are identified as *'timber-framed houses, many now re-fronted in brick'*. The variety of building materials is noted, with exposed timber-framing and bricks from the local brickworks, comprising *'Suffolk whites'* and *'soft red brick'*.
32. In terms of its plan form and layout, Woolpit village has a distinct central triangular island, which *'is a well defined focal point'* which forms the focus for three *'important vistas'* identified on page 11 of the Appraisal. In vista (1) looking north along Green Road towards the village triangle, the view is eroded somewhat by the presence of street signage and the extent of parked cars around this *'island'*. Each important vista contributes to the character and appearance of the Conservation Area.
33. I consider the significance of the Conservation Area derives from its character interest which includes a mixture of medieval, post medieval and later buildings, of a variety of styles and material finishes, arranged around a central village *'triangle'* which is laid out and maintained as a green-edged *'island'*, from which radiate outwards three main thoroughfares; Green Road, Church Street and The Street; and from there extends a wider network of smaller sub-roads. In connection with this, the vehicular traffic is regular enough to be noticeable particularly along the three main roads, but it is not an overbearing element. It contributes to the appearance of the Conservation Area, as does the traffic control measures that form part of the street scenes, most obviously in the form of a variety of bollards.
34. The Council alleges that there would be a significant impact on the appearance of the important vista along Green Road towards the central market place at the centre of the Conservation Area and that the important historical character of the southern *'gateway'* and the important historic street scene would be harmfully altered by the introduction of the highway improvements, resulting in a more urban appearance. In particular, reference is made to the kerbed build out with bollards, the footpath widening with raised kerbs, the erection of a TSRGD 516 sign on the pavement between Pepys House and Tyrells, the disruption of sightlines which have a natural downward slope and the noticeable increase in both vehicular and pedestrian traffic which it is said would detract from the perception of relative tranquillity. I disagree.
35. The changes such as they are would only be appreciable in relatively limited views north and south along Green Road from about the area of the village triangle to the southern edge of the Conservation Area. The proposed off-site highway works would only bring about a change to a limited and localised part of this designated heritage asset. In terms of the revision of road markings, when taken in the context of the existing roadway and indeed the appearance of the wider network of roads within the Conservation Area that are generally

of 'black tarmac with white network markings'; it would not be out of character and would not harm its special interest.

36. In terms of footpath widening, the existing pathway is a standard kerbed tarmac path, about wide enough for one person to traverse. The appeal proposals envisage the widening of this footpath to 1.8m with the kerb face raised to 125mm. Again, whilst this would represent a change to the current situation, it would not be incongruous with the character and appearance of the Conservation Area which includes a large number of kerbed footpaths of varying widths. The final form and finish of these proposals would be subject to detailed design at a later stage and there is an opportunity to include a higher quality surface finishing such as sandy bedding gravel to improve the appearance of this stretch of footpath, more in keeping with the current character of this area of the asset.
37. In my view, the proposed widening of the footpath would also allow better appreciation of the character and appearance of the Conservation Area by providing a more convenient means of accessing the asset to enjoy the quality of the historic built environment.
38. In terms of road signage there are currently numerous examples of instructional road signs elsewhere within the Conservation Area, not least within the village 'triangle' itself. The introduction of a new road sign would be needed at the southern end of the highways works to forewarn drivers heading north into the Conservation Area of the narrowing roadway. The exact location of this sign is not yet fixed and is subject to future agreement. It could, for instance, be located outside the southern boundary of the Conservation Area. Even if located within the asset I see no reason why it could not be sympathetically integrated into the street scene.
39. The kerbed build out with bollards adjacent to Model Cottage would be the most evident change resulting from the proposals, as the current location for this is a featureless part of the black tarmac roadway. However, the use of a variety of bollards for such traffic calming/building protection measures is already widely evident within the wider Conservation Area, with others also used to control parking. In my view, the use of bollards in this location and for this purpose, employing a sympathetic design to be agreed with the Council, would plainly not be intrusive or incongruous with the character and appearance of the wider Conservation Area and would not result in any harm.
40. In terms of the built form of the off-site highway works, the appeal proposals would only be evident from a small part of the wider Conservation Area, would not be incongruous with its current character and appearance, and, with regard to the widened footpath, could actually deliver an enhancement.
41. In relation to the increase in vehicular traffic and any effect on the character and appearance of the Conservation Area, I have identified that there would be a *very modest* increase in the amount of traffic using the immediate road network and on Green Road leading into the village centre. This very modest increase in vehicular traffic would not introduce an element into the Conservation Area that is not already present within the designated area and neither would it increase that existing element of the Conservation Area's character and appearance to any more than a modest degree. The very modest increase in traffic flow would have no effect on the special interest of the Conservation Area and no harm would be generated.

42. I consider there would be no harm caused to the Woolpit Conservation Area as a result of the appeal proposals. The proposals would as a minimum 'preserve' the character and appearance of the Conservation Area, if not actually enhance it through the improvement of the footpath.

Listed Buildings

43. When assessing the indirect impact of proposals on heritage assets such as those beyond the boundary of a development site, the question which should be asked is whether change within its wider 'setting' would result in a loss of (or damage to) its 'significance' as a heritage asset.
44. The NPPF 2018 defines significance in Annex 2: Glossary as: *'The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting'*.
45. The current Historic England (HE) guidance⁸ is clear in stating that change within a heritage asset's setting need not be harmful; the implementation of development proposals within a heritage asset's setting can be positive, negative or neutral. The HE guidance presents an approach to setting and development management based on a five-step procedure. The key issue is whether and to what extent, the proposal would affect the contribution that setting makes to the significance of the heritage asset in question. In the following analysis I give considerable weight and importance to the desirability of preserving the settings of Listed Buildings.

Mullions, Tyrells and The Cottage

46. These three Grade II Listed Buildings are closely associated with each other and are all late medieval or early post medieval houses and should be considered as a group in terms of the contribution which setting makes to their significance. They also share this group value with those other listed buildings within this same historic core area. Such associations provide positive contributions to the significance of these buildings by providing context in which to appreciate the layout and hierarchy of the earlier settlement. In particular, Tyrells and The Cottage derive significance from their historic and functional associations, as two parts of the same original late medieval dwelling.
47. Insofar as the setting of these three listed buildings contributes to their significance, it does so in terms of (i) their associative relationships within the group, as well as with other surrounding aspects of the historic built environment defining the street scenes around and south of the triangle; (ii) in respect of historic, functional and aesthetic relationships with the positions and alignments of both Green Road and Mill Lane; and (iii) in respect of their historic and functional inter-relationships with spaces forming their garden enclosures.
48. In terms of Mullions, Tyrells and The Cottage, the Council alleges that their settings would experience change as a result of the off-site highway works and increased vehicular traffic. In terms of the off-site highway works, as

⁸ The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3 (Second Edition) Historic England 2017

previously stated, these can be broadly divided into the following elements: (i) revision of road markings; (ii) footpath widening; (iii) new road signage and (iv) a kerbed build-out with bollards, adjacent to Model Cottage.

49. The proposals would effect physical change to only a short stretch of Green Road, which is already experienced as a modern tarmac road with white markings and street furniture. Although these three listed buildings are identified as deriving some significance from their association with this road, in terms of historic and functional associations, this is in no way dependent on its current appearance.
50. The three listed buildings would be broadly opposite where the kerbed build-out and bollards would be located. However, such a change would not reduce the ability to appreciate these buildings from Green Road or alter their evidential, historic or functional relationships with it. Moreover, the footpath widening adjacent to Mullions, would also be a noticeable change, particularly if the quality of finish was improved from tarmac to a more sympathetic surfacing, but in the context of the tarmac path already present, it would be inconsequential to the significance of the listed building. There is no substance to the allegation that the highway works would have an impact on the structural integrity of Mullions. The other changes, comprising new road signage and revised road markings, in the context of the existing setting would be such a marginal peripheral change as to be all but unnoticeable.
51. It is noteworthy that Dr Duck, the Council's Heritage Officer, did not raise the possibility of harm accruing to the listed buildings within the Conservation Area - including any of these three listed buildings as a result of the implementation of the off-site highway works. Given the very limited change and the existing context of these listed buildings I consider that the off-site highway works would preserve the setting of these listed buildings and would not harm their significance.
52. The appeal proposals would result in a very modest increase in traffic on average in the peak morning and evening hours. This increase would evidently be so marginal as to be barely perceptible and would not result in an apparent change to the experience of these listed buildings. As such, the traffic generation, such as it is would also not harm the significance of any of these listed buildings.

Priory Cottage

53. The Grade II listed Priory Cottage is the most southerly property in Woolpit and forms the southern gateway to the village. It comprises a cottage dating from the early 17th century, with 19th century additions. It is assessed as drawing its significance mostly from its architectural and historic interest, as evidenced in its built form. There is also some limited artistic and archaeological interest, which is derived from the few architectural embellishments and limited phasing which it possesses and exhibits. The building is set within private and well-tended gardens that provide an attractive space in which to appreciate its significance.
54. The property is adjacent to Green Road and the regular traffic along this roadway is also a notable feature within its setting. The roadway possesses historic and functional links with Priory Cottage and it forms the predominant means whereby the structure is appreciated. As the Cottage is located on the

edge of the village, there is some limited relationship with the street frontage immediately to the north, which represents pre-20th century dwellings. To the south and west, the wider setting of the building comprises open agricultural land, as it is also on the east side of Green Road (i.e. the appeal site).

55. The appeal site is assessed as falling within the setting of Priory Cottage, given that it is possible to experience the Grade II listed building from the farmland it comprises through a gap at the north end of the otherwise bushy and robust hedgerow. This hedgerow largely encloses the east side of Green Road and contains and curtails eastward views outwards from the listed building to the confines of this north-south thoroughfare of Green Road, thus separating the asset from the appeal site.
56. Therefore, whilst the appeal site does fall within the asset's setting, it makes only a very limited contribution to the significance of this building because of the screening effect of the boundary hedgerow and the concentration of the asset's relationships on (i) its garden enclosure (ii) the Green Road frontage north and south and (iii) the agricultural farmland that adjoins it to the west and south. All of these relationships are focussed to the west of the road.
57. The appeal proposals envisage two dwellings (Plots 15 and 16) in the north west corner of the development site served by a private drive that would run parallel to Green Road. A new footpath link with Green Road would run between Green Road and the private drive and thread through a gap in the roadside hedge opposite Priory Cottage. The hedgerow would be retained albeit on a slightly set back alignment.
58. Therefore, the change to the setting of Priory Cottage would only be noticeable as a change from partial views of an agricultural field to partial views of modern properties in the north west corner of the site. This would cause some erosion to the rural context of the area albeit limited by the partial retention of the hedgerow and the setback of the new properties from the Green Road frontage. Otherwise it would not affect the rural setting to the west and south, the relationships with its well-tended private gardens, Green Road or those properties in close proximity to it.
59. I consider that this limited change would result in a very low level of harm to the significance of this listed building at the lowest end of '*less than substantial harm*'. This conclusion is broadly in agreement with Dr Duck's original consultation response on the planning application where he states that the '*overall impact on the setting of Priory Cottage is notably less than substantially harmful*'.⁹ No further mitigation is suggested.
60. In line with statute, policy, and case law¹⁰, considerable weight and importance must be given to the presumption against granting permission for development that would harm the character or appearance of a conservation area or the setting of a listed building. If less than substantial harm is found of whatever magnitude, the decision maker needs to give considerable weight to the desirability of preserving the setting of the asset. In this case I have found a lack of identifiable harm to the Woolpit Conservation Area and the proposals would, as a minimum 'preserve' its character and appearance. However, the overall impact of the proposal needs to take into account the

⁹ Mr Crutchley's Appendix AC5

¹⁰ East Northamptonshire DC v SSCLG [2014] 1 P & R 22 at paragraph 29

less than substantial harm to Priory Cottage and this harm should be weighed against the public benefits of the proposals.

61. The public benefits of the appeal proposals comprise:

- An increase in the provision of housing numbers at a time of pressing need (see my conclusion on the following main issue)
- An increase in choice and type of homes
- 35% affordable housing provision
- Employment opportunities during the construction phase
- Residents would be likely to use the local shops and services within Woolpit making a positive contribution to their vitality and viability
- Provision of 0.5 ha of community open space with green infrastructure features – delivering high quality green spaces available to all
- Footpath improvements to the village centre and the wider countryside
- Highway works in the village centre would deliver benefits to the Listed Buildings and the Conservation Area.

62. In accordance with the test set out in paragraph 196 of the NPPF 2018, I find that the clear public benefits of the proposal would outweigh the less than substantial harm to the significance of a designated heritage asset.

Third Issue - Housing Land Supply (HLS)

63. It is common ground that the Council's strategic policy for housing numbers is more than five years old and has not been reviewed. Accordingly, paragraph 73 of the NPPF 2018 indicates that the Council's housing land supply is to be assessed against the standard method for calculating local housing need. The Council's local housing need is 585 dwellings per annum (dpa) and a 20% buffer is to be applied. This amounts to 3,510 dwellings for the next five years, or 702 dpa. The difference between the parties is solely down to supply.

64. No under supply/previous under delivery is taken into account when using the standard method. Therefore, no 'backlog' of unmet need should be taken into account when calculating the Council's housing land supply position.

65. The NPPF 2018 provides specific guidance in relation to the calculation of the five years supply but specifically with regard to qualifying sites, the Glossary definition of 'Deliverable' in Annex 2 goes further than its predecessor. Small sites and those with detailed permission should be considered deliverable until permission expires unless there is clear evidence that they will not be delivered. Sites with outline permission, or those sites that have been allocated, should only be considered deliverable where there is clear evidence that housing completions will begin on sites within five years. The onus is on the LPA to provide that clear evidence for outline planning permissions and allocated sites.

66. The Council relies upon the same sites in its supply as were contained in its

Annual Monitoring Report (AMR) dated 11 July 2018. The only new site referred to at the Inquiry was that known as Land on the West of Barton Road, Thurston which was missed out of the AMR in error and for which planning permission was granted on 5 July 2018. The Council has carried out a sense check of the supply against the terms of the NPPF 2018 and referred to events that have occurred after the base date of the AMR.

67. In my view the definition of 'deliverable' in the Glossary to the NPPF 2018 does not relate to or include sites that were not the subject of an allocation but had a resolution to grant within the period assessed within the AMR. The relevant period is 1 April 2017 to 31 March 2018.¹¹ There is therefore a clear cut-off date within the AMR, which is 31 March 2018. The Council's supply of deliverable sites should only include sites that fall within the definition of deliverable at the end of the period of assessment i.e. 31 March 2018. Sites that have received planning permission after the cut-off date but prior to the publication of the AMR have therefore been erroneously included within the Council's supply. The inclusion of sites beyond the cut-off date skews the data by overinflating the supply without a corresponding adjustment of need. Indeed that is why there is a clear cut-off date set out in the AMR. Moreover, the site West of Barton Road, Thurston, should be removed from the supply as its permission postdates the cut-off for the relevant period of assessment.
68. Sites with outline planning permission make up a very large proportion of the Council's claimed supply. The onus is on the Council to provide the clear evidence that each of these sites would start to provide housing completions within 5 years. I accept that there was clear evidence of what was necessary on one site provided in Mr Robert's evidence¹² and so the 200 dwellings in respect of that site should be added to the Appellant's supply calculations. As for the other 1,244 dwellings with outline permission, the Council has not even come close to discharging the burden to provide the clear evidence that is needed for it to be able to rely upon those sites.
69. The up-dated PPG on Housing and economic land availability assessment sets out guidance on what constitutes 'deliverable sites' and covers the evidence that a site with outline planning permission is expected to have in support of its inclusion in the supply. The PPG places great weight on the adequacy and sufficiency of consultation with those responsible for delivering dwellings. It is noteworthy that in this case, the Council has failed to adequately demonstrate it has done so. An assessment of the Council's AMR against the updated PPG reveals that the AMR falls substantially short of producing the evidence that a LPA is expected to produce.¹³
70. Furthermore, the Council has had to provide additional information to demonstrate that sites are deliverable as and when it has surfaced throughout the weeks and months following the publication of the AMR in an attempt at retrospective justification. It is wholly inadequate to have a land supply based upon assertion and then seek to justify the guesswork after the AMR has been published. The site at Union Road, Onehouse is one amongst others, which was only an allocation at the time the AMR was published. Although planning permission was granted 17 August 2018¹⁴ it does not alter

¹¹ Paragraph 1.1 of the Annual Monitoring Report

¹² Mr Robert's POE A4 Build out rates for Chilton Leys

¹³ See paragraphs 36 (ID:3-036-20180913); 047 (ID:3-047-20180913) and 048 (ID3-048-20180913)

¹⁴ LPA4

the fact that the site was only subject to an allocation at the cut-off date but the Council did not have any clear evidence that it would provide housing within 5 years.

71. Paragraph 73 of the NPPF 2018 requires the Council's housing supply to be made up of 'specific sites'. The Council was presented with three opportunities to demonstrate that the figure of 858 dwellings recorded in its trajectory table for small sites is robust. Firstly, on production of the AMR. Secondly, the Appellant asked for a list of sites on 30 July 2018 and was supplied with a list of 561 planning permissions, which the Council said made up its 858 dwellings. In this list there was insufficient evidence to either accept or challenge this figure, although a number of defects quickly became apparent to the Appellant. The Council was asked to provide more information but failed to do so. Finally, the Council indicated that it was going to submit a final rebuttal proof of evidence on HLS but it did not do so.
72. The Council argues that the St Modwen case¹⁵ continues to provide sensible guidance on the context, as applied to NPPF 2018 and claims that it can demonstrate a 5 year HLS of 5.39 years. However, I cannot accept that the 858 is a robust figure. I agree that it would be a time consuming exercise for the Appellant to review 561 planning permissions. This is an exercise which the Council should have done before it produced its AMR. The Appellant has completed a partial review and from the evidence that is before me it appears that there are at least 108 defective planning permissions within the list of 561 permissions¹⁶ but does not know by what number one should discount the figure of 858. As the NPPF 2018 carries a presumption that small sites are deliverable until there is clear evidence that they will not be delivered, the 858 has been left in the Appellant's HLS calculation but I consider it is likely to be an overestimate.
73. Drawing all of these threads together I consider that the Appellant's assessment of supply, set out in Mr Short's rebuttal proof of evidence, is the more realistic taking into account the St Modwen judgment. The only change is that the site West of Barton Road, Thurston should now be removed from the supply. This leaves the Council's HLS at 3.4 years. If the small sites problem is taken into account, it is highly likely that the Council's HLS is less than 3.4 years. I conclude on the third issue, therefore that the Council cannot demonstrate a five year supply of deliverable housing sites.

Other Matters

74. I have taken into account all other matters raised including the representations from the Woolpit Parish Council, the Suffolk Preservation Society, the landscape assessment of Woolpit by Alison Farmer Associates and other interested persons. I have also taken into account the various appeal decisions submitted by the main parties. The proposed development has generated a significant amount of public interest and many of the representations which have been submitted relate to the impact on the local highway network or the heritage impact which I have dealt with under the main issues.

¹⁵ St Modwen Developments Ltd v SSCLG et al [2017] EWCA Civ 1643 paragraph 35

¹⁶ APP6

75. The issue of landscape impact was raised in the representations. However, the Appellant has provided a comprehensive Landscape & Visual Impact Appraisal (LVIA) and the Council takes no issue with this. It is proposed to reinstate the former field boundary to the southern part of the site which would include a mixture of trees and hedging and a landscaped Greenway directly to the north of it which would form part of the pedestrian links throughout the site. The existing trees and hedging along the northern boundary and eastern boundaries of the site would be retained with some new planting proposed along the most southern part of the eastern boundary. Within the site itself, trees and hedging are proposed between dwellings and the public spaces to provide an attractive soft environment.
76. The appeal site would result in the loss of an agricultural field to development and whilst this would have some direct landscape impact, it would not be significantly adverse given its suburban backdrop. The proposed landscape framework would screen and filter views of buildings from the surrounding countryside. The visual impact of the development would be successfully mitigated into the rural edge of Woolpit and would provide an attractive environment for both new residents and those living in the surrounding locality. I therefore find no harm in this regard.
77. Reference is made to alternative housing sites identified in the emerging Joint Local Plan which are located to the north of the village centre. However, as I noted at the start, the emerging Joint Local Plan is in its very early stages and any conflict with this plan carries limited weight at this time and in the context of this appeal.
78. Concerns have been raised in relation to drainage, archaeology and ecological matters. However, it is noteworthy that the Council has not raised any objections in relation to these matters. In my view the concerns which have been raised can be adequately dealt with through the use of planning conditions in accordance with the advice in paragraph 54 of the NPPF 2018.

Planning Obligation

79. The S106 Unilateral Planning Obligation includes the provision of 17 affordable units on site which broadly equates to the Council's requirements for 35% provision. In this respect the Obligation is in line with both paragraph 62 of the NPPF 2018, which requires on-site delivery of affordable homes and Altered Policy H4 of the MSDLP.
80. With regard to open space covenants within the Obligation, the appeal scheme provides open space and a 360m² play area with play equipment within the site which meets the Council's policy requirements, notably Policy RT4 of the MSDLP.
81. With regard to covenants with SCC, the Obligation includes contributions in relation to primary school and Early Years provision and Public Rights of Way Improvements. A SoCG on Early Years and Education Matters has been agreed between the Appellant and SCC. There is also a Community Infrastructure Levy (CIL) Compliance Statement submitted by SCC.¹⁷

¹⁷INQ5

82. The Obligation includes the following matters in respect of SCC functions:

- Primary School Construction contribution – £180,719 (equates to £3,688.14 per dwelling). This is necessary if there are no surplus places available at the time of commencement, and if expansion of the existing primary school is confirmed, this Obligation would cease or be returned.
- Primary School Land contribution - £12,936 (equates to £264 per dwelling)– as above; and
- Contribution towards the build costs of a new Early Years setting - £33,332 (equates to £680.24 per dwelling).

83. The proposed development is estimated to generate up to four pre-school children. The proposed development should make a proportionate contribution towards the build cost of the new Early Years setting which in total would cost £500,000 and provide 60 places. The proposed development would generate 11 primary aged pupils but the Woolpit Primary Academy does not have enough places to accommodate all of the development being proposed in Woolpit. Due to the layout of the current school site it is not possible to add further permanent accommodation unless additional land is acquired.

84. Therefore the SCC strategy for primary school provision is to deliver a new 420 place primary school for Woolpit to ensure that there is adequate provision to support housing growth and basic need. The proposed development should make a proportionate contribution to the land and build costs of the new primary school in respect of the 11 pupils generated by it.

85. There are currently forecast to be surplus places available at the current secondary schools serving the proposed development, so no secondary or sixth form contributions would be required from the proposed development.

86. Paragraph 98 of the NPPF 2018 promotes the need to protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users for example by adding links to existing rights of way networks. The anticipated increased use of the PROW network from the development would result in the need for offsite improvement work involving heavy clearance on Woolpit Public Footpath 4. The total financial contribution required is £915. The requirement for the footpath improvement arises directly from the increased population which would be generated by the development in the local area and it would also meet Council policies.

87. The Council has confirmed that none of the obligations would conflict with Regulation 123 requiring that no more than five contributions are pooled towards any one specific infrastructure scheme.

88. In my view, all of the provisions set out in the Section 106 Planning Obligation are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. Therefore they all meet the tests with CIL Regulations 122 and 123 and should be taken into account in the decision.

Planning Balance

89. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with

the development plan, unless material planning considerations indicate otherwise. Whilst the RfR cites only a limited number of policies which are said to be breached I deal with all policies that have a bearing on the proposals and in line with the new approach of the NPPF 2018¹⁸ identify those which are most important for determining the appeal and whether they should be considered to be out-of-date.

90. The CS was adopted in 2008 and the MSDLP in 1998. Both plans predate the publication of the NPPF 2012 and the more recent NPPF 2018. The CSFR has had little impact on the saved or CS policies that remain in place and Policy FC1 really only and unnecessarily repeats what was in paragraph 14 of the NPPF 2012. It is now out-of-date because of the test it employs. Policy FC1.1 is policy of a very broad nature with one requirement that development must conserve and enhance the local character of the different parts of the district. It is up-to-date but is not otherwise of significance. The appeal proposal complies with these policies.
91. Policy CS1 of the CS merely sets out the settlement hierarchy. However, it includes the words *"the rest of Mid-Suffolk, including settlements not listed in the above (hierarchy) will be designated as countryside ... renewable energy"*. By virtue of this latter requirement it offends paragraphs 77 and 78 of NPPF 2018. It perpetuates the theme of protection of the open countryside for its own sake and its limitations are inimical to the balanced approach which the NPPF 2018 exhorts. It is one of the most important policies and it is out-of-date. The appeal proposal complies with the hierarchical requirements of Policy CS1 but it conflicts with the latter part of this policy as the site is located outside the settlement boundary.
92. As the proposed development is in open countryside, it also offends the requirements of Policy CS2. Policy CS2 is a most important policy and it is out-of-date. The NPPF has never and still does not exhort a restrictive approach to development outside settlements in this manner. It does not protect the countryside for its own sake or prescribe the types of development that might be acceptable. The policy as worded obviates a balancing exercise and precludes otherwise sustainable development by default and thereby defeats the presumption in its favour. It is also contrary to paragraphs 77 and 78 of NPPF 2018.
93. Policy CS5 provides that all development will maintain and enhance the environment including the historic environment, and retain local distinctiveness. It requires development actually to maintain and enhance the historic environment which exceeds the statutory duty (LBA 1990) and goes further than paragraph 192 of NPPF 2018 which requires decision makers to *"take account of the desirability of sustaining and enhancing the significance of heritage assets"* (my underlining). This is a most important policy and it is out-of-date. It does not make enhancement a requirement where no such requirement is reasonably possible or appropriate to the nature of the proposed development. The policy also fails to acknowledge the balancing exercise which the NPPF 2018 requires to be undertaken in circumstances where the harm is less than substantial.
94. Moreover, I have found that the appeal proposal would accord with national policy advice in the NPPF 2018, notably paragraph 192, and there would be no

¹⁸ Paragraph 11

conflict with Policy CS5. The proposed development constitutes a high quality design as it proposes a form of development that reflects the character and appearance of the surrounding streetscape. The DAS provides details on materials and finishes. The materials selected for the new dwellings reflect the colours and shades of the Suffolk vernacular buildings of Woolpit in their simple forms and thus retain local distinctiveness in accordance with Policy CS5 and the NPPF 2018 in Section 12. Nor would there be any conflict with Policy CS5 in relation to the off-site highway improvements works in the Conservation Area.

95. Policy GP1 is a most important policy and it is up-to-date. The proposal complies with its requirements. Policy HB8 is also a most important policy and it is up-to-date despite the fact that it predates its CS equivalent. As I disagree with the Council's case on the impact of the proposal on the character and appearance of the Conservation Area, the proposal complies with its requirements. Policy FC2 is the Council's strategic housing policy within the development plan. However, in the light of paragraph 73 of the NPPF 2018, this policy is out-of-date, which is accepted by Mr Roberts.¹⁹
96. Drawing all of these threads together I find that being outside the settlement boundary and within the countryside, the appeal proposal is not in accordance with the development plan taken as a whole.
97. However, in the context of paragraph 213 of the NPPF 2018, I have found that some of the most important policies for determining this appeal are out-of-date, notably Policy CS1 and Policy CS2. I have attached only moderate weight to the conflict with these policies which lessens the significance of that conflict.
98. At paragraph 62 of this decision, I found that the clear public benefits of the proposal would outweigh the less than substantial harm to the significance of a designated heritage asset.
99. The tilted balance in paragraph 11 of the NPPF 2018 is engaged because firstly, policies that are most important for the determination of this appeal are out-of-date and secondly, the Council cannot demonstrate a five year supply of deliverable housing sites.
100. Balanced against the identified conflict with the development plan I give substantial weight to the provision of 32 market dwellings and 17 affordable dwellings on a site which is visually and functionally well related to the existing village. Paragraph 59 of the NPPF 2018 states that to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. This comprises a substantial social benefit.
101. I have attached moderate weight in terms of the economic benefits that would arise from the provision of employment opportunities during the construction phase and the spending power from 49 new households within the local area.
102. Furthermore I am satisfied that the proposed development would fulfil the aims of the NPPF 2018 by promoting a high quality design of new homes and

¹⁹ Proof of evidence paragraph 2.3

places. I find that the provision of on-site community open space with green infrastructure features, the footpath improvements to the village centre and the wider countryside and the highway works in the village centre would all provide environmental benefits. I apportion moderate weight in terms of the environment.

103. Taking all of these matters into account, including all other material considerations, I find that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the NPPF 2018 as a whole and that the proposal represents sustainable development. On this basis a decision, other than in accordance with the development plan is justified and therefore the appeal should be allowed.

Planning Conditions

104. I have considered the conditions suggested by the Council²⁰ in the light of the advice in paragraphs 54 and 55 of the NPPF, the model conditions retained at Appendix A of the cancelled Circular 11/95 and the Government's PPG on the use of planning conditions. I have made minor adjustments to the suggested conditions in the interests of clarity. Condition 1 imposes a shorter timescale than the normal three years but this is justified given the pressing housing need and the advice in paragraph 76 of the NPPF 2018. Condition 2 is necessary for the avoidance of doubt. Condition 3 is required to safeguard heritage assets of archaeological interest. Condition 4 which relates to Construction Management is necessary to ensure minimal impact on the public highway and residential amenity but I have deleted the element relating to haul routes as this relates to land outside the site and thus cannot be controlled by condition. Conditions 5-7 are necessary in the interests of ecology, safeguarding habitats/species and visual amenity. Conditions 8 -10 are required to ensure the development does not cause increased flood risk or increased pollution to the water environment.
105. Conditions 11-23 are necessary in the interests of highway safety, traffic management, safe and suitable facilities for pedestrian and cycle movement and to comply with paragraph 110 of the NPPF. Condition 24 is required in the interests of safeguarding ecology, biodiversity and amenity within the site. Condition 25 is required to ensure the site is suitably served by fire hydrants in the interests of public safety and fire prevention. Condition 26 is necessary to ensure that the development is equipped with access to high-quality telecommunications in accordance with paragraph 112 of the NPPF.
106. Condition 27 is required to ensure that recycling bins are not stored on the highway in the interests of highway safety. Condition 28 which relates to screen walls and/or fences is required in the interests of residential amenity. Condition 29 is required to ensure the appropriate recording and analysis of archaeological assets. Condition 30 is required to ensure the provision and long-term maintenance of adequate on-site space for the parking and manoeuvring of vehicles. Condition 31 relates to a Residents Travel Pack to reflect the national policy aim of achieving the fullest possible use of public transport, walking and cycling.

²⁰ INQ4

Conclusion

107. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. The appeal is therefore allowed subject to the conditions set out in the attached Schedule.

Harold Stephens

INSPECTOR

SCHEDULE OF PLANNING CONDITIONS (1-31)

TIME LIMIT FOR IMPLEMENTATION

- 1) The development hereby permitted shall be begun not later than the expiration of two years from the date of this permission.

LIST OF APPROVED DRAWINGS

- 2) The development hereby permitted shall be carried out in accordance with the following drawings:

5018 PA01 House Type 1
5018 PA02 House Type 1
5018 PA03 Single Garage
5018 PA04 House Type 2
5018 PA05 House Type 2
5018 PA06 House Type 3
5018 PA07 House Type 3
5018 PA08 House Type 3
5018 PA09 Rev. A House Type 3
5018 PA10 Rev. A House Type 4
5018 PA11 House Type 4
5018 PA12 Rev. A House Type 4
5018 PA13 House Type 5
5018 PA14 House Type 5
5018 PA15 House Type
5018 PA16 House Type 6
5018 PA17 House Type 6
5018 PA18 Rev. A Cart Lodge
5018 PA19 House Type 7
5018 PA20 House Type 7
5018 PA21 House Type 7
5018 PA22 Rev. A House Type 8
5018 PA23 House Type 8
5018 PA24 House Type 8
5018 PA28 House Type 9
5018 PA29 House Type 9
5018 PA31 Rev H Site/block roof plan
5018 PA32 Rev C Street Elevations
5018 PA33 Site Location Plan
5018 PA34 rev A Typical Elevations
5018 PA35 rev B Street Elevations
5018 PA36 ASHP SIZES

PRE - COMMENCEMENT CONDITIONS

Archaeology

- 3) No development shall take place within the site until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation which has previously been submitted to and approved in writing by the Local Planning Authority.

The scheme of investigation shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording.
- b. The programme for post investigation assessment.
- c. Provision to be made for analysis of the site investigation and recording.
- d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- e. Provision to be made for archive deposition of the analysis and records of the site investigation.
- f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- g. The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.

Construction Management

- 4) Prior to the commencement of development details of a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority and shall incorporate the following information:
 - a. Details of the hours of work/construction of the development within which such operations shall take place and the hours within which delivery/collection of materials for the said construction shall take place at the site.
 - b. Details of the storage of construction materials on site, including details of their siting and maximum storage height.
 - c. Details of how construction and worker traffic and parking shall be managed.
 - d. Details of any protection measures for footpaths surrounding the site.
 - e. Details of any means of access to the site during construction.
 - f. Details of the scheduled timing/phasing of development for the overall construction period.
 - g. Details of any wheel washing to be undertaken, management and location it is intended to take place.
 - h. Details of the siting of any on site compounds and portalooos.
 - i. Monitoring and review mechanisms.

The construction shall at all times be undertaken in accordance with the agreed methodology approved in writing by the Local Planning Authority.

Landscaping and Biodiversity

- 5) All ecological mitigation measures and/or works shall be carried out in accordance with the details contained in the Ecological report (MHE Consulting August 2015) as already submitted with the planning application and agreed with the Local Planning Authority prior to determination.
- 6) No development shall commence until a detailed 'hard' and 'soft' Landscaping Scheme, which shall include any proposed changes in ground levels, has been submitted to, and approved in writing by, the Local Planning Authority.

The 'hard' landscaping shall include details of all hard surface materials and boundary treatments to be used within the development with a timetable for implementation, including all means of enclosure and boundary treatments, residential screen walls and fences.

The 'hard' landscaping shall be implemented and completed in accordance with the approved details and agreed timetable.

The 'soft' landscaping shall include details of the existing trees and plants on site to be retained together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication 'BS 5837:2012 Trees in relation to design, demolition and construction'.

The 'soft' landscaping shall include details (including species, size of stock at time of planting, location) of all new plants and trees to be provided as well as any areas for seeding. The new landscaping should comprise of native species only as defined in Schedules 2 and 3 of the Hedgerow Regulations 1997.

The 'soft' landscaping shall be implemented in accordance with the approved details within the first planting season (October - March inclusive) following the commencement of development.

Any trees, hedges, shrubs or turf identified within the approved Landscaping Scheme (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and species.

The approved Landscaping Scheme shall be carried out in its entirety and shall accord with the approved drawings under this permission.

- 7) Prior to the commencement of development on the site a skylark mitigation strategy, including a timetable for implementation, shall be submitted to, and agreed in writing by, the Local Planning Authority. The agreed strategy shall be implemented in full to mitigate the loss of potential nesting habitat.

Site Drainage

- 8) No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved.
- 9) No development shall take place until a surface water drainage scheme for the site, including a timetable for implementation, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate that the surface water run-off generated up to and including the 100 year + Climate Change storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be

implemented in accordance with the approved details and timetable before the development is completed. Details of which will include:

- a. Details of further infiltration testing on site in accordance with BRE Digest 365 to verify the permeability of the site (trial pits to be located where soakaways are proposed and repeated runs for each trial hole). Borehole records should also be submitted in support of soakage testing.
 - b. Infiltration devices should be no more than 2m deep and will have at least 1.2m of unsaturated ground between base of the device and the groundwater table.
 - c. Dimensioned plans illustrating all aspects of the surface water drainage scheme including location and size of infiltration devices and the conveyance network. A statement on the amount of impermeable area served by each infiltration device should also be illustrated on the plans and should be cross referenceable with associated design calculations.
 - d. Full modelling results (or similar method) to demonstrate that the infiltration device has been adequately sized to contain the critical 100yr+ Climate Change event for the catchment area they serve. Each device should be designed using the nearest tested infiltration rate to which they are located. A suitable factor of safety should be applied to the infiltration rate during design.
 - e. Infiltration devices will have a half drain time of less than 24 hours.
 - f. Modelling of conveyance networks showing no above ground flooding in 1 in 30 year event, plus any potential volumes of above ground flooding during the 1 in 100 year rainfall + Climate Change.
 - g. Infiltration devices shall only be used where they do not pose a threat to groundwater. Only clean water will be disposed of by infiltration devices due to the site being inside a Source Protection Zone. Demonstration of adequate treatment stages for water quality control shall be submitted - SuDS features should demonstrate betterment to water quality, especially if discharging towards a watercourse or aquifer.
 - h. Topographic plans shall be submitted depicting safe exceedance flow paths in case of a blockage within the main surface water system and/or flows in excess of a 1 in 100 year rainfall event. These flow paths will demonstrate that the risks to people and property are kept to a minimum.
 - i. A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.
 - j. Arrangements to enable any surface water drainage within any private properties to be accessible and maintained including information and advice on responsibilities to be supplied to future owners.
- 10) No development shall commence until details of a Construction Surface Water Management Plan (CSWMP) detailing how surface water and storm water will be managed on the site during construction (including demolition and site clearance operations) is submitted to and agreed in writing by the Local Planning Authority. The CSWMP shall be implemented and thereafter managed and maintained in accordance with the approved plan for the duration of construction. The approved CSWMP shall include:
- a. Method statements, scaled and dimensioned plans and drawings detailing surface water management proposals to include:

- i. Temporary drainage systems.
- ii. Measures for managing pollution / water quality and protecting controlled waters and watercourses.
- iii. Measures for managing any on or offsite flood risk associated with construction.

Highways

- 11) No development shall commence until details of the estate roads and footpaths (including layouts, levels, gradients surfacing and means of surface water drainage, lighting and traffic calming measures), have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and completed in accordance with the approved details and agreed timetable.
- 12) No development shall commence until a detailed scheme for highway improvements to Green Road, comprising traffic calming measures and footway widening provision which shall be in general accordance with those details as shown on Drawing no. 112/2015/04 Revision P2, has been submitted to and agreed in writing by the Local Planning Authority in consultation with the Local Highway Authority.
- 13) No development shall commence until details have been submitted to and approved in writing by the Local Planning Authority, of the means to prevent the discharge of surface water from the development onto the highway. The development shall be carried out and completed in accordance with the approved details and agreed timetable.

PRIOR TO OCCUPATION OR OTHER STAGE CONDITIONS

Highways

- 14) No part of the development shall be commenced above slab level until the new vehicular access onto Green Road has been laid out and completed in all respects in accordance with Drawing No. 5018 PA31 Rev H Site/block roof plan and with an entrance width of 5.5 metres and been made available for use. Thereafter the access shall be retained in the specified form.
- 15) Prior to the access from Green Road into the site being constructed, the ditch beneath the proposed access shall be piped or bridged in accordance with details which previously shall have been submitted to and approved in writing by the Local Planning Authority and shall be retained thereafter in its approved form.
- 16) The new estate road junction with Green Road, inclusive of cleared land within the sight splays to this junction, must be formed prior to any other works commencing or delivery of any other materials.
- 17) No development shall commence above slab level until a scheme for the provision and implementation electric car charging points for the development has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include a clear timetable for the implementation of the measures in relation to the occupancy of the development. The scheme

shall be implemented, and the measures provided and made available for use, in accordance with such timetable as may be agreed.

- 18) Details of the gateway feature identified on drawing 5018 PA31 Rev H to be located to the southwest corner of the site shall be submitted to and agreed with the Local Planning Authority and shall be completed prior to occupation of the first dwelling and thereafter retained in the approved form.
- 19) Before the access onto Green Road is first used, visibility splays shall be provided as shown on Drawing No. 5018/PA31 Revision H, as submitted, and thereafter retained in the specified form. Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays at any time.
- 20) No dwelling shall be occupied until the carriageways and footways serving that dwelling have been constructed to at least binder course level or better.
- 21) No dwelling shall be occupied until the area(s) within the site, shown on approved drawing 5018 PA31 Rev H for the purposes of loading/unloading, manoeuvring and parking of vehicles, including electric charging points and secure cycle storage, serving that dwelling has been provided and thereafter that area(s) shall be retained and used for no other purpose. Thereafter those areas applicable to that dwelling shall be retained and remain free of obstruction except for the purpose of manoeuvring and parking of vehicles.
- 22) A metalled footway/cycleway, as shown on Drawing 5018 PA31 Rev H of a minimum 2.0 metres width, shall be provided from the site into Steeles Close, northwards to connect with the existing access in Steeles Close. The metalled footway shall be provided and made available for use prior to the first occupation of any dwellings in the development.
- 23) No dwelling shall be occupied until the highway improvements secured under Condition 12 above have been constructed in strict accordance with the approved details and made available for public use and thereafter retained post construction in the approved form.

Site Infrastructure/Other

- 24) Within three months of the commencement of development a detailed lighting scheme for all public areas to be lit shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall show how and where external lighting will be installed, (through technical specifications and the provision of appropriate lighting contour plans which shall include lux levels of the lighting to be provided), so that it can be:
 - a. Clearly demonstrated that areas to be lit have reasonably minimised light pollution, through the use of minimum levels of lighting and features such as full cut off cowls or LED.
 - b. Clearly demonstrated that the boundary vegetation to be retained, as well as that to be planted, will not be lit in such a way as to disturb or

prevent bats using their territory or having access to their breeding sites and resting places or foraging areas, through the use of minimum levels of lighting and features such as full cut off cowls or LED.

All external lighting shall be installed in accordance with the specifications and locations as set out in the approved scheme and shall be maintained thereafter in accordance with that scheme.

- 25) Within three months of the commencement of development details of the provision of fire hydrants for the development, including a timetable for installation, shall be submitted to and approved in writing by the Local Planning Authority. The fire hydrants shall be installed in accordance with the approved details in their entirety and in accordance with the agreed timetable.
- 26) Within three months of the commencement of development, details of how superfast or ultrafast broadband infrastructures will be delivered to every household in the development, subject to network capacity being available, shall be submitted to and approved in writing by the Local Planning Authority. The approved superfast broadband infrastructures for each dwelling shall be installed prior to first occupation of that dwelling.
- 27) Within three months of the commencement of development, details of the areas to be provided for the storage of refuse/recycling bins shall be submitted and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety prior to the first occupation of the dwelling to which it relates and shall be retained thereafter and used for no other purpose.
- 28) The residential screen walls and/or fences as may be approved pursuant to the Landscaping Scheme under Condition 6 above, shall be erected prior to the dwelling/s to which they relate being first occupied and thereafter shall be retained in the approved form.
- 29) No dwelling shall be occupied until the archaeological site investigation and post investigation assessment, secured under Condition 3 above, has been completed and submitted to, and approved in writing by, the Local Planning Authority.

POST OCCUPANCY MONITORING/MANAGEMENT

- 30) Notwithstanding the provisions of Schedule 2 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no development shall be carried out in such a position as to preclude vehicular access to those vehicular parking spaces and no alterations shall be carried out to the approved garage units that would preclude the parking of vehicles within them without planning permission being granted in that regard.
- 31) Within one month of the first occupation of any dwelling, the occupiers of each of the dwellings shall be provided with a Residents Travel Pack (RTP). Not less than three months prior to the first occupation of any dwelling, the contents of the RTP shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority and shall

include walking, cycling and bus maps, latest relevant bus and rail timetable information, car sharing information, personalised travel planning and a multimodal travel voucher. The RTP shall be maintained and operated thereafter.

End of Conditions Schedule

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Asitha Ranatunga of Counsel

Instructed by the Council

He called:

Luke Barber HND BSc FD C Eng.

Principal Engineer Suffolk CC

Nicholas Joubert MSc

Heritage Consultant

Andrew Ryley BA (Hons) MSc MRTPI

Associate Director DLP Planning Ltd

Alex Roberts BSc (Joint Hons) Associate RTPI

Director DLP Planning Ltd

FOR THE APPELLANT:

Mr Paul Shadarevian QC

He called:

Gerry Bullard C Eng. MICE

Partner GH Bullard & Associates LLP

Andrew Crutchley BA (Hons) PG Dip (Oxon) MCiFA

Director The Environmental Dimension Partnership Ltd

Leslie Short BA MRICS MRTPI

Director Artisan Planning and Property Services Ltd

INTERESTED PERSONS:

John Guyler

Chairman of Woolpit Parish Council

John Christie

Local Resident

Susan Eburne

Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

INQ1 Notification Letter

INQ2 Letters of Representation

INQ3 Statements of Common Ground

INQ4 Suggested Planning Conditions

INQ5 Suffolk County Council Community Infrastructure Levy Regulations (CIL)
Compliance Statement dated 27 March 2018

DOCUMENTS SUBMITTED BY THE LPA

LPA1 Opening Remarks

LPA2 Pytches Road, Woodbridge – Traffic Calming scheme with buildout

LPA3 Letter from Storey Homes dated 13 August 2018: Land at Gardenhouse Lane, Rickingham

LPA4 Mid Suffolk District Planning Permission: Reference 4455/16

LPA5 List of sites disputed by the Appellant

LPA6 Closing Submissions

DOCUMENTS SUBMITTED BY THE APPELLANT

APP1 List of Drawings

APP2 HCC Decision *CPRE v Dover DC* [2015] EWHC 3808 (Admin) [APP2]

APP3 Agenda Document for MSDC Development Control Committee A 29.8.2018

APP4 Appeal Decision APP/N1730/W/17/3185513

APP5 Hart District Local Plan 1996-2006 Saved Policy RUR2

APP6 MSDC Minor Sites Outstanding Planning Permissions (April 2018)

APP7 Agreement to enter in to an Easement conditional on Appeal dated 29 August 2018 between Flagship Housing Group Limited and Landex Limited

APP8 Certified Copy of Unilateral Undertaking dated 29 August 2018

APP9 Letter from Burgess Homes Limited re site at Back Hills, Botesdale

APP10 Closing Submissions

INTERESTED PERSONS' DOCUMENTS

IP1 Statement by John Guyler

IP2 Statement by John Christie

IP3 Statement by Susan Eburne



Appeal Decision

Inquiry Held on 9-12 October and 19 November 2018

Site visit made on 19 November 2018

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

an Inspector appointed by the Secretary of State for Housing Communities and Local Government

Decision date: 10th January 2019

Appeal Ref: APP/R3650/W/16/3165974

Longdene House, Hedgehog Lane, Haslemere GU27 2PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline and full planning permission.
 - The appeal is made by Monkhill Ltd against the decision of Waverley Borough Council.
 - The application Ref. WA/2016/1226, dated 6 May 2016, was refused by notice dated 20 September 2016.
 - The application is for "...redevelopment to provide up to 29 dwellings (net increase of 27 dwellings); demolition of 2 existing semi-detached dwellings, glasshouses and outbuildings; landscaping and highway works including alterations and extension to the existing access to Hedgehog Lane. Within this hybrid planning application: Outline planning permission (with Layout, Scale and Appearance reserved and Access and Landscaping for approval) is sought for the erection of up to 28 new dwellings (Class C3), including extension and alterations to existing access from Hedgehog Lane, demolition of 2 existing semi-detached dwellings, glasshouses and outbuildings; and associated landscaping; and Full planning permission is sought for the change of use and refurbishment of Longdene House from office (Class B1a) to residential (Class C3) to provide a new dwelling."
 - This decision supersedes that issued on 4 September 2017. That decision on the appeal was quashed by order of the High Court.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. All the appeal documentation from the quashed decision was submitted as part of the documentation for my Inquiry. I have taken into account the submissions and judgments about the relevance of the previous Inspector's decision. The appellant's view is that it should be the starting point for the assessment of any supplementary evidence. However, there is case law that the quashed decision should be treated as if it has not been made and is incapable of ever having had any legal effect. I have, therefore, considered the matter afresh and determined the appeal on its merits, having regard to the evidence submitted to my Inquiry. Nevertheless, where the unchallenged reasoned conclusions of the previous Inspector's decision are capable of being material considerations, by reason of the way the witnesses at my Inquiry were questioned about these matters, or otherwise, and I have come to a different view from the previous Inspector on those points, I have set out my reasoning for doing so.

3. The appeal site comprises Longdene House, a Victorian dwelling currently in use as offices, its gardens and adjoining fields. Access is via a private driveway off Hedgehog Lane, along a tree-lined avenue. The hybrid planning application concerns four areas of the appeal site. Area A lies to the north of the driveway. It is an open field, except for a small wooden storage building, and is currently used to graze horses. Outline planning permission is sought for 25 dwellings on Area A. Outline permission is also sought for the replacement of a pair of semi-detached cottages in Area B with two dwellings. Longdene House itself is Area C, where full planning permission is sought for a change of use from office to a single dwelling with a detached garage. Area D includes existing glasshouses and outline permission is sought for the erection of one dwelling. The submitted plans show the other fields within the appeal site as undeveloped.¹
4. The northern boundary of Area A adjoins a field which is proposed to be woodland planting as part of a scheme for 135 dwellings on Sturt Farm.² Beyond this field Footpath 35 runs between Hedgehog Lane and the A287. The majority of Area A and all parts of Areas B, C and D lie within the Surrey Hills Area of Outstanding Natural Beauty (AONB). The remaining part of Area A is designated as part of an Area of Great Landscape Value (AGLV). The town centre of Haslemere lies some 1.3 km from the site, and Haslemere railway station is about 800 m away.
5. Part of the appeal application is in outline, but with access and landscaping to be determined. In considering the outline application I have had regard to the other details shown on the submitted drawings as illustrative material not forming part of the application.
6. The application was refused by Waverley Borough Council (WBC) for five reasons, citing conflict with policies of the Waverley Borough Local Plan 2002 (WBLP). Some of these policies have since been replaced by policies in the Waverley Borough Local Plan Part 1: Strategic Policies and Sites, which was adopted in February 2018 (LPP1). Reason for refusal 2 concerning affordable housing has been addressed in a planning agreement. Concerns about flood risk (Reason 3) have been overcome by submission of an amended flood risk assessment. WBC has agreed that market housing mix (Reason 4) is a matter that could be addressed on the submission of reserved matters. Reason 5 concerned financial contributions, which are now covered by planning obligations. However, the first reason for refusal remains. This provides that the proposal, as a result of the urbanising impact and harm to the landscape character would cause material harm to the intrinsic character, beauty and openness of the Countryside beyond the Green Belt, the AONB and the AGLV.
7. Planning obligations would provide 10 affordable dwellings (6 rented and 4 shared ownership), financial contributions towards playing pitches, playground, sport and leisure, waste and recycling. A contribution would also be made towards early years and primary education. A unilateral undertaking sets out provisions concerning the trees along the access driveway. This provides that land containing the trees shall not be transferred with the demise of any dwelling within Area A, and shall at all times be managed by a person or body who is not or does not consist of an owner or occupier of a dwelling within Area

¹ A planning condition suggested at the Inquiry would preclude development outside Area A, Area B, Area C and Area D.

² ID22.

- A. It adds that the reserved matters application shall be accompanied by a scheme for the long term succession of the existing avenue of trees along this driveway. A contribution towards secondary education is disputed, but provision has been made in a deed of variation to provide a contribution in accordance with a formula, if necessary.³
8. In addition to the accompanied site visit on 19 November, I undertook unaccompanied visits on 12 October to draft allocation sites at Red Court (DS18), land south-east of Haslemere Water Treatment Works (DS11) and land adjacent to the Royal Oak (DS21). I also walked Footpath 35 between Hedgehog Lane and the A287, and visited the Branscombe House site. Closing submissions were in writing.⁴ The Inquiry was subsequently closed in writing on 27 December 2018.

Main issues

9. The main issues in this appeal are the effects of the proposed development on:
- (a) The character and appearance of the area and the AONB.
 - (b) Highway safety.
 - (c) Supply of housing land.

Planning policy

10. I am required to decide this appeal having regard to the development plan, and to make my determination in accordance with it, unless material considerations indicate otherwise. The development plan for the area includes LPP1 and saved policies of WBLP.
11. LPP1 Policy RE1 provides that in areas shown as Countryside beyond the Green Belt on the Adopted Policies Map, such as the appeal site, the intrinsic character and beauty of the countryside will be recognised and safeguarded in accordance with the NPPF.
12. LPP1 Policy RE3 states, amongst other things, that new development must respect and where appropriate, enhance the distinctive character of the landscape in which it is located. With regard to the AONB it adds that the protection and enhancement of the character and qualities of the AONB that is of national importance will be a priority and will include the application of national planning policies together with the Surrey Hills AONB Management Plan, and notes that the setting of the AONB will be protected where development outside its boundaries harm public views from or into the AONB. Part of the appeal site lies with a local landscape designation (AGLV), where the same principles for protecting the AONB will apply, and which will be retained for its own sake and as a buffer to the AONB.
13. LPP1 Policy SP1 applies the presumption in favour of sustainable development as it was expressed in the 2012 version of the NPPF. Policy ST1 concerns sustainable transport. Policy AHN1 deals with affordable housing. Policy TD1 ensures that the character and amenity of the Borough are protected by, amongst other things, requiring new development to be of a high quality and inclusive design that responds to the distinctive local character of the area, and ensuring that it creates safe and attractive environments that meet the needs

³ ID33.

⁴ ID38-ID40.2.

- of users and incorporate the principles of sustainable development. Policy HA1 concerns the protection of heritage assets. Policy NE1 seeks to conserve and enhance biodiversity.
14. LPP1 requires a minimum of 990 dwellings to be provided in Haslemere during the plan period. WBC is progressing Local Plan Part 2. A Regulation 18 Preferred Options consultation was undertaken in May and July 2018 (eLPP2). The appeal site was proposed as a housing allocation in the preferred Options Consultation version of eLPP2. Land to the north of the appeal site at Sturt Farm, with planning permission for 135 dwellings, was proposed in eLPP2 to be included with the revised settlement boundary for Haslemere. However, progress on eLPP2 has been deferred.⁵
 15. Paragraph 11 of the revised *National Planning Policy Framework* (hereinafter the *Framework*) sets out how decisions should apply a presumption in favour of sustainable development. The *Framework* states that to support the Government's objective of significantly boosting the supply of homes, it is important, amongst other things, that a sufficient amount and variety of land can come forward where it is needed. Paragraph 73 requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of 5 years' worth of housing against its housing requirement set out in its adopted strategic policies. Paragraph 172 of the *Framework* provides that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection in relation to these issues.
 16. Guidance about housing land availability assessment is provided in the *Planning Practice Guidance* (hereinafter the *Guidance*).
 17. In re-determining the appeal I have had regard to the purpose of conserving and enhancing the natural beauty of the AONB in accordance with section 85(1) of the Countryside and Rights of Way Act 2000.

Reasons

Character and appearance

18. The proposed development in Areas B, C and D would alter, replace or be closely associated with, existing built form in the AONB. I have no reason to disagree with the parties that the proposals for these areas would conserve the landscape and scenic beauty of the AONB. However, the scheme for Area A is a matter of dispute.
19. The *Guidelines for landscape and Visual Impact Assessment* (GLVIA3) stresses the distinction to be made between landscape character and visual effects.⁶ Both experts at the Inquiry accepted that this distinction applies also to the terminology used in paragraph 172 of the *Framework*. Area A is well screened in views from public vantage points. The only likely view point where residential development would be apparent in filtered glimpses through vegetation would be from a small section of Footpath 35. However, the appellant's landscape expert acknowledged at the Inquiry that an adverse

⁵ ID26.

⁶ GLVIA3 is the Third Edition published by the Landscape Institute and the Institute of Environmental Management and Assessment.

impact on landscape character could not be moderated by screening.⁷

20. The appellant argues that it is on-site landscape character impacts alone that are at issue here. I do not accept this because GLVIA3 advises that the area of landscape that needs to be covered in assessing landscape effects should include the site itself and the full extent of the wider landscape around it which the proposed development may influence in a significant manner. In this case, I consider that this encompasses at least part of the grounds of Longdene House given the location of the access drive and the avenue of trees along it. The proposal would not conflict with LPP1 Policy HA1 by reason of harm to parkland of heritage significance, but this tree-lined approach through open countryside, to what was a country house with some parkland features, makes an important contribution to the landscape character of this part of the AONB.
21. The character of the area is affected to some degree by activity associated with the office use of Longdene House, and the tranquillity of the area is sometimes interrupted by background noise from road traffic, trains and aeroplanes. Nevertheless, the proposed residential development of Area A would introduce an urban form of development and associated activity into a countryside location, resulting in a loss of openness and local distinctiveness. I consider that the appellant has understated the likely impact of the appeal scheme on the landscape character of the area. I also have concerns about the proposed details for access and landscaping, and the resultant impact on the character and appearance of the area, which I raised at the Inquiry.
22. Access and landscaping details for approval in Area A are shown on Drawings 16-T001-07 Site Access Options – Scheme B, 1027.2.04A Landscape Masterplan (25 Unit Scheme) and 1027.2.07 Land Adjacent to Main Access (Area A) 25 unit scheme.
23. Access here means 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.
24. Landscaping here means the treatment of land (other than buildings) for the purpose of enhancing or protecting the amenities of the site and the area, including screening by fences and wall, planting of trees, hedges, shrubs or grass, formation of banks and terraces, provision of gardens and other amenity features.
25. It was clarified at the Inquiry that granting outline permission, with the proposed access and landscaping details, would for Area A determine the position of the cul-de-sac and circulation routes, along with the location of various landscape features. The latter would include the location of tree and shrub planting to either side of the estate road, the siting of hedgerow planting to define rear garden areas, and the position of grass verges and tree planting. This would effectively negate any scope for a reserved matter application to propose plot boundaries other than those shown on the submitted drawings. This would constrain the layout of dwellings, which is a reserved matter.

⁷ In the quashed decision, at paragraph 19, the previous Inspector concluded that due to the screening there would be a moderate adverse impact on the landscape character within the tightly drawn Area A with only slight adverse impacts beyond the red line application area. Paragraph 55 of the quashed decision gives great weight to the harm to the landscape character of the AONB, but goes on to state that the extent of the harm would be limited to Area A visible from a point on the footpath, the field itself and views from the access drive.

26. Area A is bounded by mature trees, some of which are more than 20 m high. Given the determination of the landscaping and access details, I consider that the scope for siting dwellings so as to minimise potential harm to nearby trees would be limited.⁸ I share WBC's concern that the outline planning permission proposed would be likely to result in long term harmful effects on nearby large trees arising from pressure by future occupiers to cut or lop trees because of shading or other adverse effects of large trees near to dwellings. I have taken into account the unilateral obligation, which would separate responsibility for the trees from the owners/occupiers of the proposed dwellings. If there was any consensus at the Inquiry by the experts about this resolving the matter, it is not a view that I share. The obligation cannot guarantee that any such pressure could be successfully resisted. Owners/occupiers can be very persuasive, particularly where dwellings have been sited too close to large trees. I do not consider that reliance should be placed on the obligation to safeguard the trees.
27. The tall trees along the driveway adjoining Area A are a significant feature of the local landscape and are visible from vantage points in the wider area. If pressure from owners/occupiers resulted in their loss or cutting back that would harm the local distinctiveness of the area. In coming to this finding I have had regard to the pattern of development in Haslemere, where many dwellings are set within mature vegetation, often on sloping sites. But it seems to me that within this part of the AONB the loss or diminution of such a significant landscape feature would harm the character and appearance of the area.
28. WBC is also concerned about the urbanising impact of the proposed cul-de-sac development. This is a form of development that is apparent in nearby parts of Haslemere. But the urban road configuration proposed for Area A would not accord with its location within the setting of a former country house in this part of the AONB. Area A is separated from the development permitted at Sturt Farm by a field which is proposed to be woodland planting and by Footpath 35. I consider that Area A relates more to the rural setting of Longdene House than it does to the proposed extension to the urban area at Sturt Farm, and that this should be properly reflected in the access and landscaping details.
29. In this context, I consider that the proposed cul-de-sac arrangement would fail to take the opportunities available here for improving the character and quality of the area and the way it functions, contrary to paragraph 130 of the *Framework*. The appeal scheme would also be at odds with paragraph 127, which provides that decisions should ensure that development, amongst other things, adds to the overall quality of the area, is sympathetic to local character, and establishes or maintains a strong sense of place, using the arrangement of streets and spaces to create attractive and distinctive places. Were the proposed access and landscaping details to be permitted, I am not satisfied that there would be a reasonable prospect of devising a reserved matter scheme that complied with LPP1 Policy TD1.
30. Taking all the above into account, I find that the appeal scheme would have an adverse effect on the landscape character of the area, not just for the site itself, of major significance. Given the limited visibility into the site from public

⁸ In the quashed decision at paragraph 16, concerning the trees coming under pressure for crown reduction and/or removal due to shading, the previous Inspector stated that although the area would be quite densely developed, the dwellings could be sited to minimise this.

vantage points, but having regard to the visual significance of the avenue of trees, I consider that the proposal would have an adverse visual effect of minor/moderate significance.

31. Having regard to the nature, scale and setting of the proposal, along with its likely impact on the purposes of the designation, I do not consider that the appeal scheme represents major development in the AONB for the purposes of applying national policy. This is not now disputed by WBC. I also consider that the proposed alterations to Longdene House would be beneficial. Nevertheless, for the reasons set out above, I have found that the proposal would be likely to result in harm of major significance to landscape character, and of minor/moderate significance to visual amenity. This would result in significant overall harm to the character and appearance of the area.
32. I have considered whether it would be appropriate to grant outline planning permission with all matters reserved for later consideration. However, in the absence of an illustrative layout that demonstrated the likely feasibility of designing a policy compliant scheme for 25 dwellings on Area A, I do not consider that it would be reasonable to do so.
33. On the first main issue, I consider that the outline proposal, with the submitted access and landscaping details, would be likely to result in a scheme that had a significant adverse effect on the character and appearance of the area. This would not conserve or enhance the landscape and scenic beauty of the AONB. The resultant harm, in accordance with the *Framework*, should be given great weight in the planning balance. The proposal would not safeguard the intrinsic character of the countryside and so would be at odds with LPP1 Policy RE1. It would also conflict with LPP1 Policy RE3 because it would not respect the distinctive character of the landscape. LPP1 Policies RE1 and RE3 are consistent with the revised *Framework*.

Highway safety

34. Highway safety is not an issue for WBC, but is of great concern to local residents. There is concern about the junction of Hedgehog Lane, Courts Hill Road and Longdene Road, and the potential for increased danger at major roads such as the A286 and B2131. There is particular concern that the pavements are inadequate for pedestrians to access the railway station and town centre.
35. Local reservations about the impact of additional vehicles on the road network are not without foundation given the configuration of some of the local road junctions, along with the horizontal/vertical alignment and width of some of the routes that future occupiers of the proposed development and their visitors would be likely to use. The local network is not ideal, particularly for vulnerable road users, such as pedestrians and cyclists. However, I am not convinced that the appeal scheme would make the existing situation materially worse. The existing office use of Longdene House, with its large car park, generates considerable traffic on the local roads, which includes delivery vehicles. The proposed residential use of Longdene House and the additional dwellings would change the nature and timings of trips to and from the site, and possibly the mix of modes of transport. But overall, I consider that the proposed development would be unlikely to significantly alter the current risks to road users.

36. It seems to me that the many constraints on the local network, which were apparent at my accompanied and unaccompanied site visits, serve to keep vehicle speeds low, and encourage drivers to adopt a cautious approach. I see no reason why this should be any different with residential development of the appeal site. Taking into account all the evidence adduced at the Inquiry, and from my site visits, I do not consider that the proposal would be likely to result in an unacceptable adverse effect on highway safety. Available routes to the town centre and railway station are not so dangerous that they would render the location unsuitable for further residential development.
37. Local apprehension about risks to vulnerable road users is understandable, but I do not consider that any resultant harm to highway safety should weigh significantly against the proposal. I find no conflict with LPP1 Policy ST1. Residual cumulative impacts on the road network would not be severe, and any increased risk to highway safety would fall far short of an unacceptable impact that would, in accordance with the *Framework*, justify preventing the development on highway grounds.

Housing supply

38. WBC updated its 5 year supply using a 1 April 2018 base date to demonstrate a 5.8 years' supply, with a 5% buffer as was applied by the Local Plan Inspector. The appellant disputes this and considers that with a 5% buffer there is only 3.37 years' supply.⁹ I note that Inspectors in other appeals have recently found a 5 years' supply, largely on the basis of maintaining the Local Plan Inspector's conclusions. However, the provisions of the revised *Framework* make it more difficult to place such reliance on the Local Plan Inspector's finding that WBC could demonstrate a 5 year supply of deliverable housing sites.
39. I share some of the appellant's concerns about the implications of changes in the *Framework* to the definition of 'deliverable' in assessing housing land supply, along with the requirement for 'clear evidence' required by the *Guidance*. The onus is on WBC, for sites with outline permission or allocated in a development plan, to provide clear evidence to demonstrate that housing completions will begin on site within 5 years. I am not convinced that the evidence adduced by WBC is sufficient to demonstrate deliverability for all the sites with outline planning permission. However, I do not discount sites where reserved matters applications were subsequently submitted, but which were shown to be deliverable at the base date by reason of progress made towards the submission of an application or with site assessment work.
40. Urban and Rural LAA sites could potentially contribute to supply provided that there was clear evidence that completions will begin on site within 5 years. However, I consider that WBC's submissions about the deliverability of these sites falls short of the clear evidence now required. Many of the Rural LAA sites are located in the Countryside beyond the Green Belt, or in the Green Belt, the AGLV or the AONB. There is no clear evidence about the deliverability of these sites, particularly where progress on eLLP2 has been deferred.
41. Footnote 39 of the *Framework* provides that from November 2018 significant under delivery would be measured against the Housing Delivery Test (HDT).

⁹ ID15 Table 2 indicates that this is based on deleting from WBC's total supply of 5,287 units the following: 1,159 units from outline permissions, 487 units from Urban LAA sites and 574 units from Rural LAA sites.

However, the HDT assessments have not yet been published, and paragraph 215 of the *Framework* states that the test will apply from the day following the publication of its results. I do not consider that it would be appropriate in advance of the publication of the HDT assessment to require a 20% buffer. ID15 Table 3 indicates that, with a 5% buffer, if the outline consents alone were deleted there would be 4.5 years' supply, and if the outline consents were included but both Urban and Rural LAA sites deleted there would be 4.6 years' supply. On the evidence before me, I find that the housing land supply here would be between 3.37 years and 4.6 years. There is not enough information about individual sites for me to assess where within this range the current supply falls. Nevertheless, this is a significant shortfall.

42. The additional dwellings from the proposed development would make a significant contribution to the supply of housing in Haslemere. The provision of 10 affordable dwellings would be particularly important in providing for local needs and would comply with LPP1 Policy AHN1. Given the housing land supply situation and the degree of shortfall, these are benefits which should be given significant weight in the planning balance.

Other matters

43. The appeal site lies within 5 km of the Wealden Heaths Special Protection Area (SPA). The scheme does not propose any mitigation for any adverse impact on the SPA. Natural England (NE) considers, given the size and scale of the proposal that it would not lead to a likely significant effect upon the integrity of the SPA, either alone or in combination. Accordingly, NE does not consider it necessary for an Appropriate Assessment (AA) to be undertaken. I note that an AA was completed by WBC in determining a duplicate application for the appeal site (Application Ref.WA/2018/0151), and that NE was happy with the outcome of that assessment.¹⁰ However, I am satisfied on the evidence before this Inquiry that the proposal, alone or in combination, is not likely to have a significant effect on the interest features of the SPA.¹¹ It is not, therefore, necessary to undertake an AA. WBC now concurs with this finding.
44. The proposal would provide employment during construction and future residents would contribute to the local economy. The proposed landscaping and ecological enhancements would be beneficial for wildlife, and so the scheme would gain some support from LPP1 Policy NE1. These are benefits which should be given moderate weight in the planning balance.
45. I have taken into account all the other matters raised in the evidence, including the appellant's submission that some development of AONB land will inevitably be required to meet LPP1 requirements for housing in Haslemere. But this is a matter for eLPP2, and I do not consider that it should be a decisive consideration in determining this appeal. The fact that work on eLPP2 has been deferred does not, in my view, alter this finding. Similarly, it is not very helpful in deciding the appeal on its planning merits to draw comparisons with other possible housing sites in the wider locality. It is not possible in this section 78 appeal to consider all the relevant matters, along with the views of interested parties, on the different sites likely to be required to meet the housing requirement in Haslemere. Neither these, nor any of the other matters raised, are sufficient to outweigh my conclusions on the main issues, which have led to my decision on this appeal.

¹⁰ This duplicate application was refused in August 2018 against officer recommendation for approval.

¹¹ ID16.

Conclusions

46. The scheme would gain some support from development plan policies that seek to provide housing in Haslemere, and to increase the supply of affordable housing and enhance biodiversity, but would conflict with LPP1 Policies RE1 and RE3. I find that overall the proposal would be contrary to the provisions of the development plan taken as a whole. The proposal does not accord with an up-to-date development plan and so *Framework* paragraph 11 c) does not apply.
47. I have found that WBC cannot demonstrate a 5 year supply of deliverable housing sites, and so paragraph 11 d) is engaged by virtue of Footnote 7. Paragraph 11 d) i. refers to the application of *Framework* policies that protect areas or assets of particular importance. The appellant argues that no such policies are engaged in this case. I disagree. In paragraph 11 d) i. the reference to “protect” has its ordinary meaning to keep safe, defend and guard. It seems to me that that is precisely what paragraph 172 seeks to achieve with respect to landscape and scenic beauty in AONBs. This *Framework* policy for AONBs states that they have the highest status of protection in relation to conserving and enhancing landscape and scenic beauty, and that within AONBs the scale and extent of development should be limited. The inclusion of AONBs in Footnote 6 brings into play the whole of paragraph 172, not just that part which deals with major development, as the appellant’s closing submissions seem to imply.
48. Given my findings about the effects on the character and appearance of the area, as set out above, I consider that applying *Framework* policies for the AONB here provides a clear reason for refusing the proposed development. So the provisions of paragraph 11 d) i. disengage the tilted balance. Therefore, the planning balance in this case is a straight or flat balance of benefits against harm.
49. The appeal scheme would provide additional housing in Haslemere, including affordable units, in an area of need. There would also be some benefits to the local economy and to biodiversity. But in my judgement these benefits would be outweighed by the harm to the character and appearance of the area, along with the harm to the AONB which attracts great weight. I find that the planning balance falls against the proposal.
50. The proposal would be contrary to the provisions of the development plan taken as a whole. It would not gain support from the *Framework*. There are no material considerations here which indicate that the determination of the appeal should be other than in accordance with the development plan.
51. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed. It is not, therefore, necessary for me to deal with the disputed contribution towards secondary education.

John Woolcock
Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ashley Bowes
of Counsel

Instructed by Lewis Jones
Planning Solicitor for Waverley Borough
Council

He called

Andrew Cook BA(Hons) MLD CMLI
MIEMA CEnv MID

Director Pegasus Group

Brian Woods BA(Hons) MRTPI
ONC

Managing Director WS Planning & Architecture

FOR THE APPELLANT:

Charles Banner
of Counsel

Instructed by David Neame
Director Neame Sutton Limited

He called

Dominic Farmer BSc(Hons) MSc
CEnv MCIEEM

Ecology Solutions Ltd

Colin Brown BSc(Dual Hons)
DipLD MA

Principal LanDesign Associates

Clive Burbridge BSc(Hons) MSc
MRTPI MCIT MCILT

Director Icen Projects Ltd

David Neame BSc(Hons) MSc
MRTPI

Director Neame Sutton Limited

INTERESTED PERSONS:

Dr Philippa Guest
Michael Barnes
Guy Reynolds

On behalf of CPRE Surrey
On behalf of Longdene Action Group
Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

Document	1	Appeal Ref: APP/W3520/W/18/3194926 Land on east side of Green Road Woolpit
Document	2	Extracts from the <i>Planning Practice Guidance</i>
Document	3	Schedule of suggested conditions
Document	4.1	<i>Park Lane Homes v SSHCLG</i> CO/3142/2018
Document	4.2	<i>Boddington v British Transport Police</i> (H.L.(E.))
Document	4.3	<i>West Lancashire BC v SSCLG</i> CO/4913/2016
Document	4.4	<i>Arun DC v SSCLG</i> CO/336/2012
Document	4	<i>North Norfolk DC and SSHCLG</i> CO/1319/2018
Document	5	Appellant's opening statement
Document	6	Opening submissions on behalf of the local planning authority
Document	7	Written Statement by Haslemere Vision
Document	8	Statement by Dr Philippa Guest on behalf of CPRE Surrey
Document	9	Email from WBC dated 1 October to those promoting housing sites concerning updated delivery rates
Document	10	Statement by Michael Barnes including petition
Document	11	Statement by Guy Reynolds including comments on traffic video addendum and script to addendum on traffic
Document	12.1	Draft s106 agreement
Document	12.2	Summary of s106 agreement
Document	13	Photographs of Red Court
Document	14	Plan by Mr Cook annotated with parkland area
Document	15	Housing Land Supply – Position Statement
Document	16	Addendum Note by Dominic Farmer on European Designated Site issues
Document	17	Note from Mr Woods documenting oral update to Inquiry concerning Appendix 3 and Appendix 9
Document	18	Aerial photograph of Red Court
Document	19	Email dated 10 October 2018 from Mr Barnes including letter from appellant dated 10 October 2018
Document	20	Housing Delivery Test Measurement Rule Book
Document	21	Draft unilateral undertaking
Document	22.1	Appellant's note on Sturt Farm SANG
Document	22.2	Outline planning permission dated 30 march 2015 for 135 dwellings at Sturt Farm
Document	22.3	Planning agreement dated 18 April 2018 for Sturt Farm which includes SANG obligations
Document	22.4	Plan showing approved landscaping details
Document	22.5	Planning permission for SANG dated 20 April 2018
Document	22.6	Plan for reserved matter application for Sturt Farm
Document	23	Dictionary definitions for 'parkland' and 'pastoral'
Document	24	Appellant's bundle of photographs 1-12
Document	25	Email from Natural England concerning Waverley Local Plan Part 2 dated 30 October 2018
Document	26	Waverley BC press release dated 29 October 2018 re deferring Local Plan Part 2
Document	27	Extract Hazlemere Herald 1 November 2018 re Housing site allocations withdrawn
Document	28	Sites with Outline Consent referred to in Mr Woods' EiC note
Document	29	Urban LAA Sites – October 2018
Document	30	Rural LAA Sites – October 2018

Document	31	Note on Housing Delivery Test
Document	32	Technical consultation on updates to national planning policy and guidance MHCLG October 2018
Document	33.1	Unilateral undertaking pursuant to s106 dated 14 November 2018
Document	33.2	Deed pursuant to s106 dated 16 November 2018
Document	33.3	Summary of S106 agreement & unilateral undertaking
		Note on R123 compliance: Secondary School Contribution
	33.4	Deed of Variation dated 20 December 2018
Document	34	Press Release re new timeline for eLPP2
Document	35.1	Transport Note dated 16 November 2018
Document	35.2	Qualifications and experience Clive Burbridge
Document	36	Suggested planning conditions
Document	37	Statement from Surrey County Council in support of a s106 contribution for secondary education
Document	38	Closing statement on behalf of the Longdene Action Group
Document	39	Closing submissions on behalf of the local planning authority and judgments
Document	40.1	Appellant's closing submissions and judgments
Document	40.2	Appendix : Legal submissions on the relevance of the previous Inspector's decision

PLANS

Full Application

078-PL-02	Existing Site Plan
074-PL-001 Rev. A	Location Plan
078-PL-017	Existing Block and Demolition Plan
079-PL-018	Proposed Blocks
078-PL-050	Existing Floor Plans Cottages
078-PL-051	Existing Elevations 1 Cottages
078-PL-052	Existing Elevations 2 Cottages
078-PL-053	Existing Glasshouse
078-PL-054	Existing Store 1
078-PL-055	Existing Store 2
1027.2.08	Semi-Detached Dwellings (Area B), Longdene House (Area C), Glasshouse/Outbuildings (Area D)
078-PL-020	Existing Basement
078-PL-021	Existing Ground Floor Plan
078-PL-022	Existing First Floor Plan
078-PL-023	Existing Second Floor Plan
078-PL-024	Existing Roof Plan
078-PL-025	Existing South Elevation
078-PL-026	Existing West Elevation
078-PL-027	Existing North Elevation
078-PL-028	Existing East Elevation
078-PL-030 Rev. A	Basement
078-PL-031	Ground Floor Plan
078-PL-032	First Floor Plan
078-PL-033	Second Floor Plan
078-PL-034	Roof Plan
078-PL-035 Rev. A	South Elevation
078-PL-036 Rev. A	West Elevation
078-PL-037 Rev. A	North Elevation
078-PL-038 Rev. A	East Elevation
078-PL-040	Garage Plans
078-PL-041	Garage Elevations
9172/01 Rev A	1/3 Tree Constraints Plan
9172/01 Rev A	2/3 Tree Constraints Plan
9172/01 Rev A	3/3 Tree Constraints Plan
9172/03	1/3 Tree Protection Plan
9172/03	2/3 Tree Protection Plan
9172/02	3/3 Tree Protection Plan
114543/9001	Development Area and Source Protection Zones Site Plan

PLANS

Outline Application

078-PL-02	Existing Site Plan
074-PL-001 Rev. A	Location Plan
078-PL-017	Existing Block and Demolition Plan
1027.2.04A	Landscape Masterplan (25 Unit Scheme)
1027.2.07	Land Adjacent to Main Access (Area A) 25 Unit Scheme
16-T001 07	Site Access Options – Scheme B
9172/03 2/3	Tree Protection Plan
9172/01 Rev A 2/3	Tree Constraints Plan
Plan 1027.2.04B	Landscape Masterplan

Appeal Decision

Inquiry held on 8-10 April and 2 May 2014; unaccompanied site visit made on 7 April 2014 and accompanied site visit made on 2 May 2014

by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 June 2014

Appeal Ref: APP/W0530/A/13/2207961

Land to the west of Cody Road, Waterbeach, Cambridge CB25 9LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 [hereinafter "the Act"] against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Manor Oak Homes against South Cambridgeshire District Council.
 - The application, Ref S/0645/13/FL, is dated 22 March 2013.
 - The development proposed is erection of 60 dwellings (Class C3), including affordable housing, access, car parking and associated works, open space, landscaping and a children's play area.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 60 dwellings (Class C3), including affordable housing, access, car parking and associated works, open space, landscaping and a children's play area on land to the west of Cody Road, Waterbeach, Cambridge CB25 9LS in accordance with the terms of the application, Ref S/0645/13/FL, dated 22 March 2013, subject to the conditions set out in the attached *Schedule of Conditions*.

Procedural matters

2. I have been appointed to deal with 2 appeals on nearby, but not contiguous, sites and held 2 Inquiries on consecutive dates to consider the respective appeals. The second appeal was made by Persimmon Homes East Midlands against the decision of South Cambridgeshire District Council to refuse an application to grant outline planning permission for residential development of up to 90 dwellings on land north of Bannold Road, Waterbeach. The appeal [Ref: APP/W0530/A/13/2209166] was heard at an Inquiry held between 13 and 15 May 2014. The decision in respect of that appeal is being issued on the same date as the decision in this appeal as the issues are very similar.
3. Two Planning Obligations dated 10 April 2014 have been submitted in this appeal. The first [Document 14] is between all relevant interests in the land and Cambridgeshire County Council, the headline summary of which is that:
 - i) £127,680 is offered as a contribution towards early years education facilities;
 - ii) £4,366.92 is offered as a contribution towards libraries and lifelong learning;
 - iii) £146,160 is offered as a contribution towards primary education facilities;
 - iv) £6,000 is offered as a contribution towards real time passenger information to the south bound bus stop on Cody Road;
 - v) £11,400 is offered as a contribution towards strategic waste infrastructure facilities;

- vi) £1,899.80 is offered as a contribution towards the cost incurred in the negotiation, preparation and execution of the deed; and,
 - vii) specified off site highway works are offered, comprising upgrading of the south bound bus stop or the north bound bus stop in the event that such an upgrade to the former has already been executed.
4. The second [Document 15] is between all relevant interests in the land and South Cambridgeshire District Council, the headline summary of which is that:
- i) £30,366.88 is offered as a contribution towards the provision of and improvements to indoor community facilities;
 - ii) £66,887.35 is offered as a contribution towards off-site sports facilities;
 - iii) £20,000 is offered as a contribution towards the future maintenance of the on site public open space which will be provided on the appeal site;
 - iv) £94,764.92 is offered as a contribution towards off-site public open space;
 - v) £69.50 per house and £150 per flat is offered as a contribution towards the provision of household waste receptacles;
 - vi) £4,250 is offered as a contribution towards the cost incurred in the negotiation, preparation, execution and monitoring of the deed; and,
 - vii) 24 of the dwellings provided shall be affordable housing units, which comprises 17 affordable rented units and 7 shared ownership units.
5. At the Inquiry I questioned, by reference to Part I of the appeal form, whether all parties with an interest in the appeal site were signatories to the Planning Obligations. I was advised that the other party on whom notice was served at that stage has no interest in the appeal site and was served notice because of their interest in the land over which the proposed drainage outfall would run. The Council is satisfied that all parties with an interest in the appeal site are signatories and whilst I have not seen title I intend to proceed on this basis. I shall return to consider whether the contributions meet the legal tests below.
6. During the conditions session at the Inquiry the Appellant expressed concern about a suggested condition put forward by the Council [Document 18], as a result of which it offered a further Unilateral Undertaking. This was submitted by the Appellant in the timetable agreed at the Inquiry and the Council has confirmed that it has no issues with the manner in which it is drafted. The Unilateral Undertaking [Document 21], dated 15 May 2014, offers the sum of £2,500 as a contribution towards off-site works to complete the footpath links between the appeal site and the existing Cam Locks development to the west.
7. Paragraphs 1.5 and 1.8 of the agreed Statement of Common Ground sets out the basis upon which the Council were minded to refuse the application, based on reports to the Council's Planning Committee in October 2013 and March 2014. This rationale informs my approach to the main issues.

Main Issues

8. In the light of all that I have heard I consider that there are 4 main issues in this appeal. The first is whether relevant policies for the supply of housing are out-of-date. The second is the effect of the proposed development on the character and appearance of the area. The third is whether it is justifiable to dismiss the appeal on the grounds of prematurity having regard to advice in the Planning Practice Guidance ["the Guidance"]. The fourth is whether, having regard to the Development Plan [DP] and the presumption in favour of sustainable development in the National Planning Policy Framework ["the Framework"], this is a suitable and sustainable location for this scale of

residential development. I acknowledge that this represents a revision from those circulated at the Inquiry, but the substantive issues have not changed.

Planning policy

9. The DP includes the Core Strategy DPD [CS] and the Development Control Policies DPD [DCP], which were adopted in January 2007 and July 2007 respectively. Relevant DP Policies include CS Policies ST/2 and ST/5 and DCP Policies DP/3 and DP/7. The Framework has the presumption in favour of sustainable development at its heart and this has three dimensions: economic, social and environmental. Paragraph 11 confirms that applications, and by inference appeals, should be determined in accordance with the DP unless material considerations indicate otherwise. However the Framework is one such material consideration. I examine the Framework in greater detail below.
10. The examination into the South Cambridgeshire Local Plan 2011-2031 [LP], started with its submission to The Planning Inspectorate on 28 March 2014. In accordance with paragraph 216 of the Framework, account can be taken of emerging policies. However the weight to be attached to such policies will depend on: the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given); the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).
11. It is common ground that all relevant policies and proposals, including S/4 and SS/5 which are relied upon in the putative reasons for refusal, are the subject of outstanding objections. Whilst some of those objections have been lodged by those who seek to progress this and other development schemes in the vicinity of Waterbeach this does not alter my view that there are significant unresolved objections outstanding. It remains in prospect that the Inspector appointed to undertake the examination might find that the emerging LP is unsound or recommend main modifications as a result of those objections or otherwise. On the limited information before me the unresolved objections appear to be significant because they go to the principle of the policies at issue.
12. In relation to Policy S/4 the extent to which the emerging policy is consistent with the Framework¹ remains at issue between the parties and I shall examine this as part of my consideration of the third main issue, below. Although the strategy of planning for large scale development through the identification of a new settlement might represent the best way of achieving sustainable development, paragraph 52 of the Framework says this should be achieved with community support. However there are 431 objections, presumably all still unresolved, in relation to Policy SS/5, including what the Council has characterised to be "*a local campaign opposed to the new town*"². For these reasons, applying paragraph 216 of the Framework but particularly having regard to the significance of the unresolved objections, I attach limited weight to the relevant policies and proposals of the emerging LP.
13. The Council advised in closing that the examination hearings are not likely to start before mid October 2014. Although I do not have the full picture, based on the limited information before me it would appear that the examination

¹ Including paragraphs 52, 80 and 82.

² Source of quote: page 327 of the bundle appended to Mr Hyde's proof [page 73, Appendix 25].

could be quite lengthy. The Local Development Scheme [LDS, Document 6] says that the examination will be undertaken during “*Summer/Autumn 2014*” but if the hearings do not commence until October there is likely to be some slippage in this timetable. The LDS anticipates adoption of the LP during “*Spring 2015*” but, given the need to consult on any modifications that are recommended, this would appear to be optimistic in the circumstances.

Reasons

(i) Housing supply

14. The Framework says: “*To boost significantly the supply of housing, local planning authorities should: ...identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5 % (moved forward from later in the plan period) to ensure choice and competition in the market for land*”³ [*my emphasis*]. I assess the Council’s housing supply in this context.

The relevant housing requirement

15. The Guidance says⁴: “*Housing requirement figures in up-to-date adopted Local Plans should be used as the starting point for calculating the five year supply. Considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light. ...Where evidence in Local Plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered. But the weight given to these assessments should take account of the fact they have not been tested*”.
16. Applying this advice I consider that the “*starting point*” is the CS, which I accept to be the most up-to-date, extant and tested housing requirement for South Cambridgeshire. Figure 4.7 of the Annual Monitoring Report [AMR] indicates the annual requirement that would be necessary during the remainder of the plan period, taking account of past and forecast completions. The main parties agree that when considered against the CS the Council cannot demonstrate a 5-year housing land supply. Although the figures differ, reflecting different assumptions, and do not include the “*City Deal*” which I examine below, it is clear that the magnitude of the shortfall, even on the Council’s most optimistic figure⁵, must lead to a finding that it cannot show a 5-year supply of deliverable housing sites on this basis.
17. However, even if I take the position as at April 2013, which is a question I shall return to, it is evident that the CS plan period would be a maximum of 3-years. The Council also points out that the projections and forecasts supporting the CS were not for the current housing market area, do not specifically consider the development needs of the District and were prepared in a different economic climate. I accept that the Guidance contains an important caveat and that in this case significant new evidence, in the form of the Cambridge sub-regional Strategic Housing Market Assessment [SHMA], which I turn to below, has been prepared. In all of these circumstances I attach only moderate weight to the housing land supply calculation based on the CS.

³ Source of quote: paragraph 47, principally the second bullet-point.

⁴ Source of quote: paragraph reference 3-030-20140306.

⁵ 2.6 years supply using the ‘Liverpool’ method with a 5 % buffer [DR40].

18. My colleague in the Toft appeal [Ref APP/W0530/A/13/2192228] gave reasons for finding that the housing land supply in the emerging Local Plan, based on the SHMA, "...contains a more up to date and thus more reliable assessment of housing need in the District..." than that contained in the CS; I agree. Although I recognise that the SHMA figure of 19,000 homes for the period 2011-2031 is the subject of objections and has yet to be tested through the examination process, I attach greater weight to it than I do to the CS figure of 20,000 homes for the period 1999-2016. The CS figure derives from the Structure Plan which was, in turn, based on the now revoked RPG6. It is not therefore an up-to-date, objectively assessed figure for housing need. Ultimately my view is reinforced by Mr Hyde's concession in cross-examination that if one requirement had to be used in this case, it should be that based on the SHMA.
19. As the Council submitted in closing the different requirements arising from the CS and the SHMA might lead to different 5-year housing land supply outcomes and that might place the decision maker in an invidious position as to whether a 5-year supply exists. I shall therefore proceed on the basis of an annualised requirement of 950 dwellings pa or 4,750 dwellings over a given 5-year period.

Base date

20. The issue between the parties is whether the 5-year supply requirement should use a base date of 1 April 2013 or 1 April 2014. As a general rule I accept the Council's submission that a more recent base date is to be preferred but only where I can be confident that it captures information on actual progress over the previous year⁶. In this case I am concerned that I only have a partial data set rather than a full set of the figures for the full year, April 2013-March 2014. Amongst other things the "*March AMR update*" [Document 13] says the figure for housing completions records "...*predicted completions to 31/3/2014. These predicted completions are based on the housing trajectory in the plan where there is no better information and otherwise on what developers have told us are their actual completions and planned completions to 31/3/2014. This information was gathered between October 2013 and January 2014 for major sites and others down to sites of 9 homes*" [*my emphasis*]. In other words it is only for part of the accounting year and otherwise based on a prediction.
21. In cross-examination Mr Hyde referred to other ways in which the data set was incomplete by reference to Figure 4.7 of the February 2014 AMR. In particular the table records planning permissions granted for windfall sites between 1 April and 31 December 2013 rather than for the full year. These commitments have the effect of increasing the supply side but the flip side is that no account has been taken of any planning permissions that lapsed after 31 March 2013.
22. The base date of 1 April 2013 ensures the housing land supply requirement figure is based on known completions because the actual level of historic completions is published in the 2012-13 AMR. This is the most up-to-date figure of known completions and anything else is conjecture. Moreover the Appellant refers to Mr Roberts's Appendix DR44 to show the principle that the further ahead the projection, the less accurate it becomes. The Council's approach is therefore less robust since it projects further into the future. For these reasons I find the Appellant's approach is the most robust and reliable.
23. I appreciate that this approach does not then relate to the full 5-year period looking forward [2014-2019] but it plainly does relate to a 5-year period. I am

⁶ Or where, as in the concurrent appeal with which I am dealing, it is common ground that 2014 should be used.

unclear why the Council's approach would fail to comply with Regulation 34(3) of the Town and Country Planning (Local Planning)(England) Regulations 2012. I acknowledge the claim that the housing trajectories have been fairly reliable indicators of completions in the past, but I note from paragraph 4.11 of the AMR that there has been considerable variation over the 5-year period from 2008-2012. I have no reason to doubt that it mirrors the approach taken by Cambridge City Council but that does not validate the approach or make it right. It does not lead me to find that this is a sound evidence base on which to assess supply because it remains an estimate rather than an actual figure.

24. Although I acknowledge that this leads to an inconsistency with the approach that I have taken in the Bannold Road appeal, my decisions must be led by the evidence that has been presented in each case. For this reason there is a clear basis on which to distinguish the respective appeals.

Shortfall recovery: Liverpool v Sedgfield

25. In *Bloor Homes* [Document 1] it was held that the judgment as to whether to use the Liverpool or Sedgfield method was properly a matter for an Inspector to make and a Court would not interfere, subject to soundness of reasoning. The judgment expressly took account of paragraph 47 of the Framework, previously recited, and even though the judgment was handed down post-issue of the Guidance there was no reason for the Court to take it into account. The Council distil 4 factors from *Bloor Homes* to be: (i) the need to boost the supply of housing; (ii) the severity of the shortfall; (iii) the pattern and pace of housing provision planned for the Borough; and (iv) whether the Council was "*averse to boosting the supply of housing*"⁷. I comment on these below.
26. Dealing initially with the need to boost the supply of housing, my colleague in the Three Pots appeal [Ref APP/K2420/A/13/2202261] had both of the appeals⁸ from Hinckley & Bosworth, which are relied upon by the Council, placed before him. I therefore regard it to be significant that he found the Sedgfield approach to be the "*most appropriate*" [DL13]. His observation that: "*...the Sedgfield approach has been generally considered by Inspectors to be the correct approach, as any accumulated backlog would be dealt with in the next 5 years*" [DL12], accords with my own. I consider that the Sedgfield approach aligns more closely with the Government's objective as expressed in paragraph 47 of the Framework: "*To boost significantly the supply of housing*". This view is consistent with that expressed in the joint Local Government Association and Planning Advisory Service publication "*Ten key principles for owning your housing number – finding your objectively assessed needs*"⁹.
27. I deal with the question of the buffer below but the Council acknowledges that there has been a shortfall in the initial years of the emerging LP period, from 2011, when assessed against the annual target set out in that plan. Whether that should be characterised as "*small*", as the Council submits, is somewhat subjective. Mr Hyde made the point under cross-examination that the deficit of 642¹⁰ that has built up over the first 2-years of the emerging LP is significant in such a short period of time and represents the best part of a year's shortfall.

⁷ Source of quote: paragraph 112 of the judgment.

⁸ Ref APP/K2420/A/12/2188915 and APP/K2420/A/12/2181080, at DR41, which were both subject of challenge, the latter of which gave rise to the *Bloor Homes* judgment and has therefore been quashed.

⁹ See page 175 of the bundle appended to Mr Hyde's proof [Appendix 14].

¹⁰ Calculated as 279 + 363 [See DR31 for derivation].

28. Although Mr Hyde conceded that there has not been a “*forward planning failure*” in the District, fewer houses have been built than planned for. This basic problem colours my approach to the strategic approach, which has meant that Cambridge City has been the focus of urban extensions on its periphery. Although there is evidence of joint working, exemplified by the identical date of submission of the respective Local Plans for examination, there is no joint DP; each District still needs to meet its own housing requirement. In this context there is force in the closing submission that the Council is doing nothing more than its statutory obligation as opposed to doing its best to boost the supply of housing. The pattern and pace of housing provision is unlikely to change in the short term because the spatial strategy evident in the CS is carried forward into the emerging LP. The Council does not appear to have proactively sought to boost the supply of housing, e.g. by bringing other allocated sites forward.
29. The Guidance says: “*Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible*”¹¹. The cross-reference [“*Related policy*”] is to paragraph 47 of the Framework, which is not in the “*Plan Making*” section of the Framework [paragraphs 150-185]. On this basis I reject the contention that this aspect of the Guidance is exclusively concerned with plan making. As Mr Roberts conceded in cross-examination, it can also be relevant to applications and/or appeals.
30. The DCLG publication “*Land Supply Assessment Checks*” [2009] predates the Framework and the Guidance. For this reason although it does not recommend either approach as best practice this does not alter my view that the Sedgefield approach is to be preferred. The Council also contends that the Sedgefield approach is not appropriate for a District of 108 villages and no towns, but this is not a good reason not to boost the supply of housing. As the Appellant points out, it might present greater opportunities to address the outstanding need. For all of these reasons the Sedgefield approach is to be preferred.

Has there been a persistent under-supply of housing in the District?

31. The Framework says: “*Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land*”¹². The Guidance says: “*The approach to identifying a record of persistent under delivery of housing involves questions of judgment for the decision maker in order to determine whether or not a particular degree of under delivery of housing triggers the requirement to bring forward an additional supply of housing.... The assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle*”¹³.
32. The Council’s best case is set out in the table in Mr Roberts’s Appendix DR31. It shows that during the 14-year period 1999-2013 there was only a surplus in 4-years, namely 2003-4, 2005-6, 2006-7 and 2007-8. During the last 5-years of this period, namely from 2008-9 to 2012-13, annual housing delivery was significantly, i.e. not less than 505 units, below the DP target. Even in those years that the table shows as being in surplus, if the DP target is derived from the CS a surplus is only achieved in one year, namely 2007-8. Figure 4.7 of

¹¹ Source of quote: paragraph reference 3-035-20140306.

¹² Source of quote: paragraph 47, second bullet-point.

¹³ Source of quote: paragraph reference 3-035-20140306.

- the AMR cites the annualised requirement of the CS to be 1,176 per annum over the same period from 1999 to 2013 and confirms the historic completions over the period from 1999 to 2013. I acknowledge that the CS was only adopted in 2007 but the AMR confirms that the base date of the CS was 1999.
33. In the circumstances I am far from convinced that it would be appropriate to attach weight to the annual targets for the period 1999 to 2007, shown in DR31, which are said to derive from earlier Local Plans. The published AMR is given as one source for the table at DR31 and as it appears to be the primary evidence base for housing completions and targets I attach it greater weight. The Council has a duty to publish the AMR under Regulation 34 of the Town and Country Planning (Local Planning)(England) Regulations 2012, which it has interpreted in this way, i.e. against the CS base date. On this basis I attach significant weight to this published source. The CS itself says that an AMR has to be produced and that a key aspect of monitoring will be the number of houses¹⁴. Amongst other things my attention has been drawn to CS Policies ST/10 and ST/11, which aim to achieve a "*continuous high level of dwelling production throughout the Plan period*" and bring forward sites for development where monitoring suggests that policies and allocations are not being met, respectively. These adopted policies therefore provide no basis for reverting to lower targets in superseded plans in order to avoid delivery, quite the reverse.
 34. The Appellant offers another approach that would achieve a similar result. It is said that at the point where the CS was adopted, January 2007, the target should have been the overall housing provision (20,000) less completions at the point of adoption (6,131) annualised over the remainder of the plan period. The Appellant submits that even applying the Liverpool method that this would have resulted in an annual target over the remainder of the plan period, to 2016, of 1,541 per annum. Regardless of which approach is adopted I reject the Council's claim that the table at DR31 is the '*best available evidence*'.
 35. I acknowledge DR31 collates housing completions with other data, including the capacity of sites with planning permission; I accept that there appears to be no obvious correlation between this and the number of completions. There is some relationship between GDP growth and completions although I would not agree that it is '*obvious*'. For example the table shows that the biggest increase in GDP was in 2000-2001, at 4.4 %, but that year there was still a deficit, even against the 1993 Local Plan target, which would have been much greater if assessed against the CS target. The largest deficit is recorded in the table to be in 2012-2013, at -589 but, in contrast to the period 2008-2010, the table shows that was the third year in a row in which there was growth in GDP. In any event, applying the quoted advice from the Guidance, a long-term view of the situation, since 1999, takes account of such fluctuations in the economy.
 36. On any reasonable analysis, taking account of economic factors, I therefore conclude that there has been a *record of persistent under delivery of housing* in the District of South Cambridgeshire. The Council's own published AMR shows that the historic completions only exceeded the CS target in 1 year out of 14 and on any analysis that is persistent. Even if I had been persuaded that the Council had exceeded the DP target in 4-years I would still regard that to be a *record of persistent under delivery*.

¹⁴ Paragraphs 4.4 and 4.9 of the CS, respectively on pages 245 and 247 of the bundle appended to Mr Hyde's proof [Appendix 18].

37. This conclusion is consistent with the approach of my colleague in the Three Pots appeal and the position recorded in paragraphs 48 and 49 of *Cotswold DC v SSCLG and others* [2013] EWHC 3719 (Admin). In both cases under-delivery in 50 % or more of the years in the periods considered were found to comprise persistent under delivery; Lewis J. did not interfere with that finding.

Reliance on City Deal

38. The Framework defines deliverable as: *"To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable"*¹⁵.
39. During the course of the Inquiry I was provided with further evidence of the Greater Cambridge City Deal [Documents 7.1-7.4], including a joint letter to the Chief Secretary to the Treasury welcoming the offer. That letter confirms that under the deal 1,000 additional units on rural exception sites would be delivered by 2031. However I am not persuaded that it would be reasonable to assume that 150 of those homes would be deliverable in the current 5-year supply period. On the limited information before the Inquiry it is far from clear whether any suitable sites have been identified, still less whether they would be *available now*, in order to be considered to be deliverable. Amongst other things the draft Minute records that the County Council and University, as major landowners, *"may"* find some exception sites. There is no basis for categorising these sites as windfall sites¹⁶. This novel arrangement for this area cannot, by definition, provide: *"compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply"*, as required by paragraph 48 of the Framework.
40. The draft Minute underlines that there remains considerable uncertainty about the scheme, particularly at this early stage. Matters to be resolved include joint governance, which might take approximately one year and appears to require primary legislation. The letter to the Treasury underlines the lack of certainty, including with regard to financing provisions, e.g. *"...if we receive the full £500m"* [*my emphasis*]. This goes back to the question of deliverability in terms of viability, which might depend on the availability of public subsidy. For these reasons I agree with the Appellant that there is a lack of certainty about the principle and timing of the City Deal and, as a consequence, there is no sound basis to take it into account in the current 5-year housing land supply.

Reliance on Cambridge City Council

41. The Council has prepared a number of calculations based on various assumptions, including joint figures taking account of the housing supply situation in Cambridge City Council's administrative area. The District surrounds the City and the adopted strategy, CS Policy ST/2, has sought to allocate housing on the edge of Cambridge as the first preference. Both Councils submitted their respective Local Plans on the same date for joint examination by one Inspector and although this is evidence of joint working it is, by definition, not a joint DP. Pending revised governance arrangements arising from the City Deal, the fact is that the 2 Councils comprise separate Local Planning Authorities. Paragraph 47 of the Framework is directed to each

¹⁵ Source of quote: footnote 11 of the Framework.

¹⁶ The Glossary to the Framework defines these as: *"Sites which have not been specifically identified as available in the Local Plan process. They normally comprise previously-developed sites that have unexpectedly become available"* [*my emphasis*].

Local Planning Authority, e.g. *"their housing requirements"*. Since it is clear that each Local Planning Authority must demonstrate its own 5-year housing land supply, to adopt a different approach here would be without precedent. It is telling that the Council has been unable to identify a single decision of an Inspector or the Secretary of State which adopts the joint approach which it has advanced at this Inquiry. In my view this speaks volumes.

Housing land supply calculations

42. For the above reasons I consider that the Appellant's calculation in Table 3 of Mr Hyde's proof is to be preferred. On the supply side this excludes the figures given in the February 2014 AMR for planning permissions granted between 1 April and 31 December 2013 but as it is a calculation at the end of March 2013 that is justified. I conclude that the Council has 3.51 years supply of housing. It is material to note that on the Council's own figures, adopting the Sedgefield methodology, but based on the position at 31 March 2014, including predicted completions to that date, it cannot show a 5-year housing land supply. With a 20 % buffer the Council calculates 3.9 years supply. Even using the Liverpool method, with a 20 % buffer, the Council calculates 4.4 years supply. I have given reasons why I do not accept the assumptions that underpin these figures but they tend to reinforce my conclusion in this matter.

Relevant policies for the supply of housing

43. The Framework says: *"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites"*¹⁷. The Appellant identified 3 policies to be relevant policies for the supply of housing, namely CS Policies ST/2 and ST/5, and DCP Policy DP/7. In response to my question as to whether the Council agreed it provided a note [Document 10] that identified those policies. However it contains a caveat that: *"It should be noted that to the extent that they address matters not directly relevant to the supply of housing, those elements of policy can properly attract weight"*.
44. Dealing with CS Policies ST/2 and ST/5 there appears to be no dispute that these exclusively comprise policies for the supply of housing. To the extent that it might be said that CS Policy ST/5 includes a relevant requirement for larger scale development to deliver financial contributions that does not appear to be in dispute in this appeal and is a matter I turn to in due course. However in closing it was said that DCP Policy DP/7 (2) lists criteria that are broadly consistent with the Framework. I accept that but it does not alter my view that DCP Policy DP/7 is, primarily, a policy for the supply of housing. Whilst worded positively rather than negatively DCP Policy DP/7 (1) appears to be similar to Policy EV2, which was at issue in *South Northamptonshire Council v SSCLG and Barwood Land* [2014] EWHC 573 (Admin)¹⁸. Ouseley J. held *"Such policies are the obvious counterparts to policies designed to provide for an appropriate distribution and location of development"* and that *"...the policy clearly falls within the scope of the phrase [in paragraph 49 of the Framework]"*¹⁹. My view is reinforced by the fact that this site is outside of the development framework and hence the criteria in DCP Policy DP/7 (2) do not apply to the appeal site.

¹⁷ Source of quote: paragraph 49.

¹⁸ See summary of EV2 at paragraph 38 of the judgment on page 479 of the bundle appended to Mr Hyde's proof [Appendix 31].

¹⁹ Source of quotes: paragraphs 47 and 48 of the judgment, respectively, on page 481 of the bundle appended to Mr Hyde's proof [Appendix 31].

45. On the first issue I conclude that relevant policies for the supply of housing, namely CS Policies ST/2 and ST/5, and DCP Policy DP/7, are out of date.

(ii) Character and appearance

46. The Statement of Common Ground records that the main parties agree the following points. The appeal site is enclosed by built development on 3 sides. The recently completed residential development at Cam Locks is situated to the west and the party boundary is formed by a mixture of mature trees and hedging. The residential properties at Nos 31-45 Bannold Road are located to the south and a timber close boarded fence augmented by trees and vegetation is present along the party boundary. To the north lies Waterbeach Barracks, which has now been relinquished by the Ministry of Defence [MoD]; the former married quarter housing is currently being refurbished for the open market and the first phase has been released. The party boundary is formed by a concrete post and wire fence and a number of mature trees. The appeal site is contained on its eastern boundary by Cody Road with agricultural land to the east.
47. DCP Policy DP/7 (1) only permits development for agriculture, horticulture, forestry, outdoor recreation and other uses which need to be located in the countryside. In cross-examination Mr Hyde, on behalf of the Appellant, conceded that the proposal is for development outside of the village framework of a type not permitted under the policy, which is an inevitable concession, but it needs to be seen in the context of my finding that it is not up-to-date.
48. In pursuit of its claim that the proposed development would result in a loss of a visually important open buffer which presently separates Waterbeach from the Barracks, the Council point to the comments of 2 previous Inspectors. In an appeal decision [Ref T/APP/W0530/A/86/044894/P4], dated 12 August 1986, the Inspector dismissed a scheme for 5 dwellings on a site to the north-east of the junction of Bannold Road and Cody Road. The Inspector found "*Waterbeach is a varied and characterful village which has succeeded in absorbing a large number of new houses without losing its compact and attractive appearance. It is separated from Waterbeach Barracks by a strip of arable land only some 200 m wide and the barracks itself is as extensive as a large village. It seems to me highly desirable that a wedge of open land should be retained between the 2 settlements to prevent their coalescence. Bannold Road, with its grass verges, mature trees and generally rural appearance forms a natural northern boundary to the village providing open views of farmland with the barracks beyond... If the appeal site were...to be built on this would further reduce the visual impact of the green wedge... Cody Road forms a distinct boundary to development on the northern side of Bannold Road and I consider it appropriate that the village envelope should exclude all the land to the east of this road*"²⁰. The 2004 Local Plan Inspector found that the current appeal site "*...is a green field arable site immediately to the [east of what is now Cam Locks]. The land is open to Cody Road and much more visible from the east. In my view there is far less case for developing this site and I do not support the objector's request that it be allocated for residential development*"²¹.
49. I accept that both Inspectors had to form judgments about the importance of the undeveloped area between the village and the Barracks and that their conclusions about that underlie both decisions. The appeal decision was made some 28 years ago and there have been 2 material changes since that time.

²⁰ Source of quote: paragraph 10.

²¹ Source of quote: page 1122 of the SHLAA Site Assessment Proforma [KPC9].

The first is the development of what is now Cam Locks. That built form is visible from Cody Road, particularly over the winter period, but even during the accompanied visit, when the mature hedgerow was in full leaf, the houses were still evident. However I acknowledge that the second Inspector did anticipate this change and take it into account when making the comments that he did.

50. The second arguably more significant change is that the Barracks, or at least that part of the Barracks served off Cody Road²², have been relinquished by the MoD and are being refurbished as market housing. In terms of their character and appearance I consider that the refurbished houses are indistinguishable from the "*varied and characterful*" remainder of the village. I consider that the refurbished houses²³ belie their origins. The Appellant draws comparison to, amongst others, Waddelow Road. However Park Crescent, to the south of Bannold Road, has a far more institutionalised feel, including a gate beside the entrance, and yet those houses are wholly within the settlement boundary.
51. In these circumstances I reject the claim that all of the findings made in 1986 remain pertinent today. In particular, the idea of the former Barracks and the village being "*2 settlements*" no longer applies. Mrs Pell-Coggins agreed in cross-examination that the sole reason why the former Barracks was outside of the settlement boundary was because of its military use, but that rationale for considering it separate has fallen away. The refurbished dwellings served off Cody Road are wholly dependent on Waterbeach for access and the residents are likely to use many of the services and facilities in the village, including the shops, school and GP surgery. Physically²⁴ and functionally this part of the former Barracks is now part of the village and, on the balance of probability, present and future occupiers of refurbished houses would regard themselves to be residents of the village of Waterbeach. I find no basis for concluding that this part of the former Barracks has a separate and distinct identity.
52. When viewed in this way the "*highly desirable*" separation that underpinned the Inspector's rationale in 1986 is now much less important. Indeed there is an argument that better integration would achieve the "*strong, vibrant and healthy*" community that the Framework alludes to. Otherwise the separation evident on the ground might represent a metaphor for something more. The first Inspector refers to Cody Road as forming a distinct boundary, making a distinction between the land to the west and east of the road. Although the second Inspector saw "*less case*" for developing the appeal site that comment needs to be seen in the context of the housing need at that time²⁵ and policies which then prevailed, including the emphasis on previously-developed land.
53. It is in this context that I turn to consider the site's visual importance. Views from Cody Road, such as that at issue between the main parties, are of low visual sensitivity because of the transient nature of any receptor. The Council disagrees because it says existing houses in the former Barracks have an outlook in this direction. That might be correct but that is not the specific view at issue²⁶. Nevertheless I consider that the magnitude of change on Cody Road

²² Noting that access remains restricted to some areas of the barracks, including the officer's mess, there might be a distinction to be drawn in other cases and hence the qualification. The area served off Cody Road includes Capper Road, Kirby Road, Fletcher Avenue and Abbey Place.

²³ At the time of my inspection the refurbishment was in progress along Capper Road and Kirby Road; the condition of the houses along Fletcher Avenue gave an indication of what those houses were like before the refurbishment.

²⁴ By virtue of the road link and pedestrian footway via Cody Road if nothing else.

²⁵ DR31 records that the 2004 Local Plan annual target was 753 dwellings per annum, which is the lowest for the period for which data is provided.

²⁶ Photograph 2 in Appendix 2 to the evidence of Mr Pearce.

would be high adverse, which is defined as causing a significant deterioration, because whereas there is now an open field with built development around its periphery there would be a brick wall and a view dominated by houses²⁷. However it is relevant that Cody Road is not a through route but effectively a cul-de-sac that serves the dwellings on Capper Road, Kirby Road, Fletcher Avenue and Abbey Place. There is no public right of way through the Barracks. This is material because, as Mr Pearce says, the sensitivity of visual receptors depends on the expectation and occupation or activity of the receptors.

54. Although the Council also took issue with views from Bannold Road²⁸, my site inspection revealed that views of the appeal site from these vantage-points would be less significant and so I have no reason to dispute the assessment. In particular at the time of my accompanied site inspection views of the appeal site from location 5 were largely obscured by, albeit deciduous, vegetation.
55. Cody Road is the key public vantage-point in which the appeal site might be said to provide a setting for the village and/or the former Barracks, as referred to in the putative reason for refusal, but this role is limited because the site is surrounded on 3-sides by built forms. The existing development establishes a clear relationship between those areas rather than a barrier, which is the sense in which the Council appear to use the word buffer. So whilst the appeal site is open, as in undeveloped, I question whether it fulfils the role of a buffer. Even if this might be wrong it is not a *visually important* open buffer as it is not sufficiently visible in the wider context but mainly seen from a no-through road [*my emphasis*]. The visual impact assessment demonstrates the limited extent of public views of the appeal site, aside from those in close proximity to the boundaries. The view towards the site from Cody Road is limited and enclosed. The view from the public open space looking east provides only glimpsed views of the appeal site and, during the summer, the hedgerow is an effective screen.
56. In broad landscape terms, distinct from the policy based approach evident from the CS, I accept that the site is visually contained within the envelope of the village. This view is consistent with Boyer Planning's description of it, for largely unrelated reasons, as: "...an enclave of undeveloped land within the framework of the existing village"²⁹. A passer-by, walking along the pavement on Cody Road, would at present see a field enclosed by built development on 3-sides and would not perceive separate settlements. Development of the site, in visual terms, will only result in the presence of built form coming closer to Cody Road. The Village Capacity Study, from 1998, identified the appeal site as a part of area No. 2, with "*Exposed edge, with rear garden and intermittent hedgerows*". This description would still be relevant if the appeal site was to be developed and so there would be no unacceptable impact on character.
57. In these circumstances the proposition that coalescence between the village and former Barracks would be undesirable is not justified. As I have noted, in terms of linking the communities it would be advantageous. In physical and landscape terms there is a clear and inevitable relationship between them. Development up to Cody Road would merely continue the pattern of coalescence that has taken place to the west of the appeal site over the years and so this would maintain, rather than harm, this characteristic of the village.

²⁷ The front and/or side wall of Plot 60 would dominate this view with a view along the front of the other dwellings proposed along Cody Road on the left hand side of this vista, which would only have modest front gardens.

²⁸ Photographs 5 and 6 in Appendix 2 to the evidence of Mr Pearce.

²⁹ Source of quote: page 378 of the bundle appended to Mr Hyde's proof [page 19, Appendix 27].

58. In my view the Council's revision of this reason for refusal was recognition that it would be unable to substantiate the alleged non-compliance with DCP Policy DP/3 (2) (m). It must now be common ground that the development would not have an unacceptable adverse impact on the countryside and landscape character. Neither do I consider it would contravene DCP Policy DP/3 (2) (l) because the proposed development would not have an unacceptable adverse impact on village character. It would have no material impact on the historic core of the village and, as is evident from the 1986 appeal decision, the village is characterised by the variety of housing that has been developed throughout the post war era including, most recently, at Cam Locks. To the extent that there might be public views out from land within the village framework, e.g. looking north along Cody Road³⁰, it is common ground that the impact would be low adverse, defined as a minor deterioration in the view, which is less than the policy test. Even when viewed from further along Cody Road the Council has not shown that the proposed development would have an *unacceptable adverse impact on village character*, which is a high policy test.
59. In view of this finding I attach limited weight under this heading to the findings of the Council's Strategic Housing Land Availability Assessment [SHLAA] 2012. The "*Site Assessment Conclusion*" that the site had development potential went on to set out a caveat that: "*This does not include a judgment on whether the site is suitable for residential development in planning policy terms, which will be for the separate plan making process*"³¹. It is clear that the Council's view was expressed in the putative reason, as modified, rather than the SHLAA.
60. On the second main issue I conclude that the proposed development would not harm the character and appearance of the area. By virtue of the fact that the scheme is proposed outside of the village development framework there would be a conflict with DCP Policy DP/7 (1) but for the reasons outlined above I find no conflict with DCP Policy DP/3 (2) and, in particular, criterion (l).

(iii) Prematurity

61. The Guidance says: "...arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both: a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination.... Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process"³².

³⁰ Photograph 4 in Appendix 2 to the evidence of Mr Pearce.

³¹ Source of quote: page 1128 of the SHLAA Site Assessment Proforma [KPC9].

³² Source of quote: paragraph reference 21b-014-20140306.

62. The first point to make is that the fact that the appeal is being pursued in the context of an emerging LP cannot itself render the proposal to be premature. The point is evident from my colleague's decision in Malpas, Cheshire [Appeal Ref APP/A0665/A/13/2193956], when he said: "*...the pursuance of residential schemes in the face of emerging but unadopted development plan documents cannot, in itself, render the proposal premature*"³³; I agree.
63. Mr Roberts, for the Council, agreed in cross-examination that criterion a), above, is not met. The development proposed is not so substantial, and its cumulative effect would not be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of development that are central to the emerging LP. Neither in my view is b) met. The appeal was lodged in October 2013, around 5 months before the emerging LP was submitted for examination, and had this Guidance [*seldom be justified*] been extant at that time it is open to question as to whether this putative reason would have been advanced. I have already expressed doubts about the timetable for its adoption in the LDS and given the quantum and nature of the objections I cannot characterise the emerging LP to be at an advanced stage. It might be subject to significant changes, in the form of main modifications, before adoption, assuming it is found to be sound.
64. In these circumstances the Council focussed on the words "*but not exclusively*". There is an argument that this is a reference to the application of "*both*" a) and b) but even if this is right this would not assist the Council here because I have given reasons why both a) and b) would not be met. The inference appears to be that some other circumstances should be applied, what was referred to as the exceptional case, but it is not clear what that might be. It would not be appropriate to impose what would amount to a moratorium on development pending consideration of, in particular, LP Policy S/4. The Inspector makes this clear in the Malpas decision when he responds to the suggestion by saying it would: "*...not reflect Government advice in the Framework, and such a course of action would result in housing supply falling further and further behind*"³⁴. Although a copy of the advice that was extant when the appeal was lodged was submitted³⁵, which was current when the decision in Malpas was made, this does not assist; paragraph 17 referred to refusing planning permission on the grounds of prematurity where there is a phasing policy but that does not apply. In light of the Guidance I find that no circumstances exist in this appeal that justify a deemed refusal of planning permission on the basis of prematurity.
65. Nevertheless the Appellant has made extensive submissions under this heading following what the Council has called "*forensic archaeology conducted in cross examination*"³⁶. There is a balance to be struck between taking account of these material considerations and avoiding overstepping the mark by treading into territory that is properly within the remit of the examination Inspector. I make the following observations without prejudice to the LP examination.

Would there be prejudice to the outcome of the plan-making process?

66. The Council advanced a putative refusal reason on the grounds of prematurity. On this basis the Council needs to indicate clearly how a grant of planning permission would prejudice the outcome of the plan-making process. Mr Roberts, for the Council, was clear that in his view the new town proposal

³³ Source of quote: paragraph 111 [page 288 of the bundle appended to Mr Hyde's proof [page 17, Appendix 23].

³⁴ Source of quote: paragraph 109 [page 288 of the bundle appended to Mr Hyde's proof [page 17, Appendix 23].

³⁵ Document 11.

³⁶ Source of quote: paragraph 27, Document 19.

would ultimately be included in the LP that would be adopted. Implicit to this view is that the outcome of the plan-making process would not, in this respect, be prejudiced. In substance the delivery of Policy SS/5 in relation to the area shown on Inset Map H would not be prejudiced by allowing this appeal.

67. Policy SS/5 (6) says an Area Action Plan [AAP] will be prepared for the area shown on the Policies Map. The Key and annotation on Inset Map H confirm that the area concerned excludes that part of the former Barracks accessed via Cody Road, i.e. Capper Road, Kirby Road, Fletcher Avenue and Abbey Place. This area is also proposed, on Inset No 104 [Map 2 of 2], to be outside of the settlement boundary for Waterbeach. As I have already noted the sole access to this part of the former Barracks is via Cody Road; I have given reasons why it is physically and functionally part of the village. There appears to be nothing in the emerging LP that would lead me to find that status would change. On this basis it is difficult to see how the proposed Green Belt extension could be said to separate the village from the new town. The only contiguous boundary between the proposed Green Belt and the new town would be along the northern boundary of the appeal site. However there appears to be no plan to close Cody Road at this point and so this "*direct road access*", as per Policy SS/5 (3), would be inconsistent with achieving clear separation at this point.
68. The Council has not considered the proposed Green Belt extension against the purposes of the Green Belt set out in paragraph 80 of the Framework. It was submitted for the Appellant that this was a "*serious error*" and it is surprising, especially when others had already questioned whether the proposed extension complied with these purposes³⁷. The objective appears to be separation but the second bullet-point, which is perhaps the most relevant to this aim, relates to "*neighbouring towns merging into one another*". The Council maintained at the Inquiry that the District comprises 108 villages with no towns and it follows that Waterbeach is, as it stands, a village. As such the proposed Green Belt extension would not appear to meet this or any other purpose in paragraph 80.
69. In the absence of having tested the proposed Green Belt extension against the purposes in paragraph 80 of the Framework, the Council instead relies on the "*established purposes of the Cambridge Green Belt*"; the only relevant one is to: "*Prevent communities in the environs of Cambridge from merging into one another*"³⁸. However I have already given reasons why that part of the former Barracks served by Cody Road should be seen, physically and functionally, to be part of the village of Waterbeach, rather than being a separate community. On this basis it is difficult to see how Policy S/4 is consistent with this purpose.
70. In a similar vein paragraph 52 of the Framework invites Councils to "*consider whether it is appropriate to establish Green Belt around or adjoining any such new development*". However the proposed extension to the Green Belt would principally lie between that part of the former Barracks served by Cody Road and the village rather than being around the new town. As I have noted the only point at which the proposed Green Belt would directly adjoin the new town would be along the northern boundary of the appeal site and it is only to this very limited extent that it could be said to adjoin the new development. On this basis it is difficult to see how Policy S/4 is consistent with this advice either.

³⁷ RLW/DIO representation on the consultation Local Plan, dated 11/10/2013, paragraph 4.29 [page 378 of the bundle appended to Mr Hyde's proof [page 19, Appendix 27].

³⁸ Source of quotes: paragraph 2.29 of the Proposed Submission South Cambridgeshire Local Plan.

71. Paragraph 82 of the Framework requires “*exceptional circumstances*” to be shown in order to justify the establishment of new Green Belts. I acknowledge that one example given is a new settlement, but Councils still need to satisfy the criteria set out. The Audit Trail³⁹ reveals these criteria were considered⁴⁰ and reasons given why the criteria were met. Dealing with each in turn:

- i) the Appellant submits that normal planning and development management policies would be adequate, but I accept that they might not be if, at any point, there was an absence of a 5-year supply of housing. The reference to paragraph 86 of the Framework, whether a village should be ‘*washed over*’ by Green Belt, is different and does not assist in circumstances where the land is open and undeveloped. However this is not, in itself, a demonstration of the necessity for the extension to the Green Belt [see point iv) below]. As Mr Hyde observed the logical consequence of that argument is that one would expand the Green Belt to include all sites at risk of release;
- ii) the change in circumstance that led officers to propose the designation was the new town. Although extensive representations were made with regard to the evolution of the policy, this is the key point that I take from those submissions;
- iii) it is not unreasonable for the Council to argue that the designation would have no adverse consequences for sustainable development as other sites might come forward in the absence of a 5-year supply;
- iv) there was no Green Belt study or assessment and, crucially, I have already had cause to criticise the Council in its application of Green Belt purposes, which goes to the necessity for the Green Belt in this location. Although Mr Roberts’s proof refers to openness I consider this does not go to necessity for Green Belt in this geographical location. This argument, and the absence of implication for adjoining local plans, was not expressly addressed in the Audit Trail; and,
- v) based on my earlier rationale I disagree that the designation would ensure separation between the village and new town, which is the key reason given in Mr Roberts’s proof, which was reinforced in closing.

To this extent it is difficult to see how Policy S/4 is consistent with the fourth and fifth bullet-points of paragraph 82.

72. My view that the Council has not demonstrated the necessity for the Green Belt extension in this location is reinforced by the prospect that it might be possible to achieve the objective in Policy SS/5 (3), to maintain the identity of Waterbeach as a village close to but separate from the new town, in another way, via the AAP, which better aligns separation with no direct access. Policy SS/5 (1) is clear that whilst the new town of 8,000-9,000 dwellings is proposed: “*The final number of dwellings will be determined in the Area Action Plan*”. In this regard it is material that the promoters of the new town have sought to argue that the capacity of the Major Development Site, as defined in the emerging LP, should be increased to 10,000 dwellings, based on a density of 40 dwellings per hectare⁴¹. This appears to be based on a Development Framework Plan that makes allowance for almost 150 hectares of open space⁴².

³⁹ Page A48, Draft Final Sustainability Appraisal (March 2014) at Appendix DR 18 to Mr Roberts’s proof.

⁴⁰ I acknowledge the Appellant’s submission that this was done retrospectively, after the Members decision was made in June 2013, but that does not alter the designation or the terms of the submission LP.

⁴¹ RLW/DIO representation on the consultation Local Plan, dated 11/10/2013, paragraphs 4.34 and 4.14, respectively [pages 378 and 376 of the bundle appended to Mr Hyde’s proof [pages 19 and 17, Appendix 27].

⁴² I do however acknowledge that this area appears to extend beyond the Major Development Site on Inset H, see page 388 of the bundle appended to Mr Hyde’s proof [Appendix 27].

73. The Appellant submits that in the absence of studies which will inform the AAP it is impossible for the Council to argue that provision of a buffer to the north of the former Barracks cannot be accommodated except by harming the quality of future development; I agree. Policy SS/5 (6d) says that the AAP will consider the relationship and interaction with the village. Paragraph 3.37 of the supporting text says of the Major Development Site: *"This does not mean the whole of the area will be developed. Large parts of it will remain undeveloped and green after the settlement is complete to provide open spaces within the new town and a substantial green setting for the new town...and Waterbeach village"*. Although the disposition of open space might need to be revised from that illustrated on the promoter's *Development Framework Plan*, I agree with the Appellant's submission that there would appear to be plenty of scope to provide a green, open buffer within the land allocated for the new town. So, whilst I respect the Council's objective to maintain the identity for the village, which reflects concerns raised by the local community, I am not persuaded that this outcome could not be achieved without the proposed Green Belt extension. To the contrary, it might be better to align separation with no road access.
74. For these reasons the Council has not clearly shown how a grant of planning permission would prejudice the outcome of the plan-making process. First it is clear that the proposal for the new town, Policy SS/5 read with Inset Map H, would, in substance, be unaffected by a grant of planning permission. Second I have given reasons why the objective underpinning the proposed Green Belt extension could be accommodated in another way, without causing prejudice to the outcome of the plan-making process. It might be a matter that could be properly and reasonably delegated to the AAP, which the LDS says the Council is not scheduled to commence work on until *"Winter 2017/18"*⁴³. A grant of permission would not prejudice the outcome of that plan-making process.
75. The Appellant submits that no weight should be given to draft LP Policies S/4 and SS/5 in relation to the proposed designation of land at Cody Road as Green Belt. However these policies are material to my decision and although I have expressed concerns about the degree to which the former is consistent with the Framework, this tends to reinforce my earlier view that it would be appropriate to attach limited weight to these emerging policies. To apply no weight might suggest they are not material but they are; the fact is the Council maintains that the appeal site should be designated as an extension to the Green Belt. However this rather minor concession does not alter my overall findings. On the third main issue I conclude that dismissal of the appeal on the grounds of prematurity would not be justified, having regard to advice in the Guidance.

(iv) Is it a sustainable location for this scale of residential development?

The Development Plan approach to sustainability

76. Paragraph 2.7 of the CS says: *"The Strategy is one of concentrating development on Cambridge through a number of urban extensions to the city and at the new town of Northstowe... The strategy also allows for limited development to meet local needs in Rural Centres and other villages"*. CS Policy ST/2 sets out this *"order of preference"* with *"...development in Rural Centres and other villages"* [*my emphasis*] being the last preference. Although I acknowledge that no distinction is made in CS Policy ST/2 between types of rural centres I consider that this does not assist the Appellant. CS Policy ST/5 includes Waterbeach but it is clear that the policy only permits residential

⁴³ Source of quote: Document 6, page 3.

development within the village frameworks of Minor Rural Centres, as defined on the Proposals Map. The appeal site is outside the village framework as so defined and hence I regard the debate between the parties as to whether the policy reference to an indicative maximum scheme size of 30 dwellings can be interpreted to permit 60 to be academic. The proposed development would not be policy compliant because the appeal site is not within the village framework.

77. A number of material considerations have been advanced. I acknowledge that the SHLAA concluded that the site had development potential. The summary of the SHLAA Assessment⁴⁴ found the appeal site had sustainable development potential and, using a traffic light system, classified it green, defined as a *"More sustainable site with development potential (few constraints or adverse impacts)"*. This included recognition that the appeal site could be accessed by sustainable transport modes such as walking, cycling and public transport.
78. That this is so is borne out by the Council's own Services and Facilities Study⁴⁵. It records that there is an hourly bus service between Cambridge and Ely from Monday to Saturday, inclusive, with a half-hourly service at peak times and a timetabled journey time of less than 25 minutes from the village to Cambridge. The train service from the village to and from Cambridge runs from 0700 to 2300 hours and appears to be hourly with a more frequent service to Ely at all times and to Cambridge in the morning peak. Journey times are short with a timetabled journey time to Cambridge of as little as 6 minutes. There is also an off-road cycle route parallel to the river which, by reason of the topography, provides a realistic alternative mode of travel. In addition cycling or walking are realistic ways of gaining access to the bus and rail network, as well as local services and facilities, including employment.
79. In terms of services and facilities, the village has a primary school and a GP, both of which are conveniently located close to the appeal site. There is no secondary school, although the Inquiry was advised that there is a bus service for students to gain access to Cottenham College. The village has a basic level of retail facilities, including a post office, bakery, butcher, newsagent, village store, pharmacy and hairdresser. Apart from the numerous public houses there appears to be a fairly limited range of other services and facilities, such as one garage, but there is significant employment both within and near to the village.
80. Questions of frequency aside, the fact that Waterbeach has a train service at all gives it a considerable advantage, in terms of choice of sustainable modes of transport, over many other villages in the District. I consider that this might not be adequately reflected in the Village Classification Report⁴⁶, which ranks Waterbeach as joint second from bottom in the list of settlements on the basis of a scoring system set out in the report. However I am not in a position to undertake a revised form of comparative analysis, which is properly a matter for the Inspector undertaking the LP examination. So whilst Mrs Pell-Coggins conceded in cross-examination that the Village Classification Report was *"rather harsh"* and I have sympathy with the Appellant's claim that it *"short-changes"* the village, particularly by reason of its good public transport links, it is unclear where that point goes. In comparative terms, even if Waterbeach was given a score for its public transport accessibility, it would still be a relatively poorly performing settlement when judged against the, albeit not entirely satisfactory, criteria set out in the Village Classification Report.

⁴⁴ Appendix 4 to Mr Hyde's evidence.

⁴⁵ Appendix 14 to Mrs Pell-Coggins's evidence.

⁴⁶ Appendix 13 to Mrs Pell-Coggins's evidence.

81. For these reasons I find a conflict with CS Policies ST/2 and ST/5 and the locational strategy which underpins them. In reaching this finding I appreciate that: i) paragraph 2.20 of the supporting text refers to the 30 dwellings as being a *"guideline"*; ii) the 2004 Local Plan designated the village as a Rural Growth Settlement with no numerical constraints on development; and, iii) criterion 3 of CS Policy ST/5 is met, but this does not alter this finding.

The approach of the Framework to sustainability

82. Turning to the Framework, paragraph 29 says the transport system needs to be balanced in favour of sustainable transport modes *"...giving people a real choice about how they travel"*. In this context I attach significant weight to the view of the Highway Authority that: *"This development can be considered in a sustainable location with reasonable pedestrian/cycle and public transport links"*⁴⁷. I have no doubt that in reaching this view the Highway Authority took account of the factors previously identified, including transport accessibility and the location of services and facilities. Moreover Mrs Pell-Coggins accepted in cross-examination that the appeal site is a sustainable location; I agree because prospective households would not be wholly dependent on the private car in order to meet their day to day needs. The Framework also says that in preparing Local Plans, Local Planning Authorities should support a pattern of development which, where reasonable to do so, facilitates the use of sustainable modes of transport. In this context, the fact that the Council has identified the village as a location for a large new town is not immaterial.
83. Although prospective occupiers would inevitably depend, to some extent, on the private car, it is worth noting that this is also likely to be the case, albeit to varying degrees, in all of the District's villages. My colleague in the Toft appeal found: *"Toft, in combination with Comberton, is capable of meeting a number of the day to day needs of its residents..."*⁴⁸. This was a factor in his finding that the proposal would be a sustainable development, yet I note the CS says Toft is only suitable for infill; in other words that village is lower down the spatial hierarchy in the CS. In the context of the failure of the adopted strategy to deliver an adequate supply of housing, I consider the appeal site represents a sustainable development option. It is not the most sustainable option in terms of the locational strategy in the CS but it is a sustainable option that is deliverable and would help to meet the shortage of housing in the area.
84. The Framework explicitly recognises that development in rural areas is unlikely to offer the same opportunities for promoting sustainable modes of transport as is development in urban areas. However this is not reason in itself to focus all new development around Cambridge, because the *"sustainability"* of putting development in a particular location is about much more than just accessibility. In that real sense the CS is out-of-date with the approach in the Framework.
85. As I have already noted, paragraph 7 of the Framework says that there are three dimensions to sustainable development. In terms of the economic dimension, the Government has made clear its view that house building plays an important role in promoting economic growth. The proposed development would have give rise to a number of economic benefits. In the short term this would include the creation of jobs in the construction industry as well as the multiplier effect in the wider economy arising from increased activity. In the long term future occupiers of the proposed new houses would provide more

⁴⁷ Source of quote: Transportation comments from the Highway Authority dated 28th August 2013.

⁴⁸ Source of quote: paragraph 24 of the Toft decision.

custom for the existing shops and services in the village thereby contributing to the local economy. The provision of housing in Waterbeach would help to meet the needs of businesses, e.g. on the nearby Cambridge Research Park, to house their employees, whilst also providing a realistic travel option by train to Cambridge to help support its important, wider economic role. The scheme would therefore contribute towards building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type was available in the right place at the right time to support growth.

86. Turning to the social dimension of sustainable development, the Framework places importance on widening the choice of high quality homes and ensuring that sufficient housing (including affordable housing) is provided to meet the needs of present and future generations. For the reasons identified in my consideration of the first issue, the proposal would be of clear benefit in these terms given the current shortfall in the District's housing supply. The proposed development would give rise to a high quality built environment. Accessible services that would meet many day-to-day needs of prospective occupiers exist in the village or can be accessed by sustainable modes of transport.
87. Finally in relation to the environmental role of sustainable development I have given reasons why the proposed development would not harm the character and appearance of the area. Paragraph 8 states that in order to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. I conclude, notwithstanding my finding when tested against the locational strategy in the CS, that the proposal would comprise sustainable development.

Application of the presumption in favour of sustainable development

88. The Framework says that for decision taking the presumption in favour of sustainable development means that: "*where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted*"⁴⁹. Footnote 9 to the Framework gives examples of the latter to be policies relating to land designated as Green Belt and locations at risk of flooding. The appeal site is not designated as Green Belt and although local residents have expressed concerns about flooding, the Statement of Common Ground records that all technical issues have been resolved between the main parties. Paragraph 6.1 (ii) thereof records that the Council's Drainage Manager has accepted the approach outlined within the revised Flood Risk Assessment and any other issues regarding surface water drainage have also been resolved. There is no technical evidence before the Inquiry, distinct from assertion, which would lead me to a contrary view. Although Councillor Hockney pointed out at the Inquiry [Document 17] that the Drainage Board raised concerns about the original application it is clear that those concerns have been overcome by the revised drainage scheme, which is now agreed.
89. In applying the presumption in favour of sustainable development it is necessary to undertake a balancing exercise that is skewed in favour of granting permission. I have identified the adverse impacts of the proposed development to include the fact that the development would take place outside the settlement boundary, but given that DCP Policy DP/7 is a policy for the

⁴⁹ Source of quote: paragraph 14 of the Framework.

supply of housing this is not, in and of itself, a reason to refuse permission. Similarly my finding that the proposed development would conflict with the locational strategy in the CS was made having regard to the spatial strategy set out in CS Policies ST/2 and ST/5, which are also policies for the supply of housing that are not up-to-date. Noting again the view of the Highway Authority and the concession by Mrs Pell-Coggins, prospective households would not be wholly dependent on the private car in order to meet their day to day needs due, amongst other things, to realistic public transport options and local employment opportunities. The contributions that have been offered towards upgrading a bus stop and the provision of real time passenger information would further promote these options. I have also given reasons why I attach limited weight to the emerging LP at this time, even though I acknowledge that it seeks to designate the appeal site as Green Belt.

90. On balance I find that there are no adverse impacts that would significantly and demonstrably outweigh the benefits of the scheme, which include the prospect of early implementation in order to meet the urgent housing need in the area. Although most of the other financial contributions constitute mitigation for, rather than a benefit of, the proposed development, the 40 % affordable housing that is offered is a material consideration in favour of the proposed development to which I attach significant weight. The design, including layout and landscaping, is acceptable and the contribution offered towards new footpath linkages with the recent housing at Cam Locks would facilitate legible pedestrian routes to neighbours. On the fourth main issue, taking account of the broader perspective of sustainable development that is evident from the Framework but not reflected in the DP, I conclude that this is a suitable and sustainable location for this scale of residential development.

Other Matters

(i) Consideration of the Planning Obligations and Unilateral Undertaking

91. The Council provided a "*Planning Obligations Justification Statement*" ahead of the Inquiry, the contents of which were not challenged. Appended to the statement is a bundle of policy extracts and background documents that set out the basis for the quantum of contributions sought. Moreover both of the main planning obligations are, somewhat unusually in my experience at appeal, delivered as agreements rather than unilateral undertakings, which underlines that the respective Councils are content with the level of contributions offered.
92. If I were in any doubt as to the necessity for the specific sums sought, the basis for the respective contributions is set out in the Justification Statement. In the circumstances I am satisfied that provision of the Planning Obligations are compliant with paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy [CIL] Regulations 2010. Amongst other things DCP Policy HG/3, read with the Affordable Housing Supplementary Planning Document [SPD], which was adopted in March 2010, provides a clear basis for the level and mix of affordable housing. Although the statement refers to "36" I shall assume this is a typo, perhaps a reference to the concurrent appeal⁵⁰. With this one anomaly there is a clear basis and audit trail for the sums sought.
93. The statement details the rationale for a sum of £3,000 for monitoring but not the costs, £1,250, incurred in the negotiation, preparation and execution of the deed. I note that a similar figure, £1,899.80, is offered as a contribution

⁵⁰ See paragraph 2.7 of the statement for the land to the west of Cody Road; 40 % of 60 is 24, which is what would be delivered by the second planning obligation in this case.

towards the cost incurred in the negotiation, preparation and execution of the first planning obligation. Although the basis for these sums is not set out in the Justification Statement the basis for them is self-evident and, as such, I have no reason to interfere in the quantum that is agreed between the parties.

94. The Justification Statement says the developer should pay for the installation of two sections of footpath to create links to the Cam Locks development to the west of the appeal site, as shown on the submitted site plan. The submitted Unilateral Undertaking would appear to achieve this goal. The Council has not raised an issue with regard to the quantum of the contribution offered. Whilst the Justification Statement does not identify a figure I consider that £2,500 is a reasonable contribution towards the works necessary to achieve this objective, which is compliant with paragraph 204 of the Framework and Regulation 122 of the CIL Regulations 2010.

(ii) Other material considerations

95. I appreciate that allowing this appeal might make it more difficult for the Council to resist other applications for residential development on adjoining land that have recently been put forward, including S/2092/13/OL [Document 8]. However, noting the weight that I have attached to the variable housing supply situation, that is properly a matter for the relevant decision maker.
96. Concerns have been expressed that the upstairs rooms of house Nos 12-17 would face “*directly*” towards existing properties in Bannold Road, which would result in a loss of privacy⁵¹. However, as I was able to observe during my site inspection, the relationship would not be untypical of many residential areas. The properties along this part of Bannold Road enjoy quite long rear gardens and the resulting separation distance between existing and proposed dwellings would be adequate to maintain good living conditions. My view in this matter is reinforced by the Council’s stance in this matter⁵².
97. There has been a suggestion that the Officer’s Mess of RAF Waterbeach, which lies to the north of the appeal site, “...*may soon become a Listed Building*”⁵³. However it is not so designated at the present point in time and in any event no claim is made that the proposed development would not, at a minimum, preserve the setting of the building. This factor does not weigh against the proposal. None of these material considerations nor any other matters raised in the written representations alter the overall conclusion to which I am drawn.
98. In the light of my finding that there are no adverse impacts that would significantly and demonstrably outweigh the benefits of the scheme, and my similar conclusion in the Bannold Road appeal, I have also considered whether the combined impact of allowing both appeals would result in any change in the balance of benefits and adverse impacts. The effect of permitting both appeals would be to increase the weight on the “*adverse impact*” side of the balance, principally due to the identified conflict with the spatial strategy set out in the DP. However because CS Policies ST/2 and ST/5 are policies for the supply of housing that are not up-to-date it remains the case that, in applying the presumption in paragraph 14 of the Framework, the cumulative impacts of allowing both of these appeals would not significantly and demonstrably

⁵¹ Source of quote: Document 9.

⁵² Paragraph 6.1 (iv) of the Statement of Common Ground records that there is no objection to the layout that has been submitted or the proposed design of any aspect of the development [my emphasis].

⁵³ Source of quote: Document 16.

outweigh the identified benefits. In reaching this view it is material that no case was advanced for the Council on this “combined” basis.

Overall conclusion

99. I conclude that, as policies for the supply of housing in the DP are out-of-date and the Council cannot demonstrate a 5-year supply of housing land, the appeal should be allowed and planning permission granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Taking account of the identified benefits of the appeal proposal, I conclude overall that planning permission should be granted because other material considerations clearly outweigh the identified conflict with out-of-date DP Policies.

Conditions

100. In advance of the Inquiry the Council put forward a list of 22 conditions, all of which are acceptable to the Appellant insofar as they relate to the development that I propose to grant planning permission. However I shall briefly test the suggested conditions against the advice in the Framework and the Guidance, having regard to the list of model conditions in Circular 11/95.
101. The first is the standard commencement condition, which is a requirement of the Act. The second identifies the approved plans, which is necessary in the interests of proper planning and for the avoidance of doubt. The third, requiring details of external materials to be agreed, is necessary to ensure a satisfactory appearance. The fourth, removal of permitted development rights, is necessary in order to avoid any possible adverse impact on neighbours’ living conditions. The fifth requires specified windows, which are on side elevations that look out over rear gardens of adjacent dwellings, to be fitted with fixed obscure glazing in the interests of neighbours’ living conditions. The sixth requires approval of details of the proposed garden sheds, together with their completion and retention, but as the rationale for the condition goes to cycle parking I shall add a clause to require the garden sheds to be available for this purpose.
102. The seventh, eighth and ninth conditions require details of boundary treatment, hard and soft landscaping, and implementation of the latter respectively, which are necessary in the interests of the finished appearance of the development. The tenth requires details of those trees that are proposed to be retained, which is necessary to achieve biodiversity and by reason of visual amenity but I shall revise that suggested to make reference to the current British Standard. The eleventh, bird nest boxes, is necessary to enhance biodiversity but I shall add a retention clause to ensure that they are not immediately removed.
103. The twelfth, archaeology, is necessary in order to comply with DP policy but I shall revise the suggested condition in the interests of precision. The thirteenth relates to land contamination, which is necessary in the interests of neighbours’ living conditions together with those of prospective residents, but I shall add a clause to require remediation, if necessary, to make it enforceable. The next requires implementation of the surface water drainage scheme that has been agreed with the relevant drainage bodies in order to prevent flooding. The next requires approval of a scheme of pollution control of the water environment, which is appropriate to reduce the risk of such pollution from oil etc.

104. The sixteenth and seventeenth require provision of the required visibility splays at the road junctions and driveways, respectively, which are necessary in the interests of highway safety. The eighteenth requires agreement of a traffic management plan during construction phase, which is also necessary in the interests of highway safety. The nineteenth requires the parking and turning areas to be laid out and thereafter retained for those purposes. The twentieth requires a travel plan to be submitted and approved, and whilst a revised plan is before the Inquiry it is for the Council to consider whether further details are required to discharge the condition. The final two suggested conditions agreed between the main parties require details of lighting and fire hydrants to be approved, which are necessary in the interests of minimising light pollution and ensuring an adequate water supply is available in emergencies, respectively.
105. At the Inquiry a further suggested condition was put forward by the Council [Document 18], which sought to deliver footpath links to the adjacent Cam Locks site in order to integrate the respective developments. Although such links are shown on the submitted site plan, amongst others, it must be right that the Appellant is only able to deliver those parts of the footpaths that are on land within the Appellant's control. In the circumstances I shall impose a condition to achieve this as distinct from the more wide ranging condition put forward by the Council at the Inquiry. This appears to be broadly in line with paragraph 2.36 of the "*Planning Obligations Justification Statement*", having regard to the terms of the Unilateral Undertaking that I have examined above.

Pete Drew

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 7777 002 B, 7777 001 X, 7777 017 B, 7777 018 A, 7777 019 B, 7777 020 A, 7777 021 B, 7777 022 A, 7777 023 B, 7777 024 A, 7777 025 A, 7777 026 B, 7777 027 B, 7777 028 A, 7777 029 B, 7777 030 A, 7777 031 B, 7777 032 B, 7777 033 A, 7777 034 A, 7777 035 B, 7777 037 C, 7777 038, 7777 039, 5084 F E TPP 08, 5084/LM03 Rev J, 5084/PP04 Rev I, 5084/PP05 Rev I, 5084/PP06 Rev I, TA03 Rev C, TA04 Rev C and TA09 Rev B.
3. No development shall take place until details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended (or any order revoking and re-enacting that Order with or without modification), no development within Class A of Part 1 to Schedule 2 shall take place on Plots 1 to 26 and 39 to 60 unless expressly authorised by the Local Planning Authority following a grant of express planning permission.
5. Apart from any top hung vent, the proposed windows in the specified elevations of the dwellings hereby permitted shall be fixed shut and permanently glazed with obscure glass. The specified elevations of the dwellings concerned are: Plot 8 (first floor bathroom window in north elevation); Plot 12 (first floor bathroom window in east elevation); Plot 49 (first floor bathroom window in east elevation); Plot 53 (first floor bathroom window in south elevation); and Plot 57 (first floor bathroom window in south elevation).
6. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the designs and dimensions of the garden sheds on Plots 8 to 17, 39 to 44 and 50 to 53. The garden sheds shall be completed before any dwelling on each of these respective plots is occupied in accordance with the approved details and shall thereafter be retained and available for the parking of bicycles.
7. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before that dwelling or any dwelling on any adjacent plot is occupied in accordance with the approved details and shall thereafter be retained.
8. No development shall take place until full details of hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include indications of all existing trees and hedgerows on the land and details of any to be retained, together with measures for their protection during the course of development. The details

shall also include specification of all proposed trees, hedges and shrub planting, which shall include details of species, density and size of stock.

9. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority. If within a period of 5 years from the date of the planting, or replacement planting, any tree or plant is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.
10. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the first date of occupation of any dwelling within the site:
 - i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998: 2010 "*Tree Work – Recommendations*" (or any equivalent standard replacing BS 3998: 2010).
 - ii) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
 - iii) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the Local Planning Authority.
11. No development shall take place until a scheme for the provision of bird nest boxes has been submitted to and approved in writing by the Local Planning Authority. The bird nest boxes shall be erected in accordance with the approved scheme before any dwelling is occupied and shall thereafter be retained.
12. No development shall take place until a programme of archaeological work has been undertaken in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.
13. No development shall commence until:
 - i) The appeal site has been subject to a detailed desk study and site walkover in relation to contamination, to be submitted to and approved in writing by the Local Planning Authority.
 - ii) Following approval of i) above, a detailed scheme for the investigation and recording of contamination and remediation objectives (which

have been determined through risk assessment) must be submitted to and approved in writing by the Local Planning Authority.

- iii) Detailed proposals for the removal, containment or otherwise rendering harmless any contamination (the Remediation method statement) have been submitted to and approved in writing by the Local Planning Authority.
- iv) The works specified in the Remediation method statement have been completed and a verification report submitted to and approved in writing by the Local Planning Authority, in accordance with the approved scheme.
- v) If during remediation works any contamination is identified that has not been considered in the Remediation method statement then remediation proposals, together with a timetable, should be agreed in writing by the Local Planning Authority and the remediation as approved shall be undertaken within the timeframe as agreed.

14. The site shall be drained via a new surface water sewer to the Internal Drainage Board watercourse at Bannold Drove as set out in option 3 of section 5.3.11.1 of Flood risk Assessment reference R-FRA-Q6343PP-01C Revision D dated November 2013. Prior to the commencement of any development the details of the scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be constructed and completed in accordance with the approved plans prior to the occupation of any dwelling or in accordance with an implementation programme that has been agreed in writing by the Local Planning Authority.
15. No development shall take place until a scheme for the provision and implementation of pollution control of the water environment, which shall include foul drainage, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be constructed and completed in accordance with the approved plans prior to the occupation of any dwelling or in accordance with an implementation programme that has been agreed in writing by the Local Planning Authority.
16. Visibility splays shall be provided on either side of the junction of the proposed access road with the public highway prior to occupation of any dwelling. The minimum dimensions of the required splay lines shall be 2.4 m, measured along the centre line of the proposed access road from its junction with the channel line of the public highway, and 43 m in both directions, measured along the channel line of the public highway from the centre line of the proposed access road. The visibility splays shall be maintained clear from obstruction over a height of 600 mm and thereafter retained.
17. Visibility splays shall be provided on both sides of the driveway and/or parking space to each dwelling that exits directly on to the public highway prior to occupation of any dwelling. The minimum dimensions of the required splay lines shall be 2.0 m on each side of the driveway/parking space x 2.0 m along the highway boundary within the curtilage of the dwelling. The visibility splays shall be maintained clear from obstruction over a height of 600 mm and thereafter retained.
18. No construction works shall commence on site until a traffic management plan has been agreed with the Local Planning Authority in consultation with

the Highway Authority. The principle areas of concern that should be addressed are:

- i) Movements and control of muck away lorries (all loading and unloading should be undertaken off the adopted public highway).
- ii) Contractor parking, which should be within the curtilage of the site and not on street.
- iii) Movements and control of all deliveries (all loading and unloading should be undertaken off the adopted public highway).
- iv) Control of dust, mud and debris, which should not be deposited upon the public highway.

19. The dwellings hereby permitted shall not be occupied until parking and turning space has been laid out within the site in accordance with the layout shown on drawing No 7777 001 X. The parking and turning areas shall thereafter be retained for their authorised use.
20. The dwellings hereby permitted shall not be occupied until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall be implemented in accordance with the approved details.
21. No development shall take place until a lighting scheme, to include details of any external lighting of the site such as street lighting, floodlighting and security lighting, has been submitted to and approved in writing by the Local Planning Authority. This information shall include a layout plan with beam orientation, full isolux contour maps and a schedule of equipment of the design (luminaire type, mounting height, aiming angles and luminaire profiles, angle of glare) and shall assess artificial light impact in accordance with the Institute of Lighting Engineers (2005) '*Guidance Notes for the Reduction of Obtrusive Light*'. The approved lighting scheme shall be installed in accordance with the approved details before any dwelling is occupied, and thereafter maintained and retained in that condition.
22. No development shall take place until a scheme for the provision and location of fire hydrants to serve the development to a standard recommended by Cambridgeshire Fire and Rescue Services has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved scheme before any dwelling is occupied.
23. No development shall begin until details of a scheme for the provision of public footpaths up to the western boundary of the appeal site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for implementation of the works, which shall be carried out in accordance with the approved details.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Melissa Murphy of Counsel	Instructed by Head of Legal Services, South Cambridgeshire District Council.
She called:	
Karen Pell-Coggins MA MRTPI	Senior Planning Officer, South Cambridgeshire District Council.
David Roberts BA, MRTPI	Principal Planning Policy Officer, South Cambridgeshire District Council.

FOR THE APPELLANT:

Craig Howell-Williams QC	Instructed by Januarys Consultant Surveyors, Cambridge.
He called:	
Mark Hyde BA (Hons), BTP, MRTPI, AIEMA	Planning Director, Januarys Consultant Surveyors, Cambridge.
Scott Pearce BA (Hons), Pg Dip, MArborA, MLI	Director, First Environment Consultants Limited, Oxfordshire.

INTERESTED PERSONS:

Oliver Merrington	Local resident.
Councillor Peter Johnson	Local Councillor.

DOCUMENTS

- 1 Transcript of *Bloor Homes East Midlands Ltd v SSCLG and Hinckley and Bosworth Borough Council* dated 19 March 2014, [2014] EWHC 754 (Admin).
- 2 List of appearances for the Council.
- 3 Opening statement on behalf of the Appellant.
- 4 Opening submissions on behalf of the Council.
- 5 Plan showing appeal site in the context of identified roads in the village.
- 6 South Cambridgeshire Local Development Scheme 2014.
- 7.1 (i) "Tweet Widget" regarding City Deal; (ii) Email dated 7 April 2014 setting out status of City Deal; (iii) Recommendations to Scrutiny and Overview Committee, dated 3 April 2014; and (iv) letter dated 4 April 2014 to Rt Hon Danny Alexander MP regarding Greater Cambridge City Deal.
- 7.4
- 8 Plan and decision notice [S/2092/13/OL] in respect of land to the east of Cody Road and north of Bannold Road.
- 9 Annotated plan submitted by Mr Merrington to the Inquiry.
- 10 Statement from the Council identifying policies for the supply of housing.
- 11 "The Planning System: General Principles" [ODPM, 2005], now cancelled.
- 12 The Town and Country Planning (Local Planning)(England) Regulations 2012.
- 13 March AMR update, submitted by the Council at the Inquiry.
- 14 Planning Obligation [County Council] dated 10 April 2014.
- 15 Planning Obligation [District Council] dated 10 April 2014.
- 16 Statement of Mr Merrington, which was submitted at the Inquiry.
- 17 Letter from Councillor Hockney, dated 1 May 2014, submitted at the Inquiry.
- 18 Additional condition suggested by the Council at the Inquiry.
- 19 Closing submissions on behalf of the Council.
- 20 Closing submissions on behalf of the Appellant.
- 21 Unilateral Undertaking, dated 15 May 2014, submitted by the Appellant.

Appeal Decision

Hearing held and site visit made on 12 July 2022

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 4 August 2022

Appeal Ref: APP/C1435/W/22/3297371

**Land at Old Orchard House, Horebeech Lane, Horam,
East Sussex TN21 9DZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Chailey Homes Ltd against the decision of Wealden District Council.
 - The application Ref WD/2021/2356/MAO, dated 3 September 2021, was refused by notice dated 25 March 2022.
 - The development proposed is the erection of up to 38 dwellings, access, landscaping and other associated infrastructure.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 38 dwellings, access, landscaping and other associated infrastructure at land at Old Orchard House, Horam, East Sussex TN21 9DZ in accordance with the terms of the application, Ref WD/2021/2356/MAO, dated 3 September 2021, subject to the conditions set out in the schedule attached to this decision.

Preliminary Matters

2. The application was made in outline, with all matters reserved for later consideration apart from access. I have dealt with the appeal on the same basis, taking the site layout in drawing no. 3278:01 Rev A.E as indicative only, other than in respect of the site entrance. The application date is that given on the application form.
3. A Unilateral Undertaking (UU) made by the appellant pursuant to Section 106 of the Town and Country Planning Act 1990 was discussed at the Hearing. A signed and completed version dated 22 July 2022 was subsequently provided, which the Council had agreed to. I address the obligations made in the UU below.
4. A full application for 58 dwellings relating to this site had been dismissed in an appeal decision made on 7 August 2020¹. The previous Inspector's conclusions are material considerations in assessing the effects arising from the fewer dwellings now proposed.

Main Issues

5. The main issues in the appeal are:

¹ Appeal Ref: APP/C1435/W/19/3235754 for the proposed is erection of 58 dwellings, associated garages and infrastructure on land adjacent Old Orchard House, Horebeech Lane, Horam TN21 9DZ

- the effect of the proposed development on the character and appearance of the area and
- the accessibility future occupiers would have to regularly required services.

Reasons

Character and appearance

6. The appeal site comprises a parcel of rough grassland surrounded by thickly vegetated outer edges, including along the roadside frontage. The land is situated within the low-density housing fronting this southern section of Horebeech Lane, from where access is proposed. The land lies just outside the main built-up extent of Horam and opposite the site of 123 dwellings under construction to the north of Horebeech Lane. To the rear, the site runs up to the former railway line which now provides the Cuckoo Trail. This footpath and cycleway pass under Horebeech Lane and would provide an alternative route for non-motorised users from the development to the facilities in Horam.
7. The appeal site lies within the Low Weald landscape, outside both the South Downs National Park and the High Weald Area of Outstanding Natural Beauty (AONB). With reference to paragraph 174 of the National Planning Policy Framework (the Framework), there is not the onus here to protect and enhance valued landscapes in a manner commensurate with any statutory status. This requires me instead to recognise the intrinsic character and beauty of the countryside. Furthermore, as part of the Framework's aims for achieving well-designed places, paragraph 130 requires development to be sympathetic to local character, including the surrounding landscape setting.
8. Such intrinsic character and beauty are provided by the open field and its vegetated boundaries, which provide a green frame to the settlement edge. The site offers a break in development along the southern side of Horebeech Lane, which retains the appearance of countryside and provides a strongly rural character to this side of the road. Although the site is visually well contained, where any development would not impinge greatly in wider views, the access to the new access would puncture the roadside hedging and open up the enclosed site. The housing would inevitably have a suburbanising impact upon the rural scene in views from Horebeech Lane, and also those from the Cuckoo Trail.
9. The proposed housing would thus cause harm to the character and appearance of the area, due to the same noticeable urbanisation of the green break between Horam and the adjacent settlement at Marle Green found in the previous appeal decision. However, the significant reduction in dwelling numbers would allow for a lower density and more landscape dominated scheme. A wider extent of landscaping in and around the development would reduce the scheme's adverse visual impacts to an appreciable degree, due to the opportunity for a more verdant and spacious layout which would mollify the starkness of the suburbanising effects.
10. The relevant development plan policies are those of the Wealden Local Plan 1998 (LP), the Core Strategy Local Plan 2013 (CS) and the Affordable Housing Delivery Local Plan 2016. Over this issue, there remains conflict with LP policies GD2, DC17, EN1, EN8 and E27. Collectively, these resist housing outside the Horam development boundary to protect its character and countryside setting

and help achieve sustainable development. Furthermore, the proposal would exceed the scale of development identified for Horam in CS Policy WCS6. The proposal also conflicts with Policy WCS9, in not being a small scale affordable residential scheme, permissible in rural areas outside development boundaries in order to meet an identified local housing need. Both policies augment the CS rural areas' strategy for locating housing growth so as to protect the countryside.

Accessibility to regularly required services

11. In the previous appeal decision, the Inspector concluded that the 58 dwellings would lead to reliance on the private car by future occupiers. The situation is the same, insofar as Horam is a local service centre in the CS settlement hierarchy. This indicates a limited supply of social and economic infrastructure, including employment, and a place where local residents depend upon other centres to meet a broad range of needs, with there being some form of accessibility to these.
12. Horam's services, including a doctor, a dentist, a village hall and various other facilities including shops and churches, are located around 1km from the site. There are pedestrian footways along Horebeech Lane linking to these, as well as the alternative Cuckoo Trail pedestrian/cycle route into Horam. A primary school in Maynards Green and secondary school in Heathfield are within a modest drive from the site.
13. Horam has no railway station and the nearest bus stop for services to larger centres is approximately 850m from the site. There is no lighting to the Cuckoo Trail or along parts of Horebeech Lane, which would discourage pedestrian and cyclist use outside of daylight hours. The mix of housing sizes is yet to be provided, but the proposal would quite clearly generate a need for residents to travel outside of the village to access services and facilities, including employment and leisure.
14. Due to these factors, the proposal gives rise to conflict with CS Policies SP07 and SP09. This is insofar as these seek to minimise greenhouse gas emissions by concentrating development where it is related to public transport opportunities, to make it easier to travel by more sustainable modes.

Other Matters

15. Further concerns were raised by interested parties to the application, the appeal and at the Hearing. Regarding the proposed access arrangements, these are to the satisfaction of the local highway authority. Subject to conditions, the local highway network has the operational capacity to safely accommodate up to 38 additional dwellings in this location.
16. In the previous appeal, the Inspector found the proposal would harm the living conditions of the neighbouring occupiers at Old Orchard House, in respect of outlook, privacy and light. However, the reduced quantum of housing in the current scheme would permit a detailed layout which would avoid such harm.
17. Subject to conditions, the scheme would not increase flood risk and could be provided satisfactory foul and surface water drainage.
18. Health and dental services are generally over-stretched and those in Horam would need to respond to this further development. However, such concerns

would not be grounds for resisting the further houses proposed. The lower density scheme would provide some compensatory natural habitat and wildlife connectivity.

Scheme Benefits

19. It is common ground that the CS is out of date and does not meet Wealden's local housing needs. The plan provides for only 450 homes per annum as opposed to a requirement for 1,225, as calculated under the standard method set out in national planning guidance. Paragraph 74 of the Framework requires Councils identify and update annually a minimum five-year housing land supply (5YHLS) against their local housing need. Wealden can currently demonstrate a 3.66-year housing land supply. I consider this to be a substantial shortfall in meeting current Government policy requirements.
20. A lack of a 5YHLS has endured in Wealden for over six years. In this situation the Council has granted permission for housing in a number of sites outside the Horam settlement boundary, as detailed in the appellant's evidence. Unlike this proposal, these sites appear to have all been within a development boundary proposed in a Submission Local Plan. However, this was later withdrawn and the Council is now preparing a new Local Plan, due for Regulation 18 consultation later this year.
21. Paragraph 60 of the Framework refers to the Government's objective of significantly boosting the supply of homes. In the light of this and the substantial and long-standing shortfall in housing land supply in Wealden, with no imminent prospect of plan-led resolution, the up to 38 dwellings proposed is a social benefit to which I attach very significant weight. This is particularly as the scheme is of a scale which could come forward relatively quickly in response to meeting current housing needs.
22. The 35% affordable housing provided would comply with CS Policy WCS8. The appellant's evidence over an acute need for affordable housing in Wealden, with affordability worsening, was not challenged. This is a specific social benefit to which I also attach very significant weight. Quite significant weight is attached to the provision of two plots for self-build homes, as this would help meet a demand for such opportunities.
23. The development would provide appreciable economic benefits through the generation of jobs during the construction period, both directly and indirectly. Furthermore, the new residents would support local businesses within Horam and help maintain the viability of its services and facilities. In these respects, I attribute moderate weight to the proposal's local economic benefits.

Planning obligation

24. The UU secures the 35% affordable housing provision, 5% serviced plots for custom and self-build units, a link from the development to the Cuckoo Trail, children's play area provision and a financial contribution towards bus services. I have considered the obligations made against the tests set out in paragraph 57 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. I consider all to be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

Habitats Regulations

25. The appeal site is 7km beyond Ashdown Forest, which is an area classified under the Habitats Regulations² as a Special Protection Area (SPA) in relation to birds. This SPA is classified for its ground nesting species which are susceptible to increased recreational pressure. I am satisfied with the evidence that this proposal, in combination with other plans or projects, would have no likely significant effects upon the qualifying features of that SPA, due to increased recreational pressure.
26. Likewise, I am content with the evidence that this proposal would not adversely impact on the integrity of the characteristic heathland plant species in Ashdown Forest, for which it is also designated under the Habitats Regulations as a Special Area of Conservation (SAC). This is based on Natural England deciding that the air quality implications of the quantum of growth proposed for this District in the Submission Local Plan would not adversely affect the integrity of either Ashdown Forest, Lewes Downs or Pevensy Levels SACs.

Planning Balance

27. The appeal scheme would conflict with CS policies WCS6 and WCS9 and LP policies GD2, DC17, EN1, EN8 and E27. This is through being within countryside outside the defined Horam development boundary and causing some harm to the character and appearance of the area, by encroaching into the settlement's undeveloped rural surroundings. I have also found the proposal gives rise to conflict with CS Policies SP07 and SP09. This is insofar as future occupiers would generally need to have some private car access to meet all regularly required needs and this would then impact upon greenhouse gas emissions. These are quite fundamental conflicts and, despite the support of other policies, the proposal would be contrary to the development plan when read as a whole.
28. The Framework's presumption in favour of sustainable development, in paragraph 11, is a material consideration. The Council's lack of a 5YHLS deems the development policies most important for determining the appeal to be out-of-date. This does not mean these policies carry no weight but it reduces the amount I can attach to those restricting development outside development boundaries and which might prevent local housing needs being met.
29. The decisive harm to the living conditions of occupiers of Old Orchard House has been overcome since the last appeal and no longer weighs against the proposal. The access to the highway would still open the site up, with the loss of the thick roadside hedgerow, and the housing would occupy a field visible from the much-valued Cuckoo Trail. Through reserved matter approval based on the indicative layout submitted, the Council could require a strong landscape buffer around the site, including a re-planted set back from Horebeech Lane, and a low-density layout with tree-lined streets. The lower number of dwellings proposed thus provides for a greatly reduced level of harm to character and appearance, relative to that found by the Inspector in the previous appeal.
30. As a predominantly rural District, with a relatively poor public transport network, there are challenges in meeting local housing need without an associated degree of car dependency. In this case the housing is not within the

² Conservation of Habitats and Species Regulations 2017 (as amended).

800m walking distance to services recommended in the Manual for Streets. However, the distances are not greatly in excess of this and would be mainly accessible by footpaths. The scheme is on the edge of Horem, like the other recently approved schemes, rather than being any deeper in the countryside and beyond the limits of footway access. Cycling or walking to some services would remain a realistic option for many future occupiers of the proposed housing, who would be far from entirely dependent on car travel. The degree of harm from the level of service accessibility in this location would be at most moderate in weight.

31. Development growth in Wealden is constrained by the protected landscapes of the High Weald AONB and South Downs National Park, as well as ecologically sensitive areas such as Ashdown Forest and the Pevensey Levels. As a predominantly rural area, with a relative lack of previously developed land, it is unavoidable that some countryside will be required to be built on to meet housing needs. The benefits of the scheme towards meeting local housing need, including that which is affordable or provided on a self-build basis, are accounted for above. Any adverse impacts of allowing this housing would not significantly and demonstrably outweigh these considerable benefits, when assessed against the Framework policies taken as a whole. The presumption in favour of sustainable development therefore applies to the proposal.

Conditions and conclusion

32. I have considered the conditions suggested by the Council against the tests in Framework paragraph 56. This requires conditions be imposed where necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. These conditions were largely agreed by the appellant, apart from the one-year periods for reserved matters applications and subsequent commencement upon last approval of these, which might cause practical difficulties in being met. I have therefore amended the latter to two years. Otherwise, the standard outline conditions are necessary to encourage the early take up of the permission, given the pressing need to deliver housing in Wealden. I have made further amendments to the wording of other conditions, mainly in the interests of succinctness.
33. In addition to the standard conditions for outline permission (1-3), it is necessary in the interests of certainty to condition consent to the detailed plan showing the position and design of the vehicular access onto Horebeech Lane (4).
34. To satisfactorily address matters which might otherwise have comprised reasons for dismissing the appeal, a number of conditions need to be met prior to any development being allowed to commence. These conditions are necessary in the interests of investigating any on-site archaeology (5), ensuring highway safety through compliance with an agreed Construction Traffic Management Plan (7), securing off-site highway improvements (9) and requiring adequate means of surface water drainage (14, 15).
35. In the interests of ensuring such surface water drainage measures are delivered, conditions are also necessary to ensure the receiving water course is engineered up to standard (16) and the arrangements are provided prior to occupation (17). In the interests of ensuring suitable foul drainage, a condition is necessary requiring details to be agreed prior to ground levels being

- prepared and these then being implemented as each dwelling becomes occupied (13). A post occupancy monitoring and management condition is also necessary to safeguard against ground or surface water pollution (18).
36. In the interests of promoting the take up of sustainable transport modes, a condition makes occupation of the housing dependent upon implementation of an agreed Travel Plan (11).
37. In the interests of sustainable development, a condition is necessary that ensures the development accords with agreed water and energy efficiencies and further carbon saving measures (6).
38. In the interests of certainty conditions are necessary to agree the location of the 65% market dwellings (8), the phased construction of the estate road to adoptable standards (10) and the dimensions and provision of parking spaces (12).
39. Further conditions are necessary to address air quality (19, 20), landscape management (21), Great Crested Newt mitigation (22), wildlife management (23), lighting (24) and tree/hedgerow protection (25).
40. A condition governing the provision and specification of the Cuckoo Trail link is covered in the UU, so does not need to be addressed by condition.
41. The Framework's presumption in favour of sustainable development is a material consideration sufficient to indicate this appeal be determined otherwise than in accordance with the development plan. Accordingly, based on the reasons given above and subject to the conditions set out below, I conclude that the appeal should succeed.

Jonathan Price

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) In respect of the means of access into the site from Horebeech Lane, the development hereby permitted shall be carried out in accordance with the following approved plan: 3278:01 Rev A.E.
- 5) No development shall take place until the appellant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 6) Before preparation of any groundworks or foundations for the development hereby approved, full details for the incorporation of water and energy efficiency measures, the promotion of renewable energy and sustainable construction within the development shall be submitted to and agreed in writing by the local planning authority and the development shall be carried out in accordance with the approved details and thereafter so retained.
- 7) No development shall commence on site until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. Thereafter, the approved CTMP shall be implemented and adhered to throughout the construction period. The CTMP shall include the following matters:
 - the anticipated number, frequency and types of vehicles used during construction,
 - the method of access and egress and routeing of vehicles during construction,
 - the parking of vehicles by site operatives and visitors,
 - the loading and unloading of plant, materials and waste,
 - the storage of plant and materials used in construction of the development,
 - the erection and maintenance of security hoarding,
 - the provision and utilisation of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
 - details of public engagement both prior to and during construction works,
 - pre-condition survey accompanied by the local highway authority providing photographic evidence of the existing highway, to be carried out prior to commencement,
 - a scheme for the control of noise and dust,

- measures to manage flood risk, both on and off the site, during the construction phase.
- 8) The reserved matters shall identify the 65% market dwellings to be provided on site and the development shall thereafter be in accordance with these.
 - 9) The development hereby permitted shall not commence until a scheme for off-site highway measures, including a 30-mph speed limit extension, gateway feature and north side footway/cycleway on Horebeech Lane, has been submitted to and approved in writing by the local planning authority. The approved highway measures shall thereafter be completed prior to occupation of any of the dwellings hereby permitted.
 - 10) The new estate road shall be constructed to a standard for adoption as a maintainable highway in tandem with the phasing of housing development.
 - 11) No part of the development shall be occupied until a Travel Plan has been approved in writing by the local planning authority. The Travel Plan shall thereafter be implemented as approved.
 - 12) Parking spaces shall measure at least 2.5m by 5m (with an extra 50cm on each side where spaces abut walls, fences or hedges). Car parking shall be provided prior to the occupation of the associated dwellings and thereafter retained for that purpose.
 - 13) Before preparation of ground levels of the development approved by this permission a scheme for foul drainage shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved before any of the dwellings served are occupied.
 - 14) Prior to the commencement of development, a detailed surface water drainage system shall be submitted to and approved in writing by the local planning authority.

The surface water drainage system shall incorporate the following:

- a) Detailed drawings and hydraulic calculations. The hydraulic calculations shall take into account the connectivity of the different surface water drainage features. The calculations shall demonstrate that surface water flows can be limited to the greenfield runoff rates for rainfall events with an annual probability of occurring greater than 1 in 2.33 and mean annual discharge (Q_{bar}) for rainfall events with an annual probability of occurrence less than 1 in 2.33, including those with a 1 in 100 (plus climate change) annual probability of occurrence. An allowance for urban creep (recommended 10% increase in impermeable area) shall be incorporated within the calculations.
- b) The proposed ground levels adjacent the western and southern boundaries, to allow for the conveyance of the existing overland surface water flow route without increasing flood risk on or offsite.
- c) The detailed design of the surface water drainage features (attenuation ponds and swales), informed by findings of groundwater monitoring between autumn and spring. The design should leave at least 1m unsaturated zone between the base of the drainage structures and the highest recorded groundwater level. If this cannot

be achieved, details of measures which will be taken to manage the impacts of high groundwater on the hydraulic capacity and structural integrity of the drainage system should be provided.

- d) Information on how surface water flows exceeding the capacity of the surface water drainage features will be managed safely.

The drainage shall be provided in accordance with the approved details before first occupation of the related dwellings.

- 15) The development hereby permitted shall not commence until a maintenance and management plan for the drainage system shall have been submitted to and approved in writing by the local planning authority. The management plan shall cover the following:
 - a) who will be responsible for managing all aspects of the surface water drainage system, including piped drains,
 - b) evidence of how these responsibility arrangements will remain in place throughout the lifetime of the development.

The approved maintenance and management plan shall thereafter be implemented and remain in place for the lifetime of the development.

- 16) Prior to the construction of the outfall, a condition survey of the watercourse which will take surface water runoff from the development shall be investigated and the results submitted to and approved in writing by the local planning authority and any improvements recommended to the condition of that watercourse carried out.
- 17) Prior to occupation of the development, evidence (including photographs) showing that the drainage system has been constructed to the final agreed detailed drainage designs shall have been submitted to and approved in writing by the local planning authority.
- 18) There shall be no discharge of foul or contaminated drainage from the site into either the groundwater or any surface waters, whether direct or via soakaways. Prior to being discharged into any watercourse, surface water sewer or soakaways system, all surface water drainage from parking areas and hardstandings shall be passed through trapped gullies and silt traps to BS 5911:1982, with an overall capacity compatible with the site being drained and shall be retained thereafter.
- 19) Unless otherwise agreed in writing, the development shall take place in accordance with the recommendations set out within the Air Quality Assessment authored by Phlorum Limited (date stamped 13 December 2021).
- 20) Prior to the construction of the roof of any dwellings hereby permitted, a scheme for the required onsite/offsite emissions off setting mitigation measures (in accordance with the development damage costs calculated within the submitted Air Quality Assessment or any amended Assessment provided with reserved matters detailing the number of dwellings to be provided) shall be submitted to and agreed in writing by the local planning authority. The agreed onsite/offsite emissions off setting mitigation measures shall be provided prior to the first occupation of the dwellings hereby approved.

- 21) Prior to the occupation of any of the dwellings hereby permitted, a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small privately owned, domestic gardens or areas to be adopted by the local highway authority, shall be submitted to and approved in writing by the local planning authority. The approved landscape management plan shall be adhered to for the lifetime of the development.
- 22) The development shall be carried out and thereafter maintained in accordance with the recommendations set out within the Great Crested Newt Report June 2021 and Ecological Update Report October 2020, both by Phlorum Ltd.
- 23) Before preparation of ground levels for the development hereby permitted, a wildlife management plan shall be submitted to and approved in writing by the local planning authority. This should include detailed proposals for the protection of bats, birds, reptiles, great crested newts and badgers, and measures for the mitigation of any harm to them likely to be caused by the development. The works and other measures forming part of that plan shall be carried out in accordance with it.
- 24) No floodlighting, security lighting or other external means of illumination of the site shall be provided, installed or operated in the development, except in accordance with a detailed scheme which shall have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and retained thereafter.
- 25) No trees and hedgerows on the site shall be felled, reduced, pruned or destroyed without the consent in writing of the local planning authority. Furthermore, the following operations shall not be carried out within the approved protection zone of any tree or hedgerow, except with the consent of the local planning authority:-
 - ground levels raised or lowered;
 - roots cut, trenches dug or soil removed;
 - buildings, roads or other engineering operations constructed or carried out;
 - fires lit (or in a position where the flames could extend to within 5 metres of the foliage, branches or trunk of the tree or hedgerow as per the requirements of *BS5837:2012 Trees in relation to design, demolition & construction – Recommendations*);
 - vehicles driven;
 - materials or equipment stored (as per the requirements of *British Standard 5837:2009 'Trees in Relation to Construction'*).

APPEARANCES

FOR THE APPELLANT:

Mark Best	Parker Dann Chartered Town Planning Consultants
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FOR THE LOCAL PLANNING AUTHORITY:

Stacey Robins	Head Planning/Environmental Services, Wealden District Council
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Stephanie Wood	Team Leader Development Management Wealden District Council
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INTERESTED PARTIES:

Councillor David White	Wealden District Council
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Councillor Neil Cleaver	Wealden District Council
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Councillor Susan Stedman	Wealden District Council
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Councillor Andrew Billings	Horam Parish Council
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Lucy Atabey	Editor, Horam/Vines Cross Village Diary
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Mike Gadd	Editor, Wealden Green Spaces
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Tony Niblock	Local resident
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Cornelie Usbourne	Local resident
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Peter Knowles	Local resident
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Brian Arnott	Local resident
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Wealden District Council

Housing Action Plan

June 2022

How to Contact Us

Planning Policy

Wealden District Council

Council Offices, Vicarage Lane, Hailsham, East Sussex BN27 2AX

Telephone 01892 602008

E-mail: planningpolicy@wealden.gov.uk

Website: www.wealden.gov.uk

If you, or somebody you know, would like the information contained in this document in large print, Braille, audio tape/ CD or in another language please contact Wealden District Council on 01323 443322 or info@wealden.gov.uk

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1. **Introduction**

Background

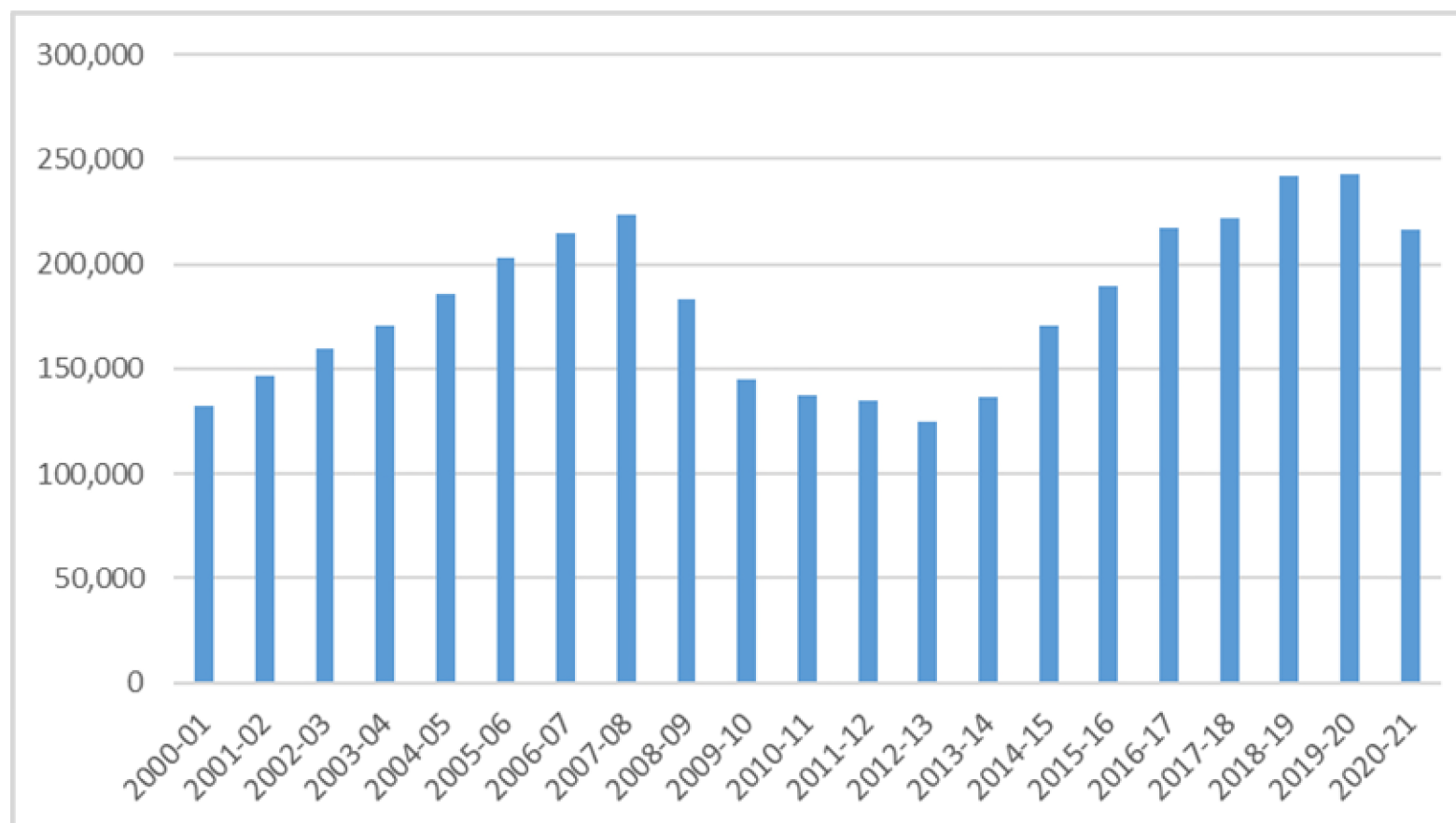
- 1.1 In a bid to address the national housing crisis, the Government published its Housing White Paper, named 'Fixing our broken housing market' in February 2017¹. The white paper set out the Government's plans to boost the supply of new homes in England and over the longer term, create a more efficient housing market whose outcomes more closely match the needs and aspirations of all households and supports economic prosperity. The white paper outlined that the country needed between 225,000 to 275,000 more homes per year to keep up with population growth in order to start tackling years of under-supply at the national level. The Government has since committed (in the autumn budget of 2017) to delivering 300,000 homes per year by the mid-2020s.
- 1.2 The Government produced a Levelling Up and Regeneration Bill² that was published on 11 May 2022 that is seeking to introduce new planning reforms in the longer-term. At this stage, it is not known whether this specific target of delivering 300,000 homes per year nationally will continue, but it is still expected that housing delivery will be a forefront of national planning policy moving forward.
- 1.3 Figure 1 below shows that actual annual net additional dwellings for England have fallen significantly short of delivering the most recent housing target of 300,000 homes per year for England. This graph clearly shows that net housing supply dropped significantly in England in the years following the economic downturn that commenced in 2008/09, but has since recovered to just above previous levels. The annual number of additional dwellings had increased to its highest level of 243,770 dwellings for over 20 years in the 2019/20 period. However, this figure has fallen significantly in the 2020-21 period to only 216,489. It is likely that the downturn was largely due to the

¹ [Fixing our Broken Housing Market, MHCLG, February 2017](#)

² [Levelling Up and Regeneration Bill, DLUHC, May 2022](#)

impact of national lockdowns associated with the Covid-19 pandemic, which resulted in the temporary closure of the construction industry throughout some of the 2020-21 period.

Figure 1: Annual Net Additional Dwellings for England - 2001-01 to 2020-21³



³ [Live tables on housing supply: net additional dwellings, Table 118 DLUHC, March 2022](#)

- 1.4 The Government's Housing White Paper, named 'Fixing our Broken Housing Market' was followed up by revisions to the National Planning Policy Framework (NPPF) in July 2018, February 2019 and lastly in July 2021. In addition, updates to National Planning Practice Guidance (PPG) were made. Both these documents have introduced a number of new measures and reforms to the planning system intended to deliver more housing, improve housing affordability and where possible, remove barriers to new housing development.
- 1.5 Local planning authorities have an important and longstanding role in planning for and demonstrating a sufficient supply of housing in their area. The Housing Delivery Test (HDT) is one of the Government's key initiatives to help boost housing growth and to encourage local planning authority's to have a more proactive role in supporting housing delivery in its area, as well as taking accountability for under-delivery.
- 1.6 The production of this Housing Action Plan is a direct result of HDT measurement 2021 that was published on 14 January 2022 for Wealden District. It should be noted that the HDT measurement is updated at least annually and therefore, this Housing Action Plan will be kept under review and updated as and when the new HDT measurement is published.

The Purpose, Aims and Status of the Document

- 1.7 The main aims of the Housing Action Plan are as follows:
- To provide a short summary of the Council's HDT results and its implications;
 - To provide an analysis of the key reasons for the historic under-delivery of new homes in the district against its housing requirement;
 - To identify the measures the Council has already undertaken and intends to take to increase and accelerate the delivery of new housing in the district; and
 - To identify the monitoring arrangements for the Housing Action Plan.

- 1.8 The Council recognises that delivering growth within the district is complex. Whilst it is noted that a number of the actions identified in the Housing Action Plan are principally within the remit of the Council to resolve (such as the production of planning documents and the timely determination of planning applications for housing schemes), the Council will also need support and the co-operation of those involved in delivering new homes that does include landowners, developers, land promoters, infrastructure providers (such as utility providers) and upper tier authorities (i.e. East Sussex County Council) to name a few.

Relationship to other Council Plans, Policies and Strategies

- 1.9 The Housing Action Plan is intended to complement existing Council plans, policies and strategies, which provide the framework for the delivery of the Council's housing priorities. A number of these documents relate specifically to planning, although the Council has produced additional documents that prioritise the delivery of new homes. This includes the following:
- Wealden District Core Strategy Local Plan (2013) – The Core Strategy sets out the vision and overall spatial strategy for the district and was adopted in February 2013. Policy WCS 1 (Provision of Homes and Jobs 2006-2027) provides a housing requirement of 9,440 additional homes over the period 2006 – 2027, which equates to 450 dwellings per annum (dpa). This is to be updated as part of the Council's new Local Plan process.
 - Wealden District Affordable Housing Delivery Local Plan (2016) – The Affordable Housing Delivery Local Plan contains a single planning policy concerning affordable housing policy in the district. It was adopted by the Council in May 2016. This is to be updated as part of the Council's new Local Plan process.
 - Wealden Local Plan (1998) – As of September 2007, a number of policies in the adopted Wealden Local Plan (1998) were 'saved' by approval of Secretary of State. These 'saved' planning policies

continue to be used for determination of planning applications for new development, including housing schemes.

- Neighbourhood Plans – At the time of writing, the Council has three 'made' (adopted) Neighbourhood Plans in the district for the Parishes of Hailsham, Herstmonceux and Hellingly. These are key documents in terms of the delivery of new housing, as they can seek to allocate housing growth to individual towns and villages within the district.
- Strategic Housing and Economic Land Availability Assessment (SHELAA) (2019) – The SHELAA involves a technical, high-level assessment of sites which could contribute towards the future supply of housing and employment land within Wealden District. It provides background evidence on the potential availability of sites. The last SHELAA document was published in January 2019. A 'Call for Sites' exercise took place between 1 June and 10 August 2020 in support of the new Local Plan and work is well underway to publish an updated SHELAA report aligned with Regulation 18 consultation on the new Local Plan. The Council continues to accept new SHELAA sites for assessment during the process of making the new Local Plan.
- Self-Build and Custom Build Register – This is completed and managed by the Council's Planning Policy Team and is a register of individuals or groups who have expressed an interest in self-build and custom build projects. As of 3 May 2022, there are 167 individuals or associations enrolled on the register.
- Wealden Local Housing Need Assessment (2021) – In support of the Council's new Local Plan, the Council appointed Icen Projects Ltd to undertake a study to examine the future need for housing in the district. This included an assessment of affordable housing need, the District's relationship with other Housing Market Areas (HMAs), as well as providing recommendations on housing mix to be provided and the needs of specific groups, such as older persons housing. This evidence base document will use to consider planning policies for the Council's new Local Plan.

- Wealden District Council Corporate Plan 2019-23 – The Council's Corporate Plan sets out the Council's key priorities for the district that includes several themed around housing delivery. The plan aims for the provision of good housing that local people can afford, in places where they want to live and ensuring that development meets future needs, with associated investment in infrastructure.
- Wealden Housing Strategy 2020-2025 – The Council's Housing Strategy was published in 2020 and contains an individual chapter on increasing housing supply that aims to increase the provision of both affordable homes and the number of smaller properties within the district.

Scope of the Action Plan

1.10 The remainder of this Housing Action Plan is structured as follows:

- *Section 2* – This section summarises the Housing Delivery Test (HDT) introduced by the government and provides a summary of the Council's most recent results and its implications.
- *Section 3* – This section provides a summary of the local housing market and delivery context and endeavours to provide the key reasons for the under-delivery of new homes in the district against its housing requirements.
- *Section 4* – This section provides a summary of the key measures the Council intends to undertake in order to provide a step change in housing delivery for the district.
- *Section 5* – This section provides details of how actions set out in the Housing Action Plan will be implemented, managed and monitored, including any relevant reporting arrangements.

2. The Housing Delivery Test (HDT)

2.1 The HDT and Housing Action Plan was first introduced within the revised NPPF that was initially published in July 2018 and later revised in February 2019 and July 2021⁴. The mechanisms for the HDT were outlined within the revised NPPF and in the Housing Delivery Test Measurement Rule Book⁵ and has been applied across all local authorities in the country (with the exception of National Parks⁶). This mechanism was introduced as a way to monitor whether local planning authorities are building enough homes to meet their respective housing requirements over a three year period.

2.2 The HDT measures the net additional number of homes delivered over the previous three year period against the Council's housing requirements. Local planning authorities are required to take appropriate actions where certain delivery target thresholds are not met. The specific consequences for local planning authorities who do not meet such targets are set out below:

- Where housing delivery falls below 95% of the local planning authority's housing requirement, they should prepare an Housing Action Plan in line with the Planning Practice Guidance (PPG)⁷, to assess the causes of under delivery and identify actions to increase delivery in future years;
- Where housing delivery falls below 85% of the local planning authority's housing requirement, a 20% buffer on the five year housing land supply position would be applied;
- Where housing delivery falls below 75% of the local planning authority's housing requirement, the NPPFs presumption in favour of sustainable development (paragraph 11 of the NPPF) will apply in decision-taking.

⁴ See paragraph 76 of the [NPPF \(July, 2021\)](#)

⁵ [Housing Delivery Test Measurement Rule Book \(July 2018\)](#)

⁶ It is noted that the South Downs National Park (SDNP) is located within a small part of Wealden District, but has a small population.

⁷ [Planning Practice Guidance \(PPG\) – Housing Supply and Delivery](#)

- 2.3 It should be noted that the consequences listed above would apply concurrently. For example, if the local planning authority falls below 85% of its HDT target, then a Housing Action Plan should be produced, as well as the application of a 20% buffer on the five year housing land supply position. The consequences will continue to apply until the next HDT measurement is published.
- 2.4 Where a Housing Action Plan is required, the PPG⁸ states that it should be prepared within six months of the HDT results being published to ensure that the document is as useful as possible.

The Housing Delivery Test Results for Wealden District

- 2.5 The first HDT measurement (known as HDT Measurement 2018) was published by Government on 19 February 2019. This stated that Wealden District had an HDT measurement result of 112%⁹ and therefore resulted in no consequences being applied to the Council at that time.
- 2.6 The second HDT measurement (known as HDT measurement 2019) was published by Government on 13 February 2020. This stated that Wealden District had an HDT measurement result of 83%. However, following discussions with Government officials regarding the calculation and specifically the timing of the adoption Wealden District Core Strategy Local Plan (February, 2013), this measurement was recalculated as 87%. A letter from Government to the local planning authority confirming the new calculation is on the Council's website¹⁰. As a result, the Council published its first Housing Action Plan in August 2020.
- 2.7 The third HDT measurement (known as HDT measurement 2020) was published by Government on 19 January 2021. This stated that Wealden

⁸ [PPG – Paragraph: 052 Reference ID: 68-053-20190722](#)

⁹ [Housing Delivery Test: 2018 Measurement](#)

¹⁰ [Letter from MHCLG to Wealden District Council regarding HDT Measurement 2019 \(17 March 2020\).](#)

District had a HDT measurement result of 83%¹¹ and therefore resulted in the Council publishing its second Housing Action Plan and adding a 20% buffer to its five-year housing land supply position in 2021.

- 2.8 The fourth and current HDT measurement (known as HDT measurement 2021) was published by Government on 14 January 2022. This stated that Wealden District has an HDT measurement result of 82%¹² and has therefore resulted in the Council needing to publish its third Housing Action Plan (this document) and to continue to apply a 20% buffer to its five year housing land supply position that is addressed later in this document. It is noted that the past three HDT measurements has seen very similar results, even when there has been an significant downturn nationally in housing delivery in the past monitoring year owing to the Covid-19 pandemic.
- 2.9 Table 1 below outlines the HDT targets for the three annual periods considered for the latest HDT measurement. Table 2 outlines Wealden District Council's performance against the HDT measurement 2021 in full. This confirms that Wealden District Council is required to publish a Housing Action Plan to add a 20% buffer to its current five year housing land supply position.

¹¹ [Housing Delivery Test: 2020 Measurement](#)

¹² [Housing Delivery Test: 2021 Measurement](#)

Table 1: Housing Delivery Test Housing Requirement

Year	HDT Target	Reason
2018/19	1,236	The 2018/19 housing requirement was based on the minimum local housing need figure identified from the 2014 household projections for that year (2018), which equated to 1,236 dwellings.
2019/20	1,127	The 2019/20 housing requirement is based on the minimum local housing need figure identified from the 2014 household projections for that year (2019). However, owing to the first national lockdown announced on 23 March 2020 for Covid-19, we saw temporary disruption to local authority planning services and the construction sector. Therefore, the Government had reflected this in the 2019/20 HDT results and reduced the 'homes required' within the 2019/2020 period by a single month, so this equated to a housing requirement figure of 1,127 dwellings for Wealden District.
2020/2021	816	The 2020/21 housing requirement was based on the minimum local housing need figure identified from the 2014 household projections for that year (2020). However, owing to the national lockdowns associated with the Covid-19 pandemic, we saw temporary disruption to local authorities and the construction sector. Therefore, Government has reflected this in the 2020/21 HDT results and reduced the 'homes required' within the 2020/2021 period in the HDT by four months, so this equated to a housing requirement figure of 816 dwellings for Wealden District

Table 2: Wealden District Performance against the Housing Delivery Test (2018/19-2020/21)

Number of Homes Required 2018/19	Number of Homes Required 2019/20	Number of Homes Required 2020/21	Total Number of Homes Required 2018/21	Number of Homes Delivered 2018/19	Number of Homes Delivered 2019/20	Number of Homes Delivered 2020/21	Total Number of Homes Delivered 2018/21	Housing Delivery Test: 2021 Measurement	Housing Delivery Test: 2021 Consequence
1,236	1,127	816	3,179	841	1,034	743	2618	82%	Buffer

2.10 Wealden District Council recognises that it did not deliver sufficient housing to meet its locally identified housing need during this period. Wealden District Council also recognises that there has been a step change in the district's housing requirement since 2013. The Council is therefore seeking to meet this challenge and has the ambition to increase both the quantum and speed of new housing delivery within the district. This Housing Action Plan forms part of a suite of documents that will aim to facilitate this change.

3. Housing Delivery Analysis

- 3.1 The PPG¹³ confirms that local planning authorities may wish to include an assessment of the reasons as to why the local authority has under-delivered in relation to housing in their Housing Action Plans. To improve the future supply of new homes, it is considered helpful to understand the planning context of Wealden and its past housing delivery results. The following section provides the planning background to the District and its performance in relation to housing delivery in previous years.

Geographical Context

- 3.2 Wealden District is the largest local authority in the County of East Sussex, covering some 835 square kilometres. In 2011, it had a population of 148,915 with 62,676 households¹⁴. 55% of the population live within the urban areas of Hailsham, Crowborough, Uckfield, Heathfield, Polegate and Willingdon, with the remainder living in rural areas¹⁵.
- 3.3 In terms of significant constraints and designations, Wealden District contains a substantial proportion of the High Weald Area of Outstanding Natural Beauty (AONB) that makes up over 53% of the District. This largely covers the northern half of Wealden District and surrounds the settlements of Heathfield and Crowborough. Over 7% of Wealden District now falls within the South Downs National Park (SDNP) to the southwest of the district (to the south of the A27 and to west of Polegate/Eastbourne). In addition, the Ashdown Forest Special Area of Conservation (SAC) and Special Protection Area (SPA) is located in the northwest of the district and the Pevensy Levels Ramsar Site and SAC¹⁶ is located in the southeast of district.
- 3.4 It is considered that both the housing market and the economy within the District are heavily influenced by the historic under provision of infrastructure

¹³ [See Paragraph 050 Reference ID: 68-050-20190722 of the PPG - Housing Supply and Delivery](#)

¹⁴ See 2011 Census.

¹⁵ See 2011 Census.

¹⁶ Both the Ashdown Forest and Pevensy Levels are also Sites of Special Scientific Interest (SSSI).

and the influence exerted by other major towns and employment opportunities in the wider region. Both the towns of Eastbourne and Royal Tunbridge Wells are located hard up against the administrative border of Wealden District to the south and north respectively, whilst the towns of East Grinstead (Mid Sussex District), Lewes (Lewes District) and Bexhill (Rother District) are located a short distance from the administrative border of Wealden.

Local Planning Context

3.5 The current adopted statutory development plan for Wealden District consists of the following documents:

- Wealden District Core Strategy Local Plan (February, 2013);
- Wealden District Affordable Housing Delivery Local Plan (May, 2016);
- Saved Policies of Wealden Local Plan (1998);
- Waste and Minerals Local Plan (February, 2013);
- Waste and Minerals Sites Plan (February, 2017); and
- The Hailsham (July, 2021), Herstmonceux (July, 2019) and Hellingly (July, 2021) Neighbourhood Development Plans.

3.6 Wealden District Council's most recently adopted development plan document that included a housing requirement for the district, is the Wealden District Core Strategy Local Plan (February, 2013)¹⁷. Policy WCS1 (Provision of Homes and Jobs 2006-2027) stated that Wealden District is to provide for 9,440 (net) dwellings over the period 2006-2027, that equated to 450 dwellings per annum (dpa). For the purposes of the HDT, the Wealden District Core Strategy Local Plan became out of date on the 19 February 2018.

3.7 The Council was in the process of producing a new Local Plan and had submitted the Wealden Local Plan (January, 2019) to the Secretary of State for independent examination on 18 January 2019. Following an extensive Stage One examination process in the spring/summer of 2019, including

¹⁷ [Wealden District Core Strategy Local Plan \(February, 2013\)](#)

public hearing sessions, it was concluded by the appointed Planning Inspector in a letter on 20 December 2019 that the submitted plan could not proceed further in the examination process and should be withdrawn. Following receipt of the Inspector's conclusions, Wealden District Council made a formal decision to withdraw the draft Wealden Local Plan on 19 February 2020 at its Full Council meeting.

- 3.8 The Council has since started work on a new Local Plan and has adopted a new Local Development Scheme (LDS) and Statement of Community Involvement (SCI) at its Full Council meeting on 22 July 2020. The LDS contains the timetable for the production of the new Local Plan and the review of the Community Infrastructure Levy (CIL) Charging Schedule. The Council has undertaken a 'Call for Sites and Broad Locations' exercise as part of the new SHELAA process that was open between 1 June and 10 August 2020. The Council continues to accept new SHELAA sites for assessment. The Council also produced the Wealden Local Plan – Direction of Travel Document¹⁸ that considered high level options for housing policy and the potential distribution of growth for the new Local Plan and this was consulted upon between 23 November 2020 and 18 January 2021.
- 3.9 The process for delivering a new Local Plan, including a review of the Council's existing housing requirement and the allocation of new housing sites is well underway. We are currently undertaking evidence gathering and further engagement to help inform and shape the new Local Plan. We are currently anticipating that the Regulation 18 consultation for the new Local Plan will take place in the summer of 2022.

Housing Requirement

- 3.10 The new Local Plan will determine the Council's new housing requirement and will be informed by a local housing needs assessment, conducted using the 'standard method' in national planning guidance – unless exceptional

¹⁸ [Wealden Local Plan – Direction of Travel Consultation \(November, 2020\)](#)

circumstances justify an alternative approach. For the 2021/2022 period, the local housing needs assessment, conducted under the 'standard method' equated to 1,221 dwellings per annum. This housing needs figure is significantly higher (over 2 ½ times) the housing target set out within the Council's adopted Wealden District Core Strategy Local Plan (February, 2013) that was published 9 years ago and is a significant reason as to why the Council is now unable to deliver against its new housing requirement without adopting a new Local Plan. The Council will be seeking to address this issue through the production of its new Local Plan.

- 3.11 Under the Localism Act 2011, local planning authorities and other duty to cooperate partners are required to cooperate with each other when preparing or supporting the preparation of policies which address strategic matters. This is known as the duty to cooperate. Making appropriate provision for housing (including affordable housing) is considered to be one of these strategic matters under the NPPF (July, 2021). The new housing requirement for Wealden District may therefore have to consider the unmet housing needs of neighbouring local planning authorities and whether it can be met within Wealden District as part of its new Local Plan.

Housing Delivery

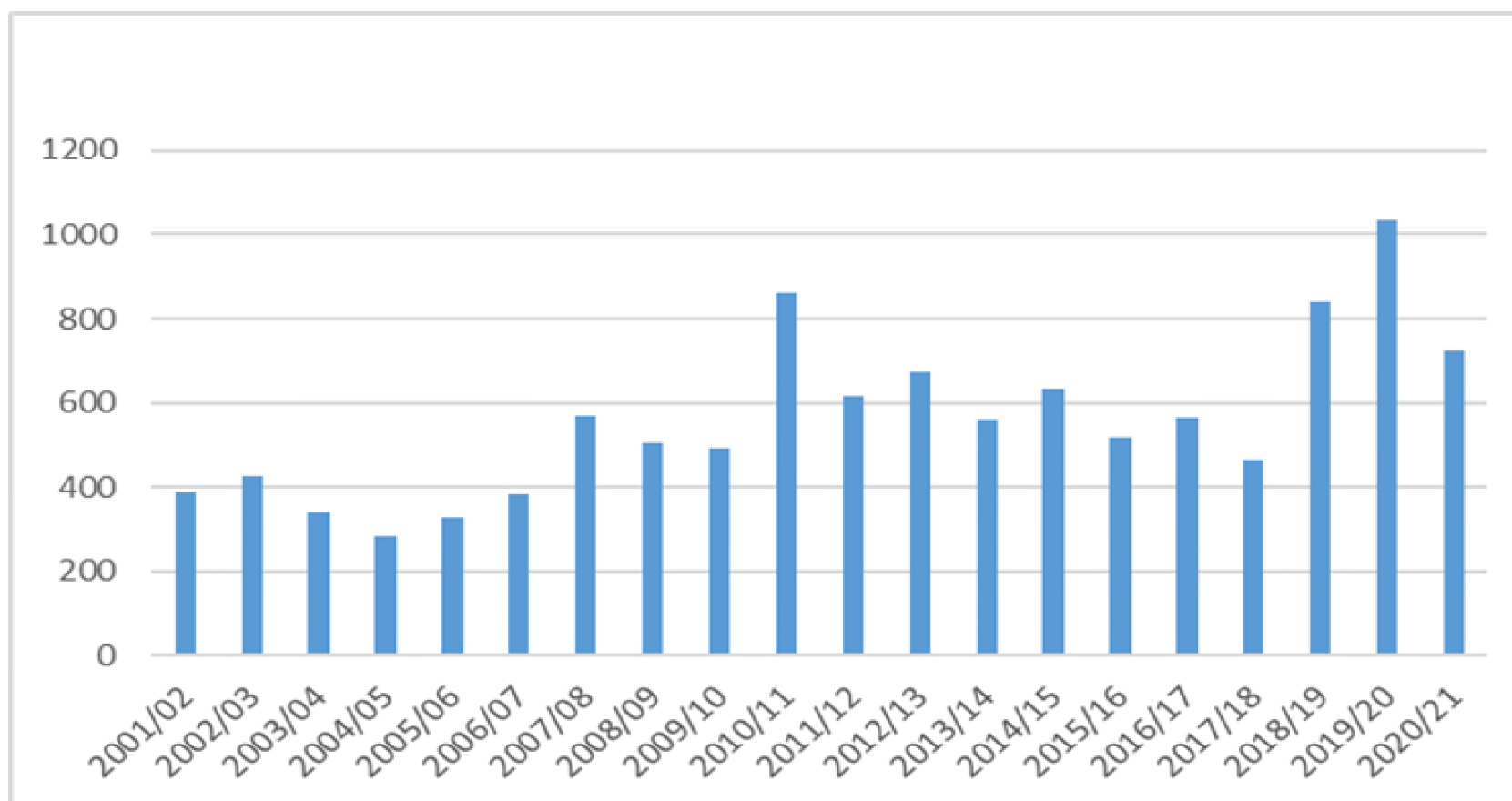
- 3.12 The Council monitors housebuilding through the collection of data on planning applications and the completion/commencement of individual dwellings. These two elements provide the basis for measuring performance against the Council's housing requirement as set out in its adopted Local Plan. The data collected on housing approvals and completions feeds into the Council's Authority Monitoring Report (AMR) and Five Year Housing Land Supply Position Statement, which are published at least on an annual basis¹⁹.
- 3.13 The monitoring process consists of site visits to existing development sites (i.e. sites with extant planning permissions) and engaging with

¹⁹ Please see the [2020/2021 AMR](#).

developers/house builders where necessary to understand potential delivery rates and completion targets. The monitoring process also includes an assessment of historical delivery rates and lead-in times for different types of housing development in the District.

- 3.14 Figure 2 below shows the number of new homes built in Wealden District between 2000-01 and 2020/21. Since the start of the Wealden District Core Strategy Local Plan period in 2006, a total of 8,643 net additional dwellings (including new dwellings in the Wealden part of the SDNP) have been delivered up until 31 March 2021. This equates to 617 dwellings per annum over the plan period, which is higher than the housing requirement set out in the Wealden District Core Strategy Local Plan (February, 2013). It should be noted that from 2007-08 period, annual net housing completions has consistently been above the adopted housing requirement.

Figure 2: Annual Net Housing Completions in Wealden District - 2000/01 to 2020/21²⁰



²⁰ [Housing Supply: Net Additional Dwellings, by Local Authority District, England: Table 122, DLUHC, March 2022](#). Please note that all net housing completions have been included in data, including those dwellings completed in Wealden District that now forms part of the South Downs National Park (SDNP).

- 3.15 The number of houses built in any given year is, in part, a reflection of the number of sites with planning permission. There is a lag between the granting of planning permission and the completion of new home on site, often around 1-3 years for sites with detailed planning permission and potentially longer on sites with outline planning permission. The lag time between the granting of planning permission and commencement is dependent on the size of the site and other related matters (such as the provision of infrastructure, as well as recently the impact of Covid-19). We now turn to the supply of new housing in the District.

Housing Supply

- 3.16 The latest housing supply position was undertaken on 1 April 2021 and is documented within Council's latest Five Year Housing Land Supply Statement published in December 2021²¹. This housing supply position is updated by the Council at least for each financial year in order to ensure that the Council's five year housing land supply position remains up-to-date. As part of this process, the Council identifies all dwellings that have been completed during the period, all housing sites where construction is underway and all sites with extant planning permissions (or with a resolution to grant planning permission) as of the 1 April 2021.
- 3.17 In total, the number of dwellings that either have extant planning permissions (or a resolution to grant planning permission) as of 1 April 2021 (and are anticipated to come forward) was 7,680 (net) dwellings. Dwellings with extant planning permissions as of 1 April 2021 have been categorised in the table below.

²¹ [Five Year Housing Land Supply Statement – 1st April 2021 \(December 2021\)](#)

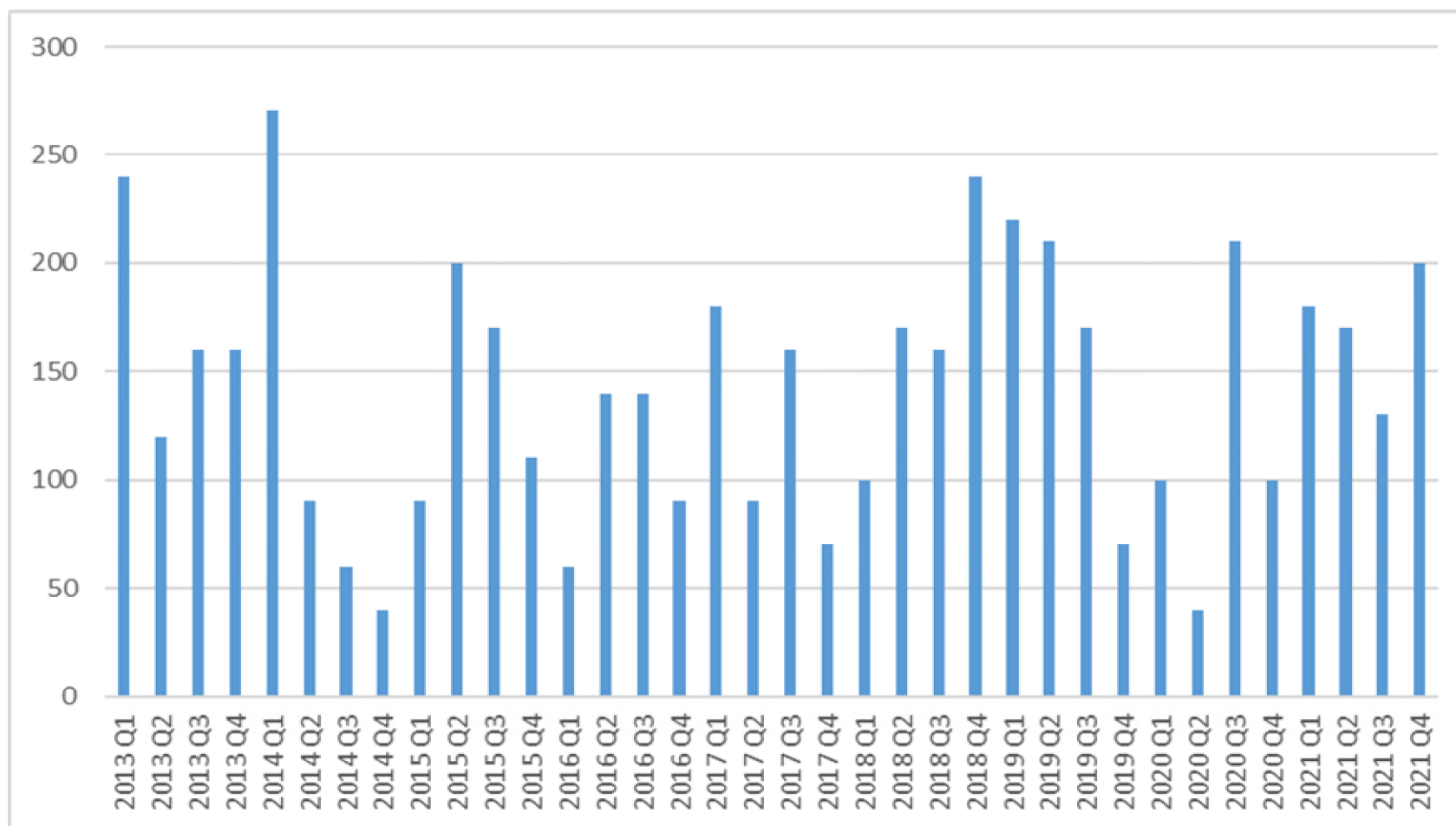
Table 3: Composition of Housing Supply as of 1 April 2021

Category of Supply	No. of Dwellings (Net)
Small Sites with 9 dwellings or less with Planning Permission	815
Major Sites with 10 dwellings or more with Detailed Planning Permission or under Construction	2,881
Major Sites with 10 dwellings or more with Outline Planning Permission or a Resolution to Grant Outline Planning Permission	3,873
Sites with Planning Permission or Resolution to Grant Planning Permission with C2 accommodation (equated to C3)	111
Total	7,680

- 3.18 In terms of the overall housing land supply position in the district, the total number of dwellings with extant planning permissions only equates to just over six years' worth of the housing need for the district. The Council will need to steadily increase the supply of new homes with planning permission over the coming years and to identify sites in a new Local Plan that can be developed for new homes. It is noted that just under half of all dwellings in supply either have detailed planning permission or are small sites (9 dwellings or less) that have either commenced and/or are very likely to deliver homes in the short term.
- 3.19 The crucial issue, and one of the main objectives of this Housing Action Plan, is to translate these planning permissions into development on the ground. The Government monitors the number of dwelling starts recorded for each local planning authority in England, including Wealden.

3.20 Figure 3 below shows housebuilding starts in Wealden since the adoption of its current Local Plan in 2013 by each quarter. Prior to the Covid-19 pandemic in March 2020, the District was experiencing its highest number of commencements since the adoption of the current Local Plan in 2013, with both the 2018 and 2019 periods recording 670 commencements. However, during the 2020 period this figure dropped significantly to 450, as a result of the partial closure of the construction industry during the period. This significant drop off in housing commencements has now largely recovered, with 680 commencements in 2021, the highest number of commencements annually recorded between 2013 and 2021.

Figure 3: Housebuilding Starts in Wealden – 2013 to 2021²²



²² [Permanent Dwellings Started and Completed, by Tenure and District: Table 253a, DLUHC, March 2022.](#)

Five Year Housing Land Supply Position

- 3.21 The NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement.
- 3.22 As discussed above, the latest five year housing land supply position was undertaken on 1 April 2021 and is documented within the Council's Five Year Housing Land Supply Statement that was published in December 2021²³.
- 3.23 The Council could not demonstrate that it had a five year housing land supply position as of 1 April 2021 against its current housing requirement under the 'standard methodology'. The five year housing requirement for Wealden as of 1 April 2021 (with a 20% buffer applied) was 7,326 (net) dwellings, whilst it was considered that the Council only had a supply 5,362 (net) dwellings that were projected to come forward in that five year period. The full calculation for this is below.

Table 4: Five Year Housing Land Supply Position for period between 1 April 2021 and 31 March 2026

Five Year Housing Requirement	6,105 (net) dwellings
20% buffer (20% of 6,125)	1,221
Five Year Housing Requirement including buffer	7,326 (net) dwellings
Total Housing Land Supply (Projected Net Housing Completions)	7,680 (net) dwellings
Five Year Housing Land Supply (Projected Net Housing Completions)	5,362 (net) dwellings
Projected Completions above/below requirement	-1,964
5 Year Housing Land Supply against Requirement	3.66 years (or 73%)

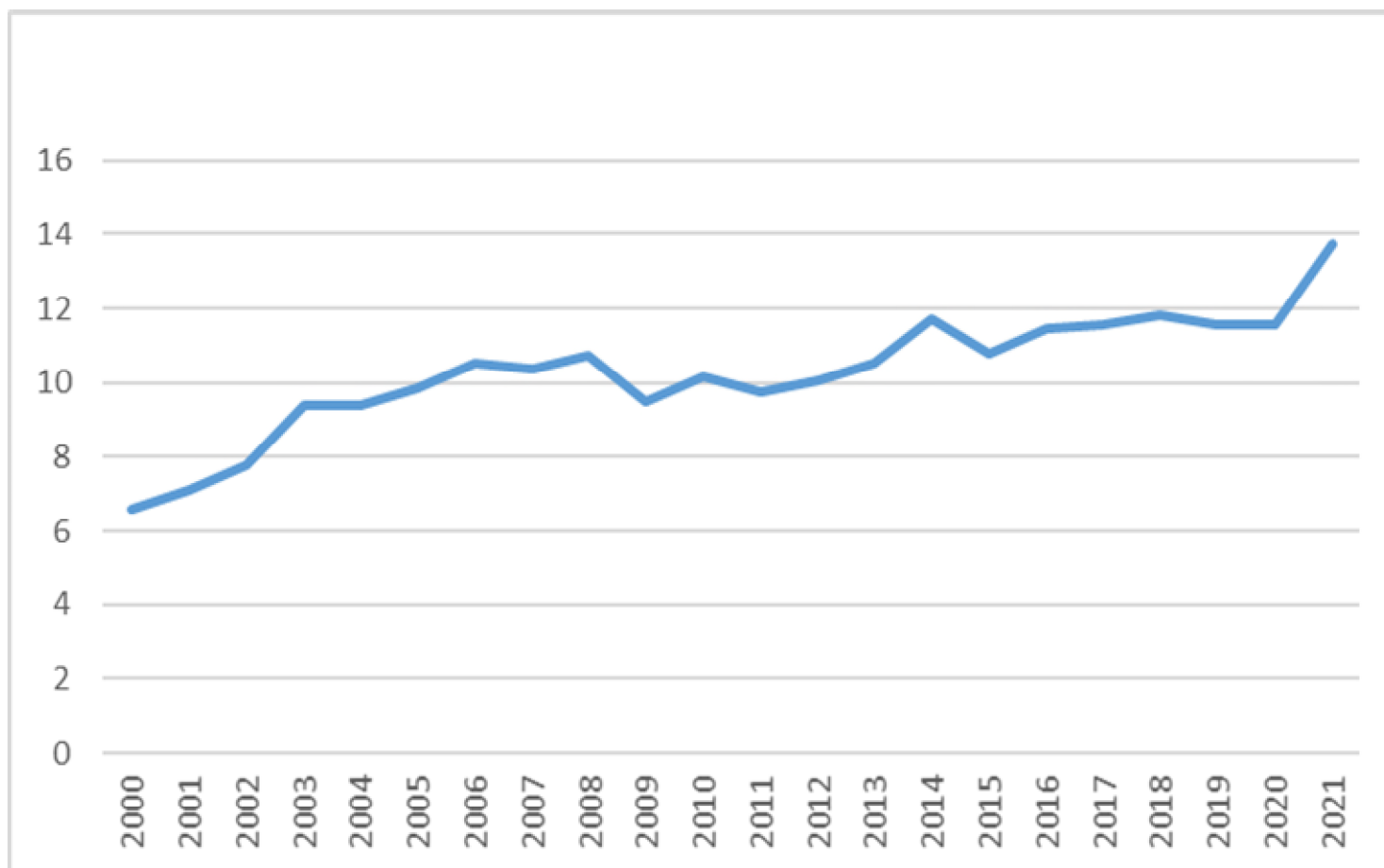
²³ [Five Year Housing Land Supply Statement – 1st April 2020 \(December 2021\).](#)

- 3.24 Therefore, as of 1 April 2021, the Council could only demonstrate a 3.66 year supply of housing land over the projected five year period. The NPPF's presumption in favour of sustainable development (paragraph 11) therefore applies in Wealden District.

Affordability

- 3.25 It is also recognised that the affordability of homes within Wealden does not align with median wages in the district and that there has been a continuing trend for worsening affordability for housing over time. Figure 4 below shows the ratio of median house prices to median gross annual workplace-based earnings for Wealden District since 2000. In short, the ratio provides the number for median gross annual workplace-based earnings needed to purchase a median priced house in Wealden. In 2000, this ratio was at 6.59 and in 2021, it had risen to 13.76. This is largely comparable with a number of outer boroughs in Greater London and other shire district's within South East England. In East Sussex, only Rother District has a marginally worst affordability ratio in 2021 at 13.82.

Figure 4: Median Affordability Ratio for Wealden since 2000²⁴



²⁴ [House price to workplace-based earnings ratio, DLHC, March 2022](#)

- 3.26 The continuing worsening of affordability in the District is an issue that can be partly addressed through the new Local Plan process (particularly the delivery of both market and affordable housing), although it is recognised that many local authorities in the south east of England have similar issues.
- 3.27 Whilst there has, and continues to be progress for housing delivery in the district, it is clear that there are a number of challenges to overcome that require intervention and support. The next section provides details on some of the actions already undertaken and future actions that will be taken forward.

4. Key Actions and Responses

- 4.1 This Housing Action Plan focuses on the intervention options open to the Council, recognising that a wide range of partners will need to be involved in helping to achieve the objectives of the Housing Action Plan. This will involve working with landowners, developers, registered providers and development bodies, as well as infrastructure providers to ensure that more new housing is delivered within Wealden District.
- 4.2 As part of the autumn budget of 2017, the Government announced a number of additional measures and identified housebuilding as a significant issues and economic driver to address. These included an increase in the Housing Infrastructure Fund and a refocussing of Homes England. The Council is committed to working constructively with Government and other partners to take advantage of funding opportunities to help deliver new housing and supporting infrastructure, in line with national planning policy. These issues will be key elements of the new Local Plan moving forward.

What has the Council done so far?

- 4.3 The Council has already made progress in supporting the delivery of housing, working with partners to bring development forward and recognising opportunities. The following table provides the specific actions that have been undertaken by Wealden District Council so far in tackling housing supply and delivery.

Table 5: Actions undertaken so far by Wealden District Council to Support Housing Delivery

Overall Action	Specific Actions Undertaken
Preparing a new Local Plan	<p>The Council is committed to updating its Local Plan. It will contain both strategic and non-strategic policies and will replace all existing Local Plan documents that the Council has adopted. The Local Development Scheme (LDS) was adopted by Wealden District Council on 22 July 2020 and confirms the following timetable for the preparation of the new Local Plan.</p> <ul style="list-style-type: none"> • Early Engagement Consultation – This document was published and consulted upon in November 2020. • Local Plan Draft (Regulation 18) consultation – Spring 2022 – this is expected to published in the Summer of 2022 • Local Plan Submission Draft (Regulation 20) – Winter 2022/2023 • Local Plan Pre-Submission Draft to the Secretary of State – Spring 2023 • Adoption of the Local Plan – Winter 2023 <p>Please note that the Council will endeavour to meet the future key deadlines within the LDS to ensure that an up-to-date Local Plan is in place and so the Council can deliver against its housing requirements and the Housing Delivery Test in the future.</p>
Review of the Community Infrastructure Levy (CIL) Charging Schedule	<p>The Council is committed to updating its CIL Charging Schedule. The LDS was adopted by Wealden District Council on 22 July 2020 and confirms the following timetable for the preparation of a new CIL Charging Schedule.</p>

Overall Action	Specific Actions Undertaken
	<ul style="list-style-type: none"> • Consultation on Draft Charging Schedule (Regulation 16) – Summer 2022 • Submission of CIL Charging Schedule (aligned with Local Plan Submission (Regulation 19) - Spring 2023 • Adoption and Publication of CIL Charging Schedule – Winter 2023 <p>The review of the CIL Charging Schedule will ensure that new housing development within the district remains viable and that funding for infrastructure to support new homes is secured. This will be aligned with the review of the Local Plan.</p>
Self-Build and Custom Housebuilding Register	<p>The Council has established a self-build and custom housebuilding register to record the interest of those looking to build their own home in Wealden District. This process is ongoing. The latest reporting for the Council's self-build and custom-build register is provided below:</p> <p>https://www.wealden.gov.uk/planning-and-building-control/planning-policy/self-build-and-custom-housebuilding/</p>
Monitoring	<p>As discussed within this Housing Action Plan, the Council through its Authority Monitoring Report (AMR) process does monitor both housing delivery and supply. The monitoring process consists of site visits to existing development sites, the monitoring of planning permissions and engaging with developers/house builders where necessary to understand delivery rates and completion targets. This process is ongoing. The latest AMR for the 2020-21 period is below:</p>

Overall Action	Specific Actions Undertaken
	https://www.wealden.gov.uk/planning-and-building-control/planning-policy/planning-policy-documents/authority-monitoring-report/
Neighbourhood Plans	<p>The Council is supporting the preparation of new Neighbourhood Plans within the District. The Herstmonceux Neighbourhood Plan was adopted by the Council on 24 July 2019. Both the Hailsham Neighbourhood Plan and the Hellingly Neighbourhood Plan were ‘made’ by the Council on 21 July 2021.</p> <p>The latest reporting for Neighbourhood Planning in the District can be found at the webpage below:</p> <p>https://www.wealden.gov.uk/planning-and-building-control/planning-policy/neighbourhood-planning/neighbourhood-plans/</p>
Brownfield Land Register	<p>The Council has established and maintains a Brownfield Land Register containing sites that are appropriate for residential development. The Brownfield Land Register is updated on an annual basis. Future iterations of the Brownfield Land Register will consider whether any sites can be included on ‘Part 2’ of the register (i.e. be granted ‘permission in principle’) so may contribute towards housing supply. The Council’s current Brownfield Land Register can be found at the following link:</p> <p>https://www.wealden.gov.uk/planning-and-building-control/planning-policy/brownfield-register/</p>
Strategic Housing and Economic Land	<p>The Council, in preparation for the new Local Plan, undertook a ‘Call for Sites and Broad Locations’ that took place between 1 June and 10 August 2020. The Council also continues to accept new SHELAA sites</p>

Overall Action	Specific Actions Undertaken
Availability Assessment (SHELAA)	<p>for assessment as part of the Local Plan process. This process ensures that the Council has the latest evidence from landowners/developers on existing SHELAA sites and provides an opportunity for new sites to come forward and be assessed. The Council had published its latest SHELAA document in January 2019 that can be found at the web link below:</p> <p>https://www.wealden.gov.uk/planning-and-building-control/planning-policy/strategic-housing-and-economic-land-availability-assessment-shelaa/</p> <p>The Council is currently in the process of preparing a new SHELAA, which will be published alongside the Regulation 18 consultation for the new Draft Local Plan.</p>
Engaging with Developers	<p>The Council has maintained an ongoing dialogue with landowners and developers (including agents and registered providers) to understand what progress is being made on sites. The Council also utilises this information to help identify potential solutions to deliver new homes and to keep accurate records for the projected five year housing land supply position that the Council maintains.</p> <p>The Council has a good track record of working with housebuilders to purchase their affordable housing element as part of larger development schemes.</p>

Overall Action	Specific Actions Undertaken
	<p>The Council meets with a working group of planning/land agents (named the Wealden Agents Panel) on a quarterly basis to raise the quality of planning applications being lodged with the local planning authority and to support the effective determination of planning applications.</p> <p>The Council has published a weekly report of validated and approved planning applications for housing (amongst other matters) that is shared with a mailing list of developers, housebuilders and registered providers to help identify opportunities.</p>
Investigation of Funding Opportunities	<p>The Council has worked with funding providers such as Homes England and is seeking opportunities to draw in financial assistance to help stimulate the development of sites. The Council is also working collaboratively with South East Local Enterprise Partnership (LEP).</p>
The Direct Provision of New Homes through Council Initiatives	<p>The Council has reviewed its estate and brought surplus land and premises to the market where it is suitable for new housing. The Council has also put forward land to be included within SHELAA process.</p> <p>The Council is developing plans for the redevelopment of Hailsham Town Centre, following the Council's acquisition of the Vicarage Field's shopping precinct, potentially to provide new homes and business floorspace.</p> <p>The Council will utilise its Housing Development Officers to provide an extra resource aimed at delivering affordable homes within the District and in turn supporting the delivery of larger developments sites.</p>

Overall Action	Specific Actions Undertaken
Improvements to the Planning Service	<p>The Council has established a specialist validation team within the Planning Service to process planning applications, which has helped in speeding up the planning application process.</p> <p>The Council has also resourced the updating of the Council's application validation list that was the subject of formal consultation in late 2020/early 2021.</p> <p>A review of the processes associated with the administration of validation is taking place to further streamline and speed up the service which will also include an invalid management strategy.</p>
Improvements to the Planning Service	<p>Working with the Council's Legal Practice, the Development Management Team has worked up a Section 106 template. This covers the topical and frequent issues which arise when a planning permission is to be granted. Examples include affordable housing and play/open space as well as mitigation concerning in-combination impacts on the Ashdown Forest. Using the template has dramatically reduced the time between resolution to grant permission and the formal issuing of the permission.</p> <p>We are exploring greater use of Unilateral Undertakings where legal agreement topics are straightforward and a bilateral is not required (reducing time in process).</p>
Improvements to the Planning Service	<p>The Council's Development Management Team has also reviewed the use of planning conditions and particularly whether the Council could reduce the number of pre-commencement conditions required for new housing schemes.</p>

Overall Action	Specific Actions Undertaken
	<p>We have also reviewed the process of condition discharge, making this a project based workflow with automation of some consultations (where required). This has reduced the time for condition case processing.</p> <p>We will continue to review the discharge of planning conditions to speed up the process, which will include a system review.</p>
Improvements to the Planning Service	<p>The Development Management Team have secured reduced time limits on the commencement of development via condition(s). This requires that development must begin within a shorter timescale than the relevant default period, where this would expedite the development without threatening its deliverability or viability.</p>
Improvements to the Planning Service	<p>The Council has improved both the speed and quality of its pre-application advice service.</p> <p>This is structured as follows</p> <ul style="list-style-type: none"> • an initial 'free' initial advice service is offered by the Senior Management Team in the service area. • If this leads to a formal request for advice, then pre-application advice is offered as a FastTrack written letter or as a meeting. <p>The link to the pre-application process is below:</p>

Overall Action	Specific Actions Undertaken
	https://www.wealden.gov.uk/planning-and-building-control/planning-advice/pre-application-advice/
Improvements to the Planning Service	<p>Improve digital access – the Council's Development Management Team have begun updating the website content for the Planning Service. We are using the website and social media for consulting on key events in the life of an application, particularly amended plans which has the potential to speed up case processing. Changes are planned to the public access element where users view applications to further create efficiencies in how applications are viewed externally.</p> <p>It has also introduced a Twitter feed for news and updates.</p>
Improvements to the Planning Service	We have begun work on the introduction of Planning Performance Agreements (PPAs), with associated charter on what can be expected. Initial feedback from Agents is that this would be welcomed in the Wealden context. PPAs could lead to additional income stream that could add resource, which would speed up case processing.
Improvements to the Planning Service	The Development Management Team have instigated greater casework review where cases are lodged for assessment, not negotiation. This results in the swift turnaround of schemes. The refusal to accept amendments on unacceptable schemes helps free up capacity to deal with those submissions that are acceptable. This has been trialled with active Agents who know what to expect from the Local Planning Authority.
Improvements to the Planning Service	Building on the experience during Covid-19 'stay at home' advice, we will continue to explore agile and digital working. This includes electronic case processing, managing workloads and performance, improving the use of resources.

Overall Action	Specific Actions Undertaken
	<p>We have used 'Teams' for meetings with agent and applicants, together with virtual committee meetings. There are other areas of work to be explored – such as triaging cases where a site inspection may occur unaccompanied or digitally (if all material issues can be assessed electronically).</p> <p>The Planning Service has recently purchased a workflow module that will work with its internal application case processing software that arrived in Q3 2020/21. This system provides a full life cycle, workflow driven solution for processing planning applications.</p> <p>The integration of Cadcorp (GIS) will see applications mapped spatially alongside an officer view of all constraints used in the determination of an application. DataMap will be replaced subject to integration.</p> <p>The interrogation of Management Information (MI) will be improved with the roll out of SQL Server Reporting Services (SSRS). This will compliment workflow and enable officers to view cases on hand through dashboards as well as provide managers with an insight into throughput.</p> <p>Subject to internal development a business case is being written to explore implementation of a planning chat bot – this is perceived to enable users to answer simple questions relating to the planning application process, improving the customer offer.</p>

Overall Action	Specific Actions Undertaken
	<p>A form will be launched to enable customers to report any alleged breaches of planning. The form is designed to allow users to upload additional information in the form of photographs to free up the time taken by compliance dealing with telephone contact and will promote the drive to digital.</p> <p>These might be viewed as small gains but will ensure the Planning Service is more efficient at case processing and decision making.</p>
Improvements to the Planning Service	<p>The Council has increased its internal and external training and development opportunities for staff, including supporting officers through university courses, conferences, specialist short term training events and through topic specific in-house training.</p> <p>We have continued to provide ongoing Member training particularly in relation to housing delivery.</p>

What more can the Council be doing?

- 4.4 The actions identified above will continue to be taken forward and developed further where appropriate, and the Council will explore new avenues in an attempt to stimulate development and facilitate growth within the district. However, the Council recognises that there is more that can be done and that a mix of measures will have to adapt to the new challenges facing the development industry in the months and years to come.
- 4.5 The Housing Action Plan includes a number of broad objectives where the Council will continue to focus its efforts. These are as follows:
- Help to provide opportunities for the local development industry;
 - Work to address blockages to specific development sites;
 - Joint working to address infrastructure issues within the District;
 - Providing certainty for developers and landowners;
 - Translate planning permissions into new homes;
 - Support further housing provision to meet needs; and
 - Supporting communities to grow sustainably.
- 4.6 The following paragraphs set out some of the key actions that will be explored in more detail.

Help to provide opportunities for the Local Development Industry

- 4.7 The Council will continue to build relationships with developers and housebuilders to understand the challenges in bringing sites forward. Building on the work undertaken through the Developers East Sussex (DES) Forum, this will include specific developer forum events that could cover topics such as: SME collaboration, self-build opportunities, working with registered providers, development management processes and procedures, and government funding opportunities.

- 4.8 As discussed above, the Council, in preparation for the new Local Plan, has undertaken a 'Call for Sites and Broad Locations' that took place between 1 June and 10 August 2020. The Council continues to accept new SHELAA sites for assessment as part of the Local Plan process. This process ensures that the Council has the latest evidence from landowners/developers on existing SHELAA sites and provides an opportunity for new sites to come forward and be assessed.

Work to Address Blockages for Specific Development Sites

- 4.9 Joint working with organisations such as Homes England will focus on helping to ensure the financial viability of developing sites in Wealden. The Council will explore opportunities to help bring public sector land forward, as well as work with housebuilders to support them in accessing available resources.
- 4.10 In addition, the Council will continue to take a robust but pragmatic view on development viability, as set out in the adopted Local Plan and NPPF. This will include utilising the Council's Housing Development Team to explore alternative ways of delivering affordable housing, including through the Council's own Housing Company (Sussex Weald Homes).
- 4.11 One of the biggest risks to future delivery (consistently raised by DES) is the availability of skilled labour, now and over the next few years noting the rising average age of those in the sector. Therefore, the Council considers that it is important to work with education, training and business providers to highlight the value of careers in the construction industry. The Council is working with DES to identify ways to attract more people into the construction industry and through regular career fairs, highlight the opportunities for jobs and careers in the industry in Wealden and beyond.

Joint Working to Address Infrastructure Issues within the District

- 4.12 There are several infrastructure concerns that are affecting the District and are influencing housing delivery in the short to longer term. This includes the

provision of Suitable Alternative Natural Green Spaces (SANGS) as an alternative visitor space to the Ashdown Forest Special Protection Area (SPA), the provision and upgrading of highways within the District and the provision of social infrastructure, such as education, health and leisure facilities. The latest Council approach to infrastructure issues in terms of priorities is detailed at section 4 of the Council's latest Infrastructure Funding Statement (IFS)²⁵.

- 4.13 In terms of SANGs, two SANGs have been provided at Crowborough and Uckfield to mitigate the impacts of housing development on the Ashdown Forest SPA (through increased recreational pressure) and funding is required to maintain these sites through developer contributions. These greenspaces provide significant additional benefits to both the incoming residents of the associated developments and existing Wealden residents and visitors. The SANGS are accessible to all users and offer a pleasant environment to visit and spend time. The SANGS also offer substantial ecological and biodiversity improvements to this former agricultural land.
- 4.14 In terms of transport interventions, highway improvements, particularly in the south of the district, proximate to the major growth of recent years continue to be a priority. An outline business case for the A22 Major Road Network junction improvement package was submitted to Department for Transport (DfT) in 2019 for around £35m including a 15% contribution coming from development contributions and CIL monies. The package of capacity improvements to five roundabouts will support housing and employment growth in the Eastbourne and South Wealden area and many of the development sites already have planning permission. The outcome of the MRN bid is unlikely to be known until the end of 2022. The Council has already earmarked £2.5 million to be allocated from CIL receipts towards this project. This is in addition to section 106 monies that have been allocated towards major trunk road improvements to the A22 and A27.

²⁵ [Infrastructure Funding Statement \(IFS\) 2020-21, December 2021](#)

- 4.15 The Council has also earmarked £1.5 million CIL receipts to support interventions required at the Ersham Road/Diplocks Roundabout Scheme, which are also identified as critical improvements required to support the level of growth. The Ersham Road/Diplocks Roundabout Scheme will also help deliver an improved village green within Hailsham, accessible to all residents of the town via a direct link to the Cuckoo Trail.
- 4.16 The Council will continue to prioritise the provision of necessary education provision across the District, working with partners at East Sussex County Council to establish needs and plan for provision early as part of the local plan review.
- 4.17 The Council has been working on providing health and wellbeing infrastructure in the District. The Council's current evidence base for both indoor/ built sports facilities and playing pitch and outdoor sports needs²⁶ outlines that areas of the District, including Hailsham, have deficits in such facilities (this evidence is being updated for the new Local Plan). Given the projects underway (Hailsham, Crowborough and Hellingly) and the need for such community/sport facilities within the District, such items have started to be prioritised for funding through CIL receipts in the 2021/22 period.
- 4.18 In addition, the Council are is currently seeking to progress the Hailsham Aspires Project²⁷ that aims to regenerate the centre of Hailsham and deliver a revitalised town centre in line with the 'Vision for Hailsham', as identified in the Hailsham Neighbourhood Plan, and offer Hailsham a bright future as the key growth town in East Sussex. The proposals would deliver a new indoor leisure centre with integrated healthcare facilities.
- 4.19 The Council is also bringing forward plans to deliver a new Community Sports Hub on Council owned land at Knights Farm East, to the north west of Hailsham. Finally, following the outcome of the Councils leisure review, plans

²⁶ [Wealden Playing Pitch and Outdoor Sports Needs Assessment 2016-2028](#) and [Wealden Indoor/Built Sports Facility Needs Assessment 2016-2028](#)

²⁷ [Hailsham Aspires Project](#)

are being progressed for improvements at Crowborough Leisure Centre, including the provision of an additional teaching pool.

- 4.20 The Council took the decision at the end of 2021 (as part of its IFS reporting process) to allocate an initial £9 million towards these projects (above) from CIL receipts, which will potentially remove another barrier to housing growth in the District.

Providing Certainty for Developers and Landowners

- 4.21 As part of the process of managing and updating the Council's Brownfield Land Register, the Council will consider whether there are any sites that could be granted 'permission in principle'. This type of consent provides greater certainty for developers by confirming that the fundamental principles of development are acceptable, before developers need to get into costly, technical matters.
- 4.22 The Council will consider the benefits of preparing masterplans for individual sites as part of the Local Plan process, setting out what is expected as part of the development of an allocated site, particularly on large and potentially complex sites. The Council will continue to work with landowners, prospective developers and the community to prepare masterplans that provide certainty for investors.
- 4.23 Where sites are yet to reach the pre-application stage, the Council's development management service will actively liaise with relevant partners to facilitate development, including acting as a conduit for discussions with Homes England and/or the Council's own Housing Company in order to facilitate new development.
- 4.24 The Council will continue to provide a pro-active approach to the pre-application service for landowners and developers at the early stages of the development process to discuss the constraints and opportunities for different sites. A large number of informal meetings have already been held with

landowners and their representatives to discuss progress and identify ways forward.

- 4.25 Where appropriate, the Council may consider the introduction of PPAs to direct and tailor resources for determining potentially more complex planning applications, covering all aspects of the planning process from the pre-application stage to the discharging of conditions.
- 4.26 The programme of improvements within the planning service (as highlighted above) will continue, with a view to ensuring that all planning applications are determined as efficiently as possible. This includes improving the quality and speed of the pre-application process, streamlining the validation process, reducing the time it takes to validate planning applications, and speeding up the process of completing legal agreements. The planning service will also continue to invest in the use of new technology to improve the productivity of all parties involved in the planning process and to enable greater mobile working – for example, planning constraints and online mapping.

Translate Planning Permissions into New Homes

- 4.27 Where planning applications have lapsed, or about to lapse, the Council will continue to take a proactive position and investigate with the applicant the reasons why the site(s) have not come forward. As identified above, the monitoring of housing schemes with extant planning permissions is undertaken regularly and can identify sites that have not progressed as expected. There may be opportunities, linked to other actions in this Plan, to identify ways forward for new sites and to make development a more realistic prospect.
- 4.28 The Council will seek to explore alternative housing delivery arrangements, including the use of the Council's own Housing Company on stalled sites where the market is currently failing to bring forward sites that have extant planning permissions. Sussex Weald Homes (wholly owned by Wealden

District Council) are actively developing a plan for homes in the area, to help address the housing needs of the local area.

Support further Housing Provision to Meet Needs

- 4.29 To enhance the potential role of small and medium sized housebuilders, the Council will seek to support the creation of developer consortiums where appetite exists. This is where developers can work together to share costs to acquire and deliver sites that they may otherwise be unable to access including portions of larger sites. This model is currently working well to the north of Hailsham to deliver shared infrastructure across two large development sites that are almost completed. Where other opportunities exist, they are under active consideration in other parts of Wealden District.
- 4.30 The Council will continue to review its portfolio of land and premises with a view to recognising opportunities for housing development, for example. The Council will seek to use its assets effectively to unlock land and stimulate private investment – particularly around Hailsham Town Centre, but also in Polegate and beyond. The Council has submitted a number of sites for new development as part of the recent ‘Call for Sites’ process.
- 4.31 As required, the Council will continue to monitor housing delivery against the target set out in its adopted Local Plan through the AMR process and will review its current target as part of the new Local Plan process. The Council is committed to ensuring that it responds to the latest evidence and policy guidance on this matter.

Supporting Communities to Grow Sustainably

- 4.32 Opportunities for the delivery of alternative forms of housing, such as ‘rural exception’ housing sites and community-led housing will be explored as part of the new Local Plan process, and may also be explored through Neighbourhood Plans. Further work is required to bring land and development

forward which is likely to involve working in partnership with landowners, developers, registered providers and community organisations.

- 4.33 For those on the self-build and custom housebuilding register, the Council will seek to fulfil our responsibilities to make land available for self and custom build housing. We will seek to highlight the self-build and custom build opportunities that are currently coming through the planning system, as well as investigating whether other sites specifically be identified to meet the needs of people on the register. The Council will consider, as part of the new Local Plan, what policy should be used to support such opportunities in its area.

5. Monitoring Arrangements

- 5.1 This Housing Action Plan will be reviewed at least on an annual basis where Wealden District Council does fall short of 95% of its HDT measurement during the reported year. The Council will monitor the effectiveness of actions themselves, as well as the outcomes (e.g. housing delivery rates and supply, the Council's five year housing land supply position etc.). The actions will be updated where necessary and new ones may be added in response to external changes, such as new funding streams, Government initiatives and changes to legislation and/or policy.
- 5.2 In addition, the Council does welcome suggestions on any future actions the Council may take to help support house building in Wealden District. If you do have any suggestions on further measures the Council can take to support housebuilding within Wealden, please contact us using the following details:

E-mail: planningpolicy@wealden.gov.uk

Telephone: 01892 602008

Address: Planning Policy, Wealden District Council, Vicarage Lane,
Hailsham, East Sussex, BN27 2AX

Published by
Wealden District Council
Council Offices
Vicarage Lane
Hailsham
East Sussex BN27 2AX
Tel: 01323 443322
Fax: 01323 443333
e-mail: planningpolicy@wealden.gov.uk
Website: www.wealden.gov.uk

Appeal Decision

Hearing held on 16 August 2022

Site visit made on 17 August 2022

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2022

Appeal Ref: APP/C1435/W/22/3296579

Land west of Station Road, Hailsham

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gleeson Strategic Land Limited & Rydon Homes Limited against the decision of Wealden District Council.
 - The application Ref WD/2020/2509/MAO, dated 30 November 2020, was refused by notice dated 28 February 2022.
 - The development proposed is outline planning application (with all matters reserved except for access) for the erection of up to 200 residential dwellings including affordable housing with the provision of vehicular, pedestrian and cycle access from Station Road, incorporating open spaces, sustainable urban drainage systems, associated landscaping, infrastructure and earthworks.
-

Decision

1. The appeal is allowed and planning permission is granted for outline planning application (with all matters reserved except for access) for the erection of up to 200 residential dwellings including affordable housing with the provision of vehicular, pedestrian and cycle access from Station Road, incorporating open spaces, sustainable urban drainage systems, associated landscaping, infrastructure and earthworks at land west of Station Road, Hailsham in accordance with the terms of the application, Ref WD/2020/2509/MAO, dated 30 November 2020, subject to the conditions in the attached Schedule.

Procedural Matters

2. Prior to the hearing the Council confirmed that they would not offer evidence in relation to their single reason for refusal relating to highways matters. Therefore, the hearing proceeded without the Council defending their decision to refuse planning permission.
3. Various iterations of an illustrative masterplan were submitted with the appeal which show how the site might be developed in the event the appeal was allowed. A parameters plan was also submitted for approval which shows the broad locations of proposed housing, open space and the retention of a public footpath. The Council have had the opportunity to comment on these plans as part of the appeal and raise no objections. I am satisfied that these plans do not materially alter the substance of the application the Council originally considered and interested parties would not be unduly prejudiced. Therefore, I have accepted these plans as part of this appeal, but I have treated the masterplan as illustrative only.

4. A range of other technical documents were also submitted with the appeal¹. Again, they do not alter the nature of the proposal originally considered and I have accepted them.
5. A draft Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 was submitted by the appellants prior to the hearing and was subsequently signed shortly after. I deal with this in my reasoning below.

Application for costs

6. An application for a full award of costs was made by Gleeson Strategic Land Limited and Rydon Homes Limited against Wealden District Council. This application is the subject of a separate decision.

Main Issues

7. The main issues in this case are:
 - Whether the proposal would promote sustainable transport having regard to a) the effect of traffic on the local highway network with particular regard to the Station Road/South Road junction; b) measures to promote sustainable modes of travel.
 - The effect of the proposal on the integrity of Pevensey Levels habitats site, including mitigation.

Reasons

Background

8. The appeal site is located outside the settlement boundary and for the purposes of planning policy lies in the countryside. The scheme is referred to by the appellants and Council as 'phase 3'. Phase 1, known as *Cuckoo Fields and Ersham Park*, relates to planning permission for up to 400 dwellings. Phase 2, known as *land adjacent to Cuckoo Trail*, relates to planning permission for up to 100 dwellings². Therefore, notwithstanding the appeal proposal, up to 500 dwellings have been granted planning permission on land close to the appeal site, which lies generally to the south and east of these two phases. The illustrative masterplan demonstrates that the proposal could be linked to phases 1 and 2 by a series of footpaths.

Highway capacity

9. Station Road is the main road linking the appeal site with the town centre, forming a priority junction with South Road (A295) at its northern extent. The layout of the Station Road/South Road junction (the junction) as it currently exists is deficient in a number of areas. This was apparent on my site visit, and is supported by the evidence and anecdotal accounts I heard during the hearing. Notably, drivers turning right out of Station Road onto South Road are required to cross to the opposing side of the carriageway³. The difficulty of this manoeuvre being exacerbated often by the weight of traffic in both directions along South Road, and the proximity of traffic signals which control

¹ Core documents CD2/22 – CD2/36, with CD2/23, CD2/25, CD2/26, CD2/27 relating to illustrative masterplans and parameters plan referred to above.

² Phase 1 planning permission ref - WD/2018/0475/MAO. Phase 2 planning permission ref - WD/2019/1864/MAO.

³ Baseline data included in TA suggests approximately 1/3 of vehicles turn right out of Station Road.

traffic flows from George Street and North Street, often resulting in platoons of vehicles heading west along South Road past the junction. Moreover, drivers wishing to turn right into Station Road from South Road often block part of the carriageway, further restricting the operational efficiency of the junction.

10. As a result of the above, and despite the width of the bellmouth which allows several left and right turners to exit from Station Road onto South Road at the same time, it does not take long for vehicles wishing to turn right to clog the junction. The result is frequent delays in being able to turn out of the junction onto South Road safely, often resulting in queues along Station Road, particularly at peak times.
11. None of this is disputed. In short, the priority junction control currently in place exhibits capacity issues. Indeed, it was recognised in the proposals for phases 1 and 2 that, the ratio of traffic flow in relation to capacity would be high based on modelled future growth, resulting in significant exceedance of the junction's operational capacity during the PM peak⁴. To mitigate the effects of the additional traffic arising from the respective approved developments, phase 1 proposed a right turn filter along South Road to aid vehicles turning right into Station Road, with phase 2 proposing a comprehensive scheme involving the provision of traffic signals as a means of controlling traffic flows.
12. In this regard, a planning condition was imposed on the phase 2 planning permission requiring that the principal traffic signalisation and junction alteration works were implemented in accordance with the approved plan⁵. Therefore, it is clear that the Council have previously accepted that the additional traffic associated with phases 1 and 2 could be accommodated at the junction subject to the approved junction alteration and signalisation scheme (junction signalisation works). The same approved junction signalisation works are proposed as part of this appeal⁶.
13. Turning to the effects of the traffic likely to be generated by the proposal. I note that the East Sussex County Council (Highway Authority) were initially concerned with the traffic survey data obtained in 2020 due to COVID-19 restrictions in place at that time. However, further surveys were completed by the appellants during November 2021 and subsequently, the Highway Authority raises no objection to the traffic data underpinning subsequent junction capacity assessments.
14. The appellants have provided an assessment of the likely traffic impacts on the junction. This is based on the proposal in combination with committed developments and anticipated traffic growth in the year 2028, which includes the implementation of the junction signalisation works⁷. The assessment demonstrates that during the AM and PM peak, no arms of the junction would be over capacity⁸, with a practical reserve capacity of 6.6% in the AM peak and 8.6% in the PM peak⁹. This demonstrates ample spare capacity within the junction for it to operate effectively.
15. Moreover, I was told during the hearing that drivers would be able to navigate the signals at the junction within one complete traffic signal cycle. This is backed up by the data which also suggests delays of less than 1 minute on all arms of the junction during both the AM and PM peak. Even allowing for the

⁴ See table 3.4 of Appeal Rebuttal Statement – ref - ITB15695-013a

⁵ Condition no 18 of planning permission WD/2019/1864

⁶ See Agreed Statement on Transport Matters drawing ref - ITB15002-GA-001A

⁷ Traffic modelling of signalised junction using industry standard LinSig software

⁸ An arm is generally considered over capacity when degree of saturation exceeds 90%

⁹ Table 3.5 of Appeal Rebuttal Statement by i-Transport – ref ITB15695-013a

limitations associated with junction modelling and forecasting future scenarios with such precision, I am satisfied that the impacts of the proposal, in combination with other committed developments, would fall well short of 'severe', that being the relevant test as set out in paragraph 111 of the National Planning Policy Framework (the Framework). I also note that the Highway Authority raises no objection to the methodology, nor do they question the figures.

16. Furthermore, concerns relating to the effectiveness of the junction signalisation works in improving the junction's capacity and efficiency are not supported by the evidence. Firstly, the works were considered as part of phase 2 and have been approved by the Council demonstrating their acceptance of this form of mitigation. Secondly, the appellants' assessment of the signal controls proposed at the junction and the impacts on traffic flows are comprehensive, and no objections are raised by the Highway Authority, nor do they contest that the works necessary to carry out the junction mitigation are not deliverable.
17. Concerns have also been raised by interested parties regarding the capacity of other junctions in the area to accommodate an increase in vehicular movements associated with this proposal. However, no detailed evidence has been submitted which leads me to conclude that the submitted Transport Assessment (TA) is not robust, and the conclusions drawn, which find the impact on other local roads and junctions in the area would not be significant, do not appear unsound.
18. The Council's reason for refusal raises concerns that the measures set out in the submitted Sustainable Transport Strategy (STS) would not be deliverable. It also states that such measures would be necessary to mitigate the impact on the junction. However, I fundamentally disagree. So too, as part of the agreed Statement of Common Ground, do the Highway Authority.
19. To clarify, it is important to note that the above reasoning does not take into account the effects of the STS in reducing traffic flows at the junction. This is because I find that the approved junction signalisation works alone would provide the mitigation necessary to ensure sufficient capacity and the effective operation of the junction.
20. Nevertheless, given that the Framework also requires that developments promote sustainable modes of travel, I will move on to assess the effectiveness of the proposed STS in achieving this.

Travel Plan

21. The planning application was accompanied by a Framework Travel Plan¹⁰. An enhanced travel plan was then submitted in the form of the STS¹¹. Aside from the concerns over the junction's operation, interested parties raise concerns over the deliverability of the measures proposed in the STS.
22. In this regard, despite the site's countryside location, a wide range of services and facilities exist within a reasonable walking distance of the appeal site¹². This includes Hailsham town centre. In addition, the Cuckoo Trail¹³, which passes through Hailsham, lies adjacent to phases 1 and 2. The submitted

¹⁰ Ref: TW/SJH/PS/ITB15695-003A

¹¹ Ref: TW/SJH/ITB15695-007a R

¹² Table 6.2 of Transport Assessment. Many services and facilities within 2km. Manual for Streets (referring to the now defunct PPG13) states that walking offers the greatest potential to replace short car trips, particularly those under 2km.

¹³ National Cycle Network – route 21

illustrative masterplan demonstrates that connections to the Trail, along with generally improved pedestrian connectivity, could be achieved to be secured as part of subsequent reserved matters. Fundamentally, the site is within proximity of a range of services and facilities and potentially accessible by non-car modes of travel.

23. The STS includes measures to improve pedestrian crossings and the footpath network in the local area. It also commits to providing Personalised Travel Planning (PTP) to all new residents of the proposal, phases 1 and 2, and some existing households in the local area. The PTP would provide details of available travel options which form part of the STS, including detailed walking and cycle maps. It would also include vouchers towards the purchase of cycle equipment or bus tickets, along with information to promote car sharing and details of a car club.
24. On the latter, it is anticipated that a new car club would be created, with residents offered free membership and initial driving credit. Despite concerns over the effectiveness of such a scheme in this location, the appellants confirm that engagement with car club operators has clarified that a scheme in this area would be viable and deliverable. I have no reason to disagree with this statement. To my mind the car club would at the very least offer alternatives for residents, potentially reducing the need for residents to own one or more cars.
25. Finally, the STS proposes bus service enhancements. The Highway Authority's consultation response on the planning application confirms that the existing bus service 'H1' stops approximately 1km away from the furthest part of the appeal site. Therefore, bus service enhancements would likely consist of a new service running along Station Road and other local roads, thus linking the appeal site with Hailsham and Eastbourne, as well as serving existing residents and phases 1 and 2 which lie in proximity of the proposed route.
26. In order to provide the new service, the Highway Authority have confirmed that parking restrictions (including double yellow lines) would be required along a number of local roads and junctions¹⁴ in order to allow access for a 'full size' bus. No parking restrictions would be necessary along Station Road. After walking the suggested bus route on my site visit¹⁵, I did not see any evidence of vehicles being double-parked in a manner which would prevent a bus from safely navigating the route. As such, given that parking restrictions are mostly proposed on only one side of streets along the proposed route, they appear to reinforce the prevailing parking situation, thus significant displacement of vehicles appears unlikely.
27. Even if the parking situation is different during evenings and weekends, when local residents are more likely to be at home, the parking restrictions necessary to secure the new bus route and service would require a Traffic Regulation Order (TRO). I appreciate that, as the TRO process falls under separate non-planning legislation, there is no certainty that the outcome would be successful, and that the TRO could be implemented in accordance with the submitted scheme. However, even if the TRO was not made, the appellants state that alternatives measures would be considered as part of the STS in order to achieve bus service enhancement.

¹⁴ As detailed in the East Sussex County Council (Highway Authority) consultation response on the planning application dated 15th February 2022.

¹⁵ Which took place at approximately 10am

28. In addition to this, the appellants have committed to providing £250,000 to deliver bus service enhancement (see planning obligations) at the request of the Highway Authority. This, when coupled with the aforementioned measures which would promote bus services, means that bus travel would represent a genuine alternative to travel by car.
29. It is put to me by interested parties that the aim of the STS, to facilitate a 5% shift in travel behaviour, would be unachievable, and that residents of the proposal would be largely reliant on the private car. However, I have not been presented with evidence of a planning policy requiring a 5% shift in travel behaviour, thus it does not appear to be necessary to make the development acceptable in planning terms. Rather than requiring a quantitative measure of travel behaviour changes, paragraph 110(a) of the Framework requires that appropriate opportunities to *promote* sustainable transport modes are taken up, having regard to development type and location. I consider that the STS would achieve these requirements.
30. Notwithstanding this, the appellants confirm that travel behaviour measures would be reviewed and monitored over a period of 5 years from occupation, with further measures incorporated as necessary in consultation with the Highway Authority. I also note that the Highway Authority raises no objections to either the 5% target, or the measures contained within the STS.
31. I also note that some of the measures proposed require further detail. Therefore, it would be appropriate in this case to impose a planning condition requiring the submission of a final STS to be agreed with the Council prior to the occupation of the development. Overall, the STS constitutes a comprehensive package of measures, and I am satisfied that the proposal would provide a realistic prospect of delivering a modal shift by promoting sustainable transport modes.

Conclusion on sustainable transport

32. The proposal would have a less than severe impact on the performance of the highway network. This relies on a condition requiring agreed junction signalisation works to be delivered. Therefore, the proposal would not conflict with policy TR3 of the Wealden Local Plan 1998 (Local Plan) and paragraph 111 of the Framework which require, amongst other matters, that development does not create or perpetuate unacceptable traffic conditions or result in severe impacts on the road network.
33. Even though the STS would likely reduce the traffic impact on the junction, it is not necessary for that purpose. However, the STS would offer a genuine choice of transport modes, giving opportunities to reduce reliance on the private car. Therefore, it would comply with policies EN2 of the Local Plan and SP07 of the Wealden District Core Strategy Local Plan 2013 (Core Strategy, and policy HAIL AT1 of the Hailsham Neighbourhood Plan 2021 (Neighbourhood Plan) which promotes active travel and a reduction in the reliance on the car. The proposal would also comply with paragraph 110(a) of the Framework which seeks to promote sustainable travel.

Habitats Site

34. The Pevensey Levels¹⁶ (the Levels) comprises a habitats site, protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Its national and international importance relates mainly to the

¹⁶ Special Area of Conservation, Ramsar Site and Site of Special Scientific Interest

areas of wetland within it. They support an assemblage of wetland plants and invertebrates, and are notable for species including freshwater molluscs, aquatic beetles and dragonflies. A number of bird species are also found on the Levels. The integrity of these wetlands relies on both a high quality of water and stable water levels.

35. The appeal site lies within 500m of the Levels and within their hydrological catchment area. The proposal would involve urbanisation of the appeal site and any surface and ground water discharging from the site has the potential to increase the nutrient levels in watercourses feeding the Levels, increase pollution, and to alter the flow and temperature of those watercourses. These effects have the potential to creating eutrophic conditions and/or introduce silt and sediments. It is also possible that foul water from the proposal could be discharged to watercourses which could affect the Levels through an increase in pollution, if connections exist. Consequently, there would be a potential pathway to the Levels which could be detrimental to the important interest features of the site, and likely significant effects cannot be screened out. As a result of this, I am obliged under the Habitats Regulations as the competent authority to carry out an Appropriate Assessment.
36. As stated above, it is the quality of the water environment within the Levels, affected by water which flows into it from the wider catchment, which is the key consideration. In this case, the primary strategy proposed would be to drain surface water through the site through a series of filtration measures, followed by the restriction of the run-off rate into the off-site local watercourse. As well as a flood risk assessment and surface water drainage strategy, an outline drainage strategy plan has also been submitted. All of which I have used to inform my assessment¹⁷.
37. The proposed surface water drainage strategy would involve a two-stage treatment process. The built development would incorporate permeable paving to allow infiltration of water to take place, along with channels to capture water from permeable surfaces such as roads into swales where pollutants would be filtered. Run-off from the areas of permeable paving and swales would then drain into attenuation basins, allowing remaining sediment to settle, providing additional filtration.
38. Natural England have commented on the proposal as part of this appeal and consider that the two-stage process proposed demonstrates suitable surface water mitigation to address potential contamination and other potential adverse effects. The appellants also propose a third stage as part of their drainage strategy, involving the provision of reedbeds which would provide further filtration of water before off-site discharge. I note that Natural England have raised concerns over the suitability of reedbeds in this location, although they go on to confirm that this third stage would not be necessary in any event, and the two-stage process referred to above would be adequate.
39. It is acknowledged that construction impacts could also affect the Levels indirectly. However, like Natural England, I am satisfied that the imposition of a planning condition, requiring the submission of a construction management plan, based on the appellant's habitats assessment, to address the potential for contaminated surface water to discharge into the catchment, would ensure no adverse effects on the habitats site.
40. In terms of foul water, it has been confirmed that it would not be treated on site, rather it would be connected to the sewage network under the control of

¹⁷ Drawing ref - 17627ag-301-301 Rev P04

Southern Water. A pumping station would be provided on site. The Council confirms that Hailsham Water Water Treatment Works would have the capacity to accept foul drainage, and I have no reason to reach a different conclusion. Southern Water raises no objection to this aspect.

41. I appreciate that ongoing management and maintenance of the drainage scheme and foul water pumping station would be necessary, and the appellants have committed to this. A maintenance schedule for the drainage strategy could be secured by planning condition, and safeguards such as a backup pump could be incorporated into the pumping station to ensure continuous operation in the event of failure. Further details could be secured by planning conditions.
42. In respect of in-combination effects, the Council confirms that any new development within the Levels catchment will be required to demonstrate that a suitable surface water drainage strategy and management arrangements will be implemented to prevent potential adverse impacts on the Levels. In this case, the proposal has been designed to deal with surface water discharging from the site, as well as foul water treatment. I have not been provided with any evidence to suggest that other developments, including phases 1 and 2, would result in adverse effects. For this reason, and given the safeguards detailed above relating to this proposal, I am satisfied that there would be no in combination adverse impacts on the qualifying features of the habitats site.
43. Regulation 70 of the Regulations has the effect of requiring that outline planning permission can only be granted if it can be demonstrated that there would be no adverse effects on the integrity of a habitats site. Conditions and planning obligations can be used to avoid adverse effects, but they must have the effect of preventing development taking place which would otherwise have an adverse effect on the habitat site's integrity.
44. In this regard, I have treated the layout as indicative only at this stage and I am aware that the layout submitted at reserved matters may affect some of the details contained in the outline drainage strategy. To address this, conditions are listed in this decision which reflect the extent of detail which is still required to be considered and would provide further safeguards for the protection of the Levels, bearing in mind the outline nature of the proposal.
45. In making an Appropriate Assessment, overall, I am satisfied that the proposal would not lead to adverse effects on the integrity of the Levels habitats site either alone or in-combination with other plans and projects.

Other Matters

46. In assessing committed developments to forecast traffic growth, the TA does not appear to have included a number of recent housing schemes. However, they were already occupied at the time of the most recent traffic surveys. Therefore, movements associated with these developments have been recorded as part of the traffic survey work and the traffic impacts of those along with the proposal have been considered. Other sites, referred to by interested parties, had in fact already been included in the TA, or were considered by the TA to generate minimal traffic movements through the junction and did not require further analysis. As a result, I am satisfied that the TA is robust in this respect.
47. Concerns have been raised relating to highway safety. However, there is no evidence that the existing junction is unsafe (rather, it is forecast to be over capacity without mitigation). Indeed, the signalisation works proposed would likely improve its safety. In terms of Station Road, whilst I acknowledge it is narrow in places and parked cars often inhibit the free flow of traffic along the

route, there is no evidence before me to suggest that the movements associated with the proposal would significantly exacerbate any issues or lead to unacceptable highway safety effects. The Council raises no objection on these grounds and the Highway Authority do not identify any safety issues in relation to the proposal's effect on the local highway network.

48. Flood risk has been raised as a concern, but the Council and East Sussex County Council are satisfied with the proposal in principle. Planning conditions are recommended requiring full drainage details which would mitigate flood risk.
49. The proposal has been assessed considering the traffic impacts within proximity of Ashdown Forest Special Area of Conservation (SAC) and Special Protection Area (SPA)¹⁸. The SAC is designated on the basis of its heathland and the habitats it supports, with air pollution deemed a significant threat to its integrity. The SPA designation is due to its assembly of birds, including Nightjar. In summary, the TA anticipates a traffic flow substantially less than the threshold where a significant effect would be likely. As such, it is considered that any increase in nitrogen levels and pollution arising from traffic associated with the proposal would be limited. Due to the distance from the SPA, impacts on bird species and associated habitats due to recreational pressures would be limited. As such, likely significant effects can be screened out as there would be no adverse effect on the integrity of Ashdown Forest SAC and SPA either alone, or in combination with other plans or projects.

Planning Balance

50. The Council's housing land supply position stands at not more than 3.66 years¹⁹. As such, they are unable to demonstrate a five-year supply of deliverable housing sites. Therefore, in accordance with the Framework, the policies which are the most important for determining the application are considered out of date. In such circumstances, paragraph 11d)(ii) of the Framework indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
51. In respect of the main issues, the proposal would promote a choice of sustainable travel modes and would not result in unacceptable traffic conditions on the local road network, in compliance with the identified development plan policies and the Framework. Furthermore, I find no adverse effects on the integrity of the Pevensy Levels.
52. The proposal would be outside an area which is the focus of future housing growth in the Local Plan. However, the effect of related policies GD2 and DC17 of the Local Plan would be to restrict housing development such as this which lies outside the settlement boundary²⁰. Given the Council's housing land supply shortfall, the need to remedy this may require the provision of other sites and locations not envisaged by those policies at that time. I therefore give conflict with these policies only limited weight.
53. The proposal would also diminish the openness of, and encroach into, the countryside. However, it would be seen in the context of phases 1 and 2 and opportunities for significant landscaping could be pursued at reserved matters

¹⁸ This is a habitats site – see Framework definition

¹⁹ As per Statement of Common Ground between appellants and Wealden District Council

²⁰ Referred to as 'development boundary' in the Local Plan

stage. As such, I also attribute limited weight to the harm to the character and appearance of the area.

54. In terms of benefits, the proposal would provide a significant number of market and affordable houses. The scheme would also provide over 4 hectares of public open space and sports pitches. Even though a proportion of the provision would be necessary to make the development acceptable in planning policy terms, the total open space and sports pitch provision would be significantly in excess of planning policy requirements. Moreover, there would be ecological enhancements, including the provision of a non-publicly accessible area of land specifically for biodiversity enhancement. Each of these benefits carries significant weight in favour of the appeal.
55. There would also be moderate benefits to the local economy both during construction and indirectly through a likely increase in local spending by future residents.
56. The proposal would address strategic and local infrastructure requirements as a result of the junction signalisation works and planning obligations proposed, in accordance with WCS7 and SPO15 of the Core Strategy. This mitigation is necessary to make the development acceptable in planning terms and attracts neutral weight.
57. In conclusion, the proposal would result in limited harm and conflict with the development plan. However, these adverse impacts would not significantly and demonstrably outweigh the identified benefits, when assessed against the policies in the Framework taken as a whole. Therefore, the proposal benefits from the presumption in favour of sustainable development²¹ and this is a material consideration of sufficient weight, clearly indicating that planning permission should be granted in this case, notwithstanding identified conflict with the development plan.
58. As a result, the appeal should be allowed.

²¹ In accordance with EN1 of the Local Plan and WCS14 of the Core Strategy

Planning Obligation

59. A signed S106 Unilateral Undertaking (UU) is included with this appeal. It includes several obligations including the provision of 35% affordable housing and 5% of plots within the development to be marketed as self-build or custom-build plots. Both these provisions meet the requirements of the development plan.
60. The UU provides for public open space on the areas marked on the parameters plan, with details of play equipment, landscaping, management and maintenance to be subsequently detailed and agreed. The UU also provides for the extension and enhancement of bus services serving the development, costs associated with the Highway Authority pursuing a TRO to restrict parking along the bus route, a TRO in order to extent the speed limit near the site, and costs associated with travel plan monitoring. All of these elements involve the promotion of sustainable travel options.
61. The UU contains provisions to ensure that Highway Agreement(s) are entered into to secure the carrying out of the works to facilitate the accesses. Whilst such agreements typically fall under highway legislation and not planning, the accesses as proposed are needed in the interests of highway safety, and I note that the Council raise no objections to its inclusion.
62. Overall, I find that the planning obligations would be directly related to the development proposed, are fairly and reasonably related in scale and kind, and are necessary to make the development acceptable. The proposal would therefore comply with the requirements of Regulation 122 of the CIL Regulations²² and the tests set out in paragraph 57 of the Framework.

Conditions

63. I have considered the Council's suggested planning conditions against the relevant guidance contained within Planning Practice Guidance (PPG) and the Framework which requires that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have amended some of them and consolidated several of them in the interests of clarity and in order to meet PPG, and to avoid repetition.
64. I have applied shorter time limit conditions relating to the submission of reserved matters²³. This is due to the Council's pressing need for housing and would assist with the delivery of development in the area. The appellants raise no objection to this. A condition is also necessary setting out the plans subject to approval as part of this permission, in order to provide certainty. For the avoidance of doubt, this includes a 'parameters plan' which, amongst other things, approves areas of the site for housing and associated infrastructure, formal recreation/sports pitches, green infrastructure and shows the retention of the existing footpath. This is necessary as my decision is based on these parameters.
65. Air quality assessment is necessary in the interests of the health of future occupiers of the development, and such mitigation may affect the layout of the development. Condition no 5 reflects this. An arboricultural impact assessment is also required with the reserved matters 'layout', as the layout

²² Community Infrastructure Levy Regulations 2010 (as amended)

²³ In comparison with the time limits set out in section 92 of the TCPA 1990.

- may impact on the tree protection works required, and the retention of trees is supported by the Framework.
66. The Council suggests a condition in order to ensure that street trees are provided in a suitable manner throughout the development. However, I am satisfied that these elements could form part of layout and/or landscaping reserved matters and a condition is not necessary at outline stage.
67. Several conditions have been recommended by Sport England and the Council in relation to the proposed playing pitches and associated facilities. I have altered the conditions so that they meet the relevant tests set out in the Framework, but they are necessary to ensure the suitable provision of sports facilities in line with the requirements of the development plan and Framework.
68. Conditions relating to archaeology are necessary based on the findings of the submitted archaeology desk-based assessment, which shows low to moderate archaeological potential.
69. A construction management plan condition is required in the interests of the amenity of occupants of properties nearby, and is required pre-commencement as it would cover the construction phase of the development. It also addresses mitigation necessary to prevent harm to the integrity of the habitats site.
70. The Council suggests a condition requiring a 'pre' and 'post' condition survey of the surrounding highway network. However, the Highway Authority have not recommended such a condition. In addition, I note that there is other highway related legislation covering damage to the road network such that I do not think the condition is necessary.
71. Foul water drainage details are required prior to the commencement of development as infrastructure may be required below ground and at an early stage of the development. Management and maintenance of foul drainage is required to protect the integrity of the habitats site.
72. It is not necessary to impose a condition requiring the location of market housing to be provided, as the Council would retain control over this element as part of their consideration of layout at reserved matters. However, I have imposed a condition requiring that 65% of the development constitutes market housing. As the proposal would increase the burden on infrastructure, the market housing would be required to make a contribution via CIL. The proposal has been assessed on this basis and local finance is material to the determination of the proposal. The appellants agree that such a condition is necessary.
73. Drainage details are required pre-commencement as the approval of such details could fundamentally affect the layout of the development. This includes further details of the watercourse which the surface water received on the development site is proposed to drain into. These conditions are necessary in the interests of flood risk management and sustainable drainage, as well as to protect the habitats site. Details of management and maintenance of drainage features is also necessary for the same reasons. The condition recommended by the Council relating to there being no discharge of foul or contaminated drainage is not necessary as it is covered by the foul and surface water drainage conditions imposed, where measures to prevent contamination would be approved.
74. For the reasons set out in my decision, highway improvements to the South Road and Station Road junction are necessary to make the development acceptable. A condition reflecting this is necessary because the implementation of phase 2 where the same junction works are proposed cannot be guaranteed.

75. Further details of the Sustainable Transport Strategy are necessary to ensure sustainable transport modes are promoted in accordance with paragraph 110 of the Framework. Conditions are also necessary relating to the provision of the approved accesses, and full details of the highway works including construction details relating to the proposed internal roads. This is in the interest of highway safety.
76. However, it is not necessary to impose a condition requiring roads to be offered for adoption as this is not reasonable as it would be determined through separate legislation. Details of car parking spaces and cycle stands are not necessary as these elements would be assessed as part of the reserved matters.
77. Conditions are necessary to ensure ecological mitigation is provided, and any further survey work recommended in the submitted reports is carried out. Biodiversity enhancement is necessary in accordance with the Framework. I have altered the wording suggested by the Council so that it is clear what is required both in terms of mitigation and enhancement.
78. A condition recommended relating to landscape management is not necessary as this could be dealt with at reserved matters stage. An additional condition relating to tree protection is not necessary as I have dealt with the requirements in condition no 6. A condition relating to artificial lighting is necessary to ensure biodiversity is not unduly harmed. A condition requiring energy efficiency measures is necessary in accordance with the development plan and Framework.
79. Finally, during the hearing I was presented with a late representation from Southern Water objecting to the development. Their concerns relate to the site's proximity to the Waste Water Treatment Works and the potential for odour. The planning application was accompanied by an odour assessment which neither Southern Water nor the Council's Environmental Health raised any objection to at that time. I note, however, that the previous odour assessment is now of some age and Southern Water considers it out-of-date. Nevertheless, there is no evidence before me to indicate that the site cannot be developed for housing based on the submitted parameters plan and potential odour impacts. As discussed during the hearing, the layout proposed at reserved matters could address any issues relating to odour, and there is the potential for further mitigation as necessary. Consequently, a condition would be appropriate in this case requiring a further odour assessment and any mitigation necessary.

Conclusion

80. For the reasons above, the appeal is allowed, subject to the following conditions.

M Woodward

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

John Litton KC	Landmark Chambers (advocate)
Joshua Mellor BSc (Hons) MSc MRTPI	Barton Willmore, now Stantec
Amy Woodward BA (Hons) MA	Barton Willmore, now Stantec
Tim Wall BA (Hons) MSc MCIHT CMILT	i-Transport

FOR THE LOCAL PLANNING AUTHORITY:

Claire Turner	Wealden Council
Rebecca Blundell	Wealden Council
Matt Taylor	Wealden Council

INTERESTED PARTIES:

Rachel Scott	MJ Gleeson
Kevin Willcox	Rydon Homes

Michael Gadd	Resident
David White	Ward councillor and resident
Cllr Susan Stedman	Ward councillor and resident
Cllr Bob Bowdler	Ward councillor and resident
Neil Cleaver	Ward councillor and resident
David Watts	Ward councillor and resident
Pam Cunningham	Resident
David Dyer	Resident
W Barnes	Resident

Other local residents in attendance did not complete attendance sheet.

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 1 year from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 1304.01A, 1304.04A, ITB15695-GA-001A, ITB15695-GA-007B.
- 5) The submission of the reserved matters 'layout' shall include an Air Quality Emissions Mitigation Assessment Report (AQR). The AQR shall follow the Air Quality and Emissions Mitigation Guidance for Sussex, 2013 to determine the appropriate level of mitigation required to help reduce the potential effect on health and the local environment and shall use the most up to date emission factors. The AQR shall include details of the proposed mitigation measures and shall include a timetable for the completion of a subsequent verification report confirming that the air quality mitigation measures have been installed as approved. The approved mitigation measures shall be implemented prior to occupation of the associated dwellings.
- 6) The submission of reserved matters 'layout' shall include an Arboricultural Impact Assessment and Method Statement which shall include the numbering and detailing of all trees within the appeal site and those outside the appeal site likely to be affected. The submission shall provide root protection areas, routing of service trenches, overhead services and carriageway positions and any details of no dig techniques along with associated use of geotextiles and an indication of the methodology for necessary ground treatments to deal with compacted areas of soils. The report shall also include a timetable for the implementation of the required works and shall be carried out in accordance with the approved scheme.
- 7) The submission of the reserved matters 'layout', 'appearance' and 'landscaping' shall include details of the changing facilities and associated car parking for the playing fields, and the means of access thereto. The approved details shall be implemented in accordance with a delivery programme which shall accompany the submission(s).
- 8) The submission of the reserved matters 'layout' shall include details of the playing pitch sizes, including a justification for the pitch sizes based on an up to date assessment of local need. An assessment of ground conditions of the land proposed for the new playing fields shall also be provided (including drainage and topography) by a RIPTA registered agronomist to identify constraints which could affect playing field quality.
- 9) No development shall commence until a detailed scheme for the Natural Turf Pitches, designed by a RIPTA registered agronomist to meet the Performance Quality Standard of the Football Association and based on the results of the assessment carried out pursuant to condition 8, has been submitted to and

approved in writing by the local planning authority. The works shall be carried out in accordance with the approved scheme within a timescale to be approved in writing by the local planning authority. The construction of the Natural Turf Pitches shall be project managed or signed off by an RIPTA registered agronomist and evidence shall be submitted that the two sports pitches pass a Performance Quality Standard test, arranged via the FA Pitch Improvement Programme, to a 'good' standard before the pitches are used.

- 10) Prior to the bringing into use of the grass playing pitches, a Management and Maintenance Scheme for the facility including management responsibilities, a maintenance schedule and a mechanism for review shall be submitted to and approved in writing by the local planning authority. The measures set out in the approved scheme shall be complied with in full, with effect from commencement of use of the playing pitches and for the lifetime of the development.
- 11) Prior to the bringing into use of the sports pitches and associated changing facilities and parking provision, a community use scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall apply to the grass pitches and the ancillary facilities comprising the changing facilities and parking and shall include details of pricing policy, hours of use, access by non-educational establishment users/non-members, management responsibilities, a mechanism for review and a programme for implementation. The approved scheme shall be implemented upon the start of use of the sports pitches and associated facilities [or other agreed timescale] and shall be complied with for the duration of the use of the development.
- 12) No development shall take place until a Written Scheme of Investigation and programme of archaeological works have been submitted to and approved in writing by the local planning authority. This shall include a construction method statement to show how significant archaeological remains will be preserved in-situ.
- 13) No part of the development shall be brought into use until an archaeological site investigation and a post investigation assessment (including provision for analysis, publication and dissemination of results and archive deposition) for that phase has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 12. The post investigation assessment shall be submitted to and approved in writing by the local planning authority.
- 14) Prior to any construction works being carried out, and subsequent to archaeological site investigation details approved under conditions 12 and 13, a construction method statement to show the preservation in-situ of significant archaeological remains, shall be submitted to and approved in writing by the local planning authority. The construction of the development shall be carried out in accordance with the approved details.
- 15) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
 - the relevant mitigation measures contained in the submitted 'Information to inform an Appropriate Assessment under the Habitat Regulations' document ref - 1004079-06-AA HRA.dv2 AH

- the parking of vehicles of site operatives and visitors;
- the management of vehicles carrying abnormal loads;
- loading and unloading of plant and materials;
- storage of plant and materials used in constructing the development;
- measures to control the emission of dust and dirt during construction;
- measures to minimise the potential for pollution of groundwater and surface water;
- a scheme for recycling/disposing of waste resulting from demolition and construction works;
- noise and vibration attenuation from construction and a scheme to ensure compliance; and
- delivery and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 16) No development shall take place until details of a scheme for foul water drainage have been submitted to and approved in writing by the local planning authority. Such details shall include arrangements for subsequent ongoing management in accordance with the relevant mitigation measures contained in the submitted 'Information to inform an Appropriate Assessment under the Habitat Regulations' document ref - 1004079-06-AA HRA.dv2 AH, along with a timetable for implementation. The development shall be carried out in accordance with the approved details
- 17) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development [or relevant phase of development] is resumed or continued.
- 18) The development shall include 65% of dwellings as market dwellings [this figure includes self-build and custom-build housing].
- 19) Prior to the construction of the superstructure of any buildings, details of water and energy efficiency measures and renewable energy and sustainable construction measures within the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter so retained.
- 20) Prior to the commencement of development, a detailed surface water drainage scheme shall be submitted to and approved in writing by the local planning authority. The surface water drainage scheme shall incorporate the following:
- Detailed drawings and hydraulic calculations. The hydraulic calculations shall take into account the connectivity of the different surface water drainage

features. The calculations shall demonstrate that surface water flows can be limited to the greenfield runoff rates for rainfall events with an annual probability of occurring greater than 1 in 2.33 and mean annual discharge (Q_{bar}) for rainfall events with an annual probability of occurrence less than 1 in 2.33, including those with a 1 in 100 (plus climate change) annual probability of occurrence. An allowance for urban creep (recommended 10% increase in impermeable area) shall be incorporated within the calculations.

- The details of the outfalls of the proposed attenuation ponds and how they connect into the watercourses shall be submitted as part of a detailed design including cross sections and invert levels.
- The detailed design of the surface water features (swales, attenuation ponds and reed beds).
- The detailed design of the surface water features (swales and attenuation ponds) shall be informed by findings of groundwater monitoring between autumn and spring. The design shall leave at least 1m unsaturated zone between the base of the drainage structures and the highest recorded groundwater level. In the event this cannot be achieved, details of measures which will be taken to manage the impacts of high groundwater on the hydraulic capacity and structural integrity of the drainage system shall be provided.
- Details of the measures to manage exceedance flows and measures to prevent surface water run-off onto Station Road.
- Details of the relevant mitigation measures contained in the submitted 'Information to inform an Appropriate Assessment under the Habitat Regulations' document ref - 1004079-06-AA HRA.dv2 AH.

The surface water drainage shall be implemented in accordance with the approved details before first occupation of any dwelling in any phase of development. Prior to occupation of each phase, evidence (including as built drawings and photographs) shall be submitted showing that the drainage system has been constructed as per the final agreed detailed drainage designs.

- 21) Prior to the commencement of development, a survey of the condition of the watercourse which the outfall will discharge directly into shall be investigated. Results of the survey shall be submitted to and approved in writing by the local planning authority. Any required improvements to the condition of the watercourse identified by the survey, along with a programme for implementation, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 22) Prior to the occupation of any dwelling, a maintenance and management plan in relation to the details approved under condition 20 shall be submitted to and approved in writing by the local planning authority. The management plan shall cover the following:
 - This plan should clearly state who will be responsible for managing all aspects of the surface water drainage system, including piped drains.
 - Details as to how these responsibility arrangements will remain in place throughout the lifetime of the development.

The approved details shall include a timetable for implementation and shall be retained for the lifetime of the development.

- 23) The development shall not be occupied until the highway improvements to South Road and Station Road as shown in principle on drawing no ITB15002-GA-001 Rev A have been completed and opened to traffic.
- 24) Prior to the occupation of any dwelling, a Sustainable Transport Strategy (STS) and Delivery Action Plan shall be submitted to and approved in writing by the local planning authority. The STS shall include the following measures:
- A targeted Personalised Journey Planning Campaign in southern Hailsham;
 - Provision of Residents Travel Information Packs and Marketing Measures;
 - Details of a Car Club;
 - Promotion of Car Sharing measures;
 - Provision of travel incentives to residents, including the offer of sustainable travel vouchers for cycle equipment or bus tickets;
 - Management and Monitoring of the STS;
 - Improvement to the local walking network to improve pedestrian crossings in the local area;
 - Measures to improve access by bus in southern Hailsham, which shall include promotion of alterations to parking restrictions on local roads to enable a full-size bus to pass through the area and the alteration of existing traffic calming measures; and
 - Delivery of a Travel Plan based on the Framework Travel Plan.
 - A timetable and programme for the implementation of all of the above measures.

The STS shall be implemented in accordance with the approved details, programme and timetable.

- 25) The accesses detailed on approved plans refs: ITB15695-GA-001A and ITB15695-GA-007B shall be laid out and constructed in their entirety prior to the occupation of any dwelling.
- 26) No works below ground level shall take place until highway works details which shall include levels, sections and constructional details of the proposed road, surface water drainage, foul sewers, outfall disposal and street lighting have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details in accordance with a timetable to be agreed with the local planning authority.
- 27) No development shall take place until a biodiversity enhancement plan has been submitted to and approved in writing by the local planning authority. The plan shall be based on chapter 6 of the submitted *Ecological Appraisal – Prepared by Aspect Ecology*, dated November 2020, and the conclusions of the submitted *Technical note – Survey results and Mitigation Measures in respect of Dormice – Prepared by Aspect Ecology*, dated February 2022. It shall include timescales for implementation and details of future management of the

enhancement features. The development shall be carried out in accordance with the approved timetable and details.

28) No development shall take place until a wildlife management report has been submitted to and approved in writing by the local planning authority. The report shall include:

- Updated ecological surveys carried out by a suitably qualified ecologist, as necessary and in accordance with the recommendations set out in *Ecological Appraisal – Prepared by Aspect Ecology, dated November 2020*, and the *Technical note – Survey results and Mitigation Measures in respect of Dormice – Prepared by Aspect Ecology, dated February 2022*. The updated surveys shall include details of any mitigation necessary including:
- Detailed proposals for the protection of bats, birds, reptiles, great crested newts, dormouse and badgers, and measures for the mitigation of any harm.

The development shall be carried out in accordance with the approved wildlife management report in accordance with an agreed programme of implementation.

29) No floodlighting, security lighting or other external means of illumination of the site shall be provided, installed or operated in the development, except in accordance with a detailed scheme which shall provide for lighting that is low level and directional and has been submitted to and approved in writing by the local planning authority. The artificial lighting to the development shall conform to requirements for Environmental Zone E2 contained within Table 2 of the Institute of Lighting Professionals Guidance Note 01/21 The Reduction of Obtrusive Light and comply with the Bat Conservation Trust and Institute of Lighting Professionals Guidance Note 08/18 Bats and Artificial Lighting in the UK (or updated guidance). The scheme shall be implemented in accordance with the approved details and thereafter retained.

30) The submission of the reserved matters 'layout' shall include an odour impact assessment and any mitigation or remedial measures necessary, along with a timetable for implementation of any mitigation or remedial measures. The development shall be carried out in accordance with the approved details.

End of conditions schedule

Appeal Decision

Inquiry held on 6-8 September 2022

Site visit made on 8 September 2022

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2022

Appeal Ref: APP/C1435/W/22/3297419

Mornings Mill Farm, Eastbourne Road, Lower Willingdon, BN20 9NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Peter & Robert Vine against the decision of Wealden District Council.
 - The application Ref. WD/2021/0174/MEA, dated 20 January 2021, was refused by notice dated 10 December 2021.
 - The development proposed is comprehensive development of a mixed-use urban extension comprising up to 700 dwellings including affordable housing, 8,600 square metres of employment floorspace, medical centre, school, community centre, retail, playing fields, children's play space, allotments, amenity open space, internal access roads, cycle and footpath routes and associated landscaping and infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for comprehensive development of a mixed-use urban extension comprising up to 700 dwellings including affordable housing, 8,600 square metres of employment floorspace, medical centre, school, community centre, retail, playing fields, children's play space, allotments, amenity open space, internal access roads, cycle and footpath routes and associated landscaping and infrastructure at Mornings Mill Farm, Eastbourne Road, Lower Willingdon, BN20 9NY in accordance with the terms of the application, Ref WD/2021/0174/MEA, dated 20 January 2021, subject to the conditions contained in the attached Schedule.

Application for costs

2. Before the Inquiry a written application for costs was made by Peter & Robert Vine against Wealden District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was submitted in outline with all matters (appearance, landscaping, layout and scale) reserved for subsequent consideration except for the means of access to Eastbourne Road. This is the basis on which I have considered the appeal.
4. The application is accompanied by an Environmental Statement (ES) prepared in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations), including technical appendices and a non-technical summary. It covers a range of relevant topics,

informed by a Scoping Opinion from the Council. This information was supplemented during the course of the appeal, following a Regulation 25 request on behalf of the Secretary of State. I am satisfied that the totality of the information provided is sufficient to meet the requirements of Schedule 4 of the EIA Regulations and this information has been taken into account in reaching a decision.

5. A signed and executed Unilateral Undertaking securing planning obligations pursuant to S106 of the Town and Country Planning Act 1990 was received after the Inquiry, in accordance with an agreed timetable. I deal with this later in my decision.
6. On 11 August, the Council confirmed that it had reviewed its position and would no longer defend the appeal. Consequently, no evidence was submitted to support any of its reasons for refusal. Many matters are positively agreed between the Council and the appellant and these are set out in the various statements of common ground.
7. On 18 August, the Willingdon and Jevington Parish Council, having been granted Rule 6 status in the appeal, withdrew from the proceedings and opted to take no further part.
8. In light of the above, there was no main party present at the Inquiry who opposed the development. Nevertheless, I heard extensively from interested parties and the appellant called witnesses to introduce their evidence and to allow the opportunity for questions.

Main Issues

9. The main issues are:
 - (a) Whether the site is a suitable location for the proposed development, having regard to planning policy;
 - (b) The effect on local highways, with particular regard to whether safe and suitable access arrangements would be achieved;
 - (c) Flood risk and drainage;
 - (d) The effect on European Protected Habitats;
 - (e) The effect on the character and appearance of the area, including landscape and visual impacts.

Reasons

Planning policy

10. The development plan, so far as it is relevant to the appeal, comprises the saved policies of the Wealden Local Plan (1998) (LP), the Core Strategy Local Plan (2013) (CS) and the Affordable Housing Delivery Local Plan (2016) (AHDLP).
11. Policy WCS4 of the CS refers to Strategic Development Areas, which are said to be locations critical to the delivery of the overall strategy. The general location of the appeal site is specifically identified (SD4) for provision of around 700 dwellings, 8,600sqm net employment floorspace, leisure, recreation and community facilities.

12. The CS Key Diagram identifies the Strategic Development Areas. It was expected that the Strategic Sites Development Plan Document would subsequently provide a more detailed site allocation, specific policies and phasing requirements but this document has not been forthcoming and is no longer being actively pursued by the Council.
13. Although the development extends beyond the indicative Strategic Development Area, this is not intended to be a detailed site boundary, rather a broad indication of the expected location for development. In the absence of a detailed site boundary or any prospect of one being identified through the plan making process within a reasonable timeframe, it is important that this development, critical to the delivery of the CS strategy, is not delayed. The proposed development is clearly in accordance with Policy WCS4.
14. Saved policies GD2 and DC17 of the LP seek to restrict development to within defined development boundaries. The proposed development is outside of the development boundaries, but these were drawn to accommodate the level of housing required at the time the LP was adopted, which is far below the level now required. If these policies continue to be strictly applied, they will inevitably prevent the delivery of much needed housing in the district, in conflict with the objectives of the National Planning Policy Framework (the Framework). This would be particularly troubling given the Council's poor record of housing delivery and current housing land supply of just 3.66 years at best. For all of these reasons, policies GD2 and DC17 are out of date. Whilst the proposal is in conflict with them, I attach the conflict only very limited weight.
15. Having regard to planning policy, the appeal site is a suitable location for the proposed development in principle.

Highways

16. The appeal proposal has been subject to extensive transport assessment using a variety of industry standard tools and modelling. The A2270 is a key route through Wealden into Eastbourne and I heard that it is a very busy road. This was evident during my various site visits and is confirmed by evidence before the Inquiry, including the submitted Transport Assessment. There is little doubt in my mind that residents regularly encounter congestion on local roads in the vicinity of the site, particularly at peak times, although reports that the A2270 is the most congested road in the UK are likely to have been influenced by recent and extensive road works.
17. The proposed development would inevitably introduce a great deal more traffic onto the local and strategic road network, but this is growth that has long been anticipated through identification of the site in the CS, as a Strategic Development Area. Indeed, the CS anticipates a great deal more growth and planning permission has already been granted for several other schemes in the vicinity of the appeal site. All relevant schemes have been taken into account in the appellant's modelling, which uses data agreed by National Highways and/or the Local Highway Authority. The submitted evidence demonstrates that the additional traffic anticipated can be accommodated by the surrounding road network, albeit that junction improvements will need to be delivered to accommodate the scheme.

18. The proposed development would deliver highway improvements to the Cophall Roundabout, the A27/A22 Golden Jubilee Roundabout, the A22 Golden Jubilee Way and Dittons Road Roundabout and works to Polegate High Street Signals. Subject to these works, the additional traffic generated by the scheme could be satisfactorily accommodated without any unacceptable impact on highway safety or severe residual cumulative impact on the road network, which is the test in national policy.
19. A similar scheme to the current proposal has been considered at a previous appeal, which identified a specific concern that the development would compromise planned bus priority measures forming part of the Hailsham, Polegate and Eastbourne Movement and Access Corridor (HPEMAC) and pedestrian safety issues surrounding the proposed access arrangements. The current proposal has been amended to address these concerns after extensive consultation and engagement with the highway authorities. It allows for a northbound and southbound bus lane, along with priority measures at the southern signal-controlled site access. An additional signal-controlled pedestrian crossing is likely to improve opportunities to safely cross Eastbourne Road, including for local school children. As such, this appeal proposal would not compromise delivery of the HPEMAC, delay buses or result in a pedestrian safety issue.
20. The site is located close to Polegate town centre with its various shops and facilities within a short walk using a variety of available routes, a railway station and various bus services serving a range of larger settlements. It is unquestionably a highly sustainable location where opportunities for sustainable modes of travel will be available, and which will be maximised through various measures to encourage uptake contained within the planning obligations. Once the HPEMAC scheme has been implemented, this is likely to further improve opportunities for sustainable travel to and from the site.
21. Given the ease of accessibility by sustainable means, it is not likely that the development would generate significant parking issues in Polegate and the presence of a level crossing in the town would deter 'rat-running', given the availability of alternative routes. A planning obligation could also secure funding towards highway improvements on Polegate High Street, aimed in part, at deterring 'rat running', a significant concern of local residents.
22. Reference was made to a highways report produced by Aecom, commissioned by Eastbourne Borough Council. This was not a document before the Inquiry but I have no reason to expect that this should alter the conclusions contained in the transport assessment work undertaken for this appeal, all of which uses data and assumptions agreed by the relevant highway authorities, as well as appropriate industry standard modelling tools.
23. Issues were raised about access for properties on Foulride Green but the scheme makes provisions to ensure continued and appropriate access for these properties. I heard that common land would be affected by the development and the appellant explained that compensatory land was likely to be offered. This is a matter for a separate regulatory regime and there is no reason to expect it should have any significant bearing on implementation of any planning permission granted as a result of this appeal.
24. National Highways and East Sussex County Council, as Local Highway Authority raised no objection to the development, subject to appropriate conditions and

planning obligations. I have no reason to disagree with the highway authorities. It is clear that the development is acceptable in highway terms. As such, I find no conflict with saved policies EN1, EN2, TR3 and TR13 of the LP or spatial planning objectives SPO7 and SPO15 and policies WCS7 and WCS14 of the CS.

Flood risk and drainage

25. The proposed built development can be accommodated within flood zone 1, the lowest category of flood risk identified by the Environment Agency. As such, it is not at inherent risk from flooding.
26. The scheme is designed to manage its own flood risk, including an allowance for climate change, using sustainable drainage principles so that run-off is directed to attenuation basins and subsequently released at a steady and controlled rate which will not exceed existing flow rates. Therefore, the site will not be at risk of flooding and will not cause flooding elsewhere. In fact, it is expected that the development would reduce the likelihood of flooding given the improved management of water within the site.
27. In addition, permeable paving and gully features will be used to provide multiple stages of run-off treatment prior to water reaching the drainage system and avoiding detriment to receiving water bodies. Concerns were raised about the impact of the development on the Wannock Mill Stream, which does not in fact cross the site but is likely to benefit from the reduced peak flows created by the development.
28. It is likely that foul drainage capacity will need to be increased to accommodate the development and Southern Water has confirmed that it will undertake any necessary upgrades to the network, should planning permission be granted. A condition could be used to prevent occupation of properties until such time as capacity is available in the network to ensure that the development is phased with this in mind.
29. No statutory consultees have raised an objection to the scheme on flooding or drainage grounds and the evidence before the Inquiry indicates that the development is acceptable. The Pevensy and Cuckmere Water Level Management Board, whilst raising no objection, noted that surface water currently drains to the Eastbourne Lakes. No indication was given that the development would affect this arrangement, given the measures to control surface water run-off within the site set out above, but the detailed design of the drainage scheme is a matter for subsequent consideration in any case.
30. So far as they are relevant to the appeal proposal, I find no conflict with saved policies EN1, EN8, EN15 and CS1 of the LP, or policies WCS12 and WCS14 of the CS.

Protected habitats

31. There are a number of European Protected Habitats in the area surrounding the site, including the Ashdown Forest Special Area of Conservation (SAC), Ashdown Forest Special Protection Area (SPA), Lewes Downs SAC, and Pevensy Levels SAC/Ramsar/SSSI. As such, a Habitat Regulations Assessment (HRA) is needed to consider whether the development would be likely to adversely affect the integrity of these sites, either alone or in combination.

32. A HRA was first carried out by the Council in contemplating the grant of planning permission and a shadow HRA was subsequently undertaken by the appellant in support of this appeal. I have considered this information in reaching my own conclusions, as the Competent Authority in this case. Natural England (NE) has also considered these documents and raised no objection to the appeal proposal. I attach great weight to this expert view.

Ashdown Forest SAC

33. Large parts of Ashdown Forest (2,729 hectares) are designated as a Special Area of Conservation (SAC). The qualifying features underpinning the SAC designation are the presence of European dry heath, North Atlantic wet heath and great crested newts. The conservation objectives for the SAC can be summarised as ensuring the favourable conservation status of its qualifying features by, amongst other things, maintaining or restoring qualifying habitats. The main threat to the SAC relates to air pollution and the effect of new development with regards to an increase in additional traffic movements resulting from development.
34. The site is located around 25km from this designation at its nearest point and no functional habitat will be lost as a result of the proposal. No habitat loss or fragmentation will be caused by the proposal. Given the distance involved, no impacts are anticipated from urbanisation and recreational disturbance, or in relation to hydrology and water quality.
35. NE's supplementary advice on conserving and restoring the SAC explains that the heathland habitat of the Ashdown Forest is sensitive to changes in air quality. Exceedance of 'critical values' for air pollutants may modify its chemical substrate, accelerating or damaging plant growth, altering its vegetation structure and composition and causing the loss of typical heathland species. Accordingly, the appeal proposal could result in an impact pathway to the SAC if it contributes to an exceedance in critical values.
36. The heathland habitat in the Ashdown Forest SAC is vulnerable to atmospheric pollution from several sources including vehicle emissions from motor vehicles. There is a potential impact pathway from increased traffic flows associated with new development on the roads which go through, or run adjacent to, the SAC. Many of the characteristic plants, mosses and lichens of heathland habitats are adapted to nutrient poor conditions and extra input of nitrogen can disadvantage these characteristic species in favour of others with a greater tolerance of higher nitrogen levels. Consequently, likely significant effects cannot be ruled out and an Appropriate Assessment is required.

Ashdown Forest SAC - Appropriate Assessment

37. In 2019, the Council proposed a significant amount of development as part of its emerging Local Plan. Whilst it has since been withdrawn, the consideration of air quality and nitrogen deposition affecting the SAC remain relevant, albeit that the appeal scheme is on a much smaller scale than the amount of development anticipated as part of the formerly emerging Local Plan.
38. In March 2019, NE published its European Site Conservation Objectives: Supplementary Advice on Conserving and restoring site features, following consultation and based on extensive scientific work. It concluded on air quality and nitrogen deposition that even without improvements in car emissions over

time that “nitrogen levels from additional transport [as a result of the expected housing development in the surrounding areas] would fall below the level that would reduce species richness on the site, even if the expected declining trend in Nitrogen failed to materialise”.

39. NE, the Government’s statutory advisor on such matters therefore concluded that the housing development in the wider area in combination would not adversely impact integrity because it would not infringe the relevant conservation objectives. NE also referred to improvements in air quality and nitrogen deposition as a result of existing rules under which all new vehicles were being manufactured. Clearly, as older vehicles are replaced by newer and more efficient vehicles, the situation will improve.
40. Even in the context of the significant amount of growth anticipated in the then emerging Local Plan, NE was content, considering the effects of that quantum of growth, that air quality impacts would not adversely affect the integrity of Ashdown Forest SAC. NE’s advice regarding air quality was that this conclusion can be reached without mitigation measures being needed under the specific requirements of the Habitat Regulations.
41. The appeal proposal represents a very small fraction of the level of growth then being contemplated. Therefore, for the same reasons, it can be concluded that when considered on its own or in combination, the proposed development would not adversely impact on the integrity of the protected Ashdown Forest SAC. NE has specifically considered the evidence submitted for this appeal and raised no objection.
42. An interested party raised concerns at the Inquiry about the approach adopted by the Council, the appellant and NE, making reference to the 2019 Local Plan examination and the previous appeal at Mornings Mill Farm. References were made to the evidence submitted by the Council at that time, when it took a different view in relation to air quality and nitrogen deposition matters, but that evidence is not before me in this case. Regardless, the Council explained that its position on the matter has changed because its previous approach has been shown to be incorrect. Reference was made to physical monitoring data collected within the SAC between 2014-2018. Again, this data was not put before the Inquiry but it is difficult to see how any such data could be relied upon in the present appeal, many years later. None of the submissions made by interested parties on this topic lead me to doubt my conclusions above, which are consistent with the Council’s present-day conclusions and that of NE.

Ashdown Forest SPA

43. Large parts of the Ashdown Forest (3,205 hectares) are designated as a SPA. The SPA status was awarded for a number of qualifying individual species that includes the Dartford Warbler and European Nightjar that the SPA supports during their breeding season. The conservation objectives for Ashdown Forest SPA are to ensure 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. The main threats to those qualifying features includes the disturbance by humans and recreational activities, development pressure and the loss of nesting/feeding habitats.

44. The site is located around 25km from this designation at its nearest point and no functional habitat will be lost as a result of the proposals. No habitat loss or fragmentation will be caused by the proposals.
45. NE's supplementary advice on conserving and restoring site features for the Ashdown Forest SPA identifies recreational disturbance as one of the principle 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.
46. However, evidence in the form of visitor surveys carried out for the Council demonstrates that it is residents living within 7km of the Ashdown Forest that are likely to visit it. The appeal site is well beyond the 7km distance and as such, the evidence does not provide a pathway of effect for recreational disturbance. No impacts are anticipated with regards to hydrology and water quality, or in relation to air quality.
47. The appeal site is located a significant distance away from Ashdown Forest and therefore would not result in additional recreational impacts on the Ashdown Forest SPA. As such, an Appropriate Assessment, in accordance with Regulation 63 of the Habitats and Species Regulations, is not required to consider the implications of the proposals for the integrity of the SPA in view of the conservation objectives.

Pevensey Levels SAC/Ramsar/SSSI

48. The Pevensey Levels, between Eastbourne and Bexhill, is one of the largest and least fragmented lowland wet grassland systems in the southeast of England. The Pevensey Levels site is designated as a Ramsar site for the outstanding assemblage of ditch flora and fauna supporting wetland plants, invertebrates including the rare Fen Raft spider, aquatic beetles and dragonflies amongst others species. The Pevensey Levels is also designated as a SAC. The SAC status was awarded for the presence of the Ramshorn snail which can be found in both a wide spatial distribution and in good population densities.
49. The conservation objectives are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the aims of the Wild Birds Directive by maintaining or restoring the habitats of the qualifying features.
50. The Pevensey Levels are required to be protected from any detrimental development impacts that may affect its environmental designations which include inappropriate water levels; invasive species (notably existing presence of Floating Pennywort and New Zealand Pigmyweed); and water pollution (principally discharged from sewage treatment plants).
51. The site is located around 2.35km from the designation at its nearest point. No functional habitat will be lost as a result of the proposals. No habitat loss or fragmentation will be caused by the development. The site is separated from the SAC/Ramsar/SSSI such that no urbanisation effects are anticipated. Recreational pressure was not identified as a threat to the SAC/Ramsar/SSSI

- under the Wealden Local Plan HRA and it is not anticipated to be a threat now. Therefore, it is considered that a likely significant effect can be screened out.
52. The site is located within the catchment of the SAC/Ramsar with ditches in the wider locality forming part of the drainage network associated with the Pevensey Levels. Water quality and water resource issues, specifically foul and surface water drainage solutions represent the potential impact pathways which require specific consideration with regard to the Pevensey Levels SAC and Ramsar site, which are designated for plants and invertebrates dependent on appropriate water levels and sensitive to changes in water quality.
53. In the absence of a suitable drainage solution to convey foul water from the site for treatment, it is possible that foul water could be discharged to local watercourses and thereby potentially conveyed to Pevensey Levels, if connections exist. Should this occur, the nutrient enriched water would have a direct and adverse impact upon the aquatic ecosystem within the SAC and result in harm to flora and fauna.
54. The potential for surface water run-off and discharge into the local watercourses gives rise to the risk of soil/silt and other suspended matter impacting aquatic and emergent plants directly through deposition and smothering as well as by increasing the turbidity of the water. This can affect the ability of plants to photosynthesise, impact upon the assemblages of aquatic invertebrates and potentially affect flow rates. Untreated and unattenuated surface water flows from the operation of the development can have similar impacts with increased hard standing potentially increasing water discharge rates causing localised erosion and flushing sediment/silt further downstream.
55. Furthermore, there is the potential for pollutants such as hydrocarbons to be present within surface water run-off. There has potential for significant adverse impacts to the Pevensey Levels and associated flora and fauna given the sensitivity to water quality from the development.
56. The Pevensey Levels has a complex hydrology which is subject to a water level management plan. The development has the potential to result in rapid changes in water levels which would impact on the Pevensey Levels. As such, there is potential for a likely significant effect as a result of changes to hydrology or run-off of pollutants that cannot be screened out. As such, an Appropriate Assessment is required.
57. The proposed development is considered to result in a negligible increase in traffic flows along roads running through the SAC/Ramsar. Accordingly, potential for likely significant effects as a result of air quality from this development alone can be screened out. However, whilst predicted traffic flows from the proposed development alone are negligible, in combination increases in traffic flows have the potential to result in changes to air quality. As such, an Appropriate Assessment is required.

Pevensey Levels SAC/Ramsar/SSSI – Appropriate Assessment

58. Having regard to the consultation response from Southern Water, sufficient capacity can be created for foul water drainage where insufficient capacity currently exists. Conditions can be used to prevent occupation of the development until such time as appropriate capacity is available. Therefore,

there will be no negative impact on the Pevensey Levels as a result of the proposed development with regard to waste water disposal.

59. Whilst an increase in traffic flows could result in an increase in NO_x and associated nitrogen deposition, atmospheric pollution is not identified as a particular sensitivity in relation to the Pevensey Levels SAC/Ramsar. NE's advice (set out in the consultation on the now withdrawn submission Local Plan), sets out that phosphates rather than nitrogen are a much more important factor in terms of water quality. As such, nitrogen deposition is not considered to be a threat to site condition in this case, particularly in the context of the formerly emerging Local Plan (and the associated assumptions about development expectations) having been withdrawn. Any new Local Plan contemplated will require a new Habitats Regulations Assessment based on its growth expectations and potential in combination effects.
60. Increased development causes two main indirect impacts with regard to hydrological issues – increased surface run off from an increase in areas of built development, hardstanding and infrastructure creating impermeable surfaces and increase in pollutants. If unmitigated this has the potential to change the hydrology of the Pevensey Levels and convey pollutants to its watercourse and drainage network and would have a likely significant effect on the designated site. However, there are many safeguards that can be put in place to mitigate or avoid such impacts.
61. During construction, the development will be subject to a range of protective measures to ensure that pollutants and silt are not allowed to reach any local watercourses. A detailed Code of Construction Practice will be secured by condition and will be required to follow industry best practice with regard to pollution and sedimentation control measures.
62. With regards to the potential effects via surface water drainage pathways from new development within or in close proximity to the Pevensey Levels, it is established that sites coming forward need to demonstrate that a suitable Surface Water Drainage Strategy can be implemented to control the quality and volume of surface water run-off to a level that avoids an adverse effect on the integrity of the Pevensey Levels SAC/Ramsar/SSSI, alone and in combination.
63. In this case, surface water flows will be limited to the greenfield run-off rates for rainfall events with an annual probability of occurring greater than 1 in 2.33 and mean annual discharge (Q_{bar}) for rainfall events with an annual probability of occurrence less than 1 in 2.33, including those with a 1 in 100 (Plus climate Change) annual probability of occurrence. An allowance for urban creep (10%) will also be allowed for.
64. All surface water (including exceedance flows) will go through a minimum of two stage treatments with surface water drainage being constructed to ensure that all surface water is discharged through at least one swale and a dry detention basin. Permeable paving will be provided to all private parking areas, therefore surface water from these areas will pass through a minimum of three stages of treatment. Adopted highway and road drainage will use trapped gully pots for collection which provide both hydrocarbon and silt removal.

65. Consideration has been given to potential exceedance flows, which indicates that even if below ground drainage suffers a blockage that surface water flows are directed through a swale and a dry basin prior to discharge off-site. The drainage strategy is split into four sub catchments with each catchment area having a natural low point which provides the location for the dry detention basins.
66. With regard to groundwater, the development will be required to undertake ground water monitoring through the winter months (autumn to spring). East Sussex County Council has been monitoring ground water in two boreholes next to the site as part of its groundwater flooding project. The two boreholes recorded groundwater levels on the ground surface on several occasions between April 2018 and March 2020. The scheme will need to take into account the impacts of high groundwater in the detailed design of the proposed surface management system to ensure the hydraulic capacity and structural integrity of SUDS features is retained. The restriction on run-off rates, and detailed design will be controlled through conditions attached to any planning permission.
67. With regard to water quality issues and given the high sensitivity of the receiving water it is important to be certain that the SuDS proposed is capable of treating the surface water run-off to a high standard. Mitigation of the potential resultant pollution from the development has been assessed in line with the CIRIA document C753. Using the site pollution index analyses for water quality assessment the Flood Risk Assessment and Drainage Strategy demonstrates that the SUDS mitigation indices are far higher than the combined pollution hazard indices.
68. In order to be certain that adverse effects on the SAC/Ramsar/SSSI are avoided, the long-term operation and management of SUDs features will be managed in perpetuity in line with the requirements set out within the SUDs Manual (CIRIA C753) and shall be undertaken by the developers appointed contractor/management company. Details of the management and maintenance plan and in perpetuity provision can be secured by way of planning condition.
69. The implementation of mitigation including construction safeguards and provision of SUDS will ensure that water flows will be maintained and that run-off from the site is of an appropriate quality and would not degrade the downstream Pevensey Levels SAC/Ramsar/SSSI.
70. With regards to the potential for in combination effects via surface water drainage pathways, as a result of new development within proximity to/hydrological connectivity to Pevensey Levels, this site and all other sites coming forward will be required to demonstrate that a suitable Surface Water Drainage Strategy and Management Plan will be implemented to prevent potential adverse impacts to the Pevensey Levels. As this site will mitigate its own impacts, and the Council confirms that other developments in the area will similarly be required to do so, no significant in-combination effects are predicted.
71. Subject to appropriate conditions, the proposed development either alone or in-combination with other plans and projects, would not result in an adverse effect on the integrity of the Pevensey Levels SAC/Ramsar/SSSI.

Lewes Downs SAC

72. Lewes Downs has been designated as a SAC, SSSI and a National Nature Reserve (NNR), due to its orchid-rich chalk grassland and scrub vegetation, which contains numerous southern and oceanic-southern species. It also supports rich invertebrate fauna, including moths and a breeding community of downland birds. Its conservation objectives are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the favourable conservation status of its qualifying features. The main air pollutants of concern relate to traffic emissions and the impact of nitrogen deposition.
73. The site is located around 14.3km from the designation at its nearest point. There will be no habitat fragmentation or loss. The distance between the site and Lewes Downs is such that adverse impacts from public access and disturbance are unlikely. No impacts are expected in relation to hydrology and water quality. The development would likely result in a negligible increase in traffic flows along the A26 adjacent to the SAC.
74. Therefore, the potential for a likely significant adverse effect on air quality from the development alone can be screened out however the potential for a likely significant effect as a result of changes to air quality in combination with other plans or projects cannot be screened out and an Appropriate Assessment is required.

Lewes Downs SAC – Appropriate Assessment

75. Air quality impacts are identified as one of the risks on the site improvement plan for Lewes Downs SAC. Grazing is an integral part of the management of Lewes Downs to manage tor grass and scrub cover so that the orchid rich grasslands can flourish. The western edge of Lewes Downs SAC closest to the A26 and the area that could be impacted by air quality impacts has a thick belt of woodland cover. The topography of this area of Lewes Downs rises very steeply from the road. The woodland belt currently functions as a buffer against air quality impacts onto the calcareous grassland and is also an important component of soil stability of the steep gradient. It is therefore not within the conservation objectives to remove this feature with any intention to restore to calcareous grassland.
76. Calcareous grassland as the qualifying feature is not present within the area to be affected by emissions. NE has advised the Council that there is no conservation objective to restore the feature to that area and that air quality impacts will not have a likely significant effect on Lewes Downs SAC alone or in combination with other plans and projects. There is no requirement for mitigation or avoidance measures. This advice is based on NE's knowledge of the topography of Lewes Downs SAC and the interest features for which it is designated. The only habitat likely to be impacted by air quality deterioration is woodland which is not a qualifying feature of the designated site, so the development poses no air quality risk to Lewes Downs SAC.
77. NE has also advised that where an existing national, regional or local initiative can be relied upon to lead to the reduction in background levels of pollution at a site, the competent authority should assess the implications of a plan or project against an improving background trend. Air quality monitoring

indicates improvements in vehicle technology will come forward and this is a further material consideration.

78. Accordingly, the proposed development alone and in-combination with other plans and projects will not result in an adverse effect on the integrity of the Lewes Downs SAC as a result of air quality.

Character and appearance

79. The proposed development would change the landscape and visual character of the appeal site, as is inevitable when a greenfield site is developed. This change is long anticipated, the area having been identified as a Strategic Development Area as far back as 2013, when the council adopted the CS.
80. Whilst this change may not be welcomed by all, the indicative masterplan and parameters plan demonstrate how the detailed design of the development seeks to minimise the impacts on the landscape, retaining existing natural features including mature trees and landscaping. This would ensure that the landscape impacts of the development are minimised, and that new development will integrate and work with the existing landscape, rather than simply imposing itself onto it.
81. Visually, the site is relatively well contained with a narrow frontage to Eastbourne Road where landscaping and tree planting is to be incorporated. Sensitive views will be significantly affected along the route of the two footpaths running across the site, which are used by local people for recreation and to access the wider countryside. Again, however, the proposed development would retain and incorporate these routes, along with the existing trees and landscaping, creating green corridors. This would be particularly effective along the route of the 1066 footpath, where areas of open space would be located alongside, maintaining open views towards the distant South Downs escarpment. The experience for users of the footpath would be somewhat different to at present, given the introduction of a large built development, but pleasant recreational walks would nonetheless be maintained. Furthermore, as new landscaping matures, it would further soften the appearance of the new development.
82. Views of the site would also be clearly visible from high ground within the South Downs National Park, where great weight should be given to conserving and enhancing landscape and scenic beauty. The submitted Landscape and Visual Impact Assessment identifies a range of viewpoints from this location, from which the site is currently seen as undeveloped agricultural land with urban development largely surrounding it. There is little doubt, notwithstanding the sensitive and considered design approach adopted, that the development would be a noticeable change in views from the National Park, but considered in context, this would not be a harmful change.
83. The development would be seen as part of the existing urban settlements, as a small component in wide panoramic and long reaching views as far as the coast. The site is a pleasant part of the existing views but it is nevertheless a component of an urban view, dominated by built development, in stark contrast to the land beyond Polegate and Wannock, and of course the National Park itself. The development would not appear out of context or at odds with its surroundings, urban areas already making up a large part of the spectacular views available. An area of open space would be maintained along the south-

eastern edge of the development, adjoining open space proposed within the Brodericklands and Hamlands Farm development and maintaining visual separation between settlements. Green agricultural land would also remain beyond the railway line, maintaining a degree of rurality.

84. The South Downs National Park is a designated International Dark Sky Reserve (IDSR), but the proposed development will be located in an existing urban context where lighting is already a feature, and some distance from the National Park boundary. The proposed development is unlikely to have any effect on the IDSR, but a condition could be used to ensure that a sensitive lighting scheme is designed, which minimises the potential for light spill and avoids any potential for harmful impacts.
85. In light of my conclusions, it is clear that the development, which is much needed in the area, has been sensitively located and designed to avoid adverse impacts on the National Park and would not harm its setting.
86. More generally, the landscape and visual impacts of the development would be minimised as far as possible through good design so that, whilst the effect of the development could not be described as positive in landscape and visual terms, the harm arising would be limited. These effects would be very localised and so the wider landscape character of the area will not be adversely affected. With this in mind, I find no conflict with Core Objective SPO13 and Policy WCS14 of the CS; saved policies EN1, EN8 and EN27 of the LP; or the Wealden Design Guide (2008), much of which will be for consideration at the detailed design stage.

Other Matters

87. Local people raise a range of issues, many of which have been discussed above. The Council and the appellant have entered into a statement of common ground and there is no dispute surrounding the acceptability of the proposal in terms of land uses, layout and design (so far as it currently known), operation of the road network, flood risk and drainage matters, highway land ownership, loss of agricultural land, cultural heritage, impact on neighbours, ecology, noise, air quality or contaminated land. There is no evidence before me that leads me to consider that any of these matters, or other matters raised should materially indicate against the grant of planning permission.
88. I have had particular regard to concerns about the impact on ecology, including concerns about protected species such as bats. Reference was also made to eels. Protected species are afforded protection under legislation independent of the planning system and so there can be comfort that they will be duly considered as part of any development proposals. Ecological surveys have been undertaken in support of the appeal proposal and mitigation measures proposed where necessary. Subject to suitable planning conditions to secure such measures, there is no reason to expect that the impacts of the development cannot be satisfactorily mitigated.
89. The effect of the development on air quality has been considered in the ES and a Technical Note accompanying the appellant's planning evidence. The site is not located in an Air Quality Management Area and the effects of the development are not expected to be significant. During operation, the impact of the scheme is assessed as negligible at all modelled receptors and air quality objectives are expected to be comfortably achieved.

90. There is an established need for a new medical centre in the locality and the proposed development makes provision. Although reference was made to an adjacent site (Hindsland) also proposing a medical centre, this scheme is also subject of an appeal which is yet to be determined. As such, there is no certainty that alternative provision will be made and it is important that the current scheme provides an opportunity to meet the established need.
91. Specific concerns are raised that the area suffers from a deficit of open space, sports pitches and amenity areas. The proposed development would deliver such spaces in excess of the Council's policy requirements and these facilities would be available to both new residents within the scheme and the wider population.

Planning Obligations

92. The appellant has submitted a Unilateral Undertaking (UU) to secure relevant planning obligations. The obligations have been identified by the Council and are supported by a CIL Compliance Statement which explains how each obligation accords with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
93. There is no dispute between the appellant and the Council that the majority of the obligations contained in the undertaking are necessary and would otherwise meet the tests contained at Regulation 122.
94. There is dispute, however, in relation to the Polegate High Street Contribution which amounts to £1,383,000. The sum is sought as a contribution towards planned traffic calming measures and public realm improvements necessitated by this and other local developments, which are expected to fund it.
95. It is of some concern that little information is before me about how the sum sought has been calculated but it is clear from the CIL Compliance Statement that the works are part of an existing strategy being implemented by East Sussex County Council. The scheme would involve improvements to the usability and safety of the town centre, importantly including highway safety improvements and sustainable transport enhancements.
96. The appeal scheme would undoubtedly lead to an increase in the number of people seeking to utilise the town's facilities and actively seeks to encourage use of the bus stops, cycleways and footpaths which the proposed enhancements would support. In addition, the scheme would further deter the likelihood of 'rat-running' through the High Street, addressing a significant concern of local residents.
97. For all of these reasons, I consider that the sum sought is proportionate and necessary in the context of this appeal, bearing in mind the extent of the works outlined. The obligation accords with the CIL Regulations and I have taken it into account in reaching my decision. If it transpires that the money is not spent by the Council for the intended purpose, then the appellant could expect to have it repaid.
98. The only other area of dispute relates to the definition of affordable housing within the undertaking, specifically, whether there should an absolute requirement for 35% affordable housing, or whether the definition should be expressed as a minimum of 35%, allowing for a greater percentage to ultimately be provided.

99. There is an acute unmet need for affordable housing in Wealden and so allowing the potential for a greater provision seems beneficial on the face of it. However, I have carefully considered the Council's position that the wider funding of local infrastructure relies on contributions from the CIL Levy, payable in relation to market housing. If larger proportions of affordable housing are allowed, that reduces the amount of funding available for important local infrastructure improvements needed to support development in the area, including planned highway works to be funded in this way.
100. There will no doubt be scenarios where a greater proportion of affordable housing could be supported, in order to assist in meet that pressing need. However, on a sizeable scheme like the appeal proposal, it is important that necessary infrastructure funding is available to support new development in the area without resulting in undue strain.
101. In this case, the policy requirement is for 35% affordable housing. There is no policy support or justification for requiring a greater proportion. 35% provision is also the figure contained within the appellant's ES and apparently the basis for assessment of the scheme. With all this in mind, I consider that the definition should, in this case, be an absolute requirement for 35% provision. This is the policy compliant figure and accords with the CIL Regulations. I have considered the appeal on this basis.
102. Amongst the obligations contained in the UU, provision is made for open space and play facilities, a community hall, education provision, a medical centre, self-build and custom-build plots, a bus service contribution and highway improvements. Having regard to the Council's policies and the need to mitigate the impacts of the development, all obligations contained in the UU are considered to accord with CIL Regulation 122 and have been taken into account.
103. Many interested parties have raised concerns that the development cannot be accommodated by local infrastructure, services and facilities. The obligations sought seek to mitigate the impacts of the development and are secured based on evidence provided by the various authorities and service providers. There is no detailed evidence before me to justify further obligations or to suggest that other services and infrastructure could not accommodate the development.

Planning Balance

104. The proposed development is in accordance with Policy WCS4 of the CS, which specifically seeks the type and amount of development proposed. Although there is a conflict with policies GD2 and DC17 of the LP, these policies are out of date for the reasons that I have set out above and so I attach the conflict only very limited weight. I have found no conflict with any other development plan policy.
105. The proposal would deliver a number of benefits, including a significant number of much needed market and affordable houses, economic benefits through job creation during construction and operation of the development, delivery of open space and sports facilities and a biodiversity net gain, amongst other things. Taken together, the benefits of the scheme attract substantial weight.

106. On the other hand, the identified harms are relatively few, including a conflict with two out of date policies from the LP and localised landscape and visual impacts.
107. The proposal is in accordance with the development plan, taken as a whole. The benefits arising from the proposed development would be substantial. I have identified no adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. Having regard to the provisions of the development plan and all material considerations, planning permission should clearly be granted.

Conditions

108. The Council and the appellant have agreed a range of planning conditions that should be attached to any planning permission granted. I have largely attached these as suggested, the parties having amended the wording to reflect discussions during the Inquiry. I have further amended the wording as necessary to improve their precision and otherwise ensure compliance with the relevant tests contained within the Framework and Planning Practice Guidance. The reasons for each condition are stated along with the relevant condition in the attached Schedule.
109. There is only one condition proposed by the Council which the appellant objects to, that requiring details of the location of market dwellings within each phase of the development. The purpose of the suggested condition, as explained during the Inquiry, is to ensure the provision of 65% market housing. I have not attached this condition because it is not necessary to make the development acceptable, 35% affordable housing having been secured as a planning obligation, with the remainder constituting market housing.
110. I have not attached the suggested condition requiring a survey of the surrounding highway network and rectification of any damage caused by construction traffic because the condition is imprecise and unenforceable. The area subject to the condition is not defined and it would be impossible to attribute damage in the public highway to the development with any certainty.
111. Further conditions were proposed by interested parties but these largely repeated matters that were already dealt with in the conditions agreed between the Council and the appellant, or sought to introduce requirements that would not accord with the relevant tests for conditions.
112. The Council, as the Local Planning Authority, is the only body that can properly approve details required pursuant to a planning condition and so reference to other bodies is both unnecessary and unreasonable.
113. A requirement for a 100m wide landscaped buffer zone on Eastbourne Road would be fundamentally at odds with the submitted parameter plan and indicative masterplan. It would be likely to adversely impact on the deliverability of the scheme and is therefore unreasonable. It is also unnecessary, bearing in mind my conclusions.
114. The appearance of the proposed materials is for consideration at the reserved matters stage. The objectives of a Construction Environmental Management Plan are satisfactorily dealt with through the Code of Construction Practice required. There is no policy basis for seeking a BREEAM Excellent

rating, Green Procurement Plan, rainwater/greywater harvesting, or green/brown roofs and these matters are not necessary to make the development acceptable. SUDS, nesting boxes and archaeology are all subject of conditions agreed between the main parties.

115. A new signal-controlled crossing is to be delivered on Eastbourne Road as part of the proposed highway works. A condition will require safety improvements to the railway pedestrian crossing to mitigate safety concerns arising from any increased usage. I have used the alternative wording agreed between the parties, albeit with some alteration to avoid the suggestion of a required financial contribution, to secure this requirement, given its greater precision and certainty.

116. Any fencing to be installed in the areas of open space in the vicinity of the water attenuation basins is for consideration at the reserved matters stage. Such a requirement is not necessary to grant planning permission.

Conclusion

117. In light of the above, the appeal is allowed.

Michael Boniface

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Sam Batchelor
Caitlin Boddy

Wealden District Council
Wealden District Council

FOR THE APPELLANT:

John Litton KC

He called:

Mark Bradbury BSc
CEng MICE

Strategic Development Manager, IDOM

Stephen Kirkpatrick BSc
BLD CMLI

SCARP

Katy Read CIEEM CEcol

Director, Biodiversity Advanced Ltd

Justin Bass MSc CMILT
MCIHT

Director, Intermodal Transportation Ltd

Mark Bewsey BA(Hons)
PGDipPlan MRTPI

Director, DHA Planning

INTERESTED PERSONS:

Caroline Ansell
Ruth Sheppard
Mike Gadd
Mary Taylor
John Pritchett
Ian Nisbet
Paul Humphreys
Robert Smart
Stephen Shing
Daniel Shing
Kimberlee Cole
David White
Douglas Murray
Nick Daines
Kevin Lock

Member of Parliament
Local resident
Local resident
Local resident
Councillor
Local resident
Local resident
Councillor
Councillor
Councillor
Local resident
Councillor
Councillor
Local resident
Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Appellant's Opening Statement and attachments
- 2 Draft site visit itinerary
- 3 Speaking notes of Ruth Sheppard
- 4 Speaking notes of Cllr John Pritchett
- 5 Speaking notes of Ian Nisbet
- 6 Speaking notes of Nick Daines
- 7 Speaking notes of Cllr Robert Smart
- 8 Speaking notes (unnamed)
- 9 Speaking notes of Kimberlee Cole
- 10 Suggested conditions from Kevin Lock
- 11 Planning application consultation response from the Pevensey & Cuckmere Water Level Management Board, dated 18 March 2021
- 12 Flooding and Drainage Note prepared by Mark Bradbury, dated 7 September 2022
- 13 Suggested conditions from Willingdon Parish Council
- 14 Suggested conditions from Cllr Douglas Murray
- 15 Updated site visit itinerary
- 16 E-mail from Mark Bewsey suggesting amended wording for condition 30, including reference to biodiversity net gain, dated 8 September 2022
- 17 Appellant's Closing Submissions and attachments
- 18 Appellant's final comments on costs

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 1 Completed Unilateral Undertaking
- 2 Amended conditions – final version
- 3 E-mail from Mark Bewsey (copied to Council) responding to Inspector's query on conditions, dated 21 September 2022

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.

REASON: In accordance with Section 92 of the Town and Country Planning Act 1990.

- 2) Application for approval of the reserved matters for the first phase of development shall be made to the Local Planning Authority not later than two years from the date of this permission and application for approval of reserved matters for the whole site shall be made within seven years from the date of this permission.

REASON: In accordance with Section 92 of the Town and Country Planning Act 1990.

- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.

REASON: In accordance with Section 92 of the Town and Country Planning Act 1990.

- 4) Prior to commencement of development a phasing plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include the phasing for the various elements of the development, including associated infrastructure. Unless otherwise agreed in writing by the Local Planning Authority, the development of the site shall be carried out in accordance with the approved phasing plan.

REASON: To enable the Local Planning Authority to regulate and control the development of land having regard to SPO15 and Policy WCS7 of the CS and Policy CS1 of the LP.

- 5) No development shall take place until a scheme for archaeological investigation of the site has been submitted to and approved in writing by the Local Planning Authority, such scheme to include a timetable for investigation. Thereafter, the archaeological works shall be carried out in accordance with the approved scheme unless the Local Planning Authority otherwise agrees in writing.

REASON: To enable the recording of any items of historical or archaeological interest, in accordance with the requirements of SPO2, SPO13 and Policy WCS14 to the CS.

- 6) No phase of the development hereby permitted shall be occupied until the archaeological site investigation and post investigation assessment (including provision for analysis, publication and dissemination of results and archive deposition) for that phase has been completed in accordance with the programme set out in the scheme approved under condition 5.

REASON: To enable the recording of any items of historical or archaeological interest, in accordance with the requirements of SPO2, SPO13 and Policy WCS14 to the CS.

- 7) The reserved matters application(s) for each phase of development shall be accompanied by a scheme identifying the specific measures, along with site locations, to be incorporated for the protection of future occupants of the dwellings from the effects of noise from rail and road traffic. The scheme shall achieve internal noise levels of no more than 30dB LAeq in bedrooms, 35dB LAeq in living rooms and external levels of 55dB LAeq in gardens.

The design and construction criteria for the residential element shall have regard to BS 8233:2014 – Sound insulation and noise reduction for buildings, or where superseded, the most up-to-date guidance.

The noise mitigation measures shall be implemented in accordance with the approved scheme before occupation of those dwellings identified as requiring the noise mitigation measures.

REASON: To protect residential living conditions, having regard to Policy EN27 of the LP.

- 8) The rating level of sound emitted from any fixed plant and/or machinery associated with the development shall not exceed background sound levels by more than 5dB(A) between the hours of 0700-2300 (taken as a 15 minute LA90 at the nearest sound sensitive premises) and shall not exceed the background sound level between 2300- 0700 (taken as a 15 minute LA90 at the nearest/any sound sensitive premises).

All measurements shall be made in accordance with the methodology of BS4142 (2014) (Method for rating and assessing industrial and commercial sound) and/or any subsequent amendments. Where access to the nearest sound sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound sensitive property.

Any deviations from the LA90 time interval stipulated above shall be agreed in writing by the Local Planning Authority.

REASON: To protect residential living conditions, having regard to Policy EN27 of the LP.

- 9) The development hereby permitted shall not begin until a scheme to deal with contamination of land and/or ground gas has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include all of the following measures, unless the Local Planning Authority dispenses with any such requirement specifically in writing:
- i) A Phase I site investigation report carried out by a competent person to include a desk study, site walkover, the production of a site conceptual model and a human health and environmental risk assessment, undertaken in accordance with BS 10175:2011, Investigation of Potentially Contaminated Sites - Code of Practice, or where superseded the most up to date standards/guidance.
 - ii) A Phase II intrusive investigation report detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011, Investigation of Potentially Contaminated Sites - Code of Practice. The report shall include a detailed quantitative human health and environmental risk assessment.

- iii) A remediation scheme detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. A clear end point of the remediation shall be stated, and how this will be validated. Any ongoing monitoring shall also be determined.
- iv) If, during the works, contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed and an appropriate remediation scheme shall be submitted to and approved in writing by the Local Planning Authority.
- v) A validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology shall be submitted prior to first occupation of the development/the development being brought into use. Details of any post-remedial sampling and analysis to demonstrate that the site has achieved the required clean-up criteria shall be included, together with the necessary documentation detailing what waste materials have been removed from the site.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors, having regard to Policy EN1 of the LP and Policy WCS14 to the CS.

- 10) For each phase of development, no enabling work (including vegetation clearance, demolition or below ground level work) shall be carried out on site until full written details of a Code of Construction Practice [Construction Management Plan] has been submitted to and approved in writing by the Local Planning Authority. The Code of Construction Practice [Construction Management Plan] shall provide for:
- i) An indicative programme for carrying out the works;
 - ii) Measures for the protection of protected and notable species and retained habitat features and surface water bodies on or adjacent to the site;
 - iii) A scheme for the control of noise and dust which shall accord with British Standard ' BS5228-1: 2009 +A1:2014- Code of practice for noise and vibration control on construction and open sites;
 - iv) Management of traffic visiting the site including the anticipated number, frequency and types of vehicles used during construction, the times of delivery and collections which shall avoid peak traffic flow times between the hours of 0800 to 0900 and 1630 to 1800 and measures necessary to ensure highway safety;
 - v) The method of access, including temporary access points, on-site turning egress and routing of vehicles temporary parking or holding areas;
 - vi) The parking of vehicles by site operatives and visitors;
 - vii) The loading, unloading and storage of plant, materials and waste;
 - viii) The provision and utilisation of wheel washing facilities and other works required to mitigate the impact of construction upon the public

highway (including the provision of temporary Traffic Regulation Orders);

- ix) Measures to minimise the potential for pollution of groundwater and surface water;
- x) Details of measures to manage flood risk, both on and off the site during construction;
- xi) The location and design of security hoardings, site offices and storage compounds;
- xii) The arrangements for public consultation and liaison during the construction works.
- xiii) Details of control measures to prevent the spread of invasive non-native species (e.g. Japanese knotweed).

The approved Code of Construction Practice [Construction Management Plan] shall be adhered to in full throughout the construction period. No bonfires are permitted during site clearance or construction.

REASON: In the interests of safety for persons and vehicles on the site and/or adjoining road, to minimise loss of amenity to adjoining residents and to minimise potential for environmental impact having regard to Policy WCS14 of the CS and Policies EN27 and TR3 of the LP.

- 11) During the construction phase, no works shall take place other than within the hours, Monday to Friday 0800 to 1800 hours, Saturday 0800 to 1300 and not at all on Sundays, Public or Bank Holidays.

REASON: To protect residential living conditions, having regard to Policy WCS14 of the CS and Policy EN27 of the LP.

- 12) The new vehicular accesses shall be in the positions shown on the approved plan, Drawing No. IT432/RTA/03E, and laid out and constructed in accordance with technical details to be submitted to and approved in writing by the Local Planning Authority.

REASON: In the interests of safety for persons and vehicles using the site and/or the adjoining road, having regard to Policies WCS7 and WCS14 of the CS and Policy TR3 of the LP.

- 13) No part of the development shall commence until a technically accepted highway scheme including construction details and specifications for the priority junction (northern access); southbound bus lane and footway/cycle lane; bus stop lay-by; and signalised junction (southern access) as shown on the approved plan, Drawing No. IT432/RTA/03E, has been submitted to and approved in writing by the Local Planning Authority. The approved highway scheme/s shall be completed prior to first occupation of the respective development phases using the approved junctions or as otherwise agreed with the Local Planning Authority.

REASON: In the interests of safety for persons and vehicles using the site and/or the adjoining road, having regard to Policies WCS7 and WCS14 of the CS and Policy TR3 of the LP.

- 14) For each phase of development, before preparation of ground levels for the development approved, detailed plans, including levels, sections and constructional details of the proposed internal access roads, surface water drainage, foul sewers, outfall disposal and street lighting to be provided (with a view to subsequent adoption as a maintainable

highway)), shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the approved details.

REASON: In the interests of safety for persons and vehicles using the site and/or the adjoining road, having regard to Policy TR3 of the LP.

- 15) The new estate roads shall be constructed in accordance with a specification submitted to and approved in writing by the Local Planning Authority. All roads shall be constructed to an adoptable standard.

REASON: In the interests of safety for persons and vehicles using the site and/or the adjoining road, having regard to SPO2, SPO12, SPO13 and WCS14 to the CS and Policy TR3 of the LP.

- 16) For each phase of development, no part of the development shall commence until such time as a technically accepted highway scheme to support the approved pedestrian/cycle links has been submitted to and approved in writing by the Local Planning Authority. The approved highway scheme shall be completed prior to first occupation of the associated phase of development.

REASON: To encourage and promote sustainable transport and in the interests of highway safety, having regard to Policy WCS14 of the CS and Policy TR3 of the LP.

- 17) No part of the development shall commence until such time as plans, details and construction specification showing the proposed upgrade works for Right of Way 5 [Willingdon and Jevington], along with a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

REASON: To ensure that suitable improvements are made and to safeguard users having regard to Policy WCS14 of the CS.

- 18) None of the dwellings hereby permitted shall be occupied until a scheme for the provision of safety measures at the Vine No.2 footpath level crossing and the stopping up of level crossings where required has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the timing of works relative to the phasing of the housing development and the works shall be carried out in accordance with the approved details.

REASON: To ensure that suitable improvements are made and to safeguard users having regard to Policy WCS14 of the CS.

- 19) For each phase of development, no part of that phase shall be occupied until a Sustainable Transport Strategy has been submitted to and approved in writing by the Local Planning Authority. The Sustainable Transport Strategy shall set out:
- i) The Travel Plan objectives, incentives and measures for all land uses within each phase of development;
 - ii) A car parking strategy indicating allocated, unallocated and car club spaces for each phase of development;
 - iii) A cycle parking strategy for each phase and all uses within a phase;

- iv) Details of the provision of electric vehicle charging points within each phase.

The Sustainable Transport Strategy shall be delivered in accordance with the approved details.

REASON: To ensure suitable car-parking space for the development and to accord with sustainable transport objectives having regard to Policy WCS14 of the CS and Policies EN1, EN2 and TR16 of the LP.

- 20) For each phase of development:

No development shall commence until a scheme for the provision and implementation of foul drainage works for that phase has been submitted to and approved in writing by the Local Planning Authority. The foul drainage works shall be implemented in accordance with the approved details.

There shall be no occupation of that phase of development until it has either been confirmed by Southern Water that there is capacity for that phase of the development, or where an upgrade to the infrastructure is required that the necessary upgrades have been implemented and confirmed by Southern Water to the Local Planning Authority.

REASON: To protect water quality and to secure a satisfactory standard of development, having regard to Policy WCS14 to the CS.

- 21) The development shall be carried out in accordance with the submitted flood risk assessment (dated January 2021). The mitigation measures it details within section 14.1.5 of the submitted FRA shall be included within the detailed design of the site. These mitigation measures shall be fully implemented in accordance with a phasing programme to be submitted to and approved in writing by the Local Planning Authority. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

REASON: To reduce the risk of flooding to the proposed development and future occupants and secure a satisfactory standard of development, having regard to Policy WCS14 to the CS and Policy CS2 of the LP.

- 22) For each phase of development, no part of the development shall commence until a detailed surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority.

The surface water drainage system shall incorporate the following:

- i) Detailed drawings and hydraulic calculations, which shall take into account the connectivity of the different surface water drainage features. The calculations shall demonstrate that surface water flows can be limited to the greenfield runoff rates for rainfall events with an annual probability of occurring greater than 1 in 2.33 and mean annual discharge (Q_{bar}) for rainfall events with an annual probability of occurrence less than 1 in 2.33, including those with a 1 in 100 (plus climate change) annual probability of occurrence. An allowance for urban creep (recommended 10% increase in impermeable area) shall be incorporated within the calculations.
- ii) The details of the outfalls of the proposed attenuation ponds and how they connect into the watercourses, including cross sections and invert levels.

- iii) The detailed design of the attenuation ponds shall be informed by findings of groundwater monitoring between autumn and spring. The design should leave at least 1m unsaturated zone between the base of the drainage structures and the highest recorded groundwater level. In the event this cannot be achieved, details of measures which will be taken to manage the impacts of high groundwater on the hydraulic capacity and structural integrity of the drainage system shall be provided.
- iv) Details of the measures proposed to manage exceedance flows and measures to prevent surface water run-off onto the A2270 Eastbourne Road. This should also include details of how the existing overland surface water flows have been retained.
- v) Evidence that the existing watercourses on site have been retained shall be provided.

The surface water drainage scheme shall be provided in accordance with the approved details before first occupation of the related dwellings. Prior to occupation of each phase, evidence (including as built drawings and photographs) shall be submitted showing that the drainage system has been constructed as per the final agreed detailed drainage designs.

REASON: In order to secure a satisfactory standard of development, having regard to Policy WCS14 of the CS and Saved Policy CS2 of the LP.

- 23) Prior to the construction of any outfall, a survey of the condition of the watercourses which will take surface water runoff from the development shall be investigated.

Results of the survey shall be submitted to and approved in writing by the Local Planning Authority. Any required improvements to the condition of the watercourse and a programme for implementation shall also be included and, if approved by the Local Planning Authority, implemented in accordance with the approved details and timetable.

REASON: In order to secure a satisfactory standard of development, having regard to Policy WCS14 of the CS and Policy CS2 of the LP.

- 24) A maintenance and management plan for the entire drainage system shall be submitted to and approved in writing by the Local Planning Authority before any construction commences on site to ensure the designed system takes into account design standards of those responsible for maintenance. The management plan shall cover the following:
- i) Who will be responsible for managing all aspects of the surface water drainage system, including piped drains;
 - ii) Evidence of how these responsibility arrangements will remain in place throughout the lifetime of the development.

The approved plan shall thereafter remain in place for the lifetime of the development.

REASON: In order to secure a satisfactory standard of development, having regard to Policy WCS14 of the CS and Policy CS2 of the LP.

- 25) There shall be no discharge of foul or contaminated drainage from the site into either the groundwater or any surface waters, whether direct or via soakaways. Prior to being discharged into any watercourse, surface water sewer or soakaways system, all surface water drainage from

parking areas and hard standings shall be passed through trapped gullies and silt traps to BS 5911:1982 with an overall capacity compatible with the site being drained and shall be retained thereafter.

REASON: To prevent pollution of the water environment, having regard to Policy WCS14 of the CS and Saved Policy CS2 of the LP.

- 26) No floodlighting, security lighting or other external means of illumination of the site shall be provided, installed or operated in the development, except in accordance with a detailed scheme to be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall provide for lighting that is low level and directional and show the predicted light levels at neighbouring residential properties. The artificial lighting to the development shall conform to requirements for Environmental Zone E2 contained within Table 2 of the Institute of Lighting Professionals Guidance Note 01/21 The Reduction of Obtrusive Light and comply with the Bat Conservation Trust and Institute of Lighting Professionals Guidance Note 08/18 Bats and Artificial Lighting in the UK.

The lighting shall be implemented in accordance with the approved scheme and retained thereafter.

REASON: To protect dark night skies and preserve living conditions in the locality having regard to Policies EN27 and EN29 of the LP, and the Wealden Design Guide (Chapter 3, Section 18 and Chapter 8, Section 7).

- 27) No development shall take place until a plan for the protection of the Mornings Mill Stream, both during construction works and once the development is complete, has been submitted to and approved in writing by the Local Planning Authority.

The scheme shall include the following elements:

- i) timing of the works;
- ii) the measures to be used during the development in order to minimise environmental impact of the works (considering both potential disturbance and pollution);
- iii) a map or plan showing river habitat to be specifically protected during the works;
- iv) any necessary mitigation for protected species using the watercourse or the watercourse corridor;
- v) construction methods;
- vi) any necessary pollution protection methods;
- vii) information on the persons/bodies responsible for particular activities associated with the method statement that demonstrate they are qualified for the activity they are undertaking.

The rivers priority habitat protection plan shall be carried out in accordance with a timetable for implementation which has first been approved by the Local Planning Authority.

REASON: To protect the rivers priority habitat within the development site and avoid damaging the site's nature conservation value, having regard to Policies WCS12 and WCS14 to the CS.

- 28) No development shall take place until a scheme for the provision and management of an 8 metre wide buffer zone alongside both banks of the Mornings Mill Stream has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority. The buffer zone shall remain free from built development including lighting, domestic gardens and formal landscaping.

The scheme shall include:

- i) plans showing the extent and layout of the buffer zone.
- ii) details of any proposed planting scheme which should be of native species and, if including riparian tree planting, should take account of access, maintenance and flood risk.
- iii) details demonstrating how the buffer zone will be protected during development and managed over the longer term, including adequate financial provision and named body responsible for management plus production of detailed management plan.
- iv) details of any proposed footpaths, fencing, lighting, etc. Lighting should be minimal and/or low level to avoid disrupting the natural diurnal rhythms of a range of wildlife using and inhabiting the river and its corridor habitat.

REASON: The Mornings Mill Stream provides a valuable ecological corridor and any enhancements should be in keeping with the existing wetland habitats having regard to Policies WCS12 and WCS14 of the CS.

- 29) For each phase of development, a landscape and ecological management plan, including details of ecological mitigation, compensation and enhancement proposals, long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens), shall be submitted to and approved in writing by the Local Planning Authority. The landscape and ecological management plan shall be carried out as approved over the lifetime of the development unless otherwise agreed in writing by the Local Planning Authority.

The landscape and ecological management plan shall include the following elements:

- i) detailed proposals for the protection of bats, birds, reptiles, great crested newts, hedgehog, black poplar trees and badgers, and measures for the mitigation of any harm to them likely to be caused by the development;
- ii) details of Biodiversity Net Gain using an appropriate metric;
- iii) details of maintenance regimes and management responsibilities;
- iv) details of any proposed planting scheme, which should be of native species of local provenance where reasonably practicable, bearing in mind access for maintenance. These should include: wet woodland habitat as part of the tree planting proposals and floodplain meadows as part of the wildflower grassland proposals;
- v) retention of existing watercourses and construction of new swales and ditches (SuDS), ideally with at least one permanently wet pond to operate as a water filtration system to maintain the quality and

quantity of the surface water run-off entering the Mornings Mill Stream; and

- vi) provide for connectivity to adjacent watercourses to enhance the potential for breeding and dispersal of reptiles and amphibians on and around this site and to adjacent habitat.

REASON: To ensure the protection of wildlife and supporting habitat and to secure opportunities for enhancing the site's nature conservation value (net gain) in line with national planning policy, adopted policies WCS12 and WCS14 of the CS and the South East River Basin Management Plan.

- 30) Details of landscaping as required by Condition 1 shall include those trees and hedgerows to be retained (including protection zones), those to be removed and new planting. No trees and hedgerows that have been approved as being retained, unless dead or dangerous, shall be felled, topped, lopped or destroyed without the consent in writing of the Local Planning Authority. Furthermore the following work shall not be carried out within the approved protection zone of any tree or hedgerow, except with the written consent of the Local Planning Authority:

- i) Levels shall not be raised or lowered in relation to the existing ground level within the approved protection zone of the tree or hedgerow.
- ii) No roots shall be cut, trenches dug or soil removed within the approved protection zone of the tree or hedgerow.
- iii) No buildings, roads or other engineering operations shall be constructed or carried out within the approved protection zone of the tree or hedgerow.
- iv) No fires shall be lit within the approved protection zone or in a position where the flames could extend to within 5 metres of the foliage, branches or trunk of the tree or hedgerow as per the requirements of BS5837:2012 Trees in relation to design, demolition & construction - Recommendations.
- v) No vehicles shall be driven over the area within the approved protection zone of the tree or hedgerow.
- vi) No materials or equipment shall be stored within the approved protection zone of the tree or hedgerow as per the requirements of British Standard 5837:2009 'Trees in Relation to Construction'.

REASON: To preserve trees and hedges on the site in the interests of visual amenity and the character of the area, having regard to Policies WCS13 and WCS14 of the CS and Policies EN12 and EN14 of the LP.

- 31) For each phase of development, a full Arboricultural Impact Assessment and Method Statement shall be submitted with the reserved matters application and shall include numbering and detailing of trees, confirming root protection areas, routing of service trenches, overhead services and carriageway positions and any details of no dig techniques along with associated use of geotextiles and an indication of the methodology for necessary ground treatments to deal with compacted areas of soil. The works shall be implemented in accordance with the approved details.

REASON: To preserve trees and hedges on the site in the interests of visual amenity and the character of the area, having regard to WCS13 and WCS14 of the CS and Policies EN12 and EN14 of the LP.

- 32) No development shall take place unless and until:

A detailed assessment of ground conditions of the land proposed for the new/retained/replacement playing field land as shown on the illustrative masterplan has been undertaken (including drainage and topography) to identify constraints which could affect playing field quality; and

Based on the results of this assessment, a detailed scheme to ensure that the playing fields will be provided to an acceptable quality (including appropriate drainage where necessary) shall be submitted to and approved in writing by the Local Planning Authority.

The works shall be carried out in accordance with the approved scheme and a timetable approved in writing by the Local Planning Authority.

REASON: To ensure that site surveys are undertaken for new playing fields and that any ground condition constraints can be and are mitigated to ensure provision of an adequate quality playing field and to accord with Policy LR3 of the LP.

- 33) Prior to the grass playing pitches being brought into use a Management and Maintenance Scheme for the facility, including management responsibilities, a maintenance schedule and a mechanism for review shall be submitted to and approved in writing by the Local Planning Authority. The measures set out in the approved scheme shall be complied with in full, on completion of the playing pitches.

REASON: To ensure that new facility is capable of being managed and maintained to deliver a facility which is fit for purpose, sustainable and to ensure that the development benefits sports provision in accordance with the Framework and Policy LR3 of the LP.

- 34) Prior to bringing into use the sports pitches and sports pavilion, a community use scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall apply to the grass pitches and the ancillary facilities comprising the changing/clubroom pavilion and parking and shall include details of pricing policy, hours of use, access by non-educational establishment users/non-members, management responsibilities, a mechanism for review and a programme for implementation. The approved scheme shall be implemented upon the start of use of the sports pitches and sports pavilion [or other agreed timescale] and shall be complied with for the duration of the use of the development.

REASON: To secure well managed safe community access to the sports facility, to ensure the development benefits sports provision and to accord with Policy LR3 of the LP.

- 35) Before preparation of any groundworks or foundations for each phase of the development hereby approved, full details for the incorporation of water and energy efficiency measures, and the promotion of renewable energy and sustainable construction within the development shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to occupation of the associated phase and thereafter so retained.

REASON: To promote sustainable building design, having regard to SPO9 and SPO13 and Policy WCS14 of the CS and Policy EN1 of the LP.

- 36) The development shall be carried out in accordance with the design principles and development objectives set out in the Design Framework Parameter Plan, Drawing No. 2.106A.

REASON: In the interests of certainty, having regard to the development proposed and assessed within the Environmental Statement.

- 37) No development shall take place, including demolition, ground works and vegetation clearance, until a biodiversity monitoring strategy has been submitted to and approved in writing by the Local Planning Authority. The purpose of this strategy shall be to ensure that the proposed ecological avoidance, mitigation, compensation and enhancement measures for the site are successfully delivered and managed. The content of the strategy shall include the following:

- i) Aims and objectives of monitoring to match the stated purpose.
- ii) Identification of adequate baseline conditions prior to the start of development.
- iii) Appropriate success criteria, thresholds, triggers and targets against which the effectiveness of the various conservation measures being monitored can be judged.
- iv) Methods for data gathering and analysis.
- v) Location of monitoring.
- vi) Timing and duration of monitoring.
- vii) Responsible persons and lines of communication.
- viii) Review, and where appropriate, publication of results and outcomes.

A report describing the results of monitoring shall be submitted to the Local Planning Authority at agreed intervals identified in the strategy. The report shall also set out (where the results of the monitoring show that conservation aims and objectives are not being met) how contingencies and/or remedial action will be identified, agreed with the Local Planning Authority, and then implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The monitoring strategy shall be implemented in accordance with the approved details.

REASON: To ensure the protection of wildlife and supporting habitat and to secure opportunities for enhancing the site's nature conservation value (net gain) in line with national planning policy, policies WCS12 and WCS14 of the CS and the South East River Basin Management Plan.

- 38) Where the approved development is to proceed in a series of phases, further surveys for roosting bats shall be undertaken to inform the preparation and implementation of bat roost mitigation strategies for each phase of development. The surveys shall be of an appropriate type for the species and survey methods shall follow national good practice guidelines. The loss of any bat roosts (in buildings or trees) shall not in any circumstances commence unless the Local Planning Authority has been provided with either:

A licence issued by Natural England pursuant to Regulation 53 of the Conservation of Habitats and Species Regulations 2017 (as amended) authorising the specified activity / development to go ahead; or

A statement in writing from the relevant licencing body to the effect that it does not consider that the specific activity/development will require a licence.

REASON: To ensure the protection of wildlife and supporting habitat and to secure opportunities for enhancing the site's nature conservation value (net gain) in line with national planning policy, policies WCS12 and WCS14 of the CS and the South East River Basin Management Plan.

- 39) The development shall not be occupied until the following highway mitigation works for the East Sussex highway network have been completed:

The A2270, Wannock Road and Polegate High Street signalised junction works (which shall have been opened to all traffic); and Stage 1 of the Hailsham, Polegate & Eastbourne Movement & Access Corridor (HPEMAC).

REASON: To ensure the impact of traffic generated by this development is mitigated, having regard to Policy TR3 of the LP and Policies WCS7 and WCS14 of the CS.

- 40) Not more than 150 dwellings shall be occupied until:

The highway improvements to the A27 Cophall roundabout have been constructed and opened to traffic in accordance with Intermodal Transportation Ltd's Dwg No. IT432/SK/13 "Possible capacity improvement on Cophall roundabout" or other such scheme of works agreed by the Local Planning Authority to provide substantially similar effect; and the improvement works to the A27 and A22 Golden Jubilee Roundabout and the A22 Golden Jubilee Way and Dittons Road Roundabout have been completed and both roundabouts are open to all traffic.

REASON: To ensure the impact of traffic generated by this development is mitigated, having regard to Policy TR3 of the LP and Policies WCS7 and WCS14 of the CS.

Appeal Decision

Hearing held on 1 December 2022

Site visit made on 2 December 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 January 2023

Appeal Ref: APP/C1435/W/22/3301104

Land at Old Nursery House, The Street, Framfield TN22 5PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Inland Ltd against the decision of Wealden District Council.
 - The application Ref WD/2021/0573/MAO, dated 3 March 2021, was refused by notice dated 1 April 2022.
 - The development proposed is 'outline application (all reserved matters, aside from principal means of access) for up to 58 new homes (including 35% affordable housing), new access road, open space and soft landscaping'.
-

Decision

1. The appeal is allowed and planning permission is granted for 'outline application (all reserved matters, aside from principal means of access) for up to 58 new homes (including 35% affordable housing), new access road, open space and soft landscaping' at Land at Old Nursery House, The Street, Framfield, TN22 5PN in accordance with the terms of the application ref WD/2021/0573/MAO dated 3 March 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal relates to an application for outline planning permission. Approval is sought for the principal means of access to the site, but matters relating to appearance, landscaping, layout and scale are reserved for future consideration. I have considered the appeal on this basis, treating all details apart from those relating to the access to the site as illustrative.
3. The plans originally submitted as part of the planning application indicated that the proposed access arrangements would have included alterations to an existing access from the B2102 which currently serves Framfield Nursery. However, amended plans were submitted during the Council's consideration of the application to maintain the access serving Framfield Nursery as existing. The Council considered the application with regard to the amended plans, and I have determined the appeal on the same basis.
4. The appeal was lodged following the Council's refusal of the application. However, the Council confirmed prior to the Hearing that the Planning Committee North had resolved to withdraw the single reason for refusal, and it did not therefore defend its decision to refuse permission. In addition, a Statement of Common Ground submitted on 17 November 2022 ('the SoCG') set out that the Council and appellant agreed that the appeal should be

allowed. Nevertheless, interested parties, including Framfield Parish Council, have raised objections to the proposal in relation to the main issues that I have identified, as well as other matters that are considered below.

5. During the appeal, the appellant submitted a deed of agreement under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) ('the s106'). The obligations and undertakings within the s106 were discussed at the Hearing, and a signed and completed version of the agreement was submitted shortly after the Hearing closed.

Main Issues

6. The main issues are:
 - i) Whether or not the development would be in a suitable location having regard to its location in the countryside outside of any development boundary, and accessibility to services, facilities and transport links;
 - ii) the effect of the proposal on the landscape, character and appearance of the area; and
 - iii) the effect of the proposal on the integrity of European Sites.

Reasons

Location

7. The appeal site is located to the south of Framfield, and comprises stables, a manège and an open field which has been used for grazing, together with an existing access from the B2102. Under Policy WCS6 of the Core Strategy Local Plan 2013 ('the CS'), the defined development boundary was removed from Framfield. Consequently, the site is within the countryside in planning policy terms, and the proposal would conflict with saved Policies GD2 and DC17 of the Wealden Local Plan 1998 ('the WLP') which generally restrict new development within countryside outside of defined development boundaries.
8. In addition, Policy WCS2 of the CS seeks broadly to concentrate growth at the urban areas, especially at Uckfield and Hailsham. There is to be some further growth at settlements within the rural area, but the rural areas strategy at Policy WCS6 of the CS does not propose additional development at Framfield. Although Policies WCS2 and WCS6 do not explicitly preclude housing development outside of the identified locations, the supporting text to WCS6 sets out that the policy confirms the overall level of housing development which will be provided for in the rural areas. In proposing development at Framfield, I therefore concur with the main parties that the proposal would be contrary to the distribution of growth indicated by Policies WCS2 and WCS6 of the CS.
9. The supporting text to Policy WCS6 advises that the overall strategy is to ensure appropriate development which protects, supports and increases the range and quality of facilities and services available to the rural areas, and which helps sustain rural living, reinforces the accessibility of settlements whilst meeting needs and community aspirations. Existing services in Framfield include a primary school, a public house, a church, a village hall and a recreation ground, and I am satisfied that these would be within reasonable walking distance of the appeal site, with possible routes using either footways along the B2102 and/or connections through the development to the north. Parts of these routes are unlit, but the proposal includes provision to improve

footpaths and footway connections in the vicinity of the site which would help to encourage and support pedestrian accessibility.

10. Future occupiers would need to travel to access services including shopping, healthcare, secondary schools and employment. These and other services and facilities to meet day to day needs would be available at Uckfield which would be within generally reasonable cycling distance of the appeal site. Much of the route though would involve relatively narrow and unlit sections of the B2102, and I consider that cycling would be unlikely to be an attractive option to all but the most confident cyclists.
11. However, there are bus stops in Framfield served by routes which offer connections to destinations including Uckfield as well as Heathfield. I acknowledge that the distance to these bus stops from the furthest parts of the site would be slightly beyond the 400m generally recommended in guidance produced by the Institute of Highways and Transportation, but not so significantly that I find walking would be unrealistic. I understand that there are currently no very early morning, evening or Sunday buses running through Framfield, and that there is only a limited Saturday service. Nevertheless, I was informed that East Sussex County Council has secured funding towards bus service improvements, and is looking to increase the frequency of the Uckfield service to hourly, and to extend services into the evening. In addition, the proposal includes a financial contribution towards the enhancement of bus services in the vicinity of the site, and I heard that a similar contribution had also been secured from a development at Blackboys. These contributions would further support improvements to services. I appreciate that the financial contribution made by the development would relate to a 5-year period and may not fully fund service improvements, but the development would also generate additional potential passengers that could help to sustain the viability of services in the longer-term. On this basis, I consider that bus services would offer future occupiers a realistic alternative to the private vehicle for at least some trips.
12. The appellant has also provided a Framework Travel Plan which sets out measures intended to support genuine choice of transport modes and to discourage car use, and the s106 includes provision for the preparation, implementation and monitoring of a further Travel Plan and measures to achieve Travel Plan objectives.
13. Given the above factors, I am satisfied that there would be opportunities for future occupiers of the site to access services by sustainable travel modes. I accept that walking, cycling or travel by bus may not be realistic options for all future occupiers or trips, and there would be likely to be some dependence on private vehicles. Even so, journeys to reach a wide range of services in Uckfield would be fairly short, helping to minimise the effect of travel by private vehicle. Moreover, the National Planning Policy Framework ('the Framework') recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. The supporting text to Policy EN2 of the WLP similarly recognises that development within rural areas inevitably generates proportionally more car traffic than that in urban areas, but that set against this, development may support valuable local services and maintain viable communities.

14. In this respect, and in addition to the support for bus services, occupiers of the site would be likely to offer increased patronage and additional expenditure that could help to sustain and potentially grow local services in the rural area. This would accord with the Framework which outlines that housing should be located where it will enhance or maintain the vitality of rural communities, albeit that I acknowledge that a larger proportion of potential expenditure may well be focussed towards Uckfield.
15. In the context of the rural location of the site within a district which the CS notes is almost 93% rural areas, I find for these reasons that the proposal would have reasonable access to services and facilities and opportunities to reduce reliance on private vehicles. I find no material conflict with saved Policy EN2 of the WLP insofar as it seeks the efficient location of development in relation to existing development and public transport. The proposal would also comply generally with spatial planning objectives SPO7, SPO9 and SPO13 of the CS which seek, broadly and amongst other things, to reduce the need for travel by car, to support travel by sustainable transport modes and to minimise emissions of greenhouse gases. It would similarly accord with the Framework which seeks to actively manage patterns of growth and promote sustainable travel while also supporting the vitality of rural communities.
16. I therefore conclude that the proposal would be in a suitable location having regard to its accessibility to services, facilities and transport links. However, the location of the site within the countryside would result in conflict with saved Policies GD2 and DC17 of the WLP and with the distribution of growth indicated by Policies WCS2 and WCS6 of the CS. That said, I return to consider the weight to be given to this conflict as part of the planning balance below.

Landscape, Character and Appearance

17. The WLP identifies the site as part of the 'Low Weald' landscape character area type which is noted as having gently undulating topography and a more open landscape than the High Weald, with streams and ghylls that flow towards rivers. A primarily agricultural landscape of traditionally mixed arable and pastoral farming, punctuated by woods, hedgerow trees and field boundary hedges, the WLP states that it retains a strong rural character and that the countryside is almost universally attractive and worth retaining for its own sake.
18. With reference to the more recent East Sussex Landscape Character Assessment 2016, the appeal site is part of Local Landscape Character Area 3: Upper Ouse Valley. This is described as countryside of low ridges and wider valleys covered by an intricate pattern of streams and woods. Key characteristics include the gently undulating terrain with broad valleys, heavily wooded landscape and abundant tree cover, small village settlements with distinctive churches, and a sense of tranquillity and remoteness away from the main settlements and roads. At a more local level, the Wealden Landscape and Settlement Character Assessment 2016 indicates that the site is part of the of the A4: Blackboys and Framfield character area. Distinctive characteristics of this area include a patchwork of small scale pastoral fields interspersed with woodland, tree-lined lanes, and a strong sense of tranquillity and remoteness.
19. Based on my observations at my visit, the site is not of particular scenic quality, and I note that it has been in equestrian use rather than agriculture. Nevertheless, it is a predominantly open field which is largely free of built form on the valley slope to the south of Framfield. Together with its immediate

surroundings which retain features such as hedgerows, tree clumps and woodland, it is broadly representative of many of the characteristics of the host landscape, and it has an attractive and distinctive rural quality, albeit that modern housing to the north and development to the east are appreciable from the site. In my judgement, the assessment within the appellant's Landscape and Visual Impact Assessment ('LVIA') of the appeal site as of medium landscape quality, medium value, and medium sensitivity is reasonable.

20. The proposal would alter the site from a mostly open field to a housing development, with an inevitable and permanent change to the intrinsic character of the site and this part of the countryside which would be urbanising. However, the development would be well-contained by the existing development to the east of the site along the B2102, the development on Becketts Way to the north as well as by the woodland and vegetation boundaries to the south and west.
21. While the illustrative details suggest green space between the development and dwellings on Becketts Way, this is shown to include connections to the existing 'twitten' pathways into Becketts Way, and the separation would not be so large in the context of the site that I consider the development would be perceived as isolated or separate from Framfield. In addition, the illustrative details suggest that the development would be of lower density than built form to the north. Together with the considerable areas of green space within the site and around the boundaries, this would allow for a sensitive transition to the countryside setting. Moreover, I have no firm reason to find that it would not be possible to bring forward a sympathetic layout and buildings of a form, style and appearance that would respect the surrounding area at reserved matters stage. The development would not therefore be uncharacteristic in the receiving landscape, and notwithstanding the size of the site itself, I do not consider that the scale of the development would be unduly large relative to Framfield so as to overwhelm or dominate the existing settlement. Nor do I find that the proposal would meaningfully erode gaps between settlements so as to cause coalescence.
22. For these reasons, I consider that the proposal would result in only a minor and contained incursion into the countryside, and effects on the landscape and character of the area would be very localised and no more than moderate.
23. In terms of visual effects, the LVIA identifies that the topography of the area and vegetation mean that the development would be visible from only a relatively small area. The clearest views would be from the rights of way and existing development to the north of the site. However, it is proposed to largely retain vegetation to the site boundaries which would provide for some screening. In addition, the indicated green space to the northern part of the site could provide for a buffer that would help to further soften the visual impact of the development on these receptors, and the effect would reduce over time as suggested new planting matured. Given the topography and screening provided by vegetation and existing development, longer distance views would be limited and glimpsed. In combination with the distances involved, resulting visual effects on these views would be very limited. Noting also that the development would not be visible from within the High Weald Area of Outstanding Natural Beauty ('the AONB'), I am satisfied that the natural beauty and special qualities of the AONB would be conserved.

24. Interested parties have referred to a dismissed appeal relating to a stable building/tractor store on the site¹ where the development was found to contribute to urbanisation of open countryside at the fringe of Framfield, and to harm the character and appearance of the rural locality. For the reasons above, I find that the current appeal would also be urbanising, and that the proposal for development in the countryside would result in some harm to the landscape character and appearance of the area. This weighs against the proposal.
25. However, I find having regard to the specific merits of the development and evidence now before me that the harm would be very localised, and I am satisfied that a suitable layout and design of development could be brought forward at reserved matters stage to respect the character of adjoining development and local distinctiveness in accordance with saved WLP Policy EN27. Over time, it would therefore assimilate well into the landscape. On this basis, it would not cause unacceptable harm to the setting of Framfield, and I further find given the localised and modest degree of harm that the character of the wider Low Weald landscape would be conserved overall as sought by saved WLP Policy EN8.

European Sites

26. European Sites designated under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') include Special Areas of Conservation ('SACs') and Special Protection Areas ('SPAs'). In circumstances where a proposal is likely to have a significant effect on a European Site, the Habitats Regulations impose a duty on the competent authority to consider implications for the conservation objectives of the Site within the framework of an Appropriate Assessment ('AA'). This duty would now fall to me.

Lewes Downs SAC and Pevensey Levels SAC and Ramsar Site

27. The Lewes Downs SAC is an important orchid site designated for the presence of semi-natural dry grasslands and scrubland facies on calcareous substrates. The Pevensey Levels SAC is designated for the presence of Ramshorn Snail, while the Pevensey Levels Ramsar site is listed for the assemblage of wetland plants and invertebrates, and for aquatic plants, freshwater molluscs, aquatic beetles and dragonflies. The conservation objectives for both SACs seek broadly to ensure that the integrity of the site is maintained or restored, including by maintaining or restoring the extent, distribution, structure and function of qualifying natural habitats and the habitats of qualifying species.
28. The appellant's Ecological Appraisal includes a 'Technical Appendix: Document to Inform a Habitats Regulations Assessment'. This outlines that there would be no likely significant effect on the Lewes Down SAC or on the Pevensey Levels SAC and Ramsar Site through habitat fragmentation and loss, urbanisation and recreational disturbance, hydrology and water quality or air quality effects as a result of the proposal, either alone or in combination with other plans and projects. The Council similarly confirmed at the Hearing that it considered there would be no likely significant effect on these sites. I have no firm reason to take a different view, and I am satisfied having regard to the evidence before me that likely significant effects on the Lewes Down SAC and the Pevensey levels SAC and Ramsar Site can be screened out.

¹ Appeal ref APP/C1435/C/11/2150502

Ashdown Forest SAC

29. The appeal site is around 6.9km from the Ashdown Forest SAC which is designated for the presence of European dry heath, North Atlantic wet heaths and great crested newts. The conservation objectives for the SAC seek broadly to ensure that the integrity of the site is maintained or restored, including by maintaining or restoring the extent, distribution, structure and function of qualifying natural habitats and the habitats of qualifying species.
30. Given the distance to the SAC, the proposal would not result in habitat loss or fragmentation, and the evidence before me indicates that the SAC qualifying habitats and species are not identified as vulnerable to recreational disturbance and nor would they be affected by drainage or water quality. Natural England has provided supplementary advice on conserving and restoring the SAC which outlines that the heathland habitat is sensitive to changes in air quality, and that exceedance of critical values for air pollutants may modify its chemical substrate, accelerate or damage plant growth, altering its vegetation structure and composition and causing the loss of typical heathland species.
31. One source of atmospheric pollution that could affect the SAC heathland habitat is vehicle emissions, and the Council has identified a potential impact pathway from increased traffic flows associated with the development on roads through, or adjacent to, the SAC. However, supplementary advice on conserving and restoring site features published by Natural England in 2019 highlighted expected future improvements to air quality and levels of nitrogen deposition as a result of improvements in vehicle technology and manufacture standards. The advice further outlined that nitrogen levels from additional transport associated with expected housing development in the surrounding areas would fall below the level that would reduce species richness on the SAC, even if the expected declining trend in nitrogen failed to materialise.
32. In addition, the Council published an emerging Local Plan in 2019 seeking to deliver, amongst other things, 14,228 homes. The emerging Local Plan has since been withdrawn, but the evidence before me indicates that Natural England were satisfied that the quantum of growth envisaged would not adversely affect the SAC through air quality impacts, and further that this conclusion could be reached without need for mitigation measures. The appeal proposes a quantum of growth considerably below that identified in the since withdrawn emerging Local Plan.
33. For these reasons and from the evidence before me, I am satisfied that likely significant effects on the Ashdown Forest SAC can be screened out, and that the proposal would not adversely affect the integrity of the European Site.

Ashdown Forest SPA

34. The Ashdown Forest SPA is designated for the presence of Dartford Warbler and Nightjar. The conservation objectives for the SPA seek broadly to ensure that the integrity of the site is maintained or restored and that the site contributes to achieving the aims of the Wild Birds Directive, including by maintaining or restoring the extent, distribution, structure and function of qualifying natural habitats and the habitats of qualifying species.
35. The evidence before me indicates that the SPA is vulnerable to recreational disturbance through damage to the qualifying species' habitat, and disturbance

to ground nesting birds. At a distance of around 6.5km from the SPA, the appeal site is within the area that surveys have shown most visitors to the SPA originate from. The development could therefore contribute additional visitors to the SPA, resulting in an increase in recreational pressure. This pressure, particularly when taken in combination with other plans and projects, could cause harm to the qualifying features of the SPA to the detriment of its conservation objectives.

36. In order to mitigate potential recreational effects of development on the SPA, the appellant proposes a financial contribution towards provision of Suitable Alternative Natural Greenspace ('SANG') according to a per dwelling tariff. The SANG contribution would be used to improve the visitor experience at the strategic SANG at Uckfield in order to displace recreational trips from the SPA. The Council has confirmed that the SANG has capacity to accommodate the recreational impact arising from the proposal, including sufficient parking which is not charged for. In addition, a contribution is proposed towards Strategic Access Management and Monitoring ('SAMM'), also on a per dwelling tariff basis. This would go towards monitoring of effects on the SPA and measures to manage these effects including education, access management as well as directing visitors towards SANG sites.
37. The contributions towards SANG and SAMM are secured through the s106 which also includes obligations on the Council to use the contributions for the purposes of mitigation of additional recreational pressures from the development on the SPA. I consider that the intended mitigation would be properly secured. I also consider having regard to the evidence before me that the contributions would be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. They would accordingly meet the tests for obligations set out at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 ('the CIL Regulations') which are also reflected within the Framework, and I have taken them into account.
38. An interested party has queried the effectiveness of SANG and SAMM. However, both are well-established measures which have been found to be effective as a general approach elsewhere. In addition, the SANG at Uckfield is much closer to the appeal site than the SPA, and I heard that visitor surveys carried out on behalf of the Council demonstrate that the mitigation measures are being successful in diverting visitors from the Ashdown Forest SPA. There is also provision through the SAMM contribution for monitoring to ensure continued effectiveness. Natural England has agreed the SANG and SAMM tariffs, and considers that they will effectively mitigate potential recreational impacts of the development. As the Government's advisor on nature conservation, and with responsibility for and significant experience in relation to these matters, I attach great weight to their advice, and do not find there to be compelling reasons to depart from their view that the mitigation would be effective and reliable in preventing harmful effects of the development on European Sites.
39. For these reasons and having regard to the mitigation secured through the s106, I concur with the AA undertaken by the Council that the scheme would not adversely affect the integrity of the SPA. Natural England has reviewed the Council's AA, and confirmed that providing the agreed mitigation is secured, it

is satisfied that the AA can ascertain that there will be no adverse effect on the integrity of the European Site in view of its conservation objectives.

40. I am satisfied that the AA undertaken by the council in relation to the SPA is suitably thorough and its conclusions rigorous and robust, and new information or evidence does not lead me to a different conclusion. As the competent authority for the purposes of the Habitats Regulations, I have therefore adopted the Council's AA in my determination of the appeal, and I conclude that the proposal would not harm the integrity of the SPA, either alone or in combination with other plans and projects.

Conclusion on European Sites

41. For the reasons given above and subject to the measures secured within the s106 to mitigate effects of the development on the Ashdown Forest SPA, I conclude that the proposal would not harm the integrity of any European Sites. The proposal would therefore accord with Policy WCS12 of the CS and saved Policies EN1, EN7 and EN15 of the WLP which together and amongst other things seek to safeguard designated nature conservation sites and avoid adverse effects on the integrity of the Ashdown Forest SPA and SAC.

Planning Obligations

42. I have considered the obligations within the submitted s106 in light of the tests within the CIL Regulations, and having regard to the evidence before me. This evidence includes a CIL Infrastructure Compliance Statement provided by the Council which sets out the justification for seeking the obligations and their accordance with the tests within the CIL Regulations.
43. In addition to the SANG and SAMM contributions which I have already considered, the s106 provides that 35% of dwellings would be affordable. This would be necessary to meet requirements at Policy AFH1 of the Wealden Affordable Housing Delivery Local Plan 2016. It would also be directly related to the development proposed and fairly and reasonably related in scale and kind to it.
44. There is provision that 5% of dwellings would be self-build or custom-build. Although this is not a development plan requirement, the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) require the Council to keep a self-build and custom housebuilding register, and establish a duty on relevant authorities to have regard to the register and to give permission to enough suitable serviced plots of land to meet the demand in their area. The Framework also advises that policies should reflect housing needs, including of people wishing to commission or build their own homes. The evidence before me indicates that there is unmet demand for self-build and custom-build housing in the area currently, and I am satisfied that provision as part of the development would be necessary. The Council advised that the 5% requirement reflects the scale of unmet need, and I have no firm reason to doubt that it would be directly related to the development proposed and fairly and reasonably related in scale and kind to it.
45. Further obligations would secure the provision and future management and maintenance of green infrastructure within the development; highway works including improvements to public footpaths, bus stops and footways along the B2102, and new crossing points; a travel plan and provision for auditing; and

financial contributions towards bus services and a Traffic Regulation Order. Although a Travel Plan would not normally be required for a development of this scale, it would help to encourage use of more sustainable modes of transport which would accord with the Framework, and which I consider would be necessary given the location of the site and my conclusions on the first main issue. On the basis of the evidence before me, I consider that all of these obligations would be required to address the impacts of the development, and I am satisfied that they would in each case be necessary to make the development acceptable in planning terms, directly related to the development proposed and fairly and reasonably related in scale and kind to it.

46. I find in light of the supporting information and evidence that is before me that each of the obligations in the s106 would comply with Regulation 122(2) of the CIL Regulations and the tests which are reflected in the Framework, and can be given weight. I have therefore taken them into account.

Other Matters

47. The appeal site is within the wider setting of the Framfield Conservation Area ('the CA') which includes a number of listed buildings, and there are further listed buildings in the vicinity of the appeal site at Framfield Grange and Grange Farm House. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have had special regard to the desirability of preserving the listed buildings and their setting or any features of special architectural or historic interest which they possess. I have also considered whether or not there would be harm to the significance of the CA through development within its wider setting.
48. However, the site is not part of the immediate setting of the listed buildings or the CA, and the topography of the area together with the presence of vegetation and intervening development means that these heritage assets do not have a direct visual relationship with the site. There is also no firm information to indicate any functional relationships or associative connections with the site. As a result, and given the lack of intervisibility between the site and the listed buildings and CA, I agree with the main parties that the proposal would preserve the setting and significance of these heritage assets.
49. The development would generate traffic, but the substantive evidence before me indicates sufficient capacity within the highway network to accommodate flows so that there would not be a significant increase in congestion. Although interested parties have commented that surveys were undertaken during the COVID-19 pandemic when traffic levels were lower and I note references to existing parking on The Street which causes a bottleneck, the survey data indicates considerable spare capacity to accommodate vehicle movements. East Sussex County Council ('ESCC') as the highway authority consider that the effect of additional vehicle flows on the highway network would be acceptable, and I have no firm reason to conclude differently.
50. The access to the site from the B2102 would be close to the existing access which serves Framfield Nursery and Old Nursery Cottage. Interested parties have raised concerns that there would be potential conflict between vehicles associated with the development and traffic accessing the adjacent Nursery site. I have also had regard to other concerns, including that visibility for vehicles turning into or out of the site would be poor resulting in danger and increased potential for collisions, noting comments referring to past incidents

that have occurred in the vicinity of the site. In doing so, I have noted a road safety audit submitted by an interested party, although it is not clear that this audit was conducted having regard to the full details of the access now proposed including swept path analyses.

51. However, the B2102 is not a trunk road or motorway, and surveyed 85th percentile vehicle speeds past the site were also less than 40mph. Because the design standards indicated by the Design Manual for Roads and Bridges guidance would not therefore be directly applicable, I do not consider a failure to fully comply with these standards to be compelling evidence that the access would be unacceptable. I appreciate that the surveyed 85th percentile vehicle speeds were above the existing 30mph speed limit and only slightly below 40mph, but the s106 provides for works to the existing highway including improvements to and additional chevrons and hazard marker posts, and additional warning signs. I have no firm reason to doubt the appellant's evidence that implementing such measures would be likely to be effective in reducing vehicle speeds.
52. Swept path analysis shows that refuse vehicles would be able to turn into and out of the site without incursion to the opposite carriageway of the B2102. The proposed access arrangements are also supported by independent road safety audit information which shows that the access would operate safely. This would be subject to the maintenance of vegetation to the east of the B2102 opposite the access to ensure necessary visibility, but this could be achieved within the highway boundary. The s106 also includes provision for implementation of parking restrictions by way of the Traffic Regulation Order Contribution which could address the recommendation within the audit for parking restrictions around the site access.
53. In addition, the appellant carried out a manual traffic count of the access serving Framfield Nurseries showing very low vehicle flows during two 24 hour survey periods, none of which were ordinary goods vehicles or heavy goods vehicles. An interested party has disputed these findings, but even on the basis of around 150 movements a week which they asserted was more usual, vehicle flows would still be very low. It was also suggested to me that potential for growth in operations at the Nursery could increase traffic further in future. However, I have no firm details to demonstrate likely levels, nor can I be sure that this would occur. In any event, even if existing or future traffic (including larger vehicle) movements using the Nursery access were higher than suggested by the appellant, I saw that intervisibility between the site access and the Nursery access is good. Accordingly, I do not consider this would be likely to result in conflict to the detriment of highway safety. Any delays associated with vehicles waiting for traffic using the adjacent site or Nursery access would be short, and given the likely levels of movements associated with the appeal proposal, would not in my assessment be likely to result in significant congestion nor in other severe impacts on the highway network.
54. The highway authority is satisfied that the necessary visibility splays can be achieved, and has not objected to the proposal on grounds of highway safety, advising that its initial concerns had been overcome. I give significant weight to its position as the relevant statutory consultee, and from the evidence before me find no compelling reason to disagree with its views. Accordingly, I consider that there would not be unacceptable impacts on either the highway network or the safety of highway users.

55. Interested parties refer to existing pressure on local services and infrastructure. However, the proposal would make CIL contributions which could fund local infrastructure provision. No concerns or objections have been raised by ESCC as the local education authority, and there is no substantive evidence before me to demonstrate that the proposal would otherwise place undue pressure on education or other services, nor that it would result in a requirement for additional capacity that could not be met.
56. I have noted particular concerns in relation to sewerage capacity. I was informed that the existing pumping station to the west of the site discharges to a nearby ditch when it cannot cope with storm flows, and that there had been an extended period during which effluent had to be removed by tanker causing significant noise and disruption to local residents. However, Southern Water is responsible for providing appropriate network capacity, and has considered potential additional flows from the development, advising that it would provide any network reinforcement necessary to mitigate additional flows associated with the development. A planning condition has been recommended to require a scheme for foul drainage works taking account of necessary works to upgrade infrastructure, and Southern Water would be able to plan and implement any necessary network upgrades alongside development to ensure that adequate capacity was in place to drain the development. Any discharges from the pumping station would be subject to permitting by the Environment Agency. There is also no detailed evidence that providers of other utility services would be unable to make provision to adequately supply the development without unacceptable impacts on existing connections in the area.
57. A number of representations refer to existing flooding locally including at the site access and on Becketts Way, and to an overland flow which crosses the site. However, the Council, and ESCC as the Lead Local Flood Authority, are satisfied in principle that sufficient drainage capacity can be accommodated as part of the development and that flood risk would not be unacceptably increased. Planning conditions have been recommended to require full details of drainage works and the overland flow which is to be retained on the site including restrictions on discharges from the site to surface or ground water, as well as details of future management and maintenance of the drainage. These conditions would mitigate flood risk as well as potential adverse water quality impacts, and I have no firm reason to reach a different conclusion to the Council and ESCC.
58. The proposal is also supported by an Ecological Appraisal which includes details of protected species surveys undertaken, as well as measures to mitigate the effects of development and enhance biodiversity. Subject to planning conditions to require further details and implementation of the identified mitigation and enhancement measures, there would not be unacceptable harm to wildlife or biodiversity.
59. The majority of trees and hedgerows at the site are indicated to be retained, and while some would be removed including to provide for access, these do not make a significant contribution to the character or appearance of the area. There would also be replacement planting as part of development which would be able to mitigate vegetation losses.
60. Occupiers of neighbouring dwellings would have views of the development. Subject though to new buildings being appropriately scaled and located as part

of the reserved matters, I am satisfied that suitable relationships could be achieved to ensure the proposal would not cause unacceptable loss of light, outlook or privacy. The proposal includes pedestrian connections from the site into Becketts Way, but there is no substantive information to show that use of this route by occupiers of the development would increase crime, and provision for parking within the site would be considered as part of reserved matters. Lighting on the site could be controlled by a planning condition, and in view of the residential nature of the proposal and its scale and relationship with nearby properties, I also consider that the development would be unlikely to result in noise or disturbance that would cause meaningful harm to nearby occupiers' living conditions. There would be potential for disturbance during the construction period, but any effects would be short-term, and could be mitigated by careful construction management with details secured by a planning condition.

61. I note comments referring to other permitted or ongoing developments in the area, including a large scheme to the south of Uckfield. However, the evidence before me indicates that current requirements for housing are not being met, and there is no firm information to show that the proposal taken cumulatively with other development in the area would result in unacceptable impacts that would warrant dismissal of the appeal. I have also noted that the appeal site was not considered suitable for housing within the Strategic Housing and Economic Land Availability Assessment 2019 which was prepared to inform the draft Wealden Local Plan. However, this was prepared in the context of a lower annual housing requirement than would currently apply. Moreover, I have considered the appeal having regard to the specific merits of the development now proposed and the evidence before me.
62. I have taken into account the representations made by interested parties including Framfield Parish Council, but I am satisfied that none of the other matters raised would result in a level of harm that would justify dismissal of the appeal, either individually or collectively, and they do not alter my findings on the main issues.

Planning Balance

63. Although I heard from an interested party that the Council has granted planning permissions in excess of requirements, the Council is currently unable to demonstrate a five year supply of deliverable housing. It suggests that the supply position is 3.66 years. The appellant considers the supply position to be 2.78 years, and asserts that a number of sites within the 'major development with outline planning permission' element of the Council's identified supply should be excluded as they were not permitted during the relevant base period, or would not be deliverable as defined by the Framework and Planning Practice Guidance. In the absence of further substantive evidence from the Council to demonstrate that these sites would be deliverable and should appropriately be considered as part of the identified supply, I lean towards the appellant's view. Even if I were to accept the Council's position though and find the supply to be 3.66 years, it is common ground between the main parties that the shortfall is substantial, and I agree with this assessment.
64. In the absence of a five year supply of deliverable housing, the Framework indicates that the policies which are most important for determining the application are deemed to be out-of-date. As a consequence, and irrespective

of the reasons for the current shortfall, the presumption in favour of sustainable development test set out in paragraph 11(d) of the Framework is engaged. There are no policies in the Framework that protect areas or assets of particular importance which would provide a clear reason for refusing the development, and the presumption therefore provides that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

65. The location of the site within the countryside would result in conflict with saved Policies GD2 and DC17 of the WLP, and the proposal would be contrary to the distribution of growth indicated by Policies WCS2 and WCS6 of the CS. However, the proposal would accord with the Framework insofar as it seeks to actively manage patterns of growth and promote sustainable travel while also supporting the vitality of rural communities. Furthermore, saved Policies GD2 and DC17 provide a level of blanket protection for the countryside, and I agree with the main parties that this is inconsistent with the Framework's more nuanced approach of recognising the intrinsic character and beauty of the countryside. These policies of the WLP and CS were also prepared in the context of the lower level of housing that was required at the time that the plans were prepared. In the absence of a 5 year supply, current housing requirements are not being met, and a rigid application of these policies would frustrate attempts to address the deficit in housing supply. Accordingly, I agree with the main parties that these policies are out of date, and I afford limited weight to the conflict with them.
66. I have also found that there would be some harm to the overall landscape and the character and appearance of the area. Although I have found no material conflict with saved Policies EN8 or EN27 of the WLP, this would be contrary to the Framework insofar as it seeks development that recognises the intrinsic character and beauty of the countryside. Nevertheless, the harm would be modest and localised, and the development would assimilate well with its surroundings over time. Moreover, it is clear that requirements for housing are not currently being addressed within the built-up areas, and the adverse effects of the proposal largely stem from the almost inevitable consequences of development on open countryside.
67. Conversely, the proposal for up to 58 dwellings on the site would make a relatively small, but nevertheless important contribution to reducing the housing supply shortfall. The Council has proposed a shorter than usual timescale for implementation of any permission granted, and I have little reason to doubt the appellant's comments at the Hearing that there are no obstacles to delivery and that the development would be brought forward within a reasonable time period. With regard to the Framework which includes objectives seeking to significantly boost the supply of housing, I afford substantial weight to the benefit of additional housing delivery.
68. In addition, the evidence before me shows that delivery of affordable housing in the district has been substantially below the level of identified need for at least the last few years, and the main parties agree that there is an acute need for more affordable homes in Wealden. The proposal includes 35% affordable housing which would provide for up to 20 affordable homes, and I afford substantial weight to this benefit. I also give significant weight to the provision

for 5% of dwellings as self-build or custom-build which would contribute to meeting needs.

69. There would be direct and indirect economic benefits of the development, both short-term during construction and longer-term on occupation. These would include employment opportunities in construction and the supply chain, as well as expenditure by future occupiers. Spend in the rural area may be fairly limited given the available services, but there would still be a contribution to the economy, and the Framework indicates that significant weight should be placed on the need to support economic growth and productivity. That said, employment opportunities would be largely temporary, and I am not persuaded that tax revenues would be a benefit of the proposal as they would reflect additional demand placed on services. In addition, I have not been provided with evidence to show how new homes bonus would confer a benefit directly related to the development. I therefore give moderate weight to the economic benefits of the proposal. In addition, I give moderate weight to the proposed contribution to bus service improvements which would be a benefit to the wider community who may also rely on these services, and could also potentially encourage new users.
70. The proposal includes green infrastructure and open space on areas that are currently inaccessible to the public, including close to dwellings on Becketts Way which could be of benefit to the existing community, particularly given improvements to footpath connections. However, the provision would in part be required to address the landscape and visual impacts of the proposal and to make the development acceptable in planning terms, and I was advised at the Hearing that a recent assessment identifies that there is no longer a quantitative shortfall in open space provision locally. These factors limit the weight that I afford to this as a social benefit. Even so, the green infrastructure could play a role in supporting biodiversity, and the appellant has proposed a biodiversity net-gain overall which could be secured by a planning condition.
71. Taking account of all of the above, the modest adverse impacts of the development would not in my judgement come close to significantly and demonstrably outweighing the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development set out in paragraph 11(d) of the Framework therefore applies and indicates that permission should be granted. Although the proposal would conflict with the development plan when it is read as a whole, the harm would be limited, and would in my assessment be outweighed by material considerations including the Framework which indicate that a decision should be taken contrary to the development plan.

Conditions

72. I have considered suggested conditions in light of the discussion and amendments proposed at the Hearing, and against the tests at paragraph 56 of the Framework. Where necessary, I have made minor amendments for clarity, brevity or to ensure compliance with the relevant tests including to omit unnecessary prescription of details that would be a matter for the Council to consider as part of the assessment of future submissions. I have also combined some conditions in the interests of succinctness.
73. I have attached conditions relating to the submission of reserved matters and the time limits associated with this (1, 2, 3), and a condition specifying the

relevant plans (4) for the avoidance of doubt and in the interests of certainty. The time limit conditions are shorter than standard owing to the pressing need for housing that the proposal would help to address, and the appellant has agreed to these. I have also imposed a condition to require that 65% of the dwellings are market housing (5) which is necessary to ensure CIL contributions towards the provision of infrastructure. However, it is not necessary to require details of the location of the market dwellings since this would be apparent through the Affordable Housing Scheme required under the s106.

74. A condition regarding archaeological investigation (6) is necessary to safeguard heritage assets of archaeological interest. A condition to require a Construction Management Plan (7) to include details of delivery and construction working hours is necessary in the interests of highway safety and the living conditions of nearby occupiers, while a condition regarding the protection for retained trees (8) is necessary to safeguard these trees and in the interests of the character and appearance of the area. Conditions regarding surface water drainage (9) and future management and maintenance of this drainage (10) are necessary to ensure adequate provision and that flood risk would not be increased. I have also imposed a condition relating to the delivery of biodiversity net gain (11) which is necessary to ensure that this suggested benefit of the development is realised, and conditions relating to contamination (12, 13, 14) which are necessary to safeguard health and the environment. To ensure that they are effective and that details which could affect how development is carried out are satisfactory, it is necessary for the requirements of Conditions 6 through 12 to be addressed prior to the commencement of development.
75. I have imposed a condition requiring the construction of the access junction from the B2102 in advance of other works taking place (15) to ensure adequate access during construction as well as on occupation. However, I do not consider that a condition relating to the access gradient would be necessary given that the design detail and standard of the access would be a matter for the Agreement with the Highway Authority under section 278 of the Highways Act 1980 that would be required by the s106.
76. A condition relating to foul drainage (16) is necessary to ensure that there would be adequate provision to serve the development, and further conditions relating to the overland flow which is to be retained (17), surface water outfall (18) and discharge to groundwater or surface water (19) are necessary in the interests of flood risk and water quality. A condition to require water and energy efficiency measures (20) is necessary in the interests of environmental sustainability. Conditions regarding wildlife management (21), lighting design (23) and to require works in accordance with the recommendations of the Ecological Appraisal submitted with the application (24) are necessary in the interests of biodiversity, the character and appearance of the area and the living conditions of neighbouring occupiers. Finally, I have attached conditions to address air quality which are necessary in the interests of health and the natural environment (22, 25).
77. Further conditions were suggested relating to the details of roads, footways and parking within the site, and requiring a landscape management plan. However, these relate to the layout and landscaping of the development, and so can be addressed in the consideration of future reserved matters applications for these aspects or through the imposition of conditions on a

reserved matters approval. These conditions are therefore unnecessary, and I have not imposed them.

78. An additional condition was put forward at the Hearing to require development in general conformity with the parameter plans. However, I am concerned that reference to 'general conformity' could be insufficiently precise as to what would be required. The Council would also be able to consider the details of any proposal as part of a future reserved matters application, and from the information that is before me, I do not consider that such a condition would in this case be necessary. I have not therefore imposed it.

Conclusion

79. For the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than the expiration of two years from the date of the grant of this outline permission.
- 3) The development hereby permitted shall commence not later than the expiration of one year from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
2833.1-A-1000-PL Rev C (Location Plan) 15 March 2021
1904062-16 (in Technical Note Access Arrangements) 22 July 2021,
1904062-17 (in Technical Note Access Arrangements) 22 July 2021,
1904062-18 (in Technical Note Access Arrangements) 22 July 2021 and
1904062-TK04 B (in Technical Note Access Arrangements) 22 July 2021.
- 5) The development shall include 65% of dwellings as market dwellings.
- 6) No development shall take place until the applicant has secured the implementation of a programme of archaeological works in accordance with a Written Scheme of Investigation which has first been submitted to and approved in writing by the Local Planning Authority.

No part or phase of the development hereby permitted shall be first occupied until the archaeological site investigation and post investigation assessment (including provision for analysis, publication and dissemination of results and archive deposition) for that part or phase has been completed in accordance with the programme set out in the approved Written Scheme of Investigation,

and the post investigation assessment has been submitted to and approved in writing by the Local Planning Authority.

- 7) No development shall take place, including any ground works or works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to in full throughout the entire construction period. The Construction Management Plan shall include details of;
 - a) the anticipated number, frequency and types of vehicles used during construction,
 - b) the method of access and egress and routeing of vehicles during construction,
 - c) the parking of vehicles of site operatives and visitors,
 - d) the loading and unloading of plant, materials and waste,
 - e) the storage of plant and materials used in construction of the development,
 - f) the erection and maintenance of security hoarding,
 - g) wheel washing facilities,
 - h) works to mitigate the impact of construction upon the public highway (which may include the provision of temporary Traffic Regulation Orders),
 - i) details of public engagement both prior to and during construction works,
 - j) scheme for the control of noise and dust,
 - k) delivery hours and construction phase working hours, and,
 - l) measures to manage flood risk, both on and off the site, during the construction phase.
- 8) No development shall take place, including any groundwork preparation, until a detailed, scaled Tree Protection Plan ('TPP') and related Arboricultural Method Statement have been submitted to and approved in writing by the Local Planning Authority. The TPP and Arboricultural Method Statement shall include details of the specification and location of exclusion fencing, ground protection and any construction activity that may take place within the Root Protection Area of trees shown on the TPP including installation of service routings and site access. All works shall be carried out in accordance with the approved details.
- 9) No development shall take place until a detailed surface water drainage system has been submitted to and approved in writing by the Local Planning Authority. The surface water drainage system shall incorporate the following:
 - a) Detailed drawings and hydraulic calculations which shall take into account the connectivity of the different surface water drainage features. The calculations shall demonstrate that surface water runoff from the proposed development shall be limited to greenfield runoff rates for rainfall events, including those with a 1 in 100 (plus climate change) annual probability of occurrence. An allowance for urban creep (recommended 10% increase in impermeable area) shall be incorporated within the calculations.
 - b) Details of the outfalls of the proposed surface water attenuation structures and how they connect into the watercourses including cross sections and invert levels, and details of the receiving watercourse's connectivity with the wider watercourse network.

- c) The detailed design of the surface water attenuation structures which shall be informed by findings of groundwater monitoring between autumn and spring. The design should leave at least 1m unsaturated zone between the base of the drainage structures and the highest recorded groundwater level. In the event that this cannot be achieved, details of measures which will be taken to manage the impacts of high groundwater on the hydraulic capacity and structural integrity of the drainage system shall be provided.
- d) Details of the measures proposed to manage exceedance flows.
- e) Details of measures to prevent the discharge of surface water from the site onto the public highway and, similarly, to prevent the discharge of surface water from the highway onto the site.
- f) Details of how existing overland surface water flows have been retained.
- g) Retention of existing watercourses on site within a communally maintained space.

The drainage shall be provided in accordance with the approved details, and the development shall not be occupied until evidence (including as built drawings and photographs) has been submitted to and approved in writing by the Local Planning Authority showing that the drainage system has been constructed in accordance with the approved details and drainage designs.

- 10) No development shall take place until a maintenance and management plan for the entire surface water drainage system approved under condition 9 has been submitted to and approved in writing by the Local Planning Authority. The maintenance and management plan shall include the following:

- a) details of who will be responsible for managing all aspects of the surface water drainage system, including piped drains, and
- b) evidence of how these responsibility arrangements will remain in place throughout the lifetime of the development.

The development shall thereafter be maintained and managed in accordance with the approved plan for the lifetime of the development.

- 11) No development shall take place until a biodiversity enhancement strategy has been submitted to and approved in writing by the Local Planning Authority demonstrating how at least a 10% net gain in biodiversity can be delivered. The development shall be carried out in accordance with the approved details.

- 12) No development below ground level shall take place until an investigation and risk assessment to assess the nature and extent of any contamination on the site, whether or not it originates on the site, has been undertaken in accordance with a scheme which has first been submitted to and approved in writing by the Local Planning Authority.

A written report of the findings of the investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority, and shall include:

- a) a survey of the extent, scale and nature of contamination;
- b) an assessment of the potential risks to:
 - i. human health
 - ii. property (existing or proposed) including buildings, crops, livestock, pets, woodland, and service lines and pipes
 - iii. adjoining land

- iv. ground waters and surface waters
- v. ecological systems
- vi. archaeological sites and ancient monuments;
- c) an appraisal of options for remediation (where necessary) and proposal of the preferred option(s).

13) Where the written report of the findings of the investigation and risk assessment pursuant to condition 12 identifies that remediation is necessary, no development below ground level shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property, and the natural and historic environment has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

The approved remediation scheme shall thereafter be carried out in accordance with its terms prior to the commencement of development, other than that development required to carry out remediation, and the Local Planning Authority shall be given two weeks' written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority.

14) In the event that contamination that was not previously identified is found at any time when carrying out the development hereby permitted, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be undertaken in accordance with the requirements of Condition 12, and, where remediation is necessary, a remediation scheme shall be prepared in accordance with the requirements of Condition 13. The investigation and risk assessment and remediation scheme shall be submitted to and approved in writing by the Local Planning Authority, and thereafter carried out in accordance with the approved details.

15) The access works at the junction of the site with the B2102 shall be constructed in accordance with the details shown on approved plan nos 1904062-17 (in Technical Note Access Arrangements) 22 July 2021 and 1904062-18 (in Technical Note Access Arrangements) 22 July 2021 prior to the commencement of any other development hereby permitted.

16) No preparation of ground levels of the development hereby permitted shall take place until a scheme for the provision and implementation of foul drainage works has been submitted to and approved in writing by the Local Planning Authority. The foul drainage works shall be implemented in accordance with the approved details, and any works required to upgrade the infrastructure sufficiently to provide adequate capacity for the development shall be implemented, before the buildings to which the foul drainage works relate are first occupied.

- 17) No preparation of ground levels of the development hereby permitted shall take place until details showing that the proposed site levels have been designed in a way that seeks to maintain the existing surface water overland flow through the site to the existing ordinary watercourse have been submitted to and approved in writing by the Local Planning Authority. The surface water flow route shall have safe flood depths and hazard rating within the site.

If circumstances arise where the overland flow path requires diversion, details of the proposed diversion of the existing surface water overland flow route through the development shall be submitted to and approved in writing by the Local Planning Authority including 2-dimensional surface water hydraulic modelling. This shall demonstrate that the expected surface water depths upstream and downstream of the development will not be increased. The diverted surface water flow route shall have safe flood depths and hazard rating within the site.

- 18) No construction of any surface water outfall shall take place until the results of a survey investigation of the condition of the watercourses which will take surface water runoff from the development, and details of any improvements required to their condition together with a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority. Any required improvements to the condition of the watercourses shall be implemented in accordance with the approved details and timetable.
- 19) There shall be no discharge of foul or contaminated drainage from the site into either the groundwater or any surface waters, whether direct or via soakaways. Prior to being discharged into any watercourse, surface water sewer or soakaways system, all surface water drainage from parking areas and hardstandings shall be passed through trapped gullies and silt traps to BS 5911:1982 (or an equivalent standard if replaced) with an overall capacity compatible with the site being drained.
- 20) No preparation of any groundworks or foundations for the development hereby permitted shall take place until full details of water and energy efficiency measures, the promotion of renewable energy and sustainable construction as part of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details prior to occupation and thereafter so retained.
- 21) No preparation of ground levels for the development hereby permitted shall take place until a wildlife management plan has been submitted to and approved in writing by the Local Planning Authority. The wildlife management plan shall include as appropriate detailed proposals for the protection of bats, birds, reptiles, great crested newts and badgers, and measures for the mitigation of any harm to them likely to be caused by the development. The development shall be carried out in accordance with the approved details.
- 22) No construction of the roof of any dwelling hereby permitted shall take place until a scheme for onsite/off site emissions off setting mitigation measures (in accordance with the development damage costs calculated within the submitted Air Quality Assessment (or any amended Assessment provided with the reserved matters detailing the number of dwellings to be provided) has been submitted to and approved in writing by the Local Planning Authority. The emissions off setting mitigation measures shall be provided in accordance with the approved details before the development is first occupied.

- 23) No floodlighting, security lighting or other external means of illumination shall be provided, installed or operated in the development, except in accordance with a detailed scheme which has first been submitted to and approved in writing by the Local Planning Authority, including details of predicted light levels at neighbouring residential properties. The scheme shall be implemented in accordance with the approved details and retained thereafter.
- 24) The development shall take place in accordance with the recommendations set out within the Ecological Appraisal March 2021 authored by Aspect Ecology Ltd (dated 5 March 2021). The approved details shall thereafter be retained.
- 25) The development shall take place in accordance with the recommendations set out within the Air Quality Assessment authored by Entran Limited (revision 1.2 dated 9 March 2021). The approved details shall thereafter be retained.

End of Schedule

APPEARANCES

FOR THE APPELLANT:

Zack Simons	of Counsel
Oliver Bell BSc, MSc, MRTPI	Nexus Planning
Ian Dix BSc (Hons), MSc, CMILT, MCIHT	Vectos
Alistair Baxter CEcol, CIEEM, MSc, MA(Oxon), BA (Hons)	Aspect Ecology
Keith Lancaster BA (Hons), MALA, LPC	Gateley Legal
Jon Seymour BA(Hons), PGDipLA, CMLI	ACD Environmental Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Declan Redman BSc (Hons), MA	Wealden District Council
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INTERESTED PARTIES:

Keith Brandon	Framfield Parish Council
Mike Gadd	Wealden Green Spaces
Ashley Jones	
Bernard Lillywhite	
Allen Rollings	(on behalf of Peter Tipping)
Peter Tipping	Framfield Nursery
Tony Wills	

DOCUMENTS SUBMITTED AT THE HEARING

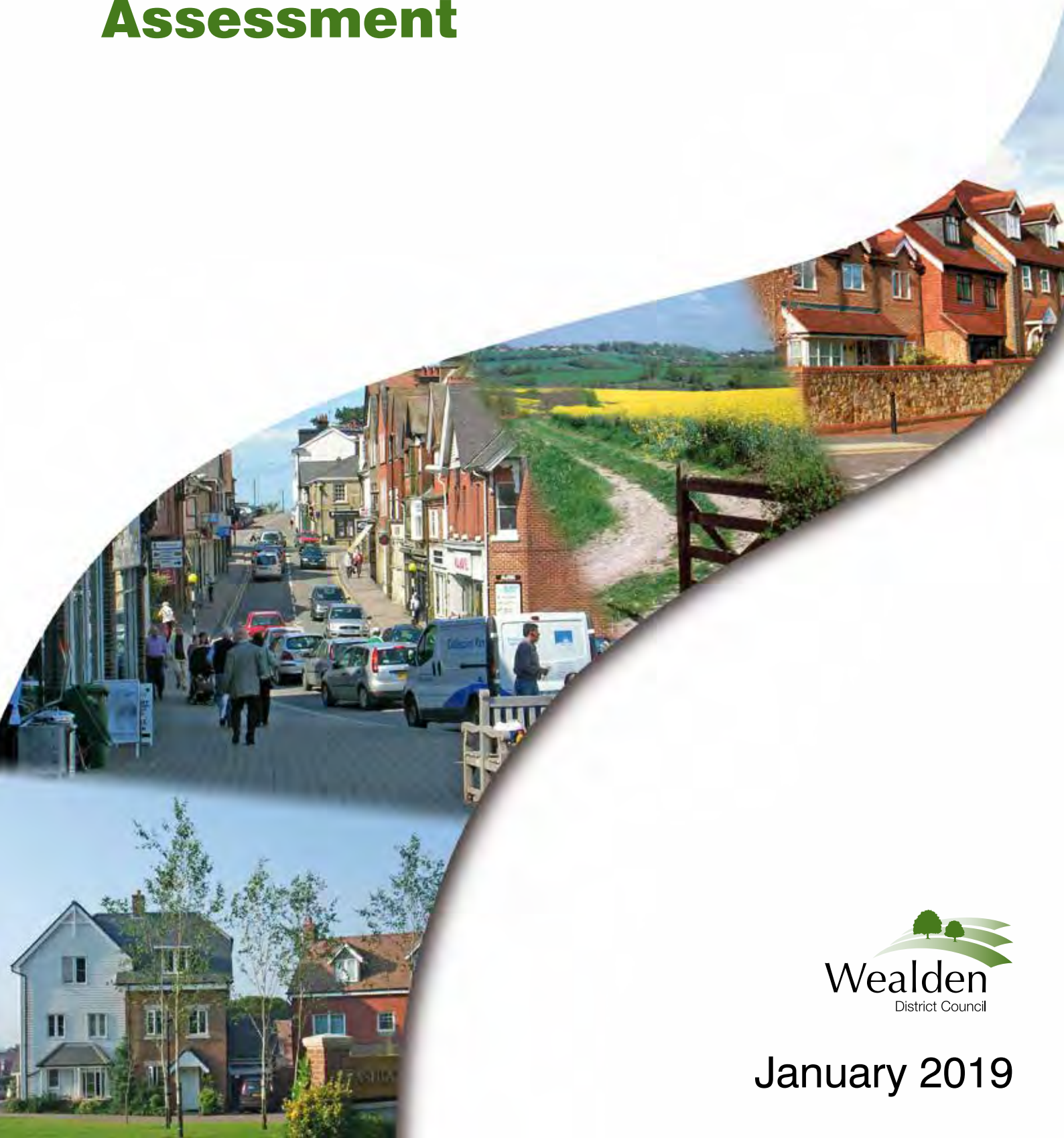
- 1 Ashdown Forest Special Protection Area (SPA) Strategic Access Management and Monitoring Strategy Tariff Guidance, submitted by the Council
- 2 Wealden District Council Local Plan Community Infrastructure Levy Background Paper 2: SANGS and SAMMS, submitted by the Council

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

- 1 Signed and executed planning obligation dated 20 December 2022, submitted by the appellant.

Wealden District Council

Strategic Housing and Economic Land Availability Assessment



How to Contact Us

Planning Policy

Wealden District Council

Council Offices, Vicarage Lane, Hailsham, East Sussex BN27 2AX

Telephone 01892 602008

E-mail: ldf@wealden.gov.uk

Website: www.wealden.gov.uk

Office hours Monday, Tuesday, Thursday, Friday 8.30am to 5.00pm and Wednesday 9.00am to 5.00pm

You may also visit the offices Monday to Friday, to view other Local Plan documents.

If you, or somebody you know, would like the information contained in this document in large print, Braille, audio tape/CD or in another language please contact Wealden District Council on 01323 443322 or info@wealden.gov.uk



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1. Executive Summary

- 1.1 This document is the Wealden District Council Strategic Housing and Economic Land Availability Assessment (SHELAA), January 2019. It supersedes all previous Strategic Housing Land Availability Assessments (SHLAA).
- 1.2 The SHELAA is an evidence base document used to support the development of planning policy documents including the Wealden Local Plan and to help inform emerging Neighbourhood Development Plans. The SHELAA is an assessment of land availability that identifies a future supply of land, which is suitable, available and achievable for housing and economic development uses. The SHELAA enables the Council to identify a sufficient supply of deliverable sites or broad locations within the time periods: 1-5 years; 6-10 years; and 11-15, as required by paragraph 67 of the National Planning Policy Framework (NPPF 2018). The majority of these sites have been brought forward to the Council by developers and land owners.
- 1.3 The findings of the SHELAA present a snap-shot of information held in the Council's SHELAA database at the time the report was published. The SHELAA is a living document and will be updated on a regular basis.
- 1.4 This report has been prepared in accordance with the National Planning Policy Framework (NPPF) that was published in July 2018, but is also compliant with the NPPF published in March 2012 that the Wealden Local Plan will be assessed against.

2. Important Note about the SHELAA

- 2.1 The SHELAA only identifies opportunities for housing and/ or employment development on sites that are considered suitable, available, available and achievable. It does not allocate sites to be developed. The allocation of sites for future housing and/ or employment development will be identified through Local Plans or Neighbourhood Development Plans. The SHELAA has been undertaken before any decision has been taken on the strategy to be included in the Council's Local Plan. The SHELAA is therefore an aid for plan making and not a statement of Council policy.
- 2.2 The level and location of housing development potential indicated in the SHELAA does not therefore indicate the level or location of housing growth that will be permitted in the District. It is merely the aggregate potential arising from the individual sites as presently identified and assessed.
- 2.3 The identification of potential housing sites within the SHELAA does not imply that planning permission would be granted if a planning application were to be submitted. The SHELAA is a high level assessment. All planning applications will continue to be considered against the

appropriate policies within the Development Plan, having regard to any other material considerations.

- 2.4 The inclusion of potential housing or employment sites within the SHELAA does not preclude them from being considered for other uses.
- 2.5 Site boundaries are based on the information available at the time of the assessment. The SHELAA does not limit an extension or contraction of these boundaries for the purpose of a planning application.
- 2.6 The site capacity for development is a high level assessment, taking into account factors known at the time of assessment. As a result site capacities may change when considered as part of planning policy or through a formal planning application.
- 2.7 The SHELAA includes sites suitable to accommodate five units or more. The exclusion of sites from the SHELAA which fall below this threshold does not preclude the possibility of a planning application being submitted and later granted. Suitable sites (particularly small sites) for residential development that have not been identified in the SHELAA will continue to come forward through the usual planning processes, including neighbourhood planning.

3. Introduction

- 3.1 The National Planning Policy Framework (NPPF) requires Local Planning Authorities to maintain an adequate supply of housing and employment sites within the area. As part of the local plan process, Local Planning Authorities must consider where housing development would be best located and assess all potential opportunities for development locations. The assessment contained within the SHELAA has assisted Wealden District Council (WDC) in the identification of potential locations for housing, either to be allocated through the Wealden Local Plan or to assist Parishes in the identification of sites to be considered for their emerging Neighbourhood Development Plans.

4. Background

- 4.1 Paragraph 67 of the National Planning Policy Framework (NPPF)(2018) requires Local Planning Authorities to prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and likely economic viability of land within their area. This is to enable them to maintain an adequate supply of housing land to meet their identified local housing needs. As part of this process, Local Planning Authorities must assess all potential opportunities for development to help identify which sites or locations are most suitable or deliverable for a particular use.
- 4.2 In addition, the National Planning Practice Guidance (NPPG) requires Local Planning Authorities to assess the existing and future supply of land available for economic development and its sufficiency and suitability to meet identified needs.
- 4.3 The SHELAA Planning Practice Guidance, last updated 13 September 2018, states that as a minimum a SHELAA assessment should:
 - Identify sites and broad locations with potential for development;
 - Assess their development potential; and
 - Assess their suitability for development and the likelihood of development coming forward (the availability and achievability).

- 4.4 This approach ensures that all land is assessed together as part of plan preparation to identify which sites or broad locations are the most suitable and deliverable for the use identified.

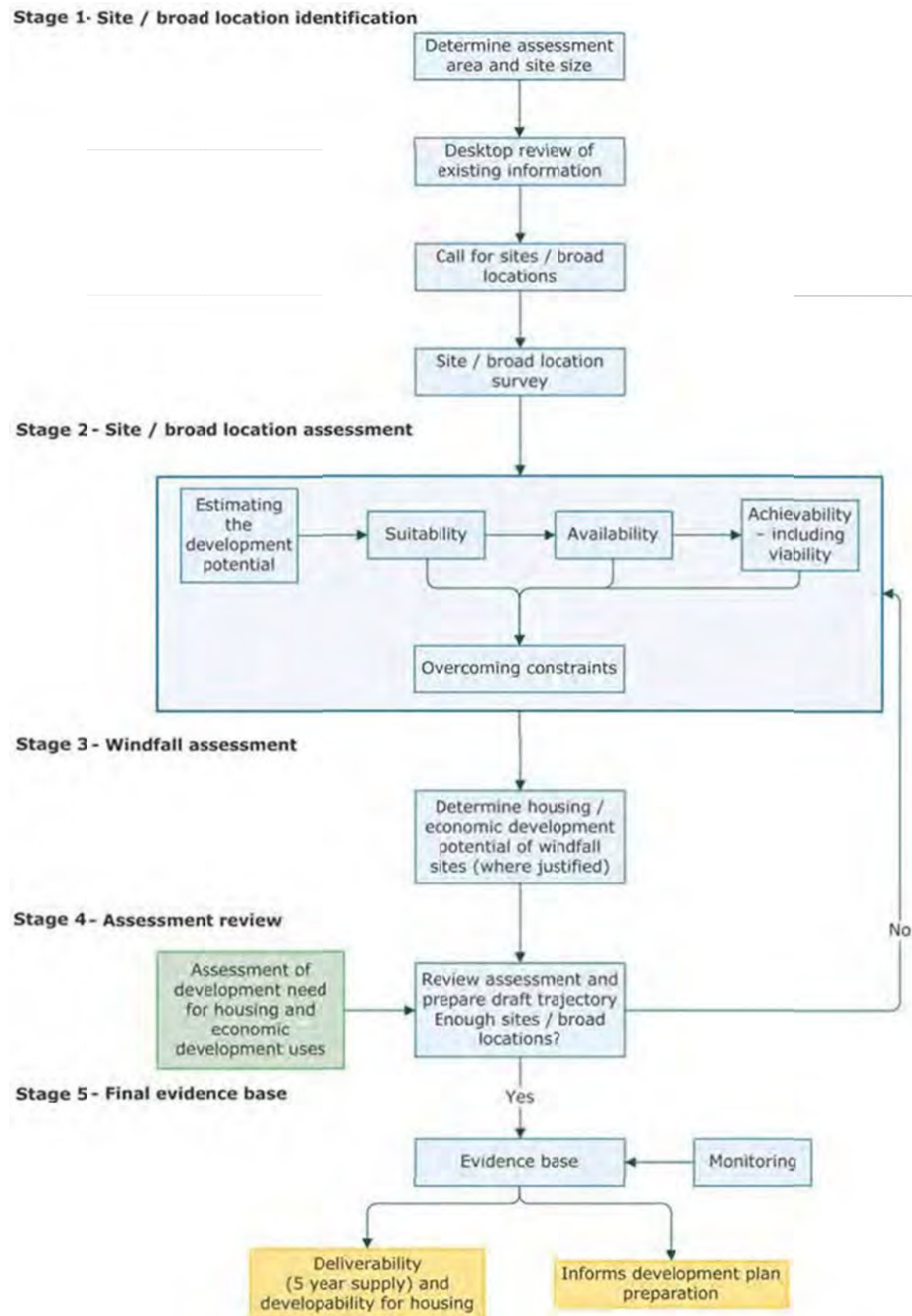
5. Progress to date

- 5.1 The Wealden Strategic Housing Land Availability Assessment (SHLAA) (March 2010) assessed the availability of land for housing development across the entire District and provided the Council with evidence to inform decisions on the strategic distribution of residential development in Wealden to 2027 to support the growth identified in the Core Strategy Local Plan which was adopted in February 2013. An addendum report was published in March 2010 which incorporated some additional sites and contained a number of factual updates, including further detailed feedback from infrastructure providers.
- 5.2 An Interim SHLAA statement was published in January 2012 to provide a partial update to the SHLAA published in 2010. It relates to sites where an update was considered necessary to support the choice of options for the Strategic Sites Issues and Options Consultation Paper (January 2012).
- 5.3 The last SHLAA to be published was in March 2014 to support the Strategic Sites Local Plan. The scope of the report was limited to those sites located within the Strategic Development Areas identified in the Core Strategy Local Plan (2013). The report incorporated some additional sites and contained a number of factual updates, including further detailed feedback from infrastructure providers.
- 5.4 Previous reports can be found on the Council's website at;
http://www.wealden.gov.uk/Wealden/Residents/Planning_and_Building_Control/Planning_Policy/Strategic_Housing_Economic_Land_Assess/PPolicy_SHELAA.aspx
- 5.5 The Council undertook a Call for Sites during the summer of 2014 to update evidence on land availability in Heathfield and the settlements identified in Policy WCS6 of the Core Strategy Local Plan (2013). This was undertaken to progress a Delivery and Sites Allocations Development Plan Document. However the Council subsequently decided to combine work on the Delivery and Site Allocations Local Plan with the review of the Core Strategy to create a new Local Plan, the Wealden Local Plan, and therefore submitted sites have been automatically carried forward to the SHELAA.
- 5.6 A further Call for Sites was undertaken between December 2014 and May 2015 to support the work on the emerging Wealden Local Plan. Since this time further sites have been submitted and have been assessed by the Council. Some of these sites have been submitted after a pro-active search for land by Wealden District Council.
- 5.7 This report contains a review of all sites submitted through the SHLAA process and all new sites submitted as part of the SHELAA process up to 15th November 2018 . This report also now contains an assessment of land available for economic development as per the requirements in the NPPG.

6. Methodology

- 6.1 The Council produced a SHELAA Methodology in March 2014 and the assessment follows the approach set out in the methodology. The Council's approach is consistent with the overall approach set out in the Planning Practice Guidance 'Housing and Economic Land Availability Assessment'. Figure 1 is the methodology flowchart provided in the NPPG.

Figure 1: Housing and Economic Land Availability Assessment flow hart



Stage 1 – Site/ broad location identification

Defining the area to be assessed

- 6.3 The Wealden Housing Market Area includes the adjoining authorities of Lewes District Council, Eastbourne Borough Council, Mid Sussex District Council, Rother District Council and Tunbridge Wells Borough Council. Several other Housing Market Areas overlap the Wealden Housing Market Area.
- 6.4 Wealden District Council has a different Local Plan timetable to its surrounding authorities with a number of overlapping housing market areas. Therefore the decision was taken to proceed with the SHELAA at a District level, undertaking regular liaison with the authorities in the Wealden Housing Market Area as it is this housing market area that has the greatest influence on the District.
- 6.5 The area assessed covers the whole of the Wealden District, with the exception of the part of the District within the South Downs National Park Authority (SDNPA). Sites submitted that fall within this area have been transferred to the SDNPA for assessment, as part of an agreement with the SDNPA.

The size of the site to be assessed

- 6.6 The assessment has included housing sites that are capable of accommodating 5 or more dwellings and commercial sites of 0.25 ha or more that could accommodate 500m² or more of floorspace (paragraph 010 NPPG Reference ID: 3-010-20140306). Smaller site thresholds were considered as part of the methodology; however, it was decided that owing to the size of the District and the potential for large greenfield sites that it was not necessary to assess smaller sites. A list of those sites considered too small for the assessment is set out in Appendix 1.

The type of site to be considered and sources of relevant information

- 6.7 Each site assessment has considered whether the site has certain land/habitat designations within them. These include: Sites of Special Scientific Interest (SSSI's); Special Protection Areas (SPAs); Special Areas of Conservation (SAC); scheduled ancient monuments; historic parks and gardens; and RAMSAR sites. These sites which have been excluded from assessment represent areas which are protected for international, European or national nature conservation or historical reasons. These designations form 24.39% of the total area of the District (including the part of the District within the South Downs National Park Authority).
- 6.8 Other designations which are noted in the site assessments are flood risk areas, Local Wildlife Sites (LWS), Areas of Outstanding Natural Beauty (AONB), defined heritage assets and areas of Ancient Woodland. Although development in these locations is not preferable, it may, in some instances, be possible to appropriately develop the site in accordance with national policy and mitigate adverse impacts through development design. Therefore sites containing these designations may still be considered suitable. These designations have been noted as a potential constraint, meaning the viability of certain sites could be impacted due to the additional remediation/ site preparation costs needed to mitigate any impacts.
- 6.9 Isolated sites separated from the edge of villages or towns in the District have been assessed as unsuitable due to their lack of proximity to existing services and facilities. Development of such sites is restricted by paragraph 55 of the NPPF 2012 (paragraph

79 of the NPPF 2018) and therefore the minimum site threshold could not be achieved.

Initial identification of potential sites and broad locations

- 6.10 A broad range of potential sources of information have been used to identify sites for the assessment.

Sites identified by the Council/ Parish Councils
<ul style="list-style-type: none"> - Land allocated for land uses which are no longer required for those uses; - Existing housing allocations; - Existing employment allocations ; - Sites with unimplemented planning permissions for housing or economic development; - Sites with planning permission for housing that are under construction; - Sites where planning permission has been refused or withdrawn – whilst a site may have been refused permission it has still been included as it may be possible to overcome those reason(s) for refusal at a later stage. For example, an application may have been refused previously on the grounds of density, meaning an application for fewer units on the same site could be feasible; - Vacant and derelict land and buildings; - Surplus public sector land and land within the Local Authority ownership; - Land in non-residential use which may be suitable for redevelopment such as commercial buildings.
Submitted Sites
<ul style="list-style-type: none"> - Sites submitted to the Council by individuals, land owners, agents or parish/ neighbourhood councils. All sites have been assessed in line with the SHELAA Methodology. - Two Call for Sites have been advertised; one in the Summer of 2014 focussing on the town of Heathfield and one between December 2014 and May 2015 to include the whole district and employment sites - All landowners who submitted sites under the SHLAA were contacted in 2015 to ascertain whether they would like their site to be carried forward to the SHELAA. - Targeted call for sites in Herstmonceux, West Hailsham and South Hailsham in 2016. - Details on the SHELAA together with a site assessment form have also been available on the Council's website.
Broad locations of search
<ul style="list-style-type: none"> - Large scale redevelopment and re-design of existing developed areas; - Sites in adjoining or rural settlements and rural exception sites; - Potential urban extensions; and - New free standing settlement options.

- 6.11 A number of sites have been granted planning permission and they are set out in Appendix 2. The suitability of these sites has been accepted through the granting of planning permission and it is not considered necessary to assess whether circumstances have changed which alter their suitability. A number of the sites are currently under construction or have been built out and for the remainder of the sites it is assumed that there is a clear intention by the developer to commence the development within years 1-5, unless otherwise specified.

- 6.12 In broad locations development may be considered feasible and could potentially be encouraged, however, sites may not have come forward in these locations or sites may have come forward, but in isolation, they would be unsuitable without additional land to sustain development. It is anticipated that sites within broad locations should come forward comprehensively, to ensure that adequate infrastructure would be in place.
- 6.13 As part of the preparation of the Wealden Local Plan, the Council produced the Wealden Local Plan Issues, Options and Recommendations consultation document (October 2015), which identified a number of options relating to housing growth across the District. These options included new settlements and large urban extensions at south Hailsham, west Polegate, Selveston, west Hailsham, north west Hailsham, Horam, Herstmonceux, Ninfield, East Hoathly, Isfield, west of A22 Uckfield, north west of A22 and Maresfield.
- 6.14 Broad locations for potential housing growth were also identified in; Hailsham, Hellingly, Polegate and Arlington, Polegate and Willingdon, Heathfield, Crowborough, Edge of Tunbridge Wells (in the parish of Frant), Stone Cross, Westham, Herstmonceux, Ninfield, East Hoathly, Horam, Mayfield and Wadhurst.
- 6.15 The consultation document also sets out a number of settlements where small scale growth could be accommodated. These areas include:
- Arlington; Boreham Street; Chiddingly; Hankham; Laughton; Muddles Green; Rushlake Green; Upper Dicker; Chalvington; Berwick Station; Bells Yew Green; Blackboys; Lower Horsebridge; Mark Cross; Maynards Green; Magham Down; Punnettts Town; Cross in Hand; Halland; Hellingly; Pevensey; Broad Oak; Five Ashes; Frant; Maresfield; Windmill Hill; and Ripe.
- 6.16 As part of the SHELAA assessment, some sites that are severed from a settlement have been identified as being unsuitable in isolation. However it has been identified where these sites could come forward as part of a comprehensive scheme, subject to other infrastructure considerations and any identified constraints being addressed, to create broad location for development.

Initial desktop review of site suitability and site surveys (where appropriate)

- 6.17 After sites were identified, an initial assessment of their potential suitability was carried out to assess each site against national planning policies to establish which have a reasonable potential for development and should be included in the site survey. Other factors were also identified including establishing potential accessibility, physical constraints, and surrounding land uses. The initial assessment was followed up through surveys where appropriate. The site surveys were used to ratify information gathered through the desk top assessment, to confirm the stage of development (i.e. if the site has planning permission), assess the potential scale and type of development which may be suitable on the site, identify issues which may affect deliverability and identify any additional sites which could have development potential that have not been identified through the call for sites or desktop work.
- 6.18 The site surveys utilised pro forma (Appendix 3) data sheets to record:
- the site size, boundaries and location;
 - current land use and character;
 - land uses and surrounding area;

- physical constraints;
- development progress; and
- an initial assessment of whether the site is suitable for a particular use or as part of a mixed use scheme.

Stage 2 – Site/ Broad Location Assessment

Estimating the development potential

- 6.19 Following the initial assessment of site suitability outlined above, more detailed consideration was given to the development potential of each site.
- 6.20 The suitability assessment of each site has been guided by national policy and guidance, the Wealden Local Plan and the current adopted development plan. In addition, market and industry requirements within the Wealden Housing Market Area have been taken into account through the viability assessments undertaken on each site.
- 6.21 The suitability assessment is based on a range of factors including:
- Physical limitations or problems (including access, infrastructure, ground conditions, topography, existing uses, adjacent uses, public rights of way, flood risk, hazardous risks, pollution or contamination);
 - Landscape impacts (for example Area of Outstanding Natural Beauty (AONB), the South Downs National Park, landscape features and nature);
 - Ecology (for example protected species, or Site of Special Scientific Interest (SSSI); and
 - Heritage (for example conservation areas, listed buildings, scheduled ancient monuments, or archaeology).
- 6.22 In terms of availability, a site can be considered to be available for development, when based on the best information available, there is confidence that there are no legal or ownership problems. This includes where the land is controlled by a developer or landowner who has expressed an intention to develop, or the landowner has expressed an intention to sell. However, the existence of a planning permission does not necessarily mean that the site is available. With regard to sites that were previously part of the SHLAA assessment, the landowner and/ or agent were contacted to determine whether the site is still available for consideration as part of the 2017 assessment. Where no response was received, the site's availability was listed as 'unknown'. If a constraint to development exists but this could be overcome in the longer term, then the site is classified as available but developable in the longer term (6-10 or 11+ years) depending on the nature or complexity of the constraints on the site.
- 6.23 In terms of achievability, a site is considered achievable for development if there is a reasonable prospect that the site will be developed at a particular point in time. This is a judgement about the economic viability of a site and the capacity of the developer to complete and sell the development over a certain period. External consultants were employed by the Council to assess the viability of the sites submitted. Further details can be found in the SHELAA Viability Report which is published on the Council's website.
- 6.24 Each site in the SHELAA has been assessed against the criteria above to determine whether it is suitable, available and/ or achievable. Each site has been subdivided into suitable and

not suitable sites.

Suitable sites

- Deliverable – sites considered suitable, available and likely to come forward in the short term (years 1-5).

- Developable – sites considered suitable in principle but that are likely to come forward in the longer term (6 -16 years). For example – they may not be currently be available but are likely to be made available or they may be dependent on provision of key infrastructure that won't be completed until 6 years or to the end of the Plan period.

- Not currently developable – sites considered suitable in principle but it is not known when they might be developed. For example because one of the constraints to development is severe and it is not known when or how it might be overcome.

Not suitable sites

- Sites considered not suitable for housing or employment use.

- 6.25 A summary of each site assessment is available in Appendix 3 and 4, together with a map delineating the boundary for each site.

Overcoming constraints

- 6.26 Each site assessment has had regard to several evidence base studies undertaken on behalf of the Council including the Landscape and Character Assessment Study 2014 (supplement 2016), South Wealden Growth Area and Wealden Local Plan Sites Landscape and Ecological Assessments 2017, and the Strategic Flood Risk Assessment. In addition East Sussex County Council were consulted on the highways impact and archaeological impact potential for each site.

- 6.27 Where constraints have been identified, due consideration has been given to how these might be overcome. The table below sets out constraints that have been identified and how these could be dealt with.

Constraint	Action required to overcome constraints
Potential sewage infrastructure capacity issues	Developers are required to demonstrate that there is adequate waste water capacity both on and off the site to serve the development and that it would not lead to problems for existing or new users. In some circumstances it may be necessary for developers to fund studies to ascertain whether the proposed development will lead to overloading of existing waste water infrastructure.
Conservation Area or Listed Building/ heritage constraint including development in their setting	Liaise with Wealden District Council and East Sussex County Council (ESCC) Archaeological team pre application to establish the level of impact, whether further studies are required to assess the impact and suitable mitigation measures. This should be fed into the design of the development.
Habitats Regulations Assessment screening	All sites will be subject to a Habitats Regulations Assessment. This will be undertaken at the local plan/ planning application stage in accordance with the legislation.

Development within or adjacent to an area of outstanding natural beauty (AONB)	<p>Paragraph 172 of the NPPF (2018) states that great weight should be given to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty (AONB), which have the highest status of protection in relation to landscape and scenic beauty. Paragraph 172 of the NPPF (2018) states that planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of:</p> <ul style="list-style-type: none"> - the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy; - the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and - any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated. <p>Development proposed in or adjacent to the AONB will have to provide evidence to establish it meets the criteria in paragraph 172.</p> <p>This exceptions test is undertaken as part of the local plan process. This is set out in the Development in the High Weald AONB paper published by the Council in January 2019. The SHELAA assessments took into account the landscape studies undertaken by the Council; Landscape and Character Assessment Study 2014 (supplement 2016), South Wealden Growth Area and Wealden Local Plan Sites Landscape and Ecological Assessments 2017.</p>
Potential contamination issues	Additional assessment should be undertaken to establish the level of the contamination and mitigation measures incorporated into the design of any scheme.
Potential ecological and landscape issues	Additional landscape and ecological studies should be undertaken to establish the level of constraint and mitigation measures incorporated into the design of any scheme. Regard should also be made to the High Weald AONB assessment and to the landscape studies undertaken by the Council.
Groundwater and surface water risk	Further assessment would be required on a site by site basis and mitigation measures incorporated into the design of the development. All new major development will be required to provide suitable SuDS schemes incorporated into the design of the development.

Tidal and Fluvial Flooding	Any housing site located in flood zone 2 and 3 will be subject to the sequential test, as appropriate, and suitable mitigation incorporated into any scheme if the exceptions test is passed. Any employment site in flood zone 3 will be subject to the sequential test, as appropriate, and suitable mitigation incorporated into any scheme if the exceptions test is passed. Housing and employment development in flood zone 3b (functional flood plain) are considered unsuitable for development (except water compatible uses and essential infrastructure where the exceptions test has been met).
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Timescales and rates of development

- 6.28 The estimated housing potential of all sites was assessed using indicative delivery rates. These rates are set out in the table below and have been estimated based on past experience within the District. It should be noted that there has been some variation to the delivery rates where the site has already commenced and it is known that the site will be delivered more quickly/slowly based upon previous monitoring years. Consequently, the table below has only been used as a rough guide for the District generally and that individual sites may be delivered quicker/slower than the rates provided. The latest delivery rates for individual sites with planning permission of more than 5 dwellings have been published within the latest AMR (2017/18) that was published in December 2018. It should be noted that each housing scheme will have individual constraints or delivery issues and that the rates below should only be used as a guide and will be iterated upon if required in future years.

Delivery Rates	
Site size	Delivery
0-100	25 p.a.
101-200	50 p.a.
201-400	75 p.a.
401-800	85 p.a.
>801	100. p.a.

Stage 3 – Windfall assessment

- 6.29 Paragraph 70 of the NPPF enables local planning authorities to make an allowance for windfall sites in their five year supply if they have compelling evidence that such sites have consistently become available in the area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the SHELAA, historic windfall delivery rates and expected future trends.
- 6.30 Windfall sites are defined as “sites that are not specifically allocated for development, which unexpectedly become available during the lifetime of a plan”. The Authority Monitoring Report (AMR) was published in December 2018, which outlined the level of windfall completions in the District from 2006/07 to 2017/18. The average windfall completions per annum are 253 net dwellings over that period and accounts for around 50% of housing development over that period.

Housing windfall completions in Wealden for the period 2006/07-2017/18

Year	Total completions	Total Windfalls
2006/07	230	230
2007/08	415	415
2008/09	349	265
2009/10	337	157
2010/11	709	358
2011/12	619	224
2012/13	674	244
2013/14	560	200
2014/15	576	205
2015/16	520	235
2016/17	564	308
2017/18	462	198
Total	6015	3039

Stage 4: Assessment review

- 6.31 The development potential of all sites (with the exception of those sites which currently have extant planning permission or are allocations) was collated to produce an indicative trajectory setting out how much housing development could potentially be provided at given points in the future (1-5, 6-10 and 11+ years) through the SHELAA.
- 6.32 This work also included a risk assessment to consider whether sites would come forward as anticipated. If a site is found unlikely to be delivered within the anticipated timescale calculated then the classification of the site was changed to reflect the most likely delivery rate.
- 6.33 The table below sets out the potential SHELAA site capacity for residential development in Wealden District in 5 year periods for the next 15 years in line with national planning policy and guidance above.

Summary of Housing Site capacity (number of dwellings) by settlement

Settlement	0-5 years	6-10 years	11+ years
Alfriston			
Arlington			
Ashurst			
Bells Yew Green	35		
Berwick			
Berwick Station	64		
Blackboys	15		
Blackham			
Bodle Street Green			
Boreham Street	10		
Broad Oak	20		
Buxted		40	
Chelwood Gate			
Chiddingly	6		
Cousley Wood			

Cross in Hand	59		
Crowborough	356	1332	219
Danehill			
Duddleswell			
East Hoathly	406		
Eastbourne	242		
Eridge			
Fairwarp			
Filching			
Five Ash Down	358		
Five Ashes			
Fletching	6		
Forest Row			
Framfield	34		

Frant	97		
Groombridge			
Hadlow Down			
Hailsham	2227	95	15
Halland	108		
Hankham	20		
Hartfield	5		
Heathfield	263	37	
Hellingly	741	284	
Hérons Ghyll			
Herstmonceux	39		
Horam	493		10
Isfield	10		
Laughton			
Little Horsted			
Lower Dicker			
Lower Horsebridge			
Lye Green			
Magham Down	60		
Maresfield	55	30	
Mayfield	20		
Maynards Green	16		
Ninfield	125		20
Nutley			
Old Heathfield			
Pevensey			
Pevensey Bay			
Piltdown			
Polegate	458		
Punnetts Town	31		
Ringles Cross	55		
Ripe	12		

Rotherfield			
Rushlake Green		7	
Selmeston			
Stone Cross	544		
Three Cups Corner			
Town Row			
Tunbridge Wells	446		
Uckfield	818	557	922
Upper Dicker	14		
Vines Cross	18		
Wadhurst	111	10	
Westham			
Willingdon	500	80	
Windmill Hill			
Withyham			
Grand Total	8200	2472	1142

6.34 The table below indicates which of the assessed sites are suitable for employment development including the gross site area for each site. The table does not indicate the net developable area of each site, which will be dependent on environmental constraints and existing uses and buildings within the site area. The net developable area will also depend on the type of business and other proposed uses for each site and whether any buildings will be subject to conversion or redevelopment and the land required for essential infrastructure and any car parking. Therefore the net developable area is likely to be materially less in most cases. The sites listed include those that could be suitable as part of a mixed use development scheme.

Summary of employment land capacity by settlement

Site ref.	Address	Postcode	Settlement	Parish	Site area (ha)
002/1410	Bird In Eye farm (South), Bird In Eye Hill	TN22 5HA	Uckfield	Framfield	9.27
010/3090	Land adjoining Rosendale, Hackhurst Lane	BN27 4BL	Lower Dicker	Hellingly	2
044/1310	Arlington Stadium, Arlington Road West	BN27 3RE	Hailsham	Hailsham	6.74
052/1310	Former Southern Water Sewerage Works, Station Road, Old Swan Lane	BN27 2BY	Hailsham	Hailsham	2.4
059/1610	Birchlands, Benhall Mill Road, Tunbridge Wells	TN2 5JW	Tunbridge Wells	Frant	1.09
080/3100	Rothwebis Nursery and Cobwebs, A271, London Road, Lower Horsebridge	BN27 4DH	Lower Horsebridge	Hellingly	0.81

083/3280	Intercon Scaffolding Yard & adjoining land occupied by Langsett, Rattle Road	BN24 5DS	Stone Cross	Westham	0.32
091/1310	Wellfield, 154 - 156 Station Road, Hailsham	BN27 2SB	Hailsham	Hailsham	0.63
113/1990	Willows Saw Mill, Millwood Lane, Maresfield	TN22 3AS	Five Ash Down	Buxted	1.22
114/3280	Land south of Onestack, Dittons Road	BN24 5ET	Stone Cross	Westham	3.71
126/1610	Land at Little Mount Farm, Benhall Mill Road	TN2 5JW	Tunbridge Wells	Frant	6.11
156/1840	Pound Green Nurseries, Pound Green	TN22 4JL	Buxted	Buxted	0.61
166/1510	North of field and adjoining land South of the Polegate Bypass and North of Dittons Road	BN26 6HX	Polegate	Polegate	2.16
180/1510	Hindsland Playing Fields, Eastbourne Road	BN20 9NU	Polegate	Willingdon/Jevington	6.46
184/3110	Land adjoining the former Red Lion PH (off A271)	BN27 1PN	Magham Down	Hailsham	2.22
202/3090	Swallow Business Park Phase 2, to the north of the A22	BN27 4BT	Lower Dicker	Hellingly	6.03
206/1620	Friday Street Farm, Oak Tree Lane, Friday Street	BN23 8BB	Eastbourne	Westham	47
220/3090	The Crofters and The Old Depot	BN27 4AN	Lower Dicker	Chiddingly	1.15
221/3360	Fairfield Farm, Eastbourne Road Westham	BN24 5NG	Westham	Westham	94.36
233/3090	Hackhurst Lane, Lower Dicker	BN27 4BL	Lower Dicker	Hellingly	1.04
236/3370	Mornings Mill Farm, Eastbourne Road	BN20 9NY	Willingdon	Willingdon/Jevington	62.34
247/3090	The Golden Cross Inn and Caravan Park, Golden Cross	BN27 4AW	Lower Dicker	Chiddingly	0.91
248/1820	Land West of the The Bulls Head and adjoining land	BN27 4SF	Boreham Street	Wartling	2.12
251/1790	Blackboys Inn and adjoining land	TN22 5LG	Blackboys	Framfield	3.21
255/1510	Land at and adjoining Honey Farm, Eastbourne Road	BN26 6QN	Polegate	Polegate	45.02
261/1510	Hindsland Fields (west), Eastbourne Road	BN20 9NU	Polegate	Polegate	1.83
271/1510	Land South of Aberdale Road	BN26 6JH	Polegate	Polegate	3.76
274/3390	Brick Farm, Windmill Hill	BN27 4RS	Windmill Hill	Herstmonceux	0.29
280/1110	Millbrook Garden Centre, Tubwell Lane, Jarvis Brook	TN6 3RJ	Crowborough	Crowborough	0.96

281/1110	Rockington Nursery, Blackness Road	TN6 2NB	Crowborough	Crowborough	2.04
287/1410	High Tree House, South- West of Eastbourne Road	TN22 5QE	Uckfield	Uckfield	4.13
294/1310	Hamlins Mill, Mill Road	BN27 2HY	Hailsham	Hailsham	0.24
305/1310	Bolneys Farm, South Road	BN27 3NU	Hailsham	Hailsham	3.57
461/1310	Amberstone Council Depot	BN27 1PH	Hailsham	Hailsham	0.58
467/1310	Land at Station Road	BN27 2EQ	Hailsham	Hailsham	1.06
470/1310	Fire Station, Victoria Road	BN27 2AY	Hailsham	Hailsham	0.15
527/1610	Land to the north east of Benhall Mill Road	TN2 5JH	Tunbridge Wells	Frant	0.63
529/3280	Dittons Nursery, Dittons Road	BN24 5EP	Stone Cross	Westham	5.94
534/3000	Sussex Plants Ltd and adjoining land, Park Road Nurseries, Park Road	BN27 1PB	Hellingly	Hellingly	9.21
538/1410	The Timber Yard, Lewes Road, Ridgewood	TN22 5SN	Uckfield	Uckfield	0.304
539/1410	Cress Farm, 20 Lewes Road, Ridgewood	TN22 5SN	Uckfield	Uckfield	0.28
547/1920	Land on the north west side of Fir Grove Road	TN21 0SS	Cross In Hand	Heathfield & Waldron	2.04
574/3000	Horselunges Business Park and Gros Fayt, Park Road/Mill Lane	BN27 4HD	Hellingly	Hellingly	0.95
579/3090	Land comprising Units 7 and 4 plus concrete hardstanding to rear, Hackhurst Lane, Lower Dicker	BN27 4BW	Lower Dicker	Hellingly	1.06
597/1210	Land at Heatherlea, Newick Lane	TN21 8PT	Heathfield	Heathfield & Waldron	2.13
602/3300	Land at The Ceders, Camberlot Road	BN27 3QH	Upper Dicker	Arlington	0.16
608/2090	Land at Collins Honda, Hailsham Road	BN27 4JU	Herstmonceux	Herstmonceux	0.52
609/2090	Land adj. to Collins Honda	BN27 4JU	Herstmonceux	Herstmonceux	1.4
614/3030	Land at The Old Brickyard, Chiddingly Road	TN21 0JJ	Horam	Horam	2.89
621/1310	Land at Hailsham Delivery Offices, 11 North Street	BN27 1DG	Hailsham	Hailsham	0.14
622/1510	Land at Royal Mail Delivery Office, 74 High Street	BN26 6AA	Polegate	Polegate	0.14
659/3090	Land at Lower Dicker Garden Centre	BN27 4BJ	Lower Dicker	Hellingly	1.73
660/1790	The Old Crown, High Street	TN22 5JR	Blackboys	Framfield	0.207
673/1110	Old Community Centre, Park Road	TN6 2RG	Crowborough	Crowborough	0.112

675/2070	Land at Peelings and Saxon Nurseries, Hankham Road	BN24 5AP	Hankham	Westham	7.38
677/3280	Land west of Dittons Nursery, Dittons Road	BN24 5EP	Stone Cross	Westham	1.97
685/2060	Land at The Halland Forge Hotel	BN8 6PW	Halland	East Hoathly	1.58
702/3330	Land at High Street	TN5 6AP	Wadhurst	Wadhurst	0.838
706/2060	Land south of Halland - Land with frontages to B2019, A22 Eastbourne Road and Back Lane, Halland	BN8 6PN	Halland	East Hoathly	2.514
724/1310	Land between Station Road and Old Swan Lane	BN27 2RU	Hailsham	Hailsham	5.814
728/1310	Land south of Hailsham -Site 1 Land East of Ersham Road (Ersham Park)-2-Land West of Station Road	BN27 3PN	Hailsham	Hailsham	49.659
748/1750	Land Adjacent to Court Lodge & Bells Yew Green Industrial Estate	TN3 9BJ	Bells Yew Green	Frant	1.31
784/3000	Land at Park Road,	BN27 1PB	Hellingly	Hellingly	1.29
799/3090	Rainbow Farm and Oak Tree Farm, Camberlot Road	BN27 3RH	Lower Dicker	Hellingly	5.89
800/3090	Careways	BN27 4BJ	Lower Dicker	Hellingly	1.34
802/3090	Land to rear of Terra	BN27 4BY	Lower Dicker	Arlington	1.54
803/3090	Land to the rear of Prospect House,	BN27 4BT	Lower Dicker	Hellingly	5.47
809/1310	Plumb Centre, 116 London Road	BN27 3AL	Hailsham	Hailsham	0.62
864/3090	Ades Farm, Lower Dicker, Hailsham, BN27 4BH	BN27 4BH	Lower Dicker	Hellingly	4.01
869/3090	Meadowsweet, Caldicotts Lane, Lower Dicker, Hailsham BN27 4BG	BN27 4BG	Lower Dicker	Hellingly	3.87
870/3090	Laurelhurst Farm, Lower Dicker, Hailsham, BN27 4BD	BN27 4BD	Lower Dicker	Hellingly	4.54
878/3300	Robins Nursery, Coldharbour Road, Upper Dicker, Hailsham BN25 2PX	BN25 2PX	Upper Dicker	Arlington	0.4
886/1210	Heathfield Ambulance Station, Burwash Road, Heathfield TN21 8RA	TN21 8RA	Heathfield	Heathfield & Waldron	0.09
888/3090	Land at Marigolds Farm	BN27 4AA	Lower Dicker	Chiddingly	0.35
903/1310	Land and access track to the rear of 168 Battle Road	BN27 1UE	Hailsham	Hailsham	0.809371
918/3120	Land at Oakwood Park, Maresfield	TN22 2EE	Maresfield	Maresfield	11.34
921/1630	Land to the south of the Woodland Centre, A22, Whitesmith, Lewes	BN8 6JB	Chiddingly (Other 1630)	Chiddingly	4.79

922/1880	Willetts Farm, Muddles Green, Chiddingly	BN8 6HR	Chiddingly	Chiddingly	4.75
941/1920	Land at Sunnyside	TN21 0SN	Cross in Hand	Heathfield & Waldron	0.57
955/1110	Crowborough Police Station, Crowborough Hill	TN6 2DA	Crowborough	Crowborough	0.224
956/1410	Uckfield Police Station, New Town	TN22 5DL	Uckfield	Uckfield	0.296

Results

- 6.35 The Wealden Local Plan (January 2019) through policy WLP1 (Provision for Homes and Jobs) sets out the objectively assessed need (OAN) requirement for the plan at 950 dwellings per annum with the overall housing target to be delivered of 14,228 dwellings (net) over the plan period from 1st April 2013 to 31st March 2028. The housing requirement is based upon a stepped housing trajectory under Policy 12 (Managing the Delivery of Housing) of the Proposed Submission Wealden Local Plan (August, 2018) that states that the Plan will deliver an average 750 (net) dwellings per annum until the end of the 2020/21 monitoring period and thereafter, an average of 1,179 (net) dwellings per annum until the end of 2027/28. Consequently, this equates to a 5 year requirement between 1st April 2018 and the 31st March 2023 of 4,608 (net dwellings). Adding on the additional 5% buffer required under paragraph 73 of the NPPF, the District's housing requirement for years 1-5 is 4838 units and a further 5895 dwellings for years 6-10, and 4750 for years 11-15 (reverting to the OAN for the last period).
- 6.36 The Council identifies 8200 dwellings on SHELAA sites that are considered 'deliverable' within years 1-5 and the assessment identifies 2472 units which the Council considers developable within years 6-10. The SHELAA therefore demonstrates that the Council has enough potential housing sites (with a surplus of 3592), to meet its five year housing requirements using the current OAN requirement set out in the Wealden Local Plan (January 2019). With regard to years 6-10 and 11-15 there is a shortfall of 3423 in years 6-10 and 4753 in years 11-15. It is unlikely that 8200 would be delivered within years 1-5 given previous housing delivery rates therefore the level of surplus from years 1-5 would roll over into years 6-10 to help meet the requirement for years 6-10. There are sufficient sites to meet the need identified for the ten year plan period set out in the Wealden Local Plan.
- 6.37 In addition, there are over 5,000 committed dwellings as of the 1st October 2017 (i.e. sites with planning permission), which have been identified in the table below by Parish and windfall development which is outlined in Stage 3 above, which could potentially add a further 258 dwellings per annum using the average over the period 2007/8 to 2016/17. This is enough to meet a ten year supply of housing sites as required through the NPPF. This additional supply beyond the annualised requirement will be called upon if the delivery rates projected in the District's current Housing Trajectory are stalled for any reason.

Table of commitments (as at 1st October 2017)

Parish	Commitment
Alciston	1

Arlington	26
Buxted	14
Chalvington with Ripe	38
Chiddingly	16
Crowborough	346
Danehill	2
East Hoathly	10
Fletching	7
Forest Row	15
Framfield	26
Frant	77
Hadlow Down	7
Hailsham	590
Hartfield	6
Heathfield and Waldron	283
Hellingly	675
Herstmonceux	171
Hooe	1
Horam	222
Isfield	22
Laughton	16
Little Horsted	6
Long Man	4
Maresfield	75
Mayfield and Five Ashes	28
Ninfield	81
Pevensey	1
Polegate	193
Rotherfield	29
Selmeston	3
Uckfield	1274
Wadhurst	89
Warbleton	13
Wartling	13
Westham	487
Willingdon and Jevington	393
Withyham	7
Total	5267

Stage 5 – Final Evidence base

6.38 This final report presents the Council's assessment of housing and employment land as of January 2019 and provides the information required by paragraph 28 (ID: 3-028-20140306) of the National Planning Policy Guidance.

7. Monitoring & Next Steps

- 7.1 A full review of the SHELAA will be undertaken regularly. This will feed into the ongoing development of the WLP and subsequently planning documents such as Neighbourhood Development Plan.
- 7.2 The SHELAA is a live document therefore if any member of the public, developer, landowner/ agent or Parish/ Town/ District councillor has any further information they would like to submit in relation to a site or if they have an additional site they would like to be put forward for inclusion in the SHELAA, the relevant information should be sent to the Planning Policy Team at:

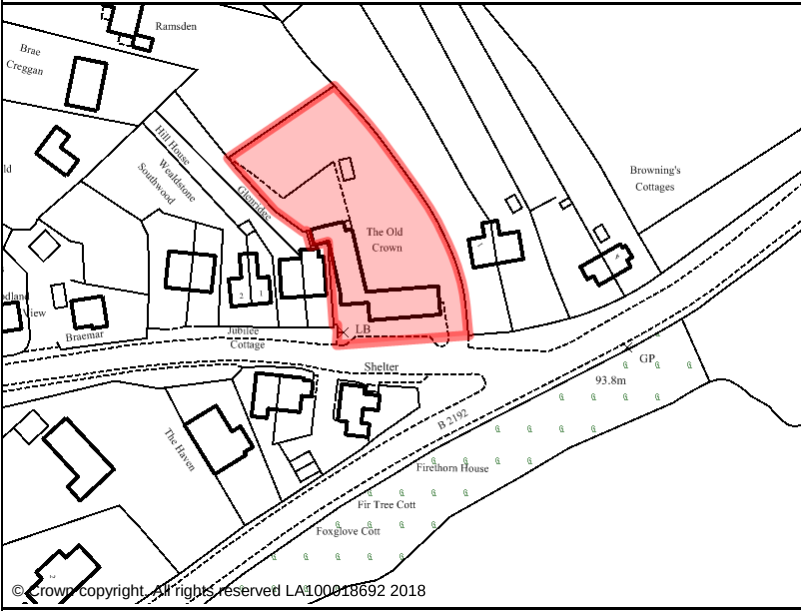
Email: shelaa@wealden.gov.uk

Post: Planning Policy, Wealden District Council, Vicarage Lane, Hailsham, BN27 2AX

- 7.3 This information will then be considered and (where appropriate) included within the next review of the SHELAA. The SHELAA Planning Practice Guidance requires the assessment, once completed, to be kept up to date (at least annually). Following publication of this SHELAA Report, the SHELAA process will be repeated annually. Further information on the SHELAA will be made available on the Planning Policy web pages:
www.wealden.gov.uk/shelaa

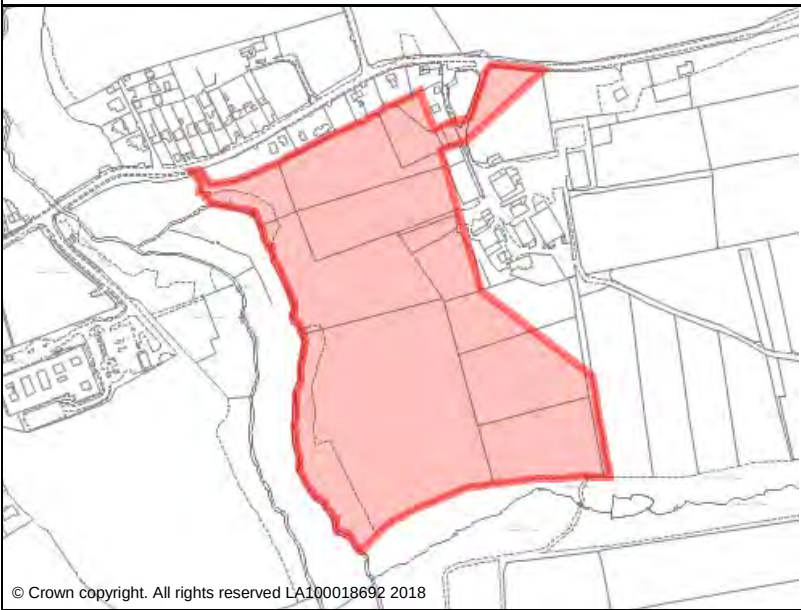
Appendix 5: Sites considered suitable for development

Wealden SHELAA Potentially Suitable Sites Summary

 <p>© Crown copyright. All rights reserved LA100018692 2018</p>	Plan showing whole extent of submitted site	Site Reference: 660/1790
		Settlement: Blackboys
		Parish: Framfield
		Address: The Old Crown, High Street
		Suitable for housing: Yes Suitable for employment: Yes Site available: Yes Site achievable: Yes Site Conclusion: Deliverable
		Site area (ha) Gross: 0.207 Site area (ha) Net: 0.2
Delivery Yr 1-5: 6		Delivery Yr 6-10: Delivery Yr 11+: Total Capacity 6

Reasons: The site comprises of office accommodation with associated parking in the former Old Crown public house. The site is generally well located in relation to existing services and local facilities in Blackboys to the east and pedestrian and vehicular access currently exists to the site. If residential development is sought on the site this would be at a loss to the existing employment provision on the site, the need for which would be required to be assessed by the Council against the policies in the Wealden Local Plan.

N.B. The SHELAA has been conducted in advance of decisions on the planning strategy in the WLP

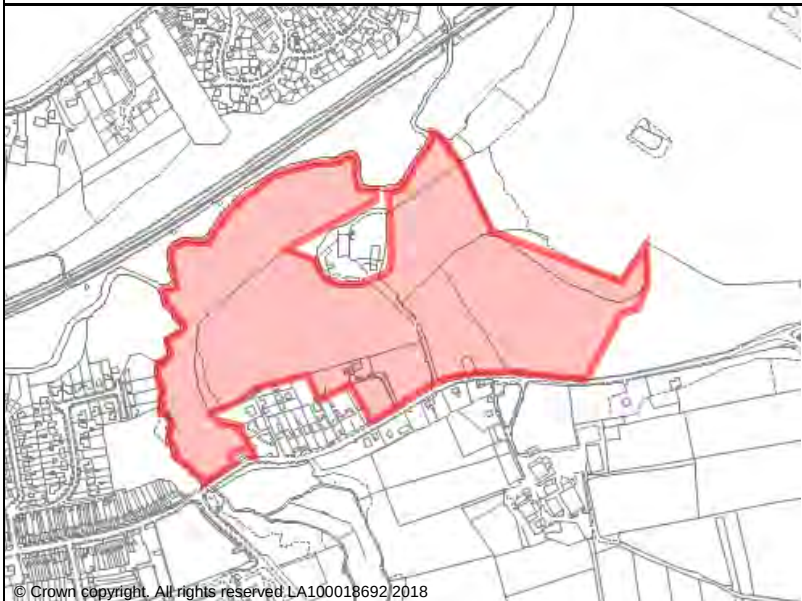
 <p>© Crown copyright. All rights reserved LA100018692 2018</p>	Plan showing whole extent of submitted site	Site Reference: 002/1410
		Settlement: Uckfield
		Parish: Framfield
		Address: Bird In Eye farm (South), Bird In Eye Hill
		Suitable for housing: Yes Suitable for employment: Yes Site available: Yes Site achievable: Yes Site Conclusion: Not currently devel
		Site area (ha) Gross: 9.27 Site area (ha) Net: 6.1
Delivery Yr 1-5:		Delivery Yr 6-10: Delivery Yr 11+: 197 Total Capacity 197

Reasons: This is a substantial site which comprises of sloping farmland located to the east

Wealden SHELAA Potentially Suitable Sites Summary

of Uckfield and generally facing towards the town and therefore visible from it. The B2102 adjoins the site to the north with scattered farmland to the south and east and the urban edge of Uckfield (including the Uckfield Hospital) to the west. This site was refused planning permission for housing by Wealden Council and a subsequent appeal was dismissed in 2008, taking account of circumstances existing at that time. The Inspector at the appeal for this site suggested that the site might be considered as a natural or logical extension to the urban area. In view of the existing landscape features, any development would need to introduce a strong and reinforced landscape framework to the site to complement the form and layout of any scheme. A small part of the site to the west is within Flood Zone 3, and this has been excluded from the site area. The development of this site for housing would require the provision of a new vehicular access and also pedestrian/cycle links towards the town centre. Off-site improvements would also be necessary to the Framfield Road to ease traffic movements to and from the town centre, as well as improvements within the town centre itself. Directly adjacent to the site at the main Bird-in-Eye Farm is a Listed Farmhouse. However the design and layout of any scheme could ensure that the setting of this building is not materially harmed. The site is within 7km of the Ashdown Forest SPA therefore if the site were to come forward for development it would require a Habitats Regulations Assessment.

N.B. The SHELAA has been conducted in advance of decisions on the planning strategy in the WLP

Plan showing whole extent of submitted site	Site Reference: 127/1410		
	Settlement: Uckfield		
	Parish: Framfield		
	Address: Land at Bird In Eye (North), Framfield Road/ Bird In Eye Hil		
	Suitable for housing: Yes Suitable for employment: No Site available: Yes Site achievable: No Site Conclusion: Not currently devel		
	Site area (ha) Gross: 14.27 Site area (ha) Net: 8.31		
Delivery Yr 1-5:	Delivery Yr 6-10:	Delivery Yr 11+: 300	Total Capacity 300

Reasons: This site was refused planning permission for housing by Wealden Council and a subsequent appeal was dismissed in 2008, taking account of circumstances existing at that time. This site comprises sloping farmland in close proximity to Uckfield and generally facing towards the town and therefore visible from it. The Inspector at the appeal suggested that the site might be considered as a natural or logical extension to the urban area. In view of the existing landscape features, any development would need to introduce a strong and reinforced landscape

24 February 2009

- a) Broadway Malyan
- b) Woolf Bond Planning
- c) CMS Cameron McKenna
Solicitors

Our Ref: APP/C1435/A/07/2046982
APP/C1435/A/07/2042597
APP/C1435/A/07/2053422

Dear Sirs,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78

A) APPEAL BY CLARENCE PRESTON WILL TRUST AND BARHAM ESTATES LTD – DOWNLANDS FARM, SNATTS ROAD, UCKFIELD, TN22 2AP

APPLICATION REFERENCE: WD/2006/2855/MEA

B) APPEAL BY TAYLOR WIMPEY (UK) LTD – LAND AT BIRD IN EYE NORTH, FRAMFIELD ROAD, UCKFIELD, TN22 5HA

APPLICATION REFERENCE: WD/2006/2173/MEA

C) APPEAL BY HERON LAND DEVELOPMENTS, PERSIMMON HOMES AND GALLAGHER ESTATES – LAND AT BIRD IN EYE SOUTH, FRAMFIELD ROAD, UCKFIELD, TN22 5HA

APPLICATION REFERENCE: WD/2006/3564/MAO

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, P E Dobsen MA (Oxon) DipTP MRTPI FRGS, who held a public inquiry between 15 January and 18 July 2008, which closed in writing on 14 October 2008, into your respective clients' appeals as listed above and summarised below:

- A) Downlands Farm:** made by Clarence Preston Will Trust and Barham Estates Ltd against the decision by Wealden District Council to refuse outline planning permission for residential development comprising approximately 750 dwellings; a neighbourhood centre with employment uses (Class B1); community hall, land for community uses and small retail facilities; a primary school; creation of new vehicular access from the A22 and emergency and bus only accesses from Snatts Road; construction of estate roads and new cycle and footway connections; provision of a 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; on land at Downlands Farm, Snatts Road, Uckfield in accordance with application reference WD/2006/2855/MEA dated 29 November 2006. This is referred to by the Inspector and the Secretary of State as Downlands (IR2).

B) Bird in Eye North (BIEN): made by Taylor Wimpey (UK) Ltd against the decision by Wealden District Council to refuse outline planning permission for mixed use development of land to provide at least 300 dwellings (including 30% affordable housing), 930 sq m of B1 business use, formal and informal open space, access roads and highways improvements including footpaths, landscape proposals and environmental enhancements; on land at Bird in Eye North, Framfield Road, Uckfield in accordance with application reference WD/2006/2173/MEA dated 24 July 2006. This is referred to by the Inspector and the Secretary of State as BIEN (IR2).

C) Bird in Eye South (BIES): made by Heron Land Developments, Persimmon Homes and Gallagher Estates against the decision by Wealden District Council to refuse outline planning permission for the erection of 197 dwellings, including affordable housing, with associated access, structural landscaping and recreational space (including 4 LAPS and one LEAP); on land at Bird in Eye South, Framfield Road, Uckfield in accordance with application reference WD/2006/3564/MAO dated 12 April 2007. This is referred to by the Inspector and the Secretary of State as BIES (IR2).

2. On 13 July 2007, the appeals were recovered for the Secretary of State's determination in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990. The appeals were recovered as they all raise policy issues relating to residential development of 150 or more dwellings, or on more than 5 ha of land, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendations and summary of the decisions

3. The Inspector recommended that all three appeals be dismissed and planning permission be refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and with his recommendations for all three appeals. A copy of the Inspector's Report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising after the close of the Inquiry

4. Following the close of the Inquiry, the Secretary of State has received the following correspondence:
 - email dated 13 October 2008 from Ashley Damiral of CMS Cameron McKenna Solicitors on behalf of the BIES appellants attaching a copy of a decision notice dated 10 October 2008 granting planning permission for development on land north of Mallard Drive, Uckfield (application reference: WD/2006/2171/MAO). She has also received a copy of the Section 106 Agreement relating to that application, dated 19 September 2008;
 - letter dated 13 October 2008 from Roger Tustain of Broadway Malyan on behalf of the Downlands appellants; and
 - letter dated 28 November 2008 from Laurence Keeley.

5. The Secretary of State does not consider that this correspondence raises any new issues which would either affect her decision, or require her to refer back to parties, prior to reaching her decision. Nevertheless, the correspondence can be made available upon request to this office.

Procedural matters

6. At the inquiry five applications for costs were made. These applications are the subject of separate decision letters but can be summarised as follows:
- two identical applications for a full award of costs by the Woodland Trust and Downlands Action Group against the Downlands appellants;
 - alternative applications for a full and partial award of costs by Wealden District Council and East Sussex County Council against the Downlands appellants;
 - an application for a partial award of costs by the Downlands appellants against Wealden District Council;
 - two identical applications for a full award of costs by the BIEN and BIES appellants against the Downlands appellants; and
 - an application for a partial award of costs by the Downlands appellants against the BIEN appellants.
7. The Secretary of State notes that, at the appeal stage, the Downlands appellants amended their application as described in inquiry document W3 (IR34). She also notes that the BIEN appellant amended their original application as described in inquiry document SCG4 (IR448). The Secretary of State considers that there would be no prejudice to any party in determining these appeals on the basis of these amendments, and has done so.

Environmental Statement

8. In reaching her decision on Downlands and BIEN, the Secretary of State has taken into account the Environmental Statements which were submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (IR633). The Secretary of State is content that the Environmental Statements comply with the above regulations, and that they are sufficient to ensure that the environmental effects of the proposed developments can be rigorously assessed.

Policy considerations

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case, the development plan comprises the Regional Spatial Strategy for the South East (formerly RPG9), published in 2001; the saved policies of the East Sussex and Brighton Structure Plan 1991-2011, adopted in 1999; and the saved policies of the Wealden Local Plan, adopted in 1998. The Secretary of State considers that the development plan policies most relevant to the appeals are those set out in section 4 of inquiry document SCG1.

10. In terms of the emerging development plan, the emerging Regional Spatial Strategy (the South East Plan) is at an advanced stage, with the Secretary of State having published her Proposed Changes on 17 July 2008 for public consultation. The Secretary of State has accordingly given its policies significant weight. The LDF is at an early stage of preparation and carries little weight.
11. Material considerations which the Secretary of State has taken into account include Planning Policy Statement 1 (PPS1): *Delivering Sustainable Development*; *The Planning System: General Principles and Climate Change Supplement*; Planning Policy Statement 3 (PPS3): *Housing*; Planning Policy Statement 7 (PPS7): *Sustainable Development in Rural Areas*; Planning Policy Statement 9 (PPS9): *Biodiversity and Geological Conservation*; Planning Policy Guidance note 13 (PPG13): *Transport*; Planning Policy Guidance note 24 (PPG24): *Planning and Noise*; Circular 11/95: *The Use of Conditions in Planning Permission*; and Circular 05/2005: *Planning Obligations*.
12. In determining the appeals, the Secretary of State has had regard to the non-statutory Wealden Local Plan (NSLP). For the reasons given in IR649-651, she considers that although the NSLP does not form part of the statutory development plan, it is a material consideration that should be afforded some weight.
13. In determining the BIES appeal, and in view of the proximity of the site to the Grade II listed oast house, the Secretary of State has had special regard to the desirability of preserving the listed building or its setting, or any features of special architectural or historic interest which it possesses, as required by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (IR496).

Main issues

The development plan

14. The Secretary of State notes that the Inspector had assumed that the final SE Plan would be published imminently and therefore recommended that the appeals be determined on the basis of the SE Plan (IR640-641). However, as it has not yet been published, the development plan remains as set out in paragraph 9 above.
15. None of the appeal sites are allocated in the saved policies of the Local Plan. The Secretary of State has had regard to Structure Plan policy S22 which proposes 'major peripheral expansion' at Uckfield during 2006-2011. However, as stated in IR642, planning permission has already been given for significant peripheral expansion at Uckfield; S22 states that the scale, nature and location of any such allocation will be determined in the Local Plan; and S22 further states that the expansion is subject to the availability of appropriate transport infrastructure. She therefore agrees with the Inspector that this policy contains important caveats which do not support the three appeal schemes. In addition, there are some site-specific development plan conflicts, as set out below. Overall, she considers that none of the proposals are in accordance with the development plan. She has gone on to consider whether there are material considerations weighing in favour of the proposals which are sufficient to overcome this lack of accordance.

16. While it does not form part of the development plan, the Secretary of State agrees with the Inspector that the appeals are all, to varying degrees, contrary to the NSLP strategy, its housing allocations and its development boundaries (IR652).

The emerging development plan

17. The Secretary of State has had regard to the fact that the emerging SE Plan maintains the status of Wealden as a split district, and that the 'rest of Wealden' is to make provision for 200 d.p.a under a 'balanced dispersal' strategy (IR643-645). She agrees with the Inspector's view that the emerging Plan's housing requirement cannot be read as proposing any major peripheral expansion of Uckfield during the Plan period (IR646). She notes his conclusion that the appeals are not in accordance with the emerging SE Plan, either individually or cumulatively (IR648). The Secretary of State agrees with this conclusion in respect of Downlands Farm, as she considers that the provision of 750 dwellings would constitute a major peripheral expansion which would not be in accordance with a 'balanced dispersal' strategy. She also agrees with this conclusion in respect of any of the schemes in combination. However, she considers that BIEN and BIES, which would provide 300 and 197 dwellings respectively, are individually not strongly in conflict with the emerging SE Plan in this respect.

Housing land requirements and supply

18. For the reasons given in IR655, the Secretary of State agrees with the Inspector that conclusions on housing land requirements should be based on the figures in the emerging SE Plan as this represents the most up to date position. For the reasons given in IR657-658, the Secretary of State agrees with the Inspector that the Council's assessment of housing supply is robust. She is satisfied that there is at present a more than 5 year supply of housing in Wealden. She is further satisfied that the supply is higher in 'rest of Wealden' than for the district as a whole. Notwithstanding the fact that emerging SE Plan housing requirements are to be treated as a minimum (IR662), she therefore considers there is no good case to allow any of the three appeals on the basis of housing need at this time.
19. The Secretary of State has considered the appeals in the light of paragraphs 69-72 of PPS3. In the light of her conclusion above, and the fact that these greenfield sites are not allocated in the overall land supply, she considers that they do not fall to be considered under paragraph 71. Paragraph 72 states that applications should not be refused solely on the grounds of prematurity; the Secretary of State's reasons for refusing all of the appeals are set out in this decision letter and summarized in the conclusions (paragraphs 51-55). Given the existence of a 5 year housing land supply, she considers that the damage to the plan-led system that would arise from granting permission for housing on any of these unallocated greenfield sites weighs against all the schemes, and that it would be preferable for housing sites to come forward via the LDF process, and in tandem with a town centre traffic scheme.
20. In the determination of these appeals, the Secretary of State has had regard to the Inspector's appeal decision cited (APP/C1435/A/07/2061628 re. land north of Dittons Road, Polegate) (IR660). She notes that the Inspector in that case concluded that supply in Wealden stood somewhere between 'just over five years...(to) less than four years'. However, as different evidence was before that

inquiry, and taking into account that the Polegate case was within the Sussex Coast sub-region rather than 'rest of Wealden', the Secretary of State is satisfied that the situation is sufficiently different in relation to these three appeals to justify reaching a different conclusion on housing land supply.

Affordable housing

21. The Secretary of State is satisfied that the three appeals would all provide the level of affordable housing required by local policy (IR789-791). Although she considers that the potential contribution to meeting the shortfall of affordable housing carries some weight in favour of the three appeals, she agrees with the Inspector that there are no grounds to allow any of the appeals solely on the basis that they would provide affordable housing (IR791).

Landscape considerations

22. The Secretary of State agrees with the Inspector that in terms of its character, Downlands seems everywhere more 'rural' than BIEN or BIES and is more part of the countryside than of the urban fringe (IR667). She also agrees that, in terms of its landscape quality, Downlands is a more attractive and unspoilt swathe of countryside, and therefore more sensitive and worthy of protection from development than BIEN or BIES (IR668). For the reasons given in IR670, the Secretary of State agrees with the Inspector that development on the Downlands site would have by far the greatest overall impact on the character and appearance of the site, and on the wider landscape, whereas BIEN and BIES are far more influenced in terms of both character and quality by the very immediate and highly visible proximity of the town (IR671-672).

Downlands

23. The Secretary of State has had regard to the mitigating factors put forward by the Downlands appellants relating to design, screening and the fact that there are comparatively few publicly accessible locations from which any of it would be clearly visible (IR675-677). For the reasons given in IR678, the Secretary of State agrees with the Inspector that whilst there may be some truth in these assertions, the Downlands scheme would 'spill out' into a new and relatively pristine area of countryside and, because of its scale, would appear as a separate and self-contained new settlement ill-related to the existing town. She agrees with the Inspector that no amount of tree screening or high quality design would compensate for that (IR679).
24. For the reasons given in IR684-685, the Secretary of State agrees with the Inspector that the Snatts Road Link would have some adverse impact on the landscape, and that the proposed roundabout would have a considerable visual impact.
25. The Secretary of State therefore agrees with the Inspector's conclusion in IR690 that Downlands would have a far greater and more harmful impact on landscape than BIEN or BIES, and that its landscape impact would be contrary to relevant development plan policies. She shares the Inspector's view that this amounts to a major planning objection sufficient on its own to justify refusal of planning permission (IR690).

BIEN and BIES

26. For the reasons given in IR680, the Secretary of State agrees with the Inspector that BIEN and BIES are both much better related to Uckfield and would appear, far more so than Downlands, to be natural or logical urban extensions.
27. For the reasons given in IR686-688, the Secretary of State agrees with the Inspector that although the BIEN scheme would lead to the loss of some unremarkable countryside on the urban edge, there are no good reasons to refuse the BIEN scheme purely on landscape grounds. She also agrees with the Inspector, for the reasons given in IR689, that there are no cogent reasons to resist the BIES proposals purely on landscape grounds.

Ecology and nature conservation

28. The Secretary of State has had regard to the ecological characteristics of the three sites, as described by the Inspector at IR694-697, and to the differences of opinion between the parties on the likely impact of the proposals as described at IR700-705. For the reasons given in IR707-708, the Secretary of State considers, like the Inspector, that enough sound and reliable ecological survey work has been done on the three appeal sites for the purposes of her consideration of these appeals.

Downlands

29. The Secretary of State has taken into account the benefits that Downlands claim would be derived from the 55ha country park, and the positive management of the site, which it is claimed would increase and enrich the biodiversity of the wider site and its surroundings. For the reasons given in IR714, the Secretary of State agrees with the Inspector that the ecological benefits of the Downlands appeal would contribute positively to the management of some of the undeveloped portions of the site in accordance with local nature conservation planning policies. However, these potential benefits must be set against the other potential effects on the ecology of the site.
30. For the reasons given in IR715-717, the Secretary of State agrees with the Inspector that very little ancient woodland would be directly lost as a result of the Downlands proposals (IR718). For the reasons given in IR719-723, she also agrees with the Inspector that although the indirect impact of the proposals on ancient woodland is more difficult to assess, the Downlands scheme has the potential to be quite damaging in the long term, contrary to PPS9 and related development plan policies.
31. For the reasons given in IR727-728, the Secretary of State considers that there is no conclusive evidence about the impact on priority habitats and protected species. However, she agrees with the Inspector that there is a possibility that some protected species might suffer significant harm in terms of damage to their habitats and loss of population, if the Downlands scheme were implemented (IR728).
32. Overall, the Secretary of State considers that there are some potential benefits, and also some potential for harmful impact on the ecology of the site. While she agrees with the Inspector's conclusion in IR730 that Downlands should not be refused outright on the basis of harm to its ecology or biodiversity, she considers

that the overall balance of benefit against harm does not weigh in favour of the proposal.

BIEN and BIES

33. For the reasons given in IR731-738, the Secretary of State agrees with the Inspector that there is no sound case for rejecting the BIEN or BIES schemes on the grounds of any harm to ecological/nature conservation interests.

Highways and transport

Transport sustainability – Downlands

34. For the reasons given in IR746, the Secretary of State agrees with the Inspector that Downlands would be further away from many, although not all, town centre facilities and destinations than BIEN and BIES, requiring on aggregate longer journeys, often with steeper gradients, and that this places Downlands at a disadvantage in terms of crude accessibility compared with BIEN and BIES. Considered on its own merits, she concludes that the accessibility of Downlands presents a problem which weighs against a grant of permission for the scheme.
35. The Secretary of State has carefully considered the proposed measures which have been put forward to mitigate problems with accessibility. She agrees with the Inspector that the Downlands proposals would provide a good measure of support for local bus services and the travel plans would assist in this and encourage bus use (IR751). For the reasons given in IR752, the Secretary of State agrees with the Inspector that whilst the use-mix of the Downlands scheme may provide a desirable level of internalisation of trips, boosting the sustainability credentials of the development, the pros and cons of this internalisation are fairly evenly balanced. However, the Secretary of State considers that the matters set out in IR747-749 would tend to increase car-dependency, particularly given the site's considerable ease of access onto the A22 by-pass (IR750).
36. Overall, the Secretary of State therefore agrees with the Inspector's conclusion in IR753 that Downlands would not be particularly accessible, particularly by non-car modes of transport, and exhibits signs of likely car-dependency, contrary to national and local transport policies.

Transport sustainability – BIEN and BIES

37. For the reasons given in IR754-757, the Secretary of State agrees with the Inspector that both BIEN and BIES have advantages in terms of their intrinsic accessibility and sustainability over Downlands (IR758). However, she also agrees that both have drawbacks of their own (IR758) and she notes that neither would offer a choice of pedestrian/cycle routes into town (IR755). In addition, she agrees with the Inspector that the failure of BIEN to provide a cycle/footpath link over the River Uck and the railway line is a significant failing in its wider connectivity with the town (IR756).

Impact on Uckfield town centre

38. The Secretary of State further notes that the District and County Councils' preferred option is for a 'town centre scheme' to relieve ongoing town centre traffic congestion, but that such a scheme is at an early stage. While they consider that

any further major housing development should come through the LDF process in tandem with such a town centre scheme, they have also determined that there is 'headroom' to build up to 300 units (above already committed sites) in advance of a town centre scheme, provided that there is in place a 'retrofit package' of soft demand management measures to reduce car usage (IR762-764). Downlands would not fall within that headroom figure, and the Secretary of State therefore considers that it would be unacceptable in terms of traffic impact, notwithstanding the arguments put forward by Downlands on its likely lack of impact on the town centre (IR767-769). For the reasons given in IR765-766, the Secretary of State concurs with the Councils' view that the BIE schemes are not unacceptable on the grounds of traffic impact. In reaching this conclusion, she has also taken into account that BIEN and BIES would make a contribution to the eventual town centre solution, while Downlands would not (IR767-769).

39. Whilst the Secretary of State considers that the BIE schemes could be accommodated by this offer of headroom capacity, and that this is a matter of some weight in favour of the BIE appeals, she is of the view that it does not justify the release of these greenfield sites at this present time. Overall, the Secretary of State agrees with the Inspector that the two Councils' preferred position on the matter of town centre traffic impact is to be preferred, and that this takes primacy over the 'offer' of headroom capacity (IR770).

Other matters

Deliverability of Downlands and BIES

40. The Secretary of State has had regard to the Council's claim that the Downlands scheme is not deliverable, particularly the proposed Snatts Road Link and the primary school, but that this claim has been denied by the appellants (IR777-778). For the reasons given at IR779, the Secretary of State agrees with the Inspector that the Council's concerns are reasonable. She further agrees with the Inspector that the evidence suggests that there is not a reasonable prospect of the delivery of the Snatts Road link. In any case, even if it was appropriate to impose a Grampian condition, the Secretary of State does not consider that this would overcome the planning objections to the appeal proposal.
41. The Secretary of State has also had regard to the Council's claim that BIES may not be deliverable owing to concerns relating to the matter of legal title to a piece of land required for the main cycle/pedestrian route (IR780). If she had been minded to allow the BIES appeal, she is satisfied that this issue could have been satisfactorily dealt with by way of a Grampian condition to ensure that matters of legal title were fully explored before development could take place. However, in the circumstances of this case, the Secretary of State does not consider that the imposition of a Grampian condition would overcome the planning objections to the appeal proposal.

Noise – BIEN

42. The Secretary of State notes that a noise issue was raised initially because of the potential impact of the existing industrial uses at The Yard upon the BIEN scheme. However, for the reasons given in IR784-787, she agrees with the Inspector that BIEN should not be refused on any grounds relating to the proximity of The Yard (IR788).

Effects on listed buildings

43. The Secretary of State notes that there is a Grade II listed oast house immediately adjacent to BIES. Like the Inspector, the Secretary of State is satisfied that the setting of this building would not be materially harmed by the BIES proposals (IR792).

Employment – Downlands and BIEN

44. The Secretary of State has taken into account that the proposals in Downlands and BIEN would provide an element of employment land. However, given the relatively small quantum of employment development proposed by each scheme, the Secretary of State does not consider that this carries significant weight in the determination of the appeals.

Conditions and obligations

Downlands

45. The Secretary of State has considered the proposed conditions and the Inspector's comments at IR331-334, as well as national policy set out in Circular 11/95. She considers that the proposed conditions are reasonable and necessary and meet the tests of Circular 11/95.
46. The Secretary of State has considered the signed and dated Section 106 Unilateral Undertaking and the Supplemental Undertaking (both dated 31 July 2008), along with the Inspector's comments at IR336-338. The Secretary of State has also had regard to the District and the County Councils' comments on the two Undertakings, as set out in inquiry document WDC29. The Secretary of State is satisfied that the Undertakings are, in principle, capable of meeting the tests of Circular 05/2005. However, if she had been minded to allow this appeal, she would have wished to see some minor amendments made (as highlighted by the Councils in inquiry document WDC29). Overall, the conditions and the obligations proposed do not overcome the Secretary of State's concerns about this appeal.

BIEN

47. The Secretary of State has considered the proposed conditions and the Inspector's comments at IR484-487, as well as national policy as set out in Circular 11/95. She considers that the proposed conditions are reasonable and necessary and meet the tests of Circular 11/95.
48. The Secretary of State has considered the signed and dated Section 106 Undertakings (both dated 29 September 2008), along with the Inspector's comments at IR488-492. The Secretary of State has also had regard to the District and the County Councils' comments on the two Undertakings, as set out in inquiry document WDC29. Like the Inspector, the Secretary of State is satisfied that the Undertakings are, in principle, capable of meeting the tests of Circular 05/2005. However, if she had been minded to allow this appeal, she would have wished to see some minor amendments made (as highlighted by the Councils in inquiry document WDC29). Overall, the conditions and the obligations proposed do not overcome the Secretary of State's concerns about this appeal.

BIES

49. The Secretary of State has considered the proposed conditions and the Inspector's comments at IR610-613, as well as national policy set out in Circular 11/95. She considers that the proposed conditions are reasonable and necessary and meet the tests of Circular 11/95.
50. The Secretary of State has considered the signed and dated Section 106 Unilateral Undertakings (both dated 11 September 2008), along with the Inspector's comments at IR614-617. The Secretary of State notes that although the District and County Councils appear to be satisfied with the terms of the Undertakings, some of the provisions of the BIEN Undertakings with which they have raised concerns are also contained in the BIES Undertakings. The Secretary of State is satisfied that the Undertakings are, in principle, capable of meeting the tests of Circular 05/2005. However, if she had been minded to allow this appeal, she would have wished to see some minor amendments made (as highlighted by the Councils in inquiry document WDC29 in relation to the BIEN Undertakings). Overall, the conditions and the obligations proposed do not overcome the Secretary of State's concerns about this appeal.

Overall conclusions

51. The Secretary of State concludes that all three appeals would conflict with the development plan. In each case, she has gone on to consider whether there are material considerations which outweigh this conflict and which would justify the release of these unallocated greenfield sites. In doing so, she has carefully considered the Inspector's Report, and the evidence which was put before the inquiry in respect of each appeal. She has also considered whether the proposed conditions and the planning obligations offered would overcome her concerns about these planning appeals.
52. The Secretary of State is satisfied that there is more than a five year supply of housing land and therefore no good case for releasing any of these greenfield sites on grounds of housing need at this time. She considers that the damage to the plan-led system that would arise from granting permission for housing on any of these unallocated sites weighs against all of the schemes, and that it would be preferable for housing sites to come forward via the LDF process, and in tandem with a town centre traffic scheme.

Downlands

53. The conflict with the development plan is most serious in the case of Downlands, and the Secretary of State considers that the proposal is unacceptable in terms of landscape impact and traffic impact. She further considers that the overall balance of ecological considerations does not weigh in its favour. While the provision of affordable housing carries some weight in favour of the proposal, the Secretary of State considers that, overall, in the light of her conclusions on housing need, there are not sufficient material considerations in favour of the scheme to outweigh the conflict with the development plan.

BIEN

54. The Secretary of State has taken into account that the landscape and ecology considerations do not make this proposal unacceptable, but that there are some

site-specific drawbacks in terms of transport sustainability, the town centre linkage and the failure to provide a town centre link across the railway and the river Uck. While she notes that the traffic impact would fall within the 300-unit headroom figure, and considers that the provision of affordable housing carries some weight in its favour, the Secretary of State considers that, overall, in the light of her conclusions on housing need, there are not sufficient material considerations in favour of the scheme to outweigh the conflict with the development plan.

BIES

55. The Secretary of State has taken into account that the landscape and ecology considerations do not make this proposal unacceptable, but that there are some site-specific drawbacks in terms of transport sustainability and the town centre linkage. While she notes that the traffic impact would fall within the 300-unit headroom figure, and considers that the provision of affordable housing carries some weight in its favour, the Secretary of State considers that, overall, in the light of her conclusions on housing need, there are not sufficient material considerations in favour of the scheme to outweigh the conflict with the development plan.

56. The Secretary of State therefore considers that the release of these greenfield sites is not justified, and permission should be refused for all three schemes.

Formal decision

57. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby dismisses your clients' appeals and refuses planning permission for:

A) Downlands Farm: residential development comprising approximately 750 dwellings; a neighbourhood centre with employment uses (Class B1); community hall, land for community uses and small retail facilities; a primary school; creation of new vehicular access from the A22 and emergency and bus only accesses from Snatts Road; construction of estate roads and new cycle and footway connections; provision of a 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; on land at Downlands Farm, Snatts Road, Uckfield in accordance with application reference WD/2006/2855/MEA dated 29 November 2006.

B) Bird in Eye North: mixed use development of land to provide at least 300 dwellings (including 30% affordable housing), 930 sq m of B1 business use, formal and informal open space, access roads and highways improvements including footpaths, landscape proposals and environmental enhancements; on land at Bird in Eye North, Framfield Road, Uckfield in accordance with application reference WD/2006/2173/MEA dated 24 July 2006.

C) Bird in Eye South: the erection of 197 dwellings, including affordable housing, with associated access, structural landscaping and recreational space (including 4 LAPS and one LEAP); on land at Bird in Eye South,

Framfield Road, Uckfield in accordance with application reference
WD/2006/3564/MAO dated 12 April 2007.

Right to challenge the decision

58. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within 6 weeks of the date of this letter.
59. A copy of this letter has been sent to Wealden District Council and interested third parties.

Yours faithfully

Maria Stasiak

Authorised by the Secretary of State
to sign in that behalf



Report to the Secretary of State for Communities and Local Government

**by P E Dobsen MA (Oxon) DipTP
MRTPI FRGS**

**an Inspector appointed by the Secretary of State
for Communities and Local Government**

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ GTN 1371 8000

Date: 27 November 2008

Town and Country Planning Act 1990

**Wealden District Council – Inquiry into conjoined Section 78 appeals against
the refusal of 3 outline planning applications:**

- A) Downlands Farm, Snatts Road, Uckfield (appeal ref. 2046982)**
- B) Bird In Eye North, Framfield Road, Uckfield (appeal ref. 2042597)**
- C) Bird In Eye South, Framfield Road, Uckfield (appeal ref: 2053422)**

Inquiry held on 15 January-7 February, and 17 June-18 July 2008

Downlands Farm, Bird In Eye North and Bird In Eye South, Uckfield

File Ref(s): APP/C1435/A/07/2046982; APP/C1435/A/07/2042597; and APP/C1435/A/07/2053422

Appeal A) file ref: APP/C1435/A/07/2046982

Downlands Farm, Snatts Road, Uckfield TN22 2AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Clarence Preston Will Trust and Barham Estates Ltd. against the decision of Wealden District Council.
- The application (Ref WD/2006/2855/MEA), dated 29 November 2006, was refused by notice dated 22 February 2007.
- The development proposed (as amended) is “residential development for approximately 750 dwellings; a neighbourhood centre with employment uses (Class B1); community hall, land for community uses and small retail facilities; a primary school; creation of new vehicular access from the A22 and emergency and bus only accesses from Snatts Road; construction of estate roads and new cycle and footway connections; provision of a 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”.

Summary of Recommendation: that the appeal be dismissed

Appeal B) file ref: APP/C1435/A/07/2042597

Land at Bird In Eye North, Framfield Road, Uckfield TN22 5HA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Taylor Wimpey UK Ltd (formerly Taylor Woodrow Developments Ltd.) against the decision of Wealden District Council.
- The application (Ref WD/2006/2173/MEA), dated 24 July 2006, was refused by notice dated 17 January 2007.
- The development proposed is “mixed use development of land to provide at least 300 dwellings (including 30% affordable housing), 930 sq.m. of B1 business use, formal and informal open space, access roads and highways improvements including footpaths, landscape proposals and environmental enhancements”.

Summary of Recommendation: that the appeal be dismissed

Appeal C) file ref: APP/C1435/A/07/2053422

Land at Bird In Eye South, Framfield Road, Uckfield TN22 5HA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Heron Land Developments, Persimmon Homes and Gallagher Estates against the decision of Wealden District Council.
- The application (Ref WD/2006/3564/MAO), dated 12 April 2007, was refused by notice dated 6 July 2007.
- The development proposed is “outline application for the erection of 197 dwellings, including affordable housing, with associated access, structural landscaping and recreational space (including 4 LAPS and one LEAP)”.

Summary of Recommendation: that the appeal be dismissed

1 Introduction: report format etc.

1. This report is in 6 sections, as follows: section 1 – Introduction; section 2 - The Inquiry (including Secretary of State matters); section 3 - Downlands Farm (appeal A); section 4 - Land at Bird In Eye North (appeal B); section 5 - Land at

Bird In Eye South (appeal C); and section 6 – Conclusions and Recommendations.

2. I use the shorthand terms Downlands, Bird In Eye North and Bird In Eye South throughout, to refer both to the sites and to the respective appellants. I also refer to “BIEN” for Bird In Eye North, and to “BIES” for Bird In Eye South. The appeals are listed in order of the site size (and scale of proposed development) rather than in the chronological date order of the appeals.
3. A contents page and appearances list is attached (see Annex). I also attach separate Appendices A (lists of core and inquiry documents), B (lists of proofs of evidence), C (list of statements of common ground), D (pre-inquiry meeting notes), and E (agreed planning conditions).
4. In this conjoined appeals inquiry there are 3 different appellants, who are promoting 3 geographically separate and essentially “competing” greenfield housing sites for the peripheral expansion of Uckfield. These have all had outline planning permission refused by Wealden District Council (The Council, or WDC).
5. In certain matters all 3 appellants object to each others’ proposals, and bring detailed evidence against them. That applies especially to landscape impact, ecology and nature conservation, and traffic and transport. However, they also pursue a common case in respect of housing land requirements and supply. Their case in respect of planning policies, and the status of and weight due to various development plans, is also held in common. This shared ground between the appellants is reflected in the report format; for example, to avoid needless repetition I do not set out the housing land case in all 3 report sections 3, 4 and 5, but only under section 3 on Downlands.
6. During the inquiry, 11 statements of common ground (SCGs 1- 11) on specific matters were also produced by individual appellants and the Council. These are listed in Appendix C. Some supersede earlier versions.
7. Nevertheless, it should be noted at the outset that the Council remains fundamentally and in principle opposed to all 3 proposals. In the event that the Secretary of State is minded to approve one or more of them, the Council’s own “preference” would be for the BIES, BIEN and Downlands schemes, in that order. That is also the reverse order of magnitude of the 3 schemes.
8. All the third parties who appeared at the inquiry are objectors to one or more of the proposals. Most provided short written statements, which are listed in Appendix B. There are no third party supporting appearances.
9. In general, despite the length of this report I have been quite brief in my reporting of all the parties’ cases, seeking only to state the main points from each witness’s evidence. I have tried to avoid unnecessary repetition. In my view, few significant concessions were made by any witnesses under cross-examination. To ensure a measure of stylistic consistency, I have not relied upon the witnesses’ own summaries (where supplied) for this exercise.
10. The detailed points and arguments may be found in the inquiry proofs, and to assist with that I give alphabetical references [W etc.] to the proofs throughout. They are listed in Appendix B. Those with asterisks refer to witnesses who were not called, but whose evidence nevertheless remains before the inquiry. In general, the proofs provide numerous references to the inquiry core documents,

and to the additional documents tabled during the inquiry (both listed in Appendix A).

11. The proofs also come with their own appendices, which in some cases are duplications or part-duplications of the core documents. In this report, I refer only to (what I consider are) the more important of all these.

2 The Inquiry

12. A pre-inquiry meeting (PIM) was held at the Wealden DC offices at Crowborough on 8 November 2007, to agree various procedural and administrative matters. Notes of the meeting were subsequently issued and placed on the Council's inquiry website (Appendix D).
13. I made an accompanied inspection of all 3 appeal sites, and other locations in and around Uckfield, on 8 January 2008. I also made unaccompanied inspections of miscellaneous locations at other convenient times during the inquiry.
14. The Inquiry sat on Tuesdays to Fridays for a total of 28 days, at 3 different venues. From 15-31 January 2008, it was held at The Weald Hall, Uckfield Town Council Offices, Uckfield; and from 5-7 February, at Pilgrim Hall, Easons Green (near Uckfield). After a lengthy adjournment - necessitated by the inquiry over-running its initial time allocation, and the non-availability of key participants - the inquiry resumed at The Weald Hall from 17-19 June. From 1 July to the close on 18 July it was held at The East Sussex National Resort, just outside Uckfield.
15. One incidental advantage of this timetable was that I was able to see the sites and their surroundings in both winter and summer conditions.
16. For the most part, the inquiry followed a topic-based format. This in turn was derived from the Council's reasons for refusal. Thus the inquiry heard first about housing land requirements and supply, then continued with landscape matters, followed by ecology/nature conservation, before going on to consider highways, traffic and transport. It also covered planning policies, and finally, conditions and planning obligations. These topics are equally relevant to all 3 appeals. The topic-based pattern greatly reduced the number of separate appearances by individual professional witnesses, and thereby saved inquiry time.
17. The Secretary of State's Proposed Changes to the emerging South East Plan were published on 17 July, just before the end of the inquiry sitting phase. As I had previously indicated, I invited the main parties to make further written representations on the implications for their housing land case of these Proposed Changes. This meant that the parties closing submissions (and costs applications) also had to be delayed until after the end of the sitting phase.
18. I received these written representations by 13 October. I formally closed the inquiry, in writing, on 14 October 2008.
19. Costs applications were made by the Council and by BIEN, BIES and The Woodland Trust/Downlands Action Group against Downlands, and by Downlands against the Council and BIEN. I address those in 5 separate reports.
20. In the following sections 3, 4 and 5 I report each appeal in turn: appeal A, Downlands Farm; appeal B, Bird In Eye North; appeal C, Bird In Eye South. My conclusions are placed at the end, in section 6.

Secretary of State Matters

21. The 3 appeals were recovered by the Secretary of State on the basis that they each raise issues relating to residential development of 5 or more hectares or 150 or more dwellings.
22. By letter dated 13 July 2007, the Secretary of State indicated that she wishes particularly to be informed about the following matters:
23. a) the extent to which the proposed development would be in accordance with the development plan for the area;
24. b) the extent to which the proposed development would be consistent with Government policies in Planning Policy Statement 1: Delivering Sustainable Developments, and accompanying guidance The Planning System: General Principles, with particular regard to whether the design principles adopted in relation to the site and its wider context, including the layout, scale, open space, visual appearance and landscaping, will preserve or enhance the character and appearance of the area, having regard to the advice in paragraphs 33 to 39 of PPS1;
25. c) the extent to which the proposed development is consistent with Government planning for housing policy objectives in Planning Policy Statement 3: Housing, with particular regard towards delivering - high quality housing that is well designed and built to a high standard; a mix of housing, both market and affordable, particularly in terms of tenure and price, to support a wide variety of households in all areas, both urban and rural; a sufficient quantity of housing taking into account need and demand and seeking to improve choice; housing developments in suitable locations, which offer a good range of community facilities with good access to jobs, key services and infrastructure; a flexible, responsive supply of land, managed in a way which makes effective and efficient use of land, including re-use of previously developed land, where appropriate;
26. d) the extent to which the proposed development is consistent with the advice in PPG13: Transport, in particular on the need to locate development in a way which helps to promote more sustainable transport choices; promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling; reduce the need to travel especially by car, and whether the proposal complies with local car parking standards and the advice in paragraphs 52 to 56 of PPG13;
27. e) the matters raised in the Council's notice of decision;
28. f) whether any planning permission granted should be accompanied by any planning obligations under Section 106 of the 1990 Act, and, if so, whether the proposed terms of such obligations are acceptable;
29. g) whether any permission should be subject to any conditions, and, if so, the form these should take; and
30. h) any other matters that the Inspector considers relevant.
31. All of the above matters are addressed in the main parties' evidence. As stated above, I have tried to summarise the key points in this evidence, without alluding to every point made.

3 DOWNLANDS FARM (appeal A)

Procedural Matters

32. On the final sitting day, I ruled that I would not hear the Downlands counsel (Mr. Clay) put questions to the other 2 appellants (BIEN and BIES) regarding their draft S106 obligations. This was in order to save inquiry time and ensure a reasonably timely close, and in the knowledge that Mr. Clay, if he so wished, would still have the opportunity to make closing submissions on the contents of those obligations. I also decided to allow only one set of closing submissions from each party, those of the Council to precede those of the 3 appellants, according to an agreed timetable.
33. There are no other procedural matters specific to the Downlands appeal of which the Secretary of State should take particular note.
34. The Council's 6 reasons for refusal are listed below. They apply in full only to the proposals in the application as originally submitted. At the appeal stage, with the agreement of The Planning Inspectorate (confirmed by me at the pre-inquiry meeting), certain amendments to the application were made [DL3.6-10]. These are described in several of the Downlands proofs and in proof [W3].
35. Before the inquiry, the Council indicated that it would not be pursuing reason for refusal No 3, re archaeology, owing to the re-positioning of the site access in the amended scheme [W3].
36. Some of the following matters are covered in SCG1. The Downlands site, and the other appeal sites, are conveniently shown on plan WDC17, which also names many other locations and streets etc. within Uckfield.

The Site and its Surroundings

37. The appeal site, somewhat irregular in shape, comprises a swathe of the farmed and wooded countryside which adjoins the north western edge of Uckfield. Some 85 ha. in total area, it includes about 14 ha. of woodland and scrub on the western side of the A22 Uckfield by-pass (incorporated into the site for purposes of water attenuation). Most of it however lies on the south east side of the A22, between it and Snatts Road, a minor "country" road which generally demarcates the existing north western edge of the town.
38. In addition, the appeal site includes land for a proposed new cycleway within the highway boundary alongside the A22 and Bell Farm Road (B2012), and land for a new footpath/cycleway alongside Snatts Road and Church Street (the proposed Snatts Road link).
39. The bulk of the site comprises grade 3 agricultural land, interlaced with extensive areas of woodland, much of it semi-natural ancient woodland. Two wooded ghylls (or gills) provide natural divisions within it. Longwood Gill is a narrow woodland strip with a stream, while Shermanreed Wood, slightly broader in width, contains much recent replanting. There is a woodland belt along the A22 bypass to the west of an old carriage driveway. Part of the site adjoining 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.
40. The site slopes generally from east to west, from about 60 m. AOD at Snatts Road to about 25 m. AOD at the bypass. Owing to the gills, it has a rather

complex detailed topography. The area at Budletts Common is flatter and different in character, comprising a mixture of degraded heath, scrub, and open fields.

41. 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, and in the area of Budletts Common.
42. Much of the farmland within the site is let on farm business tenancies. The woodlands are largely unmanaged, and are unfrequented. However, a public footpath crosses the site northwards from Snatts Road, and there is some informal use of the woodlands by dog-walkers etc.
43. The A22, which straddles the appeal site, represents a significant physical feature on the western side of Uckfield. West of it runs the Shortbridge stream, a tributary of the Sussex Ouse, which in turn is partly fed by the smaller streams within the site. North of it, and about 1 km. from the northern part 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 a substantial countryside gap.
44. 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 (a Rule 6 party and objector to the Downlands scheme). Other nearby SNCIs are west of the A22.
45. More detailed descriptions of the site, and of its location in relation to Uckfield, are in the application documents, the revised ES, SCG1, and in various proofs of evidence [esp. T1, RV1, Co1, B1, W3].

The town of Uckfield

46. Uckfield is a small East Sussex market town with a population of about 14,000. It functions as a local employment centre providing a wide range of jobs in manufacturing and services, as well as a shopping centre for its residents and the wider rural area.
47. The town lies in the west-central part of Wealden district, approximately at the rather indeterminate topographical boundary between the High Weald and the Low Weald, and a few kms. south of the High Weald AONB (Area of Outstanding Natural Beauty). The nearest towns are Haywards Heath to the north-west, Crowborough to the north-east, Heathfield to the east, and Lewes to the south-west. Of these, Crowborough and Heathfield are within Wealden district.
48. Uckfield is focused on the River Uck, which has flooded on some well-publicised recent occasions (notably 2000), and has local tributaries including the Framfield stream. It has a busy and vibrant town centre, based on and around the north/south High Street. The centre contains supermarkets (Tesco, Somerfield) and numerous other shops and services, as well as a small railway terminus, with fairly frequent trains to London, and a bus station.
49. During the post-war period, the town experienced successive phases of suburban expansion, especially from the 1970s onwards. The main employment area - the Bell Lane industrial estate - lies south and west of the town centre. The A22 Uckfield by-pass, built in the 1980s, skirts the town on its western side (and passes through the Downlands site). Nearby villages include the aforementioned

Maresfield and Five Ash Down, to the north, and Framfield, to the east. Otherwise, the town is virtually surrounded by rolling farmland, interspersed by patches of ancient and more recently established woodland.

50. Uckfield contains a secondary college of education, and several primary schools. Its environs contain some large country houses, such as Buxted Park.

Planning Policy: the Development Plan

51. At the time of final editing of this report (October 2008), the development plan comprises the Regional Spatial Strategy in the form of RPG 9, Regional Planning Guidance for the South East [PD2.1], and the saved policies of the East Sussex and Brighton and Hove Structure Plan (SP) 1991-2011 [PD3.1 and 2], and the Wealden Local Plan (LP, adopted 1998) [PD5.1].
52. In these appeals, the Council's reasons for refusal refer to policies in both the SP and the LP. The policies are individually named in section 4 of SCG1.
53. The appeal site is not allocated for development in the LP.

Other Planning Policies

54. Other relevant regional planning policies are contained in the emerging South East Plan, which, following the publication of the Secretary of State's Proposed Changes in July 2008, is at a very advanced stage.
55. The draft plan was published in March 2006 [PD2.2], and was examined in public in November 2006-March 2007. The Panel Report [PD2.3] was published in August 2007. The Proposed Changes were published just before the end of the sitting phase of this inquiry. They are therefore available to inform the Secretary of State's decisions on these appeals. When the South East Plan is subsequently approved, which - after a further round of consultations which closed on 24 October - is anticipated shortly, it will fully replace both RPG 9 and the SP.
56. The non-statutory Wealden Local Plan (NSLP) [PD5.2] was approved by the Council for development control purposes in November 2005. Its early stages followed the normal statutory procedures, including appropriate consultations etc, but at the prompting of GOSE these procedures were later abandoned in the face of the new development plans system, and the Council's duty to expedite the preparation of a local development framework (LDF).
57. The NSLP was later subject to legal challenge, concluding (in the Council's favour) in the Court of Appeal [PD5.24]. The NSLP, therefore, has not been quashed, but remains extant. The weight to be attached to it is a matter of dispute between the Council and the 3 appellants. Whereas the Council would afford it significant weight, the appellants would give it very limited weight. However, all parties agree that it cannot and does not have development plan status.
58. A more detailed history of NSLP plan preparation is in [W2] paras. 3.28-4.25. The most relevant NSLP policies are cited in the Council's reasons for refusal (also cited in section 4 of SCG1).
59. Unlike BIEN and BIES, no part of Downlands Farm has been allocated for development at any stage of the NSLP. BIEN and BIES formed part of a single allocation at the first deposit stage, but were subsequently deleted in favour of 3

other greenfield housing sites on the edge of Uckfield. These are known as land north of Mallard Drive; land north of Eastbourne Road (a.k.a. land at Cysley's Farm); and Sandpits, Lewes Road. I refer to these in this report as the allocated NSLP sites (at Uckfield). They all now have planning permission.

60. National planning policies of particular relevance to the appeal include those in PPS 1 [PD1.1], PPS 3 [PD1.2], PPS 7 [PD1.4], PPS 9 [PD1.5], and PPG 13 [PD1.7].

Planning History

61. Other than the current application/appeal, there is no significant planning history pertaining to this greenfield site. [W3]

The Proposals

62. The application is in outline, with all detailed matters reserved. The original application documents (see Appendix A) include: master plan map [DL1.4]; planning statement [DL1.5]; design and access statement (DAS) [DL1.7]; environmental statement [DL1.8]; and transport assessment [DL1.10].
63. During the appeal stage, certain amendments were made to the application. These are shown and described in the amended illustrative master plan [drwg. 01-007-305, DL3.8]; DAS [DL3.7]; revised environmental statement [DL3.6]; and revised transport assessment [DL3.9] etc. A complete list of application documents is at para. 2.4 of SCG1.
64. The most notable amendments are: i) the re-location of the main vehicular access from the Black Down roundabout to a position about 1 km. to the south, with a new roundabout on the A22; ii) the replacement of reference to 9,600 sq.m. of B1 and B8 uses by 2000 sq.m. of B1 and B8 uses within the neighbourhood centre; iii) the replacement of proposed neighbourhood centres by one neighbourhood, or "village" centre.
65. Although much of the application documentation is illustrative, and any outline permission would be subject to the approval of reserved matters, it is common ground that the following would not alter: the amount and type of development; the boundaries of the developed areas; the boundaries of areas of open space and structural landscaping; and the positions of the vehicular accesses and cycle/footpath routes.
66. The scheme layout is shown on the revised master plan, with much additional illustrative detail in the revised DAS. In summary, some 18.75 ha. of farmland would be developed for housing, comprising 750 dwellings (mixed houses and flats) in a variety of buildings of up to 4 storeys in height, and including up to 40% affordable housing overall (equivalent to 300 dwellings).
67. There would be 3 main housing areas, at an average density of 40 d.p.h., separated by the woodlands at Longwood Gill and Shermanreed Wood. A village centre and adjoining one-form-entry primary school would be located near the eastern end of Longwood Gill, approximately in the middle of the site but not in its most elevated position.
68. The main vehicular access would be from a new roundabout on the A22 Uckfield bypass, close to an area (within the site) of regenerating woodland. There would also be an emergency/cycle and pedestrian access, and a bus/emergency access,

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- both to Snatts Road. New cycle/pedestrian links to the town centre would follow the A22 (cycle only), and Snatts Road/Church Street (the Snatts Road link).
69. The proposals include the provision of a 55 ha. "country park", comprising mainly the retained areas of ancient woodland, and having a permanent ranger/warden, and a small information/education facility. This is presented as a unique feature of the Downlands scheme, of use by and of benefit to the town as a whole, but not all of it would be accessible to the public. Elsewhere would be a network of formal and informal open spaces, and the woodlands would be surrounded by 10-20 m. wide buffer areas.
70. The Downlands scheme is presented both as a partially self-contained new community, and as a sustainable urban extension to Uckfield. The DAS makes reference to the recently developed Bolnore Village, near Haywards Heath in West Sussex (which I visited unaccompanied), whose design and townscape in some respects it might resemble. Some of the illustrative material suggests, too, that the prevailing architectural style might be influenced by Arts and Crafts precursors.
71. Downlands' main features are described in [T1], which in summary lists the following as benefits: i) site availability and absence of development constraints; ii) sustainable mixed use development, with a total population of about 1,875; iii) accessibility and containment; iv) up to 300 affordable dwellings (40%); v) additional community benefits in the form of a country park, primary school, and various areas of open space; and vi) environmental enhancement and a high standard of design.
72. The appellants maintain that this mix of features distinguishes the scheme from both BIEN and BIES, either singly or in combination.

Reasons for Refusal

73. The stated reasons for refusal are as follows:
74. " (1) The proposed development represents an unjustified and unacceptable form of development of a site that lies in open countryside outside the defined development boundary for Uckfield, contrary to policies S5 and S10 of the East Sussex and Brighton and Hove Structure Plan 1991-2011, policies GD2 and DC17 of the adopted Wealden Local Plan (1998), and policies GD2 and DC15 of the non-statutory Wealden Local Plan (2005)."
75. " (2) The proposed development would result in the unacceptable loss of ancient woodland and wetland habitats and lead to the unacceptable fragmentation, isolation and disturbance of natural habitats that support protected wildlife species and other flora and fauna of acknowledged nature conservation importance, contrary to (SP) policies S1 and EN17, (LP) policies EN1, EN13 and EN16, and (NSLP) policies NE14 and NE16."
76. " (3) Insufficient information has been submitted to enable a proper assessment of the archaeological implications of the proposed development, contrary to (SP) policy EN24, (LP) policy EN25 and (NSLP) policy BE12."
77. " (4) The proposal does not satisfactorily demonstrate that adequate provision will be made to facilitate walking and cycling and reduce dependence on the private car, contrary to (SP) policies S1, S3 and TR3, (LP) policy TR3 and (NSLP) policies TR1 and TR2."

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78. “ (5) The proposal does not satisfactorily demonstrate that there would be an acceptable impact on the surrounding highway network, particularly in Uckfield town centre which is already heavily congested at peak times, contrary to (SP) policies S1 and TR3, (LP) policy TR3, and (NSLP) policy TR2.”
79. “ (6) The applicant has failed to demonstrate to the satisfaction of the district planning authority that the proper provision and delivery of the necessary infrastructure improvements can be secured to meet the additional needs arising from the proposed development, contrary to (SP) policy S3, (LP) policy CS1 and (NSLP) policy CS1.”

The Case for Clarence Preston Will Trust and Barham Estates Ltd (the Downlands appellants)

80. The material points are:

Planning policy etc.

81. (The appellants' evidence is mainly in T1). The development plan comprises the adopted RSS 9 (i.e. RPG 9, 2001), and the saved policies of the SP and the LP. The emerging South East Plan has not yet been approved, and remains at a stage where its provisions should carry only limited weight.
82. In fact, the only relevant development plan policies below regional level are the saved SP policies. In particular, those related to housing strategy and targets based upon the extant RSS 9.
83. SP policy S22 provides the strategic basis for development at Uckfield over the period 2006-2011. Uckfield has been assessed through a full and proper process of policy development as being appropriate for major peripheral growth.
84. Within Wealden district, Uckfield is indeed one of the most sustainable locations for significant housing development (see [T1, section 7]). It is not constrained by high-level environmental policy constraints, such as landscape or nature conservation designations. It has a relatively dynamic local economy, many local services and facilities concentrated in the town centre, and good transport links, including a railway station with trains to London. In terms of location, it is situated mid-way between the sub-regional shopping centres of Brighton, Eastbourne and Tunbridge Wells.
85. Yet there is a policy vacuum at the local level. No post-2006 housing allocations have been made and confirmed *after a full and proper statutory process*. The Council has never justified its housing distribution and interpretation of SP policy S22 to any independent inquiry. Therefore its policy stance at this inquiry is seriously flawed. The fact that Downlands lies outside current development limits should be given little weight.
86. The NSLP is a non-statutory plan whose provisions also merit very little weight. While its housing allocations at Uckfield now have planning permission, they are insufficient to meet pressing housing needs to 2011, and in each case are less suitable as housing sites than Downlands. Moreover, they fail to give Uckfield the prominence for development which is clearly signalled by the SP.
87. The Wealden local development framework (LDF) is at an early stage. A core strategy issues and options paper was published in July 2007, but it is couched in very general terms, and it too merits very little weight in this appeal [PD5.4].

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88. The Council has produced other policy documents which can be said to support the appeal scheme. In particular, the Officers Report to Cabinet, August 2007 [PD5.13]. This clearly summarises the Council's ongoing failure to deliver enough housing through the planning system, and makes various suggestions as to how this could be rectified - including the grant of permission to non-allocated sites. Downlands would be the best way of meeting the housing delivery shortcomings identified in that report.
89. The Downlands scheme is strongly supported by the policies and advice in PPS 3, which is a very important consideration in the appeal. PPS 3 requires LPAs to demonstrate a robust 5-year rolling housing land supply, but the Council is unable to do so (see below, housing land requirements etc.). Indeed, for some time it has been signally failing to deliver both market and affordable housing. And this within a local context of extremely high levels of need for affordable housing, and an acknowledged corporate objective to deliver it.
90. The failure to deliver housing means that applications which meet the PPS 3 deliverability tests should not be refused. The appeal site/scheme is: available (within a single charitable trust ownership); suitable (being in accordance with the SP, creating a sustainable community, accessible to public transport and to the town centre by foot and cycle, and having a generally benign and beneficial environmental impact); and achievable (capable of delivering about 400 dwellings by 2012).
91. Unlike BIEN and BIES, Downlands would not simply be a mundane and unremarkable residential extension to Uckfield. Instead, it represents a well-planned and designed, fully integrated new community, with a distinct identity of its own. In this, it is wholly in accord with the sustainability and design objectives of PPS 1. So this is not a speculative housing scheme aimed at maximising the developer's profit. The appellants are a registered charity, and proceeds from the site sale would go to some 17 other charities who are beneficiaries of the trust.
92. Seen within the context of PPS 3, none of the Council's stated reasons for refusing the Downlands scheme are valid. ([T1, sections 10-15] explains why in detail, with reference to all the Downlands evidence).
93. Although the strong case for more housing land at Uckfield might well justify the release of BIEN and BIES as well as Downlands, the latter has significant advantages in planning terms over the BIE sites, and should therefore be preferred.
94. Therefore, if the Secretary of State is minded to approve only one of the 3 inquiry applications, that one should be Downlands.

Education

95. On the basis of conventional local education authority (East Sussex County Council) assumptions, the Downlands scheme would "generate" 188 primary schoolchildren, 131 secondary, and 23 post-16 students. The proposals include a one form entry primary school (capacity 210 pupils) on a site adjacent to the local centre [M].
96. Details of the developer's funding contributions for this, and for other education facilities in Uckfield, are in a planning obligation (Appendix F).

Housing land requirements and supply

97. Evidence on this matter has been provided by all parties in 2 tranches, separated by an interval of several months. The first was in the early part of the inquiry (Jan/Feb 2008), when the SE Plan had only progressed to the intermediate stage of the Panel Report. For Downlands, this is contained mainly in [T2, W1 and the 3 appellants' joint statement on housing land supply, dated December 2007].
98. The second tranche of evidence - which was specifically requested by the Inspector - came after the inquiry sitting phase, and following the publication in July 2008 of the Secretary of State's Proposed Changes to the SE Plan.
99. The first tranche evidence is mainly in the appellants' joint statement. 1 October 2007 was agreed with WDC as the base date for the 5 year supply assessment. The document sets out the appellants' joint assessment of the SP residual requirement (5,356 dwellings), and compares this with the (somewhat lower) emerging SE Plan residual requirement, based on the Panel report (3,994). It then considers the known sources of housing land supply, comprising large site planning permissions and resolutions to grant permission (2,233), together with small site planning permissions (0-370), making a total deliverable supply of 2,233-2,603.
100. Based on these figures, the shortfall against the SP requirement was calculated at 3,123 (at worst)-2,753 (at best), leading to the conclusion that there was only 2.43 yrs. to 2.08 yrs. supply.
101. The (lesser) shortfall against the emerging SE Plan requirement was calculated at 1,761-1,391, leading to the conclusion that there was 3.25 yrs. to 2.79 yrs. supply.
102. On either basis, the Council plainly did not have a 5 years' land supply. In fact, it had considerably less than that. In those circumstances, PPS 3 states (para.71) that "Where Local Planning Authorities cannot demonstrate an up-to-date five year supply of deliverable sites...they should consider favourably planning applications for housing..."
103. Doc. [NORTH 2.1A] followed the first tranche evidence. It slightly modifies the appellants figures, and summarises the differences between them and the Council on housing land requirements and supply. From its Table 1, based on the SP requirement (of 880 dwellings per annum, 2006-2011) the Council accepts there would be a shortfall of 904 dwellings. But the appellants find a far greater shortfall, between 2,793 and 3,163. Even if the SE Plan (Panel report) requirement is considered (Table 2), rather than the SP, there would be a shortfall of 1,431-1,801.
104. The first tranche evidence also includes [G], on affordable housing, which is not disputed by the Council. This cites the LP and NSLP affordable housing policies (HG2 and HG4 respectively) which both require about 30% of dwellings in qualifying schemes to be affordable. It goes on to consider the Council's housing market assessment for the High Weald area (which includes Uckfield), the 2005 sub-regional housing needs study, and the 2005 district housing needs survey.
105. These studies demonstrate high levels of need in Wealden district for affordable housing. The context is one of high local house prices, and a very low

proportion of existing households in affordable housing. This need is recognised by the Council - and meeting it is said to be its top housing priority - but its past record of delivery of affordable dwellings in the district has in fact been very poor. And the NSLP affordable housing target (250 p.a.) is much less than the scale of need shown by the 2005 housing needs survey.

106. In a nutshell, the planning system hitherto has signally failed to provide enough affordable housing in Wealden district, and at Uckfield. But all 3 of the inquiry schemes would provide a substantial number of affordable homes to help meet this pressing need. BIEN and BIES would each provide 30% of their total number, while Downlands would provide up to 40% (300, out of 750 in total). It would in each case be provided through the mechanism of a S106 planning obligation, with various options for tenure. Given the high level of need demonstrated by [G], and the poor past record of delivery, this is a very material consideration which militates strongly in favour of permission for all 3 schemes at this inquiry.
107. The recent publication of the Secretary of State's Proposed Changes to the SE Plan has prompted a further look at housing land requirements and supply. For the 3 appellants, this is contained in [SCG11, also numbered Wo2]. At the same time, SCG10 was produced, showing the (updated) extent both of agreement and disagreement with the Council on housing land requirements and supply.
108. Although the Proposed Changes have been published, it is important to recognise that the SE Plan is not yet part of the development plan. Therefore the SP should continue to be the basis for the housing land requirement. That said, SCG10 follows the evolution of the annual requirement for Wealden at successive stages of the emerging SE Plan. Its Table 3 is based on the Proposed Changes' annual requirement for Wealden of 550 dwellings. This shows that with the inclusion of provision for the "backlog of unmet housing needs", referred to in Policy H2 (managing the delivery of the regional housing provision), there would be a shortfall of between 1,259 and 1,716 over the agreed 5-year period 2007-12.
109. [Wo2] explains how this has been calculated, by reference to 2 formulas for calculating both the affordable housing backlog, and the general housing backlog.
110. On that basis, even if the SE Plan Proposed Changes are taken as the source for the housing requirement, there is a demonstrable shortfall in Wealden's housing supply. Thus PPS 3 para. 71 comes emphatically into play: additional housing sites are needed in Wealden, and (in accordance with policy 22 in the SP) at Uckfield. As far as housing land is concerned, including the need for affordable housing, the Secretary of State should give favourable consideration to all of the inquiry applications.
111. This is supported by a recent (July 2008) appeal decision on land at Dittons Road, Polegate [NORTH14]. In it, the Inspector found that housing land supply at Wealden might be less than 4 years, and she went on to cite PPS 3 para 71, before allowing the appeal. The Secretary of State should reach a similar conclusion in this inquiry.

Landscape matters

112. (The appellants' evidence is mainly in RV1). Downlands comprises arable land set within a framework of woodland, and has undulating topography which slopes

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- north-westwards towards the Shortbridge stream valley. From its high points there are wide views across a heavily wooded landscape to the higher ground of the Ashdown Forest, in the High Weald AONB. However, there are comparatively few views from these areas into the site, and virtually none from the rest of Uckfield.
113. The site is well removed from the AONB, and is not itself subject to any statutory or non-statutory landscape designations. It is only visible from the Ashdown Forest at a distance of 5kms. A visual impact assessment shows that there would be no perceptible impact on these views.
114. Although the site falls within the Uckfield/Maresfield/Five Ash Down Countryside Gap defined in the LP, this policy was subsequently deleted and there is no equivalent policy in the NSLP. Notwithstanding this, a substantial gap of open countryside would be retained between Maresfield and Uckfield, measuring over 800m. at its narrowest point. Visually, Uckfield would not to any significant extent appear any closer to Maresfield than at present. And the entire development would be well contained by existing woodlands, and the A22.
115. The proposals are amply described in the revised DAS and in the revised ES. These show that there would be no significant adverse long term residual damage arising from it, and there would be no overall harm to the landscape character of the surrounding countryside. While parts of the site would, inevitably, be urbanised, this would only be perceived from a few isolated places in the countryside to the north, and the visual and landscape impacts in aggregate would only be of limited local importance.
116. The Snatts Road link, which has attracted some criticism on landscape and other grounds, would require comparatively little tree felling or woodland clearance. The area would still be perceived as woodland, albeit with a useful and attractive cycle/footpath running through it.
117. Overall, the benefits of development would far outweigh any local landscape (or other) impacts. They provide a great opportunity for the town. In particular, the proposed 55 ha. country park would benefit not only the scheme's residents, but Uckfield as a whole. It would link to neighbouring publicly accessible space at Lake Wood etc, to provide a continuous buffer along the A22 Uckfield by-pass. Neither BIEN nor BIES offer a remotely comparable environmental public benefit. In addition, Downlands would contain generous amounts of well-sited formal and informal open space around the developed areas.
118. The country park would deliver significant advantages. It would protect and enhance the environmental qualities of the site and the surrounding countryside; provide close physical and visual links for residents within their immediate environment; and promote through its management and its educational and interpretative facilities a full appreciation of the natural setting of the development.
119. In sum, the Downlands proposals are not merely "acceptable" in landscape terms. Far more than that, they provide a successful demonstration of a fully considered and integrated approach by the landowners, developers, designers and other specialists, which will deliver substantial overall environmental and social benefits. By comparison, both the BIE schemes are relatively mundane, but would have cumulative landscape impacts much greater than Downlands.

Ecology and nature conservation

120. (The appellants' evidence is mainly in [Co1, Co1A and Co4]). The Downlands site includes a variety of arable and pasture fields and hedgerows probably originating from woodland clearance in post-mediaeval times, interspersed with scrub, remaining woodland blocks, and ponds. The grasslands are of recent origin, and species-poor. [Co1]
121. [Co1, app. 1] is a map of areas and site names within Downlands. Much site description and ecological survey data is in the revised ES. This, with other background documents, takes account of the amended proposals, as shown on the revised illustrative masterplan. The ecological background, including details of protected species (bats, dormice, badgers), reptiles and amphibians, aquatic invertebrates etc. is summarised in [Co1, section 2].
122. None of the existing land at Downlands is statutorily designated for its ecological interest or value, or for its contribution to nature conservation. It is a good, but certainly not an exceptional example of a mosaic of Wealden habitats. Overall, it is merely of district-level significance.
123. In general, no part of the Downlands site has had the benefit of positive conservation management. That point cannot be over-emphasised. Like many similar places in Sussex, it has been neglected, but this has not been of much real benefit for its biodiversity. Left to agriculture and occasional intrusions for commercial forestry, the system would continue to degrade (for example, through invasion by scrub and bracken). But the site has great potential for improved management, which would most certainly increase - not decrease - its biodiversity and conservation value in the long term. This is a crucial advantage of the Downlands proposals, compared with BIEN and BIES. [Co1]
124. The Downlands proposals provide an opportunity not merely to protect the existing biodiversity resources of the site, but positively to enhance them. Quite apart from their other merits, in terms of ecology and nature conservation they would amount to an overwhelming public good. They would not adversely affect any statutorily designated site, nor any protected species in a way which cannot be adequately mitigated during Natural England's licencing processes. [Co1]
125. PPS 9 and local planning policies require development to minimise any losses of existing biodiversity, and maximise the benefits of future management and habitat creation. There are specific legislative requirements for protected species, but otherwise habitats must be maintained in a favourable condition. [Co1]
126. The Downlands proposals would amply meet these requirements. Their ecological effects are described in [Co1, section 5]. In broad summary, the effects on, and losses of existing biodiversity resources would be minimal: i) there would be no significant loss of ancient semi-natural vegetation, including ancient woodland; ii) there would be no likelihood, with suitable drainage and access management, of significant changes to the ecology of the ghyll (or gill) woodland; iii) there would only be minor losses of vegetation of recent origin and low biodiversity (including species-poor grassland and scrub); and iv) ground flora of the woodlands would only suffer minor and localised effects. [Co1]

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127. The only wetland to be lost is 2 small isolated ponds of poor quality that would be replaced by several better ones. No natural habitats of any quality would be fragmented or isolated as a result of the proposals. While the woods would experience increased recreational use as they become part of the country park, they will also be better managed than before. Thus the human impact upon them will be essentially benign.
128. To set against these minor effects, development would bring the following positive benefits: i) 29.5 ha. of ancient semi-natural woodland would be brought under conservation management; ii) 2.6 ha. of replanted ancient woodland in Shermanreed Wood would be restored to semi-natural woodland; iii) Budletts Common (5.8 ha. of ancient wet acid grassland) would be restored, by scrub clearance and grazing, from neglect to high biodiversity, with great benefits - of regional significance - to habitats and dependent species; iv) a continuity of managed woodland and grassland would be established from West Park to Budletts Common; and v) great crested newts would benefit from enhanced habitat management and additional ponds. [Co1]
129. All these benefits would be secured (via a planning obligation) partly through a permanent warden or ranger for the proposed 55 ha. country park [Co1, app.7], who would co-operate with local nature conservation bodies. The park and warden would also promote public education on living with wildlife and appreciating the natural world. However, there would be restricted access to some areas of the country park.
130. Buffer zones with a minimum width of 10m. would adjoin all areas of ancient woodland. The whole site area west of the A22 would be part of the country park, and would not have any development on it, or public access to it.
131. During the construction phase, to obviate short-term environmental damage there would be an environmental management plan, overseen by an ecological "clerk-of-works". [Co1]
132. A permanent, 20m. wide green bridge would span the access road into the site from the new roundabout on the A22 [Co1, app.5]. This would be planted with suitable vegetation to provide a continuum of habitat across the road, and reduce any risk of habitat severance for animals such as dormice, bats, and reptiles. Despite the views of some sceptics, such bridges are not uncommon in Europe, and have been shown to work effectively.
133. The ES describes the various specific elements of the Downlands ecosystem in detail. On balance, the proposals and the prospect of active future management of undeveloped areas would be beneficial both for watercourses and ponds, and also for woods, grasslands and heath. In place of continued neglect, many Downlands wildlife habitats would gain from positive management by traditional means. [Co1]
134. No nearby SNCIs, including Lake Wood adjacent, would be adversely affected by the Downlands scheme. Nor would the hydrology or aquatic life of the Shortbridge stream, which lies west of the A22, or its tributaries.
135. [Co1, section 6] shows that the Downlands proposals comply fully with the key principles in PPS 9. They would also comply with SP and LP nature conservation policies. In addition, they respond to advice from statutory consultees, and as a

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- result Natural England does not object, and the Environment Agency has withdrawn its initial objection.
136. Detailed responses to other consultees' comments on the Downlands scheme are in [Co1, section 5]. These show that the scheme has been misunderstood, and misrepresented, even by organisations which seek to promote nature conservation. They ought to know better! In fact, the criticisms by The Woodland Trust and the Sussex Ouse Conservation Society are not well-founded. The Council's ecology-related reason for refusal has no merit. [Co1]
137. By contrast, both BIEN and BIES are at a considerable ecological disadvantage. They would both entail some harm to valuable habitats and protected species, and would also fail to bring forward any benefits for biodiversity in the wider area. They would not include any environmental/ecological benefits remotely comparable with the Downlands country park and proposed management strategy [Co1]
138. [Co1A] responds to, and comprehensively refutes, further ill-considered criticisms of the Downlands scheme made at this inquiry by the Council, and separately by BIEN and BIES.
139. The Council's evidence on ecology and nature conservation raises some 12 specific topics (see [R1]). These are: i) information about Downlands; ii) status of habitat types in relation to habitat action plans; iii) ancient woodland (definition, effects etc.); iv) Longwood ghyll and sandrock exposures; v) heath and fern (bracken) and its management; vi) grasslands, arable and stewardship; vii) habitat mosaics and places; viii) effects of people on places; ix) hydrology; x) Downlands in the context of landscape change; xi) protected species; xii) disparities in treatment of Downlands and BIEN/S sites.
140. Detailed and robustly-researched responses on all these matters are in [Co1A, sections 3-14]. These cannot readily be summarised here. On many if not all of them, the Council's evidence is factually and verifiably incorrect. Indeed, it contains several glaring errors. Some of its evidence wrongly applies ecological principles, and/or relies upon inappropriate examples. Worst of all, its overall drift is misleading. It grossly exaggerates the ecological effects of the Downlands scheme, and - on the other hand - underestimates its substantial ecological benefits. It also underestimates the harmful impacts of BIES and BIEN, and their comparative lack of ecological benefits. For all these reasons, very little reliance should be placed upon it.
141. [Co1A, sections 15 and 16] contain responses to the ecology-based criticisms of Downlands made by BIEN and BIES, respectively (see [Wr1 and Me1]). Again, these reveal many errors, inconsistencies and unjustified bias. The criticisms are all refuted, and very little reliance should therefore be placed on them.
142. [Co4] contains further responses to supplementary evidence by BIEN and BIES [WR2 and Me2], produced during the inquiry. They raise additional matters on the following main topics: protected species issues; the identification and extent of ancient woodland; effects on ancient woodland; indirect human impacts on habitats; and countryside, people and habitat management at Downlands. Again, these detailed points cannot be summarised here.
143. There is a separate note [attached to Co4] containing a summary of all the issues raised in the Downlands ecology evidence [Co1, Co1A, Co2, Co2A, Co3,
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Co3A, and Co4] which should assist the inquiry. The overarching conclusion is that, by contrast with BIEN and BIES, the Downlands scheme would bring many specific nature conservation benefits, with minimal adverse effects. On balance, the proposals would bring a considerable benefit to biodiversity in the area, and would therefore comply fully with PPS 9, and all of the relevant development plan and other policies.

Highways and transport matters

144. (The appellants' evidence on Downlands is mainly in [B1 and B4]).
145. 2 of the Council's reasons for refusal (see above) related to transport and accessibility issues. Subsequently, a revised illustrative masterplan was produced which has been accepted as the basis for this inquiry.
146. The main revision was to take the principal vehicular access to the site from a proposed new roundabout on the A22 Uckfield bypass, rather than from the existing Black Down roundabout to the north (this was in order to avoid any harm to ancient woodland in that area). This change to the proposals was accompanied by a revised transport assessment (TA), dated October 2007 (DL3.9). [B1]
147. A description of the local highway network is in [B1, section 3]. Downlands lies north west of Uckfield close to the junction of 3 primary routes, the A22, A26 and A272. The A22 Uckfield bypass forms part of the A22 between London and Eastbourne. The A26 runs from the A22 to Crowborough and Tunbridge Wells, while the A272 goes west to Haywards Heath. [B1]
148. The site lies about 1.5 kms. to the north west of Uckfield town centre. It is bounded to the west by the A22 and to the north, east and south respectively by 3 minor roads – London Road, Snatts Road and Rocks Road. Where the A22 abuts the site, it has a wide, single carriageway, with grass verges on either side, and a 60 mph speed limit. [B1]
149. For public transport, Uckfield has local buses [routes are shown in B1, app. AMB-A] and a railway station. Historically, buses have been poor, with limited services, low quality vehicles, and inadequate passenger information. The small, terminus railway station is located near the bus station, at the southern end of the High Street by the River Uck. It provides a half-hourly service to London Bridge during peak weekday periods and an hourly service at other times, with a journey time of about 70 minutes for direct trains. [B1, 3.5ff.]
150. Uckfield's undulating terrain poses some difficulties for pedestrians. There is a somewhat tortuous, poorly maintained and ill-lit pedestrian footpath from Snatts Road to the town centre, via Pudding Cake Lane. Additional links are needed. [B1]
151. The proposed development would indeed be served by a much improved transport infrastructure. The proposals include provision for dedicated bus, pedestrian and cycle accesses as well as improvements to local transport infrastructure, to benefit both prospective new residents and the existing community. The package of measures to encourage a genuine modal shift - away from the private car to walking, cycling and public transport - is extensive, and far outweighs measures that could be implemented by the smaller BIE sites. [B1]

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152. The main vehicular access would be via a new roundabout on the A22, designed to ensure a safe junction with sufficient capacity to accommodate all traffic flows [B1, app. AMB-B]. Snatts Road would only provide access for buses and emergency vehicles. [B1, 3.6]
153. The proposals feature a comprehensive and sustainable transport strategy. Crucially, in view of the recognised problems of congestion and road safety in Uckfield town centre, the impact of car trips on the town centre network would be minimised. The direct access to the A22 will ensure that the majority of essential car borne trips to destinations outside Uckfield will not have to travel through the town centre – in marked contrast to BIEN and BIES, from which most car journeys would have to enter the town centre via Framfield Road. [B1]
154. It must also be remembered that Downlands will include some employment and small retail facilities, as well as a primary school, recreational playing fields and a country park. This will facilitate the “internalisation” of many short trips – perhaps 10% of all residents’ trips - within the development, thereby obviating the need to use the car. Neither BIEN nor BIES offers this significant advantage, which is encouraged by transport policy at all levels.
155. In addition, the Downlands transport strategy will strongly encourage a modal shift for other local journeys. Thus, a new 3.1 kms. cycle link would run alongside the eastern edge of the A22, within its ample grassy verge, to terminate opposite the bus station [B1, app. AMB-C]. A further new footpath/cycleway (the Snatts Road link) would follow Snatts Road and Rocks Road to provide a convenient (and attractive) link to the town centre. [B1, app. AMB-D]
156. [B1 app. AMB-E] illustrates walking isochrones from the site. This shows a list of facilities and services that would be within reasonable walking distance. [B1 Table 3.1] lists those within 2 kms. of Downlands centre. Together, these demonstrate that, like Downlands itself, some facilities are in the north of the town.
157. The proposals include a S106 obligation which will provide extensive improvements to local bus services nos. 31 and 245. This would involve re-routing both services through the site. [B1, 3.27-31 and apps. AMB-G and H]
158. In addition, a comprehensive community travel plan will include a package of “soft” measures to encourage walking, cycling, car sharing and the use of public transport. This would contain separate travel plan programmes for on-site business employees, pupils at the primary school, and residents. [B1, 3.32-37 and app. AMB-I]
159. On traffic impact, rigorous junction capacity tests have been undertaken using robust development trip rates for a 2016 completion year (see TA). These show that the access roundabout would operate satisfactorily, with minimal delay to through traffic on the A22. The safety audit shows that only minor design modifications might be advisable.
160. In terms of off-site junctions, the proposals would have impacts on peak hour flows at the Black Down roundabout to the north and the Copwood roundabout to the south, but these could be satisfactorily mitigated by minor improvement works to those roundabouts. These too have been subject to safety audits. [B1, 3.38-50 and apps. AMB-J,K,L,M]

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161. The sustainable transport strategy has been developed with national (PPG13, PPS3) and local (SP, LP and NSLP) transport policies fully in mind. It would be wholly in accordance with those policies, in particular with regard to issues of location, and accessibility by non-car travel modes.
162. In general, longer distance car borne trips are directed onto the strategic road network, while more local trips, by bus, cycle and on foot, are encouraged either onto new dedicated infrastructure or onto the local minor road network. The proposals are fully compatible with the objectives of providing a balanced mix of land uses that will minimise the need to travel both among residents and the existing population, and will encourage modal shift away from car use. [B1, section 4]
163. Turning more specifically to the reasons for refusal, Downlands would not have an adverse traffic impact on the A22, Batts Bridge roundabout, or Maresfield village. [B1, 5.37-44, and apps. AMB-Q, R]
164. Uckfield town centre is of most interest to ESCC as local highways authority; but Downlands traffic to and through it would be minimal [B1 5.5-44, and apps. AMB-N, O, P]. The development traffic impact has been robustly analysed. In brief, based on a realistic trip rate derived from TRICS, the maximum increase in peak hour movements on the town centre road network would be less than 2% of existing traffic flows. This is virtually insignificant in traffic terms. Full details are in [B1 Table 5.1 and app. AMB-N].
165. However, for this appeal ESCC have changed their position, to insist on “nil detriment” (i.e. no increase over existing peak hour flows). But, contrary to ESCC’s assertions that stance is not supported by anything in national or local transport policy, and the Secretary of State should not support it. The 1998 LP and the NSLP for example both include a 2% impact threshold, as a trigger for developer contributions to a town centre traffic management scheme.
166. In fact, ESCC’s attempts to secure developer contributions to a town centre scheme already have a vexed history, and its position at this inquiry is both confused and confusing. An achievable traffic management scheme or solution is not yet in place, nor is even designed, but remains at the early planning stage. It will be subject to all manner of potential hurdles and obstacles, both financial and political. Contributions to a scheme have been sought from the 3 NSLP sites, and would be justified from the BIE sites – but are not justified from Downlands, since it would not significantly exacerbate town centre congestion.
167. While there is no viable scheme to improve traffic flows and road safety in the town centre, it is highly likely that the approved NSLP housing sites will be implemented. By contrast with Downlands, and as ESCC accepts, that will exacerbate existing town centre congestion.
168. In any event, there must be considerable doubt as to the wisdom of any sort of engineered, town centre scheme (involving new roads, road widening etc. in a one-way gyratory) which would increase road capacity in the town centre. Such a scheme would inevitably increase, not decrease, town centre traffic flows even further, and would therefore be self-defeating. It would not accord with current best practice. Instead, ESCC should focus on discouraging car use, and encouraging modal shift. That is precisely what Downlands would achieve. Therefore, ESCC’s opposition to Downlands is both puzzling and contrary.

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169. In fact, Downlands would be highly accessible by non-car modes, and would comply fully with national and local policies and guidance in this regard. [B1, 5.45-60]
170. There can be no credible objection to the new access roundabout in principle. There is nothing in national or local policy which would preclude such a junction in that location. Nor is there any reason to suppose that it would be seen as a precedent for additional roundabout junctions on the A22. [B1, 5.61-88, and apps. AMB-M, S, T, U, V]
171. To summarise, the Downlands proposals are not merely acceptable in traffic and transport terms, but are highly commendable, and wholly consistent with the latest best practice in transport planning. They would make Downlands the most sustainable, in transport terms, of all 3 sites at this inquiry – and rather more so than the 3 approved NSLP sites. Unlike BIEN and BIES, they would not entail increased traffic congestion in the town centre, and they would have far superior pedestrian and cycle links with the town. In short, there are no reasonable grounds for refusing them. [B1]
172. [B4] is a response to ESCC's rebuttal evidence. It therefore deals with some of the foregoing matters in more detail. In particular: walk distances; trip rates; the travel plan; and the new junction on the A22. The following few paragraphs summarise the main counter-rebuttal points on these matters.
173. On walk distances, ESCC have queried some of those given by Downlands, suggesting they are under-measurements. [B1 annex A] provides some revisions, based on GIS, and is the most accurate set of results available to the inquiry. Comparable distances are shown for the BIE sites. The analysis shows that Downlands' accessibility to various town centre facilities compares well with the other inquiry and NSLP sites. [B4 2.1-8 and annex A]
174. On trip rates, ESCC is wrong to suggest that it has previously queried the Downlands assumed rates, or the assumed level of internalisation of trips. In any event, Downlands stands by its original trip rate assumptions [B4 4.1-3]
175. On the travel plan [B4 annex B], which would also be delivered as a component of a S106 obligation, ESCC underestimates the effect of Downlands' proposed improvements to bus services. That alone will go a long way towards a step-change in existing travel choices for Uckfield residents. And, with vigorous marketing, the travel plan(s) will also make a significant contribution towards modal shift, far more than ESCC seems prepared to recognise. [B4 5.1-15 and annex B]
176. On the new junction, contrary to ESCC's assertion, there is nothing in PPG 13, Circular 2/07 (Planning and the Strategic Road Network), or in the SP which would in principle, or as a matter of policy, preclude a new access roundabout on the A22 Uckfield by-pass. The A22 is not part of the motorway, trunk or "strategic" road network where such a policy objection might apply. Instead, it serves a more local function in the East Sussex road hierarchy. [B4 6.1-15]
177. Finally, it should be noted that the Downlands transport measures, as outlined above, are included in a completed S106 obligation. With these measures in place, Downlands would be the most sustainable in transport terms of all the 3 proposals at this inquiry.

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178. The material points are:

Planning policy etc.

179. (WDC evidence is mainly in W2, sections 3 and 4). The application was considered in the light of development plan and other relevant policies. The former are in RPG 9, the SP and the LP. The latter are in the emerging South East Plan and the NSLP, and also include national planning policies in PPGs and PPSs and other documents. The reasons for refusal (see above) only cite the determining policies in PPSs, the SP, the LP and the NSLP.
180. The proposal would be contrary to all of these policies.
181. The South East Plan is at an advanced stage, following publication of the Secretary of State's Proposed Changes. These should be given significant weight, especially in the matter of housing land requirements for Wealden district and Uckfield. Although still extant, RPG 9 is to a large extent out of date, and will soon be superseded by the South East Plan. It no longer merits any significant weight.
182. The SP will also be superseded by the South East Plan, but for the time being its saved policies remain part of the development plan.
183. The LP only contains housing land allocations up to 2004, but it too has many saved policies, which have some bearing on the appeals.
184. The history of the NSLP is described briefly above (see Other Planning Policies). Although it cannot, by definition, have the same status or weight as the development plan, its early stages followed statutory procedures and benefited from lengthy and intensive public consultation. The merits of various competing housing sites, including those in this inquiry, were thoroughly considered. A legal challenge to the plan was rejected by the Court of Appeal. It was adopted for development control purposes only quite recently, in November 2005. Thus although it precedes the publication of PPS 3, it is adequately up to date. For all these reasons, the NSLP should be given very significant weight, almost the equivalent of that due to a statutory development plan. This has been acknowledged by Inspectors in appeal decisions.
185. For planning policy purposes, it should particularly be noted that the NSLP allocates 3 housing sites on greenfield land at Uckfield, with a combined capacity of 400 units. They comprise allocation UC1, Land north of Mallard Drive, for 120 dwellings; allocation UC2, Land north of Eastbourne Road (a.k.a. Cysleys Farm), for 220 dwellings; and allocation UC3, Land at Sandpits, Lewes Road, for 60 dwellings.
186. For a small market town like Uckfield, these 3 sites combined, with their 400 dwellings, amount to a very substantial level of growth over a short time period, as much as the town can reasonably absorb within its existing infrastructure capacity – and particularly that of the local road network. Nevertheless the appellants all tend to ignore or disregard them, as if they did not exist. Such a position is not merely untenable, it is absurd.
187. It must be emphasised that these allocated housing sites all now have planning permission. All can be developed by 2011, and thereby contribute to

the 5 year land supply required by PPS 3. Both collectively and individually, environmentally and in terms of sustainability, these 3 sites are preferable as housing sites to any of the 3 appeal sites, all of which have been rejected as candidates by the local plan process.

188. On its own, the Downlands scheme, with 750 dwellings (and other mixed uses), would be significantly larger than these 3 allocations combined. However, as the ensuing evidence demonstrates, there is no need for this scale of development at Uckfield to satisfy the housing land requirement. Moreover, as detailed below, there are significant objections to Downlands on landscape, ecological and traffic/transport grounds – none of which apply to the 3 allocated NSLP sites.

Education – the primary school

189. [C] sets out in detail the development contributions expected by East Sussex County Council towards education facilities (and certain other facilities, such as libraries, rights of way etc, but excluding highways and transport) in the event that Downlands (or any combination of the 3 appeal schemes) is approved. These are based on various national and development plan policies. Details of the contributions, and their timing etc, should in principle be included in the relevant planning obligation.
190. Apart from this, there are serious doubts as to whether the proposed on-site primary school at Downlands is actually deliverable [WDC28]. This for 2 reasons: first, 750 units is insufficient to justify a single form entry school, and therefore it is questioned whether ESCC would build one there. Rather, it may use the contribution to expand existing schools. But, just as Downlands is unsustainably located for a new school to be readily accessed from other parts of Uckfield, it is also unsustainably located for its population to gain access to other schools.
191. Second, the school site shown on the master plan contains steep slopes, and the necessary levelling means that the school could not be accommodated on the site shown. It would have to be enlarged. The road layout and development areas would also need to be revised, but the implications of this (close to Longwood Ghyll etc.) have not been assessed by the ES. They could be substantial. There would also be implications for the form of the planning application itself.

Housing land requirements and supply

192. Evidence on this matter has been provided by all parties in 2 tranches, separated by an interval of several months. The first was in the early part of the inquiry (Jan/Feb 2008), when the SE Plan had progressed to the intermediate stage of the Panel Report. For WDC, this is contained in [W1 and appendices].
193. The second tranche of evidence – which was specifically requested by the Inspector - came after the inquiry sitting phase, and following the publication in July 2008 of the Secretary of State's Proposed Changes to the SE Plan. In fact, formal closure of the inquiry was postponed mainly in order for the Inspector to take the Proposed Changes into account.
194. The first tranche evidence (which is briefly summarised below) had necessarily to take more account of the SP housing land requirement for Wealden district, and set out a number of housing land requirement and supply scenarios with that

in mind [W1 appendices 1-7]. The second tranche is based on the very sound premise that the SE Plan is now so advanced, and indeed so close to approval, that to all intents and purposes (including the purposes of this inquiry) the SP may now be disregarded. In short, it has been overtaken by events. Indeed, it is confidently anticipated that the SE Plan will be approved before the Secretary of State's decisions on these appeals, thereby replacing the SP entirely.

195. To recap, the main conclusions of the first tranche evidence [see W1] were as follows: a) although the SP was prepared for the period up to 2011, it will be replaced by the SE Plan late in 2008. Therefore, substantially more weight should be given to the provisions of the SE Plan than to the SP; b) it is appropriate to calculate land availability over the agreed 5-year period (from October 2007) totally upon SE Plan provisions since, when it is approved its requirements will apply from 2006 right up to 2026; c) the remaining allocations in the NSLP will convert to permissions, and consequently these allocations should be included as a source of housing land supply; d) based on the SE Plan Panel report annual requirement of 480 d.p.a, Wealden has a surplus of 1,111 dwellings, equating to 7.03 years' housing land supply [W1 app.7]. This rises to 8.75 years in the "rest of Wealden" area, which contains Uckfield [W1 app.11]; e) even if the SP were used as the basis for calculating the district requirement up to October 2008, there is still a 5.15 years' supply [W1 app.6]; f) the foregoing assessments are amply backed up by evidence of sites' availability, suitability and achievability, as required by PPS 3, para. 54 and the DCLG document "Demonstrating a 5 year supply of Deliverable Sites" [LA1.2]; g) thus land supply will be well in excess of the PPS 3 requirement to establish a 5-year land supply, and it will provide flexibility over the period of emergence of the LDF; h) in fact, a cautious approach has been taken towards the land availability assessments, and the aforementioned supply figures are likely to be exceeded owing to additional supply components not included in WDC figures - in particular, additional supply is likely to come from completions within 5 years of permissions yet to be granted on unallocated land (i.e. windfalls), and from higher densities on NSLP sites.
196. Thus, given the significant amount of available housing land in Wealden district, including more than 5 years' supply, to grant ad hoc permissions for any of the 3 inquiry sites would result in a serious unplanned over-supply of housing.
197. Also, it is highly probable that the NSLP allocations would come forward before any of the inquiry sites, (in the event of one or more being allowed). In addition, implementation of the NSLP sites will provide many affordable dwellings, to help meet the acknowledged need. None of the inquiry sites should be allowed on the basis that (as WDC readily acknowledges) it would provide affordable housing in line with normal policy.
198. The second tranche of WDC evidence on housing land requirements and supply shows how matters have moved on, and to a large extent supersedes the first tranche. The main points (from WDC closing submissions [WDC28, section 2]) are as follows. They draw mainly on [W6 and appendices].
199. First, it is worth stating that even if there were a shortage of housing land in Wealden (which is certainly not the case – see below) that should not automatically lead to any of these appeals being allowed. [PPS 3 paras. 69 and 71.] For such unallocated sites even to be considered for approval, they would have to be both acceptable in planning terms, and deliverable. But as other

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- evidence shows, none of them is acceptable (i.e. suitable), and there are very serious doubts about the deliverability of Downlands and, possibly, BIES.
200. On the housing land requirement, the Secretary of State's Proposed Changes have overtaken much of the earlier debate at this inquiry. There is now no justification at all for continuing to have regard to the SP (its policy H1 etc.). The SE Plan has a start date of 2006, prior to the start of the agreed 5-year supply period (October 2007).
201. The annual requirement for Wealden is now 550, giving a total Oct 2007-Oct 2012 of 2,750. This is agreed with the appellants.
202. Paras. 1.1-2.5 of Ch. 7 of the draft SE Plan have now been deleted and there is no reference to shortfalls or surpluses in the Proposed Changes. This confirms that any shortfalls should not be carried forward into the new SE Plan, and undermines the appellants' evidence on land availability, which relies heavily on shortfalls against previous plans prior to 2006.
203. Thus there is no justification for the appellants having regard to any so-called shortfall predating the start of the SE Plan period – i.e. pre-2006. They now seem to recognise this. In its place, they seek to raise an additional numerical requirement called “backlog of unmet housing needs”. But this is without foundation. There is simply no reference to it in Proposed Changes policy H1. Disregarding this, but allowing for an agreed completions shortfall (of 444) from April 2006 to October 2007, the correct figure for the 5-year requirement (for the whole of Wealden) is 3,194 dwellings (2,750+444) [W6.4 app.B].
204. On supply, completions April 2006-Oct 2007 are agreed; the dispute is over future supply. The Council has analysed this very thoroughly. It is satisfied that there are no bars to development of the sites relied upon in its analysis; but where there is some reasonable doubt, a discount has been applied, in line with para. 54 of PPS 3. Overall, some 159 dwellings may now be added to the supply, compared with the “first-tranche” position.
205. Thus WDC can demonstrate a supply of 3,835, giving a surplus of 641 (3,835-3,194) [W6 table 3]. This equates to a 6 year land supply. And this is without reliance on the aforementioned 159 units (which would give a surplus of 800, or 6.25 years' supply) [W6, 4.8].
206. Owing to the increased district requirement (550 d.p.a.) in the Proposed Changes, compared with the Panel report (480 d.p.a.), this represents a reduced surplus against WDC's first-tranche position of about 7 years' supply (see above), but it still comfortably exceeds the PPS 3 requirement.
207. Moreover, the Secretary of State cannot ignore the SE Plan strategy. It is very important to note that Uckfield is not within the area where the Proposed Changes have increased Wealden's housing requirement. This is because the Changes increase the annual district requirement from 480 (the Panel recommendation) to 550, but the increases are all in the Sussex Coast part of Wealden (280 increasing to 350), and not in the “areas outside sub-regions” (also called the rest of Wealden), which include Uckfield. This area remains at the Panel's recommended 200, a lowly figure (see Proposed Changes chapters 17 and 25).
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208. By contrast, there is now a far greater focus on housing delivery in the Sussex Coast part of Wealden (chapter 17). Within it, the policy is firmly aimed at regenerating the economy in the Hailsham/Polegate area. That regeneration objective depends heavily on housing development in that area. But within the rest of Wealden, including Uckfield (chapter 25), the policy emphasis in the Proposed Changes is on environmental protection and safeguarding the countryside.
209. Thus, while Wealden as a whole can demonstrate at least 6 years' housing supply, the part which includes Uckfield can demonstrate 8.71 years' supply [W6, 4.27].
210. It follows that to allow additional, unallocated housing at Uckfield would not only be unjustified by the up-to-date 5 year housing land requirement, but it would also upset and undermine the Secretary of State's regional strategy. It is assumed that the Inspector and the Secretary of State would have no reason or wish to do that.

Landscape matters

211. (WDC evidence is mainly in W3, paras. 8.1- 65.) Uckfield lies approximately at the transition between the High Weald and the Low Weald landscape character areas. Both the LP and the NSLP place the site broadly within the latter for the purposes of their environmental policies. However, the site and its surroundings have several High Weald landscape characteristics. These include the following: the fact that more than 50% of the site is heavily wooded, with large woodland blocks on all sides except the south east - hence its densely wooded appearance from a distance; a generally elevated, rolling topography; the narrow, deep, heavily wooded Longwood Gill; the stream through Shermanreed Wood; substantial sandstone outcrops in Longwood Gill (and at Lake Wood adjacent to the site); the substantial area of heathland at Budletts Common; and the large bold ridge which approximately follows Snatts Road, to the south east.
212. A photographic appraisal [W3, app. E], including various views from viewpoints in the countryside north of the site, demonstrates the ridge, the site's extensive open areas, and its woodland concentrated on the lower slopes. The ridge hides the town of Uckfield from views in the zone of visual influence. It has very little built development on it at present, and that which does exist is inconspicuous.
213. Not so the proposed development, which would be seen as a substantial, first encroachment of Uckfield beyond its natural hillside setting. Far from being a well-integrated urban extension, the development would appear as a very large, stand-alone settlement, spilling out into hitherto undeveloped and unspoilt countryside, and visually unrelated to (and not visible from) the rest of the town. Indeed, unlike BIEN and BIES, it is no exaggeration to say that the development would be physically and visually divorced from the town.
214. One of the most notable northerly viewpoints is the much-visited car park at Marl pits near Nutley in the Ashdown Forest. This is well within the High Weald AONB, and although the appeal site is over 5 kms. away, it is reasonable to suggest that, in what is at present an unbroken and heavily wooded countryside setting, the development would significantly harm the setting of the AONB.

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215. Another much-frequented viewpoint is Maresfield recreation ground, which is much closer at hand. From here, large parts of the development would be clearly visible. The same applies to other public viewpoints. [W3, app. E]
216. Although this is an outline application, it is clear enough from the appellants' master plan and the design and access statement where development would occur, and at approximately what density and height. For example, the neighbourhood centre would be at a high point, relatively close to Snatts Road, where it would be the hub of the development. Commercial buildings and housing around it would be up to 4 storeys high. And this in a place higher than anywhere else in Uckfield's administrative area.
217. Located on a complex existing sloping landform, the adjacent primary school would almost certainly require a substantial amount of cutting, filling and levelling, which in turn would take more land from the planned housing areas, potentially raising their densities and building heights significantly above those anticipated in the DAS. This could only increase their visual impact.
218. Another major physical and visual impact of the proposed development would be on Snatts Road itself. This at present is a long, narrow, largely unlit country lane, which virtually marks the north western boundary of Uckfield. It would be transformed by the development, and would in effect be suburbanised. At present, one stretch of it gives extensive parkland views of the site which clearly show its strongly rural character; although the development would preserve part of this in the foreground, much of it would be visible from this locally well-known viewpoint [W3, app. H, view 1].
219. The hitherto undisturbed ancient woodland in Hunters Way Shaw on the southern side of Snatts Road would be decimated by the extensive tree felling (at least 31 trees would be lost) and scrub clearance needed for the proposed Snatts Road link. This would further harm the character of the site's surroundings and of Snatts Road itself.
220. On its south western side, the proposed new roundabout on the A22, with all the associated roadworks and other engineering operations, would represent another major intrusion on the landscape, and would further reduce both ancient and regenerating woodland in the locality.
221. It is acknowledged that the site is not designated in the LP/NSLP for its landscape value. However, it comprises a substantial tract of countryside on the north west edge of Uckfield, and is - unlike BIEN and BIES - clearly separate from the town itself. With its rolling fields, woodlands and other features, it is attractive, unspoilt and well worth preserving. Of the 3 sites in this inquiry, Downlands is overwhelmingly the one which would be most harmed in landscape terms by development. The sheer scale of development proposed would only compound this harm.

Ecology and nature conservation

222. (WDC's evidence is mainly in [R1]). Although the Downlands site has (as yet) no statutory nature conservation designations, this may be because it has been little studied until now. Yet Downlands contains various legally protected species, and priority species and habitats, which make up a strikingly rich and varied ecology.

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223. Its priority habitats include eutrophic standing waters, aquifer fed springs, arable field margins, ancient and/or species rich hedgerows, wood pasture and parkland, wet woodland, lowland mixed deciduous woodland, lowland dry acid grassland, lowland meadows, lowland heathland, purple moor grass and rush pasture, and inland rock outcrops. Together, these create a valuable framework or mosaic of habitats for a diverse range of animals and plants.
224. It is not only Downlands itself which is of concern in this appeal. Adjoining and nearby sites with nature conservation designations include the Lake Wood SNCI, the West Park local nature reserve, Butchers Wood SNCI, Budlett's Common Rocks SNCI and Shortbridge Stream Meadow SNCI.
225. The appeal site is particularly notable for its sandstone rock exposures and gills (esp. Longwood Gill, but also the stream area in Shermanreed Wood), and for its widespread ancient woodland, secondary woodland, and (perhaps) primary woodland. (These and their most characteristic plant and animal species are described in detail in [R1, sections 8-13.])
226. A development of the scale proposed, on land hitherto largely undisturbed by human impacts, would seriously disrupt the "ecological synergy" which exists on this site between woods, fields, wetlands and the Wealden sandrocks. It would cause devastating habitat fragmentation. Some species would disappear altogether, while others would be reduced to critically low levels. The loss of flora and fauna would not be compensated for by the arrival of opportunist, pioneer species, including alien plants that would have a damaging effect on native wildlife. And the effects of development would also spill over into important adjacent habitats, mentioned above, including ancient woodlands and sandrock exposures.
227. PPS 9 states clearly that ancient woodland should not be lost, or damaged in any way. While there would be little physical clearance of ancient woodland on the main part of the site, many trees would be lost in connection with the Snatts Road footpath and cycle link, which would traverse ancient woodland. It is possible that this area includes some primary woodland, never previously disturbed. The link would pass through a 200m. length of Hunters Way Shaw, before crossing Rocks Road on a bridge. The works would also damage exposures of sandrock here.
228. Moreover, in general the development would have a range of harmful woodland-edge effects, contrary to PPS 9 and to SP and LP/NSLP policies. The remaining ancient woodland would deteriorate even if, as the appellants say, it is managed for long-term conservation and recreation within a country park. For example, general human disturbance near the woodland, with increased noise, traffic, night-time light levels, disturbance and predation by dogs and cats, and various kinds of pollution would in combination have a profound effect on the flora and fauna for which the wood is a habitat some or all of the time.
229. Harmful agents and effects would include subtle changes in micro-climate (e.g. the "heat island" effect), nitrogen pollution from car exhausts, increases in footfall and trespass, fire-raising, and dumping of garden and other rubbish. Despite the best intentions and efforts of any country park warden or ranger, it would in practice be virtually impossible to control access to parts of the woodlands and rock outcrops. The appellants' case is either disingenuous in this regard, or simply naive. Some damage from the inevitable increase in human

pressures would be innocent and inadvertent, but some would be deliberate and malicious, as has occurred at Lake Wood and in other comparable situations.

230. The proposals would largely destroy the biodiversity of the site's grassland and arable land, which the appellants have underestimated. For illustration, the abundance of grass seed in the fields at Downlands encourages birds, mice and voles, which, in turn, are food for owls and other birds of prey. And even the duller-seeming grassland or arable can be rapidly improved for wildlife, as may be happening here under DEFRA's existing farm stewardship scheme.
231. Both PPS 9 and the SP and LPs contain a range of policies aimed at protecting and conserving biodiversity, especially in and around ancient woodlands and other priority habitats. These are cited in the reasons for refusal. But the effects of large scale development - some of them dramatic, others insidious, quite gradual and difficult to measure - could not all be subject to full or effective mitigation. If the development were to proceed, much ecological damage would be done. It could not be undone, and the policies would be breached.
232. The appellants rely on the use of buffer strips to protect the site's woodlands from harmful edge effects. It is accepted that these would have some ameliorative effect. But as shown on the master plan, they would not in general be adequate in width. A more generous width of 30 m. would be far preferable in most locations, as it would create a gradient (or ecotone) from closed canopy to short sward. However, this would have a knock-on effect for the general layout and design of the development elsewhere.
233. Nor is it accepted that the proposed green-bridge would have the desired effect of acting as a wildlife movement corridor, as it would be quite narrow, and shared with a footpath and cycle track. Green-bridges in general have had mixed success, and their efficacy in the UK is by no means proved. Failure of the green bridge would only exacerbate habitat fragmentation.
234. In the final analysis, far from being positive, on balance, for biodiversity, ecology and nature conservation, the effects of development would be overwhelmingly negative and harmful. This must be counted a very strong reason to refuse the Downlands proposals and dismiss the appeal.
235. Indeed, of the 3 sites in this inquiry, Downlands is the one which would be most harmed in ecological/biodiversity terms by development. The sheer scale of development proposed would only compound this harm.

Highways and transport matters

236. (WDC's/ESCC's evidence re Downlands is mainly in [H1, H4, H4A, H5 and SCG2, also numbered WDC16]. Much of [H1, H5 and SCG2] is equally relevant to BIEN and BIES, but is only summarised in this section. Relevant technical information is in the annexes to these proofs).
237. East Sussex County Council (ESCC) are the local highways authority and give evidence on highways and transport matters on behalf of themselves and WDC. ESCC maintains an objection in principle to all 3 appeal schemes on traffic and transport grounds.
238. In a nutshell, all 3 appeal schemes are unsustainable in transport terms, because they would lead to an undue increase in traffic congestion in Uckfield,

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- and in use of the private car. Despite their best efforts, none of the appellants have gone far enough to demonstrate a robust sustainable transport case.
239. Therefore, both individually and collectively, the 3 schemes would be contrary to national, regional, SP and local policies and guidance [relevant policies are in H1, annex A6].
240. No party to the inquiry disputes that the local roads network in Uckfield is already struggling to cope with existing traffic levels. It would be premature to allow any of the appeal schemes before there is certainty of delivery of town centre transport enhancements. Owing to cumulative impact, that applies with even greater force to any combination of the schemes.
241. That said, in the event that the Secretary of State is minded to allow one or more of the appeals, measures could be taken to mitigate their traffic impact and achieve a degree of modal shift away from car use. Thus there has been much detailed discussion, both before and during the inquiry, about what those measures could or should be, and how they could be incorporated into the necessary planning obligations. [H1]
242. With respect to traffic and transport, there are key themes common to all 3 appeals. All parties acknowledge an existing highway problem in and around Uckfield – growing town centre congestion, compromised road safety, rat running through nearby villages - and recognise that measures must be taken to accommodate existing and anticipated future traffic levels generated by recent planning permissions (the 3 NSLP sites) and any other permitted housing proposals. [H1]
243. Existing levels of congestion have a detrimental effect on the safety and free flow of traffic, and on pedestrian safety and amenity, particularly in the town centre. No further development should be permitted without a step-change in transport improvements and travel behaviour measures, including that of existing residents. [H1]
244. In this context, it should be noted that ESCC have exhausted all options for further improvements to the town centre highways network within the limits of adopted highway land, by such means as changing traffic signal timings etc. [H1]
245. Thus, since 2007 ESCC and WDC have jointly been considering a potential town centre solution, or scheme. Various hard engineering options have been tested by traffic modelling, involving link roads, and a northern and southern one-way gyratory system.
246. But alongside this there must also be a range of soft measures tailored and “retrofitted” to match the existing population of the town, in particular to encourage a modal shift away from the private car. [H1]
247. On behalf of ESCC, 3 alternative town centre schemes (with sub-options) have been tested by JMP consultants using a VISSIM model. However, meaningful public consultation on the options can only occur when there is funding certainty. The costs of each scheme are fairly similar - £8.6-9.2m. - but existing S106 contributions fall far short of this, and there is a large funding gap. Notwithstanding the planning objections to the 3 inquiry schemes, any that are approved should make a significant financial contribution. [H1]
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248. The earliest that public funding could contribute to the overall scheme costs would be 2011, through the LTP3 funding award. [H1]
249. There are various significant obstacles - political as well as financial - to delivery of a town centre scheme. There is therefore much uncertainty over its prospects of implementation. These obstacles cannot be resolved, nor the uncertainty lessened, by this inquiry. Indeed, there is as yet no preferred scheme for the inquiry even to consider. [H1]
250. Even with an implemented town centre scheme, additional sustainable transport measures are required, to achieve the modelled trip rate of 0.66 vehicles/dwelling in the peak hour. Without those measures, a more reasonable trip rate of 0.8 vehicles/dwelling is expected. This is backed up by recent traffic surveys. On that scenario, wholly unacceptable levels of traffic queuing and delay would occur on the key routes into and junctions in the town centre – notably Framfield Road, and Bell Lane. [H1]
251. The 0.66 trip rate is a key assumption of the traffic modelling undertaken. It is accepted by the BIE traffic consultants but not by Downlands, who posit a 0.4 trip rate for their scheme based on TRICS data. But even the 0.66 trip rate would only occur in reality if the travel demand and sustainable transport packages are introduced early and are robust. In fact, further traffic surveys suggest the robustness of a 0.8 trip rate. [H1 table 1] is a summary of the traffic generated by the 3 appeal sites using the 0.66 and 0.8 trip rates. [H1]
252. The 3 appeal sites are not alone in their potential impact on local traffic conditions. It must be remembered that when implemented, the approved NSLP sites, totalling 400 dwellings, will themselves add to existing congestion.
253. Given the considerations above, if any of these 3 appeals are allowed, immediate measures must be taken to relieve congestion, to enable some “headroom” in the interim period before a town centre scheme is in place.
254. This would be consistent with the latest best practice in transport planning, which, arguably, endorses a “nil detriment” approach to traffic impact. This contrasts with the previous approach, under LP and NSLP policies, which tolerated traffic impacts from new development of up to 2%. But the interim (or “bridging”) scenario could only work to a ceiling level of trips. [H1]
255. It should be noted that all new transport infrastructure should comply with the requirements of the Disability Discrimination Act (DDA).
256. The preceding points from [H1] are supported and illustrated by [H1 annexes A1-A25].
257. [H5] develops some of the foregoing points, especially in relation to: ESCC’s position on the appeal schemes; the “nil detriment” impact criterion; prospect of LTP3 funding for the town centre scheme; impact of appeal schemes on peak hour traffic spreading; effect of enhanced local bus services; revised costings for town centre scheme options; pedestrian connectivity; and transport emissions.
258. As far as ESCC’s position is concerned, this has long been that a developer-funded town centre solution is essential for Uckfield to enable significant further housing development to occur. Moreover, the approval of 400 units at the NSLP sites will effectively absorb any spare network capacity, thereby in effect forcing the “nil-detriment” stance. [H5]
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259. This nil-detriment principle arises from growing concerns about local traffic congestion, and is supported by national planning guidance in Circular 2/07 and the DfT's guidance on transport assessments. It should be the starting point for consideration of the appeals. In practice, it supersedes the previous 2% impact criterion in the NSLP. Thus it is entirely reasonable for local highways authorities to resist development which would only exacerbate existing traffic congestion and polluting emissions. [H5]
260. There is no reasonable prospect of the town centre scheme being wholly funded by LTP3 monies, but these may become available as a top-up. [H5]
261. On peak hour spreading, all 3 appeal schemes would tend to exacerbate the existing situation in Uckfield. [H5, figs. 1 and 2]
262. On buses, ESCC stresses the need for a high-intensity, convenient town bus service as an essential part of any strategy to reduce existing peak hour car use. [H5]
263. Revised costings (some showing significant increases) for the 3 town centre scheme options are in [H5 annex 1].
264. All inquiry schemes will need to comply with the guidance in the DfT Manual for Streets, in order to provide safe and attractive routes for pedestrians, and thereby improve the sites' connectivity. Pedestrians and cyclists should not be at any disadvantage compared with car drivers [H5]
265. [H5] contains new data on traffic emissions. This further underlines the need for a town centre scheme.
266. Of the 3 appeal schemes, Downlands is by far the largest (750 dwellings etc.), and is the least acceptable in terms of traffic and transport sustainability. However, further negotiations during the inquiry have led to a significant measure of agreement between ESCC/WDC, BIEN and BIES, which is contained in [SCG2]. This sets out a summary of key issues, and a list of those upon which agreement has been reached, robustly supported by 11 annexes of technical data etc. Thus [SCG2] deals with the transport measures required for the BIE sites, and the scale of the required retrofit package.
267. It must be emphasised that WDC/ESCC maintain the view that no significant further development should be permitted at Uckfield in advance of eventual LDF allocations, and the delivery of a satisfactory town centre scheme. However, if the Secretary of State decides that some strategic housing provision is required from this inquiry, then up to 300 units (equivalent to the "headroom") could be afforded to the BIE schemes individually or together. [SCG2, section 1]
268. There is an agreed trip rate of 0.66 for the BIE sites. There is no agreed trip rate for Downlands. Provided a S106 obligation secures the travel plan, the package of headroom measures, and the appropriate contribution to the town centre solution, some development on the BIE sites could come forward. And their sustainability can be improved by the packages of agreed measures. SCG2 annex 9 contains a summary of the S106 package needed for the headroom. [SCG2, section 2]
269. [H1 annexes A1-A5 and A7] set out background context material to Downlands, including plans, key routes, and a pedestrian access audit. [H4 and annexes D1-D10] also refer specifically to Downlands.
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270. On balance, Downlands is more distant from most (but not all) town centre facilities than are the BIE sites. Crucially, the Downlands site lacks good levels of route choice and accessibility – but both these attributes are essential to the achievement of genuine modal choice.
271. [H4 annex D4] is an analysis of the pedestrian infrastructure needed properly to connect the site with the town centre. Existing routes are few and very deficient, and the proposed new pedestrian/cycle links alongside the A22 and Snatts Road have serious limitations. The A22 route would be long and circuitous. It leads away from the town centre at first, and then it follows a very busy and polluted main road, containing fast traffic. For all these reasons, it would not prove very attractive to many Downlands residents.
272. There are local objections to the proposed Snatts Road link, which would also involve the loss of ancient woodland, and in any event it is probably not deliverable, owing to ownership constraints (see also below).
273. [H4A] contains rebuttal evidence on the following matters: distances to local shops and services; connectivity with town centre and surrounding area; trip rates, including potential for internalisation of trips; travel plan provisions; the nil-detriment criterion; the A22 access junction; and delivery of the town centre scheme.
274. In broad summary, all these matters suggest that the Downlands appellants are far too sanguine about their level of impact on the town centre, the efficacy of their proposals in achieving modal shift, and the overall accessibility and connectivity of the Downlands site. In fact, Downlands would be the least sustainable in transport terms of all 3 of the appeal schemes.

Deliverability

275. Government policy (esp. in PPS 3) advises that housing sites must be deliverable. But Downlands faces insuperable delivery problems. Even without all the other planning objections, this factor alone would justify dismissing the appeal.
276. In particular, the Snatts Road link, which on Downlands' own evidence is the only pedestrian route out of the site and therefore an essential part of their scheme, is simply not available. It lies over 3rd party land (including some owned by ESCC). But landowners' letters submitted by Downlands do not commit any of them to do anything other than negotiate. None provide any assurance that the land in question will ever be made available for the Downlands scheme.
277. Indeed, soon after the inquiry opened the Council invited Downlands to withdraw the appeal if it could not demonstrate delivery of the link. It has never done so. At the very least, the inquiry should conclude that the Snatts Road link cannot be relied upon. Owing to its poor prospect of delivery, it does not even merit the imposition of a Grampian condition.
278. Second, the primary school. There is no commitment by ESCC (the local education authority) to build a school on site in order to serve a development with insufficient child-yield. In any event, the submitted masterplan cannot accommodate the required facilities. This further undermines the Downlands case on sustainability and transport.

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279. From the outset, Downlands claimed that it would provide “6 Good Things” - affordable housing, a country park, large amounts of informal open space, an exceptionally high standard of building design, a primary school, and the neighbourhood centre - all to a higher quantum or standard than could reasonably be expected or required on the basis of current planning policies. But the Downlands evidence is confused, contradictory and evasive on all these aspects.
280. In fact, none of these alleged benefits can be relied upon, and collectively they should not sway the Secretary of State in Downlands’ favour. They are in effect stymied by the terms of the Trust Deed and the Option Agreement, both publicly available documents [WDC22]. Given the fiduciary duty of the trustees, Downlands has not been able to demonstrate that the Trust Deed could allow for a scheme at less than “best value”. This indicates, for example, that their offer of additional affordable housing (i.e. more than the normal 30% policy requirement) is without substance. Much the same applies to the country park and the other so-called benefits.

The Case for Other Parties

281. The material points are:

282. *The BIEN appellants:* 1) Landscape considerations (see [Coo2]): Unlike BIEN (and BIES) the Downlands site is physically separate from Uckfield. It lies wholly on a north-west, outwards facing slope, far from the River Uck “bowl”, and clearly outside the town. Development here would breach the strong northern topographical boundary. It would be perceived as Uckfield spilling over the ridge, and edging ever closer to the villages to the north. It would entail the following more specific adverse impacts: loss of elements of Low Weald landscape character; the introduction of high density development into a rural area; a much-diminished sense of remoteness and tranquillity; reduction in the countryside gap between Uckfield and Maresfield, and the creation of new development pressures in this area; and the breaching of the A22 by way of the proposed new roundabout. Moreover, in their landscape assessment methodology, which is neither transparent nor rigorous, the Downlands appellants have underestimated these impacts. Of the 3 appeal proposals, Downlands would have by far the greatest, and the most harmful impact in landscape terms.
283. 2) Trees (see [FL]): The Downlands proposals would entail some unacceptable damage to ancient woodlands, contrary to various national and local policies. In particular, to Thirty Acre Wood west of the A22, from the construction of the proposed new roundabout, and from the proposed attenuation basins. These works would involve both direct woodland loss, and disruptions to wet woodland hydrology.
284. 3) Ecology and nature conservation (see [Wr1 and Wr2]): The Downlands ES identifies a number of important on-site habitat types and species that would be affected by this large-scale development. In particular, ancient woodland, including gill woodland and wet woodland. Budletts Common also contains priority habitats, and the site is adjacent or close to designated nature conservation sites, including Lake Wood SNCI. [Wr1]
285. Some information in the ES is incomplete or inaccurate. In any event, the proposals would harm ancient woodland in Shermanreed Wood and elsewhere.

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- There would be unacceptable impacts on various ponds important for great crested newts, and upon the terrestrial habitats of this priority species. Dormice, which are present in Shermanreed Wood, Longwood Gill, Thirty Acre Wood and elsewhere, would also suffer from the loss and fragmentation of their habitat. In addition, there would be harmful impacts on nationally important invertebrates, reptiles, breeding birds, and bats. [Wr1]
286. In general, some of the ecological impacts of the Downlands scheme have not been properly assessed. Adequate mitigation has not been proposed. The impacts on ancient woodland, and on great crested newts, dormice, and other fauna would be contrary to national and local policies. Given the availability of alternative sites, Downlands should be ruled out of contention as a housing site on ecological grounds alone. [Wr1]
287. [Wr2, section 3] responds to matters raised by the Downlands appellants particularly in [Co1 and Co1A]. Despite that evidence, the information in the ES remains seriously flawed because of: i) under-reporting of the protected species present on the site (esp. bats, newts and dormice); ii) under-valuing what has been reported (esp. bats, amphibians and reptiles); iii) inadequate consideration of indirect impacts (including on adjacent designated sites); iv) inadequate assessment of significance of impacts (esp. on bats and amphibians); and v) inappropriate reliance upon mitigation (as opposed to impact avoidance).
288. In addition, there is no strong likelihood, much less guarantee, that the proposed country park would deliver beneficial effects for nature conservation (even if it could be delivered), and in any event they could not compensate for the significant adverse effects of the Downlands development. On a smaller scale, the same may be said of the much-vaunted (but unreliable) green bridge.
289. 4) Transport matters (see [Ru2]): Walking or cycling, the Downlands site is not currently accessible to a range of local facilities. It is further away from key town centre facilities than BIEN [Ru2, fig.1]. While new on-site facilities are proposed, their phasing and viability are at best uncertain. Moreover, because of land ownership constraints there is also considerable uncertainty over the deliverability of the proposed Snatts Road link into the town centre. By comparison, BIEN does not have any of these transport disadvantages.
290. The Downlands proposals also aim to re-route existing bus services 31 and 245 into the site [Ru2, figs. 2 and 3]. BIEN has examined the implications of this. The proposed service alterations will have detrimental effects elsewhere in terms of the areas currently served, and on passenger journeys. Also, they would be costly to introduce and may not be viable in the longer term.
291. Downlands would have a single point of vehicular access onto the A22 Uckfield bypass. Owing to the combination of this convenient access, a limited range of accessible local facilities, unattractive foot and cycle routes to the town centre, and unrealistic bus services, Downlands would have a high level of car dependency. Each car journey to the town centre would be almost twice as far as from BIEN. Compared with BIEN, it would not therefore be very sustainable in transport terms.
292. *The BIES appellants:* 1) Landscape considerations (see [D]): The Downlands site occupies the west-facing slopes of the sandstone ridge which forms the western edge of Uckfield. The important contribution of these slopes to the town's setting is apparent from vantage points to the north and west. Since the
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town is not seen in these views, these western slopes provide it with a wholly rural setting. Resulting from this situation, and its intrinsic qualities, the appeal site has “substantial” landscape sensitivity, compared with the “slight” sensitivity of the BIES site. Its landscape value is “moderate”, compared with “slight” for BIES. Its capacity to accommodate development (a factor which combines landscape sensitivity with landscape value) is “low”, compared with “high” for BIES. The large scale development proposed at Downlands would have a significant and detrimental effect on the character of the landscape as a whole, and on the setting to Uckfield. Far from conserving the wholly rural setting that exists at present, the proposals would urbanise a wide tract of countryside previously unaffected by the urban influence of the town. Development of these western slopes would be visible from Maresfield and across the rural Weald, and adversely affect the relationship of Uckfield with its rural area. Of the 3 appeal proposals, Downlands would have the greatest, and the most harmful impact in landscape terms.

293. 2) Ecology and nature conservation (see [Me1, section 6]): Of the 3 appeal sites, Downlands enjoys by far the greatest abundance and diversity of wildlife habitats and species. Collectively, these are at least of county importance, and (as one independent expert has stated) some might warrant SSSI status. The proposals would result in a chain of adverse impacts, including: the loss of several areas of ancient woodland, ancient hedgerows, and other habitats of nature conservation importance; the fragmentation and isolation of habitats within the site and the wider countryside; impacts on off-site receptors, including designated areas; impacts on protected and notable species; conflicting mitigation requirements for the site’s wide diversity of habitats and species; and damage to sensitive habitats including ancient woodland, gill woodland, heathland and sandrock exposures. These impacts are summarised in [Me1, app. Fig.9]
294. Indirect impacts would include the following: noise and light pollution; recreational pressure; cat predation; pollution from dust and runoff; fly tipping of garden and other waste; alterations to site hydrology; impacts on tree root protection; and introduction of invasive species. [Me1]
295. A number of protected and notable species would be harmed, including the great crested newt; dormouse; various bats and birds; and various amphibians and reptiles. [Me1]
296. Any potential benefits achieved by the proposed country park would be outweighed by all these adverse impacts. Current pressures from recreation are very low and a substantial increase in recreational damage is likely to occur from the increase of 750 dwellings in the immediate vicinity, despite the proposed access management measures. [Me1]
297. Unlike BIEN and BIES, the Downlands proposals therefore represent an unacceptable risk to the integrity of sensitive habitats of nature conservation importance, including UK BAP habitats and ancient woodland. They would be contrary to policies in PPS 9, the SP, the LP and the NSLP. [Me1]
298. In any event, development is not a necessary precondition for the maintenance and enhancement of natural habitats at Downlands. Parts of it are already managed under the Organic Higher Level Stewardship Scheme, and

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- numerous other grant schemes exist to fund management works of the kind proposed by the Downlands appellants. [Me1]
299. [Me2, section 2] responds in detail to matters raised by the Downlands appellants particularly in [Co1 and Co1A]. This confirms and indeed strengthens the ecological case against Downlands set out in [Me1]. In broad summary, the scale of the Downlands scheme and the ecologically sensitive nature of the site are inherently incompatible, and it is unavoidable that significant ecological impacts would also occur outside of the appeal site. The proposed country park would suffer from conflicting objectives and could not compensate for the ecological harm entailed. Downlands would conflict with national, regional, SP and LP policies, and on ecological grounds alone should not be permitted. That conclusion is supported by the expert opinions and evidence of various other organisations, including English Nature and The Woodland Trust, and by the Council.
300. The need for brevity precludes a detailed discussion of specific topics. To take just two, ancient woodland and the proposed green bridge: the Downlands appellants have underestimated the extent, and potential loss of ancient woodland on the site. This may be because of their misinterpretation of certain historic maps put in as inquiry documents. In fact, there are 5 areas which would be lost, not one. As for the green bridge, this would be most unlikely to maintain the connectivity of habitats for hazel dormice, or other species, and as a result would be largely ineffectual.
301. *The Woodland Trust*: (The Woodland Trust's evidence is in [WT]). The Woodland Trust owns Lake Wood, a 20 acre ancient woodland adjacent to the south of Downlands. It is a designated SNCI, a site of nature conservation importance. The Downlands proposals should be refused because of the harm they would do to ancient woodland both on the appeal site itself, and at Lake Wood.
302. Ancient woods are those where there is believed to have been continuous woodland cover since at least AD1600. Ancient semi-natural woodland is composed of native tree species that have not obviously been planted. Ancient woods over 2 ha. are recorded in ancient woodland inventories.
303. Ancient woodland is irreplaceable. Much has been lost, and the UK is now one of the least wooded parts of Europe (down to 12% cover, compared with 36% for Europe as a whole). Increasingly, the remaining ancient woods are small islands within a hostile landscape of intensive agriculture and urban sprawl. But they are now subject to protection. This is enshrined in the UK BAP targets, in which ancient woodland is a priority habitat.
304. Importantly, PPS 9 (para. 10) states that local planning authorities should not grant planning permission for any developments that would result in the loss or deterioration of ancient woodland, unless the need for, and the benefits of development in that location outweigh the loss of the woodland habitat. This is backed up by SP (EN17), LP and NSLP (NE12, NE16) policies.
305. The appeal proposals' impact on various areas of ancient woodland would be much greater than the appellants seem to recognise or acknowledge. This would not be mitigated or compensated for by the creation of the proposed country park. Apart from the direct loss of some ancient woodland, there would be numerous other specific impacts arising from the close proximity of such a large
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- development (other objectors' evidence on these is supported). All these would result in the inevitable degradation of the woodlands, including at Lake Wood, which would suffer from far greater disturbance than hitherto. Within the appeal site, the proposed buffering would be wholly inadequate. Even with consistent 30 m. buffers, much damage would be done. And the major loss of arable land which would also occur, would undermine the integrity of the Downlands network of habitats as a whole.
306. *The Downlands Action Group*: (DAG's evidence is mainly in [Wa, Wal, Re and S]). The proposals are not justified by housing need, as the Council has shown in its robust case on housing land requirements and supply. This is fully supported. [Wa]
307. In any event, "planning by appeal" is in principle unsatisfactory, and unacceptable within a supposedly plan-led system. [Wa]
308. The Downlands proposals are not in accordance with PPS 3 (see esp. para. 69), and, as the Council has also shown, they would be contrary to numerous development plan and other policies. In addition, from the application material it is uncertain whether the outline proposals are sufficiently detailed to be i) properly assessed by the decision-maker, and ii) deliverable. [Wa]
309. The appellants have also misjudged the landscape impact of their scheme. Their landscape impact assessment methodology [see RV1] is in part unconventional and highly questionable, and some of their detailed conclusions on the impact upon certain key viewpoints are far from convincing. Indeed, they almost defy common sense and observation. A proper assessment from these viewpoints shows that the landscape impacts would be significantly greater than they claim. In sum, given the very substantial scale of the proposals, they would amount to a wholly unacceptable intrusion upon an attractive and hitherto unspoilt piece of countryside. [Wa]
310. The clear-cut objections to the Downlands scheme far outweigh its alleged merits, and the Council was right to refuse it. [Wa]
311. Snatts Road retains its attractive character as a narrow country lane with a rural appearance, especially in its western section. This would be destroyed by the development and its associated traffic, and would become suburbanised. Sooner or later, there would be road widening, other highways works, street lighting and an influx of parked vehicles. Much to the town's detriment, a quiet but distinctive corner of Uckfield would be lost. [Wal]
312. The Downlands appellants claim that their proposals would encourage a modal shift away from car use, but to any resident already living in the area - particularly to a household with children - this is simply not credible. In fact, the site is too far away from the town, and would be ill-served by its circuitous, unattractive and sometimes dangerous cycle and pedestrian routes, especially alongside the fast and very heavily trafficked and polluted A22. Many residents would in practice choose schools away from the site, while other Uckfield residents would come to the proposed on-site primary school by car from outside. [Re]
313. The Snatts Road link would be particularly hazardous where it crosses Snatts Road, and again in Church Road, when approaching the town centre. Few people with young children would want to use it. Far from encouraging walking and
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- cycle use, the development would be emphatically car-dependent. This would be antithetical to sustainable development. [Re]
314. Contrary to the appellants' detailed but rather complacent ecological evidence, the proposals would do great harm both to many resident animal and plant species within the site, and also to the Lake Wood SNCI immediately adjacent. The site itself suffers very little human disturbance at present, which helps to account for its rich and diverse range of wildlife. Major development would change that radically for the worse. [S]
315. The appellants have greatly underestimated the potential range and scale of impacts and disturbance to habitats which would inevitably be caused by such a large human population in such close proximity. Their misplaced faith in narrow landscape buffers and country park management would be no panaceas for this, as is amply shown by long and sometimes painful experience at Lake Wood and elsewhere. Indeed, the many children, dogs and cats associated with the development could not in practice be readily managed, or their movements and activities controlled. In short, far from proving beneficial, the development would have seriously adverse consequences for local biodiversity. [S]
316. *Prof. TJC Beebee, Professor of Molecular Ecology, University of Sussex:* The proposed development would do profound and irreversible damage to the site's outstanding habitats for reptiles and amphibians. Although not yet designated as such, these alone would justify SSSI status for parts of the appeal site. There are no better sites for reptiles or amphibians in the Uckfield area. [Be]
317. Apart from the direct loss of habitat, the site's reptiles and amphibians in general would suffer from fires, human persecution and predation by cats, and its great crested newts in particular from the introduction of pet fish species into their breeding ponds. [Be]
318. So-called mitigation, as proposed by the appellants, would do little or nothing to protect the site's reptiles and amphibians. The green bridge, at best an unproven device, would be largely ineffectual. It would not prevent habitat fragmentation. [Be]
319. *Mr B. Kemp, Sussex Amphibian and Reptile Group:* Professor Beebee is one of the country's foremost herpetologists, his objections are fully supported, and should be taken very seriously. [K]
320. *Mr D. Godding:* The application seeks to bypass proper democratic consultation and the local plan process. Through them, local people have already rejected Downlands Farm as a candidate for development. The proposals would have a profoundly harmful impact upon Uckfield, traffic in the town centre, and on the character of the site and Snatts Road. They could not be successfully integrated with the town. The proposed Snatts Road link would not prove attractive to users. Indeed, none of the existing or proposed footpath and cycle links to the town centre are satisfactory, and therefore few Downlands residents would be encouraged to reduce their car use. Planning permission should be refused. [Go]
321. *Mrs J. Daly:* In its elevated position, the Snatts Road link would be extremely intrusive for the houses in Hunters Way adjacent. Apart from the destruction of trees to make way for it, there would be a new source of noise and disturbance, potential for anti-social behaviour, and a substantial loss of privacy.

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322. *Mr E. Osborne:* Mrs Daly's objections are fully supported. In addition, through tree removal the link would exacerbate water penetration into back gardens, with a danger of minor flooding.
323. *Mrs J. Eastwood:* The proposed development would harm attractive countryside on the north side of the town, and would make Uckfield begin to coalesce with Maresfield. Only properly allocated sites should be considered for development, and public consultation on plans should not be ignored. The proposals would not be sustainable, as they would not encourage non-car travel modes. They would also seriously harm the site's varied and valuable flora and fauna. Planning permission should be refused. [E]
324. *Mr L.Ashby:* Although the proposals have their merits, there are various aspects which have not been properly considered. These include: the ownership of community facilities; the school's connection with other schools; the site's road access to the town centre; sewerage; and the routeing of new bus services. In general, more local consultation on all these is required. [A]
325. *Mr L.Keeley:* The Downlands proposals would not make adequate provision for affordable housing, or for housing the elderly. In general, they are not well-designed, and various improvements could be made. [Ke]
326. *Mr. M.Pope:* The Downlands proposals are incongruous, inappropriate, disjointed and unwanted. They seem to derive solely from the whims of a deceased developer. They would be contrary to a raft of planning policies, and are a blatant attempt to circumvent the democratic forward planning (LDF) process.
327. Moreover, they are superfluous to the needs of Uckfield, and disproportionate to its infrastructure capacity. In addition, they would seriously damage the site's very attractive rural landscape, as well as its ecology and biodiversity. There is no particular, established or known need for a country park, and the other alleged ecological benefits could all occur without such a massive housing development. The appellants are highly complacent, or perhaps naïve, about the inevitable human impacts upon fragile ecosystems - which are well documented from nearby nature reserves. Ancient woodlands would be damaged, particularly at Longwood Gill, and land contamination could damage the Shortbridge stream catchment.
328. Furthermore, the single road access would not work in highways terms, and development traffic would add to pollution, and congestion in the town centre. Neither the proposed cycleway along the A22, nor the Snatts Road link (which would also damage ancient woodland) would be safe, convenient or attractive for pedestrians or cyclists. In short, the Downlands scheme has no planning merits, only drawbacks, and it should be emphatically rejected. It should certainly not be accepted on narrow political grounds. [Po]
329. *Mr. N.Johnston:* The Snatts Road Link has not been properly planned or thought through. Local residents have not been consulted about it. Not only would it damage ancient woodland, it would also harm the residential amenities of the nearby houses in Hunters Way (20 photographs submitted). Its use would entail noise and disturbance, and other forms of nuisance, including a loss of privacy, and unwanted light at night. It would not be properly screened. There could be landslips, damage to property boundaries and localised flooding. Moreover, with sheer drops nearby, it might not even be safe for users. In any

event, owing to the various complications of land ownership revealed at this inquiry, it is probably not deliverable. At the very least, it is a major flaw in the proposals. [Jo]

Written Representations

330. Letters from interested persons received during the inquiry are included among the documents. They do not raise new matters.

Conditions and Obligations

331. [DOWN 31 and Appendix E] contains a list of 46 largely agreed suggested conditions in the event of a successful appeal. These are grouped into the following categories: reserved matters and time limits (conditions 1-5); phasing (6); operational (7-8); use of resources/sustainability/recycling (9-12); drainage/flood protection/contamination (13-17); highways/parking/garaging (18-21); open space and play areas (22-23); landscaping/fences/walls (24-26); the Snatts Road link (see also DOWN 32) (27-29); floodlighting and materials (30); the commercial area (31-32); ecology (33-42); tree protection (43-45); archaeology (46).
332. A details of materials condition is in fact absent from the list, but should also be included.
333. Some of these are standard conditions, and some arise from consultations with, e.g, The Environment Agency. Others derive from the SCGs.
334. I agree that these or similarly worded conditions would meet all the tests in the conditions Circular 11/95, and would otherwise be appropriate if the Secretary of State were minded to grant outline planning permission.
335. On the Snatts Road Link, Downlands suggests [DOWN 32] a Grampian-type addition (see (ii) below) to draft condition 27. The condition in full would read as follows: "Before preparation of any groundworks or foundations for the development, (i) detailed plans of the proposed cycle and footpath link from Snatts Road to Rocks Park Road (the Snatts Road link) for the area covered by plan 01-007-507 (inquiry document DOWN 8) including levels, sections, surface materials, ramps, steps and constructional details shall be submitted to and approved in writing by the local planning authority; and (ii) unless otherwise agreed in writing by the local planning authority no development shall occur unless/until the details of the necessary interests in the land required to carry out the Snatts Road link works have been secured by the developer, submitted to and confirmed in writing by the local planning authority".
336. With a letter dated 31 July 2008 from Burges Salmon Solicitors, and before the inquiry formally closed, the appellants submitted 2 unilateral planning undertakings. There is a principal undertaking [DOWN 21] and a supplemental undertaking [DOWN 22], both dated 31 July. An explanatory note [DOWN 28] summarises the obligations in both.
337. [DOWN 28] covers the following matters, which are contained in the 2 obligations' schedules: the principal undertaking [DOWN 21] - phasing; affordable housing; the primary school; early years provision; community facility; country park management; outdoor playing space, landscape areas and country park; commercial areas; contributions to ESCC services; travel plans; highways; community management company. The supplemental undertaking [DOWN 22] –

contributions to “retrofit” transport infrastructure and town-wide travel plan measures.

338. In [WDC29] the Council/ESCC commented on various details in these 2 unilateral undertakings, objecting to some provisions and suggesting changes to others. I note that this document states that most of the matters it raises could be overcome by re-drafting the relevant provisions. Should the Secretary of State be minded to grant planning permission for Downlands, these points may require further correspondence/resolution with the parties.

4 BIRD IN EYE NORTH (BIEN) (appeal B)

Procedural Matters

339. There are no procedural matters relating exclusively to the BIEN appeal of which the Secretary of State should be aware.
340. Some of the following matters are covered in SCG3.

The Site and its Surroundings

341. The appeal site, irregular in shape and about 15 ha. in size, is located about 1.4 kms. south east of Uckfield town centre, to the north of Bird In Eye hill on the B2102, Framfield Road [Wo1, plan WBP2]. Beyond flood plains (see below), the site is bounded by existing residential development to the west and north. There is also a substantial area of frontage development adjacent to the south, alongside the Framfield Road. This represents the existing, eastern limits of the town. Further east lies open countryside and the village of Framfield.
342. The railway line lies just beyond the site’s northern boundary, which follows the River Uck. Its tributary, the Framfield stream, forms the site’s western boundary, which is close to the New Town area of south Uckfield. There is ancient woodland adjacent to the east.
343. The smaller BIES appeal site is nearby, to the south of the Framfield Road, but is not contiguous with BIEN. Both sites lie on the eastern side of the Framfield stream.
344. There is a small (0.5 ha.), long established industrial area (The Yard) close to the northern site boundary of BIEN. This forms an enclave, being detached from the town, and at present surrounded by fields. Its uses include B1, B2 and B8, a taxi firm and a scaffolding storage yard. This area would be partially surrounded by the proposed development, which would include B1 uses as a buffer between it and the new housing (see also below, The Proposals).
345. Most of the BIEN site is poor-to-average quality farmland, with about two-thirds in permanent pasture. It forms part of a much larger, mixed agricultural/equestrian holding.
346. Like Downlands and BIES, the site is not subject to any landscape or nature conservation designations, nor affected by the proximity of any conservation area, or (unlike BIES) the setting of any listed building. A substantial part of it is within the River Uck floodplain, but no development is proposed in that area, and there is no objection on grounds of flood risk.

The town of Uckfield

347. This is as described above (see under appeal A). Further details are in [Wo1].

Planning Policy: the Development Plan

348. The development plan policy background is the same as for appeal A.

Other Planning Policies

349. Other planning policies are as described under appeal A. In addition, it should be noted that both BIEN and BIES were allocated for housing development in the First Deposit draft [PD5.3] of the Wealden Local Plan Review - the precursor of the NSLP – in January 2003. The allocation was subsequently deleted.

Planning History

350. Other than its allocation in the First Deposit draft of the Wealden Local Plan review, the application site has no significant prior planning history. Planning applications relating to The Yard (the isolated employment site adjacent to the north) are described in [W4]. They are not claimed by any party to be significant or particularly relevant to the present inquiry.

351. The appellants' description of the Council's consideration of the application is in [Wo1, p.16-21].

The Proposals

352. The proposals are in outline with all matters reserved except for access. Details are on the master plan L.11 (as revised) and provide for a mixed use development, comprising principally housing, but with some employment and community and complementary uses, and infrastructure.

353. The application is accompanied by a planning statement [BIEN1.5], an Environmental Statement [BIEN1.7, 1.8] and a Design and Access Statement (DAS) [BIEN5.3]. Together, these provide a detailed description of the proposals, with assessments of their impact, but they are partly illustrative.

354. Although the application refers to “at least 300 dwellings...”, the appellants are content to accept a condition limiting development to a maximum of 300 [Wo1, para. 4.3]. The density would be about 33 dwe./ha (para. 3.6, SCG3).

355. The proposals include: 300 dwellings, including 30% affordable housing; 930 sq.m. B1 business uses; formal and informal open space for recreation and leisure, along with space for habitat protection; a surface water drainage strategy; access roads and highway improvements, with pedestrian and cycle facilities; and landscape proposals.

356. Access, in the form of a ghost island priority T-junction, would be from the existing access point off Bird In Eye hill, (B2102, Framfield Road). There would also be pedestrian and cycle routes to the town centre, adjoining the Framfield stream and connecting to the Framfield Road. There would be no such connection to the north eastern part of Uckfield via a (previously suggested) crossing over the River Uck and the railway line.

357. A central access road would follow the alignment of the existing road to the industrial area, outside the appeal site, which would remain as it is, with its own

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- reserved right of way. Development would be served to the west and east, with some residential parcels backing onto properties fronting Framfield Road. This land slopes northwards towards the River Uck, but there would be no development in the floodplain, which would be reserved for public open space.
358. Abutting the existing industrial area would be some 930 sq.m. of new B1 uses, between the former and the new housing. Ancient woodland to the east of the site would be retained.
359. The appellants control farmed land south of Victoria Pleasure Ground, located in south Uckfield about 1 km. from the appeal site. They have offered a S106 obligation which would transfer this land to the Council for use as public open space. [Wo1, p.13 and plan WBP3]
360. The scheme would comprise a mix of house types (1 to 5 bed dwellings), with higher densities located along the access road, and lower densities around the periphery. Buildings would be of 2-4 storeys, with the lower ones on higher land. Further details are in the DAS.

Reasons for Refusal

361. The stated reasons for refusal are as follows:
362. “ (1) The proposed development represents an unacceptable and unjustified form of development of a site which lies outside the limits of the defined development boundary for Uckfield and Framfield, contrary to the provisions of planning policy statements 1 and 7, (SP) policies S1, S4, S10 and EN1, (LP) policies GD2, EN1 and DC17, and (NSLP) policies GD2 and DC15.”
363. “ (2) The development proposal would lead to an unacceptable increase in existing safety hazards and unacceptable traffic conditions in the immediate area, specifically rural lanes around the village of Framfield and Uckfield town centre, an area that is already heavily congested at peak times, and the proposal is therefore contrary to (SP) policies TR3 and S1, (LP) policy TR3, and (NSLP) policy TR2.”
364. “ (3) The proposal does not satisfactorily demonstrate that adequate provision will be made to encourage sustainable modes of transport, and therefore the proposal is contrary to (SP) policies S1 (c) and TR3, and (NSLP) policies TR1 and TR2.”
365. “ (4) Notwithstanding the provision of an Environmental Statement, insufficient information has been submitted to address the impact of the development proposals on landscape management, habitat enhancements, space allocation for buffer zones between the built form and retained natural features (including adjacent ancient woodland – Wealden Ancient Woodland Survey 2005) and impact on connectivity with other sites for protected species. Based on the submitted information, therefore, the proposed development package is contrary to the provisions of PPS 9, (SP) policies S1, EN17, EN18 and EN20, (LP) policies EN1, EN5, EN12, and EN16, and (NSLP) policies NE1, NE14 and NE15.”
366. “ (5) No mechanism exists to secure affordable housing on site and as a result the proposed development is contrary to (SP) policies H4 and S7(d), (LP) policy HG3 and (NSLP) policy HG4.”

367. “ (6) Significant areas of the site are noise sensitive. Despite the provision of an Environmental Statement, it has not been adequately demonstrated to the satisfaction of the district planning authority that the site could be redeveloped to secure the description of development set out in the application and take into account the noise constraints on site. Accordingly, the proposed development is contrary to (PPS1 and PPG24), (SP) policies S1(b), E5 and EN1, (LP) policies EN27 and BS5, and (NSLP) policies BE1, HG8 and BS5, coupled with the advice contained within adopted SPG “Housing Estate Design” 2004.”

The Case for Taylor Wimpey UK Ltd. (the BIEN appellants)

368. The material points are:

Planning policy

369. (The appellants’ case is mainly in [Wo1]). The development plan currently comprises RPG 9, 2001 [PD2.1]; the saved policies of the SP, 1999 [PD3.1 and 2]; and the saved policies of the LP, 1998 [PD5.1 and 15].

370. RPG 9 will eventually be replaced by the South East Plan [draft PD2.2], for which the Secretary of State’s Proposed Changes have now been published. The emerging RSS is a material consideration in this appeal. The Panel Report sets out a higher annualised housing requirement (480 p.a.) to be met within Wealden district than the draft South East Plan (see also below, housing land requirements and supply). The Proposed Changes raised that again (550 p.a.).

371. Although its saved policies remain a part of the development plan, the 1998 LP is substantially out of date. The Council began a statutory review, and published a first deposit draft in 2003 [PD5.3]. In that, BIEN was allocated for housing. In 2004 however, the Council resolved not to progress the emerging plan through statutory procedures to a public local inquiry. A revised draft was published in 2004 [PD5.14], in which BIEN was no longer an allocated housing site. In 2005, the Council approved the NSLP for development control purposes [PD5.2]. Like Downlands and BIES, BIEN is not allocated in that non-statutory plan.

372. Notwithstanding this, the case for BIEN is tacitly supported by (and is certainly not contrary to) the housing requirements and policies in RPG 9, the South East Plan, and - in particular - the SP.

373. [Wo1, paras. 6.12-22] briefly describes key RPG 9 policies. It should be noted that its policy H2, which set the housing requirement for East Sussex, is not disaggregated to a district level.

374. [Wo1, paras. 6.23-33] describes key SP provisions. The SP sets out policies for development in East Sussex to 2011, and merits considerable weight in this appeal. Policy H1 sets out the phased requirement for housing completions. In Wealden, this is to be met at a rate of 550 per annum over the whole plan period (1991-2011), split between 440 p.a. (1991-2006) and 880 p.a. (2006-2011). Thus there is a doubling of annualised completion rates in Wealden in the last 5 years of the SP.

375. The policy (in para. 6.12) goes on to identify Uckfield, along with Hailsham and Polegate as the 3 most sustainable locations for housing growth in the district. Saved Policy S22 refers to the need for “major peripheral expansion” at Uckfield between 2006 and 2011. BIEN relies upon this SP policy in particular. Policy H3

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- requires the maintenance of a 5 year supply of housing land. Policy H4 refers to affordable housing, at levels to be decided in local plans.
376. [Wo1, paras. 6.34-45] describes key LP provisions. It covered the period 1994-2004, and therefore, unlike the SP, its housing policies are out of date. It should be noted however that one policy, UC7(i), confirms the allocation of land south of Victoria Pleasure Ground for public open space (as proposed by BIEN).
377. [Wo1, paras. 6.46-94] describes the evolution of the LP review, through the first and revised deposit drafts, through to the adoption of the NSLP in December 2005. In the first deposit draft, BIEN (with BIES) was included under policy UC1 in an allocation of 500 dwellings at Bird In Eye hill. Its advantages for development, compared with competing sites, are described in the reasoned justification, and remain entirely relevant today.
378. Nevertheless, and ill-advisedly, the site was subsequently deleted by Members apparently on highways grounds. Other sites, at Cysleys Farm and Sandpits, were allocated instead. These are both in more peripheral, less sustainable locations than BIEN, and (especially in the case of Cysleys Farm) would have far more harmful landscape impacts.
379. Owing to the Council's unfortunate decision not to proceed with statutory local plan procedures, there was never an opportunity for BIEN to put its case for allocation before an independent Inspector at a local plan inquiry. This fact cannot be over emphasised. Had there been, its planning merits over the subsequently allocated sites in the NSLP would, no doubt, have been vindicated. BIEN were, and remain aggrieved by the Council's failure to proceed via the normal, statutory route. The emerging LP could and should have been progressed through the statutory stages, and this would have provided a sound and robust policy base, at least to 2011. The inevitable alternative - and, of course, the position at this inquiry - is so-called "planning by appeal".
380. Judicial Review occurred in the High Court and then in the Appeal Court. While the Court of Appeal's judgment is accepted by BIEN - by which, in effect, it was deemed lawful for the Council to proceed with a non-statutory plan - the planning consequences are unfortunate. Owing to the slippage in LDF preparation, there is and will be no statutory local plan containing Wealden housing allocations until 2012 at the earliest. The Council does not dispute that.
381. As for the NSLP, it cannot merit more than very limited weight. The Council is therefore quite wrong to treat it, at this inquiry, as if it had almost the same weight as a statutory local plan. That said, the BIEN proposals would in fact comply with many NSLP policies and development control criteria. For example, those relating to affordable housing (the 30% requirement etc.), transport, density and design. Indeed, BIEN's only instance of non-compliance with the plan is that it is not an allocated housing site.
382. In fact, the 3 allocated housing sites at Uckfield in the NSLP are all inferior, both as locations, and for environmental reasons, to BIEN. Moreover, they do not amount to the "major peripheral expansion" at Uckfield required by the SP's Policy S22, and they would not meet housing land requirements to 2011.
383. A further material consideration is the Council's quite recent (August 2007) Cabinet report on Improving the Delivery of Housing [PD5.13]. This acknowledges the Council's past and continuing failure to provide enough housing
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land to meet requirements, and concludes by recognising the general lack of a delivery culture within the Council. Without referring to individual sites, it makes several suggestions as to how more housing could be delivered in Wealden. Emanating as it does from within the Council, it is a very significant document, and many of its arguments tacitly support the allocation/approval of BIEN.

384. BIEN's case on the housing land requirement and supply is summarised under Appeal A (case for the joint appellants), and is not therefore repeated here. The various requirement and supply figures are contained in the BIEN documents listed in Appendix A. The most recent, updated to take account of the Secretary of State's Proposed Changes to the South East Plan, are in SCG10 (a document agreed between the 3 appellants and the Council) and SCG11 (joint appellants statement). SCG10 shows (in its Table 3) a large shortfall, even against the 5-year (2007-2012) land requirement in the Proposed Changes, in the range 1259-1716. SCG11 however reiterates that the SP should be the basis for calculating housing land supply for the purposes of this inquiry. This shows an even more serious shortfall.
385. BIEN would draw particular attention to a recent appeal decision at Dittons Road, Polegate [NORTH.14]. In it, the Inspector found that the Council could not demonstrate a 5-year land supply. There is no reason why the Secretary of State should not draw a similar conclusion in this inquiry.
386. A discussion of policy would not be complete without reference to PPS 1 and PPS 3. Both are very strongly supportive of increased housing delivery, and PPS 3 puts the onus on local planning authorities to ensure at least a rolling 5-year land supply, which in this case the Council has failed to do. BIEN would fully comply with all PPS 3 guidance, including para. 71, which states that where there is not a demonstrable 5-year supply, LPAs should consider favourably planning applications for housing.
387. Indeed, given this national policy context, together with a lack of demonstrable planning or environmental objections to BIEN, and its superiority in planning terms to all the alternative sites - whether allocated in the NSLP, or under consideration in this inquiry - BIEN should now be given outline planning permission, subject to the agreed planning conditions and the submitted unilateral planning obligations.

Housing land requirements and supply

388. (The case is substantially the same as for appellants in appeals A and C. See under appeal A).

Landscape matters

389. (The appellants' case is mainly in [Coo1] and the accompanying appendices/plans/photographs). Simply in landscape terms, the BIEN site is preferable to all the alternatives. Historically, Uckfield has grown organically on either side of the River Uck valley, which forms a readily perceptible, bowl-like landform. However, some recent development has extended beyond this natural constraining boundary. Nevertheless, future development should as far as possible be contained within "the bowl", as it would be at BIEN.
390. Owing to its location and topographical orientation within the bowl, BIEN is the most closely associated of the 3 appeal sites with Uckfield, both physically and

visually. It faces the urban area, rather than the open countryside. By contrast, Downlands lies beyond the strong visual enclosure of the northern ridge, and faces away from the town; BIES lies beyond and to the south of BIEN, and outside the strong visual enclosure of Bird In Eye hill.

391. As can be seen from the ES: there are no landscape or visual reasons why BIEN should not be developed for housing; new development would be seen as further, natural organic growth of the town, contained within strong landscape boundaries; the site is bounded by development on 2 sides, with landform and woodland on the other sides; the landscape impacts of development are not significant; the “zvis” - zones of visual influence - of all phases of development are very small, and the extent of the impacts limited; they would be restricted to views from existing housing areas on the opposite valley side; there would be no landscape impact on conservation areas, listed buildings, or historic parks or gardens; public access to the site would be improved, existing hedgerows reinforced, and new woodland created; existing woodland and hedgerows within the site would be retained and protected; any local visual impact will reduce with the growth of new planting, which will also enclose the existing employment area and create a strong green skyline along Bird In Eye hill. The latter points would be implemented by way of a landscape management plan, forming part of the reserved matters.
392. With these obvious merits, the site compares very favourably in landscape terms with the alternatives, including both the other appeal sites and the sites allocated in the NSLP. Each site/proposal may be assessed in terms of landscape character, visual impact, and mitigation, and an overall conclusion reached on the sites’ suitability for development. As the table [in Co01, p12-13] shows, BIEN is the best of the competing sites. Of the others, Downlands would be particularly harmful, while Cysleys Farm (allocated in the NSLP) would also have a significantly harmful landscape impact.

Ecology and nature conservation

393. (The appellants’ case is mainly in [Wr1, WR2 and SCG5, also numbered NORTH12]).
394. The BIEN scheme is informed by a thorough ecological appraisal, which included a desk study and field surveys. This was an important input into the master-planning exercise, and provided the ecological baseline for the assessment of ecological impact, as set out in the ES [BIEN 1.7]. The desk study and field survey methods are fully described in appendix E1 of the ES ecology report. [Wr1]
395. There are no statutory or non-statutory designated nature conservation sites within or adjacent to the site boundaries. The scheme would have no direct or indirect impacts on designated sites further afield. [Wr1]
396. There are 2 areas of ancient woodland within the site boundaries [fig. 2 in app. 1]. Both will be retained, and will have adjoining buffer zones, with their widths and general characteristics agreed with the Council. Public access would be controlled through the use of fencing and footpaths. A nature conservation management plan would ensure appropriate management in the long term. [Wr1]

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397. There are 13 hedgerows within the site, of which 9 are species-rich, and 5 are defined as “important” under the hedgerows regulations [PD1.25]. Together they comprise a network of habitat corridors across the site. The scheme would retain the major part of this hedgerow network, with appropriate buffer zones (also agreed with the Council) to protect it from indirect effects. Scheme planting would create an additional 400 m. of new hedgerow, and also repair and strengthen the existing network. [Wr1]
398. The River Uck and Framfield stream form the northern and western boundaries of the site, and are of particular nature conservation value for their fish species and aquatic invertebrates. They are also habitat corridors. They would have wide buffer zones from the built development, provided by the retention of adjacent flood-plain grassland, and their waters would be carefully protected during and after construction. [Wr1]
399. None of the habitat types to be lost to development are of any particular ecological value. They include improved grassland, species-poor semi-improved grassland, and amenity grassland, with some scrub and young planted trees. [Wr1]
400. Although the site may support small numbers of dormice, the ecological surveys have not confirmed their presence. In any event, the proposals would not result in a significant loss of habitat for them. There are no known bat roosts. Nor is the site significant for amphibians or reptiles. Outlying badger setts occur in the ancient woodland margins, and would not be affected by the scheme. [Wr1]
401. The site supports various common and widespread invertebrates, but the proposals would not on balance affect them. There are also several species of breeding birds. These are active mainly in the woodlands and trees alongside the streams, which would be retained. The partial loss of grassland would be compensated for by new gardens and areas of open space, as well as by the new hedgerows. [Wr1]
402. As the Council now accepts (see SCG5, also numbered NORTH.12), the BIEN proposals would not have any significantly harmful ecological impacts which would not be adequately mitigated. Therefore, they would not be contrary to any policies in PPS 9, the SP, the LP or the NSLP. [Wr1]
403. There is no objection to the scheme by Natural England, and any ecological objections or reservations expressed in other consultation responses have been adequately addressed in the ES, and in the revised scheme masterplan (Drg. L11B). The latter, with its retention and protection of all important existing wildlife habitats, its provision of ample buffer zones around ancient woodlands, streams and hedgerows, and its creation of new hedgerows and other planting, will ensure that any ecological effects are minimised, while providing new habitats and opportunities for wildlife. [Wr1]
404. The Secretary of State should note that [Wr1] remains a robust statement of the appellants’ evidence on ecology, and is endorsed by SCG5 (NORTH.12) agreed with the Council. Section 5 of SCG5 deals with appropriate planning conditions related to ecology.

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405. [Wr2], which supplements [Wr1], is a response to various specialised and detailed ecological matters, including survey methods, raised by the Downlands appellants, particularly in [Co1A, Co2 and Co2A].
406. [Wr2, sections 4 and 5] deal with the BIEN site and proposals. [Wr2, app.1] is a cumulative effects table, showing the combined ecological impacts of BIEN and BIES. These, in all cases, would not be significant. [Wr2] shows that the methodological criticisms made by the Downlands appellants of the BIEN ecological surveys and evidence are misconceived and have little or no validity, and that BIEN would have no significant ecological effects, given the mitigation strategies agreed with the Council.
407. By contrast, the Downlands proposals would have a far greater and more harmful impact on nature conservation and ecology.

Highways and transport matters

408. (The appellants' case is mainly in [Ru1] with separately bound figures, appendices and drawings).
409. There are 2 highways and transport related reasons for refusal (see above). Reason 2 refers to alleged safety hazards and unacceptable traffic conditions. Reason 4 suggests that the proposals fail to provide for sustainable modes of transport.
410. It is significant that neither matter was thought problematical when the site was allocated in the first deposit draft of the local plan review in 2003.
411. One of the salient characteristics of the BIEN site is its relatively close proximity to Uckfield town centre, with its many shops and other facilities and public transport (rail and bus) termini. This would facilitate sustainable transport choices by prospective residents and reduce potential dependence on the private car.
412. Thus the site compares favourably with Downlands, in particular, which is more peripheral and less accessible to/from the town. With regard to traffic impact, the BIEN proposals for 300 houses (compared with 750) are also much smaller in scale than Downlands.
413. The relevant SP, LP and NSLP transport policy context is set out in [Ru1, section 2]. The appeal proposals meet the relevant policy criteria and requirements.
414. The ESCC Local Transport Plan [PD4.2] is also a material consideration, as is the ESCC Local Area Transport Strategy [PD4.1]. The BIEN proposals are consistent with the aims of these documents.
415. As part of the planning application an Environmental Statement was submitted [BIEN1.7 and 1.8], including a Transport Assessment (TA) by PBA [BIEN1.11]. Key TA findings are summarised in [Ru1, section 4]. These show that the appeal site is highly accessible to a range of facilities (jobs, leisure, retail) by foot, cycle and public transport. Thus the site's convenient location would promote sustainable travel choices.
416. For illustration, fig.T1.1 in [Ru1, app. APR1] shows the site's position in relation to Uckfield. It lies only about 1.2 kms. from the town centre. Fig. 2

shows the site in relation to a range of local facilities along Framfield Road, and in the High Street, both north and south of the railway line. It is located within an easy 10 mins. (800m.) walk of most of the local facilities on Framfield Road, and is only a little further removed (20 mins. walk) from the High Street.

417. The site is passed by the 318 bus route between Uckfield and Heathfield (fig.T1.3). Through a planning obligation, the BIEN scheme would contribute to improvements in the frequency of this service. In addition, bus route 245 provides a shuttle service between the community hospital, close to the BIEN site, and the town centre.
418. ESCC is in general agreement with the scheme's TA in terms of the baseline conditions and transport impact, and this provides a robust basis for a package of suitable transport measures to accompany the proposals.
419. In terms of traffic generation and congestion, the BIEN scheme has been robustly tested by the TA. It uses a trip rate of 0.87 vehicles 2-way in the morning peak hour, generating 261, 2-way vehicle trips from the residential part of the scheme.
420. The trip rate was used in the assessment of key road junctions: the site access (PICADY model); Framfield Road/High Street, and High Street/Bell Lane (TRANSYT signal model). These junctions were assessed at base years and in 2011 with and without the development.
421. The site access junction was shown to work within capacity in 2011. Framfield Road/High Street will operate near to capacity with and without development in 2011; however, BIEN will only contribute 2 to 3 additional vehicles per minute. The High Street/Bell Lane junction would be over capacity both in the base year and 2011. However, with an appropriate package of supporting measures, this can be mitigated.
422. Following the submission of the application, further discussions between PBA and ESCC's consultants Owen Williams have resulted in a revised and partially agreed package of transport measures to accompany the scheme [see Ru1, section 4]. The 7 measures comprise: i) Framfield Road footway and cycleway scheme; ii) site access junction; iii) Framfield Road parking scheme; iv) Framfield Road pedestrian scheme; v) public transport; vi) town centre scheme; and vii) travel plan. The following 7 paragraphs describe these in more detail.
423. i) Framfield Road footway and cycleway: Drwg. 09630/103/030D2 shows a proposed foot/cyclepath linking the site on its western boundary with the Framfield Road, including a new pelican crossing, relocated bus stops etc. This path would connect with the footway on the north side of Framfield Road, connecting through to the town centre. It would also connect with the network of foot and cycle routes within the site itself, and would entail minimal harm to woodland (see [Ru1, app. APR9]).
424. ii) Site access junction: Drwg. 09630/103/001B (as agreed with ESCC's consultants) in [Ru1, app. APR2] shows the latest proposed layout for the site access from Bird In Eye hill. The existing T-junction access would be upgraded to provide a right turn ghost island arrangement with improved visibility. There would also be a separate emergency and pedestrian/cycle access to the west. A new 30 mph speed limit is proposed, with traffic calming features. There would

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- also be new footways, a pedestrian crossing refuge, new bus stops and street lighting.
425. iii) Framfield Road parking scheme: Drwgs. 09630/001/008/01E,02E,03E and 04E show a proposed parking and traffic management scheme for the section of Framfield Road between the High Street and the Framfield stream. This provides for 51 on-street marked parking bays; revised waiting and loading restrictions; a marked 2-way traffic route; 2 pelican crossings and improved footways and crossing points at side roads. Their overall effect would be to revise the existing on-street parking layout while retaining enough spaces to meet demand, and provide a corridor through these parking areas so as not to compromise the free flow of traffic along Framfield Road. The scheme incorporates amendments suggested by ESCC's consultants.
426. iv) Framfield Road pedestrian scheme: ESCC and their consultants Owen Williams have undertaken an audit of pedestrian facilities along Framfield Road, and have identified and costed improvements. Most of these can be readily agreed by the appellants, who are entirely willing to make a financial contribution towards them (see [Ru1, app. APR6]).
427. v) Public transport: the appellants have discussed possible improvements to the frequency of the 318 bus service with ESCC (see [Ru1, app. APR8]). This matter is still under discussion.
428. vi) Town centre scheme: ESCC have appointed JMP consultants to operate a traffic model for Uckfield town centre, which currently suffers from morning and evening peak hour congestion. JMP have tested various options (1, 2, 3) for highways and signals works etc. aimed at ensuring acceptable traffic flows and highways safety. BIEN and BIES have funded additional traffic modelling to assess their respective traffic impact, individually and together. This has shown that under options 1, 2 and 3c the town centre road network would operate within acceptable levels of capacity. Any preferred option (which might cost up to £10m.) would be funded by developer contributions, including from BIEN. As yet, no scheme has been agreed, and the matter remains under discussion. Should it remain undecided, BIEN are prepared to contribute to alternative (as yet unspecified) transport measures.
429. vii) Travel plan: As suggested in the TA, residential and employment travel plans could be developed, possibly in response to a planning condition. The purpose would be to achieve a meaningful and lasting level of reduction in car trips.
430. Collectively, this package of 7 measures would do much to encourage the use of sustainable transport modes to and from the BIEN site. They would also support BIES, if the Secretary of State is minded to approve both schemes [Ru1, table 2]. They would respond to SP and LP policy requirements. With them in place, the site can be safely accessed, and the increase in travel demand generated by the development can be accommodated on the local highway network - notably on the Framfield Road, and in Uckfield town centre - without adding unduly to traffic congestion.
431. [Ru1, table 1] cross-references the measures against the 2 reasons for refusal for BIEN, and shows how they have both been fully addressed.
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432. In sum, the BIEN proposals are satisfactory in highways and transport terms, and they comply with development plan and other policies.
433. The foregoing case has to some extent been updated by SCG2, the joint statement on highways and transport issues produced during the inquiry by ESCC/WDC, BIEN and BIES (but not Downlands). This is introduced and summarised in Mr. Harris's evidence for WDC and ESCC (the local highways authority). It represents an attempt to accommodate some development from the appeal sites before 2011, in addition to that in the NSLP's 3 committed sites, but only in the event that the Secretary of State agrees with the appellants that there is an overriding housing need in Uckfield which must be met. In short, BIEN is prepared to sign up to, and make financial contributions towards, the various transport infrastructure measures proposed by ESCC in SCG2, including the "headroom" package which aims to remove existing car trips from the local road network. The BIEN measures are included in a planning obligation.

Noise

434. (The appellants' case is in [Cog and SCG6]). The BIEN proposals would neither cause, nor suffer from any significant levels of, or nuisance from, noise. That applies to noise from any source, be it road or rail traffic, industrial, or other. This is amply demonstrated by the appellants' 2 thorough noise assessments: that by Peter Brett Associates for the ES in 2006, and that by Mr. Cogger in late 2007 for the purposes of the inquiry. (The Council's evidence does not take the latter into account). The data have been assessed in the context of both national policies and standards, and local (SP and LP) policies [Cog].
435. Measured noise levels at the site are generally within those criteria considered suitable for residential development. Both day and night, they fall within NEC "A". This means that noise is not a determining factor in granting planning permission. Whilst slight excesses are evident at locations close to the B2102 (Framfield Road) at the southern site boundary, these are minor and localised and could be dealt with by standard and commonly used mitigation techniques (including fencing and the use of appropriate room layouts) [Cog].
436. Contrary to the Council's suggestion, there is no significant or consistent source of noise from the existing employment site that would compromise the proposed residential development. The Council is therefore being unduly alarmist about this. In fact, the assessments demonstrate no significant continuous noise arising from that site, while short term impacts from the handling of scaffolding are insufficient to constitute a noise nuisance. Other noise associated with the employment site is restricted to occasional vehicle movements along the access road [Cog].
437. Nor would the development compromise the continuation of these existing employment uses. In addition, the increase in traffic generated by the development would not give rise to a perceptible change in traffic noise levels at properties adjacent to the B2102 or other nearby roads [Cog].
438. It is clear even from the scheme masterplan that the rear gardens of properties adjacent to the access road and properties to the west of the employment site will benefit from screening by the massing of the residential buildings. Properties to the east of the employment site will benefit both from screening and distance attenuation by the proposed commercial development [Cog].

439. There are therefore no grounds for refusing planning permission on the basis of any noise considerations. Indeed, the policies cited by the Council are all very general in nature, and do not establish specific noise criteria. In any event, they would not be contravened by the development [Cog].

440. During the inquiry, BIEN and WDC produced SCG6, on noise. This is very important. It confirms that the Council no longer has any objections in principle to the proposals on noise grounds, as it is satisfied with the mitigation strategy proposed by the appellants. Suggested agreed condition 43 (BIEN18) refers.

The Case for Wealden District Council

441. The material points are:

Planning policy

442. The Council's case is substantially the same as in appeals A and C. The proposals would be contrary to the policies cited in reasons for refusal 1-3. (The other reasons for refusal, 4-6, have now been substantially overcome).

Housing land requirements and supply

443. The Council's case is substantially the same as in appeals A and C. In the light of this, there is no need or requirement for BIEN to contribute to housing land supply.

Landscape matters

444. (WDC evidence is mainly in W4, paras. 7.1 – 12 and in SCG4, also numbered NORTH9).

445. The appeal site is reasonably well contained by the woodlands at its eastern/north eastern extremities, but is quite prominent in the landscape when viewed from the north, beyond the River Uck, in the vicinity of Hempstead Lane. The development would contain 3 and 4 storey buildings, which would be seen in views from this part of Uckfield. [W4]

446. The town's landscape character would be affected if development at this peripheral location is allowed on this scale, and at this height. To place a number of relatively tall buildings here would be out of keeping with the character of Uckfield, where most tall buildings are in the centre. There is also the question of cumulative impact to consider, when the site is assessed alongside the nearby BIES; clearly, both sites combined would have a greater landscape impact than either one of them on its own. [W4]

447. That said, BIEN is smaller and much better related, physically and visually, to the rest of Uckfield than is Downlands, and development here would be far less damaging in landscape terms. [W4]

448. On the basis of the amended plans L11B (master plan), L13B (development density), and L14B (building heights), which would reduce the maximum building heights to 2.5 - 3 storeys, and would retain adequate landscape buffers alongside the woodland areas, there are no outstanding landscape objections to the proposals. It is now accepted that a high quality urban design and layout within the site can be achieved. If outline planning permission were granted, the detailed design scheme could be addressed in the reserved matters. [SCG4]

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449. Nevertheless, in the absence of an overriding housing need, there remains an objection in principle to development beyond the defined development boundary. In addition, the site's relationship with the existing employment uses at The Yard is inherently unsatisfactory, and an example of poor design [SCG4]

Ecology and nature conservation

450. (WDC evidence is mainly in [R2 and SCG5, also numbered NORTH12]).
451. As a result of the appellants' further information and evidence at the appeal stage, the Council no longer objects to the proposals on grounds of ecology and nature conservation. Therefore reason for refusal No (4) may in effect be withdrawn, and the ecological issues addressed through planning conditions [see SCG5, section 5]. Provided a sound ecological plan is implemented with adequate funding, an acceptably high level of valued biodiversity can be developed and maintained at the site.
452. The proximity of existing development increases the importance of retaining landscape scale ecological features on site and in the vicinity, including managed hedgerows with buffer strips. This will allow their biodiversity to be protected and enhanced, and provide corridors for species movement.
453. Many of the site's hedges, especially in the eastern part, are species-rich and important both as landscape features and for wildlife. These should be maintained, according to a formal management plan, with a 5m.-10m. buffer strip on either side. There should be no application of fertilisers, herbicides or pesticides within 10m.-20m. of the hedge where it is adjacent to farmland or other open spaces.
454. In order to protect the biodiversity of ancient woodland at the eastern and western site fringes, development, including private gardens, should be at least 20m. distant from it. While a width of 30 m. might be thought appropriate elsewhere, in this case the wood is narrow and will remain open on its western side, with a good buffer zone.
455. There is scope for a path through the western woodland area having less impact than that shown on the illustrative masterplan. The use of the floodplain as a managed public asset for quiet recreation is commended.

Highways and transport matters

456. (WDC's/ESCC's case re BIEN is mainly in H1, H2, H2A, H5 and SCG2).
457. [H1, H5 and SCG2] contain evidence which is relevant to all 3 inquiry schemes. This is summarised above, under appeal A, and therefore is not repeated here.
458. [H2] refers in places specifically to BIEN. [H2 annexes B1-B11] contain background and survey information.
459. [H2 section 4] gives modelled traffic queue lengths at critical town centre junctions under a range of assumptions on trip rates etc.
460. BIEN's relative sustainability in transport terms depends in part on its distance from town centre facilities, and also on the nature, variety and quality of existing and proposed pedestrian and cycling routes. On balance, BIEN is closer to most (but not all) town centre facilities than Downlands, and about the same distance

as BIES, which lies nearby on the south side of Bird In Eye hill. There is little to choose between BIEN and BIES in this regard.

- 461. Like Downlands, BIEN lacks a high degree of route choice, which is reflected in the proposals' reliance upon the Framfield Road to take cars, buses, cycles and pedestrians into the town centre.
- 462. There would not be any link over the River Uck and the railway line to the north eastern part of the town. In terms of connectivity, this would be a significant drawback of the current scheme.
- 463. [H2A] addresses some minor inaccuracies and inconsistencies in the BIEN traffic/transport case.
- 464. The BIEN transport proposals would be delivered through a S106 obligation.

Noise

- 465. (WDC evidence is mainly in [L and SCG6]). A longstanding employment area (The Yard), containing industrial and other employment uses, abuts the northern part of the appeal site. It includes a scaffolding operation. It is at present isolated, and surrounded by fields. Well removed from the nearest residential areas (on Bird In Eye hill and north of the river and railway), it is not regarded as a significant source of noise nuisance to any property [L].
- 466. However, with the proposed development - from which it would be wholly independent - it would be in close proximity to new housing to the east and south west. Even a casual site inspection, not employing acoustic experts or noise measuring devices, confirms the potential for noise nuisance (especially from the scaffolding operation) to harm the residential amenity of nearby parts of the proposed development [L].
- 467. The Council has not undertaken its own technical noise assessment. But an assessment was duly submitted with the application in 2006 and addressed in the ES. This makes appropriate reference to the legal and policy framework for considering matters of noise impact and sensitivity to noise nuisance (esp. in PPG 24; BS8233:1999; and BS4142:1997). And the noise monitoring points used are appropriate for determining which NECs – noise exposure categories, see PPG 24 – would apply to different parts of the appeal site [L].
- 468. However, in some respects the appellants' 2006 assessment is limited and therefore flawed. Noise measurements have not been taken over a long enough period to determine these NECs accurately. Nor is there sufficient data on the full range of noise sources, including the heavy plant, within the employment area, or on their occurrence throughout the day. The difference between the noise rating level and the noise background level may have been underestimated [L].
- 469. In addition, while there is potential for noise mitigation through design, there remains some uncertainty as to how far the detailed housing layout would achieve this [L].
- 470. During the inquiry, WDC and BIEN produced SCG6, on noise. This takes the appellants' further noise assessments into account. It confirms that the Council no longer has any objections to the proposed development on noise grounds, as

it is satisfied with the mitigation strategy proposed by the appellants. Draft agreed condition 43 (BIEN18) refers.

The Case for Other Parties

471. The material points are:

472. *The Downlands appellants:* 1) Landscape matters (see [RV2]): The Council's original objections to BIEN on landscape grounds are sound, and are generally supported. The site includes the western part of a north facing ridge and slope that forms an important rural backdrop to Uckfield. Development would be particularly conspicuous in views from a main residential area (Manor Park estate and the Hempstead Lane area), causing a range of adverse visual impacts. Like BIES, it would also cross the natural development boundary of the Framfield stream. The new access proposals would require new footways, illuminated street signage, highway lighting and vegetation loss, all amounting to substantial urban features which would harm the rural aspect of Bird In Eye hill. This would be compounded by night time effects. Furthermore, when considered in conjunction with BIES, the BIEN scheme would have substantial adverse cumulative effects. New intrusive development would be seen from wide areas of east and south Uckfield. It would also create new development pressure on other greenfield land to the east, owing to a lack of adequate defensible boundaries. And, like BIES but unlike at Downlands, there would be no compensating advantage of a substantial new country park.

473. 2) Ecology and nature conservation (see [CO2 and CO2A]): In broad terms, there are several features of ecological value at and adjoining the BIEN site. They include: the River Uck and Framfield stream; ancient semi-natural woodland; species-rich hedgerows; and habitats for bats, grass snakes, badgers and dormice. Impacts of the proposals would include: possible water pollution and hydrological change; loss of sections of hedgerows; loss of and damage to ancient woodland; and fragmentation of habitats suitable for dormice, bats, badgers and reptiles. [Co2]

474. The mitigation proposals are noted. However, although they may assist the scheme to comply with protected species legislation, the BIEN proposals do not begin to match the ecological advantages of the Downlands scheme. This is because they do not bring forward a recreational/educational resource - the 55 ha. country park proposed for Downlands – for the town as a whole, nor any benefits for biodiversity in the wider area. [Co2]

475. In addition, as with landscape there has been no cumulative ecological assessment of BIEN with BIES. If both were approved and implemented, Uckfield would spread to the east of the Framfield stream, and a greater length of it as well as the River Uck could be harmed. More hedgerows would be lost, and more protected species habitats fragmented or lost. [Co2]

476. Notwithstanding these rather broad-brush conclusions, it is not really possible, from the appellants' evidence, to make a full assessment of the scheme's ecological impacts. This is because there are various flaws in their ecological impact assessment. These are that: i) the description and evaluation of some features, and the assessment of impacts, is inadequate; ii) the marl pit pond in the field east of the site has been ignored; iii) the standard IEEM guidelines for ecological impact assessment [PD1.18] have not been followed; and iv) no zone of influence of the development has been determined.

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477. This has led to an under-estimate of ecological impacts at BIEN, which contrasts oddly with the appellants' exaggeration of the limited impacts of the Downlands scheme.
478. Details substantiating these criticisms are in [Co2A]. In a nutshell, there is a lack of adequate and robust ecological survey information for the BIEN scheme, as originally stated in WDC's 4th reason for refusal. Despite the Council's own evidence to this inquiry, that reason remains valid.
479. 3) Traffic and transport matters (see [B2]): The BIEN proposals have a number of serious deficiencies, 4 in particular. In summary, these are: i) the scheme would be heavily car-dependent, with substandard footways and no special cycle provision on Framfield Road; ii) nor would it deliver a bridge link over the River Uck and railway, an item regarded as essential by the Council; iii) BIEN traffic would have a significant impact on the High Street/Framfield Road signal junction, and on the town centre, with no guarantee of mitigation. Thus it would exacerbate traffic congestion in the town centre; iv) there would be no significant improvements to bus services, and the residents would be reliant on existing services too far from the site. In all these matters, BIEN would compare unfavourably with Downlands. In addition, there is no cumulative assessment of the traffic impact of BIEN with BIES, and therefore the Secretary of State has insufficient information or justification for allowing both schemes.
480. Seen in the round, in planning terms BIEN is greatly inferior to Downlands (see [T4]). It would not create a sustainable community, with diverse and well designed and integrated facilities. It would be just another bland, peripheral housing estate. And, as noted above, it would compare very poorly in terms of landscape impact, ecology and nature conservation, and traffic and transport.
481. *Miss C. Handford*: BIEN and BIES should both be refused planning permission. Both proposals would exacerbate flood risk from the River Uck and the Framfield Stream, and cause the repetition of the serious flooding problems experienced in Uckfield in 2000, and subsequently. Secondly, they would greatly increase traffic congestion and pollution along Framfield Road, which is very busy, and can be dangerous, particularly at peak hours. In addition, they would make parking conditions on and around Framfield Road even more difficult than they already are, given the paucity of on-street parking. Many local residents are concerned about these matters, as shown by a recently canvassed 32-page petition (tabled). The suggested Framfield Road parking scheme would be inadequate. Local residents are also concerned that at this inquiry the Council's (and ESCC's) officers appear to be withdrawing their objections to development at Bird In Eye, despite the members' opposition, and the refusal of planning permission.
482. *Mr. L. Ashby*: Miss Handford's traffic and parking-related objections to the BIE schemes are endorsed. 28 recent letters from local residents in and around Framfield Road (tabled) make similar points.

Written Representations

483. Letters from interested persons received during the inquiry are included among the documents. They do not raise new matters.

Conditions and Obligations

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484. [BIEN18] contains a list of 43 agreed suggested conditions in the event of a successful appeal. These are grouped into the following categories: reserved matters and time limits (conditions 1-5); form of development (6-9); operational (10-12); use of resources/sustainability/recycling (13-16); drainage/flood protection/contamination (17-23); highways/parking/garaging (24-27); open space and play areas (28-29); landscaping/fences/walls/trees (30-35); floodlighting and materials (36); commercial area (37-38); ecology (39-41); archaeology (42); noise (43).
485. BIEN and the Council subsequently agreed that draft condition 20 should be prefaced by the words "Unless otherwise agreed in writing by the local planning authority...". In addition, a details of materials condition is in fact absent from the list, but should be included.
486. Some of these are standard conditions, some arise from consultations with, eg, The Environment Agency, and others derive from the SCGs.
487. I agree that these or similarly worded conditions would meet all the tests in conditions Circular 11/95, and would otherwise be appropriate if the Secretary of State were minded to grant planning permission.
488. Before the end of the inquiry sitting phase, the appellants submitted 2, draft S106 unilateral undertakings [BIEN 16 and BIEN 17]. BIEN 16 deals with District Council matters, and BIEN 17 with County Council matters. BIEN 16 schedules 1,3 and 6 cover the provision of affordable housing, and schedules 2, 4 and 7 cover the provision of children's outdoor playing space and landscape areas. Schedule 5 covers the provision of other play space. BIEN 17 schedule 1 covers contributions to certain ESCC services; schedule 2 refers to highway works; schedule 3 covers contributions to local access improvements; schedules 4, 5 and 6 cover contributions to public transport, to a bus and emergency vehicle access gate (at the approved Mallard Drive development), and to the Framfield Road parking scheme; schedule 7 covers a contribution in instalments for the town centre (traffic) solution; and schedules 9, 10 and 11 cover other transport measures, including a site travel plan.
489. In [WDC24] the Council/ESCC commented on certain details in draft BIEN 16 and BIEN 17, and suggested some changes.
490. Following this, further correspondence occurred between the end of the inquiry sitting phase, and the formal inquiry close on 14 October 2008. With a letter from Harold Benjamin Solicitors dated 22 August 2008, BIEN 16 and BIEN 17 were updated, taking [WDC 24] into account. Details of the affordable housing (amount-mix-floorspace-tenure etc.), and all financial contributions are included. An additional schedule 8 to BIEN 16 refers to the marketing of the proposed commercial area. The solicitors' letter takes issue with some of the [WDC 24] suggestions.
491. A letter from Harold Benjamin Solicitors dated 29 September 2008 attached the 2 completed unilateral undertakings, also dated 29 September. In my view, these obligations would in general meet the 5 tests for planning obligations in Annex B to Circular 05/2005, Planning Obligations, and they would be necessary to any grant of planning permission.
492. However, in [WDC 29] the Council/ESCC makes further detailed comments on the completed BIEN obligations. I note that this document states that most of

the matters it raises could be overcome by re-drafting the relevant provisions. The Downlands closing submissions also make detailed comments. Should the Secretary of State be minded to grant planning permission for BIEN, these points may require further correspondence/resolution with the parties.

5 BIRD IN EYE SOUTH (BIES) (appeal C)

Procedural Matters

493. There are no procedural matters relating exclusively to the BIES appeal of which the Secretary of State should be aware.

The Site and its Surroundings

494. The appeal site, which is irregular in shape and about 9.6 ha. in size, comprises mainly open pastures on the eastern side of Uckfield, to the south of the Framfield road (B2102) off Bird In Eye hill. It also contains small unused areas of woodland and scrub. It slopes generally uphill from west to east, from the boundary adjacent to the Framfield stream (a tributary of the River Uck), to the boundary adjoining the Bird In Eye farm buildings. There is an area of ancient woodland, Bird In Eye Shaw, adjacent to the south.

495. More detailed descriptions of the site are in, especially [Th, D, and Me1]. Respectively, these emphasise its location and setting on the eastern edge of Uckfield, its landscape features and wider landscape context, and its ecological assets and characteristics.

496. The site has access from Bird In Eye hill, which currently serves a small complex of farm buildings and other business and recreational uses. A grade II listed oast house makes a conspicuous central feature in this group, and can be clearly seen from locations on the west side of the Framfield stream. A new junction with Bird In Eye hill is proposed as part of the proposals, a short distance to the east of the existing.

497. There is longstanding frontage development to Bird In Eye hill - mainly detached houses and bungalows in sizeable plots – on both the north and south sides. This includes development up to the boundary of the site with Bird In Eye hill. Beyond the Framfield stream to the west (and immediately south of the community hospital) is an open, grassed site known as “land north of Mallard Drive”. This is allocated for housing in the NSLP, and now has planning permission. Like BIES, it is controlled by the appellants and is intended to be developed by them.

498. The site is within walking distance of a range of facilities and services along Framfield Road, and in Uckfield town centre, which lies about 1 km. to the north west. (Details, including walking distances, are in [Wi]).

The town of Uckfield

499. This is as described above (see under appeal A), and in various proofs and documents.

Planning Policy: the Development Plan

500. The development plan policy background is the same as under appeals A and B. In addition, it should be noted that both BIEN and BIES were allocated for

housing development in the first deposit draft [PD5.3] of the Wealden Local Plan Review – the precursor of the NSLP.

Other Planning Policies

501. Other planning policies are as described under appeal A.

Planning History

502. Other than its allocation in the first deposit draft of the Wealden Local Plan Review, the application site has no significant prior planning history. Minor applications relating to the small complex of buildings at Bird In Eye farm are agreed to have no particular relevance for the appeal.

The Proposals

503. The application is in outline, with all detailed matters reserved except for the means of access. It seeks permission for 197 dwellings, on approximately 6.1 ha. of the 9.6 ha. site. The average net residential density would be 32 dwellings/ha. Five play areas would be included, comprising 4 LAPS and one LEAP. The remainder of the land, mainly adjacent to the Framfield stream and along the southern site boundaries, would comprise retained woodland and scrub, recreation land, and other open areas, including detention ponds.

504. The proposals are described in some detail in the DAS. This includes a range of illustrative material, including a master plan, which provides information on the proposed use, the amount of development, an indicative layout, scale parameters (including building heights), and indicative points of access.

505. The scheme's underlying design principles are described in [Th].

Reasons for Refusal

506. The stated reasons for refusal are as follows:

507. “ (1) The proposed development represents an unacceptable and unjustified form of development of a site which lies outside the limits of the defined development boundary for Uckfield and Framfield, contrary to the provisions of PPS 1 and 7, (SP) policies S1, S4, S10 and EN1, (LP) policies GD2, EN1 and DC17, and (NSLP) policies GD2 and DC15.”

508. “ (2) The development proposal would lead to an unacceptable increase in existing safety hazards and unacceptable traffic conditions in the immediate area, specifically rural lanes around the village of Framfield and Uckfield town centre, an area that is already heavily congested at peak times and the proposal is therefore contrary to (SP) policies TR3 and S1, (LP) policy TR3 and (NSLP) policy TR2.”

509. “ (3) Notwithstanding the provision of an Environmental Statement and taking account of enhancement proposed as part of the application, insufficient information has been submitted to address the impact of the development proposals on landscape management, habitat enhancements, effect of pedestrian and cycle links on habitats, layout of development, space allocation for buffer zones between the built form and retained natural features (including adjacent ancient woodland – Wealden Ancient Woodland Survey 2005) and impact on connectivity with other sites for protected species. Based on the submitted information, the proposed development package is contrary to the provisions of

PPS 9, (SP) policies S1, EN17, EN18 and EN20, (LP) policies EN1, EN5, EN12 and EN16, and (NSLP) policies NE1, NE14, and NE15”.

510. “ (4) The proposal does not satisfactorily demonstrate that adequate provision will be made to encourage sustainable modes of transport, contrary to (SP) policies S1 (c) and TR3, and (NSLP) policies TR1 and TR2”.

511. “ (5) No mechanism exists to secure affordable housing on site and as a result the proposed development is contrary to (SP) policies H4 and S7 (d), (LP) policy HG3 and (NSLP) policy HG4”.

The Case for Heron Land Developments, Persimmon Homes and Gallagher Estates (the BIES appellants)

512. The material points are:

Planning policy

513. (The appellants’ case is mainly in [Gr, sections 4, 6 and 7]). Together with BIEN, and land north of Mallard Drive, the appeal site was included in a single residential allocation for up to 500 dwellings under policy UC1 in the first deposit local plan [PD5.3] in January 2003. The allocation followed a substantial degree of local consultation.

514. This draft allocation alone confirmed the site’s general suitability for housing, in terms of its location, sustainability and all environmental factors and constraints. But, like BIEN, BIES was not subsequently maintained as a housing allocation in the NSLP. This was a flawed decision on the Council’s part.

515. The BIES site and proposals fully comply with national planning policy guidance in PPS 1, PPS 3, PPG 13 etc, and owing to a compelling housing need in Wealden, and specifically at Uckfield the appeal should be allowed.

516. There is no dispute that the SP housing requirement to 2011 [PD3.1] cannot be met within the built-up areas of the district, and therefore that suitable and deliverable sites for urban extensions are required. These, by definition, must be on greenfield land.

517. Schemes should be well integrated with the existing pattern of settlement, and should be at locations well served by public transport. Located on the edge of Uckfield but close to the town centre (within 1 km. direct), and also convenient for bus routes and the railway station, the appeal site readily meets both criteria.

518. Importantly, as the BIES transport evidence [Wi] shows, the proposals can be accommodated without seriously harming traffic circulation along Framfield Road, or adding significantly to town centre congestion. This was not properly appreciated by the Council in its decision to delete the allocation.

519. Para. 71 of PPS 3 [PD1.2] states that where, as in this case, LPAs have less than 5 years supply of housing land (see below), planning applications for housing should be considered favourably. Even the Council acknowledges that it has a major problem in delivering housing land in the next 5 years. [PD5.13]

520. The BIES proposals also meet the criteria set out in para. 69 of PPS 3: i.e. they would achieve high quality and a good mix of housing; the site is suitable for housing, and environmentally sustainable; the proposals would use land

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- effectively and efficiently; and they would comply with all planning for housing objectives. All this is amply demonstrated by the BIES evidence to this inquiry.
521. The SP [PD3.1] contains various relevant saved policies [PD3.2], which are part of the development plan. Among these are S4, S22, H1 and H4. These all may be said to support the appeal proposals. In particular, policy S22 identifies Uckfield as a location where “major peripheral expansion” for housing and associated facilities may take place 2006-2011. BIES relies upon this clear policy statement.
522. In the light of PPS 3 advice, the appeal proposals are justified as an exception to saved policy GD2 in the LP [PD5.1], which was adopted in 1998; in any event, this plan’s allocations only covered the period to 2004, and its development requirements now have little relevance or weight. Other LP saved policies, which are also part of the development plan, would largely be met by the proposals.
523. As mentioned above, the site is not an allocated housing site in the NSLP [PD5.2]. However, by the very fact that it is non-statutory, and not subject to a full independent evaluation of alternative sites, the NSLP merits only very limited weight in this appeal. It is not, therefore, determinative.
524. That said, as the appellants’ evidence to this inquiry demonstrates, the proposals would accord with many other NSLP policies, covering a wide range of conventional planning requirements and criteria. These include NE1, NE7, NE14, NE15, BE1, HG4, HG7, HG8, HG9, TR1, TR2, TR5, TR8, LR2, LR4, TS1, CS2 and CS4.
525. In general, BIES would be more suitable for housing than alternative sites at Uckfield (including the NSLP allocated sites at Sandpits, Lewes Road, and at Cysleys Farm, north of Eastbourne Road; and the Downlands and BIEN appeal sites). It would also meet all current policy requirements for affordable housing, and this can be secured by way of a planning obligation. An obligation would also cover appropriate transport infrastructure and community requirements, in compliance with the relevant policies.
526. The emerging South East Plan is a material consideration in this appeal, but it has not yet reached its final form.
527. The Panel recommended an overall increase in housing land supply for the SE region of 10% (see also below, under housing land requirements and supply). The proposed figure for Wealden district thereby increases from 400 dwellings per annum to 480 dpa. The Secretary of State’s Proposed Changes increase the requirement further, to 550 p.a.
528. Finally under the heading of planning policy, the Secretary of State has several options in deciding these 3 appeals, and will need to consider which site is the most or least suitable for development.
529. Downlands has such critical disadvantages - in terms of harm to the landscape and to ecology/nature conservation, as well as traffic and transport - that it should not be approved, regardless of any housing land supply considerations.
530. Having far less impact in environmental terms, BIES and BIEN should both be allowed if the Secretary of State considers this is warranted by the housing land position. But if only one appeal is to be allowed, the smaller BIES scheme should
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be preferred to BIEN. This is because it would have the least impact in terms of the release of greenfield land.

531. In sum, the BIES proposal complies with national and SP policy, and with much LP (and NSLP) policy. But the NSLP, which fails to allocate the site, merits only limited weight. BIES is also fully consistent with the emerging SE Plan, albeit this has not yet been approved.

The proposals - design principles

532. (The site constraints and the proposals' underlying design principles are in [Th], with separately bound appendices). As shown in the DAS, the appeal scheme is a carefully considered and appropriate design solution for the site. It would have both a robust structure and a distinct sense of identity. Overall, it would be perceived as an attractive, relatively small-scale extension to Uckfield, in particular to the New Town area south of the river and railway line [see Th, app. 3]. This area provides a palette of design references that can be used in the detailed architectural design of individual buildings, boundaries and spaces.
533. The development will differ from, but will complement that to be built on land north of Mallard Drive, west of the Framfield stream [see Th, app. 1.2]. It will retain existing local views of the listed oast house. It will not exceed or dominate the skyline towards Framfield; it retains and enhances some meadowland; leaves ancient woodland undisturbed and encourages biodiversity.
534. The scheme will comprise a mix of 2-3 storey detached houses, terraces and apartment blocks. The highest (3 storey) buildings will be on the lower slopes. A variety of housing designs will create a sense of local identity and distinctiveness, with an appropriate balance of public open space and private gardens, separated by hedges and fences.
535. The housing layouts will maximise solar gain, and all dwellings will comply generally with sustainable building principles and practices. The layout will integrate the required parking (at 1.5 spaces max. per dwelling), and promote crime prevention and personal safety. Pedestrian and cycle movement will be facilitated. There will be ample, well-located and supervised play areas.
536. The landscape and ecological enhancement strategies include water management to control the surface water hollows. The many green spaces within the site will provide a highly attractive setting for the buildings and circulation areas.

Housing land requirements and supply

537. (The case is substantially the same as for the appellants in appeals A and B.)

Landscape matters

538. (The appellants' case is mainly in [D], with separately bound appendices and plans/photographs). The appeal site, some 9.6 ha. in size, is located on the eastern side of Uckfield, within 1 km. of the town centre, and is adjoined by built-up areas to the west, with playing fields, a hospital and a school. It lies on the lower slopes of Bird In Eye Hill, on the west, town-facing slopes of the Framfield stream. Its character may be described as "urban-edge", having strong visual links with the town. It is at best undistinguished in terms of its landscape quality. The land use is predominantly horse-grazing.

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539. While the site is contained by mature woodland blocks, including the ancient woodland at Bird In Eye Shaw, it lacks any sense of rural seclusion or remoteness from development. In this, as in other respects, it differs significantly from Downlands.
540. The site is visible from properties abutting its northern and western edges, and from the area around Uckfield community hospital. There are no views of it from Framfield village or the landscape to the east.
541. The outline proposals respond to the site's topography and existing features, avoiding any skyline development and respecting the prominence of Bird In Eye Farm, with its grade II listed oast house. Open space running from the Framfield stream valley floor to the top of the hill would maintain views towards them. The landscape proposals would develop the existing framework of woodland, shaws and hedgerows to enhance their landscape and wildlife conservation value, and contain local views of the development. Internal planting would soften built forms, and contribute to a tree-lined skyline.
542. Apart from improved grassland, there would be no loss of existing landscape features, and no trees of any significance would be removed. All existing woodland would be protected by substantial buffer zones. The overall effect of development on the wider landscape would be minimal, owing to substantial screening by local topography and mature woodland. The remote and secluded character of the Low Weald particularly around Framfield would be wholly unaffected. In sum, the landscape and visual effects of development would be localised, and limited to the immediate landscape context.
543. By contrast, development of the Downlands site would have a far more significant effect on the landscape around Uckfield (see under BIES case, appeal A). In landscape terms, BIES has significantly greater capacity to accommodate development.

Ecology and nature conservation

544. (The appellants' case is mainly in [Me1, Me2 and SCG8, also numbered SOUTH3]).
545. In general terms, the appeal site comprises several horse-grazed improved grassland fields with broadleaved semi-natural woodland and scrub habitats along its western margin. The site slopes down to the Framfield stream which flows northward along the western site boundary, beyond which lies a neglected semi-improved grassland. [Me1]
546. Although a formal ES was not required, a comprehensive ecological assessment was submitted with the planning application [Me1, app. A]. This provides full details of its methodology, the conservation context, habitat surveys, protected and notable species, impact assessment and mitigation strategy etc. It is fully fit-for-purpose. [Me1]
547. The assessment's findings and conclusions remain robust, reliable and relevant. They are amply detailed for an outline application and are now accepted by the Council [see SCG8]. The broad conclusions are that the improved grassland fields that would house most of the development are of negligible nature conservation importance, although their margins provide habitat for 2 reptile species (grass snake and slow-worm). The woodland within the west

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- of the site is its only habitat of more than local ecological interest, being of county conservation importance and providing habitat for protected species including badgers, bats and (possibly) dormice. [Me1]
548. Providing the recommended mitigation and enhancement measures are implemented, the development would have a negligible ecological impact. Indeed, the development has the potential to increase opportunities for wildlife in the locality, through the retention, creation, management and enhancement of woodland, scrub, rough grassland, hedgerow and garden habitats. [Me1]
549. Taking these matters further, [Me1, section 2] describes the planning policy background; [Me1, 3] the baseline ecological condition; and [Me1, 4] impact assessment and mitigation.
550. It should be noted that the site has no statutory or non-statutory nature conservation designations, and no UK BAP priority habitats (as defined in the Countryside and Rights of Way Act 2000). The Sussex biodiversity action plan includes BAPs for habitats and species considered to be of county biodiversity importance; among those, the site contains or is bordered by examples of hedgerows, streams and woodland. The woodland located on the western site margin, and Bird In Eye Shaw (located outside the site adjacent to its southern boundary) are identified as ancient woodland. There are no TPOs on the site. [Me1]
551. Importantly, the scheme's mitigation proposals include the provision of landscape buffers and the restriction of public access [see Me1, 4]. The buffers between the proposed development areas and "ecological receptors" will each have several functions, and will be wide enough to reduce all potential impacts to an insignificant level. This is accepted by the Council [SCG8]. A buffer of about 50 m. width is proposed between the development area and the Framfield stream. Water detention basins will provide new wetland habitats. [Me1]
552. The level of connectivity of wildlife habitats between the site and the surrounding countryside would be maintained. With the buffers and other mitigation measures in place, there would be no adverse effects on badgers, dormice, bats, birds or reptiles, or other protected or notable groups or species. [Me1]
553. Indeed, unlike at Downlands, the scheme does not raise any significant issues for ecology/nature conservation which could not be resolved through its design (including at the reserved matters stage), and mitigation measures [SCG8]. These, including the Harlands Farm toads, have all been discussed in detail and agreed with the Council's ecology witness. Natural England has no objections. In sum, no significant wildlife habitats would be damaged or disturbed. And no national or local nature conservation policies would be breached. There are therefore no reasons relating to ecology or nature conservation for resisting development of the BIES site. [Me1 and SCG8]
554. The Secretary of State should note that [Me1] remains a robust statement of the appellants' evidence on ecology, and is supported by the Council's evidence. [Me2], which supplements it, is a response to various specialised and detailed ecological matters, including survey methodologies, raised by the Downlands appellants, particularly in [Co1A, Co3 and Co3A]. There are no other objectors on ecological grounds.
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555. [Me2, section 3] deals with the BIES site and proposals. It shows that the methodological criticisms made by the Downlands appellants of the BIES ecological surveys and evidence are misconceived and have little or no validity, and confirms that BIES would have no significant ecological effects, given the mitigation strategies agreed with the Council [SCG8].
556. By contrast, the Downlands proposals [see Me2, section 2] would have a far greater and more harmful impact on nature conservation and ecology.
557. For reference, agreed ecology conditions for the BIES scheme are in [SCG8, section 12].

Highways and transport matters

558. (The appellants' case is mainly in [Wi] with separately bound figures, appendices and drawings).
559. There are 2 highways and transport related reasons for refusal (see above). Reason 2 refers to alleged safety hazards and unacceptable traffic conditions. Reason 4 suggests that the proposals fail to encourage sustainable modes of transport.
560. It is significant that neither matter was thought problematical when the site was allocated in the first deposit draft of the local plan review in 2003.
561. One of the salient characteristics of the appeal site is its relatively close proximity to Uckfield town centre, with its many facilities and public transport (rail and bus) termini [Wi, Fig. SMA1]. This would facilitate sustainable transport choices by prospective residents, and reduce potential dependence on the private car. Thus the site compares very favourably with Downlands, in particular, which is more peripheral and less accessible to/from the town. With regard to traffic impact, the proposals for 197 houses (compared with 750 and 300 respectively) are also smaller in scale than Downlands, in particular, and BIEN.
562. The relevant SP, LP and NSLP transport policy context is set out in [Wi, section 2]. The appeal proposals meet all the relevant policy criteria and requirements.
563. Following consultation with ESCC, a Transport Assessment (TA) for 197 dwellings was prepared [BIES1.13]. It was agreed not to address or propose any highways improvements in or around Uckfield town centre, as a separate study was being undertaken on behalf of ESCC.
564. The TA findings are summarised in [Wi, section 3]. These show that, contrary to reason for refusal 4, the appeal site is highly accessible to a range of facilities (jobs, leisure, retail) by foot, cycle and public transport. In short, the site's very convenient location would promote sustainable travel choices.
565. The site's accessibility to local facilities is summarised in fig. SMA2 in the TA and in [Wi, table 1 and fig. SMA1]. A radial of 1.6 km. is an indicator of the facilities within reasonable walking and cycling distance. Whether assessed against PPG 13 criteria (paras. 75 and 78) or national travel survey (NTS) statistics, the accessibility of the site is clearly demonstrated.
566. New bus stops are proposed along Framfield Road close to the proposed pedestrian and cycle access [Wi, app.2]. The appellants are prepared to offer a

financial contribution towards these and other improvements to the 318 bus service. ESCC has advised on an appropriate sum.

567. Uckfield railway station is only 1.4 kms. from the site centre – about 17 mins. by foot. The central bus station, at 1.5 kms. distance, is 18 mins. walk away. The walk time to the community hospital is 9 mins. There is also ready access to Harlands primary school (16 mins. walk) and to both Uckfield technical college and Heathfield community college (20 mins. by bus).
568. 95% of the dwellings on the site would be within a 20 mins. walk to Uckfield town centre, and also within a 6 mins. walk from a bus stop.
569. The proposals include a travel plan to encourage travel modes other than the private car. This includes a package of measures [see Wi, para.3.42], and would promote car-sharing, cycling and walking.
570. A peak hour trip rate of 0.7 per dwelling was used in the TA. Based on that, the site will generate 138 (inbound and outbound) vehicles per hour in both the morning and evening travel peak hours. The access junction, comprising a simple priority junction as now agreed with ESCC, will operate within capacity [Wi, apps.4 and 5].
571. An emergency access is proposed from the site to Bird In Eye hill [Wi, app.1]. This would provide the site's main pedestrian and cycle route to Framfield Road.
572. The proposals would contribute to a need for certain off-site highway works, and the appellants would help fund these following consultation with ESCC [Wi, section 4]. PBA, the traffic consultants for BIEN have designed a scheme for on-street parking for residents of Framfield Road. This involves a reorganisation of the existing parking spaces to assist the free flow of traffic along the road, particularly by ensuring a continuous 2-way flow. [Drawings and cost estimates are in Wi, app. 6]. ESCC supports this scheme.
573. On town centre highways improvements, ESCC has begun the process of design and costing. WDC is confident a scheme could be implemented which would address existing town centre congestion and accommodate traffic from already committed sites and the BIES site.
574. ESCC has accepted that only 5% of development traffic would be directed towards Framfield – thereby having a minimal impact on the rural road network. Despite some local objections, the BIES scheme would not cause any significant traffic congestion, or reduce road safety, in or around Framfield.
575. With the related highways improvements in place, contrary to reason for refusal 2 the site can be safely accessed, and the increase in travel demand generated by the development can be safely accommodated on the local highway network – notably on the Framfield Road, and in Uckfield town centre - without adding unduly to traffic congestion.
576. In sum, the proposals are acceptable in highways and transport terms, subject to the completion of highways works and contributions to bus services in accordance with a S106 obligation.
577. The foregoing case has to some extent been updated by SCG2, the joint statement on highways and transport issues produced during the inquiry by ESCC/WDC, BIEN and BIES (but not Downlands). This is introduced and

summarised in Mr. Harris's evidence for WDC and ESCC (the local highways authority). It represents an attempt to accommodate some development from the appeal sites before 2011, in addition to that in the NSLP's 3 committed sites, but only in the event that the Secretary of State agrees with all 3 appellants that there is an overriding housing need in Uckfield which must be met. In short, BIES is prepared to sign-up to, and make financial contributions towards, the various transport infrastructure measures proposed by ESCC in SCG2, including the "headroom" package which aims to remove existing car trips from the road network. The BIES measures are included in a planning obligation.

The Case for Wealden District Council

578. The material points are:

Planning policy

579. The Council's case is substantially the same as in appeals A and B. The proposals would be contrary to the policies cited in the reasons for refusal (except reasons 3, see below, and 5).

Housing land requirements and supply

580. The Council's case is substantially the same as in appeals A and B. In the light of this, there is no need or requirement for BIES to contribute to housing land supply.

Landscape matters

581. (WDC's case is mainly in [W5, page 7]). The proposed development would intrude upon the rural landscape on rising land beyond a (partially breached) natural boundary to Uckfield represented by the Framfield stream. It would be clearly seen from the vicinity of Harlands primary school, Harlands Road, and the Uckfield community hospital.

582. However, development here would relate visually to the existing development on the east side of Framfield stream, and that allocated in the NSLP on land north of Mallard Drive. It would not impinge upon the skyline, and would be contained to a considerable extent within the surrounding ancient woodland and buffer strips.

583. There is longstanding residential development on the east side of the Framfield stream, up Bird In Eye Hill, and also a complex of buildings at Bird In Eye Farm. The site is not and has never been designated for its landscape value. The design and access statement shows an acceptable development layout, which responds successfully to the site's topography, and respects long-distance views of the grade II listed oast house at Bird In Eye Farm. In sum, by contrast with Downlands, there is no good case, on landscape grounds alone, to resist development of the type and scale proposed.

Ecology and nature conservation

584. (WDC's case is mainly in [W5, appendix C and in SCG8]).

585. As a result of the appellants' further information and evidence at the appeal stage, the Council does not object to the proposals on grounds of ecology and nature conservation. Therefore reason for refusal No 3 may in effect be withdrawn and the outstanding ecological issues addressed through planning

conditions. These arise from the ecology of the open field areas; the surrounding woodlands; wetlands; and, specifically, common toads and the Harlands Farm pond (see [W5, app. C and SCG8]).

586. The ecological impact of the development can be mitigated by good management both during the clearance, construction and post-development phases. The issues arising at reserved matters stage will be: management of, and access to woodland, wetland and buffer areas; realising the ecological potential of the buffer zones; mitigating the impact of engineering operations to create the balancing ponds; access at the site's north western corner; and the need to facilitate the movement of common toads to and from their breeding pool at Harlands Farm.

587. Agreed suggested ecology conditions are in SCG8.

Highways and transport matters

588. (WDC's/ESCC's case re BIES is mainly in [H1, H3, H3A, H5 and SCG2])

589. [H1, H5 and SCG2] contain evidence which is relevant to all 3 inquiry schemes. This is summarised above, under Downlands, and therefore is not repeated here.

590. [H3] refers in places specifically to BIES. [H3 annexes C1-C12] contain background and survey information.

591. [H3 section 4] gives modelled traffic queue lengths at critical town centre junctions under a range of assumptions on trip rates etc.

592. BIES's relative sustainability in transport terms depends in part on its distance from town centre facilities, and also on the nature, variety and quality of existing and proposed pedestrian and cycling routes. On balance, BIES is slightly closer to most (but not all) town centre facilities than Downlands, and about the same distance as BIEN, which lies nearby on the north side of Bird In Eye hill. There is little to choose between BIES and BIEN in this regard.

593. Like Downlands and BIEN, BIES lacks a high degree of route choice, which is reflected in the proposals' reliance upon the Framfield Road to take cars, buses, cycles and pedestrians into the town centre.

594. [H3A] addresses some minor inaccuracies and inconsistencies in the BIES traffic/transport case.

595. The BIES transport proposals would be delivered through a S106 obligation.

The Case for Other Parties

596. The material points are:

597. *The Downlands appellants:* 1) Landscape matters (see [RV3]): The site occupies the west-facing slopes of Bird In Eye hill, and is highly conspicuous in views from Harlands, and the general vicinity of the primary school and the community hospital. The development would cause a significant adverse visual impact on this range of publicly accessible viewpoints and on many residents in south Uckfield. Like BIEN, it would also cross the natural development boundary of the Framfield stream. The new access proposals would require new footways, illuminated street signage, highways lighting and vegetation loss, all amounting

to substantial urban features which would harm the rural aspect of Bird In Eye hill. This would be compounded by night-time effects. Furthermore, when considered in conjunction with BIEN, the BIES scheme would have substantial adverse cumulative effects. New intrusive development would be seen from wide areas of east and south Uckfield. It would also create new development pressure on other greenfield land to the east, owing to a lack of adequate defensible boundaries. And, like BIEN but unlike at Downlands, there would be no compensating advantage of a substantial new country park.

598. 2) Ecology and nature conservation (see [Co3 and Co3A]): In broad terms, there are several features of ecological value at and adjoining the BIES site. They include ancient semi-natural woodland; the Framfield stream; hedgerows; and habitat for badgers, bats, reptiles, dormice and breeding birds. Impacts of the proposals would include some loss of woodland and species-rich hedgerows; loss and fragmentation of some habitat; and pollution of the Framfield stream. [Co3]
599. The mitigation proposals are noted. However, although these may assist the scheme to comply with the protected species legislation, the BIES proposals do not begin to match the ecological advantages of the Downlands scheme. This is because they do not bring forward a recreational/educational resource - the 55 ha. country park proposed at Downlands - for the town as a whole, nor any benefits for biodiversity in the wider area. [Co3]
600. In addition, as with landscape there has been no cumulative ecological impact assessment of BIES with BIEN. If both were approved and implemented, Uckfield would spread to the east of the Framfield stream, and a greater length of it could be harmed. More hedgerow would be lost, and more protected species habitats fragmented or lost. [Co3]
601. Notwithstanding these rather broad-brush conclusions, it is not really possible, from the appellants' evidence, to make a full assessment of the scheme's ecological impacts. This is because there are several serious flaws in their ecological impact assessment. These are that: i) the ecological surveys are not comprehensive, as claimed, and are inadequate as a basis for the evaluation of features or any assessment of impacts; ii) no zones of influence of the development/site activities have been determined; and iii) the standard IEEM guidelines [PD1.18] for ecological impact assessment have not been followed.
602. This has led to an under-estimate of the ecological impacts at BIES, which contrasts oddly with the appellants' exaggeration of the limited impacts of the Downlands scheme.
603. Details substantiating these criticisms are in [Co3A]. In a nutshell, there is a lack of adequate and robust ecological survey information for the BIES scheme, as originally stated in WDC's 3rd reason for refusal. Despite the Council's own evidence to this inquiry, that reason remains valid.
604. 3) Traffic and transport matters (see [B3]): The BIES proposals have a number of serious deficiencies, 3 in particular. In summary these are: i) the scheme would be heavily car-dependent, with substandard footways and no special cycle provision on Framfield Road; ii) BIES traffic would have a significant impact on the High Street/Framfield Road signal junction, and on the town centre, with no guarantee of mitigation. Thus it would exacerbate traffic congestion in the town centre; iii) there would be no significant improvements to

bus services, and the residents would be reliant on existing services too far from the site. In all these matters, BIES would compare unfavourably to Downlands. In addition, there is no cumulative assessment of the traffic impact of BIES with BIEN, and therefore the Secretary of State has insufficient information or justification for allowing both schemes.

605. Seen in the round, in planning terms BIES is greatly inferior to Downlands (see [T5]). It would not create a sustainable community, with diverse and well designed and integrated facilities. It would be just another bland, peripheral housing estate. And, as noted above, it would compare very poorly in terms of landscape impact, ecology and nature conservation, and traffic and transport.
606. *The BIEN appellants:* Unlike Downlands, there are no compelling reasons to refuse the BIES scheme. That said, if the Secretary of State were minded to allow only one of the appeal proposals, that should be BIEN, not BIES. That is because it relates better in landscape and visual terms to Uckfield, while having no other disadvantages compared with BIES.
607. *Miss C.Handford:* BIES and BIEN should both be refused planning permission. Both proposals would exacerbate flood risk from the River Uck and the Framfield Stream, and cause the repetition of the serious flooding problems experienced in Uckfield in 2000, and subsequently. Secondly, they would greatly increase traffic congestion and pollution along Framfield Road, which is very busy, and can be dangerous, particularly at peak hours. In addition, they would make parking conditions on and around Framfield Road even more difficult than they already are, given the paucity of on-street parking. Many local residents are concerned about these matters, as shown by a recently canvassed 32-page petition (tabled). The suggested Framfield Road parking scheme would be inadequate. Local residents are also concerned that at this inquiry the Council's (and ESCC's) officers appear to be withdrawing their objections to development at Bird In Eye, despite the members' opposition, and the refusal of planning permission.
608. *Mr.L. Ashby:* Miss Handford's traffic and parking-related objections to the BIE schemes are endorsed. 28 recent letters from local residents in and around Framfield Road (tabled) make similar points.

Written Representations

609. Letters from interested persons received during the inquiry are included among the documents. They do not raise new matters.

Conditions and Obligations

610. [SOUTH12 and Appendix E] contains a list of 37 agreed suggested conditions in the event of a successful appeal. These are grouped into the following categories: reserved matters and time limits (conditions 1-5); form of development (6-7); operational (8-10); use of resources/sustainability/recycling (11-14); drainage/flood protection/contamination (15-19); highways/parking/garaging (20-23); open space and play areas (24-25); landscaping/fences/walls/trees (26-31); floodlighting and materials (32); ecology (33-36); archaeology (37).
611. A details of materials condition is in fact absent from the list, but should be included.

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612. Some of these are standard conditions, some arise from consultations with, eg, The Environment Agency, and others derive from the SCGs.
613. I agree that these or similarly worded conditions would meet all the tests in conditions Circular 11/95, and would otherwise be appropriate if the Secretary of State were minded to grant planning permission.
614. Before the end of the inquiry sitting phase, the appellants submitted 2, draft S106 planning undertakings [SOUTH 10 and SOUTH 11]. These were later superseded by [SOUTH 13 and SOUTH 14] respectively. [SOUTH 13] deals with ESCC matters, and [SOUTH 14] deals with District Council matters. [SOUTH 13] schedule 1 covers contributions to certain ESCC services; schedule 2 refers to highway works; schedule 3 covers contributions to local access improvements; schedules 4, 5 and 6 cover contributions to public transport, to a bus and emergency vehicle access gate (at the approved Mallard Drive development), and to the Framfield Road parking scheme; schedule 7 covers a contribution in instalments for the town centre (traffic) solution; and schedules 8, 9 and 10 cover other transport measures, including a site travel plan. [SOUTH 14] schedules 1, 3, 4 and 7 cover the provision of affordable housing, and schedules 2, 5 and 6 cover the provision of children's outdoor playing space and landscape areas and of other play space.
615. Further correspondence occurred between the end of the inquiry sitting phase, and the formal inquiry close on 14 October 2008. With a letter from CMS Cameron McKenna Solicitors dated 12 September 2008, [SOUTH 13] and [SOUTH 14] were updated and issued as 2 duly executed deeds of unilateral undertaking, both dated 11 September 2008. The letter refers to a piece of unregistered land, and a previously agreed planning condition about the proposed pedestrian and cycle access route, and gives a preliminary assurance that this condition (no.3) can be fulfilled and enforced.
616. 2 further letters refer to this matter: from Sharpe Pritchard (for WDC/ESCC) dated 16 September 2008 [WDC30], and from CMS Cameron McKenna dated 26 September 2008. The former raises legal arguments, arising from this question of title, and concerning the deliverability of the proposed pedestrian/cycle link. The latter reaffirms the appellants' view that the link can both be implemented and kept in use, and that this would be adequately secured by condition 3.
617. I take no particular view on the contents of these letters, which refer more to legal points and principles, than to town planning matters. But should the Secretary of State be minded to grant planning permission for BIES, they may require further correspondence/resolution with the parties.

6 Conclusions and Recommendations (re: all 3 Appeals)

618. The following conclusions are divided into 2 main sections: a) general matters, and b) site specific matters.

a) General matters - Overview

619. In this section 6, I set out my conclusions on the main town planning issues raised by the 3 appeals, together with my recommendations as to whether or not outline planning permission should be granted for all (or any) of them.

620. At the head of each subsequent section, references [in square brackets] are to the numbered paragraph sections of the report from which I have drawn the information most relevant to the matter in hand.

621. Instead of addressing each application/appeal separately, I deal with all 3 under each main heading in these conclusions. This is because, by common agreement, all 3 raise broadly similar planning issues, and the sites are essentially competing with each other. It also follows from the way I structured the inquiry.

622. At this point, I should mention 2 caveats. First, I have tried in these conclusions to be as brief as possible, by stating only the most salient points which I think should assist the Secretary of State in determining the appeals.

623. Therefore, I have not specifically addressed a number of detailed points which arose in evidence, including in cross-examination, some of which are also mentioned in closing submissions. I consider that those I have omitted either i) led to no firm or clear-cut conclusions, or ii) were of only peripheral relevance. The inquiry evidence, however, is available in the listed proofs and documents.

624. Secondly, owing to a lengthy midway adjournment, and the postponement of the inquiry close to accommodate further written evidence on the SE Plan and the costs applications, the inquiry was spread over much of 2008 - almost a year.

625. Inevitably, therefore, there were changes in circumstances (notably the publication of Proposed Changes to the SE Plan), as well as an iterative process whereby several of the professional witnesses responded to each others' criticisms of their case with rebuttal proofs (one ecology witness ended up submitting 7 separate proofs). These led to some more entrenched positions. On the other hand, some SCGs were produced during the inquiry, which by definition narrowed some differences between the parties.

626. Both factors have complicated the process of reporting, as there have been various quite intricate shifts in the parties' stances. I do not attempt to trace all these. I have endeavoured, instead, to report the gist of the cases as I understood them to stand at the time of closing submissions, thereby omitting some apparently superseded material.

627. Turning to the substance of the applications, these are all for mainly housing development on greenfield sites on the edge of Uckfield. While BIES is exclusively for housing, BIEN and Downlands also contain some employment and other uses. Therefore, the focus should be on whether the respective sites are

suitable and available for housing, within the context of both planning policy (national and local), and general housing land considerations.

628. The 3 appellants collaborated on one aspect of their case - housing land requirements and supply – but disagreed, sometimes quite heatedly, on various other aspects. They challenged each others' evidence on such matters as landscape impact, ecology and nature conservation, and traffic and transport.
629. The Council remains opposed to all 3 applications, both on the grounds of lack of need, and on site-specific grounds. It regards all of these sites as neither necessary nor, albeit for different site-specific reasons, suitable.
630. The Council (and other 3rd party objectors) also oppose these applications on the basis that they are all on non-allocated sites, which have previously been rejected by the process of site-selection for development plans/the NSLP. Thus they have no great sympathy with “planning by appeal”. In their view, such large housing sites (with about 750, 300 and 200 dwellings respectively) should only come forward through the plan-making process. None of these sites was included in the Adopted 1998 LP, nor in the 2005 NSLP, and the current phase of statutory plan-making, the LDF, is still at an early stage, with no draft housing allocations as yet.
631. Therefore, the Council would regard any permission granted for these sites as prejudicial not only to the existing and emerging local planning process, but also to the very principle of a plan-led system.
632. Given the primacy in PPS 1 etc. of the plan-led system, to which the Government remains committed, I have much sympathy with this view. On the other hand, PPS 3 para. 72 makes it clear that LPAs should not refuse planning applications solely on the grounds of prematurity.
633. Although all 3 applications are in outline, they all contain a good deal of supporting information. For example, all have quite detailed design and access statements, and 2 – BIEN and Downlands – also have environmental statements. In my opinion, these statements fulfil the requirements of the regulations and are adequate. Therefore, no one need be in much doubt as to what is proposed. Whether it is deliverable (PPS 3, para. 54) is another matter, which I consider below (see Other Matters).
634. While each appellant at the inquiry was criticised by others for providing incomplete and/or inaccurate or inconsistent information about their proposal, there is in my view sufficient material in each case to arrive at decisions on the appeals. In some instances (e.g. on landscape, and some aspects of ecology) there is almost too much! Therefore, when the sitting phase ended on 18th July, I precluded any further evidence on any matters other than housing land requirements and policies in the newly-published Proposed Changes to the SE Plan.

Secretary of State matters

635. I set out the Secretary of State matters near the beginning of this report. These relate closely to the structure of the inquiry and to these conclusions.

Policy: the Development Plan and other policies

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636. [51-60; 81-94; 179-188; 369-387; 513-531]. When this inquiry opened in January 2008, the development plan comprised RPG 9, and the saved policies in the SP and the adopted Wealden LP. At the time of final editing (late October 2008), that remains the case.
637. Other relevant policies - agreed by all parties at that stage to be material considerations - were in the emerging SE Plan, which had then reached the stage of the Panel Report, and the NSLP.
638. However, the weight to be accorded to these latter plans was a matter of dispute between the appellants and the Council. The Council argued that both the emerging SE Plan and the NSLP should be given significant weight. The 3 appellants, on the other hand, said the opposite, i.e. that neither should be given much weight, and in the case of the NSLP (including its housing allocations), almost no weight.
639. At the time of final editing of this report, an important change to this position was imminent. The Secretary of State's Proposed Changes to the SE Plan were published in July 2008, and the 12-week further consultation stage expired on 24 October 2008.
640. I have assumed, because I have no evidence or knowledge to the contrary, that the SE Plan will be approved quite soon after the 24 October deadline, and possibly before the Secretary of State's decisions on these appeals. I have no knowledge of how the final, approved version may differ from the Proposed Changes. But I can say that when this occurs, both RPG 9 and the SP will be superseded and their policies will have no bearing on, or relevance to these appeals.
641. As far as strategic policy is concerned, it would not therefore be sensible for me to recommend the Secretary of State to determine the appeals in accordance with RPG 9 and the SP. Instead I recommend that they be determined in accordance with the SE Plan: that is, the approved version, or, if for any reason that is still not available when the decisions are issued, in accordance with the Proposed Changes.
642. I would however make one comment on the SP. The appellants all rely on its saved policy S22, which proposes "major peripheral expansion" at Uckfield during 2006-2011. 2 points arise: first, the policy states that the scale, nature and location of any such allocation will be determined in the local plan, and (second) that it is subject to the availability of appropriate transport infrastructure etc, to ensure it would not add to transport problems. In my view, the NSLP (whose status I consider further below) makes those allocations, in accordance with policy S22, with its 3 sites totalling 400 dwellings – all of which now have planning permission. I consider that this represents major peripheral expansion at Uckfield. Further, policy S22 recognises that growth at Uckfield is constrained by transport problems - in particular, town centre congestion - which I also discuss further below. In short, even if it were to be relied upon in this inquiry, SP policy S22 includes important caveats which, to my mind, do not support the 3 appeal schemes.
643. This leads me to consider how the SE Plan Proposed Changes deal with Wealden district, and its constituent parts. I agree with the Council's account of this. First, the Proposed Changes maintain the status of Wealden (within the emerging SE Plan) as a split district, partly within the Sussex Coast sub-region,
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- and partly within “the rest of Wealden” (outside any named sub-region). Second, while table H1b indicates a minimum annual average net additional dwelling requirement for the whole of Wealden at 550 dwellings - 70 more than the 480 recommended by the Panel - all of the increase is to be accommodated in the Sussex Coast sub-region, and not in the rest of Wealden, which includes Uckfield. Third, under policy AOSR5, the rest of Wealden is to make provision for just 200 d.p.a, compared with 350 for the Sussex Coast sub-region (policy SCT5).
644. The accompanying para. 25.27 to AOSR5 should be quoted in full: “The town of Uckfield will continue to play an important role as a small market town in supporting its wider hinterlands. Given its accessibility by rail and road and its lack of serious environmental constraints it is expected that the town will help meet wider housing needs through the provision of new dwellings”. The following para. 25.28 goes on to say that “A ‘balanced dispersal’ strategy should be used in making LDF site allocations, which takes account of the role and accessibility of each rural settlement moderated by environmental designations”.
645. The Proposed Changes contain no other direct references to Uckfield or the rest of Wealden.
646. Given the aforementioned figure of 200 d.p.a for the rest of Wealden as a whole, to be shared among its various settlements, I do not read these policy statements as proposing any major peripheral expansion of the town during the plan period. In my opinion, that contrasts with the previous strategic position under policy S22 of the SP.
647. On a separate point, I also assume that the 200 d.p.a. are expected to come forward through local plans - currently the NSLP, but subsequently the LDF – and not through ad hoc appeals.
648. In my view, therefore, for the reasons given by the Council the 3 applications at this inquiry are not in accordance with the emerging SE Plan strategy, either individually or collectively (but especially, not collectively).
649. As for the local plan, no one claims that the 1998 LP, being significantly out of date, is of much relevance to this inquiry. But I have assumed that the NSLP (which was approved for development control purposes in 2005, and runs to 2011) will remain extant, and a material consideration in determining planning applications, until it is superseded by the emerging LDF. Approval of the LDF is still some time away, and is agreed by all parties to have no significant bearing on these appeals; indeed, at the inquiry it was barely even mentioned.
650. Some of the appellants’ (especially BIEN’s) evidence rehearsed the early stages of the local plan process which led eventually to the NSLP. This included their view of the merits of the legal challenge (mounted by one of them), which eventually foundered in the Court of Appeal. I take no view on that. It is water under the bridge. I merely note that the plan was not quashed by the courts, but remains extant - albeit that as a non-statutory plan it is not (and never will be) a part of the development plan.
651. Turning, then, to the weight to be given to the NSLP, my view is that it should be given some weight in the determination of the appeals – perhaps even “significant” weight, although that is not a very precise term - even though it does not have the status and weight of a statutory development plan. This means that its housing allocations should not be ignored, or discounted, as the
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appellants have sought to do, but should be recognised and accepted as a fact, and as a material consideration. Other Inspectors in decisions cited at this inquiry [in W2] (to be fair, not all) have thought likewise.

652. Therefore, I would remind the Secretary of State that all 3 applications are contrary to the NSLP strategy, its housing allocations, its development boundaries, and to certain other NSLP policies, as cited in the various reasons for refusal.

Housing Land Requirements and Supply

653. [97-111; 192-210]. On this, despite the volume and complexity of the submitted evidence, I give only a broad overview, in which I will be quite brief.

654. The evidence shows substantial and continuing differences between the (joint) appellants and the Council on both the relevant 5-year housing land requirement, and the housing land supply. For example, among the “first tranche” evidence in the early stages of the inquiry, Docs. [WDC8 and NORTH 2.1A] were both Statements of Differences between the parties. They arose from significant disagreements as to whether, for the requirement, the SP or the emerging SE Plan should take precedence; and for the supply, as to the deliverability of large and small sites with planning permission, and over the status of NSLP allocations without permissions. I make no attempt to “resolve” those differences retrospectively, and in any event both documents have been largely superseded.

655. I note that where housing requirements are concerned, PPS 3 (para 53) expressly allows emerging RSSs to be taken into account. As with any emerging development plan, the weight to be given to it depends largely upon the stage it has reached. As stated above, the Proposed Changes to the SE Plan were published in July 2008, representing a very advanced stage, and they thereby created both a new housing land requirement, and a new strategic policy context for the inquiry to consider. I have therefore based these conclusions on the Proposed Changes, but I recognise that in a very short time these will themselves be superseded (or perhaps confirmed) by the final approval of the SE Plan.

656. But there are still, so to speak, two parallel narratives on these matters – the joint appellants’, and the Council’s. Since they operate from different assumptions, on matters both of principle and of detail, there is little agreement between them, and I find that they cannot easily be reconciled. I do not attempt to trace these narratives’ somewhat intricate course, but it can be found in the parties’ closing submissions.

657. Soon after the Proposed Changes were published, the appellants and the Council submitted an agreed document [SCG10, also numbered WDC27]. This shows, in Table 3, a summary of the differences between the parties on the housing land requirement, based on the Proposed Changes, and supply. Whereas the Council calculates a total 5-year requirement of 3,194, the appellants’ figure is (in the range) 3,822-3,909. The Council’s calculation of supply is 3,835, compared with the appellants’ (range) 2,193-2,563. On these bases, the Council finds a net surplus of 641 dwellings. The appellants, on the other hand, find a net shortfall of 1,259-1,716. The differences between these figures are based on the alternative calculations in proofs [W6 and Wo2].

658. Given these alternatives, I endorse the Council’s approach and arguments - what I have called its narrative - in [W6]. This is because I think that in general

it takes full and proper account of, firstly, the SE Plan housing requirement and plan strategy, which, to repeat, will very soon become part of the strategic development plan; and secondly, the components of housing land supply. I consider these supply assessments both painstaking and acceptably robust. Thus, based on the Proposed Changes, I agree with the Council that the 5-year housing requirement 2007-2012 for Wealden district stood at 3,194 dwellings. The onus is primarily upon the Council as local planning authority to demonstrate the supply, and I am reasonably content that it has done so, following the relevant DCLG guidance, resulting in its figure of some 3,835 dwellings.

659. On that basis, it follows that there is at present a more than 5 years supply of housing in Wealden. In the rest of Wealden, where Uckfield is located, it is rather more than that. I conclude from this, and from the advice in paras. 69-71 of PPS 3 there is no good, much less a compelling case to allow any of the 3 appeals on the basis of general housing need, and certainly not 2 or 3 of them.

660. The appellants have cited, and appear to rely upon, a fairly recent (July 2008) Inspector's appeal decision (APP/C1435/A/07/2061628, re Land north of Dittons Road, Polegate [NORTH14]). I note that this concluded (in para. 75) that supply in Wealden stood somewhere between "just over 5 years...(to) less than 4 years". This, on the face of it, is a less comforting or supportive position for the Council at this inquiry. But I note that the evidence to that earlier inquiry was, inevitably, somewhat different, both on the prevailing policy context, and on the housing land assessments. And the Inspector's leading conclusion on housing land (cited above) seems to me somewhat equivocal about a 5 year supply. In addition, it should be noted that the Dittons Road site, unlike Uckfield, lies in the Sussex Coast part of Wealden district, where the SE Plan would concentrate housing growth, and not in the rest of Wealden. Moreover, from the Inspector's decision the Council accepted the site's general suitability for housing – which is certainly not the case with the sites in this inquiry.

661. The Secretary of State may wish to take a different view from mine, and to prefer the appellants' housing land narrative, lately exemplified in [SCG11, also numbered Wo2], with its overall conclusion that there is not a demonstrable 5 years' supply in Wealden. From the advice in PPS 3, that would provide a basis for allowing one or more of the appeals, even in the face of site specific objections (about which, see below).

662. In addition, the Secretary of State will not need reminding that the SE Plan requirements are (as stated in para. 7.7 of the Proposed Changes) to be treated as a minimum (and not a ceiling). In her decision para. 77, the Dittons Road Inspector emphasised that point. And there is also a further reason why the Secretary of State may wish to take a different view – i.e. in the event that the finally approved version of the SE Plan differs significantly (in its housing requirement for Wealden or its constituent parts) from the Proposed Changes.

b) Site specific matters - landscape considerations

663. [112-119; 211-221; 282-283; 292; 309; 389-392; 444-449; 472; 538-543; 581-583; 597]. I turn now to the first of the site specific matters. Since these are all greenfield sites, landscape considerations – the various proposals' impact on the landscape and countryside – are germane to all 3 appeals. Relevant development plan and other (NSLP) policies aim to ensure that development does

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- not harm the landscape, or the character and appearance of the countryside generally.
664. There was discussion at the inquiry not only about the nature and magnitude of these impacts, but also about the methodology used by landscape specialists to assess them. I do not enter into the details or technicalities of the latter debate, but concentrate instead on my own perceptions and understanding of landscape impact, as informed by the views of all parties.
665. I begin with 2 simple points. First, none of the 3 sites is, or (as far as I am aware) has ever been formally designated for its landscape character and/or quality. Uckfield lies to the south of the High Weald AONB, the nearest nationally-important landscape designation, although its environs are visible from it. And no land around Uckfield is subject to any extant local landscape or countryside gap-type designations.
666. However, I am in little doubt that if any of these sites were at any time considered as a candidate for inclusion in a local landscape quality designation (a category not in general favoured by the advice in PPS 7), then that site would be Downlands. To my mind and eye, the rural landscape character and quality of Downlands are different from, and qualitatively superior to, those of the other 2 sites.
667. In terms of its character, Downlands seems everywhere more “rural” - more a part of the countryside proper – than either BIEN or BIES. This is apparent, I think, regardless of the season, when one walks over any part of it, whether the arable fields in the higher southern and eastern parts (in general, the area proposed for development), or the ancient woodlands in the lower-lying, more western parts, or the more open areas around Budletts Common. And, while its tranquillity is undoubtedly affected by the proximity of the busy A22 Uckfield bypass, Downlands feels comparatively remote from any town; as I have said, it is more a part of the countryside than of the urban fringe.
668. As for its landscape quality, it seems to me that the combination of topography (the overall height AOD, and the subtle variations in level caused by the minor valleys which traverse it) together with the visually-pleasing interlacing of gently rolling fields and their wooded fringes, and the relative absence of any eyesores or jarring elements, make Downlands intrinsically the best of these 3 sites (and therefore the least suitable for development). In simple terms, it is a more attractive and more unspoilt swathe of countryside, and therefore more sensitive and worthy of protection from development, than BIEN or BIES.
669. Nothing in the Downlands evidence deflects me from that view; and where there were landscape-analytical differences between Downlands and the other landscape witnesses, I tend to agree with the common stance taken by the Council, BIEN, BIES and the Downlands Action Group.
670. Second among these preliminary points, the Downlands proposal is far larger in scale than either BIEN or BIES, or even the 2 combined (750 dwellings etc. compared with about 500 for both). Thus, even if one discounts the fact that the Downlands application site contains much woodland and open land which is not proposed for development, it still includes by far the largest area proposed for development (18.5 ha.). It follows that development here would have by far the greatest overall impact on the character and appearance of the site, and on the wider landscape.
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671. BIEN and BIES are different from Downlands. They are each much smaller in size. They mainly comprise sloping farmland (both arable and pasture or grazing land), part-fringed by woodland, but in both cases the woodland is much less extensive than on the fringes of Downlands.
672. Most importantly, they are both unequivocally in the urban fringe, (BIES referred to the urban edge, possibly a better term) rather than in what I call the countryside proper. Thus, both BIEN and BIES are far more influenced - in terms of both character and quality - by the very immediate and highly visible proximity of the town. BIEN even contains - or, strictly speaking, surrounds - what could be considered a detached portion of the town in the form of The Yard with its mixed industrial uses.
673. That, as I see it, is the general context for the consideration of landscape impact. I now come briefly to consider the individual proposals.
674. *Downlands*: The Downlands appellants stress 3 points in particular as mitigating factors against any untoward landscape impact arising from their scheme.
675. Although this is an outline application, the first is the claimed quality of design. They say that the proposed housing areas would be i) well located and laid out, avoiding the most sensitive parts of the site, ii) adequately buffered from the adjacent ancient woodland, and iii) well integrated with the village centre, with iv) an appropriate height profile for all buildings. They add v) that the architectural design would borrow from high quality Arts and Crafts and/or Wealden precursors, and they claim that it would be superior to the more mundane or commonplace character of the rival BIE schemes.
676. Secondly, although development would be concentrated on the upper parts of the site near Snatts Road, it would not be at the highest levels, and much of it would be screened and contained by thick woodland - notably, from the A22 Uckfield Bypass.
677. Third, and very importantly, there are comparatively few publicly-accessible locations from which any of it would be clearly visible. It would hardly be seen from anywhere in the existing town, even from much of Snatts Road, and it would only be seen from a limited number of places in the heavily wooded and lightly-settled countryside to the north and west.
678. I find some truth in these assertions. But, as the Council and other parties to the inquiry have noticed, 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.
679. 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.

680. Not so BIEN and BIES, which are both sites which - despite minor topographical complexities - face towards the existing town, and are visible from the nearby parts of it. This is because they both form part of a bowl-like landform which contains much of the east side of the town, a point which applies to BIEN in particular. In short, I think that they are both much better related to Uckfield, topographically, morphologically, and visually, and for that reason they both would appear, far more so than Downlands, to be “natural” or logical urban extensions. In my opinion, owing to its higher degree of containment by existing development BIEN might be preferred to BIES in this regard.
681. These general considerations obviate any need for a detailed analysis of individual view points, or the precise delineation of zones of visual influence. (One should not lose sight of the wood for the trees.) But I must record the fairly unanimous critique, from other parties, of the Downlands visual and landscape impact assessments. In general, this critique suggests that the Downlands scheme’s visual impact from certain viewpoints has been seriously under-estimated by its proponents, leading to their excessively sanguine (some say wrong-headed) view of it.
682. For example, the Council and others said that the scheme’s impact in views from the nearby Maresfield village recreation ground, and from the much more distant Marl pits car park in the AONB - as well as from certain other public viewpoints - had been wholly misrepresented.
683. Having visited all the viewpoints at issue, and at different lights and seasons, I tend to agree; in my opinion, the landscape impact of the Downlands scheme would be significantly greater, and more harmful to the countryside, than its proponents admit.
684. I should also mention the effect of the Snatts Road link. This has proved controversial mainly because of its alleged impact (through selective tree-felling, lighting etc.) on ancient woodland, and owing to arguments over its deliverability. I refer to both those points below. But it would also have some adverse impact on the landscape, given that it would traverse a hitherto virtually-untouched swathe of woodland and scrub which contributes much to the existing rural character of Snatts Road.
685. The same applies to the proposed roundabout access to the A22. The effects of this on ancient woodland are disputed, but as a major engineering artefact its visual impact would be considerable, and all the more striking for being located along a long stretch of road (between the Black Down and Copwood roundabouts) from which, at present, Uckfield is so well-screened by trees as to be all but invisible.
686. *BIEN*: Unlike Downlands, I consider that the BIEN site is essentially a visually mundane collection of fields, separated by gappy hedges, whose character is much influenced by the somewhat scrappy, modern ribbon-development alongside Framfield Road, as well as by The Yard industrial exclave. In my opinion, it does not have the intrinsic quality of landscape to qualify - even if that were supported by PPS 7 or other policy – for a local landscape designation.

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687. BIEN's landscape evidence, which I generally accept, indicates that development here would fit comfortably into the aforementioned bowl-like landform, and would relate satisfactorily to the nearby parts of the town north of the River Uck and west of the Framfield stream. Its outer edges would be contained within a woodland framework. And, if suitably laid-out and designed it could also help tie the aforementioned sporadic development better into the wider fabric of the town. The landscape proposals would serve that end, and would assist in the successful juxtaposition of the BIEN scheme with the adjacent countryside.
688. As mentioned at the outset of this report, the Council remains opposed in principle to the development of any of these unallocated greenfield sites. However, during the inquiry it changed its stance from one of initial opposition to BIEN on landscape grounds to one of acceptance. I consider that to be a reasonable evolution of its assessment. In my opinion, although it would lead to the loss of some unremarkable countryside on the urban edge, there are no good reasons to refuse the BIEN scheme purely on landscape grounds.
689. *BIES*: Much the same applies to BIES. Being located on quite a steep, town-facing grassy slope (mainly used for grazing horses), any development on BIES would be very visible from the Community Hospital and nearby existing and approved residential areas off the Framfield Road, but it would not breach the skyline when looking eastwards, and could be designed (as shown by the DAS) to protect existing views of the listed oast house building at Bird In Eye Farm. Like BIEN, but unlike Downlands, it would appear as a natural and logical extension to the town, and not significantly separated, much less divorced, from it by the Framfield stream. As with BIEN, I think that the landscape proposals would complement the form and layout of development shown in the DAS, and help provide a pleasing new urban edge to Uckfield. In sum, there are in my opinion no cogent reasons to resist the BIES proposals purely on landscape grounds.
690. To sum up, I consider that Downlands would have a far greater and more harmful impact on landscape than BIEN or BIES, or even the 2 combined. This would be contrary to relevant development plan and other policies. In my judgement, this amounts to a major planning objection to the Downlands scheme; sufficient, even on its own, to justify refusal. There is no such objection to BIEN or BIES. Between those 2 sites, BIEN is slightly preferable to BIES on landscape grounds.

Site specific matters - ecology and nature conservation

691. [120-143; 222-274; 284-288; 293-305; 314-319; 393-407; 450-455; 473-478; 544-557; 584-587; 598-603].
692. *i) General points – nature conservation designations, and PPS 9 (Biodiversity and Geological Conservation)*: Given the amount of evidence and the time devoted to this topic at the inquiry, it is important to remember that none of the 3 appeal sites is subject to any international, national, or regionally important nature conservation designation, either in whole or in part.
693. Nor was there any evidence put to me that any of them is about to become so designated. While there was a firm suggestion from one authoritative 3rd party witness (Professor T. Beeby) that Downlands merits SSSI status for its reptile and amphibian assemblage, the fact remains that it is not a SSSI.

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694. Downlands is immediately adjacent to a locally-designated site, Lake Wood (managed by The Woodland Trust), which is a county SNCI (site of nature conservation importance) but BIEN and BIES are not.
695. All 3 sites either contain, or are close to certain BAP priority habitats, and/or provide habitats for certain statutorily protected species, including badgers, dormice, bats, and great crested newts. All, but most especially Downlands, contain varied wildlife habitats and plant assemblages.
696. There is general agreement that Downlands (by far the largest and least homogeneous appeal site) contains a richer variety of species, and greater biodiversity in general, than the other 2 sites. However, that does not necessarily apply to the developable areas, which are not rich in plant or animal species, nor in biodiversity, however it is defined. PPS 9 para. 16 advises that planning permission should be refused where harm to protected species or their habitats would result, unless the need for, and the benefits of the development clearly outweigh the harm.
697. All 3 sites either contain, or are immediately adjacent to ancient woodland (AW). In the case of Downlands, there is a very substantial amount of AW within the application site boundary (albeit not within the areas proposed for development). In the case of BIEN and BIES, there is AW just outside the application site boundaries, with small areas inside BIEN. PPS 9 para. 10 advises that planning permission should not be granted for any development that would result in the loss or deterioration of AW, unless the need for, and benefits of the development in that location outweigh the loss of the woodland habitat.
698. PPS 9 also advises that good design may include opportunities for building-in beneficial biodiversity. Such opportunities should be maximised, using planning obligations where appropriate.
699. ODPM Circular 06/2005 contains further advice on statutory obligations (e.g. on non-designated sites and on protected species) as they affect planning decisions.
700. *ii) General points - stances of inquiry parties:* All 3 planning applications were refused, in part, on grounds of insufficient information about/probable harm to the respective sites' ecology/nature conservation interest. This was despite 2 of the sites - Downlands and BIEN – having a detailed ecology chapter in their environmental statements (no formal environmental statement was required for BIES). But by the end of the inquiry, there was much more information and evidence available on these aspects.
701. As a result, the Council in effect withdrew its objections to both BIEN and BIES on these grounds, as confirmed by SCG5 (BIEN) and SCG8 (BIES). The Council no longer considers that BIEN or BIES should be refused on ecological/nature conservation grounds.
702. However, as in the case of landscape considerations, the Council maintains a strong objection to Downlands on these grounds. It argues that the Downlands scheme would be contrary to the relevant SP, LP and NSLP nature conservation policies, and also to the advice in PPS 9, particularly in respect of ancient woodlands.

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703. This was reinforced by similar objections to Downlands from BIEN and BIES, and also from The Woodland Trust (a Rule 6 party), the Downlands Action Group, and some individual objectors.
704. The Council, therefore, would be content with the various agreed draft conditions on ecology/nature conservation to be imposed on the BIEN and BIES schemes, should the Secretary of State decide to allow either of them. Relevant conditions have also been drafted for Downlands.
705. At the inquiry, all 3 appellants, the Council, and the Downlands Action Group were represented by very well qualified and experienced professional witnesses. I think it fair to report that Downlands was more generally on the defensive than the other appellants – in the sense of the numbers and weight of the opposition. Nevertheless, it maintained a very confident and assertive view not only that its proposals would not significantly harm any ecological/nature conservation interest (including that of AW), but that they would, on balance, bring far more ecological benefits than BIEN or BIES, as positively encouraged by PPS 9.
706. To anticipate, my overall view is that while all 3 schemes would entail ecological impacts (which probably goes without saying, given that these are all greenfield sites containing or fringed by freshwater streams and AW), none of them - and particularly not BIEN or BIES - should be refused on ecological grounds alone. That said, there is far more room for doubt (in my mind, at least) as to precisely what effects the Downlands scheme would have, and where to strike the ecological balance, between potentially adverse impacts and potential benefits.
707. *iii) General points - the ecological surveys:* One of the bones of contention at the inquiry concerned the extent to which the 3 appellants had produced adequately thorough and robust baseline ecological surveys, aimed at providing an accurate and up to date picture of their site's existing ecological resources and status, including resident and visiting species lists etc. It would be tedious and unnecessary to report the details of this debate.
708. Suffice it to say that I (admittedly, not a trained ecologist) am reasonably satisfied that enough sound and reliable ecological survey work has been done on all 3 appeal sites for the purposes of this inquiry. Whether it meets the latest professional best practice guidance in all particulars I am not qualified to say. The details are in the Downlands and BIEN environmental statements and the BIES comprehensive ecological assessment, supplemented by the inquiry proofs and appendices. Thus, in my view, while there may be residual doubts as to whether, for example, there are dormice on certain parts of the sites, whether the sites are ever visited by otters, or whether they are foraged by certain less common bat species, there are no glaring omissions, and no significant species or other ecological resources have been wholly overlooked.
709. *iv) The individual sites – Downlands:* Judging from the massed opposition to it at the inquiry, Downlands is by far the most controversial of the 3 sites in terms of ecology and nature conservation. And yet, paradoxically, it is Downlands which makes by far the largest claims for its own ecological merits, and nature conservation benefits.
710. This for 2 reasons. First, the Downlands proposals include a 55 ha. country park, which broadly speaking would take in much of the AW, Budletts Common and other land within the application site. About 16 ha. of this would be
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accessible to the general public. The country park would have a full-time ranger, and an interpretation centre, funded by way of a S106 obligation. It would be managed for the dual purposes of public recreation, and nature conservation, and, I accept, would strive hard to reconcile the two.

711. Secondly, Downlands emphasises that much of the site at present (and for many years past) has been neglected - left to go its own way - and has not been managed positively in the interests of nature or woodland conservation. This, they say, would change with the development scheme, and new and beneficial management practices would be introduced, notably at Budletts Common, and maintained for the foreseeable future. Over time, they say, this would increase and enrich the biodiversity of the wider (undeveloped) site and its surroundings. Downlands says that neither BIEN nor BIES would or could offer remotely comparable benefits.
712. Both of these claims were challenged, but in my view not successfully refuted, by other parties. It was pointed out that the country park proposal is not included in any plan or policy, and is not backed up by any known or even latent demand for such a facility. It could not, they said, be reasonably required as part of the scheme, and should not influence the Secretary of State's decision on the appeal. In short, they feel it does not amount to much.
713. As for improved management, there was nothing to preclude that under existing arrangements and grant schemes, including DEFRA's countryside stewardship (such as a higher-level scheme already in operation at Downlands). The landowner did not need a planning permission for 750 houses to introduce better management practices for the land.
714. Despite much thought, I remain unsure what weight (or credence) the Secretary of State should give to these claimed benefits. They cannot readily be quantified. No party to the inquiry - other than Downlands - has endorsed or supported them, much less welcomed them. Certainly, they do not by themselves justify the grant of planning permission for what is by any standards a very large development scheme. Not even the Downlands appellants would claim that they do. But I do not think they should be ignored, or dismissed out of hand. It seems to me that they would contribute positively to the management of some of the undeveloped portions of the Downlands site, (especially Budletts Common) in the furtherance of worthwhile nature conservation objectives. That would be consistent with local nature conservation planning policies.
715. Turning to the matter of ecological impact, I come first to the vexed question of ancient woodland (AW). It may be recalled that one of the significant changes made to the scheme before the inquiry started was to move the main access from the Black Down roundabout to a position on the A22 1 km. to the south; this was done mainly in order to obviate or minimise any impact on AW, and, I think, demonstrates how conscious the Downlands appellants have been of AW (and ecological considerations in general). And they point out that following the scheme amendments, there are no longer any significant objections to the proposals from The Environment Agency, or Natural England.
716. There were claims and counter-claims about various areas of woodland on the Downlands site, as to whether they were, or were not AW according to conventional definition(s). "Hunters Way Shaw" (site of the proposed Snatts

Road link) was a case in point. As were certain other blocks of woodland. Some old maps were produced, dating back to the eighteenth century, and research theses were cited to see what light they could cast on the subject. There was discussion of ground plant indicator species, and of minor topographical irregularities and discontinuities. I became aware of the pitfalls of relying on these sometimes conflicting or inconclusive sources of information.

717. Indeed, I found some of this evidence contradictory and confusing, and being inexpert in the subject I have not been able to come to a definitive assessment as to precisely the extent of AW, properly so-called, at Downlands. However, I have formed the view that the most reliable plan showing the distribution of AW at Downlands is probably at App. SU13 to the Downlands proof CO4. This, I find, is adequately backed by the painstaking Downlands evidence, and I consider that no other site-wide plan is to be preferred.
718. On that basis, I agree with Downlands that very little AW would be directly lost as a result of the proposals. Thus, I am not persuaded by those who would have me and the Secretary of State believe that there would be significant losses in numerous locations. In fact, I think that the extent of any loss would be quite small, and almost insignificant. For example, contrary to some claims there would be none in the vicinity of the access from the A22. And, although some trees would be felled in Hunters Way Shaw to make way for the Snatts Road link, there is probably very little proven AW in this area. In sum, I do not think that the Downlands scheme should be refused on the basis of any direct loss of AW.
719. I find the indirect impact of the proposed development on AW at Downlands even more difficult to assess. This subject was one where the respective ecologists at the inquiry took almost diametrically opposed stances, (which at times seemed to me somewhat artificially exaggerated).
720. In brief, the charge was that you cannot place 750 houses, a school and other development in close proximity to AW, both on the application site and at Lake Wood, without entailing all manner of adverse human impacts, through both lawful access and trespass, ranging from the inadvertent to the downright malicious, or even criminal.
721. Such damage (or “deterioration”) is of course abhorred by PPS 9, and local policies alike. While Downlands cited examples from far and wide where ancient woodlands near large new housing areas had apparently not suffered any significant damage, or loss of biodiversity, other parties produced examples where they had, including at Lake Wood.
722. One can only come to the common sense conclusion that both situations (in every degree from the benign to the highly damaging) can and do arise. The question then is whether access and other management is an effective tool in preventing or mitigating any harmful effects. I think that is virtually impossible to predict, as it depends on so many variables. Downlands was accused of being far too sanguine, perhaps even disingenuous, not only about the local impact, but about human nature in general. For its part, it responded by saying that closer contact and involvement with nature (for example, through facilitating people’s access to AW) could only be a wholesome and educational process, and good for society as a whole, especially young people. This, it claimed, would induce a proper sense of responsibility and care for the natural environment, as promoted by Natural England.

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723. For present purposes, I refuse to be drawn into any debate about human nature! But it seems to me that the Downlands scheme certainly has the potential to be quite damaging, in the long term, to the AW on the site, contrary to PPS 9 and local policies; however, this is by no means a foregone conclusion.
724. Much would depend upon the management regime in place during construction works and after occupation commenced, the extent of public access to the AW, its day to day monitoring and control, the type and effectiveness of fencing, staffing, the maintenance budget and other factors. But, having considered all the evidence and expert opinion, I do not think that Downlands should be refused outright on the basis of harm to AW; to my mind, any such harm is merely potential, rather than probable or demonstrable.
725. That said, I believe it is open to the Secretary of State to take what I can only call a precautionary view, which in this inquiry would mean not granting planning permission on a site if other, less potentially vulnerable sites were available. In respect of AW, I regard both BIEN and BIES and their wooded fringes as less potentially vulnerable than Downlands. All of the inquiry parties (except Downlands, of course) would agree.
726. As will be recalled, I reached a similar conclusion with respect to landscape considerations.
727. There was also debate about priority habitats and protected species. I do not consider any of these individually. The Council's and BIES' closing submissions address these matters at length, and express particular concerns about the protection (in terms of mitigation strategies, rather than avoidance) of amphibians (especially great crested newts), certain reptiles, dormice, and bats. Prof. Beeby thought that the reptile populations would be decimated by human interference. The opposition all suggest that protected species would suffer some loss of, and fragmentation of habitat, raising serious doubts as to whether the necessary licences for works could be obtained from Natural England. For BIES, citing legal precedents, the unlikelihood of obtaining licences, together with alleged shortcomings in the environmental statement, are sufficient in themselves to warrant the refusal of Downlands on nature conservation grounds.
728. The contending ecologists are divided about the effects on protected species, and their views not easily reconciled. Perhaps some objectors have exaggerated the threats. I do not go so far. But I too have doubts that some protected species (including bats, dormice and great crested newts) might suffer significant harm - in terms of damage to their habitats and losses of population (i.e. their "conservation status") - if the Downlands scheme were implemented. Thus I am far from being entirely reassured by the Downlands evidence on these matters, and I lean slightly towards the views of the other parties.
729. As for the oft-mentioned green bridge, I find the expert evidence inconclusive as to whether this would, or would not, facilitate the movement of protected species (especially the hazel dormouse) between parts of the site, thereby offsetting any risks from habitat fragmentation. But I am prepared to accept that in favourable circumstances it could prove a useful tool.
730. In sum, as I have already indicated I am not recommending the Secretary of State to refuse Downlands outright on the basis of harm to its ecology or biodiversity, or those of neighbouring land. However, from the evidence of several other parties I have quite serious reservations about the long term

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

731. *v) The individual sites – BIEN:* I can deal very briefly with the other 2 appeal sites, starting with BIEN. Unlike Downlands, the prospective ecological impacts of the BIEN scheme have not provoked much opposition, or even drawn much comment (except from Downlands). This site, which is much smaller and more dominated by arable land, exhibits a lower level of biodiversity, is not nearly so controversial.
732. It mainly comprises grassed fields of middling agricultural quality, separated by a partial network of somewhat degraded hedgerows. It does not contain very much AW, although there is some, and more extensive blocks of AW are adjacent to parts of the application site boundary. It is somewhat removed both from the River Uck, to the north, and the Framfield stream, to the west.
733. There is some evidence of the presence of protected species, but not in any notable concentrations. In short, this is very ordinary urban-fringe farmland in ecological terms, and not therefore very rich in biodiversity. It is also affected by the proximity of the housing alongside Framfield Road, and by the industrial enclave at The Yard, both of them giving rise (as I surmise from my own site visits) to some human and vehicular disturbance.
734. As previously mentioned, I am satisfied with the level and detail of the ecological surveys of BIEN which have been undertaken in connection with this inquiry. While reasonably comprehensive, they have not revealed any unexpected ecological treasures.
735. Following this work, the Council changed its stance during the course of the inquiry and no longer maintains an objection in principle to BIEN on ecological/nature conservation grounds. I understand that this followed site visits by the respective ecology witnesses for the parties.
736. The upshot is SCG5, which deals with such matters as buffer zones (between developable areas and nearby AW), long-term habitat management (including a draft management plan), long-term habitat monitoring, and hedgerow translocation. It also includes agreed suggested planning conditions. The Council agrees, as I do, that implementation of the conditions would obviate any significant ecological harm arising from development, and that the scheme would therefore be in accordance with the relevant national and local policies.
737. Although Downlands has claimed certain limitations in the BIEN baseline surveys, I do not think that this amounts to a case for rejecting the BIEN proposals. Nor are the other alleged impacts from the scheme. No other party has raised any significant objections to BIEN on ecological grounds, and I have no good reason to do so. I can report, therefore, that there is no sound case for rejecting the BIEN scheme on the grounds of any harm to ecological/nature conservation interests.
738. *vi) The individual sites – BIES:* My conclusions on BIEN, being couched in somewhat general terms, apply also and equally to BIES. Again, I consider that

there is no sound case for rejecting the BIES scheme on the grounds of any demonstrable harm to ecological/nature conservation interests.

Site specific matters - highways and transport

739. [144-177; 236-274; 289-291; 312-313; 408-433; 456-464; 479; 558-577; 588-595; 604-605]. All 3 applications were refused partly on highways and transport related grounds. At the inquiry ESCC put most of the evidence against the 3 appellants, supported by WDC. The 2 Councils therefore have a common case. But there is also a statement of common ground (SCG2, also numbered WDC16) between them and BIEN and BIES. This in effect withdraws some of the Councils' highways and transport related objections to BIEN and BIES.

740. The cases of the 3 appellants differ, since the sites, their locations, and the proposals themselves all differ. That said, there are in my view essentially 2 main issues raised by each appeal: i) the intrinsic accessibility and "sustainability" of each site/proposal in transport terms; and ii) its impact on local traffic conditions, in particular congestion and road safety in Uckfield town centre. I now consider each issue in turn, followed by some miscellaneous matters. I have concentrated far more on broad considerations of accessibility and traffic impact, than on the technical/statistical data in the related documents.

741. *i) Transport sustainability – brief overview:* All 3 sites are located on greenfield land on the edge of Uckfield. To provide a reminder of the context, Uckfield is a small market town, with a population of about 14,000. Therefore, none of the 3 locations is in any real sense remote, or very far from the town centre.

742. However, distance is relative, and there is disagreement over which site is, or could be the best connected with the town centre, and in general with the town's facilities and services. While BIEN and BIES are, for a reasonably fit person, within practicable walking distance of the town railway station and the bus station, Downlands is not. However, although the route to Downlands is also more hilly, it would be practicable to cycle from all 3 sites to those public transport facilities, for onward travel further afield.

743. All 3 appellants claim that their proposals would be highly sustainable in transport terms, in line with relevant national and local policies, because a) they would be well and conveniently located in relation to existing facilities and services, particularly in the town centre; and b) they would maximise opportunities to achieve modal shift away from car use, particularly by encouraging and facilitating the use of public transport, cycling and walking.

744. For their part, the 2 Councils say that while the respective proposals would each go some way towards this ideal, they would not fully attain it. They say that Downlands would be the least satisfactory in this respect. This is largely because it is, on the whole, the most peripheral of the 3 sites, being, on aggregate, located further away from key town centre facilities than BIEN or BIES.

745. But, they add, all 3 sites would fail to provide a high level of connectivity with the town: Downlands because of the non-deliverability of the Snatts Road link, the general unsuitability of other existing routes to the town centre, and the long and indirect route of the proposed A22 Uckfield bypass cycle route; BIEN because of its failure to provide a pedestrian/cycle link to the north, over the River Uck and the railway line; and BIEN/BIES because of their shared reliance on the

narrow and frequently congested Framfield Road for a connection to the town centre.

746. *Transport sustainability – Downlands*: All parties provide estimates of the distances from the Downlands “village centre” to various town centre and other services and facilities in Uckfield. Perhaps needless to say, these vary somewhat, being based on slightly different assumptions and types of measurement. There is no single agreed set of distances, and I do not attempt here to provide one. But from my examination of all of them, and from my own perambulations on foot, I find that Downlands would indeed be further away from many (but not all) town centre facilities and destinations than the other sites, requiring on aggregate longer journeys, often with steeper gradients. That places it at a disadvantage, in terms of crude accessibility, compared with BIEN and BIES.
747. I agree, too, with the 2 Councils that there are particular and significant difficulties with the Downlands pedestrian/cycle routes. While the proposed Snatts Road link would provide a reasonably direct, generally safe, and in places quite attractive route into the northern part of the town centre via Church Street, the evidence suggests that, for reasons of land ownership, it may well not be deliverable. An existing footpath link from Snatts Road to Pudding Cake Lane (off Church Street) is far from satisfactory, as it follows a rather tortuous route, incorporates steep steps or other obstacles in places, and is frequently too narrow, enclosed and ill-lit. It could not easily be made Disability and Discrimination Act compliant. And, from my own observations, (and probably for those reasons) it seems to be little frequented.
748. As for the proposed, 3.1 kms. long cycle route along the A22 etc, that would head away from the town centre before eventually doubling back along the line of the B2102 Bell Farm Road. While there is enough space for it within the highway verge alongside the Uckfield bypass, it would be in close proximity to heavy flows of fast traffic. On a wet day, or after dusk, that would be especially daunting. I therefore agree with the Downlands Action Group and others that for most Downlands residents it would not prove a very tempting or attractive route into the town centre, and, I suspect, would in practice be little used.
749. It seems to me, therefore, 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.
750. 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.
751. On the other hand, I accept that the Downlands proposals would (through a planning obligation) provide a good measure of support for local bus services, and that speaks in its favour. The travel plans, in which Downlands places much trust, would also assist in this, and encourage bus usage.
752. Downlands also claims that its own use-mix, particularly the village centre employment, the primary school, the playing fields, and country park, would provide a desirable level of “internalisation” of trips - up to 10% of all trips -

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- thereby reducing its residents' need to travel, and boosting the sustainability credentials of the development. Other parties point out that these, particularly the primary school, would also attract many daily trips from outside, thereby generating additional car journeys not experienced by BIEN or BIES. From this somewhat inconclusive debate, it seems to me that these pros and cons of internalisation at Downlands might in fact be fairly evenly balanced.
753. In sum, contrary to the claims made on its behalf, I do not find that Downlands would be particularly accessible, particularly by non-car modes of transport, compared with the other appeal sites. Instead, I think the scheme exhibits signs of a likely car-dependency. That would not be in line with current national or local transport policies.
754. *Transport sustainability – BIEN and BIES:* As already noted, BIEN and BIES would both be closer, on the whole, to existing town centre services and facilities than Downlands. There is very little to choose between them in this regard. Each site is of course slightly closer/further away than the other from a given destination; for example, BIES is further from the secondary college, but is closer to Harlands primary school and the community hospital. But there is no systematic advantage for one BIE site over the other.
755. Neither BIEN nor BIES would offer a choice of pedestrian/cycle routes into the town centre, as both would be dependent upon the narrow Framfield Road, which is frequently congested during peak hours. There is no public footpath along much of Bird In Eye Hill, and no proposal from either scheme of providing one, so it would not be advisable or safe to walk from the main site entrances towards the town. However, that is not actually necessary, as both sites would connect with Bird In Eye Hill from points further to the west, close to the Framfield stream, from where there are footpaths alongside Framfield Road leading towards the town centre.
756. BIEN would not provide a cycle/footpath link over the River Uck and the railway line, leading on towards the eastern part of the town centre and the college etc. in that part of town. I understand that such a link was long regarded by the Council as essential to the development of the site, although they seemed later to have relaxed their view on it. But I regard it as a significant failing in BIEN's wider connectivity with the town.
757. As part of their planning obligations, both sites would contribute to bus service improvements along Framfield Road, and the proposed Framfield Road parking scheme - although evidently not very popular with local residents - would at least ease traffic movements along that route to the town centre. While there was some criticism from Downlands over its safety for cyclists, and its convenience for the disabled, I consider this somewhat exaggerated, and that neither matter would frustrate the implementation of the scheme.
758. To conclude this section, I think that both BIEN and BIES have advantages, in terms of their intrinsic accessibility and sustainability, over Downlands. But there is not much to choose between BIEN and BIES, and both have drawbacks of their own.
759. *ii) The proposals' impact on Uckfield town centre:* This matter took up much inquiry time. However, I found the debate rather frustrating, since much of it was speculative, dealing as it did with the many uncertainties about a future town centre traffic management scheme for Uckfield. And the parties muddled
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the waters further by accusing each other of failing to understand aspects of it. Rather than attempting to unravel these complexities, I give in the next few paragraphs a summary of the situation as I understand it.

760. All parties agree that Uckfield town centre - in particular, certain key traffic light junctions, notably Bell Lane/High Street and High Street/Framfield Road - suffers increasingly from traffic congestion, especially at the peak morning and afternoon periods. During the inquiry, I myself observed the lengthy traffic queues which often build up at these junctions. As accidents records show, this also compromises road safety.
761. It is also agreed that without radical interventions town centre congestion can only get worse, particularly when the new housing developments in Uckfield from the NSLP (some 400 units) are built and occupied.
762. The 2 Councils say that some kind of “town centre scheme” is needed, as soon as possible, to relieve this growing congestion. But while traffic modelling and other studies have been done, “a town centre solution” remains at an early stage. Thus there is not even a preferred option as yet (whether of “hard” engineering measures, or “soft” demand management measures, or some combination of the two) to put out to public consultation. Even when there is, and if/when sufficient monies are available for it in the form of developer contributions, it might well be thwarted by public opposition.
763. The Councils strongly maintain that any further major housing development at Uckfield (over and above the committed NSLP sites) should only come through the LDF process, in tandem with a town centre scheme. That way, both matters can be comprehensively and systematically addressed, instead of ad hoc (as in this inquiry). However, as this very inquiry shows, housing schemes also come forward through the development control process, and their implications for town centre traffic cannot simply be ignored. Therefore, the Councils accept a responsibility to see whether there is any scope for permitting such proposals before a town centre scheme is in place.
764. This leads directly to the “headroom” concept. This would be an interim, or bridging solution in the period before the implementation - still some years away - of a town centre scheme. ESCC traffic studies indicate that up to 300 units could be built, from all or any of the 3 appeal schemes, in advance of a town centre scheme, provided there were in place a “retrofit package” of soft demand management measures to reduce car-usage among the existing resident population of the town. Details of such measures are in the ESCC proofs and appendices.
765. That would provide the so-called headroom. Both BIEN and BIES, who acknowledge their traffic impacts on the town centre, accept the logic of this; thus they have signed up to SCG2. Following on from this, they have developed proposals in S106 planning obligations both to conform with this headroom concept and quantum, and also to contribute monies to an eventual town centre solution. For its part, Downlands is prepared to contribute, through a planning obligation, to certain retrofit measures only.
766. Despite some reservations over the details, the Councils are broadly content with these BIE obligations, and on that basis they do not find the BIE schemes unacceptable on the grounds of traffic impact. Moreover, the Councils accept that their accessibility, enhanced by physical works (such as the Framfield Road

parking scheme) and commitment to demand management measures, are such that a trip rate of 0.66 car trips/unit/hour can be achieved.

767. For its part, Downlands has never agreed that it would have a significant (i.e. more than 2%) traffic impact on the town centre, and does not therefore accept any need or obligation to contribute towards a town centre solution. This, it says, is largely because, unlike the BIE sites, much traffic from Downlands would not have to pass through the town centre. It takes this 2% criterion from extant policies in the 1998 LP and the NSLP. However, citing national policy advice and current best practice, ESCC maintains that this inquiry should not be looking at a 2% impact criterion, but at “nil detriment”, whereby a given scheme would in effect make no additional impact on the town centre over and above existing traffic levels.
768. This matter of traffic impact on the already congested town centre is complicated by the parties’ disagreements on, in particular, the trip rates arising from the various schemes. 3 principal trip rates (0.4 trips/dwelling/peak hour; 0.66 and 0.8) were discussed at the inquiry, and various impact assessments based on them have been produced and are contained in the inquiry documents. At the risk of over-simplification, Downlands stands by its TRICS-derived, relatively low (0.4) trip rate, which the Councils do not accept, whereas they agree with BIEN and BIES a 0.66 trip rate for their schemes.
769. I tend to agree with the Councils that the trip rate claimed by Downlands may not be sufficiently robust, and that town centre traffic generated by the scheme would therefore be greater than they contend. That is consistent with my earlier conclusion, derived from the proposed transport infrastructure, about the relative car-dependence of Downlands. Indeed, the Council says that town centre traffic impact would be very much in excess even of 2%. While I do not go so far as that, I think that Downlands, like the BIE schemes, could reasonably be expected to contribute monies to the town centre scheme, in addition to any headroom measures.
770. That said, I tend overall to agree with the 2 Councils’ preferred position on this matter of town centre traffic impact, which takes primacy over its “offer” of headroom capacity. It therefore seems to me that if the Secretary of State accepts that there is no compelling housing need at present to support and justify the appeal schemes, the best course of action would be to refuse them all, in part on the basis that they would all exacerbate town centre traffic congestion.
771. *iii) Other highways matters:* The first of these other matters is the policy justification for the aforementioned “nil detriment” traffic criterion. Downlands argues that there is nothing in existing national or local policy or practice to support or underpin it. ESCC, on the other hand, maintains it is based on advice in the DfT’s 2007 Guidance on Transport Assessments and Travel Plans [PD1.21], which supersedes older, more permissive local policies (with their 2% impact criterion). Moreover, ESCC says it is justified by the actual situation at Uckfield, which is one of increasing traffic congestion that could only be exacerbated by the appeal schemes in advance of a town centre scheme.
772. I consider that Downlands may well be right on a strict reading of the cited policy guidance, but that there is also much force in the broader ESCC argument. In sum, I neither reject, nor fully endorse the 2 Councils’ “nil-detriment” position.

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773. The second matter is ESCC's objection in principle to a new roundabout junction on the A22 Uckfield bypass. Again, I agree with the Downlands appellants that there is no clear-cut policy objection, derived either from national or local policy, which would in principle preclude such a junction. In this context, I note in particular that the A22 is not a trunk road or motorway, nor part of a properly-defined strategic route.
774. Further, I understand that the main rationale for a new roundabout junction here was the unsuitability of access from the Black Down roundabout, as originally proposed, which would have necessitated an access road through ancient woodland on the site. This would have led to significant losses of the woodland. All parties agree that this would not have been desirable.
775. Finally under this heading, I should report that none of the 3rd party objectors who raised these matters favoured any of the appeal schemes on transport or traffic grounds. No one spoke in support of any of the transport measures proposed by the appellants. Instead, all were opposed to the applications, on the general grounds of increased traffic, and related congestion and pollution, coupled with additional parking difficulties and miscellaneous road safety hazards.

c) Other Matters

776. Various other matters were raised in evidence to the inquiry. I consider the most important to be: deliverability (Downlands and BIES); the allocated NSLP sites; noise (BIEN); affordable housing; effects on listed buildings; and flooding. I take them in that order, and report as follows.
777. *Deliverability(Downlands and BIES)*: The Council says flatly that the Downlands scheme is not deliverable. Other parties agree. The Council casts particular doubt on the deliverability of i) the Snatts Road Link, owing mainly to land ownership constraints and uncertainties, and ii) the primary school – both acknowledged by Downlands as essential parts of the scheme. In addition, it says that the “6 Good Things” (its own ironic description), also claimed as scheme benefits, are far from certain of delivery, being frustrated by legal constraints or requirements upon the developers.
778. Downlands denies that there are any significant problems with the delivery of the scheme, or any part of it. The Snatts Road link could simply be dealt with by way of a Grampian-type condition; detailed design matters on the primary school could be dealt with at reserved matters stage; and nothing arising from legal, contractual obligations, including the fiduciary duties of the Downlands trustees, prevents the scheme from including features which might go beyond the normal requirements of policy.
779. I agree with the Council that there are reasonable concerns about these matters, and particularly the Snatts Road link, which, as all parties agree, is an essential component of the Downlands scheme. In part they relate to legal ownership and contractual matters - such as fiduciary duties - upon which I am not qualified to comment. However, I also note from the Downlands submissions that they may be capable of resolution at reserved matters stage, and are not therefore fatal to the scheme at this stage. I think that may well apply to the primary school. However, I cannot report that there is a reasonable prospect of delivery of the Snatts Road link; on the contrary, the evidence suggests that

there is virtually no prospect of that. Therefore I doubt the efficacy of the suggested Grampian condition.

780. In its closing submissions, the Council also raises a caveat about BIES' deliverability. This refers to the matter of the legal title to a piece of land needed for its main cycle/pedestrian route towards the town centre. I understand that title has not been properly established by the appellants or their vendors. The Council says that it should be secured, both immediately to allow development to commence, and in the long term against the possibility of a future claimant asserting ownership. If for this reason the link is not in fact deliverable, the BIES scheme should be refused. For its part, BIES accepts that there may be a previously-unsuspected problem with title, but it denies the existence of any other potential claimants.

781. I am unsure whether this matter could be satisfactorily resolved, perhaps by way of a Grampian condition in the event that the Secretary of State decides to allow the BIES appeal. In those circumstances, it might be necessary to investigate it further through correspondence with the parties.

782. *Allocated NSLP sites:* Some of the earlier proofs of evidence, in particular, address the relative planning merits of the 3 appeal sites and the 3 allocated (and now permitted) housing sites in the NSLP. In general, the Council defends the latter on the basis of due process (by which they were selected), landscape impact, and traffic and transport. For their part, the appellants all defend their own sites when compared with the NSLP sites, on much the same grounds.

783. I consider this debate rather sterile. Events have moved on, and it is now water under the bridge. I have already stated that I consider that the NSLP merits weight in this inquiry, for the reasons given in [W2]. Given that all 3 NSLP sites have planning permission, and are generally expected to be implemented in due course, there seems to me no useful purpose now in comparing them with the 3 inquiry sites. Especially as there is no choice to be made between them. Instead, this inquiry should and does focus upon whether there is a demonstrable need for any additional greenfield sites at Uckfield, and, if so, which of the appeal sites would be the most or least suitable.

784. *Noise (BIEN):* [434-440; 465-470]. A noise issue was raised initially because of the potential impact of the existing industrial uses at The Yard upon the nearest proposed dwellings in the BIEN scheme. Although noise evidence was commissioned by both BIEN and the Council, and is summarised in the body of this report, neither expert witness was called owing to the narrowing of differences resulting in SCG6.

785. In short, the Council does not claim that operations at The Yard would cause a noise impact that could not be mitigated, and an appropriate planning condition has been agreed in the event that the appeal is allowed. I agree with that approach.

786. However, the Council maintains a concern that it amounts to bad planning to place noise-sensitive development near a commercial site, which to some extent influences its residential layout. One effect of this is to bring commercial vehicles (associated with continuing operations at The Yard) into the heart of a mainly residential scheme.

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787. In my view, these are sound points. I consider that the overall layout and design of the BIEN scheme is not entirely satisfactory, being to some degree compromised by the very existence and proximity of The Yard. On the other hand, further design work could be done at reserved matters stage to create an acceptable juxtaposition of, and relationship between the 2 sites. Moreover, BIEN would mitigate (through screening by buildings and landscaping) the visual impact of The Yard, which at present appears to me as an anomalous and unsightly intrusion upon the rural environment.
788. In sum, I do not find a significant noise objection to the BIEN scheme, and the design implications for BIEN of The Yard site are evenly balanced. To put it another way, BIEN should not be refused on any grounds related to the proximity of The Yard.
789. *Affordable housing:* There is no dispute that all 3 appeal schemes would supply affordable housing, as required by planning policy at all levels, to be delivered through planning obligations. All 3 appellants have submitted such obligations. Statistics on affordable housing need in Wealden district are usefully presented in the Downlands proof [G]. These, too, are not in dispute. As with so many other districts in South East England, they show a high level of need in Wealden.
790. BIEN and BIES undertake to provide a ratio of 30% affordable units in their schemes, while Downlands suggests that - depending on the availability of social housing subsidy - their proportion could rise to 40%. However, as mentioned above (under Deliverability) this is disputed by the Council, on the basis that it would not be conducive to best value, and would therefore be precluded by the terms of the Trust Deed.
791. I see no need to explore this matter in detail. The main point is that none of the schemes either claims, or is certain, to provide a higher proportion of affordable housing than current policies would normally require from any site granted planning permission. The allocated NSLP sites, both at Uckfield and throughout Wealden district, will produce affordable housing, as, in due course, will sites allocated in the LDF. Thus I see no grounds for allowing any of the 3 appeal schemes solely on the basis that it would provide affordable housing, especially where there are sound planning objections to them.
792. *Effects on listed buildings:* There are no listed buildings on or in close proximity to Downlands or BIEN. There is a grade 2 listed oast house immediately adjacent to the east of BIES, which would be close to the proposed housing. However, neither the Council nor any other party suggests that the setting of this building would be materially harmed by the BIES proposals, which have been developed with it in mind. I agree with that.
793. *Flooding:* There was a notable flood in Uckfield in 2000, when the River Uck burst its banks and many properties around the lower end of the High Street were inundated. Therefore it is not surprising that some local residents have referred in general terms to flood risk. However, none of the applications was refused on grounds of flood risk - essentially the sites are all well above any flood plains - and the inquiry heard no evidence on the matter. The parties' closing submissions do not refer to it. I am satisfied that it is not a significant issue in any of the appeals.

794. **Summary of Conclusions:** There is no compelling case, based on housing land requirements and supply and the advice in PPS 3, to allow any of the appeals, much less 2 or 3 of them. Moreover, all 3 sites and proposals suffer from significant site-specific objections, contrary to national and local planning policies. In general these are most acute in the case of Downlands. This, by far the largest of the schemes, set within an attractive rural landscape containing much ancient woodland, would entail the largest and least acceptable landscape impact, and would be most likely to compromise nature conservation and the biodiversity of its site and surroundings. This would not be adequately compensated by its claimed ecological benefits. In addition, it would be the least accessible of the 3 sites, and the least sustainable in transport terms. As for the BIE sites, their planning merits would be very similar, but BIEN would be better-integrated visually and physically with the town of Uckfield.

795. **Recommendations:** I recommend that all 3 appeals be dismissed. However, should the Secretary of State decide to allow one appeal, perhaps for reasons of increasing housing supply, I consider that on planning grounds BIEN is on balance the most suitable and acceptable of the 3 proposals in this inquiry.

Paul Dobsen

Inspector

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Appendix A – Inquiry documents (list)
Appendix B - Inquiry proofs (list)
Appendix C - Statements of common ground (list)
Appendix D - PIM Notes
Appendix E - Suggested planning conditions

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY AND EAST SUSSEX COUNTY COUNCIL:

Mr. C. Boyle - instructed by Mr. V. Scarpa, Solicitor to Wealden District Council

He called:

Mr R. Walker DipTP MRTPI – planning consultant in private practice
Dr. P. Roper HonDBA FLS FRES MBES – ecological consultant, Patrick Roper Assocs.
Mr. J. Harris MRTPI CMILT MIHT – Owen Williams (Amey), traffic and transport consultants to ESCC

FOR THE 3 APPELLANTS:

i) DOWNLANDS

Mr. J. Clay – instructed by Broadway Malyan

He called:

Mr. R. Tustain BAHons DipTP DMS MRTPI – planning consultant, Broadway Malyan
Mr. P. Russell-Vick DipLA MLI – landscape consultant, enplan
Mr. P. Colebourn MA MSc MRTPI MIEEM – ecological consultant, Ecological Planning and Research Ltd.
Mr. A. Brown BA MCILT MIHT – transport and traffic consultant, Mayer Brown

ii) BIRD IN EYE NORTH (BIEN)

Peter Village QC and Mr. R. White – instructed by Woolf Bond Planning

They called:

Mr. J. Woolf MA DipTP MRTPI – planning consultant, Woolf Bond Planning
Mr. J. Cooper BSc DipLD FLI – landscape consultant, Cooper Partnership Ltd.
Ms. S. Wray BSc PhD FIEEM – ecological consultant, Cresswell Assocs.
Mr. A. Russell BTP MSc MRTPI MIHT – transport and traffic consultant, Peter Brett Assocs.

iii) BIRD IN EYE SOUTH (BIES)

Ian Dove QC – instructed by CMS Cameron McKenna, Solicitors

He called:

Mr. N. Groves DipTP MRTPI – Boyer Planning Ltd.
Mr. B. Duckett BSc MLI – landscape consultant, Hankinson Duckett Assocs.
Mr. A. Meurer BSc MIEEM – ecological consultant, Hankinson Duckett Assocs.

OTHER RULE 6 PARTY: THE WOODLAND TRUST

Mr. R. Walton – instructed by The Woodland Trust

He called:

Ms. A. Farr – The Woodland Trust

INTERESTED PERSONS (all objecting to one or more proposals)

For the Downlands Action Group:

Mr. D. Wade

Dr. M. Stenning

Mrs. B. Reed

Mr. F. Wallace

Mr. M. Pope

Others:

Mr. K. Riddle – Framfield Parish Council

Mr. L. Ashby

Mr. L. Keeley

Mrs. J. Eastwood

Mr. D. Godding

Mr. B. Kemp

Prof. T. Beeby

Mrs. J. Daly

Mr. N. Drew

Mr. N. Johnston

Ms. C. Handford

NB. See Appendix B (list of proofs/written statements) for alphabetical codes pertaining to each

Appendix A

Lists of core and inquiry documents

Conjoined Appeals under s78 of the Town and Country Planning Act 1990

**Clarence Preston Will Trust and Barham Estates Ltd (Appeal Reference:
APP/C1435/A/07/2046982)**

Taylor Wimpey (Appeal Reference: APP/C1435/A/07/2042597)

**Heron Land Developments Ltd, Persimmon Homes South East Ltd and Gallagher Estates
Limited (Appeal Reference: APP/C1435/A/07/2053422)**

INQUIRY DOCUMENTS LIST

WEALDEN DISTRICT COUNCIL

WDC	1.	Opening
WDC	2.	Various letters from GOSE
WDC	3.	Cabinet Report dated 12 th December 2007
WDC	4.	Print out from SEERA website – South East Plan timetable
WDC	5.	Statement of differences <i>SUPERSEDED by WDC 8</i>
WDC	6.	Various planning permissions
WDC	7.	Land Availability: updated information at 22.01.08 (Dwellings)
WDC	8.	Land Availability: statement of differences
WDC	9.	Joint statement between the Council and the Bird in Eye Sites on Highways <i>SUPERSEDED by WDC 16</i>
WDC	10.	Emails between Alan Cowling (East Sussex County Council) and Joanna Gliddon (Burgess Salmon) relating to the proposed primary school at Downlands
WDC	11.	Ecology documents to be referred to by Dr Roper in chief
WDC	12.	Christopher Boyle's costs warning to Downlands Farm
WDC	13.	Further documents to be referred to by Dr Roper
WDC	14.	Estate Map of Downlands Farm from 1829
WDC	15.	Land availability – update on supply 10.06.08
WDC	16.	Statement of common ground between the Council and the Bird in Eye Sites on Highways

WDC	17.	Large map of Uckfield area
WDC	18.	Briefing note from ESCC to County Council Members – email from Rupert Clubb
WDC	19.	Briefing from ESCC to District Council Members – email from Kelvin Williams
WDC	20.	Update sheet for the evidence of R Walker for Wealden District Council
WDC	21.	Differences between the Council and the appellants on housing land supply
WDC	22.	Extract from title of Downlands Farm
WDC	23.	Letter from the Head of Planning for Schools regarding the proposed school at Downlands
WDC	24.	Update sheet for Bird in Eye North’s section 106 planning obligation
WDC	25.	Update sheet for Downlands’ section 106 planning obligation
WDC	26.	Town Centre Solution - 25 Point Improvement Plan
WDC	27.	Additional Planning Policy SOCG
WDC	28.	Closing submissions on behalf of Wealden District Council and East Sussex County Council
WDC	29.	Counsel’s closing on s106 obligations
WDC	30.	Schedule of amended walking distances to services from the Bird in Eye sites
WDC	31.	Accompanying plan to WDC 30
WDC	32.	Erratum sheet to Counsel’s submissions on final s106 obligations
WDC	33.	Joint appellants’ Housing Land Supply Representation
WDC	34.	Chapters 7, 17 and 25 of the South-East Plan

DOWNLANDS FARM

DOWN	1	Opening
DOWN	2	Arun District Council Annual Monitoring Report 2006 -07
DOWN	3	Department for Communities and Local Government “ <i>Strategic Housing Land Availability Assessments</i> ” Practice Guidance
DOWN	4	Wealden District Council reasons for refusal of planning permission for site at

		Honey Farm, Eastbourne Road, Polegate
DOWN	5	Appeal decision dated 23 February 2007 in respect of land to the rear of Mill Ridge and fronting Crowborough Hil, Crowborough
DOWN	6	Wealden District Council Agenda and Decisions for Cabinet Meeting on Wednesday 12 th December 2007
DOWN	7	Housing Land Supply note – Appellants’ Supplementary Statement 21 st January 2007
DOWN	8	Plan of Snatts Road Crossing identifying trees to be removed and trees subject to TPOs
DOWN	9	Table produced by Mr Russell Vick applying Cooper methodology for landscape assessment
DOWN	10	Letters from Natural England to Wealden District Council dated 30 January 2007 and 17 August 2007 and s78 appeal decision in respect of Land to the east of Woodside Farm, Hempstead Lane, Hailsham
DOWN	11	Ancient Woodland: guidance material for local authorities (English Nature)
DOWN	12	The Sussex Wildlife Trusts “ <i>Landscape Buffer Strips for the protection of trees woods and other wildlife habitats</i> ”
DOWN	13	13(a) Statement of Common Ground between Downlands and the Council sent 10th April SUPERSEDED by DOWN 25
DOWN		13(b) Table of Dwelling Occupation Headroom Limit Analysis
DOWN	14	Queues in (metres) analysis of A14
DOWN	15	Map in Colour of Uckfield Area
DOWN	16	Plan of Option 3B for the Town Centre Scheme
DOWN	17	Email from Tony Brown to Kevin Chaney with minutes of meeting with Downlands’ Consultants 30 th November 2007 attached
DOWN	18	Road safety assessment of Bird in Eye North and Bird in Eye South
DOWN	19	Road safety assessment of Downlands site and A22 cycle route
DOWN	20	Email correspondence regarding Downlands’ proposal for a primary school
DOWN	21	Downlands’ Section 106 undertaking
DOWN	22	Downlands’ supplemental Section 106 undertaking
DOWN	23	Map and correspondence regarding land ownership of Snatts Road

DOWN	24	Extracts from the Wealden PPG 17 Assessment
DOWN	25	Statement of Common Ground between Downlands and Wealden District Council (signed version of 13(a))
DOWN	26	Statement from Natural England in response to the Government announcement regarding various planning issues
DOWN	27	Downlands' reasons for requesting the right to raise and comment on issues arising from other parties' 106 obligations
DOWN	28	Summary of the main points in Downlands' section 106 unilateral undertaking
DOWN	29	Management strategy for Downlands' Farm
DOWN	30	Memorandum and Articles of Downlands' Community Interest Company
DOWN	31	Conditions agreed by Wealden District Council and Downlands
DOWN	32	Amendment to draft condition 27
DOWN	33	Closing submissions
DOWN	34	East Leake appeal decision

BIRD IN EYE NORTH

NORTH	1	Opening
NORTH	2.1	Housing Land Supply — statement of differences between Council and Appellants—SUPERSEDED by North 2.1A
NORTH	2.2	Schedule of deliverable sites (with planning permission or resolution to grant) — sites agreed between the Council and the Appellants— SUPERSEDED by North 2.2A
NORTH	2.3	Schedule of deliverable sites (with planning permission or resolution to grant) — main areas of disagreement between Appellants and the Council— SUPERSEDED by North 2.3A
NORTH	2.1A	Housing Land Supply – statement of differences between Council and Appellants (REVISED 22 JANUARY 2008)
NORTH	2.2A	Schedule of deliverable sites (with planning permission or resolution to grant) – sites agreed between the Council and the Appellants (REVISED 22 JANUARY 2008)
NORTH	2.3A	Schedule of deliverable sites (with planning permission or resolution to grant)

		– main areas of disagreement between Appellants and the Council (REVISED 22 JANUARY 2008)
NORTH	3.	Witness statements from case in the High Court: Martin Grant Homes & Taylor Woodrow Developments v Wealden District Council
NORTH	4.	Rother District Council annual monitoring report December 2007
NORTH	5.	NOT USED
NORTH	6.	NOT USED
NORTH	7.	Revised masterplan
NORTH	8.	Photograph of Framfield Road and Framfield Stream
NORTH	9.	Statement of Common Ground on landscape with Wealden District Council
NORTH	10.	Mr Cooper's rebuttal to DOWN 9
NORTH	11.	Extract plan from Bird in Eye North Environmental Statement
NORTH	12.	Statement of Common Ground between Bird in Eye North and the Council on ecology
NORTH	13.	Statement of Common Ground between Bird in Eye North and the Council on noise
NORTH	14.	The Polegate decision
NORTH	15.	Statement of Common Ground between Bird in Eye North and the Council
NORTH	16.	Section 106 planning obligation in respect of District Council matters <i>SUPERSEDED BY NORTH 20</i>
NORTH	17.	Section 106 planning obligation in respect of County Council matters <i>SUPERSEDED BY NORTH 21</i>
NORTH	18.	Bird in Eye North draft conditions
NORTH	19.	Letter from Jeremy Woolf to Mark Boulton in respect of minor amendment to BIEN red line application boundary, with substitute plan WBP1 and correspondence between Richard Walker and Vic Scarpa attached
NORTH	20.	Section 106 unilateral undertaking in respect of District Council matters
NORTH	21.	Section 106 unilateral undertaking in respect of County Council matters
NORTH	22.	Closing submissions

BIRD IN EYE SOUTH

SOUTH	1	Opening
SOUTH	2	Statement of Common Ground with Wealden District Council (Planning)
SOUTH	3	Statement of Common Ground with Wealden District Council (Ecology)
SOUTH	4	Statement from Keith Kirby at Natural England dated 1 February 2008
SOUTH	5	Statement of Common Ground Between Bird in Eye South, Southern Water Services Limited and Wealden District Council Regarding Flooding and Drainage
SOUTH	6	Planning Obligation Between the Council and Bird in Eye South regarding Mallard's Drive
SOUTH	7	Extracts from the Institution of Highways and Transport guidelines for providing journeys on foot
SOUTH	8	Correspondence from Adrian Meurer regarding Uckfield ecology
SOUTH	9	Will of Clarence Preston
SOUTH	10	Section 106 planning obligation in respect of County Council matters <i>SUPERSEDED by SOUTH 13</i>
SOUTH	11	Section 106 planning obligation in respect of District Council matters <i>SUPERSEDED by SOUTH 14</i>
SOUTH	12	Bird in Eye South draft conditions
SOUTH	13	Section 106 planning obligation in respect of District Council matters <i>SUPERSEDED BY SOUTH 16</i>
SOUTH	14	Section 106 planning obligation in respect of County Council matters <i>SUPERSEDED BY SOUTH 17</i>

SOUTH	15	Plan for Bird in Eye South showing area of land outside ownership of the Berrys
SOUTH	16	Section 106 unilateral undertaking in respect of District Council matter
SOUTH	17	Section 106 unilateral undertaking in respect of County Council matters
SOUTH	18	Letter to PINS from CMCK dated 12 th September 2008
SOUTH	19	Letter to PINS from Sharpe Pritchard dated 16 th September 2008
SOUTH	20	Letter to PINS from CMCK dated 26 th September 2008
SOUTH	21	Closing submissions
SOUTH	22	Case of Berkeley v Secretary of State and another
SOUTH	23	Case of Regina v Cornwall County Council (ex Parte Jill Hardy)
SOUTH	24	Correspondence from CMCK to PINS enclosing letter dated 1 st February 2008 from CMCK to Burges Salmon

THIRD PARTIES

TP	1	Statement from Natural England dated 23 January 2008
TP	2	Letter and enclosures from Sussex Ouse Conservation Society dated 12 January 2008
TP	3	Letter to Environment Agency from Michael Pope (undated)
TP	4	Environment Agency response dated 20 December 2007
TP	5	Statement from Mr Drew
TP	6	Statement from Mr Osborne
TP	7	Statement from Mr Paul Francis
TP	8	Statement from Mrs Jill Daly
TP	9	Statement from Mrs Jane Eastwood
TP	10	Statement from Mr A J McGuckin
TP	11	Statement from Mr Godding
TP	12	Statement from Mr Kemp (Sussex Amphibian and Reptile Group)
TP	13	Statements from Mr Ashby

TP	14	Statement from Mr Laurence Keely
TP	15	Statement from Mr Riddle (Framfield Parish Council)
TP	16	Natural England Report Dated 11 June 2008
TP	17	Statement from Mr Pope
TP	18	Statement from Mr Johnston
TP	19	Statement from Mr Godding
TP	20	Statement from Ms Handford
TP	21	Petition from local residents
TP	22	Closing submissions on behalf of the Downlands Action Group and the Woodland Trust

Conjoined Appeal under s278 of the Town and Country Planning Act 1990
Clarence Preston Will Trust and Barham Estates Ltd (Appeal Reference:
APP/C1435/A/07/2046982)

Taylor Wimpey (Appeal Reference: APP/C1435/A/07/2042597)

Heron Land Developments Ltd, Persimmon Homes South East Ltd and Gallagher Estates
Limited (Appeal Reference: APP/C1435/A/07/2053422)

Core Documents List

Volumes 1 -3

Policy Documents

National policies and guidance

PD1.1	PPS1: Delivering Sustainable Development
PD1.2	PPS3: Housing
PD1.3	PPS6: Town Centre and Retail Development
PD1.4	PPS7: Sustainable Development in Rural Areas
PD1.5	PPS9: Biodiversity and Geological Conservation (2005)
PD1.6	PPS12: Local Development Frameworks
PD1.7	PPG13: Transport
PD1.8	PPG 17: Planning for Open Space, Sport and Recreation
PD1.9	PPS25: Development and Flood Risk
PD1.10	Barker Review of Housing Land Supply (2004)
PD1.11	Government Response to the Barker Report (2004)
PD1.12	Homes for the Future: More Affordable, More Sustainable (2007)
PD1.13	Sustainable Communities Plan (2003)
PD1.14	Housing and Regeneration Bill
PD1.15	Delivering Affordable Housing November 2006
PD1.16	Government Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the planning System
PD1.17	Planning for Biodiversity and Geological Conservation: A Guide to Good Practice
PD1.18	Institute of Ecology and Environmental Management (2006) Guidelines for Ecological Impact Assessment in the United Kingdom (July 2006).
PD1.19	Measuring Public Transport Accessibility Levels (TfL 2003)
PD1.20	Section 38 (6) of the Planning and Compulsory Purchase Act 2004
PD1.21	DfT/DCLG Guidance on Transport Assessments and Travel Plans

	1.21.1	Guidance on Transport Assessments
	1.21.2	Guidance on the Assessment of Travel Plans
	1.21.3	Using the Planning Process to secure travel plans
PD1.22	Circular 02/07 Planning and the Strategic Road Network	
PD1.23	Statutory Instrument 1994 No. 2716 The Conservation (Natural Habitats, &c.) Regulations 1994	
PD1.24	Statutory Instrument 2007 No. 1843 The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007	
PD1.25	Statutory Instrument 1997 No. 1160 The Hedgerows Regulations 1997	
PD1.26	Wildlife and Countryside Act 1981 (as amended)	
PD1.27	Countryside and Rights of Way Act 2000 Section 74: List of habitats and species of principal importance for the conservation of biodiversity in England	
PD1.28	UK Biodiversity Action Plan	
PD1.29	PPG24: Planning and Noise	
PD1.30	Circular 05/2005: Planning Obligations	
PD1.31	Manual for Streets (DfT/DCLG)	
PD1.32	Inclusive Mobility (DfT 2002)	

Volumes 4 and 5

Regional policies and guidance

PD2.1	RPG9 – Regional Planning Guidance for the South East
PD2.2	The Draft South East Plan
PD2.3	Panel Report on the draft South East Plan
PD2.4	From “Rio to Sussex” – Sussex Biodiversity Partnership 2001

Volume 6

Structure Plan policies and guidance

PD3.1	East Sussex Brighton and Hove Structure Plan 1991-2011
PD3.2	Structure Plan Saved Policies
PD3.3	East Sussex County Council’s adopted supplementary planning guidance “A New Approach to Development Contributions”

Volume 7

County Council policy documents

PD4.1	Uckfield Local Area Transport Strategy East Sussex County Council 2002
PD4.2	East Sussex County Council Local Transport Plan

Volume 8

Wealden District Council policies and guidance

PD5.1	Wealden Adopted Local Plan December 1998
PD5.2	Non Statutory Wealden Local Plan December 2005
PD5.3	Wealden Local Plan Review: First Deposit Draft January 2003
PD5.4	Draft Local Development Framework
PD5.5	Wealden Corporate Plan 2007-10
PD5.6	Wealden Community Strategy adopted February 2007
PD5.7	Wealden Housing Strategy 2002-2005 (Update No.2)
PD5.8	Wealden Housing Market Assessment – Stakeholder presentation for High Weald March 2007
PD5.9	Wealden Sub Regional Housing Needs Study 2005 (David Couttie Associates)
PD5.10	Wealden Housing Needs Survey 2005 (David Couttie Associates)
PD5.11	Wealden Housing Strategy Statistical Return 2006
PD5.12	Wealden Local Plan Review Background Paper – Low Weald Towns Sector Appraisal –Transport and Accessibility March 2001
PD5.13	Officers Report to Cabinet; ‘Improving the Delivery of Housing’ (1 August 2007)
PD5.14	Wealden Local Plan Review: Revised Draft November 2004
PD5.15	1998 Local Plan Saved Policies September 2007
PD5.16	Wealden Core Strategy Issues and Options Paper July 2007
PD5.17	Wealden District Council “Access for All Guidance”
PD5.18	Report to Wealden Local Plan Special Review Committee (WLPRC) 15 December 2003 Chapter 18 – Uckfield and minutes of the meeting
PD5.19	Report to WLPRC 15 December 2003 – Land at Downlands Farm
PD5.20	Report to WLPRC 29 March 2004 Chapter 18 – Uckfield and minutes of the meeting

PD5.21	Report to WLPRC 19 July 2004 Chapter 18 – Uckfield and minutes of the meeting
PD5.22	Report to WLPRC 10 April 2005 Chapter 18 – Uckfield pages 33-73
PD5.23	Programme Management Revised Development Control Scheme February 2007
PD5.24	Decision in the Court of Appeal(Civil Decision) between Wealden District Council and Martin Grant Homes and another 31 October 2005
PD5.25	Weald Ancient Woodland Survey 2006. A revision of the ancient woodland inventory for Wealden District, East Sussex.
PD5.26	Draft Supplementary Planning Guidance entitled ‘Outdoor Play Space’ (February 2003)

Miscellaneous policy documents

PD6.1	Environment Agency River Ouse Catchment Flood Management Plan
PD6.2	English Nature (2001) Great crested newt mitigation guidelines

Land Availability documents

LA1.1	Wealden District Council Core Strategy Background Paper: Housing Land Strategy
LA1.2	Advice Produced by the Department for Communities and Local Government: Demonstrating a 5 year supply of land
LA1.3	Wealden District Council LDF Annual Monitoring Report 2005 - 2006

Volumes 9 and 10

Downlands documents

Original Application documents

DL1.1	Cover letter
DL1.2	Application form
DL1.3	Site redline
DL1.4	Outline Application Masterplan Map
DL1.5	Planning Statement dated 29 th November 2006
DL1.6	Phase 1 Desk Study by BRD Environmental Limited
DL1.7	Design and Access Statement
DL1.8	Environmental Statement

DL1.9	Environmental Statement Non-Technical Summary dated October 2006
DL1.10	Transport Assessment October 2006
DL1.11	Stage 1 Safety Audit dated 10 th November 2006

Consultation responses and decision

DL2.1	Consultation response: Corporate development department dated 3 rd January 2006.
DL2.2	Consultation response: Technical Services observations dated 29 th November 2006
DL2.3	Consultation response: Housing Strategy Comments dated 9 th December 2006
DL2.4	Consultation response: CPRE Sussex dated 12 th December 2006
DL2.5	Consultation response: Natural England 14 th December 2006
DL2.6	Consultation response: Forestry Commission dated 19 th December 2006
DL2.7	Consultation response: Parish Town Council dated 20 th December 2006
DL2.8	Consultation response: PNB dated 20 th December 2006
DL2.9	Consultation response: LAB dated 20 th December 2006
DL2.10	Consultation response: Woodland trust dated 20 th December 2006
DL2.11	Consultation response: Parish Town Council dated 2 nd January 2007
DL2.12	Consultation response: Sussex Wildlife Trust 8 th January 2007
DL2.13	Consultation response: Uckfield Town Council dated 8 th January 2007
DL2.14	Consultation response: Transport and Environment, County Hall dated 8 th January 2007
DL2.15	Consultation response: English Heritage dated 8 th January 2007
DL2.16	Consultation response: Pollution Control Observations dated 11 th January 2007
DL2.17	Consultation response: Environment Agency dated 15 th January 2007
DL2.18	Consultation response: South East England Regional Assembly dated 19 th January 2007
DL2.19	Consultation response: East Sussex County Council (Planning and Building Control) dated 19 th January 2007
DL2.20	Consultation response: Waste Management dated 24 th January 2007
DL2.21	Consultation response: East Sussex County Council (Development and Building Control) dated 24 th January 2007
DL2.22	Consultation response: East Sussex County Council (Transport and Environment department) dated 24 th January 2007
DL2.23	Consultation response: East Sussex County Council (Highways Department) dated

	26 th January 2007
DL2.24	Consultation response: Memo to Robert King from Head of Planning and Environmental Policy
DL2.25	Consultation response: Memo Wealden District Council with plans dated 4 th December 2006
DL2.26	Wealden District Council Committee Report dated 8 th February 2007
DL2.27	Wealden District Council decision letter date 22 nd February 2007

Appeal documents

DL3.1	Appeal form
DL3.2	Wealden District Council appeal questionnaire
DL3.3	Wealden District Council Pre-Inquiry Statement
DL3.4	Wealden District Council Supplementary Pre-Inquiry Statement
DL3.5	Statement of Case for Clarence Preston Will Trust and Barham Estates Limited
DL3.6	Amended Environmental Statement dated October 2007
DL3.7	Amended Design and Access Statement dated October 2007
DL3.8	Amended Illustrative Masterplan dated October 2007
DL3.9	Amended Transport Assessment and appendices dated October 2007
DL3.10	Amended Safety Audit dated 4 th October 2007
DL3.11	Phase 1 Contamination Report (as per)
DL3.12	Phase 1 Desk Study by BRD Environmental Limited November 2006 (as per DL1.6)
DL3.13	Application Boundary Plan (as per DL1.3)
DL3.14	Rule 6 Statement by Heron Land Developments Limited, Persimmon Homes (South East) Limited and Gallagher Estates Limited
DL3.15	Rule 6 Statement by Taylor Wimpey UK Limited
DL3.16	Consultation response: Mr John Jales dated 26 October 2007
DL3.17	Consultation response: Rod Hoilley Smith dated 28 October 2007
DL3.18	Consultation response: DW & DM Care dated 28 October 2007
DL3.19	Consultation response: Jonathan Hill dated 29 October 2007
DL3.20	Consultation response: R&R Stevens dated 30 October 2007
DL3.21	Consultation response: B D Hemsley dated 31 October 2007
DL3.22	Consultation response: Uckfield Town Council dated 6 November 2007
DL3.23	Consultation response: Denis K Godding dated 6 November 2007

DL3.24	Consultation response: Graham King dated 8 November 2007
DL3.25	Consultation response: R J Hossack dated 8 November 2007
DL3.26	Consultation response: Laurence Keeley (undated)
DL3.27	Consultation response: Geoff and Pauline Davies dated 17 November 2007
DL3.28	Consultation response: Christina Harrison (undated)
DL3.29	Consultation response: Mary E Wracke (undated)
DL3.30	Consultation response: J St Clair Butler dated 22 November 2007
DL3.31	Statement of evidence on behalf of Mr and Mrs Watts dated November 2007
DL3.32	Consultation response: CPRE Sussex dated 14 December 2007
DL3.33	Consultation response: Forestry Commission England dated 17 December 2007
DL3.33	Consultation response: Environment Agency dated 18 December 2007
DL3.34	Consultation response: Mrs P Stewart dated 11 January 2008
DL3.35	Consultation response: Sussex Ouse Conservation Society dated 12 January 2008

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Bird in Eye North documents

Application documents

BIEN1.1	Covering letter
BIEN1.2	Application form
BIEN1.3	Site redline plan
BIEN1.4	Illustrative masterplan
BIEN1.5	Planning statement
BIEN1.6	Design Guide and Masterplan
BIEN1.7	Environmental statement
BIEN1.8	Environmental statement: non technical summary
BIEN1.9	Report on results of public consultation
BIEN1.10	Screening option dated 22 nd December 2004
BIEN1.11	PBA Transport Assessment dated January 2006

Consultation responses and decision

BIEN2.1	Consultation responses: anonymous letter dated 12 th November 2006
BIEN2.2	Consultation response: Wealden District Council dated 13 th November 2006 regarding Housing Strategy

BIEN2.3	Consultation response: East Sussex Downs and Weald NHS Trust dated 20 th November 2006
BIEN2.4	Consultation response: Natural England dated 21 st November 2006
BIEN2.5	Consultation response: South East England Regional Assembly dated 22 nd November 2006
BIEN2.6	Consultation response: Wealden District Council dated 28 th November 2006 regarding Waste Management
BIEN2.7	Consultation response: East Sussex County Council dated 30 th November 2006
BIEN2.8	Consultation response: Framfield Parish Council dated 5 th December 2006
BIEN2.9	Consultation response: Uckfield Town Council dated 6 th December 2006
BIEN2.10	Consultation response: Wealden District Council dated 11 th December 2006
BIEN2.11	Consultation response: Environment Agency dated 11 th December 2006
BIEN2.12	Consultation response: Sussex Police dated 21 st December 2006
BIEN2.13	Consultation response: Southern Water (undated)
BIEN2.14	Consultation response: East Sussex County Council Strategic Representations (undated)
BIEN2.15	Consultation response: East Sussex County Council Highway Authority (undated)
BIEN2.16	Wealden District Council Development Control North Sub Committee Report dated 11 th January 2007
BIEN2.17	Wealden District Council decision letter dated 17 th January 2007

Appeal documents

BIEN3.1	Appeal form
BIEN3.2	Wealden District Council appeal questionnaire
BIEN3.3	Wealden District Council Statement of Case
BIEN3.4	Supplementary Pre-Inquiry Statement Wealden District Council
BIEN3.5	Appellant's pre-inquiry statement
BIEN3.6	Rule 6 statement from Heron Land Developments, Persimmon Homes South East and Gallagher Estates
BIEN3.7	Amended Rule 6 Statement from Heron Land Developments, Persimmon Homes South East and Gallagher Estates
BIEN3.8	Rule 6 Statement from Clarence Preston Will Trust and Barham Estates Ltd
BIEN3.9	Design and Access Statement (revised December 2007)

Planning Evidence Documents

BIEN 4.1	Not used
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Landscape Evidence Documents

BIEN 5.1	Not used
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Noise Evidence Documents

BIEN 6.1	Peter Brett Associates Report <i>Bird in Eye Farm Noise Assessment</i> : Project reference 09630/007, January 2006
BIEN 6.2	See PD1.29 – PPG24 <i>Planning and Noise</i> , 1994
BIEN 6.3	British Standard BS4142: 1997 <i>Method for rating Industrial Noise affecting mixed residential and industrial areas</i>
BIEN 6.4	British Standard BS 8233: 1999, <i>Sound insulation and noise reduction for buildings – Code of Practice</i>
BIEN 6.5	World Health Organisation <i>Guidelines for Community Noise</i> , 1999
BIEN 6.6	Institute of Environmental Assessment <i>Guidance Notes No.1: Guidelines for the Environmental Assessment of Road Traffic</i> , 1993

Transport Evidence Documents

BIEN 7.1	Not used
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Ecology Evidence Documents

BIEN 8.1	Not used
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Volumes 12 and 13

Bird in Eye South Documents

Application documents

BIES1.1	Application letter
BIES1.2	Planning application form
BIES1.3	Application site plan
BIES1.4	Illustrative masterplan
BIES1.5	Planning statement

BIES1.6	Design and Access statement
BIES1.7	Landscape and visual assessment
BIES1.8	Topographical survey
BIES1.9	Statement of Community Engagement
BIES1.10	Zone of visual influence
BIES1.11	Sustainability checklist
BIES1.12	Flood Risk Assessment
BIES1.13	Transport Assessment
BIES1.14	Notice of application for planning permission
BIES1.15	Ecological Assessment
BIES1.16	Wardell Armstrong Desk Study Report
BIES1.17	Screening Opinion dated 5 th October 2005

Consultation responses and decision

BIES2.1	Consultation Response: Pollution Control dated 12 th April 2007
BIES2.2	Consultation Responses: Wealden District Council – Engineering and Drainage dated 12 th April 2007
BIES2.3	Consultation Response: Sussex police dated 14 th May 2007
BIES2.4	Consultation Response: Wealden District Council – Conservation and Design dated 15 th May 2007
BIES2.5	Consultation Response: Southern Water dated 15 th May 2007
BIES2.6	Consultation Response: David Nuttall Planning Engineer dated 16 th May 2007
BIES2.7	Consultation Response: Sussex Wildlife Trust dated 21 st May 2007
BIES2.8	Consultation Response: East Sussex County Council dated 29 th May 2007
BIES2.9	Consultation Response: East Sussex County Council – Transport dated 30 th May 2007
BIES2.10	Consultation Response: East Sussex County Council – Transfer dated 31 st May 2007
BIES2.11	Consultation Response: East Sussex Fire and Rescue Service dated 5 th June 2007
BIES2.12	Consultation Response: East Sussex County Council Report dated 8 th June 2007
BIES2.13	Wealden District Council delegated committee report
BIES2.14	Wealden District Council decision notice dated 6 th July 2007

Appeal documents

BIES3.1	Application form
BIES3.2	Wealden District Council appeal questionnaire
BIES3.3	Pre-inquiry statement
BIES3.4	Statement of Case for the appellants
BIES3.5	Statement of Case for Wealden District Council
BIES3.6	Supplementary Pre-Inquiry Statement dated for Wealden District Council
BIES3.7	Rule 6 Statement from Taylor Wimpey UK Ltd
BIES3.8	Rule 6 Statement from Clarence Preston Will Trust and Barham Estates Ltd
BIES3.9	Design and Access Statement (Revised December 2007)

Appendix B

Inquiry Proofs of Evidence [and report text references]
(NB. Separately bound appendices to proofs not listed)

i) The LPA (Wealden District Council):

- 1 Mr Walker, Vol 1 – Land Availability [W1]
- 2 Mr Walker, Vol 2 – Policy [W2]
- 3 Mr Walker, Vol 3 – Downlands [W3]
- 4 Mr Walker, Vol 4 – Bird In Eye North [W4]
- 5 Mr Walker, Vol 5 – Bird In Eye South [W5]
- 6 Mr Walker, Vol 6 – Sec.of State's Proposed Changes to SE Plan etc. [W6]
- 7 Dr Roper – Ecology and Nature Conservation (Downlands) [R1]
- 8 Dr Roper – Ecology and Nature Conservation (Bird In Eye North) [R2]
- 9 Dr Roper – Ecology and Nature Conservation (Bird In Eye South) [R3]
- 10 Mr Leversedge – Noise (Bird In Eye North) [L] *
- 11 Mr Cowling – Development Contributions [C] *
- 12 Mr Harris – Highways, Transport and Access (all sites) [H1]
- 13 Mr Harris – Highways, Transport and Access (Bird In Eye North) [H2]
- 14 Mr Harris – rebuttal (Bird In Eye North) [H2A]
- 15 Mr Harris – Highways, Transport and Access (Bird In Eye South) [H3]
- 16 Mr Harris – rebuttal (Bird In Eye South) [H3A]
- 17 Mr Harris – Highways, Transport and Access (Downlands) [H4]
- 18 Mr Harris – rebuttal (Downlands) [H4A]
- 19 Mr Harris – supplementary [H5]

ii) Downlands Farm appellants:

- 1 Mr Tustain - Main proof [T1]
- 2 Mr Tustain - Housing Land Supply and Affordable Housing [T2]
- 3 Mr Tustain – Bird In Eye North [T3]
- 4 Mr Tustain – Bird In Eye South [T4]
- 5 Ms Grant – Affordable Housing [G] *
- 6 Mr Russell-Vick – Landscape and Design (Downlands) [RV1]
- 7 Mr Russell-Vick – Landscape and Design (Bird In Eye North) [RV2]
- 8 Mr Russell-Vick – Landscape and Design (Bird In Eye South) [RV3]
- 9 Mr Colebourn – Ecology and Nature Conservation (Downlands) [Co1]
- 10 Mr Colebourn – rebuttal (Downlands) [Co1A]
- 11 Mr Colebourn – Ecology and Nature Conservation (Bird In Eye North) [Co2]
- 12 Mr Colebourn – supplementary (Bird In Eye North) [Co2A]
- 13 Mr Colebourn – Ecology and Nature Conservation (Bird In Eye South) [Co3]
- 14 Mr Colebourn – supplementary (Bird In Eye South) [Co3A]
- 15 Mr Colebourn – supplementary response [Co4]
- 16 Mr Brown – highways and transport (Downlands) [B1]
- 17 Mr Brown – highways and transport (Bird In Eye North) [B2]
- 18 Mr Brown – highways and transport (Bird In Eye South) [B3]
- 19 Mr Brown - response to ESCC highways and transport evidence [B4]
- 20 Mr Melton – Education Contributions [M] *

iii) Bird In Eye North appellants:

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- 1 Mr Woolf – Planning and Housing Land Supply [Wo1]
 - 2 Mr Woolf – Joint appellants housing supply [Wo2]
 - 3 Mr Cooper – Landscape (Bird In Eye North) [Coo1]
 - 4 Mr Cooper – Landscape (Downlands) [Coo2]
 - 5 Ms Wray – Ecology [Wr1]
 - 6 Ms Wray – Ecology rebuttal (Downlands/BIEN) [Wr2]
 - 7 Mr Forbes Laird – Trees [FL]*
 - 8 Dr Cogger – Noise (Bird In Eye North) [Cog]*
 - 9 Mr Russell – Transport (Bird In Eye North) [Ru1]
 - 10 Mr Russell – Transport (Downlands) [Ru2]

iv) Bird In Eye South appellants:

- 1 Mr Groves – Planning and Housing Land [Gr]
- 2 Mr Thompson – Design [Th]*
- 3 Mr Duckett – Landscape [D]
- 4 Mr Meurer – Ecology and Nature Conservation [Me1]
- 5 Mr Meurer – Rebuttal and supplementary [Me2]
- 6 Mr Wiseman – Highways and Transport [Wi]*

v) Third Parties' written statements (Objectors)

- 1 Mr Wade (Downlands Action Group) [Wa]
- 2 Mr Wallace (Downlands Action Group) [Wal]
- 3 Mrs Reed (Downlands Action Group) [Re]
- 4 Dr Stenning (Downlands Action Group) [S]
- 5 Prof Beeby (re Downlands) [Be]
- 6 Ms Farr, The Woodland Trust (re Downlands) [WT]
- 7 Mr Kemp [K]
- 8 Mr Godding [Go]
- 9 Mrs Eastwood [E]
- 10 Mr Ashby [A]
- 11 Mr Keeley [Ke]
- 12 Mr Pope [Po]
- 13 Mr Johnston [Jo]
- 14 Miss Handford [Ha]

* Witness not called

Main parties – 55 proofs total
3rd parties – 14 written statements

(Revised 22/10/08)

Appendix C

List of Statements of Common Ground (SCGs) – relating to the following appeal sites:

Downlands

SCG1 (DOWN25) [WDC/Downlands]

Bird In Eye North

SCG2 (WDC16) - Joint Statement on Transport and Highways Issues
[WDC/BIEN/BIES]

SCG3 (BIEN15) – Planning policies etc. [WDC/BIEN]

SCG4 (NORTH 9) – Landscape [WDC/BIEN]

SCG5 (NORTH 12) – Ecology [WDC/BIEN]

SCG6 Noise – WDC/BIEN

Bird In Eye South

SCG2 (WDC16) - Joint Statement on Transport and Highways Issues
[WDC/BIEN/BIES]

SCG7 (SOUTH 2) - Planning [WDC/BIES]

SCG8 (SOUTH 3) - Ecology [WDC/BIES]

SCG9 (SOUTH 5) – Flooding and Drainage [WDC/BIES/Southern Water]

Downlands/Bird In Eye North/Bird In Eye South

SCG10 (WDC27) - Joint statement on housing land and planning policy
following Secretary of State's Proposed Changes to the South East Plan
[WDC/Downlands/BIEN/BIES]

SCG11 (WO2) - Joint appellants' Housing Land Supply Representation
[Downlands/BIEN/BIES]

(Revised 15/9/08)

NB. Some earlier SCGs e.g. on housing land requirements/supply have been superseded by the above.

Pre-Inquiry Meeting (P.I.M.), Wealden DC Offices, Crowborough: 8 November 2007.
Inspector's Notes.

Re: 3 conjoined, recovered Section 78 appeals concerning outline proposals for sites at Downlands Farm, Bird in Eye (North) and Bird in Eye (South) – Uckfield. (Public Inquiry to commence 15 January 2008).
[PINS appeal refs: APP/C1435/A/07/2046982; 2042597 and 2053422.]

The P.I.M. was held between 1400 hrs. and 1625 hrs, with about 40 persons present. The Inspector, Paul Dobsen MA(Oxon), DipTP, MRTPI, FRGS introduced himself, and explained that the purpose of the meeting was to consider and agree upon certain procedural and administrative matters in advance of the inquiry.

The following represented the main parties:

Robert Walton, Barrister – Wealden DC (Christopher Boyle to appear at Inquiry)
Jonathan Clay, Barrister – instructed by Broadway Malyan Planning, for Downlands appellants.
Peter Village, QC – instructed by Woolf Bond Planning, for Bird in Eye (North) appellants.
Tony Kitson, Solicitor, Cameron McKenna, representing Bird in Eye (South) appellants.

The following 15 matters were agreed and/or notified to the parties by the Inspector:

1. The Inquiry venues will remain as previously notified. Ms. Karen Duke of Wealden DC will advise the public on appearances, timings etc.
2. The Inspector will make an accompanied inspection of all 3 appeal sites, together with other relevant land, highways, viewpoints etc. in Uckfield, starting at 1000 hrs. on Tuesday, 8 January. There may be a further accompanied inspection at the end of the inquiry. The normal protocols for accompanied visits will be observed; in particular, there will be no discussion of the merits of the appeals. The parties should agree upon a suitable itinerary, but the Inspector does not require prior notification of this.
3. The inquiry will commence on 15th January with opening statements by the 4 main parties, followed on 16th January by up to 2 days on housing land requirements and supply. The Council will be heard first.
4. The inquiry will then comprise 3 separate sessions, considering the Downlands appeal, then Bird in Eye (North), and finally Bird in Eye (South). The anticipated number of inquiry days is 8, 4 and 4 respectively – but this may well be reduced owing to the housing land opening session. In each session, the Council will be heard first, and any 3rd parties will be heard after the main parties.
5. There will be small gaps between the 3 appeals, with possibly a whole or half-day after Downlands.
6. Sittings will be from 1000 hrs. (to about 1700 hrs.) on Tuesdays, Wednesdays and Thursdays, and 1000 hrs. to 1300 hrs. on Fridays.

-
7. The main parties will collaborate on the production of Statements of Common Ground (SCGs). There may be 4 in all, on housing land requirements/supply, and on each appeal. The latter will contain full lists of agreed and (if applicable) not-agreed conditions, with reasons for their imposition.
 8. The Inspector and the Secretary of State would be greatly assisted by broad agreement on the following: i) (what comprises) the development plan, and the relevant policies within it; ii) other relevant policies, and the status and weight to be attached to the adopted, non-statutory Wealden Local Plan, 2005; and iii) (in the light of the above, and PPS3) the number of dwellings, including affordable dwellings "required" at Uckfield on greenfield urban extension sites for completion by 2011. These matters should be included in the relevant SCG.
 9. While the Inspector will need to assess the relative planning merits of the 3 appeal sites/proposals (and those in the non-statutory plan at Uckfield), he is not expecting to compare them with sites in other settlements in Wealden district, nor to visit any such sites.
 10. S.106 obligations. The main parties will need to collaborate on the need for, and the detailed requirements of these. They should be mutually consistent. Any such obligations which the parties want taken into account by the Inspector and the Secretary of State must be in completed form by the end of the inquiry.
 11. Revisions to Downlands application. The Inspector had seen correspondence on this on the appeal file, and heard Mr. Clay's submissions in favour of the inquiry accepting the revisions (which he briefly summarised). The Council strongly object, but indicated that it would live with them, albeit with considerable reluctance. The Inspector ruled that the revisions would be accepted for the purposes of the inquiry, and should be addressed by all parties in their evidence.
 12. Lists of witnesses. The 3 appellants and WDC all provided draft lists of professional witnesses. However, these might change following the production of SCG.
 13. Exchange of evidence. There was general agreement with Mr. Village's suggestion that all proofs of evidence should be exchanged (possibly at Uckfield) and distributed on 18 December. The Inspector urged all parties to comply with any deadlines notified to them by the Planning Inspectorate. In general, while recognising the essentially adversarial nature of the proceedings, he also urged a mutually collaborative and co-operative attitude upon all parties, as this would assist him in making his recommendations to the Secretary of State.
 14. Hotels. The Inspector confirmed that he would endeavour to avoid staying at any hotel used by the main parties during the inquiry; or, at least, to avoid any contact with them.
 15. The Inspector undertook to produce these P.I.M.notes for expeditious distribution (via PINS and Wealden DC) to interested parties.

P.E.D.

9th November 2007

Appendix E

Suggested Conditions

Appeal A – Downlands

Reserved Matters and Time Limits

1. Details of access, appearance, landscaping, layout and scale (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

Reason To meet the requirements of Article 4 of the Town and Country Planning General Development Procedure Order 1995 (as amended).

2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

Reason To meet the requirements of Section 92 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

Reason To meet the requirements of Section 92 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

4. The detailed plans and the development shall be substantially in accordance with the amended Design and Access Statement and illustrative materplan layout (October 2007).

Reason The layout of the proposed development is the subject of an Environmental Impact Assessment and any material alteration to the layout may have an impact which has not been assessed by that process, having regard to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

5. No work shall be carried out within any phase of development hereby approved, until detailed drawings for that phase have been submitted to and approved in writing by the Local Planning Authority showing existing and proposed levels and contours of the development site, finished floor levels of all the proposed buildings and the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform. The development shall be carried out in accordance with the approved scheme unless the Local Planning Authority gives its written consent to any variation.

Reason To enable satisfactory control of development on this sloping site and to ensure a satisfactory landform in the interests of visual and residential amenities in accordance with Policy EN27 of the adopted Wealden Local Plan.

Phasing

6. Prior to the commencement of development, a Phasing Programme shall be submitted to and approved by the Local Planning Authority identifying the programme and sequence of works. The development shall be carried out in accordance with the approved Phasing Programme unless otherwise agreed with the Local Planning Authority.

Reason To ensure a satisfactory phasing of development.

Operational

7. No work shall be carried out on site until full written details for a Code of Construction Practice has been submitted to and approved in writing by the Local Planning Authority. The Code of Construction Practice should detail good practice measures for site working to mitigate potential impacts from construction and shall be implemented throughout the period of work on site.

Reason In the interests of and for the safety of persons and vehicles on the site and/or adjoining road and to minimise loss of amenity to adjoining properties having regard to Policies EN27 and TR3 of the adopted Wealdon Local Plan.

8. No work shall be carried out on the site until provision has been made available within the site, in accordance with details to be approved in writing by the Local Planning Authority, for all temporary contractors buildings, plant, vehicles and stacks of materials associated with the development and such provision shall be retained and used for those purposes throughout the period of work on the site.

Reason In the interests of, and for the safety of, persons and vehicles using the premises and/or the adjoining road and in order to secure a satisfactory standard of development, having regard to Policy EN27 of the adopted Wealden Local Plan.

Optimising Use of Resources / Sustainability / Recycling

9. No work shall be carried out on site until a detailed management plan for reducing construction waste during the building process in the form of site management, waste management and project design and planning has been submitted to and approved in writing by the Local Planning Authority. The approved waste management plan shall be implemented throughout the period of work on site.

Reason In the interests of sustainability having regard to Policy EN1 of the adopted Wealden Local Plan.

10. Before preparation of any groundworks or foundations for the development, hereby approved, written details of measures for energy and water conservation within the development shall be submitted to and agreed in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Reason To promote sustainable building design having regard to Policy EN1 of the adopted Wealden Local Plan.

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11. No development approved by this permission shall be commenced until details of the siting and form of means for the disposal of refuse, which shall also include facilities for recycling to be provided on the site, shall be submitted to and agreed in writing by the Local Planning Authority. The approved details shall be implemented to the satisfaction of the Local Planning Authority and thereafter so retained.

Reason To preserve the residential and visual amenities of the locality, having regard to Policy EN27 of the adopted Wealden Local Plan.

12. Prior to the commencement of any development, details of predicted energy use of the development and the generation of on-site renewable energy shall be submitted to and approved in writing by the Local Planning Authority. These details will demonstrate how energy efficiency is being addressed, including benchmark data, and show the on-site measures to be taken to produce a minimum of 10% of the total energy requirements of the new development by means of renewable energy sources. Such details as may be approved shall be implemented prior to the occupation of the dwelling to which they relate.

Reason In accordance with the principles of PPS1 and Policy EN1 of the Adopted Local Plan.

Drainage / Flood Protection / Contamination (EA denotes recommended by Environment Agency)

13. No development approved by this permission shall be commenced until full details for the disposal of foul and surface water drainage from the development or within each phase of the development, have been submitted to and approved in writing by the Local Planning Authority. Details of surface water drainage should include a scheme for the provision of a sustainable surface water drainage system (SUDS) together with design calculations and construction details. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through trapped gullies or other appropriate SUDS feature with an overall capacity compatible with the site being drained. The approved drainage works within each phase shall be completed prior to the completion or occupation of any dwelling within the relevant phase whichever is the sooner.

Reason In order to secure a satisfactory standard of development, and prevent pollution of controlled waters and the increased risk of flooding having regard to Policies EN4 and CS2 of the adopted Wealden Local Plan.

Note The storage volume provided will need to cater for the 1 in 100 year event plus a 20% allowance for climate change. The allowable rate of discharge will need to be agreed.

14. No development approved by this permission shall take place, including land filling and/or land raising, within the 1 in 100 year flood outline (land below 24.69m AOD), as identified within Section 3 and Figure 7 of the applicant's Flood Risk Assessment dated 2007. (EA).

Reason To reduce the risk of flooding to comply with the findings of the applicant's Flood Risk Assessment (FRA).

15. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment and the following mitigation measures:
1. Ensure that finished floor levels of the development are set no lower than 25.29m Above Ordnance Datum, (600mm above 24.69m AOD, the 1 in 100 year flood outline). (EA)

Reason To reduce the risk of flooding to comply with the findings of the applicant's Flood Risk Assessment (FRA).

16. No development approved by this planning permission shall be commenced until:
1. A site investigation has been designed for the site using the information obtained from the desktop study and Conceptual Model. This should be submitted to, and approved in writing by the Local Planning Authority prior to that investigation being carried out on the site. The investigation must be comprehensive enough to enable:
 - a) A risk assessment to be undertaken relating to groundwater and surface waters associated on and off the site that may be affected, and
 - b) refinement of the Conceptual Model, and
 - c) the development of a Method Statement detailing the remediation requirements.
 2. The site investigation has been undertaken in accordance with details approved by the Local Planning Authority and a risk assessment has been undertaken.
 3. A Method Statement detailing the remediation requirements, including measures to minimise the impact on ground and surface waters, using the information obtained from the site investigation has been submitted to the Local Planning Authority. This should be approved in writing by the Local Planning Authority prior to that remediation being carried out on site. (EA)

Reason To ensure that the proposed site investigations and remediation will not cause pollution of Controlled Waters.

17. If during development any visibly contaminated or odorous material not previously identified is found to be present at the site, this must be investigated. The Planning Authority must be informed immediately of the nature and degree of contamination present. The developer shall submit a Method Statement, which must detail how this unsuspected contamination shall be dealt with. (EA)

Reason To ensure that the development complies with approved details in the interest of protection of Controlled Waters.

Highways / Parking / Garaging

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18. Detailed drawings of the internal access roads shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development on any phase. The new main internal roads shall be constructed to a standard approved by the Local Planning Authority with a view to subsequent adoption as a maintainable highway and the works phased and completed with the progress of building construction to the written approval of the Local Planning Authority.

Reason In the interests of and for the safety of persons and vehicles using the site and the adjoining roads, in accordance with policy TR3 of the Approved Local Plan.

19. Before preparation of any groundworks or foundations for the development, the access from the A22 required to serve that development shall be completed to base course level, together with the surface water and foul sewers to the approval of the Local Planning Authority in consultation with the Highway Authority.

Reason In the interests of highway safety and the amenity of the locality having regard to Policy TR3 of the adopted Wealden Local Plan.

20. No development shall take place until details of parking facilities (and turning spaces where appropriate), to be provided within the site shall be submitted to and approved in writing by the Local Planning Authority; such details to show means of access, size, siting (indicating location of disabled person's parking), surface treatment, method of delineation of parking on site, construction details, levels and surface water drainage. The parking and turning areas shall be laid out in accordance with the approved details prior to the occupation of the associated dwellings and thereafter retained in accordance with the approved details.

Reason To ensure adequate and satisfactory standard of parking provision within the development having regard to Policies EN27 and TR16 of the adopted Wealden Local Plan.

21. The garage/parking areas shall be used solely for ancillary domestic storage and/or vehicle parking purposes incidental to the occupation and enjoyment of the dwelling units to which they serve and shall not be used for nor in connection with any commercial trade or business purposes and shall not be converted into habitable accommodation, including domestic workshop, study, games room and similar uses, without prior written consent of the Local Planning Authority.

Reason To protect the visual and residential amenities of the site and ensure the retention of parking provision, having regard to Policies EN27 and TR16 of the adopted Wealden Local Plan.

Open Space and Play Areas

22. Before preparation of any groundworks or foundations for the development, details of the amenity open space provision for each phase of the development, shall be submitted to and approved in writing by the Local Planning Authority for that phase. Such details shall include grass seeding/turfing, planting, construction of footpaths and installation of all necessary boundary treatments, equipment and street furniture. Unless

otherwise agreed with the Local Planning Authority, each phase of the approved scheme shall be fully implemented during the first planting season following the substantial completion of the relevant phase of development or occupation of the 25th dwelling in each phase, whichever is the sooner, and thereafter shall be so retained for the purpose of amenity open space only.

Reason In the interests of ensuring that sufficient amenity space is provided on the development site for the future occupiers of the development in a reasonably timely manner having regard to Policies LR1 and LR4 of the adopted Wealden Local Plan.

23. Before preparation of any groundworks or foundations for the development, full details of play areas for each phase of the development (including grass seeding/turfing, planting, fencing, safety surfacing, play equipment, seats, litter bins and lighting), and details of the timing of implementation of such works, shall be submitted to and approved in writing by the Local Planning Authority for that phase. Unless otherwise agreed with the Local Planning Authority, each phase of the approved scheme shall be fully implemented following the substantial completion of the relevant phase of development or occupation of the 25th dwelling in each phase, whichever is the sooner and thereafter shall be so retained.

Reason In the interests of ensuring that sufficient amenity space is provided on the development site for the future occupiers of the development in a reasonably timely manner having regard to Policy LR3 of the adopted Wealden Local Plan.

Landscaping, Fences, Walls

24. Before preparation of any groundworks and foundations on site for any phase of development hereby approved including the school site and commercial areas, full details of hard landscape works for that phase of the development, which shall include details of all fencing, walling and other boundary treatments, steps, retaining walls and surface finishes, shall be submitted to and approved in writing by the Local Planning Authority and shall be implemented prior to the occupation or first use of the building to which it relates.

Reason To ensure a satisfactory appearance to the development having regard to Policy EN27 of the adopted Wealden Local Plan.

25. Before preparation of any groundworks and foundations on site for the development hereby approved, a phased scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. These details shall include indications of all existing trees and hedgerows on the land, including those to be retained, together with measures for their protection which shall comply in full with British Standard 5837:2005, "Trees in Relation to Construction" in the course of the development, together with a scheme for the subsequent maintenance of any trees, shrubs and hedges retained on the site and any proposed to be planted as part of the approved landscaping scheme. Soft landscape details shall include planting plans, written specifications, schedules of plants – noting species (which should be indigenous), planting sizes and proposed density.

All planting, seeding and/or turfing comprised in the approved (phased) details of landscaping (for each phase) shall be carried out in the first planting and seeding seasons following the first occupation of the building(s) or the substantial completion of the development (within each phase) whichever is the sooner. Any trees, shrubs, hedges or plants which within a period of five years from the completion of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason To protect and enhance the visual amenities of the area and in order to secure a satisfactory standard of development, having regard to Policies EN14 and EN27 of the adopted Wealden Local Plan.

26. For each phase of development a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for landscaped areas, other than small privately owned, domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of any of the development hereby permitted within that phase, and the landscape management shall be carried out in accordance with the approved plan over the period specified.

Reason To ensure a satisfactory maintenance and management of the landscaped areas in accordance with Policies EN14 and EN27 of the adopted Wealden Local Plan.

Snatts Road Link

27. Before preparation of any groundworks or foundations for the development (i) detailed plans of the proposed cycle and footpath links from Snatts Road to Rock Park Road "The Snatts Road Link" for the area covered by Plan 01-007-507 (Inquiry Document DOWN 8) including levels, sections, surface materials, ramps, stops and constructional details shall be submitted to and approved by the Local Planning Authority; and (ii) unless otherwise agreed in writing by the Local Planning Authority no development shall occur unless/until the details of the necessary interest in the land be required to carry out the Snatts Road link works have been secured by the developer submitted to and confirmed in writing by the Local Planning Authority.

Reason In the interests of and for the safety of persons using the site in accordance with policy TR3 of the Approved Local Plan and in the interests of the appearance and ecology of the locality in accordance with policy EN27 of the Approved Local Plan and Policy NE14 of the Non-Statutory Wealden Local Plan.

28. Unless otherwise agreed in writing with the Local Planning Authority, the detailed works approved for the Snatts Road Link shall be completed in accordance with the approved plans before the occupation of any dwellings hereby permitted.

Reason To ensure the early availability of sustainable modes of travel in accordance with policy EN1 of the Approved Wealden Local Plan.

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29. Before preparation of any groundworks or foundations for the development, detailed plans of proposed bridges at Eleven Acre Wood and Rocks Road shall be submitted to the Local Planning Authority and be subject to their approval, and such work as approved to be carried out at the time of the development and thereafter so retained.

Reason In the interests of and for the safety of persons and vehicles using the site and the adjoining roads, and in the ecological and amenity interests of the locality in accordance with policy TR3, EN27 and EN16 of the Approved Local Plan.

Floodlighting and Materials

30. During the construction phase, no floodlighting or other external means of illumination of the site shall be provided, installed or operated at the site, except in accordance with a detailed scheme which shall have been submitted to and approved in writing by the Local Planning Authority.

Reason To preserve the rural and residential amenities of this part of the Low Weald Countryside Area having regard to Policies EN8 and EN27 of the adopted Wealden Local Plan, and to safeguard the interests of wildlife.

Commercial Area

31. No power driven machinery shall be used or operated within the commercial part of the development here by approved, before 08:00 hours or after 18:00 hours on weekdays, before 08:00 hours or after 13:00 hours on Saturdays, or at any time on Sundays or public holidays except with the prior written approval of the Local Planning Authority.

Reason To protect the residential amenities of the locality, having regard to Policy EN27 of the Wealden Local Plan and Policy BE1 of the Non Statutory Wealden Local Plan.

32. No deliveries related to the B1(a) uses hereby permitted shall be taken at or despatched from the site outside the following times: 0800 to 1800 on weekdays, nor at any time on Saturdays, Sundays, Bank or Public Holidays.

Reason To preserve the residential amenities of the adjoining properties and to maintain the characteristics of the locality, having regard to Policy EN27 of the Wealden Local Plan and Policy BE1 of Non Statutory Wealden Local Plan Interim Guide for Development Control (2005).

Ecology (EA denotes as recommended by Environment Agency)

33. Prior to the commencement of development, details of all watercourse crossings (traffic and pedestrian) proposed on site shall be submitted to and approved in writing by the Local Planning Authority. These crossings should be clear span in design. Thereafter the bridges shall be constructed as set out in the approved scheme. (EA)

Reason To ensure that crossings are of an acceptable clear-span type which will maintain the river corridor and the movement of both watercourse and associated wildlife.

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34. Prior to the commencement of development, a scheme for the provision and management of a buffer zone alongside the on site watercourses shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the Local Planning Authority. The scheme shall include:

- a) plans showing the extent and layout of the buffer zone
- b) details demonstrating how the buffer zone will be protected during development and managed/maintained over the long term
- c) details of any footpaths and fencing. (EA)

Reason To ensure that mitigation measures as set out in the Environmental Statement are implemented.

35. Prior to the commencement of development, a plan for the protection and/or mitigation of damage to wet grassland and wet woodland, during construction works and once the development is complete, including management responsibilities, shall be submitted to and approved in writing by the Local Planning Authority. The wet grassland and wet woodland protection plan shall be carried out in accordance with a timetable for implementation as approved. (EA)

Reason To protect the wet grassland and wet woodland within and adjacent to the development site and ensure the protection of existing habitats and watercourses during construction from potentially harmful activities such as soil compaction, trampling, sedimentation, run-off etc.

36. Prior to the commencement of development, a scheme for the restoration of BAP wet grassland and wet woodland habitats shall be submitted to and approved in writing by the Local Planning Authority. The restoration scheme shall be carried out in accordance with a timetable for implementation as approved. (EA)

Reason To ensure that the wet grassland and wet woodland habitats are restored and enhanced and that opportunities identified for habitat restoration and management requirements as set out in Section 6 of the Environmental Statement are implemented.

37. Prior to the commencement of development, details of any amphibian under road tunnels and crossings proposed on site shall be submitted to and approved in writing to the Local Planning Authority. Thereafter, the tunnels and crossings shall be constructed as set out in the approved scheme. (EA)

Reason To ensure that the movement of Great Crested Newts and other amphibians ecological connectivity between habitats is maintained and that mitigation measures set out in Section 6 of the Environment Statement are implemented.

38. No disturbance of soil, and roots or vegetation shall take place until a Wildlife Protection Plan for Construction has been submitted to and agreed in writing by the Local Planning Authority. The plan shall include:

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1. An appropriate scale plan showing 'wildlife protection zones' where all construction activities are restricted and where protective measures will be installed or implemented.
 2. Details of wildlife features of importance such as ancient woodland, Sites of Nature Conservation importance and protected species.
 3. Details of protective measures (both physical measures and sensitive working practices) to avoid impact during construction. These to include measures such as the covering of trenches and manholes, during construction; the safeguarding of badgers setts, runs and foraging areas, especially relating to the throughput of construction and other vehicular traffic, timing of operational activities; erection of protective fencing at agreed distances from sensitive habitats and wildlife areas.
 4. A timetable to show phasing of construction activities to avoid periods of the year when sensitive wildlife could be harmed, such as the bird nesting season and other wildlife breeding seasons.
 5. Persons responsible for:
 - a) compliance with legal consents relating to nature conservation;
 - b) compliance with planning conditions relating to nature conservation;
 - c) installation of physical protection measures during construction;
 - d) regular inspection and maintenance of physical protection measures and monitoring of working practices during construction;
 - e) provision of training and information about the importance of wildlife protection zones to all personnel on site;
 - f) species monitoring in accordance with condition 39 below.

This list to be updated whenever necessary to keep the contact list current.

All construction activities shall be implemented in accordance with the approved details and timing of the plan unless otherwise approved in writing by the Local Planning Authority.

Reason To protect features of recognised nature conservation importance, having regard to Policy NE14 of the Non-Statutory Wealden Local Plan.

39. No disturbance of soil, roots or vegetation shall take place until there has been submitted to and agreed in writing by the Local Planning Authority a scheme of surveying and monitoring of all important and protected species found on site, such as badgers, bats, amphibians and reptiles, to show the effects of the scheme during construction and for a period of two years after the last house has been occupied. The scheme shall include:
 1. A clear statement of the proposed aims and objectives of monitoring;
 2. Details and justification for selection of baseline data and any changes or thresholds that, if occurring or reached, will trigger detailed remedial measures;

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3. Details of positive conservation targets along with any associated standards or success criteria that will indicate that targets have been reached;
 4. Details of the important and protected species and their places of shelter such as setts, hibernation sites that are to be monitored;
 5. Methods for sampling and analysing, including the timetable and location for field survey;
 6. Details of any legally required licences obtained from statutory agencies for the duration of the period of the construction and any changes to those licences which may be necessary during and post construction;
 7. Submission of a report on the monitoring to the Local Planning Authority at intervals to be agreed after the commencement of construction works, or as otherwise approved in writing by the Local Planning Authority, including a report on actual or anticipated changes in communities or populations, the Reasons for the changes and any remedial measures considered to be necessary to modify the changes;
 8. Procedures to be put in place to enable the monitoring reports to be considered by the Local Planning Authority in consultation with the developer.

Should the Local Planning Authority consider that remedial measures are necessary as a result of considering the monitoring report and any consultation responses under the above clause they shall give written notice to the developers. Within one month of receiving such written notice from the Local Planning Authority the developers shall submit a scheme of remedial measures which shall include (but should not be limited to) the further mitigation and/or changes to any approved mitigation schemes and/or changes to working practices and programme of implementation for the approval of the Local Planning Authority.

Reason To identify and ensure the survival and protection of important species and those protected by legislation that could be affected adversely by the development, having regard to Policy NE14 of the Non-Statutory Wealden Local Plan.

40. The approved remedial measures shall be implemented in accordance with the approved scheme and programme unless otherwise approved in writing by the Local Planning Authority.

Reason To identify and ensure the survival and protection of important species and those protected by legislation that could be affected adversely by the development, having regard to Policy NE14 of the Non-Statutory Wealden Local Plan.

41. No disturbance of soil, roots or vegetation shall take place until full details of a habitat creation/restoration scheme have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include:

- i) Purpose, aims and objectives for the scheme;

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- ii) A review of the site's ecological potential and any constraints;
 - iii) Description of target habitats and range of species appropriate for the site;
 - iv) Selection of appropriate strategies for creating/restoring target habitats or introducing target species;
 - v) Selection of specific techniques and practices for establishing vegetation;
 - vi) Sources of habitat materials (eg plant stock) or species individuals;
 - vii) Method statement for site preparation and establishment of target features;
 - viii) Extent and location of proposed works;
 - ix) Aftercare and long-term management;
 - x) The personnel responsible for the work;
 - xi) Timing of the works;
 - xii) Monitoring
 - xiii) Disposal of wastes arising from the works.

All habitat creation works shall be carried out in accordance with the approved details, unless otherwise approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the program agreed with the Local Planning Authority.

Reason To protect features of recognised nature conservation importance, having regard to Policy NE14 of the Non-Statutory Wealden Local Plan.

42. A habitat management plan shall be submitted to and approved by the Local Planning Authority prior to the first occupation of the development. The plan shall include:
- i) Description and evaluation of the features to be managed;
 - ii) Ecological trends and constraints on site that may influence management;
 - iii) Aims and objectives of management;
 - iv) Appropriate management options for achieving aims and objectives;
 - v) Prescriptions for management actions;
 - vi) Preparation of work schedule (including a five-year project register, an annual workplan and the means by which the plan will be rolled forward annually);
 - vii) Personnel responsible for implementation of the plan;
 - viii) Monitoring and remedial/contingencies measures triggered by monitoring.

The plan shall be carried out as approved, unless otherwise approved in writing by the Local Planning Authority.

Reason To protect features of recognised nature conservation importance having regard to Policy NE14 of the Non-Statutory Wealden Local Plan.

Tree Protection

43. Before preparation of any ground levels on site, details of the form and position of fencing, which shall comply in full with British Standard 5837:2005 'Trees in Relation to Construction', for the protection of those trees, shrubs and natural features not scheduled for removal, shall be submitted to and be to the written approval of the Local Planning Authority, and such fencing shall be erected in the position as approved before the development is commenced and thereafter retained until such completion of the development, to the approval of the Local Planning Authority. Hereafter, the fencing shall be referred to as the 'approved protection zone'.

Reason To preserve trees and hedges on the site in the interests of this dual amenity and the character of the area, having regard to Policy EN12 of the adopted Wealden Local Plan.

44. No trees and/or hedgerows on the site unless dead or dangerous shall be felled, topped, lopped or destroyed without the consent in writing of the Local Planning Authority. Furthermore, the following work shall not be carried out within the approved protection zone of any tree or hedgerow, except with the consent of the Local Planning Authority.
- A. Levels shall not be raised or lowered in relation to the existing ground level within the approved protection zone of the tree or hedgerow.
 - B. No roots shall be cut, trenches dug or soil removed within the approved protection zone of the tree or hedgerow.
 - C. No buildings, roads or other engineering operations shall be constructed or carried out within the approved protection zone of the tree or hedgerow.
 - D. No fires shall be lit within the approved protection zone or in a position where the flames could extend to within 5m of the foliage, branches or trunk of the tree or hedgerow as per the requirements of British Standard 5837:2005 'Trees in Relation to Construction'.
 - E. No vehicles should be driven over the area within the approved protection zone of the tree or hedgerow.
 - F. No materials or equipment to be stored within a minimum distance of 10m from the tree or hedgerow or within the approved protection zone of the tree or hedgerow as per the requirements of British Standard 5837:2005, 'Trees in Relation to Construction'.

Reason To preserve trees on the site in the interests of visual amenity and the character of the area, having regard to Policy EN12 of the adopted Wealden Local Plan.

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45. No development shall take place until there has been submitted to, and approved by the Local Planning Authority in writing, a plan to show the location and/roots, depths and construction details of all services to be provided (including all utilities, drainage and any private connections) in relation to the existing trees on site having regard to the requirements of British Standard 5837:2005, 'Trees in Relation to Construction' and the National Jointed Utilities Guidance Note No 10 (NJUG10).

Reason To minimise any impact from service trenching existing trees, having regard to Policy EN12 of the adopted Wealden Local Plan.

Archaeology

46. No development shall take place until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the local planning authority.

Reason The development is likely to disturb items of archaeological interest.

Reserved Matters and Time Limits

1. Details of the access, siting, appearance, landscaping, layout, scale, and phasing (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

Reason

To meet the requirements of Article 4 of the Town and Country Planning General Development Procedure Order 1995 (as amended)

2. Details of road access and pedestrian and cycle access connecting the first development phase to Bird-in-Eye Hill, to satisfy the above condition shall be substantially in accordance with Drawings 9630/103/001/B and 2008.954.073 at Annexe 4 of the Statement of Common Ground on Transport and Highway Issues dated 1st July 2008

Reason

In the interests of highway safety and to ensure the optimum location for sustainable modes of transport in accordance with policies EN1 and TR3 of the Adopted Wealden Local Plan

3. The pedestrian cycle and access routes referred to above shall be implemented in full in accordance with the approved plans before the occupation of the first dwelling

Reason

To encourage the early use by residents of sustainable methods of transport

4. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

Reason

To meet the requirements of Section 92 of the Town and Country Planning act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

5. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

Reason:

To meet the requirements of Section 92 of the Town and Country Planning act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

Form of Development

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- 6 The detailed plans to be submitted shall provide for no more than 300 dwellings

Reason

The Environmental Appraisal submitted with the outline application tested a proposal for 300 dwellings.

- 7 The housing development shall be of no more than 3 storeys, and with no accommodation in the roofspace for 3 storey dwellings

Reason

To enable the Local Planning Authority to control the development in relation to its surroundings and setting, and to comply with the terms of the Statement of Common Ground on Landscape (paragraph 3.1(viii)) and policy EN 27 of the Approved Local Plan

- 8 The details to be submitted shall have regard to the provisions of the Statement of Common Ground on Landscape signed on 31st January 2008 including paragraph 3.4 of the statement and revised master plan No 1583/11K

Reason

To enable the Local Planning Authority to control the development in accordance with the terms of the Statement of Common Ground on Landscape which overcame the councils objections on the impact of the proposal, and in accordance with policy EN 27 of the Approved Local Plan

- 9 No work shall be carried out on site for the development hereby approved, until detailed drawings for each phase of the development, have been submitted to and approved in writing by the Local Planning Authority showing existing and proposed levels and contours of the development site. The development shall be carried out in accordance with the approved scheme unless the Local Planning Authority gives its written consent to any variation.

Reason:

To enable satisfactory control of development on this sloping site and to ensure a satisfactory landform in the interests of visual and residential amenities in accordance with Policy EN27 of the adopted Wealden Local Plan

Operational

- 10 No work shall be carried out on site until full written details for a Code of Construction Practice has been submitted to and approved in writing by the Local Planning Authority. The Code of Construction Practice should detail good practice measures for site working to mitigate potential impacts from construction and shall be implemented throughout the period of work on site.

Reason:

In the interests of and for the safety of persons and vehicles on the site and/or adjoining road and to minimise loss of amenity to adjoining properties having regard to Policies EN27 and TR3 of the adopted Wealden Local Plan.

- 11 No work shall be carried out on the site until provision has been made available within the site, in accordance with details to be approved in writing by the Local Planning Authority, for all temporary contractors buildings, plant, vehicles and stacks of materials associated with the development and such provision shall be retained and used for those purposes throughout the period of work on the site.

Reason

In the interests of, and for the safety of, persons and vehicles using the premises and/or the adjoining road and in order to secure a satisfactory standard of development, having regard to Policy EN27 of the adopted Wealden Local Plan.

- 12 All rights of way, way marking and furniture shall be retained both during and after the construction period, to the satisfaction of the Local Planning Authority.

Reason:

For the protection of public amenity and safety, having regard to Policy EN27 of the adopted Wealden Local Plan.

Optimising Use of Resources/ Sustainability/Recycling

- 13 No work shall be carried out on site until a detailed management plan for reducing construction waste during the building process in the form of site management, waste management and project design and planning has been submitted to and approved in writing by the Local Planning Authority. The approved waste management plan shall be implemented throughout the period of work on site.

Reason

In the interests of sustainability having regard to Policy EN1 of the adopted Wealden Local Plan.

- 14 Before preparation of any groundworks or foundations for the development, hereby approved, written details of measures for energy and water conservation within the development shall be submitted to and agreed in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Reason

To promote sustainable building design having regard to Policy EN1 of the adopted Wealden Local Plan.

- 15 No development approved by this permission shall be commenced until details of the siting and form of means for the disposal of refuse, which shall also include facilities for recycling to be provided on the site, shall be submitted to and agreed in writing by the Local Planning Authority. The approved details shall be implemented to the satisfaction of the Local Planning Authority and that thereafter so retained.

Reason:

To preserve the residential and visual amenities of the locality, having regard to Policy EN27 of the adopted Wealden Local Plan.

16. Prior to the commencement of any development, details of predicted energy use of the development and the generation of on-site renewable energy shall be submitted and approved by the Local Planning Authority. These details will demonstrate how energy efficiency is being addressed, including benchmark data, and show the on-site measures to be taken to produce a minimum of 10% of the total energy requirements of the new development by means of renewable energy sources. Such details as may be approved shall be implemented prior to the first occupation of the dwelling to which it relates.

Reason

In accordance with the principles of PPS1 and Policy EN1 of the Adopted Local Plan.

Drainage / Flood Protection / Contamination

- 17 No development approved by this permission shall be commenced until a scheme, including design calculations and construction details, for the disposal of surface water which shall include the provision and implementation of a surface water regulation system and storage facility has been approved and implemented to the satisfaction of the Local Planning Authority in accordance with the details and timetable agreed.

Reason

To prevent an increased risk of flooding, having regard to Policy CS2 of the adopted Wealden Local Plan and Policies CS3 and CS5 of the Non-Statutory Wealden Local Plan.

Note: The storage volume provided will need to cater for the 1 in 100 year event plus a 20% allowance for climate change. The allowable rate of discharge will need to be agreed

- 18 No development approved by this permission shall be commenced until full details for the disposal of foul and surface water drainage from the

development or within each phase of the development, have been submitted to and approved in writing by the Local Planning Authority. The approved drainage works within each phase shall be completed prior to the completion of occupation of any dwelling within the relevant phase whichever is the sooner.

Reason

In order to secure a satisfactory standard of development, and prevent pollution of controlled waters and the increased risk of flooding having regard to Policies EN4 and CS2 of the adopted Wealden Local Plan.

- 19 Prior to the commencement of any development, a scheme for the provision and implementation of a sustainable surface water drainage system (Suds), shall be submitted to and agreed in writing with the Local Planning Authority unless it can be satisfactorily demonstrated that such a scheme cannot be provided on site. The works / scheme shall be constructed and completed in accordance with the plans and timetable approved by the Local Planning Authority.

Reason:

To reduce the risk of flooding by ensuring a satisfactory drainage system, to comply with the recommendations of the applicant's Flood Risk Assessment, (FRA) and to prevent pollution of controlled waters by ensuring the provision of a satisfactory means of surface water disposal in accordance with Policy CS2 of the adopted Wealden Local Plan

- 20 No development approved by this permission shall take place, including land filling and / or land raising, within the 1 in 100 year flood outline, (land below 24.5m AOD), as identified within Section 6 of the applicant's Flood Risk Assessment contained in Volume 2 of the Environmental Statement (January 2006)

Reason:

To reduce the risk of flooding and to comply with the findings of the applicant's Flood Risk Assessment and in accordance with Policy CS2 of the adopted Wealden Local Plan

- 21 If during development any visibly contaminated or odorous material not previously identified is found to be present at the site, this must be investigated. The Local Planning Authority must be informed immediately of the nature and degree of contamination present. The developer shall submit a Method Statement, which must detail how this unsuspected contamination shall be dealt with.

Reason:

To ensure that the development complies with approved details in the interest of protection of Controlled Waters.

- 22 Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and

hardstandings shall be passed through trapped gullies or appropriate SUDS treatment feature with an overall capacity compatible with the site being drained.

Reason: To prevent pollution of controlled waters by ensuring the provision of a satisfactory means of surface water disposal.

- 23 A naturally vegetated buffer strip of at least 8 metres from the top of the bank and incorporating bankside vegetation shall be retained on the site where it adjoins water courses. Before work commences on the site details of such buffers including any temporary protection fencing required should be submitted to and approved by the Local Planning Authority and implemented in accordance with approved details

Reason

To maintain an undamaged undisturbed functioning watercourse

Highways / Parking / Garaging

- 24 Before preparation of any groundworks or foundations for each phase of the development , detailed plans including levels, sections and constructional details of the proposed roads, footpaths, surface water drainage, foul sewers, outfall disposal and street lighting to be provided shall be submitted to the Local Planning Authority and be subject to their approval, and such work as approved to be carried out at the time of the development and thereafter so retained.

Reason:

In the interests of and for the safety of persons and vehicles using the site and the adjoining roads, in accordance with policy TR3 of the Approved Local Plan

- 25 Before preparation of any groundworks or foundations for each phase of the development , the access required to serve that development shall be completed to base course level, together with the surface water and foul sewers to the approval of the Local Planning Authority.

Reason:

In the interests of highway safety and the amenity of the locality having regard to Policy TR3 of the adopted Wealden Local Plan.

- 26 No development shall take place for each phase of the development until details of parking facilities (and turning spaces where appropriate), to be provided within the site shall be submitted and approved in writing by the Local Planning Authority; such details to show means of access, size, siting (indicating location of disabled person's parking), surface treatment, method of delineation of parking on site, construction details, levels and surface water drainage. The parking and turning areas shall be laid out in accordance with

the approved details prior to the occupation of the associated dwellings and thereafter retained in accordance with the approved details.

Reason

To ensure adequate and satisfactory standard of parking provision within the development having regard to Policies EN27 and TR16 of the adopted Wealden Local Plan.

- 27 The garage/parking areas shall be used solely for ancillary domestic storage and/or vehicle parking purposes incidental to the occupation and enjoyment of the dwelling units to which they serve and shall not be used for nor in connection with any commercial trade or business purposes and shall not be converted into habitable accommodation, including domestic workshop, study, games room and similar uses, without the prior written consent of the Local Planning Authority.

Reason

To protect the visual and residential amenities of the site and insure the retention of parking provision, having regard to Policies EN27 and TR16 of the adopted Wealden Local Plan.

Open Space and Play Areas

- 28 Before preparation of any groundworks or foundations for each phase of the development, details of the amenity open space provision (including the areas between the proposed development and existing watercourses), shall be submitted to and approved in writing by the Local Planning Authority for that phase. Such details shall include grass seeding/turfing, planting, construction of footpaths and installation of all necessary boundary treatments, equipment and street furniture. The approved scheme shall be fully implemented during the first planting season following the substantial completion of the relevant phase of development or occupation of the 25th dwelling in each phase, unless otherwise agreed in writing with the Local Planning Authority, whichever is the sooner and thereafter shall be so retained for the purpose of amenity open space only.

Reason

In the interests of ensuring that sufficient amenity space is provided on the development site for the future occupiers of the development in a reasonably timely manner having regard to Policies LR1 and LR4 of the adopted Wealden Local Plan.

- 29 Before preparation of any groundworks or foundations for each phase of the development, full details of play areas (including grass seeding/turfing, planting, fencing, safety surfacing, play equipment, seats, litter bins and lighting), and details of the timing of implementation of such works, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented following the substantial

completion of the relevant phase of development or occupation of the 25th dwelling in each phase, unless otherwise agreed in writing with the Local Planning Authority, whichever is the sooner and thereafter shall be so retained

Reason:

In the interests of ensuring that sufficient amenity space is provided on the development site for the future occupiers of the development in a reasonably timely manner having regard to Policy LR3 of the adopted Wealden Local Plan.

Landscaping, Fences , Walls and Trees

- 30 Before preparation of any groundworks and foundations on site for any phase of development hereby approved, full details of hard landscape works for that phase of the development, which shall include details of all fencing, walling and other boundary treatments, steps, retaining walls and surface finishes, together with the timing for implementation of such works, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented following the substantial completion of the relevant phase of development or occupation of the 25th dwelling in each phase, unless otherwise agreed in writing with the Local Planning Authority, whichever is the sooner and thereafter shall be so retained

Reason To ensure a satisfactory appearance to the development having regard to Policy EN27 of the adopted Wealden Local Plan.

- 31 Before preparation of any groundworks and foundations on site for the development hereby approved, a phased scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. These details shall include indications of all existing trees and hedgerows on the land, including those to be retained together with measures for their protection which shall comply in full with British Standard 5837:2005, "Trees in Relation to Construction" in the course of the development, together with a scheme for the subsequent maintenance of any trees, shrubs and hedges retained on the site and any proposed to be planted or translocated as part of the approved landscaping scheme. Soft landscape details shall include planting plans, written specifications, schedules of plants - noting species (which should be indigenous), planting sizes and proposed density.

All planting, seeding and/or turfing comprised in the approved details of landscaping for each phase shall be carried out in the first planting and seeding seasons following the first occupation of the building(s) or the substantial completion of the development within each phase whichever is the sooner. Any trees, shrubs, hedges or plants which within a period of five years from the completion of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason

To protect and enhance the visual amenities of the area and in order to secure a satisfactory standard of development, and preserve trees and hedges on the

site in the interests of this dual amenity and the character of the area having regard to Policies EN14, EN12 and EN27 of the adopted Wealden Local Plan

- 32 No trees and/or hedgerows on the site unless dead, dying or dangerous shall be felled, topped, lopped or destroyed without the consent in writing of the Local Planning Authority. Furthermore, the following work shall not be carried out within the approved protection zone of any tree or hedgerow, except with the consent of the Local Planning Authority:
- A. Levels shall not be raised or lowered in relation to the existing ground level within the approved protection zone of the tree or hedgerow.
 - B. No roots shall be cut, trenches dug or soil removed within the approved protection zone of the tree or hedgerow.
 - C. No buildings, roads or other engineering operations shall be constructed or carried out within the approved protection zone of the tree or hedgerow.
 - D. No fires shall be lit within the approved protection zone or in a position where the flames could extend to within 5 m of the foliage, branches or trunk of the tree or hedgerow as per the requirements of British Standard 5837:2005, 'Trees in Relation to Construction'.
 - E. No vehicles should be driven over the area within the approved protection zone of the tree or hedgerow.
 - F. No materials or equipment to be stored within a minimum distance of 10 m from the tree or hedgerow or within the approved protection zone of the tree or hedgerow as per the requirements of British Standard 5837:2005, 'Trees in Relation to Construction'.

Reason To preserve trees on the site in the interests of visual amenity and the character of the area, having regard to Policy EN12 of the adopted Wealden Local Plan.

- 33 No development shall take place until there has been submitted to, and approved by the Local Planning Authority in writing, a plan to show the location and/roots, depths and construction details of all services to be provided (including all utilities, drainage and any private connections) in relation to the existing trees on site having regard to the requirements of British Standard 5837:2005, 'Trees in Relation to Construction' and the National Jointed Utilities Guidance Note No. 10 (NJUG10).

Reason To minimise any impact from service trenching existing trees, having regard to Policy EN12 of the adopted Wealden Local Plan.

- 34 No development shall take place until details of earthworks have been submitted to and approved in writing by the Local Planning Authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform. The development shall be carried out in accordance with the approved details.

Reason

To ensure a satisfactory landform on the interests of visual amenity within the locality in accordance with Policies EN14 and EN27 of the adopted Wealden Local Plan

- 35 For each phase of development, a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for landscaped areas, other than small privately owned, domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of any of the development hereby permitted within that phase and the landscape management shall be carried out in accordance with the approved plan over the period specified.

Reason

To ensure a satisfactory maintenance and management of the landscaped areas in accordance with Policies EN14 and EN27 of the adopted Wealden Local Plan.

Floodlighting and Materials

- 36 During the construction phases no floodlighting or other external means of illumination of the site shall be provided, installed or operated at the site, except in accordance with a detailed scheme which shall have been submitted to and approved in writing by the Local Planning Authority.

Reason

To preserve the rural and residential amenities of this part of the Low Weald Countryside Area having regard to Policies EN8 and EN27 of the adopted Wealden Local Plan and to safeguard the interests of wildlife

Commercial Area

- 37 No power driven machinery shall be used or operated within the commercial part of the development hereby approved, before 08:00 hours or after 18:00 hours on weekdays, before 08:00 hours or after 13:00 hours on Saturdays, or at any time on Sundays or public holidays except with the prior written approval of the Local Planning Authority.

Reason:

To protect the residential amenities of the locality, having regard to Policy EN27 of the Wealden Local Plan and Policy BE1 of the Non Statutory Wealden Local Plan.

- 38 No deliveries related to the B1(a) uses hereby permitted shall be taken at or despatched from the site outside the following times: 0700 to 1800 on weekdays and 0700 to 1300 on Saturdays, nor at any time on Sundays, Bank or Public Holidays.

Reason:

To preserve the residential amenities of the adjoining properties and to maintain the characteristics of the locality, having regard to Policy EN27 of the Wealden Local Plan and Policy BE1 of Non Statutory Wealden Local Plan Interim Guide for Development Control (2005)

Ecology

- 39 No development shall commence for each phase of the development until details of ecological enhancements have been submitted to and approved in writing by the Local Planning Authority. These details shall include:
- 1) appropriate ecological enhancements;
 - 2) compensatory habitat creation;
 - 3) measures specifically to address retention and enhancement of the site's ecological connectivity through ecological corridors and networks;
 - 4) a scheme for human access restrictions to the retained and created habitats to include access control measures;
 - 5) a detailed Landscape and Biodiversity Management Plan for ongoing habitat/landscape management of the site.
- Thereafter, the scheme shall be completed in accordance with the approved plans.

Reason

To protect features of recognised nature conservation importance having regard to Policy NE 14 of the Non -statutory Wealden Local Plan, and in accordance with the Statement of Common Ground on Ecology dated January 2008.

- 40 No development shall commence until details of the alignment and construction methods of the proposed footpath and cycleway has been submitted to and approved in writing by the Local Planning Authority. These details shall include appropriate scale maps of vegetation (tree, shrub and ground flora), and other features of ecological value, within the woodland in the western part of the site. Thereafter, the scheme shall be completed in accordance with the approved plans.

Reason

To enable direct sustainable access links without unduly disturbing wildlife having regard to Policy NE 14 of the Non -statutory Wealden Local Plan,

- 41 No development shall commence until a detailed ecological monitoring strategy has been submitted to and approved in writing by the Local Planning Authority. Thereafter, ecological monitoring shall be undertaken in accordance with the approved strategy.

Reason

To protect features of recognised nature conservation importance having regard to Policy NE 14 of the Non -statutory Wealden Local Plan, and in accordance with the Statement of Common Ground on Ecology dated January 2008.

Archaeology

- 42 No development shall take place until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Local Planning Authority.

Reason The development is likely to disturb items of archaeological interests

Noise

- 43 Before the first occupation of any of the dwellings hereby permitted a scheme for the sound insulation of all dwellings to be sited within 100 metres from boundary of the existing commercial area, which is surrounded by the application site, shall be submitted to and approved in writing by the Local Planning Authority and the works completed in accordance with the approved details and thereafter so retained.

Reason:

In the interests of the residential amenities of future occupants of the development and to enable the Local Planning Authority to exercise control within the area where the Statement of Common Ground on Noise indicates that "complaints would be likely from time to time" due to activities within the commercial area.

Reserved Matters and Time Limits

1. Details of the access, siting, appearance, landscaping, layout, scale, and phasing (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.

Reason

To meet the requirements of Article 4 of the Town and Country Planning General Development Procedure Order 1995 (as amended)

- 2 Details of road access and pedestrian and cycle access connecting the first development phase to Bird-in-Eye Hill, to satisfy the above condition shall be substantially in accordance with Drawing 2008.954.032 Revision H at Annexe 4 of the Statement of Common Ground on Transport and Highway Issues dated 1st July 2008

Note: in the event of both Bird in Eye sites being consented, reference should also be made to Drawing 2008.954.073 Revision B

Reason

In the interests of highway safety and to ensure the optimum location for sustainable modes of transport in accordance with policies EN1 and TR3 of the Adopted Wealden Local Plan

- 3 Unless otherwise agreed in writing by the Local Planning Authority, the pedestrian cycle and access routes referred to above shall be implemented in full in accordance with the approved plans before the occupation of the first dwelling

Reason

To encourage the early use by residents of sustainable methods of transport

- 4 Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.

Reason

To meet the requirements of Section 92 of the Town and Country Planning act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

- 5 The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

Reason:

To meet the requirements of Section 92 of the Town and Country Planning act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

Form of Development

- 6 The details referred to in the above conditions shall have due regard to the Master Plan (JJG.U2SK04.) submitted with the outline application.

Reason

To ensure reasonable levels of consistency with the scheme subject to environmental analysis

- 7 No work shall be carried out on site for the development hereby approved, until detailed drawings for each phase of the development, have been submitted to and approved in writing by the Local Planning Authority showing existing and proposed levels and contours of the development site. The development shall be carried out in accordance with the approved scheme unless the Local Planning Authority gives its written consent to any variation.

Reason:

To enable satisfactory control of development on this sloping site and to ensure a satisfactory landform in the interests of visual and residential amenities in accordance with Policy EN27 of the adopted Wealden Local Plan

Operational

- 8 No work shall be carried out on site until full written details for a Code of Construction Practice has been submitted to and approved in writing by the Local Planning Authority. The Code of Construction Practice should detail good practice measures for site working to mitigate potential impacts from construction and shall be implemented throughout the period of work on site.

Reason:

In the interests of and for the safety of persons and vehicles on the site and/or adjoining road and to minimise loss of amenity to adjoining properties having regard to Policies EN27 and TR3 of the adopted Wealden Local Plan.

- 9 No work shall be carried out on the site until provision has been made available within the site, in accordance with details to be approved in writing by the Local Planning Authority, for all temporary contractors buildings, plant, vehicles and stacks of materials associated with the development and such provision shall be retained and used for those purposes throughout the period of work on the site.

Reason

In the interests of, and for the safety of, persons and vehicles using the premises and/or the adjoining road and in order to secure a satisfactory standard of development, having regard to Policy EN27 of the adopted Wealden Local Plan.

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- 10 All rights of way, way marking and furniture shall be retained both during and after the construction period, to the satisfaction of the Local Planning Authority.

Reason:

For the protection of public amenity and safety, having regard to Policy EN27 of the adopted Wealden Local Plan.

Optimising Use of Resources/ Sustainability/ Recycling

- 11 No work shall be carried out on site until a detailed management plan for reducing construction waste during the building process in the form of site management, waste management and project design and planning has been submitted to and approved in writing by the Local Planning Authority. The approved waste management plan shall be implemented throughout the period of work on site.

Reason

In the interests of sustainability having regard to Policy EN1 of the adopted Wealden Local Plan.

- 12 Before preparation of any groundworks or foundations for the development, hereby approved, written details of measures for energy and water conservation within the development shall be submitted to and agreed in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Reason

To promote sustainable building design having regard to Policy EN1 of the adopted Wealden Local Plan.

- 13 No development approved by this permission shall be commenced until details of the siting and form of means for the disposal of refuse, which shall also include facilities for recycling to be provided on the site, shall be submitted to and agreed in writing by the Local Planning Authority. The approved details shall be implemented to the satisfaction of the Local Planning Authority and that thereafter so retained.

Reason:

To preserve the residential and visual amenities of the locality, having regard to Policy EN27 of the adopted Wealden Local Plan.

14. Prior to commencement of each phase of the development, details of predicted energy use of the development and the generation of on-site renewable energy shall be submitted and approved by the Local Planning Authority.

These details will demonstrate how energy efficiency is being addressed, including benchmark data, and show the on-site measures to be taken to produce a minimum of 10% of the total energy requirements of the new development by means of renewable energy sources. Such details as may be approved shall be implemented prior to the first occupation of the dwelling to which it relates.

Reason

In accordance with the principles of PPS1 and Policy EN1 of the Adopted Local Plan.

Drainage / Flood Protection / Contamination

- 15 No development approved by this permission shall be commenced until details of proposed flood risk mitigation works have been submitted to and approved by the Local Planning Authority. The scheme shall be constructed in accordance with the approved details.

Reason

To ensure that the development is subject to minimum risk of flooding ,and to comply with the recommendations in the Flood Risk Assessment (FRA) paragraph 9.24 and having regard to Policy CS2 of the adopted Wealden Local

- 16 No development approved by this permission shall be commenced until full details for the disposal of foul and surface water drainage from the development or within each phase of the development, have been submitted to and approved in writing by the Local Planning Authority. The approved drainage works within each phase shall be completed prior to the completion of occupation of any dwelling within the relevant phase whichever is the sooner.

Reason

In order to secure a satisfactory standard of development, and prevent pollution of controlled waters and the increased risk of flooding having regard to Policies EN4 and CS2 of the adopted Wealden Local Plan.

- 17 Prior to the commencement of any development, a scheme for the provision and implementation of a sustainable surface water drainage system (Suds), shall be submitted to and agreed in writing with the Local Planning Authority. Unless it can be satisfactorily demonstrated that such a scheme cannot be provided on site. The works / scheme shall be constructed and completed in accordance with the plans and timetable approved by the Local Planning Authority.

Reason:

To reduce the risk of flooding by ensuring a satisfactory drainage system, to comply with the recommendations of the applicant's Flood Risk Assessment, (FRA) and to prevent pollution of controlled waters by ensuring the provision of a satisfactory means of surface water disposal in accordance with Policy CS2 of the adopted Wealden Local Plan

- 18 If during development any visibly contaminated or odorous material not previously identified is found to be present at the site, this must be investigated. Local Planning Authority must be informed immediately of the nature and degree of contamination present. The developer shall submit a Method Statement, which must detail how this unsuspected contamination shall be dealt with.

Reason:

To ensure that the development complies with approved details in the interest of protection of Controlled Waters.

- 19 Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through trapped gullies or appropriate SUDS treatment feature with an overall capacity compatible with the site being drained.

Reason: To prevent pollution of controlled waters by ensuring the provision of a satisfactory means of surface water disposal.

Highways / Parking / Garaging

- 20 Before preparation of any groundworks or foundations for each phase of the development, detailed plans including levels, sections and constructional details of the proposed roads, footpaths, surface water drainage, foul sewers, outfall disposal and street lighting to be provided shall be submitted to the Local Planning Authority and be subject to their approval, and such work as approved to be carried out at the time of the development and thereafter so retained.

Reason:

In the interests of and for the safety of persons and vehicles using the site and the adjoining roads, in accordance with policy TR3 of the Approved Local Plan

- 21 Before preparation of any groundworks or foundations for each phase of the development, the access required to serve that development shall be completed to base course level, together with the surface water and foul sewers to the approval of the Local Planning Authority in consultation with the Highway Authority.

Reason:

In the interests of highway safety and the amenity of the locality having regard to Policy TR3 of the adopted Wealden Local Plan.

- 22 No development shall take place for each phase of the development, until details of parking facilities (and turning spaces where appropriate), to be provided within the site have been submitted and approved in writing by the Local Planning Authority; such details to show means of access, size, siting (indicating location of disabled person's parking), surface treatment, method of delineation of parking on site, construction details, levels and surface water drainage. The parking and turning areas shall be laid out in accordance with the approved details prior to the occupation of the associated dwellings and thereafter retained in accordance with the approved details.

Reason

To ensure adequate and satisfactory standard of parking provision within the development having regard to Policies EN27 and TR16 of the adopted Wealden Local Plan.

- 23 The garage/parking areas shall be used solely for ancillary domestic storage and/or vehicle parking purposes incidental to the occupation and enjoyment of the dwelling units to which they serve and shall not be used for nor in connection with any commercial trade or business purposes and shall not be converted into habitable accommodation, including domestic workshop, study, games room and similar uses, without the prior written consent of the Local Planning Authority.

Reason

To protect the visual and residential amenities of the site and insure the retention of parking provision, having regard to Policies EN27 and TR16 of the adopted Wealden Local Plan.

Open Space and Play Areas

- 24 Before preparation of any groundworks or foundations for each phase of the development, details of the amenity open space provision (including the open area west of Bird in Eye Farm and land adjoining site boundaries), shall be submitted to and approved in writing by the Local Planning Authority for that phase. Such details shall include grass seeding/turfing, planting, construction of footpaths and installation of all necessary boundary treatments, equipment and street furniture. The approved scheme shall be fully implemented during the first planting season following the substantial completion of the relevant phase of development or occupation of the 25th dwelling in each phase, whichever is the sooner, unless otherwise agreed in writing with the Local Planning Authority, and thereafter shall be so retained for the purpose of amenity open space only.

Reason

In the interests of ensuring that sufficient amenity space is provided on the development site for the future occupiers of the development in a reasonably timely manner having regard to Policies LR1 and LR4 of the adopted Wealden Local Plan.

- 25 Before preparation of any groundworks or foundations for each phase of the development, full details of play areas (including grass seeding/turfing, planting, fencing, safety surfacing, play equipment, seats, litter bins and lighting), and details of the timing of implementation of such works, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented following the substantial completion of the relevant phase of development or occupation of the 25th dwelling in each phase, unless otherwise agreed in writing with the Local Planning Authority, whichever is the sooner and thereafter shall be so retained

Reason:

In the interests of ensuring that sufficient amenity space is provided on the development site for the future occupiers of the development in a reasonably timely manner having regard to Policy LR3 of the adopted Wealden Local Plan.

Landscaping, Fences , Walls and Trees

- 26 Before preparation of any groundworks and foundations on site for any phase of development hereby approved, full details of hard landscape works for that phase of the development, which shall include details of all fencing, walling and other boundary treatments, steps, retaining walls and surface finishes, together with the timing for implementation of such works, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented following the substantial completion of the relevant phase of development or occupation of the 25th dwelling in each phase, unless otherwise agreed in writing with the Local Planning Authority, whichever is the sooner and thereafter shall be so retained

Reason To ensure a satisfactory appearance to the development having regard to Policy EN27 of the adopted Wealden Local Plan.

- 27 Before preparation of any groundworks and foundations on site for the development, a phased scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. These details shall include indications of all existing trees and hedgerows on the land, including those to be retained, together with measures for their protection which shall comply in full with British Standard 5837:2005, "Trees in Relation to Construction" in the course of the development, together with a scheme for the subsequent maintenance of any trees, shrubs and hedges retained on the site and any proposed to be planted, or translocated as part of the approved landscaping scheme. Soft landscape details shall include planting plans, written specifications, schedules of plants - noting species (which should be indigenous), planting sizes and proposed density.

All planting, seeding and/or turfing comprised in the approved, details of landscaping for each phase shall be carried out in the first planting and seeding

seasons following the first occupation of the building(s) or the substantial completion of the development within each phase whichever is the sooner. Any trees, shrubs, hedges or plants which within a period of five years from the completion of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason

To protect and enhance the visual amenities of the area and in order to secure a satisfactory standard of development, and preserve trees and hedges on the site in the interests of this dual amenity and the character of the area having regard to Policies EN14, EN12 and EN27 of the adopted Wealden Local Plan

- 28 No trees and/or hedgerows on the site unless dead or dangerous shall be felled, topped, lopped or destroyed without the consent in writing of the Local Planning Authority. Furthermore, the following work shall not be carried out within the approved protection zone of any tree or hedgerow, except with the consent of the Local Planning Authority:
- G. Levels shall not be raised or lowered in relation to the existing ground level within the approved protection zone of the tree or hedgerow.
 - H. No roots shall be cut, trenches dug or soil removed within the approved protection zone of the tree or hedgerow.
 - I. No buildings, roads or other engineering operations shall be constructed or carried out within the approved protection zone of the tree or hedgerow.
 - J. No fires shall be lit within the approved protection zone or in a position where the flames could extend to within 5 m of the foliage, branches or trunk of the tree or hedgerow as per the requirements of British Standard 5837:2005, 'Trees in Relation to Construction'.
 - K. No vehicles should be driven over the area within the approved protection zone of the tree or hedgerow.
 - L. No materials or equipment to be stored within a minimum distance of 10 m from the tree or hedgerow or within the approved protection zone of the tree or hedgerow as per the requirements of British Standard 5837:2005, 'Trees in Relation to Construction'.

Reason To preserve trees on the site in the interests of visual amenity and the character of the area, having regard to Policy EN12 of the adopted Wealden Local Plan.

- 29 No development shall take place until there has been submitted to, and approved by the Local Planning Authority in writing, at plan to show the location and/roots, depths and construction details of all services to be provided (including all utilities, drainage and any private connections) in relation to the existing trees on site having regard to the requirements of British Standard 5837:2005, 'Trees in Relation to Construction' and the National Jointed Utilities Guidance Note No. 10 (NJUG10).

Reason To minimise any impact from service trenching existing trees, having regard to Policy EN12 of the adopted Wealden Local Plan.

-
- 30 No development shall take place until details of earthworks have been submitted to and approved in writing by the Local Planning Authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform. The development shall be carried out in accordance with the approved details.

Reason

To ensure a satisfactory landform on the interests of visual amenity within the locality in accordance with Policies EN14 and EN27 of the adopted Wealden Local Plan

- 31 For each phase of development, a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for landscaped areas, other than small privately owned, domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of any of the development hereby permitted within that phase and the landscape management shall be carried out in accordance with the approved plan over the period specified.

Reason

To ensure a satisfactory maintenance and management of the landscaped areas in accordance with Policies EN14 and EN27 of the adopted Wealden Local Plan.

Floodlighting and Materials

- 32 During the construction phases, no floodlighting or other external means of illumination of the site shall be provided, installed or operated at the site, except in accordance with a detailed scheme which shall have been submitted to and approved in writing by the Local Planning Authority.

Reason

To preserve the rural and residential amenities of this part of the Low Weald Countryside Area having regard to Policies EN8 and EN27 of the adopted Wealden Local Plan and to safeguard the interests of wildlife

Ecology

- 33 No phase of the development shall take place until up-dated surveys, and where appropriate mitigation strategies prepared, for bats, badgers, dormice, water voles, amphibians, reptiles have been carried out and submitted to and approved by the Local Planning Authority. The mitigation strategies shall be carried out in accordance with approved plans.

Reason

To enable mitigation strategies in response to up to date survey information and in accordance with policy NE14 of the non-statutory Wealden Local Plan

-
- 34 No development shall commence until details of ecological enhancements have been submitted and approved in writing by the Local Planning Authority. These details shall include
- (i) Ecological enhancements incorporated into any SUDS scheme which is included within the details
 - (ii) Measures to facilitate the migration of toads across the site
 - (iii) Compensatory Habitat creation and landscape planting
 - (iv) Measures to address connectivity through ecological corridors and networks
 - (v) A scheme for human access control measures
 - (vi) A detailed management plan for the ongoing habitat/landscape management of the site.

Thereafter the scheme shall be completed in accordance with the approved plans

Reason

In the interests of the ecology of the area in accordance with policy NE14 of the non-statutory Wealden Local Plan

- 35 No phase of the development shall commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include :
- (i) Method statements detailing how environmental impacts will be prevented during construction (eg temporary fencing around retained habitats, presence of qualified ecologist when working in sensitive areas)
 - (ii) Full details of construction site drainage and treatment and attenuation of run-off, designed to prevent pollution and sedimentation of any watercourse or wetland during construction.

Thereafter the scheme shall be completed in accordance with the approved plans.

Reason

In the ecological interests of the locality and in accordance with policy NE14 of the non-statutory Wealden Local Plan

- 36 No development shall commence until the buffer zones for all areas of woodland and retained hedgerows both within and adjacent to site boundaries have been submitted to and approved in writing by the Local Planning Authority. These details shall include
- (i) planting and seeding details

-
- (ii) measures to protect these features during construction
 - (iii) a plan showing the width of buffer zones

The width of the buffer zones shall be in general accordance with the Illustrative Master Plan submitted with the planning application

Reason:

To protect Ancient Woodland and species-rich hedgerow which are of recognised nature conservation importance having regard to Policy NE 14 of the Non -statutory Wealden Local Plan,.

Archaeology

- 37 No development shall take place until the developer has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Local Planning Authority.

Reason The development is likely to disturb items of archaeological interest.

MASTERPLAN PROPOSAL

4.2 ILLUSTRATIVE MASTERPLAN

The Development is structured by an interconnected network of streets which ensures maximum permeability throughout. Streets are oriented to provide both physical and visual connectivity to the square and other public space areas, and visual links which penetrate through development to the countryside beyond. A principally radiating arrangement of streets and blocks also permits buildings to maximise passive solar gain. Block dimensions are designed in some cases to accommodate mid-block parking courts and plot sizes suitable for a range of building types.

The woodlands along the west and south boundaries provide a robust landscape structure for the set-piece buildings and the continuous built edge of the development.



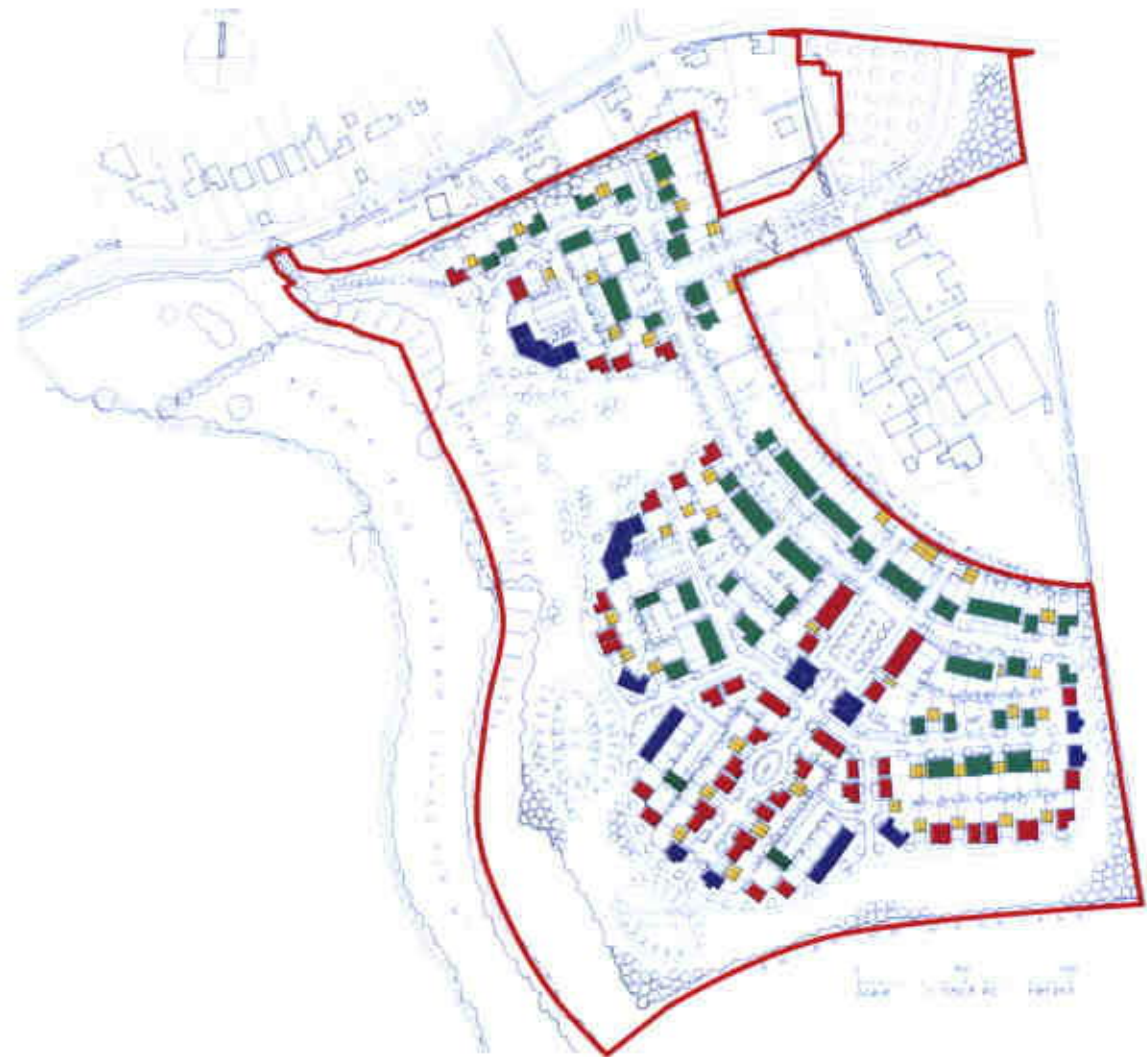
JOHN THOMPSON & PARTNERS

MASTERPLAN PROPOSAL

4.3 STOREY HEIGHTS

- 1 Storey
- 2 Storey
- 2.5 Storey
- 3 Storey

Varying building heights will be used to create diversity and interesting roofscapes that will be used to relate well to the general pattern of buildings in the existing neighbourhood.



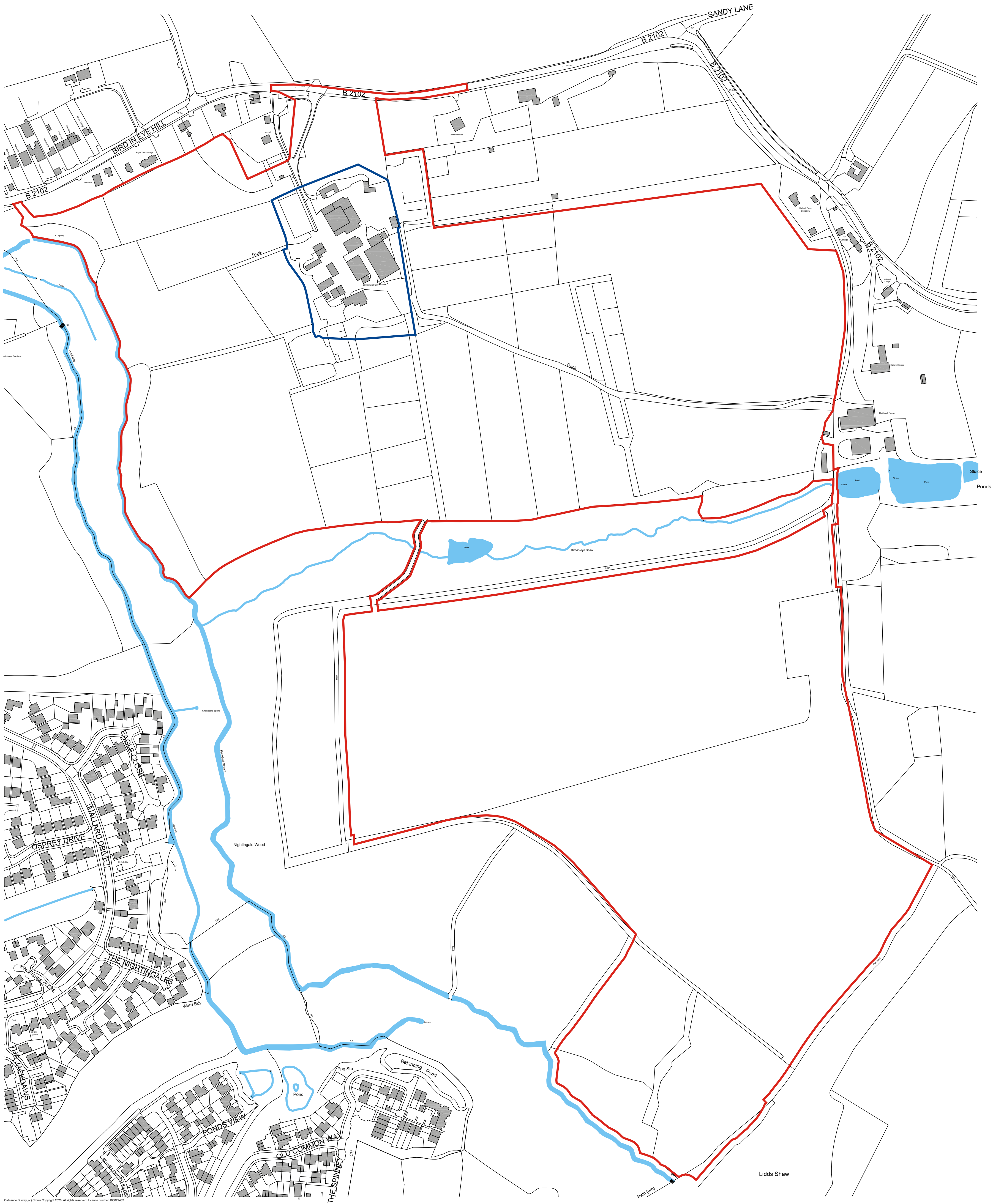
MASTERPLAN PROPOSAL

4.4 MOVEMENT ANALYSIS

-  Emergency vehicle access and pedestrian link to Framfield Road
-  Local vehicular routes
-  Pedestrian / cycle only routes
-  Main parking zones

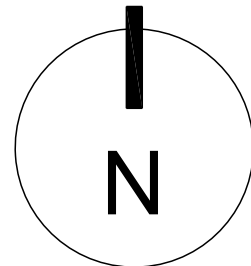
All parking courts are overlooked by adjacent housing. In some courts studios over parking are provided to give security.





KEY

- Application Site Boundary
- Area of land retained for Bird in Eye Farm



Applicants:
Croudace Homes Ltd and Mr. & Mrs. Berry

Croudace
HOMES.CO.UK



Paul Brown RIBA Chartered Architect
14 Weymede, Green Lane, Byfleet, Surrey, KT14 7DG
T: 01932 349946 M: 07443 417 952

Land at Bird in Eye Farm, South of Bird in Eye Hill,

UCKFIELD

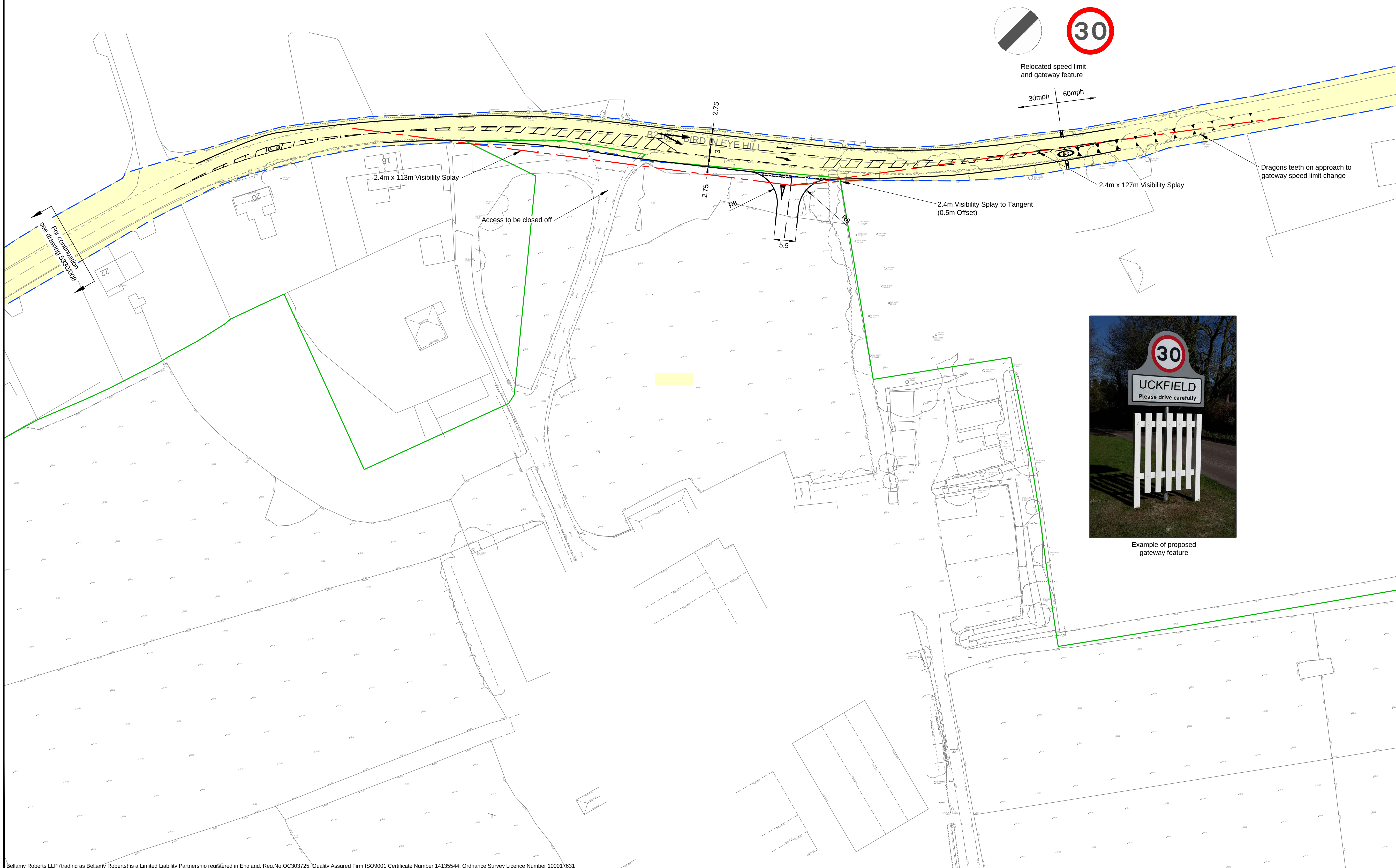
Rev: L - 27/04/2021 Red line revised around Hallwell Farm
Rev: K - 22/04/2021 Joint applicants names added. Title block amended to suit.
Rev: J - 01/03/2021 Red line revised around Hallwell Farm area.
Rev: H - 24/02/2021 Red line revised around eastern pond area.
Rev: G - DRAFT 8 17/02/2021 Easement through Ancient Woodland reduced from 10 to 6M overall.
Rev: F - DRAFT 7 21/10/2020 Red line around Hallwell Farm revised adjacent pond and now follows a straight line through the courtyard.
Rev: E - DRAFT 6 18/10/2020 Red line moved to go through centre of Hallwell Farm courtyard.
Rev: D - DRAFT 5 09/10/2020 Access strip to Hallwell Farm bungalow and strip around southern field dimensioned at 6M wide.
Rev: C - DRAFT 4 08/10/2020 Access strip to Hallwell Farm bungalow added.
Rev: B - DRAFT 3 07/10/2020 Red line excludes access strip to Hallwell Farm bungalow. Ancient woodland omitted from red line boundary except the 10m footpath link easement. Red line now includes Hallwell Farm courtyard and a 6M strip around the southern field.
Rev: A - DRAFT 2 20/05/2020 Drawing date revised.

1:2000 @ A1 0 20 40 60 80 100 Metres

Site Location Plan

Ref: PRB/BIE/PA1L

May 2020



Notes

Do not scale this drawing

— — — — Highway Boundary

— Site Boundary

PREVIOUS	H	Design Revised		3CB		MT
	G	Taper revised to 1:25 on RTL		3CB	26/09/21	MT
	F	AMENDMENT NOTE		3CB	07/10/22	MT
	E	AMENDMENT NOTE		3CB	06/06/21	MT
	D	AMENDMENT NOTE		3CB	24/03/22	MT
	C	AMENDMENT NOTE		ARM	07/03/22	MT
	B	AMENDMENT NOTE		ARM	02/03/22	MT
	A	AMENDMENT NOTE		ARM	08/02/22	MT
	AMENDMENT			DRN	DATE	CHK



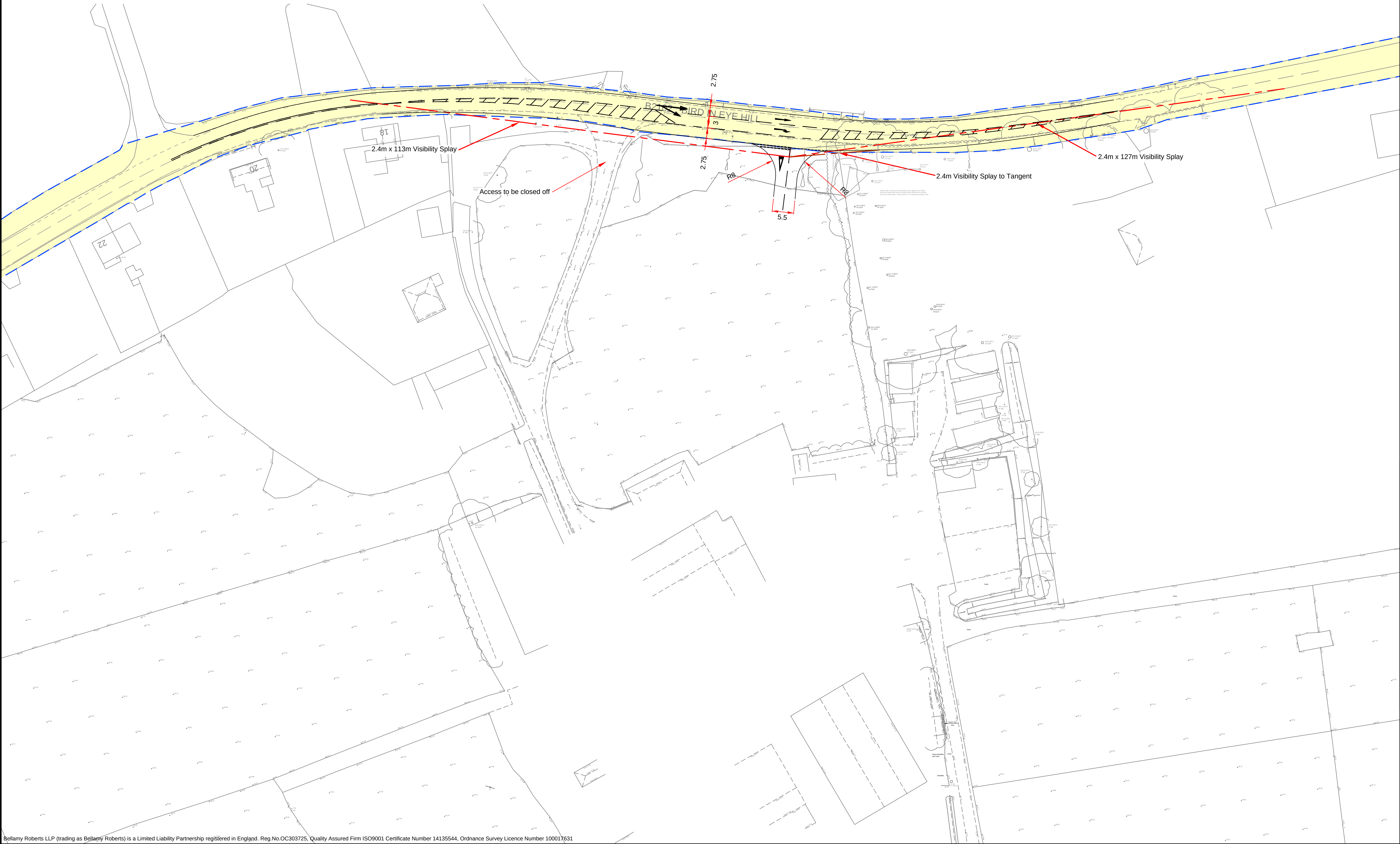
Bellamy Roberts
Clover House
Western Lane
Odiham
Hampshire, RG29 1TU
Tel: 01256 703355
Email: info@bellamyroberts.co.uk

CLIENT
Croudance Homes Ltd.

PROJECT	Bird in Eye, Uckfield
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TITLE	Proposed Access - Right Turn Lane
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DRAWN BY ARM		DESIGN BY ARM	CHK BY MT
DATE 02/02/22	DRAWING No. 5330 / 021		REV No. H
SCALE 1:1000 @ A3			



Notes

- Do not scale this drawing
- Highway Boundary
- Site Boundary

K	Design Revised	MB	MT
J	Design Revised	MB	MT
H	Design Revised	JCB	MT
G	Taper revised to 1:25 on RTL	JCB	MT
F	AMENDMENT NOTE	JCB	MT
E	AMENDMENT NOTE	JCB	MT
D	AMENDMENT NOTE	JCB	MT
C	AMENDMENT NOTE	ARM	MT
B	AMENDMENT NOTE	ARM	MT
A	AMENDMENT NOTE	ARM	MT
REVISION	AMENDMENT	DRN	CHK



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	DESIGN BY ARM	CHK BY MT
DATE 02/02/22	DRAWING NO. 5330 / 021	REV NO. K
SCALE 1:500 @ A1		



- KEY**
- Application Site Boundary
 - Area of land retained for Bird in Eye Farm
 - Area of land for SANG (part only shown)
 - Ancient Woodland
 - Ancient Woodland buffer - 15M
 - Existing Hedges with 5M buffer zone
 - Existing watercourses
 - Existing overhead electricity cables
 - Location of Listed Oast house
 - Proposed main site access
 - Proposed Visibility Splays
 - Proposed pedestrian/cycle access to connect to existing F.P. network
 - Proposed 5M landscaped buffer to farm & existing adjacent housing
 - Proposed Open Space area
 - Proposed Local Equipped Area of Play
 - Proposed footpath/cycleway
 - Potential informal footpaths within open space
 - Proposed balancing pond
 - Proposed swales
 - New tree planting within Public Realm
 - New hedgerow buffers within Public Realm
 - New trees within garden areas
 - Proposed garden planting

Rev: S 08/09/22 Main entrance alignment revised.
Rev: R 17/02/22 Attenuation basin updated.
Rev: P 16/02/22 Layout revised to respond to Planning and Housing officer comments.
Rev: N 27/04/21 Joint applicant names added. Title block revised.
Rev: M 01/03/21 Red line adjacent Halliwell Farm revised.
Rev: L 24/03/21 Red line & SANG boundary updated. Road adjacent parcels N & P realigned. Parcel B revised to suit amended Lycroft boundary.
Rev: K Draft 10 10/12/20 Flat blocks in parcels B & C revised. Unit numbers change in parcels B, C, F, G & H.
Rev: J Draft 9 18/12/20 Numbers of flats reduced, more housing. Parcels C, F & G.
Rev: I Draft 8 28/06/20 SANG parking increased to 30 units.
Rev: H Draft 7 26/06/20 Latest swale & pond layout added. Existing house accesses revised. House on perimeter changed.
Rev: G Draft 5 19/05/20 First version fully coloured.
Rev: F Draft 6 26/05/20 General updates.
Rev: D Draft 4 07/05/20 Exstg trees added. LEAP revised. Play area removed. Pond updated. Parcel H extended. Parcels QR omitted. Road alignment & boundary amended.
Rev: C Draft 3 17/04/20 Fully revised 282 units. Badger sett & barn owl box added. Swale added.
Rev: B Draft 2 15/04/20 southern SANG parking removed. Lycroft access shown. Farm access added. Eastern farm track added. Play areas removed. SANG track removed.
Rev: A Draft 1 14/04/20 286 units.

Applicants:
Croudace Homes Ltd and Mr. & Mrs. Berry

Croudace
HOMES.CO.UK

R Paul Brown RIBA Chartered Architect
14 Weymede, Green Lane, Byfleet, Surrey, KT14 7DG
T: 01932 349946 M: 07443 417 952

Land at Bird in Eye Farm, South of Bird in Eye Hill, UCKFIELD

Illustrative Site Layout
Ref: PRB/BIE/PA2S
Apr 2020



KEY

Site Boundary - 42.75Ha (excludes the ancient woodland dividing the SANG areas).

Retained Land for Bird in Eye Farm - 1.62Ha

SANGS Land - 26.17Ha

Ancient Woodland and buffer zone within the housing land - 1.69Ha

Residual land for Housing and Open Space - 13.27Ha

Open space within housing land - 4.62Ha

Land for Housing only - 8.65Ha

Applicants:
Croudace Homes Ltd and Mr. & Mrs. Berry

Croudace
HOMES.CO.UK

R Paul Brown RIBA Chartered Architect
14 Weymede, Green Lane, Byfleet, Surrey, KT14 7DG
T: 01932 349946 M: 07443 417 952

Land at Bird in Eye Farm, South of Bird in Eye Hill, UCKFIELD

1:2000 @ A1

Rev: E 08/09/22 Main access revised.
Rev: D 04/03/22 Minor amendment to POS boundary.
Rev: C 11/06/21 Red line amended around Hailwell Farm.
Rev: B 27/04/21 Joint applicant names added. Title block revised.
Rev: A 01/04/2021 Areas updated. Draft status removed.

Indicative Parameter/Land Use Plan

Ref: PRB/BIE/PA4E

May 2020

1. Public Open Space

The site benefits from approximately 75% being designed as public open space. Multi-functional green corridors, with new tree planting will break up the development parcels and provide a strong landscape framework for the new housing.

A key feature of the site is the green corridor, with planting designed to frame views of The Oast (Grade II Listed) within the Bird in the Eye Farm complex. A low cut hedgerow on the edge of the farm complex will allow for the building to the seen from within the public open space, while the green corridor will frame the views towards it, respecting its setting and enabling the building to continue to be seen from the higher parts of the town further to the west.



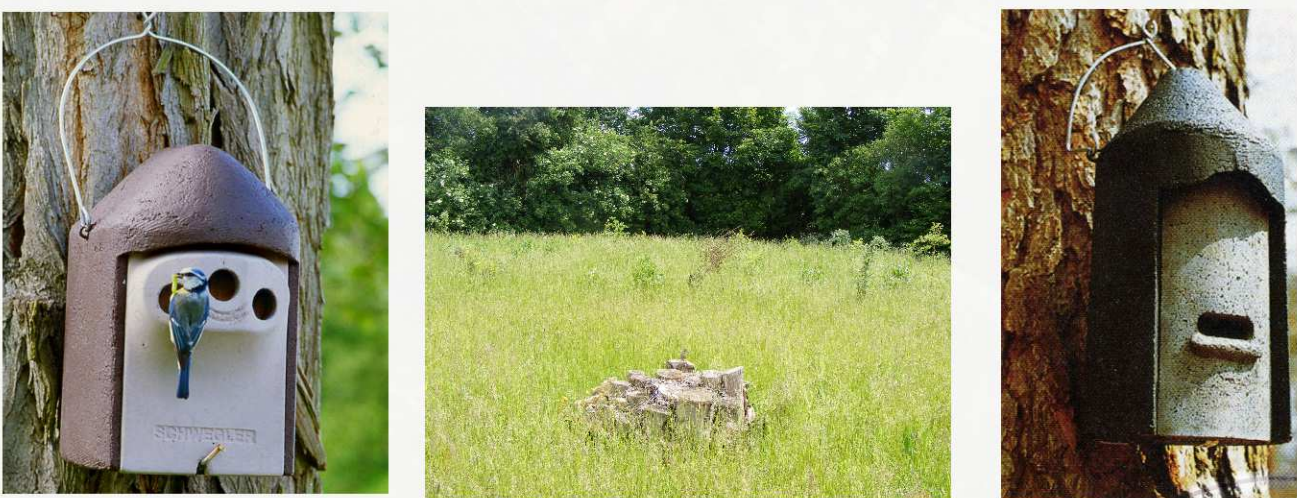
2. Strategic Suitable Alternative Natural Greenspace

A large area of land to the east and south of the new housing will be provided as a Strategic Suitable Alternative Natural Greenspace (SANG) providing a significant recreational resource adjoining the site and for the wider town. A car park within the area will allow for dogs to be off leads from the point they leave the car. A 2.7km circular walking route will be provided with secondary walking routes which link to the main one, offering users opportunities to vary their routes. The primary walking route will connect to public footpath Framfield 65b, which extends along the outside of the south eastern boundary of the Strategic SANG, opening the opportunity for access to the wider footpath network and longer walks. Planting within the Strategic SANG, including areas of woodland, trees and wildflowers, will draw the eye and add to the experience of the routes through the seasons. This new planting, as well as the establishment of a wildlife pond, will offer further biodiversity benefits and habitat creation.



3. Biodiversity Enhancements

The Site provides significant scope for a range of biodiversity enhancements to be delivered alongside the new development and Strategic SANG. New woodland and tree planting will strengthen existing habitat and maintain the ecological functionality of these features for dormice and foraging bats which have been recorded within the Site. New areas of wildflower planting will diversify the existing range of flora and provide new habitat for reptiles and invertebrates. In addition, the inclusion of dormouse nest boxes, bat boxes, bird boxes and the creation of log piles for reptiles will provide further opportunities for these species across the Site.



Consented Outline Application
WD/2010/2874/FE
146 dwellings and associated infrastructure

4. Retained Woodland and Trees

The site benefits from woodland and trees of high arboricultural and landscape quality, which are located on the boundaries. The vast majority of these can be protected, with some enhancements to provide further structure to the site.

Bird in the Eye Shaw, which bisects the site is a significant landscape feature, and will provide a mature backdrop to the development, as well as a sense of continuity, and of place. In addition, the woodland on the boundaries of the southern part of the SANG, including Nightingale Wood, will separate the walking routes from the new housing to the north, and indeed from the existing town to the west. Both Bird in the Eye Shaw and Nightingale Wood are designated as Ancient Woodland, and woodland margin planting and setting the development well back from the edge of Bird in the Eye Shaw will ensure their long term protection.



5. New Tree and Hedgerow Planting

Extensive native tree and hedgerow planting to be undertaken within the public open space to complement the well-wooded landscape character of the area and add to its wider green infrastructure. This will also provide opportunities for ecological enhancements.

Woodland margin planting on the northern edge of Bird in the Eye Shaw (Ancient Woodland) will provide planted protection to the woodland linking to the ecological corridors through the public open space of the development.

Street trees will be planted in the verges along the roads, and in the pocket parks to bring the benefits of green infrastructure into the centre of the development, in the form of improving air quality, providing wildlife refuges and assisting in absorbing surface water run-off.



6. Sustainable Drainage Features

Sustainable drainage basins to be located within the public open space. These basins will be planted with marginal plants which will offer enhanced ecological and habitat benefits.



7. Children's Play Provision

A LEAP (Locally Equipped Area for Play) will be located within public open space positioned centrally within the proposed residential area. This will allow easy access for residents. The LEAP will be designed in a 'rural style', incorporating timber elements of natural play befitting the settlement edge location of the Site. It will predominantly be aimed at younger children (up to 8 years) and will provide a range of play experiences and opportunities.



Proposed	Existing
Application boundary	Existing trees / vegetation
Structural Tree Planting Mix	Trees / vegetation removed
Woodland Margin Planting Mix	Existing public footpath
Thicket Mix	
Proposed Street / POS Tree	
Ornamental tree	
Native hedge planting	
Ornamental shrub / herbaceous ornamental grass planting	
Wildflower and marginal planting in attenuation basin	
Amenity grass	
Longer grass	
Wildflower meadow	
Natural Succession	
Wildlife Pond	
Recreational footways	
Proposed cycleway	
Play areas - LEAP	
Rustic Post and Rail Fencing	
Timber seating	
Dog waste bin	

Strategic SANG walking routes
Primary walking route within mown grass paths
Secondary walking route with mown grass paths

Rev	Date	By	Description
M	12/09/22	CC	Amended man access
K	07/05/21	AS	Updated Comments from Land Trust
J	01/06/21	AS	Updated Comments from Land Trust
H	06/04/21	SP	Amended site boundary
G	02/03/21	AJ	Amended to new site boundary
F	22/02/21	AJ	Amended to new layout
E	26/09/20	PH	Amended to learn comments
D	21/07/20	PH	Amended to match layout
C	30/05/20	PH	Amended to match layout
A	30/05/20	PH	Amended to match layout

CSA
environmental
Dives Barn, High Street,
Ashwell, Hertfordshire SG7 5NT

01442 743447
ashwell@csaenvironmental.co.uk
csaenvironmental.co.uk

Project: Bird in the Eye Farm, Uckfield

Title: Landscape Strategy & SANG Design

Client: Croudace Homes Ltd.

Scale: 1:1250 @ A0
Date: September 2022
Drawing No: CSA/2446/114

Drawn: CC
Checked: CA
Rev: M



**Easter Term
[2017] UKSC 37**

*On appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and
[2015] EWHC 410 (Admin)*

JUDGMENT

**Suffolk Coastal District Council (Appellant) v
Hopkins Homes Ltd and another (Respondents)
Richborough Estates Partnership LLP and another
(Respondents) v Cheshire East Borough Council
(Appellant)**

before

**Lord Neuberger, President
Lord Clarke
Lord Carnwath
Lord Hodge
Lord Gill**

JUDGMENT GIVEN ON

10 May 2017

Heard on 22 and 23 February 2017

*Appellants (Cheshire and
Suffolk)*

Martin Kingston QC
Hugh Richards
Jonathan Clay
Dr Ashley Bowes
(Instructed by Sharpe
Pritchard LLP)

Respondent (Hopkins)

Christopher Lockhart-
Mummery QC
Zack Simons

(Instructed by DLA Piper
UK LLP (Birmingham))

Respondent (Richborough)

Christopher Young
James Corbet Burcher
(Instructed by Town Legal
LLP)

Respondent (SSCLG)

Hereward Phillpot QC
Richard Honey
(Instructed by The
Government Legal
Department)

LORD CARNWATH: (with whom Lord Neuberger, Lord Clarke, Lord Hodge and Lord Gill agree)

Introduction

1. The appeals relate to the proper interpretation of paragraph 49 of the National Planning Policy Framework (“NPPF”), which is in these terms:

“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”

2. The Court of Appeal observed that the interpretation of this paragraph had been considered by the Administrative Court on seven separate occasions between October 2013 and April 2015 with varying results. The court had been urged by all counsel “to bring much needed clarity to the meaning of the policy”. Notwithstanding the clarification provided by the impressive judgment of the court (given by Lindblom LJ), controversy remains. The appeals provide the opportunity for this court not only to consider the narrow issues of interpretation of para 49, but to look more broadly at issues concerning the legal status of the NPPF and its relationship with the statutory development plan.

3. Both appeals relate to applications for housing development, one at Yoxford in the administrative area of the Suffolk Coastal District Council (“the Yoxford site”), and the other near Willaston in the area of Cheshire East Borough Council (“the Willaston site”). In the first the council’s refusal of permission was upheld by the inspector on appeal, but his refusal was quashed in the High Court (Supperstone J), and that decision was confirmed by the Court of Appeal. In the second, the council failed to determine the application, and the appeal was allowed by the inspector. The council’s challenge succeeded in the High Court (Lang J), but that decision was reversed by the Court of Appeal, the judgment of the court being given by Lindblom LJ. Both councils appeal to this court.

The statutory provisions

4. The relevant statutory provisions are found in the Town and Country Planning Act 1990 (“the 1990 Act”) and the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”).

Plan-making

5. Part 2 of the 2004 Act deals with “local development”. Each local planning authority in England is required to “keep under review the matters which may be expected to affect the development of their area or the planning of its development” (2004 Act section 13), and to prepare a “local development scheme”, which (inter alia) specifies the local development documents which are to be “development plan documents” (section 15). The authority’s local development documents “must (taken as a whole) set out the authority’s policies (however expressed) relating to the development and use of land in their area” (section 17). “Local development documents” are defined by regulations made under section 17(7). In short they are documents which contain statements as to the development and use of land which the authority wishes to encourage, the allocation of sites for particular types of development, and development management and site allocations policies intended to guide determination of planning applications. Together they comprise the “development plan” or “local plan” for the area (Town and Country Planning (Local Planning) (England) Regulations (SI 2012/767) regulations 5 and 6).

6. In preparing such documents, the authority must have regard (inter alia) to “national policies and advice contained in guidance issued by the Secretary of State” (section 19(2)). Every development plan document must be submitted to the Secretary of State for “independent examination”, one of the purposes being to determine whether it complies with the relevant statutory requirements, including section 19 (section 20(1)(5)(a)). The Secretary of State may, if he thinks that a local development document is “unsatisfactory”, direct the local planning authority to modify the document (section 21). Section 39 gives statutory force to the concept of “sustainable development” (undefined). Any person or body exercising any function under Part 2 in relation to local development documents must exercise it “with the objective of contributing to the achievement of sustainable development”, and for that purpose must have regard to “national policies and advice contained in guidance issued by the Secretary of State ...” An adopted plan may be challenged on legal grounds by application to the High Court made within six weeks of the date of adoption, but not otherwise (section 113). Schedule 8 contained transitional provisions providing generally for a transitional period of three years, after which the plans produced under the previous system ceased to have effect subject to the power of the Secretary of State to “save” specified policies by direction.

Planning applications

7. Provision is made in the 1990 and 2004 Acts for the development plan to be taken into account in the handling of planning applications:

1990 Act section 70(2)

“In dealing with such an application the authority shall have regard to -

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.”

2004 Act section 38(6)

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

Unlike the development plan provisions, these sections contain no specific requirement to have regard to national policy statements issued by the Secretary of State, although it is common ground that such policy statements may where relevant amount to “material considerations”.

8. The principle that the decision-maker should have regard to the development plan so far as material and “any other material considerations” has been part of the planning law since the Town and Country Planning Act 1947. The additional weight given to the development plan by section 38(6) reproduces the effect of a provision first seen in the Planning and Compensation Act 1991 section 54A. In *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, the equivalent provision (section 18A of the Town and Country Planning (Scotland) Act 1972) was described by Lord Hope (p 1450B) as designed to “enhance the status”

of the development plan in the exercise of the planning authority's judgment. Lord Clyde spoke of it as creating "a presumption" that the development plan is to govern the decision, subject to "material considerations", as for example where "a particular policy in the plan can be seen to be outdated and superseded by more recent guidance". However, the section had not touched the well-established distinction between the respective roles of the decision-maker and the court:

"It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker ..." (p 1458)

9. An appeal against a refusal of planning permission lies to the Secretary of State, who is subject to the same duty in respect of the development plan (1990 Act sections 78, 79(4)). Regulations under section 79(6) and Schedule 6 now provide for most categories of appeals, including those here in issue, to be determined, not by the Secretary of State, but by an "appointed person" (normally referred to as a planning inspector). The decision on appeal may be challenged on legal grounds in the High Court (section 288).

The National Planning Policy Framework

10. The Framework (or "NPPF") was published on 27 March 2012. One purpose, in the words of the foreword, was to "(replace) over a thousand pages of national policy with around 50, written simply and clearly", thus "allowing people and communities back into planning". The "Introduction" explains its status under the planning law:

"Planning law 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 must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions. ..."

11. NPPF is divided into three main parts: “Achieving sustainable development” (paragraphs 6 to 149), “Plan-making” (paragraphs 150 to 185) and “Decision-taking” (paragraphs 186 to 207). Paragraph 7 refers to the “three dimensions to sustainable development: economic, social and environmental”. Paragraph 11 begins a group of paragraphs under the heading “the presumption in favour of sustainable development”. Paragraph 12 makes clear that the NPPF “does not change the statutory status of the development plan as the starting point for decision making”. Paragraph 13 describes the NPPF as “guidance for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications”.

12. Paragraph 14, which is important in the present appeals, deals with the “presumption in favour of sustainable development”, which is said to be “at the heart of” the NPPF and which should be seen as “a golden thread running through both plan-making and decision-taking”. It continues:

“For plan-making this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.

For **decision-taking** this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted.”

We were told that the penultimate point (“any adverse impacts ...”) is referred to by practitioners as “the tilted balance”. I am content for convenience to adopt that rubric.

13. Footnote 9 (in the same terms for both parts) gives examples of the “specific policies” referred to:

“For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.”

14. These are said to be examples. Thus the list is not exhaustive. Further, although the footnote refers in terms only to policies in the Framework itself, it is clear in my view that the list is to be read as including the related development plan policies. Paragraph 14 cannot, and is clearly not intended to, detract from the priority given by statute to the development plan, as emphasised in the preceding paragraphs. Indeed, some of the references only make sense on that basis. For example, the reference to “Local Green Space” needs to be read with paragraph 76 dealing with that subject, which envisages local communities being able “through local and neighbourhood plans” to identify for “special protection green areas of particular importance to them”, and so “rule out new development other than in very special circumstances ...”

15. Section 6 (paragraphs 47 to 55) is entitled “Delivering a wide choice of high quality homes”. Paragraph 47 states the primary objective of the section:

“To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in [the NPPF], including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% ... to ensure choice and competition in the market for land. ...;
- identify a supply of specific, developable sites or broad locations for growth, for years six to ten and, where possible, for years 11-15;
- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
- set out their own approach to housing density to reflect local circumstances.”

16. This group of provisions provides the context for paragraph 49, central to these appeals and quoted at the beginning of this judgment; and in particular for the advice that “relevant policies for the supply of housing” should not be considered “up-to-date”, unless the authority can demonstrate a five-year supply of deliverable housing sites.

17. Section 12 is headed “Conserving and enhancing the historic environment” (paragraphs 126 to 141). It includes policies for “designated” and “non-designated” heritage assets, as defined in the glossary. The former cover such assets as World Heritage Sites, Scheduled Monuments and others designated under relevant legislation. A non-designated asset is one “identified as having a degree of significance meriting consideration in planning decisions because of its heritage interest”. Paragraph 135 states:

“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgment will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

“Significance” in this context is defined by the glossary in Annex 2 as meaning “the value of a heritage asset to this and future generations because of its heritage interest”, which may be derived “not only from a heritage asset’s physical presence, but also from its setting”.

18. Annex 1 (“Implementation”) states that policies in the Framework “are material considerations which local planning authorities should take into account from the day of its publication” (paragraph 212); and that, where necessary, plans, should be revised as quickly as possible to take account of the policies “through a partial review or by preparing a new plan” (paragraph 213). However, it also provides that for a transitional period of a year decision-takers “may continue to give full weight to relevant policies adopted since 2004, even if there is a limited degree of conflict with this Framework” (paragraph 214); but that thereafter

“... due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in [the NPPF], the greater the weight that may be given).” (paragraph 215)

NPPF - Legal status and Interpretation

19. The court heard some discussion about the source of the Secretary of State’s power to issue national policy guidance of this kind. The agreed Statement of Facts quoted without comment a statement by Laws LJ (*R (West Berkshire District Council) v Secretary of State for Communities and Local Government* [2016] EWCA Civ 441; [2016] 1 WLR 3923, para 12) that the Secretary of State’s power to formulate and adopt national planning policy is not given by statute, but is “an exercise of the Crown’s common law powers conferred by the royal prerogative.” In the event, following a query from the court, this explanation was not supported by any of the parties at the hearing. Instead it was suggested that his powers derived, expressly or by implication, from the planning Acts which give him overall responsibility for oversight of the planning system (see *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2003] 2 AC 295, paras 140-143 per Lord Clyde). This is reflected both in specific

requirements (such as in section 19(2) of the 2004 Act relating to plan-preparation) and more generally in his power to intervene in many aspects of the planning process, including (by way of call-in) the determination of appeals.

20. In my view this is clearly correct. The modern system of town and country planning is the creature of statute (see *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, 140-141). Even if there had been a pre-existing prerogative power relating to the same subject-matter, it would have been superseded (see *R (Miller) v Secretary of State for Exiting the European Union (Birnie intervening)* [2017] 2 WLR 583, para 48). (It may be of interest to note that the great *Case of Proclamations* (1610) 12 Co Rep 74, which was one of the earliest judicial affirmations of the limits of the prerogative (see *Miller* para 44) was in one sense a planning case; the court rejected the proposition that “the King by his proclamation may prohibit new buildings in and about London ...”.)

21. Although planning inspectors, as persons appointed by the Secretary of State to determine appeals, are not acting as his delegates in any legal sense, but are required to exercise their own independent judgement, they are doing so within the framework of national policy as set by government. It is important, however, in assessing the effect of the Framework, not to overstate the scope of this policy-making role. The Framework itself makes clear that as respects the determination of planning applications (by contrast with plan-making in which it has statutory recognition), it is no more than “guidance” and as such a “material consideration” for the purposes of section 70(2) of the 1990 Act (see *R (Cala Homes (South) Ltd) v Secretary of State for Communities and Local Government* [2011] EWHC 97 (Admin); [2011] 1 P & CR 22, para 50 per Lindblom J). It cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme.

Law and policy

22. The correct approach to the interpretation of a statutory development plan was discussed by this court in *Tesco Stores Ltd v Dundee City Council (ASDA Stores Ltd intervening)* [2012] UKSC 13; 2012 SLT 739. Lord Reed rejected a submission that the meaning of the development plan was a matter to be determined solely by the planning authority, subject to rationality. He said:

“The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it.

It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others ... policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.” (para 18)

He added, however, that such statements should not be construed as if they were statutory or contractual provisions:

“Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780 per Lord Hoffmann) ...” (para 19)

23. In the present appeal these statements were rightly taken as the starting point for consideration of the issues in the case. It was also common ground that policies in the Framework should be approached in the same way as those in a development plan. However, some concerns were expressed by the experienced counsel before us about the over-legalisation of the planning process, as illustrated by the proliferation of case law on paragraph 49 itself (see paras 27ff below). This is particularly unfortunate for what was intended as a simplification of national policy guidance, designed for the lay-reader. Some further comment from this court may therefore be appropriate.

24. In the first place, it is important that the role of the court is not overstated. Lord Reed’s application of the principles in the particular case (para 18) needs to be

read in the context of the relatively specific policy there under consideration. Policy 45 of the local plan provided that new retail developments outside locations already identified in the plan would only be acceptable in accordance with five defined criteria, one of which depended on the absence of any “suitable site” within or linked to the existing centres (para 5). The short point was the meaning of the word “suitable” (para 13): suitable for the development proposed by the applicant, or for meeting the retail deficiencies in the area? It was that question which Lord Reed identified as one of textual interpretation, “logically prior” to the exercise of planning judgment (para 21). As he recognised (see para 19), some policies in the development plan may be expressed in much broader terms, and may not require, nor lend themselves to, the same level of legal analysis.

25. It must be remembered that, whether in a development plan or in a non-statutory statement such as the NPPF, these are statements of policy, not statutory texts, and must be read in that light. Even where there are disputes over interpretation, they may well not be determinative of the outcome. (As will appear, the present can be seen as such a case.) Furthermore, the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly. With the support and guidance of the Planning Inspectorate, they have primary responsibility for resolving disputes between planning authorities, developers and others, over the practical application of the policies, national or local. As I observed in the Court of Appeal (*Wychavon District Council v Secretary of State for Communities and Local Government* [2008] EWCA Civ 692; [2009] PTSR 19, para 43) their position is in some ways analogous to that of expert tribunals, in respect of which the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence (see *Secretary of State for the Home Department v AH (Sudan)* [2007] UKHL 49; [2008] 1 AC 678, para 30 per Lady Hale.)

26. Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies, as in the *Tesco* case. In that exercise the specialist judges of the Planning Court have an important role. However, the judges are entitled to look to applicants, seeking to rely on matters of planning policy in applications to quash planning decisions (at local or appellate level), to distinguish clearly between issues of interpretation of policy, appropriate for judicial analysis, and issues of judgement in the application of that policy; and not to elide the two.

The two appeals

Evolving judicial guidance

27. To understand the reasoning of the two inspectors in the instant cases, it is necessary to set it in the context of the evolving High Court jurisprudence. The decisions in the two appeals were given in July and August 2014 respectively, after inquiries which ended in both cases in June. It is not entirely clear what information was available to the inspectors as to the current state of the High Court jurisprudence on this topic. The Yoxford inspector referred only to *William Davis v Secretary of State for Communities and Local Government* [2013] EWHC 3058 (Admin) (Lang J, 11 October 2013). This seems to have been the first case in which this issue had arisen. One of the grounds of refusal was based on a policy E20 the effect of which was generally to exclude development in a so-called “green wedge” area defined on the proposals map. Lang J recorded an argument for the developer that the policy should have been regarded as a “relevant policy for the supply of housing” under paragraph 49 because “the restriction on development potentially affects housing development”. The judge rejected this argument summarily, saying “policy E20 does not relate to the *supply* of housing and therefore is not covered by paragraph 49” (her emphasis).

28. By the time the two inquiries in the present case ended (June 2014), and at the time of the decisions, it seems that the most recent judicial guidance then available on the interpretation of paragraph 49 was that of Ouseley J in *South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land* [2014] EWHC 573 (Admin) (10 March 2014) (“the *Barwood Land* case”). Ouseley J favoured a wider reading which “examines the degree to which a particular policy generally affects housing numbers, distribution and location in a significant manner”. He thought that the language could not sensibly be given a very narrow meaning because

“This would mean that policies for the provision of housing which were regarded as out of date, nonetheless would be given weight, indirectly but effectively through the operation of their counterpart provisions in policies restrictive of where development should go ...”

He contrasted general policies, such as those protecting “the countryside”, with policies designed to protect specific areas or features “such as gaps between settlements, the particular character of villages or a specific landscape designation, all of which could sensibly exist regardless of the distribution and location of housing or other development.”

29. At that time, it seems to have been assumed that if a policy were deemed to be “out-of-date” under paragraph 49, it was in practice to be given minimal weight, in effect “disapplied” (see eg *Cotswold District Council v Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin), para 72 per Lewis J). In other words, it was treated for the purposes of paragraph 14 as non-policy, in the same way as if the development plan were “absent” or “silent”. On that view, it was clearly important to establish which policies were or were not to be treated as out-of-date in that sense. Later cases (after the date of the present decisions) introduced a greater degree of flexibility, by suggesting that paragraph 14 did not take away the ordinary discretion of the decision-maker to determine the weight to be given even to an “out-of-date” policy; depending, for example, on the extent of the shortfall and the prospect of development coming forward to make it up (see eg *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin), para 71 per Lindblom J). As will be seen, this idea was further developed in Lindblom LJ’s judgment in the present case.

The Yoxford site

30. In September 2013 Suffolk Coastal District Council refused planning permission for a development of 26 houses on land at Old High Road in Yoxford. The applicant, Hopkins Homes Ltd (“Hopkins”), appealed to an inspector appointed by the Secretary of State. He dismissed the appeal in a decision letter dated 15 July 2014, following an inquiry which began in February and ended in June 2014.

31. The statutory development plan for the area comprised the Suffolk Coastal District Local Plan (“SCDLP”) adopted in July 2013, and certain “saved” policies from the previous local plan (“the old Local Plan”) adopted in December 1994. Chapter 3 SCDLP set out a number of “strategic policies”, including:

i) Under the heading “Housing”, Policy SP2 (“Housing numbers and Distribution”) proposed as its “core strategy” to make provision for 7,900 new homes across the district in the period 2010-2027. In addition, “an early review” to be commenced by 2015 was to identify “the full, objectively assessed housing needs” for the district, with proposals to ensure that these were met so far as consistent with the NPPF. A table showed the proposed locations across the district to make up the total of 7,900 homes.

ii) Under the heading “The Spatial Strategy”, Policy SP19 (“Settlement Policy”) identified Yoxford as one of a number of Key Service Centres, which provide “an extensive range of specified facilities”, and where “modest estate-scale development” may be appropriate “within the defined physical limits” (under policy SP27 - “Key and Local Service Centres”). Outside these

settlements (under policy SP 29 - “The Countryside”) there was to be “no development other than in special circumstances”.

iii) The commentary to SP19 (para 4.05) explained that “physical limits boundaries” or “village envelopes” would be drawn up for the larger settlements, but that these limits are “a policy tool” and that where allocations are proposed outside the envelopes, the envelopes would be redrawn to include them.

32. In his report on the examination of the draft SCDLP, the inspector had commented on the adequacy of the housing provision (paras 31-51). He had noted how the proposed figure of 7,590 homes fell short of what was later agreed to be the requirement for the plan period of 11,000 extra homes. He had considered whether to suspend the examination to enable the council to assess the options. He decided not to do so, recognising that there were other sites which might come forward to boost supply, and the advantages of enabling these to be considered “in the context of an up-to-date suite of local development management policies that are consistent with the Framework ...”

33. The “saved” policies from the old plan included:

AP4 (“Parks and gardens of historic or landscape interest”)

“The District Council will encourage the preservation and/or enhancement of parks and gardens of historic and landscape interest and their surroundings. Planning permission for any proposed development will not be granted if it would have a materially adverse impact on their character, features or immediate setting.”

AP13 (“Special Landscape Areas”)

“The valleys and tributaries of (named rivers) and the Parks and Gardens of Historic or Landscape Interest are designated as Special Landscape Areas and shown on the Proposals Map. The District Council will ensure that no development will take place which would be to the material detriment of, or materially detract from, the special landscape quality.”

The appeal site formed part of an area of Historic Parkland (related to an 18th century house known as “Grove Park”) identified by the council in its Supplementary Planning Guidance 6 “Historic Parks and Gardens” (SPG) dated December 1995.

34. In his decision-letter on the planning appeal, the inspector identified the main issues as including: consideration of a five years’ supply of housing land, the principle of development outside the defined village, and the effects of the proposal on the local historic parkland and landscape (para 4). He referred to paragraphs 14 and 49 of the NPPF, which he approached on the basis that it was “very unlikely that a five years’ supply of housing land could now be demonstrated” (paras 5-6). There had been a debate before him whether the recent adoption of the local plan meant that its policies are “automatically up-to-date”, but he read the comments of the examining Inspector on the need for an early review of housing delivery as indicating the advantages of “considering development in the light of other up-to-date policies”, whilst accepting that pending the review “relevant policies for the supply of housing may be considered not to be up-to-date” (para 7).

35. He then considered which policies were “relevant policies for the supply of housing” within the meaning of paragraph 49 (paras 8-9). Policy SP2 “which sets out housing provision for the District” was one such policy and “cannot be considered as up-to-date”. Policy SP15 relating to landscape and townscape “and not specifically to the supply of housing” was not a relevant policy “and so is up-to-date”. For the same reason, policy SP19, which set the settlement hierarchy and showed percentages of total proposed housing for “broad categories of settlements”, but did not suggest figures or percentages for individual settlements, was also seen as up-to-date; as was SP27, which related specifically to Key and Local Service Centres, and sought, among other things, to reinforce their individual character.

36. Of the saved policy AP4 he noted “a degree of conflict” with paragraph 215 of the Framework “due to the absence of a balancing judgement in Policy AP4”, but thought its “broad aim” consistent with the aims of the Framework. He said: “these matters reduce the weight that I attach to Policy AP4, although I shall attach some weight to it”. Similarly, he thought Policy AP13 consistent with the aims of the Framework to “recognise the intrinsic quality of the countryside and promote policies for the conservation and enhancement of the natural environment” (para 10).

37. In relation to the proposal for development outside the defined village limits, he observed that the appeal site was outside the physical limits boundary “as defined in the very recently adopted Local Plan”. He regarded the policy directing development to within the physical limits of the settlement to be “in accordance with

one of the core principles of the Framework, recognising the intrinsic character and beauty of the countryside”. On this aspect he concluded:

“I consider that the appeal site occupies an important position adjacent to the settlement, where Old High Road marks the end of the village and the start to the open countryside. The proposed development would be unacceptable in principle, contrary to the provisions of Policies SP27 and SP29 and contrary to one of the core principles of the Framework.” (paras 13-14)

38. As to its location within a historic parkland, he discussed the quality of the landscape and the impact of the proposal, and concluded:

“20. In relation to the built character and layout of Yoxford and its setting, Old High Road forms a strong and definite boundary to the built development of the village here. I do not agree that the proposal forms an appropriate development site in this respect, but would be seen as an ad-hoc expansion across what would otherwise be seen as the village/countryside boundary and the development site would not be contained to the west by any existing logical boundary.

21. In respect of these matters, the historic parkland forms a non-designated heritage asset, as defined in the Framework and I conclude that the proposal would have an unacceptable effect on the significance of this asset. In relation to local policies, I find that the proposal would be in conflict with the aims of Policies AP4 and AP13 of the old Local Plan ...”

39. Finally, under the heading “The planning balance”, he acknowledged the advantage that the proposal would bring “additional homes, including some affordable, within a District where the supply of homes is a concern”, but said:

“However, I have found significant conflict with policies in the recently adopted Local Plan. I have also found conflict with some saved policies of the old Local Plan and I have sought to balance these negative aspects of the proposal against its benefits. In doing so, I consider that the unacceptable effects of the development are not outweighed by any benefits and means that it cannot be considered as a sustainable form of

development, taking account of its three dimensions as set out at paragraph 7 of the Framework. Therefore, the proposal conflicts with the aims of the Framework.” (paras 31-32)

40. Hopkins challenged the decision in the High Court on the grounds that the inspector had misdirected himself in three respects: in short, as to the interpretation of NPPF paragraph 49; as to the status of the limits boundary to Yoxford; and as to the status of Policy AP4. The Secretary of State conceded that the inspector had misapplied the policy in paragraph 49. Supperstone J referred to the approach of Ouseley J in the *Barwood Land* case, with which he agreed, preferring it to that of Lang J in the *William Davis* case. He accepted the submission for Hopkins that the inspector had erred in thinking that paragraph 49 only applied to “policies dealing with the positive provision of housing”, with the result that his decision had to be quashed (paras 33, 38-41). He held in addition that this inspector had wrongly proceeded on the basis that the village boundary had been defined in the recent local plan, rather than in the earlier plan (para 46); and that he had failed properly to assess the significance of the heritage asset as required by paragraph 135 of the Framework (para 53). On 30 January 2015 Supperstone J quashed the decision. The council’s appeal to the Court of Appeal failed. It now appeals to this court.

The Willaston site

41. The Crewe and Nantwich Replacement Local Plan, adopted on 17 February 2005 (“the adopted RLP”) sought to address the development needs of the Crewe and Nantwich area for the period from 1996 to 2011. Under the 2004 Act, it should have been replaced by a Local Development Framework by 2008. This did not happen. As a consequence, the policies were saved by the Secretary of State by Direction (dated 14 February 2008).

42. Crewe is identified as a location for new housing growth in the emerging Local Plan, which is the subject of an ongoing examination in public and subject to objections, as are some of the proposed housing allocations. At the time of the public inquiry in June 2014, the emerging Local Plan was understood to be over two years from being adopted. Richborough Estates Partnership LLP (“Richborough”) in August 2013 applied to Cheshire East Borough Council for permission for a development of up to 170 houses on land north of Moorfields in Willaston. The council having failed to determine the application within the prescribed period, Richborough appealed. Willaston is a settlement within the defined urban area of Crewe, but for the most part is physically separate from the town. As a consequence there is open land between Willaston and the main built up area of Crewe, within which open land the appeal site lies.

43. In the appeal Cheshire East relied on the adopted RLP, in particular policies NE.2, NE.4, and RES.5:

i) Policy NE.2 (“Open Countryside”) seeks to protect the open countryside from new build development for its own sake, permitting only a very limited amount of small scale development mainly for agricultural, forestry or recreational purposes.

ii) Policy NE.4 (“Green Gap”) relates to areas of open land around Crewe (including the area of the appeal site) identified as needing additional protection “in order to maintain the definition and separation of existing communities”. The policy provides that permission will not be granted for new development, including housing, save for limited exceptions. It has the same inner boundary as NE.2.

iii) Policy RES.5 (“Housing in the open countryside”) permits only very limited forms of residential development in the open countryside, such as agricultural workers’ dwellings.

44. In his decision letter dated 1 August 2014 the inspector allowed the appeal and granted planning permission for up to 146 dwellings. He concluded that Cheshire East was unable to demonstrate the minimum five year supply of housing land required under paragraph 47 of the NPFF. The council appears to have accepted at the inquiry that policy NE.2 was a policy “for the supply of housing”. The inspector thought that the same considerations applied to the other two policies relied on by the council, all of which were therefore relevant policies within paragraph 49, although he acknowledged that policy NE.4 also performed strategic functions in maintaining the separation and definition of settlements and in landscape protection. He noted also that two of the housing sites in the emerging local plan were in designated “green gaps”, which led him to give policy NE.4 reduced weight (paras 31-35).

45. He concluded on this aspect (para 94):

“94. I have concluded that there is not a demonstrable five-year supply of deliverable housing sites (issue (i)). In the light of that, the weight of policies in the extant RLP relevant to the supply of housing is reduced (issue (ii)). That applies in particular to policies NE.2, NE.4 and RES.5 in so far as their extent derives from settlement boundaries that in turn reflect

out-of-date housing requirements, though policy NE.4 also has a wider purpose in maintaining gaps between settlements.”

46. He considered the application of the Green Gap policy, concluding that there would be “no significant harm to the wider functions of the gap in maintaining the definition and separation of these two settlements” (para 95). His overall conclusion was as follows:

“101. I conclude that the proposed development would be sustainable overall, and that the adverse effects of it would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. There are no specific policies in the NPPF that indicate that this development should be restricted. In such circumstances, and where relevant development plan policies are out-of-date, the NPPF indicates that permission should be granted unless material considerations indicate otherwise. There are no further material considerations that do so.”

47. The council’s challenge succeeded before Lang J, who quashed the inspector’s decision by an order dated 25 February 2015. In short, she concluded that the inspector had erred in treating policy NE.4 as a relevant policy under paragraph 49, and in seeking “to divide the policy, so as to apply it in part only” (para 63). Richborough’s appeal was allowed by the Court of Appeal with the result that the permission was restored. The council appeals to this court.

The Court of Appeal’s interpretation

48. Giving the judgment of the court, Lindblom LJ referred to the relevant parts of the NPPF and (at para 21) the three competing interpretations of paragraph 49:

i) *Narrow*: limited to policies dealing only with the numbers and distribution of new housing, and excluding any other policies of the development plan dealing generally with the disposition or restriction of new development in the authority’s area.

ii) *Wider*: including both policies providing positively for the supply of new housing and other policies, or “counterpart” policies, whose effect is to restrain the supply by restricting housing development in certain parts of the authority’s area.

iii) *Intermediate*: as under (ii), but excluding policies designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation (as suggested by Ouseley J in the *Barwood Land* case).

49. He discussed the connection between paragraph 49 and the presumption in favour of sustainable development in paragraph 14, which lay in the concept of relevant policies being not “up-to-date” under paragraph 49, and therefore “out-of-date” for the purposes of paragraph 14 (para 30). He explained the court’s reasons for preferring the wider view of paragraph 49. He read the words “for the supply of housing” as meaning “affecting the supply of housing”, which he regarded as not only the “literal interpretation” of the policy, but “the only interpretation consistent with the obvious purpose of the policy when read in its context”. He continued:

“33. Our interpretation of the policy does not confine the concept of ‘policies for the supply of housing’ merely to policies in the development plan that provide positively for the delivery of new housing in terms of numbers and distribution or the allocation of sites. It recognizes that the concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed - including, for example, policies for the Green Belt, policies for the general protection of the countryside, policies for conserving the landscape of Areas of Outstanding Natural Beauty and National Parks, policies for the conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another by preventing or limiting development. It reflects the reality that policies may serve to form the supply of housing land either by creating it or by constraining it - that policies of both kinds make the supply what it is.” (para 33)

50. The court rejected the “narrow” interpretation, advocated by the councils, which it thought “plainly wrong”:

“It is both unrealistic and inconsistent with the context in which the policy takes its place. It ignores the fact that in every development plan there will be policies that complement or support each other. Some will promote development of one type or another in a particular location, or by allocating sites for particular land uses, including the development of housing. Others will reinforce the policies of promotion or the site allocations by restricting development in parts of the plan area,

either in a general way - for example, by preventing development in the countryside or outside defined settlement boundaries - or with a more specific planning purpose - such as protecting the character of the landscape or maintaining the separation between settlements.” (para 34)

51. Whether a particular policy of a plan was a relevant policy in that sense was a matter for the decision-maker, not the court (para 45). Furthermore

“46. We must emphasize here that the policies in paragraphs 14 and 49 of the NPPF do not make ‘out-of-date’ policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker ... Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is ‘out-of-date’ should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied ...”

52. In relation to the Yoxford site, the court agreed with Supperstone J that the inspector had wrongly applied the erroneous “narrow” interpretation. Policies SP 19, 27 and 29, were all relevant policies in that they all “affect the supply of housing land in a real way by restraining it” (paras 51-52). The court also agreed with the judge that the inspector had been mistaken in assuming that the physical limits of the village had been established in the 2013 plan (para 58); and also that he had misapplied paragraph 135 relating to heritage assets (para 65). In that respect there could be no criticism of his treatment of the impact of the development on the local landscape, but what was lacking was

“... a distinct and clearly reasoned assessment of the effect the development would have upon the significance of the parkland as a ‘heritage asset’, and, crucially, the ‘balanced judgment’ called for by paragraph 135, ‘having regard to the scale of any harm or loss and the significance of the heritage asset’.” (para 65)

53. In respect of the Willaston site, the court disagreed with Lang J’s conclusion that policy NE.4 was not a relevant policy for the supply of housing. The inspector had made no error of law in that respect, and his decision should be restored (paras 69-71).

Discussion

Interpretation of paragraph 14

54. The argument, here and below, has concentrated on the meaning of paragraph 49, rather than paragraph 14 and the interaction between the two. However, since the primary purpose of paragraph 49 is simply to act as a trigger to the operation of the “tilted balance” under paragraph 14, it is important to understand how that is intended to work in practice. The general effect is reasonably clear. In the absence of relevant or up-to-date development plan policies, the balance is tilted in favour of the grant of permission, except where the benefits are “significantly and demonstrably” outweighed by the adverse effects, or where “specific policies” indicate otherwise. (See also the helpful discussion by Lindblom J in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin), paras 42ff)

55. It has to be borne in mind also that paragraph 14 is not concerned solely with housing policy. It needs to work for other forms of development covered by the development plan, for example employment or transport. Thus, for example, there may be a relevant policy for the supply of employment land, but it may become out-of-date, perhaps because of the arrival of a major new source of employment in the area. Whether that is so, and with what consequence, is a matter of planning judgement, unrelated of course to paragraph 49 which deals only with housing supply. This may in turn have an effect on other related policies, for example for transport. The pressure for new land may mean in turn that other competing policies will need to be given less weight in accordance with the tilted balance. But again that is a matter of pure planning judgement, not dependent on issues of legal interpretation.

56. If that is the right reading of paragraph 14 in general, it should also apply to housing policies deemed “out-of-date” under paragraph 49, which must accordingly be read in that light. It also shows why it is not necessary to label other policies as “out-of-date” merely in order to determine the weight to be given to them under paragraph 14. As the Court of Appeal recognised, that will remain a matter of planning judgement for the decision-maker. Restrictive policies in the development plan (specific or not) are relevant, but their weight will need to be judged against the needs for development of different kinds (and housing in particular), subject where applicable to the “tilted balance”.

Paragraph 49

57. Unaided by the legal arguments, I would have regarded the meaning of paragraph 49 itself, taken in context, as reasonably clear, and not susceptible to much legal analysis. It comes within a group of paragraphs dealing with delivery of housing. The context is given by paragraph 47 which sets the objective of boosting the supply of housing. In that context the words “policies for the supply of housing” appear to do no more than indicate the category of policies with which we are concerned, in other words “housing supply policies”. The word “for” simply indicates the purpose of the policies in question, so distinguishing them from other familiar categories, such as policies for the supply of employment land, or for the protection of the countryside. I do not see any justification for substituting the word “affecting”, which has a different emphasis. It is true that other groups of policies, positive or restrictive, may interact with the housing policies, and so *affect* their operation. But that does not make them policies *for* the supply of housing in the ordinary sense of that expression.

58. In so far as the paragraph 47 objectives are not met by the housing supply policies as they stand, it is quite natural to describe those policies as “out-of-date” to that extent. As already discussed, other categories of policies, for example those for employment land or transport, may also be found to be out-of-date for other reasons, so as to trigger the paragraph 14 presumption. The only difference is that in those cases there is no equivalent test to that of the five-year supply for housing. In neither case is there any reason to treat the shortfall in the particular policies as rendering out-of-date other parts of the plan which serve a different purpose.

59. This may be regarded as adopting the “narrow” meaning, contrary to the conclusion of the Court of Appeal. However, this should not be seen as leading, as the lower courts seem to have thought, to the need for a legalistic exercise to decide whether individual policies do or do not come within the expression. The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14. As the Court of Appeal recognised, it is that paragraph, not paragraph 49, which provides the substantive advice by reference to which the development plan policies and other material considerations relevant to the application are expected to be assessed.

60. The Court of Appeal was therefore right to look for an approach which shifted the emphasis to the exercise of planning judgement under paragraph 14. However, it was wrong, with respect, to think that to do so it was necessary to adopt a reading

of paragraph 49 which not only changes its language, but in doing so creates a form of non-statutory fiction. On that reading, a non-housing policy which may objectively be entirely up-to-date, in the sense of being recently adopted and in itself consistent with the Framework, may have to be treated as notionally “out-of-date” solely for the purpose of the operation of paragraph 14.

61. There is nothing in the statute which enables the Secretary of State to create such a fiction, nor to distort what would otherwise be the ordinary consideration of the policies in the statutory development plan; nor is there anything in the NPPF which suggests an intention to do so. Such an approach seems particularly inappropriate as applied to fundamental policies like those in relation to the Green Belt or Areas of Outstanding Natural Beauty. No-one would naturally describe a recently approved Green Belt policy in a local plan as “out of date”, merely because the housing policies in another part of the plan fail to meet the NPPF objectives. Nor does it serve any purpose to do so, given that it is to be brought back into paragraph 14 as a specific policy under footnote 9. It is not “out of date”, but the weight to be given to it alongside other material considerations, within the balance set by paragraph 14, remains a matter for the decision-maker in accordance with ordinary principles.

The two appeals

62. Against this background I can deal relatively shortly with the two individual appeals. On both I arrive ultimately at the same conclusion as the Court of Appeal.

63. It is convenient to begin with the Willaston appeal, where the issues are relatively straightforward. On any view, quite apart from paragraph 49, the current statutory development plan was out of date, in that its period extended only to 2011. On my understanding of paragraph 49, the council and the inspector both erred in treating policy NE.2 (“Countryside”) as “a policy for the supply of housing”. But that did not detract materially from the force of his reasoning (see the summary in paras 44-45 above). He was clearly entitled to conclude that the weight to be given to the restrictive policies was reduced to the extent that they derived from “settlement boundaries that in turn reflect out-of-date housing requirements” (para 94). He recognised that policy NE.4 had a more specific purpose in maintaining the gap between settlements, but he considered that the proposal would not cause significant harm in this context (para 95). His final conclusion (para 101) reflected the language of paragraph 14 (the tilted balance). There is no reason to question the validity of the permission.

64. The Yoxford appeal provides an interesting contrast, in that there was an up-to-date development plan, adopted in the previous year; but its housing supply

policies failed to meet the objectives set by paragraph 47 of the NPPF. The inspector rightly recognised that they should be regarded as “out-of-date” for the purposes of paragraph 14. At the same time, it provides a useful illustration of the unreality of attempting to distinguish between policies for the supply of housing and policies for other purposes. Had it mattered, I would have been inclined to place in the housing category policy SP2, the principal policy for housing allocations. SP 19 (settlement policy) would be more difficult to place, since, though not specifically related to housing, it was seen (as the commentary indicated) as a “planning tool” designed to differentiate between developed areas and the countryside.

65. Understandably, in the light of the judicial guidance then available to him, the inspector thought it necessary to make the distinction, and to reflect it in the planning balance. He categorised both SP 19 and SP 27 as non-housing policies, and for that reason to be regarded as “up-to-date” (see para 35 above). Under the Court of Appeal’s interpretation this was an erroneous approach, because each of these policies “affected” the supply of housing, and should have been considered out-of-date for that reason. On my preferred approach his categorisation was not so much erroneous in itself, as inappropriate and unnecessary. It only gave rise to an error in law in so far as it may have distorted his approach to the application of paragraph 14.

66. As to that I agree with the courts below that his approach (through no fault of his own) was open to criticism. Having found that the settlement policy was up-to-date, and that the boundary had been approved in the recent plan, he seems to have attached particular weight to the fact that it had been defined in “the very recently adopted Local Plan” (para 37 above). I would not criticise him for failing to record that it had been carried forward from the previous plan. In some circumstances that could be a sign of robustness in the policy. But in this case it was clear from the plan itself that the settlement boundary was, to an extent at least, no more than the counterpart of the housing policies, and that, under the paragraph 14 balance, its weight might need to be reduced if the housing objectives were to be fulfilled. He should not have allowed its supposed status as an “up-to-date” policy under paragraph 49 to give it added weight. It is true that he also considered the merits of the site (quite apart from the plan) as providing a “strong and definite boundary” to the village (para 20). But I am not persuaded that this is sufficient to make it clear that the decision would have been the same in any event.

67. I do not, however, agree with the Court of Appeal’s criticisms of his treatment of the Heritage Asset policy. Paragraph 10 of his letter (summarised at para 36 above) is in my view a faithful application of the guidance in paragraph 215 of the Framework. That does not, and could not, suggest that even “saved” development plan policies are simply replaced by the policies in the Framework. What it does is to indicate that the weight to be given to the saved policies should be assessed by reference to their degree of consistency with the Framework. That is what the

inspector did. Having done so he was entitled to be guided by the policies as stated in the saved plans, and not treat them as replaced by paragraph 135.

68. In any event, in so far as there needs to be a “balanced judgement”, which the Court of Appeal regarded as “crucial” (para 65), that seems to me provided by the last section of his letter, headed appropriately “the planning balance”. Overall the letter seems to me an admirably clear and carefully constructed appraisal of the relevant planning issues, in the light of the judicial guidance then available. It is with some reluctance therefore that I feel bound to agree with the Court of Appeal that the decision must be quashed, albeit on narrower grounds. The result, is that the order of Supperstone J will be affirmed, and the planning appeal will fall to be re-determined.

Conclusion

69. For these reasons I would dismiss both appeals.

LORD GILL: (with whom Lord Neuberger, Lord Clarke and Lord Hodge agree)

70. I agree with Lord Carnwath’s conclusions on the decision that is appealed against and with his views as to the disposal of these appeals. I only add some comments on the approach that should be taken in the application of the National Planning Policy Framework (the Framework) in planning applications for housing development.

71. These appeals raise a question as to the respective roles of the courts and of the planning authorities and the inspectors in relation to guidance of this kind; and a specific question of interpretation arising from paragraph 49 of the Framework.

72. In *Tesco Stores Ltd v Dundee City Council*, (*ASDA Stores Ltd intervening*) ([2012] UKSC 13) Lord Reed considered the former question in relation to development plan policies. He expressed the view, as a general principle of administrative law, that policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context (at para 18). The proper context, in my view, is provided by the over-riding objectives of the development plan and the specific objectives to which the policy statement in question is directed. Taking a similar approach to that of Lord Reed, I consider that it is the proper role of the courts to interpret a policy where the meaning of it is contested, while that of the planning authority is to apply the policy to the facts of the individual case.

73. In my opinion, the same distinction falls to be made in relation to guidance documents such as the Framework. In both cases the issue of interpretation is the same. It is about the meaning of words. That is a question for the courts. The application of the guidance, as so interpreted, to the individual case is exclusively a planning judgment for the planning authority and the inspectors.

74. The guidance given by the Framework is not to be interpreted as if it were a statute. Its purpose is to express general principles on which decision-makers are to proceed in pursuit of sustainable development (paras 6-10) and to apply those principles by more specific prescriptions such as those that are in issue in these appeals.

75. In my view, such prescriptions must always be interpreted in the overall context of the guidance document. That context involves the broad purpose of the guidance and the particular planning problems to which it is directed. Where the guidance relates to decision-making in planning applications, it must be interpreted in all cases in the context of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, to which the guidance is subordinate. While the Secretary of State must observe these statutory requirements, he may reasonably and appropriately give guidance to decision-makers who have to apply them where the planning system is failing to satisfy an unmet need. He may do so by highlighting material considerations to which greater or less weight may be given with the over-riding objective of the guidance in mind. It is common ground that such guidance constitutes a material consideration (Framework, para 2).

76. In relation to housing, the objective of the Framework is clear. Section 6, “Delivering a wide choice of high quality homes”, deals with the national problem of the unmet demand for housing. The purpose of paragraph 47 is “to boost significantly the supply of housing”. To that end it requires planning authorities (a) to ensure *inter alia* that plans meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework, including the identification of key sites that are critical to the delivery of the housing strategy over the plan period; (b) to identify and update annually a supply of specific deliverable sites sufficient to provide five years’ worth of housing against their housing requirements, with an additional buffer of 5% to ensure choice and competition in the market for the land; and (c) in the longer term to identify a supply of specific, developable sites or broad locations for growth for years six to ten and, where possible, for years 11-15.

77. The importance that the guidance places on boosting the supply of housing is further demonstrated in the same paragraph by the requirements that for market and affordable housing planning authorities should illustrate the expected rate of housing

delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing, describing how they will maintain delivery of a five-years supply of housing land to meet their housing target; and that they should set out their own approach to housing density to reflect local circumstances. The message to planning authorities is unmistakeable.

78. These requirements, and the insistence on the provision of “deliverable” sites sufficient to provide the five years’ worth of housing, reflect the futility of authorities’ relying in development plans on the allocation of sites that have no realistic prospect of being developed within the five-year period.

79. Among the obvious constraints on housing development are development plan policies for the preservation of the greenbelt, and environmental and amenity policies and designations such as those referred to in footnote 9 of paragraph 14. The rigid enforcement of such policies may prevent a planning authority from meeting its requirement to provide a five-years supply.

80. This is the background to the interpretation of paragraph 49. The paragraph applies where the planning authority has failed to demonstrate a five-years supply of deliverable sites and is therefore failing properly to contribute to the national housing requirement. In my view, paragraph 49 derives its content from paragraph 47 and must be applied in decision-making by reference to the general prescriptions of paragraph 14.

81. To some extent the issue in these cases has been obscured by the doctrinal controversy which has preoccupied the courts hitherto between the narrow and the wider interpretation of the words “relevant policies for the supply of housing”. I think that the controversy results from too narrow a focus on the wording of that paragraph. I agree with the view taken by Lindblom LJ in his lucid judgement that the task of the court is not to try to reconcile the various first instance judgments on the point, but to interpret the policy of paragraph 49 correctly (at para 23). In interpreting that paragraph, in my opinion, the court must read it in the policy context to which I have referred, having in view the planning objective that the Framework seeks to achieve.

82. I regret to say that I do not agree with the interpretation of the words “relevant policies for the supply of housing” that Lindblom LJ has favoured. In my view, the straightforward interpretation is that these words refer to the policies by which acceptable housing sites are to be identified and the five-years supply target is to be achieved. That is the narrow view. The real issue is what follows from that.

83. If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated. The purpose of paragraph 49 is to indicate a way in which the lack of a five-years supply of sites can be put right. It is reasonable for the guidance to suggest that in such cases the development plan policies for the supply of housing, however recent they may be, should not be considered as being up to date.

84. If the policies for the supply of housing are not to be considered as being up to date, they retain their statutory force, but the focus shifts to other material considerations. That is the point at which the wider view of the development plan policies has to be taken.

85. Paragraph 49 merely prescribes how the relevant policies for the supply of housing are to be treated where the planning authority has failed to deliver the supply. The decision-maker must next turn to the general provisions in the second branch of paragraph 14. That takes as the starting point the presumption in favour of sustainable development, that being the “golden thread” that runs through the Framework in respect of both the drafting of plans and the making of decisions on individual applications. The decision-maker should therefore be disposed to grant the application unless the presumption can be displaced. It can be displaced on only two grounds both of which involve a planning judgment that is critically dependent on the facts. The first is that the adverse impacts of a grant of permission, such as encroachment on the greenbelt, will “significantly and demonstrably” outweigh the benefits of the proposal. Whether the adverse impacts of a grant of permission will have that effect is a matter to be “assessed against the policies in the Framework, taken as a whole”. That clearly implies that the assessment is not confined to environmental or amenity considerations. The second ground is that specific policies in the Framework, such as those described in footnote 9 to the paragraph, indicate that development should be restricted. From the terms of footnote 9 it is reasonably clear that the reference to “specific policies in the Framework” cannot mean only policies originating in the Framework itself. It must also mean the development plan policies to which the Framework refers. Green belt policies are an obvious example.

86. Although my interpretation of the guidance differs from that of the Court of Appeal, I have come to the same conclusions in relation to the disposal of these cases. I agree with Lord Carnwath that in the Willaston decision, notwithstanding an erroneous interpretation of policy NE.2 as being a policy for the supply of housing, the Inspector got the substance of the matter right and accurately applied paragraph 14. I agree too with Lord Carnwath, for the reasons that he gives (at para 68), that in the Yoxford decision the Inspector made a material, but understandable, error. I would therefore dismiss both appeals.



Neutral Citation Number: [2019] EWHC 1862 (Admin)

Case No: CO/371/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/07/2019

Before:

MR JUSTICE GARNHAM

Between:

Eastleigh Borough Council
- and -
Secretary of State for Housing Communities and
Local Government

Claimant

1st Defendant

2nd Defendant

Mr Robert Janaway

Mr Simon Bull

3rd Defendant

Paul Stinchcombe QC (instructed by **Eastleigh Borough Council Legal Services**) for the
Claimant

Leon Glenister (instructed by Government Legal Department) for the **1st Defendant**
Christopher Boyle QC & Andrew Parkinson (instructed by **Moore Blatch LLP**) for the **2nd**
& 3rd Defendant

Hearing dates: 9th & 10th July 2019

Approved Judgment

Mr Justice Garnham :

1. The Claimant Council (“the Council”) applies, with the permission of Lang J granted on 19 March 2018, for statutory review of the decision of the First Defendant’s Inspector, dated 20 December 2018, to allow the appeal of the Second and Third Defendant (“the Developers”) against its decision to refuse planning permission for the development of up to 70 dwellings on land at Satchell Lane, Hamble-le-Rice, in Hampshire (“the Satchell Lane Proposal”).
2. I had the benefit of detailed written and oral argument from Paul Stinchcombe QC for the Claimants, Leon Glenister for the Secretary of State and Christopher Boyle QC and Andrew Parkinson for the Second and Third Defendant. I am grateful to all counsel for their clear and economically expressed submissions.

Background

3. For several years up until 2018, the Council had a significant shortfall against the requirement in paragraph 47 of the 2012 version of the National Planning Policy Framework (“NPPF”) to have a five-year housing land supply (“5YHLS”). At the time of the appeal into the Satchell Lane Proposal, however, the action taken by the Council to address its HLS shortfall (including on occasion granting planning permission for residential development in application of the ‘tilted balance’) had so boosted the HLS that the Council now had a 7-10YHLS.
4. The Developers applied for planning permission for up to 70 dwellings on a green field site in the Hamble Peninsula, outside the urban edge of Hamble and within the open countryside. The section of Satchell Lane adjoining the appeal site is rural in character (twisting, narrow and tree-lined) and has no footways or lighting in a northerly direction. That northern route provides the shortest, (lawfully available) pedestrian route to a local secondary school, health centre and railway station.
5. The Council refused the application for the following reasons:
 - “1. The proposals represent an inappropriate and unjustified form of development which would have an unacceptably urbanising and visually intrusive impact upon the designated countryside, to the detriment of the character, visual amenity, and the quality of the landscape of the locality. The application is therefore contrary to Saved Policies 1.CO, 18.CO, 20.CO of ... of the Eastleigh Borough Local Plan Review (2001-2011), and the provisions of the National Planning Policy Framework.
 2. The site is considered to be in an unsustainable and poorly accessible location such that the development will not be adequately served by sustainable modes of travel including public transport, cycling and walking. The application is therefore contrary to the requirements of Saved Policy 100.T of the Eastleigh Borough Local Plan Review 2001-2011 and Paragraphs 17 and 35 of the National Planning Policy Framework.”
6. Policy 1.CO provides that planning permission for development in a countryside location would not be granted unless it met at least one of four listed criteria – the Council decided that the proposed development did not meet any of the listed criteria.

7. Policy 18.CO provides that “development which fails to respect, or has an adverse impact on, the intrinsic character of the landscape, will be refused”. The Council concluded that developing up to 70 dwellings on any site in the urban countryside, permanently urbanising, it would necessarily have an adverse impact on the intrinsic character of the landscape.
8. Policy 20.CO provides that development which would be detrimental to the quality of the landscape which had been identified for landscape improvements in the Local Plan (as part of the appeal site had) would not be permitted.
9. Policy 100.T provides that for development to be permitted it must meet certain listed criteria which included that it is, or could be, well served by public transport, by cycling and by walking.

The Appeal and the Planning Inspector’s decision

10. The Developers appealed the Council’s decision and a planning inquiry was held on 16-17 and 23-24 October 2018. The Council’s position at the inquiry was that:
 - The Developers were proposing a considerable housing development in the countryside contrary to Policy 1.CO of the extant Development Plan;
 - The proposal would also permanently urbanise an open field causing harm to an area designated for landscape improvement contrary to Policies 18.CO and 20.CO of the Development Plan;
 - The proposal also breached Policy 100.T in that the shortest route (walking) to the secondary school, health centre and railway station was unsafe and that children, the vulnerable and the frail would consequently be at risk;
 - It had a considerable surplus above the 5YHLS called for by paragraph 47 NPPF 2012,
 - The policies were not out of date by reference to the HLS nor could they be rendered out of date because they predated the NPPF or because they were in a Plan which was time-expired;
 - The countryside policies were all either broadly consistent or completely consistent with the NPPF, and that therefore, consistent with all recent Decision Letters (“DL”s) in Eastleigh, between considerable/significant and full weight had to be attached to the breaches of the countryside policies;
 - It was irrelevant that, in the past and on certain sites, it had chosen to permit development in breach of countryside policies in order to secure its 5YHLS;
 - So far as Policy 100.T was concerned it was fully aligned with Part 9 of the 2018 NPPF;
 - The policies were being breached in circumstances in which the ‘tilted balance’ could not apply because an Appropriate Assessment was required and therefore the statutory presumption in favour of the Development Plan applied; and
 - The appeal should be dismissed by straightforward application of the statutory presumption in favour of the Development Plan.

11. The Inspector allowed the appeal.
12. Under the sub heading “Sustainability/accessibility” in his decision letter, he addressed the possible routes, of which there were three, from the site to various facilities. At paragraph 40 of the decision letter (“DL40”), he said that no reliance could be placed on a route through fields as it did not appear to be legally established, and was unsurfaced, unlit, unattractive, and unwelcoming in inclement weather and in darkness. That conclusion is no longer in issue. There remained available two route to the facilities to the north of the site, notably the school and the healthcare facility, one is northerly along Satchell Lane, the other southerly.
13. The Inspector recorded that the Council’s sole objection was that the northerly route to the school, health centre and railway station was unsafe for pedestrians [DL34]. He noted that the northerly route to the above facilities was the shortest [DL33]. He noted, having undertaken the journey himself, that walking the northerly route to the above facilities along Satchell Lane was neither safe nor acceptable: the road was unlit; possessed no footpaths for most of the route; included a number of tight bends; and in many places there were steep banks which limited the ability of pedestrians to avoid oncoming traffic [DL36].
14. However, he held that there was no policy requirement to use the northern part of Satchell Lane [DL38 and DL42] and there were alternative routes [DL38-39]. He held that the Council’s case omitted the southern walking routes, the part walking and part bus option, and the agreed acceptability of cycling by either route [DL41]. Accordingly, whilst the northern route was unsafe for pedestrians, Policy 100.T was complied with [DL42].
15. Under the headings “Planning policy background and weight”, “Other matters – housing land supply” and “Planning balance and conclusion”, he dealt with the issues that found Ground 2 before me.
16. He said that whilst Policy 1.CO did not impose blanket protection in the countryside, the approach lacked the flexibility and balance enshrined in the NPPF, such that it should be accorded reduced weight [DL15-16]. He said that the fact that the Council could clearly demonstrate a 5YHLS was not relevant to the weight accorded to Development Plan policies [DL18]. It was, however, relevant in this regard that the Council had achieved its HLS in part by greenfield planning permissions outside settlement boundaries, from which it was reasonable to infer that the Council either considered that the settlement boundary carried reduced weight or that the policy harm was outweighed by other considerations [DL18].
17. Whilst a range, from considerable/significant to full weight, had been attributed to the countryside policies in other cases, given that “they were out of step with national policy” only limited weight should be attributed to them [DL19]. The change from an open field to a housing development would clearly have a permanently urbanising effect and a consequent change in the appreciation of the immediate landscape. This, however, would be the case in relation to any greenfield development proposal; and the conflict would be with policies which themselves have limited weight [DL26].
18. Despite the presence of significantly more than a 5YHLS, the provision of market and affordable housing weighed significantly in favour of the proposal in light of the national policy to significantly boost the supply of homes [DL47].
19. The Proposal had been the subject of Appropriate Assessment, and accordingly the presumption in favour of sustainable development in paragraph 11 of the NPPF did not

apply. The appeal therefore fell to be considered applying the balance provided for by section 38(6) of the Planning and Compulsory Purchase Act 2004 (“PCPA”) and in accordance with the Development Plan, unless material considerations indicated otherwise [DL63].

20. As agreed by the Council, the economic and social benefits of the proposal were worthy of significant weight and, given the national objective of significantly boosting the supply of homes, the provision of market and especially affordable housing carries significant weight [DL64].
21. The proposal met Policy 100.T, which was neutral in the planning balance [DL65].
22. Hence the key factor to be set against the benefits of the proposal was the conflict with the countryside policies. As set out above, limited weight was attached to these matters, and this harm was substantially outweighed by the benefits of the proposal [DL66].
23. For these reasons the appeal was allowed [DL67].

The Grounds

24. The Claimant advances two grounds of challenge:
25. First, it is said that the Inspector erred in law in finding that Policy 100.T was complied with. In particular, it is said that he failed properly to interpret and apply Policy 100.T which required the development to be well served by walking.
26. Second, it is argued that the Inspector erred when weighing the balance between housing land supply and breach of countryside policies.

The Law

27. It is common ground that the principles relevant to a challenge under s288 of the Town and Country Planning Act 1990 are authoritatively set out by Lindblom J (as he then was) in *Bloor Homes East Midlands Ltd v SSCLG*, [2014] EWHC 754 (Admin) at [19]:

“(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to “rehearse every argument relating to each matter in every paragraph” (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment* (1981) 42 P. & C.R. 26, at p.28).

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the “principal important controversial issues”. An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-

under-Heywood in *South Bucks District Council and another v Porter (No. 2)* [2004] 1 W.L.R. 1953, at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, “provided that it does not lapse into Wednesbury irrationality” to give material considerations “whatever weight [it] thinks fit or no weight at all” (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State for [Environment, Transport and the Regions]* [2001] EWHC Admin 74, at paragraph 6).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 17 to 22).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in *Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB), at paragraph 58).

(7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P. & C.R. 137, at p.145)."

Submissions and Discussion

Ground 1 - Unsafe Pedestrian Route

Submissions

28. In support of the First Ground, Mr Stinchcombe, for the Council, submits that the Inspector erred in law in finding that Policy 100.T was complied with. In particular, it is said that he failed properly to interpret and apply Policy 100.T which required the development to be well served by walking as well as by other modes of non-car transport; he failed to take into account a relevant planning consideration in application of this policy - viz. that schoolchildren residents of the proposed development who walked to the nearest secondary school would likely do so by the relatively short northerly Satchell Lane route (1.1km), which he had found to be unsafe, rather than the much longer southerly route (3.2 to 3.8km); and he gave no intelligible or adequate reasons for permitting a development which put future schoolchildren at this risk.
29. In response to Ground 1, Mr Glenister for the Secretary of State, submits the argument that the Inspector failed to properly interpret and apply Policy 100.T is fundamentally a rationality challenge. He says that the Inspector's conclusions were clear, rational and well-reasoned; that the Inspector did take account of the Council's argument that schoolchildren would be more likely to take the northern route. He noted the northerly route was shorter but unsafe, but still considered that appeal site was "well served". Mr Glenister argued that the Inspector's reasons in respect of accessibility met the requirements of *Dover District Council v CPRE Kent* [2018] 1 WLR 108.
30. Mr Boyle, for the Second and Third Defendants, contends that whether the development was "well served" by walking is quintessentially a matter of planning judgment for the Inspector. The Inspector found it was and that it complied with policy. That judgment was not arguably irrational in a situation where there was no policy requirement to be able to walk to the local secondary school by a particular route, or indeed at all; and in any event where there was a safe alternative route. As there was no policy requirement for a particular walking route to the local school to be available, it was not necessary for the Inspector to make a finding on this point. In any event, he expressly referred to the relative distances between the two alternative routes to the school, and therefore this was plainly taken into account. The Inspector did not permit a development which put future schoolchildren at risk, because an alternative route to the school was available. The reasons why the Inspector found this alternative route was suitable are abundantly clear from the DL.

Discussion

31. In my view, the Inspector did not err in his approach to this issue. The issue in question was the sustainability and accessibility of the site. The Council's refusal of permission, which was under appeal before the Inspector, had concluded that the site is "considered to be in an unsustainable and poorly accessible location such that the development will not be adequately served by sustainable modes of travel including...walking". It was said that the application did not comply with Policy 100.T and the local plan and paragraphs 17 and 35 of the NPPF 2012.
32. Policy 100.T requires that the development "is, or could be, well served by...walking". Paragraph 35 provides that:

"plans should protect and exploit opportunities for the use of sustainable transport modes for the movement of goods and people. Therefore, developments should be located and designed where practical to ...create safe and secure layouts which minimise conflicts between traffic and...pedestrians...."
33. There was no doubt that there was a safe, sustainable and short walking route from the site to many facilities to the south and west. The problem concerned facilities to the north, notably the school and the healthcare facility. I accept Mr Stinchcombe's submission that the adequacy of the route to the facilities in the north was one of the main issues in dispute before the Inspector; in fact, he describes it (at DL34) as the "Council's sole objection on accessibility/accessibility grounds".
34. However, in my view, on its proper construction, Policy 100.T is concerned with the provision of *means* of sustainable transport. Similarly, the focus of paragraph 35 of the NPPF is on providing *opportunities* for sustainable modes of transport, such as walking. Whilst it is undeniably the case that a development would not properly be regarded as "well served" by a walking route that was unsafe (and the contrary was not suggested before me), and that it is implicit in paragraph 35 that the opportunities to be provided are opportunities for a safe mode of transport, there is nothing, express or implied, in either policy that requires every possible route from the development to be safe. What matters is whether there was *a* safe route, and there was.
35. Nor, in my judgment, is there an obligation on the decision maker to assess whether residents of the development are likely to make use of unsafe routes between the site and particular facilities. It may well be the case that 14-year-old children living on the site would be tempted to use the shorter, northerly route to school, even though, in the Inspector's view, that is unsafe, rather than the markedly longer, but safer, southern route. But that does not mean that the site is not adequately *served* by a perfectly adequate, safe walking route. It is. The southern route is longer but safe. Nor does the existence of an unsafe alternative mean that there are no adequate *opportunities* for sustainable modes of transport, such as walking, which is entirely safe. There are. It just happens that, as regards the school and the health centre, those opportunities involve a longer route. I see no error of interpretation in the Inspector's approach.
36. Whether, on the facts, the site was "well served by ...walking" involved a planning judgment. The Inspector clearly had in mind how residents of the development could and would access the relevant facilities from the site. In my view, he was plainly entitled to conclude that it was accessible by walking routes and well served by walking routes. His reasons were required to be "proper, adequate and intelligible but can be briefly stated" (see *R (CPRE Kent) v Dover DC* [2018] 1 WLR 108). In my judgment, they were all of

that. At DL36 and 37, he held that the northern route was not safe. At DL39, however, he held that “there is no necessity to use the northern route to access the school because the southern routes...is (sic) within a reasonable walking distance”. At DL42, he concluded that “the appeal site is sustainable in locational terms having regard to the proximity of and accessibility to local services and facilities. It complies with LPR 100.T”. In my judgment that reasoning is unimpeachable.

37. Accordingly, I reject this ground of challenge.

Ground 2 - Planning balance – Housing supply and countryside policies

Submissions

38. The Council argues that the Inspector erred when weighing the balance between housing land supply (HLS) and breach of countryside policies. Mr Stinchcombe broke this ground down into four sub-grounds:

- (i) the Inspector wrongly determined that the fact that the Council could clearly demonstrate a 5YHLS was not relevant to the weight which should be accorded to breach of the countryside policies;
- (ii) he wrongly determined that it was relevant to have regard to how such countryside policies had been applied in the past in order to obtain a 5YHLS, when attributing weight to such breaches;
- (iii) he wrongly reduced the weight attached to the breach of countryside policies by reason of their lacking the flexibility enshrined in the NPPF, in that this was contrary to decided authority; and
- (iv) he wrongly took into account that the harm occasioned by permanently urbanising the countryside “would be the case in relation to any greenfield development proposal” which was an irrelevant consideration where there was double the HLS requirement and no need to develop any greenfield site.

39. In relation to Ground 2, the Secretary of State argues that whilst the level of shortfall may be relevant to the weight of development plan policies where there is less than a 5YHLS, there is no duty to consider the level of shortfall when considering the weight of development plan policies where there is a 5YHLS. He says that the Inspector was entitled to consider the past application of the relevant policies in determining their “currency”; such consideration has been given by other inspectors and the relevance was conceded by the Council’s witness at the inquiry. He argues that the Inspector complied with the principle identified in *Bloor Homes v SSCLG* [2014] EWHC 754 (Admin) and did not suggest that the lack of internal balance in Policy 1.CO meant that the policy was out of date. The observation that any greenfield development proposal would cause some limited harm to the existing landscape character is a matter of common sense, and the Inspector was entitled to make this observation.

40. The Second and Third Defendants argue that there was no policy requirement to take into account the existence of a 5YHLS when considering the weight to be attached to the relevant policies. As such, there was no legal obligation on the Inspector to take this into account. Whether or not he did so was a matter of planning judgment for him. It was not arguably irrational for him to do so where (i) the reason he found the relevant policies to be out of date had nothing to do with the Claimant’s housing supply position and (ii) the existence of a 5YHLS had been achieved by the Claimant through the grant of planning permission in breach of those policies.

41. They say it was not irrational for the Inspector to have regard to the application of the policies in the past in a situation where the Claimant's own planning witness had agreed that this was relevant and previous inspectors had taken this approach. They argue that the Inspector applied, in terms, the approach required by *Bloor Homes*. It is trite law that the fact that a particular policy is not expressly mentioned does not mean that it has been disregarded and the Inspector did give reasons for any departure from previous appeal decisions.
42. Finally, Mr Boyle contends that it was open to the Inspector to conclude that this aspect of landscape harm identified by the Claimant was not site or development specific, but rather would occur any time development took place contrary to Policy 1.CO.

Discussion

43. I address each of the four sub-grounds advanced by Mr Stinchcombe in turn.

Ground 2 (i)

44. Mr Stinchcombe argued that the Inspector wrongly determined that the fact that the Council could clearly demonstrate a 5YHLS was not relevant to the weight which should be accorded to breach of the countryside policies. He said it was plainly relevant and that had been "authoritatively decided".
45. The Council's arguments here did elide somewhat with their arguments as to the overall planning balance, more properly the subject of analysis under the third element of this ground. In my view, it is important to address them discretely if they are properly to be understood.
46. The assertion under challenge, "...the fact that the authority could clearly demonstrate a five-year housing land supply is not relevant to the weight which should be accorded to development plan policies" is found in DL18. That paragraph falls in the section of the decision letter dealing with planning policy, background and weight. It relates to the weight to be attached to the countryside policies, policies 1.CO, 18.CO and 20.CO.
47. It is common ground that where there is no 5YHLS, the NPPF, in both its 2012 and 2018 forms, deems such policies out of date. Footnote 7 to Paragraph 11 of the NPPF 2018 provides that "...where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73)" the plan is deemed to be out of date. As is again common ground, being out of date has consequences for decision-taking. Paragraph 11 provides that:

"Plans and decisions should apply a presumption in favour of sustainable development. ... For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole” (emphasis added).

48. Furthermore, where there is no 5YHLS an inspector is obliged to consider the *extent* of the shortfall (*Hopkins Home v SSCLG* [2016] EWCA Civ 168).
49. However, as Mr Glenister put it, in the context of the NPPF, there is a ‘one-way consideration’ for 5YHLS. As Mr Boyle submits, there is nothing in statute or policy which expressly or impliedly required the Inspector to take into account *the existence* of a 5YHLS when deciding the weight to be attached to countryside policies. Accordingly, it was for the Inspector to determine the weight to be attached to the fact that there was more than 5YHLS, subject only to a *Wednesbury* challenge.
50. In my judgment, a failure to give weight to the fact that the Council could demonstrate more than a 5YHLS in determining the weight which should be accorded to development plan policies was not irrational. When the Inspector came to consider the overall planning balance, at DL47, he did consider the weight to be attached to the provision of housing. That was the proper place in the analysis for that consideration. I see no basis for saying he should have *increased* the weight, prior to conducting the balancing exercise because of the absence of a negative, namely that there was no shortage of housing land.

Ground 2 (ii)

51. It is argued that the Inspector wrongly determined that it was relevant to have regard to how such countryside policies had been applied in the past in order to obtain a 5YHLS, when attributing weight to such breaches. It is said that it was plainly irrelevant when the Council did have a 5YHLS.
52. This argument did have a superficial attraction. At first blush, it might be thought wrong to compare the position now, when there is an adequate supply of housing land, with the situation earlier when there was not, and when the Council was required to find ways of meeting the shortfall.
53. However, this can only be a rationality challenge. As Mr Boyle correctly submitted the range of considerations capable of being material are broad: any consideration which relates to the use and development of land is capable of being material: see *Stringer v Minister for Housing and Local Government* [1971] 1 WLR 1281 at p 1294G to H. The history of the application of the countryside policies was *capable* in law of being material for planning purposes.
54. As to the rationality of the Inspector’s reasons, in my judgment, Mr Glenister has a complete answer. He submits that the Inspector’s “consideration of the past application of the policy ... revealed that the current compliance with the 5YHLS was achieved “in part by greenfield planning permissions outside settlement boundaries – in some cases on sites which were within Strategic Gaps”. This indicates that the development plan policies were not consistent with the NPPF, which goes to their “currency”. Consideration of this was clearly rational”. I agree.

Ground 2 (iii)

55. Mr Stinchcombe argued that the Inspector wrongly reduced the weight attached to the breach of countryside policies by reason of their lacking the flexibility enshrined in the

NPPF. He says he failed to take into account the consistency of those policies with paragraph 170 of the NPPF through recognising the intrinsic character and beauty of the countryside; and he gave no intelligible or adequate reason for disagreeing with previous Eastleigh DLs in this regard and therefore breached the principle of consistency in planning decisions established by case law.

56. Mr Stinchcombe relies on [186] in the judgment of Lindblom J in *Bloor Homes* where he said:

“186 I do not think Mr Cahill's argument gains anything from Kenneth Parker J's analysis of the particular policies of the development plan that he had to consider in *Colman's* case, in which he compared of those policies with government policy in the NPPF. In any event I do not read Kenneth Parker J's judgment in that case as authority for the proposition that every development plan policy restricting development of one kind or another in a particular location will be incompatible with policy for sustainable development in the NPPF, and thus out-of-date, if it does not in its own terms qualify that restriction by saying it can be overcome by the benefits of a particular proposal. That is more than I can see in what Kenneth Parker J said, and more than I think one take from the NPPF itself. The question of whether a particular policy of the relevant development plan is or is not consistent with the NPPF will depend on the specific terms of that policy and of the corresponding parts of the NPPF when both are read in their full context. When this is done it may be obvious that there is an inconsistency between the relevant policies of the plan and the NPPF. But in my view that was not so in this case.”

57. That certainly makes good the submission that a policy is not out of date simply because it does not include an internal cost-benefit analysis. Instead, what is required is a comparison of the policy and the relevant parts of the NPPF. That is precisely what the Inspector set out to do at DL14. He said there that “What is important is the degree of consistency of a particular policy or policies with the 2018 Framework. This will depend on the specific terms of the policy/ies and of the corresponding parts of the Framework when both are read in their full context.”
58. At DL16, he concluded that 1.CO and related policies lacked “the flexible and balanced approach...enshrined in the Framework” and as a result accorded “reduced weight” to the countryside policies. At DL19, he gave them only limited weight because, in his view, they were out of step with national policy. That was consistent with [213] of NPPF 2012 which states that “due weight” should be given to development plan policies in light of their consistency with the NPPF.
59. It follows that his approach was entirely correct. The test he applied was correct. What remained to him was a matter of planning judgment, which can only be challenged on the grounds of rationality.
60. In my view, the Inspector was entitled to reach the view that there was an inconsistency between Policies 1.CO, 18.CO and 20.CO, on the one hand, and paragraph 170 of the NPPF on the other.

61. Policy 1.CO provided that planning permission would not be granted for development in the open countryside unless it met at least one of four listed criteria. Policy 18.CO provided that “development which fails to respect, or has an adverse impact on, the intrinsic character of the landscape, will be refused.” Policy 20.CO provided that development which was detrimental to the quality of that landscape would not be permitted.
62. NPPF 2018 [170] adopts a much more nuanced approach. Instead of the blanket refusal of development subject to limited and specific exceptions, it requires that planning decisions should contribute to and enhance the natural and local environment by meeting a series of objectives. The Inspector rightly described the latter as a “flexible and balanced approach”. In my judgment, the Inspector was fully entitled to conclude that this led to reduced weight being attributed to the retained policies.
63. Mr Stinchcombe would quibble with the precise descriptor of the reduction in weight. The Inspector concluded that the countryside policies should attract “limited weight”. In other Eastleigh Borough Council decisions inspectors have used different adjectives indicating, perhaps, a lesser weight reduction. Mr Stinchcombe says other inspectors, who recognised a difference between Policy 1.CO and [170] NPPF, still attached “considerable” or “significant” weight to breaches of Policy 1.CO in earlier decision letters. In my judgment, this is classically a matter of planning judgment, involving as it does a subjective judgment of the significance of differences between policies. I detect no error of law here.

Ground 2 (iv)

64. Finally, Mr Stinchcombe argues that the Inspector wrongly took into account (at DL26) that whilst the development would cause landscape harm, this “would be the case in relation to any greenfield development proposal.” He says that was an irrelevant consideration where there was a substantial excess of the HLS requirement and no need to develop any greenfield site.
65. As set out above, any consideration which relates to the use and development of land is capable of being material (*Stringer*). This consideration clearly relates to the development of land and accordingly is capable of being material. Accordingly, it was a matter of planning judgment for the Inspector to decide whether this factor was material in this case.
66. In my judgment, all the Inspector was doing was stating that this development, like any other greenfield development, would have an “urbanising” effect. That might not be a very remarkable observation, but it was certainly not an irrational one. As Mr Boyle put it, it was open to the Inspector to conclude that this aspect of landscape harm was not site or development-specific, but rather would occur any time development took place contrary to Policy 1.CO.

Conclusion

67. For all those reasons, this review is dismissed.



Neutral Citation Number: [2019] EWHC 3158 (Admin)

Case No: CO/1470/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 November 2019

Before :

MRS JUSTICE LANG DBE

Between :

WOKINGHAM BOROUGH COUNCIL

Claimant

- and -

**(1) SECRETARY OF STATE FOR HOUSING,
COMMUNITIES AND LOCAL GOVERNMENT**

Defendants

(2) TAYLOR WIMPEY UK LIMITED

(1) DARRELL JOHN BEASLEY

Interested Parties

(2) BEVERLEY ANNE BEASLEY

Cain Ormondroyd and Horatio Waller (instructed by **Select Business Services: Legal Solutions**) for the **Claimant**

Jacqueline Lean (instructed by the **Government Legal Department**) for the **First Defendant**

Morag Ellis QC (instructed by **Eversheds Sutherland**) for the **Second Defendant**

The **Interested Parties** did not appear and were not represented

Hearing date: 6 November 2019

Approved Judgment

Mrs Justice Lang :

1. The Claimant applies under section 288 of the Town and Country Planning Act 1990 (“the TCPA 1990”) to quash the decision of the First Defendant, dated 28 February 2019, in which his Inspector allowed an appeal by the Second Defendant and granted planning permission for residential development on land at Parklands, east of Basingstoke Road, Spencers Wood, Wokingham (“the Site”).
2. The issue in the claim was whether the Inspector erred in not affording full weight to the conflict between the proposed development and policies CP9, CP11 and CC02 in the development plan, which restricted development outside settlement limits.
3. Permission was given on the papers by Mr John Howell QC, sitting as a Deputy High Court Judge, on 17 May 2019.

Planning history

4. The Site is primarily an area of open pasture land which lies between the villages of Three Mile Cross and Spencers Wood. It adjoins the eastern frontage of Basingstoke Road.
5. The Second Defendant applied for outline planning permission for up to 55 dwellings (with 35% affordable housing), together with all associated parking, landscape and access, and 1.56 ha of Suitable Alternative Natural Greenspace (“SANG”). The proposed development consisted of two areas of residential development, adjoining each village, with a SANG in between.
6. The Second Defendant appealed under section 78 TCPA 1990 against the Claimant’s failure to give notice of its decision within the prescribed period.
7. The Claimant relied upon six putative reasons for refusal of permission. Following an agreement under section 106 TCPA 1990, by the date of the Inquiry, only two putative reasons remained, which related to landscape and design.
8. The Inspector (Mr Nick Palmer BA (Hons) BPI MRTPI) held an Inquiry between 8 and 11 January 2019, and attended a Site visit on 11 January 2019.
9. The Inspector’s conclusions were set out in his Decision Letter (“DL”), as follows:

“Overall

51. I have found that the proposal, including the mitigation measures, would not adversely affect the integrity of the SPA. On this basis the presumption in favour of sustainable development applies. I note that Policy CC01 of the LP has similar wording to the previous Framework in terms of the presumption, which has now been superseded.

52. The parties agree that the housing numbers set out in Policy CP17 of the CS are out-of-date as they were based on the South East Plan which has been revoked. Where strategic policies are

more than 5 years old, as is the case here, the Framework requires that local housing need is calculated using the standard methodology. Using the 2014-based household projections the housing need for the period 2018 to 2023 is 4,320 dwellings, including a 5% buffer. This would require delivery of 907.2 dwellings per annum (dpa). This delivery rate significantly exceeds that which is specified in Policy CP17 at 723 dpa. There is a 6.83 years' supply of deliverable housing sites and paragraph 11 (d) of the Framework is not engaged on the basis of housing land supply.

53. Part of this supply has, however been achieved by using land outside the development limits. In the Lambs Lane appeal [APP/X0360/W/18/3199728] the Inspector noted the use of land outside development limits in achieving the housing land supply and considered that this could reduce the weight to be given to those limits. Nonetheless she concluded that this did not support attributing the aims of the policies limited weight.

54. In the Stanbury House appeal [APP/X0360/W/15/3097721], the parties had agreed the annual rate to deliver the objectively assessed need to be 876 dpa. The Inspector gave limited weight to the development boundaries on the basis that they were derived from Policy CP17. The housing need of over 907 dpa is higher still than the figure used in that appeal.

55. I take the view that the development limits are out-of-date because they are based on an outdated housing requirement, but that the aims of Policies CP11, CP9 and CC02 are generally consistent with national policy. It is important to look at the underlying aims of those policies in deciding the weight to be given to the conflict with them. Those aims are to protect the identities of separate settlements, to maintain the quality of the environment and to locate development where there is good accessibility to services and facilities. For the reasons given above, the proposal would maintain the separation of the settlements and their separate identities. There would be a high degree of accessibility to services and facilities. Although there would be limited harm to the character and appearance of the area, the SANG would be designed to maintain the quality of the environment. For these reasons the proposal would be in accordance with the underlying aims of the policies to a significant extent.

56. Because the development limits are out-of-date, Policies CP11, CP9 and CC02 are not fully up-to-date. This does not mean, however that those policies are out-of-date such that the tilted balance in paragraph 11 (d) of the Framework would be engaged. Nonetheless because the policies are not fully up-to-date the conflict with them does not attract full weight. I also take into account the significant degree of consistency between

the proposal and their underlying aims. Having regard to all of these factors I give significant weight to the policy conflict. I have also given great weight to the harm to the setting of the listed building and moderate weight to the harm to the character and appearance of the area.

57. On the other hand, I have given substantial weight to the benefit of the SANG. I also give significant weights to the benefits of the affordable housing, the accessible location and to the enhancement to the setting of the listed building in terms of improved public access. There would also be economic benefits arising from the construction of the development and from the expenditure of its residents and I give further limited weight in this regard. The improvement to the footpath linking to Oakbank School would primarily be required to address the needs of the development but would also be of wider benefit. The planting within the SANG would aim for biodiversity gain. I give further limited weights to these benefits.

58. The substantial, three significant and three limited weights that I have identified in favour of the proposal would be enough to outweigh the great, significant and moderate weights that I attach to the harms and policy conflicts. The material considerations are of enough weight to indicate that my decision should be otherwise than in accordance with the development plan. This balancing exercise demonstrates that the benefits would outweigh the impacts and the proposal would accord with Policy 1 of the NP in this respect.”

Grounds of challenge

10. The Claimant submitted that the Inspector erred in law by affording ‘significant’ rather than ‘full’ weight to the conflict between the proposed development and policies CP9, CP11 and CC02 in the development plan, which restrict development outside settlement limits.
11. In particular, the Claimant submitted that:
 - i) The Inspector failed to give adequate reasons for his conclusion.
 - ii) If the Inspector’s reason for his conclusion was simply that the housing requirements in CP17 were out-of-date, he took into account an immaterial consideration and/or his conclusion was irrational.
 - iii) The Inspector failed to have regard to a material consideration, namely, whether or not the development limits were preventing the Council from complying with national policy on the five year housing land supply.
 - iv) The Inspector acted unfairly in relying upon the fact that some of the sites in the Council’s five year housing land supply fell outside settlement boundaries,

without requesting evidence and/or submissions on this matter from the Council.

12. The First and Second Defendants resisted the Claimant's challenge, submitting that the weight to be accorded to policies CP9, CP11 and CC02, and the wider balancing exercise, were quintessentially matters of planning judgment for the Inspector. There was no proper basis for interfering with the Inspector's exercise of planning judgment in this case.
13. In particular, the Defendants submitted:
 - i) The reasons were intelligible and adequate, when read fairly as part of the decision as a whole.
 - ii) The undisputed evidence was that the development limits were set by reference to the out-of-date housing requirements in CP17. This was a material consideration and it was rational for the Inspector to have regard to it. On a fair reading of the decision, the Inspector did not reach his conclusion simply on the basis that CP17 was out-of-date.
 - iii) The Inspector was well aware of the evidence in respect of the Claimant's housing land supply, and the Claimant's submission at the Inquiry that this was "a powerful material consideration pointing to the giving of full weight to the settlement boundary policies" (paragraph 50 of the Claimant's closing submissions). It did not follow that the Inspector was therefore required to conclude that the conflict with the policies should be given full weight. It was no part of the Inspector's role to consider whether the development limits in the development plan were appropriate – that was a matter for consideration on examination of the emerging Local Plan.
 - iv) The Claimant must have been aware that the extent to which development had occurred outside settlement limits was potentially relevant, in the light of the previous inspector's decision in Lambs Lane which was part of the evidence at the Inquiry. The Claimant adduced evidence on this point, and both parties made submissions on it. The Claimant was given a fair opportunity to address this matter.

Legal and policy framework

14. The parties relied upon the "seven familiar principles" set out by Lindblom J. in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin), at [19].

(i) Applications under section 288 TCPA 1990

15. Under section 288 TCPA 1990, a person aggrieved may apply to quash a decision on the grounds that (a) it is not within the powers of the Act; or (b) any of the relevant requirements have not been complied with, and in consequence, the interests of the applicant have been substantially prejudiced.

16. The general principles of judicial review are applicable to a challenge under section 288 TCPA 1990. Thus, the Claimant must establish that the Secretary of State misdirected himself in law or acted irrationally or failed to have regard to relevant considerations or that there was some procedural impropriety.
17. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. As Sullivan J. said in *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, at [6]:

“An application under section 288 is not an opportunity for a review of the planning merits.....”

18. In *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865, Lord Carnwath giving the judgment of the Supreme Court warned, at paragraph 23, against over-legalisation of the planning process. At [24] to [26], he gave guidance that the courts should recognise the expertise of the specialist planning inspectors and work from the presumption that they will have understood the policy framework correctly. Inspectors are akin to expert tribunals who have been accorded primary responsibility for resolving planning disputes and the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence. Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies. But issues of interpretation, appropriate for judicial analysis, should not be elided with issues of judgment in the application of that policy.
19. A decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case: see Lord Bridge in *South Lakeland v Secretary of State for the Environment* [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, at 271; *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28; and *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83.
20. Two citations from the authorities listed above are of particular relevance to the disputed issues in this case.
 - a) *South Somerset District Council*, per Hoffmann LJ at 84:

“...as Forbes J. said in *City of Westminster v Haymarket Publishing Ltd*:

“It is no part of the court’s duty to subject the decision maker to the kind of scrutiny appropriate to the determination of the meaning of a contract or a statute. Because the letter is addressed to parties who are well aware of all the issues involved and of the arguments deployed at the inquiry it is not

necessary to rehearse every argument relating to each matter in every paragraph.”

The inspector is not writing an examination paper on current and draft development plans. The letter must be read in good faith and references to policies must be taken in the context of the general thrust of the inspector’s reasoning ... Sometimes his statement of the policy may be elliptical but this does not necessarily show misunderstanding. One must look at what the inspector thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood a relevant policy or proposed alteration to policy.”

b) *Clarke Homes*, per Sir Thomas Bingham MR at 271-2:

“I hope I am not over-simplifying unduly by suggesting that the central issue in this case is whether the decision of the Secretary of State leaves room for genuine as opposed to forensic doubt as to what he has decided and why. This is an issue to be resolved as the parties agree on a straightforward down-to-earth reading of his decision letter without excessive legalism or exegetical sophistication.”

21. An inspector is under a statutory duty to give reasons for his decision, pursuant to rule 19 of the Town and Country Planning Appeals (Determination by Inspectors)(Inquiries Procedure)(England) Rules 2000.
22. In *South Buckinghamshire District Council v Porter* (No 2) [2004] 1 WLR 1953, Lord Brown reviewed the authorities and gave the following guidance on the nature and extent of the inspector’s duty to give reasons:

“36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the ‘principal important controversial issues’, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be

read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

23. Whilst reasons may be “briefly stated”, depending on the context, they must not give rise to substantial doubt as to whether the decision-maker misunderstood some relevant policy or other important matter or failed to reach a rational decision on relevant grounds. As Lord Carnwath confirmed in *Dover DC v CPRE (Kent)* [2018] 1 WLR 108, the essence of the duty is that the information provided must not leave “genuine doubt...as to what [the Inspector] has decided and why” (at [42]).

(ii) Decision-making

24. Section 70(2) TCPA 1990 provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”) provides:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

25. In *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447, Lord Clyde explained the effect of this provision, beginning at 1458B:

“Section 18A [the parallel provision in Scotland] has introduced a priority to be given to the development plan in the determination of planning matters.....

By virtue of section 18A the development plan is no longer simply one of the material considerations. Its provisions, provided that they are relevant to the particular application, are to govern the decision unless there are material considerations which indicate that in the particular case the provisions of the plan should not be followed. If it is helpful to talk of presumptions in this field, it can be said that there is now a presumption that the development plan is to govern the decision on an application for planning permission..... Thus the priority given to the development plan is not a mere mechanical preference for it. There remains a valuable element of flexibility. If there are material considerations indicating that it should not be followed then a decision contrary to its provisions can properly be given.

Moreover the section has not touched the well-established distinction in principle between those matters which are

properly within the jurisdiction of the decision-maker and those matters in which the court can properly intervene. It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker. It is for him to assess the relative weight to be given to all the material considerations. It is for him to decide what weight is to be given to the development plan, recognising the priority to be given to it. As Glidewell J observed in *Loup v Secretary of State for the Environment* (1995) 71 P & C.R. 175, 186:

“What section 54A does not do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations.”

Those matters are left to the decision-maker to determine in the light of the whole material before him both in the factual circumstances and in any guidance in policy which is relevant to the particular issues.

.....

In the practical application of section 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will be required to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it. He will also have to identify all the other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which of them do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it. And having weighed these considerations and determined these matters he will require to form his opinion on the disposal of the application. If he fails to

take account of some material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse.”

26. This statement of the law was approved by the Supreme Court in *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, [2012] P.T.S.R. 983, per Lord Reed at [17].

(iii) The Framework

27. The National Planning Policy Framework (“the Framework”) is a material consideration to be taken into account when applying section 38(6) PCPA 2004 in planning decision-making, but it is policy not statute, and does not displace the statutory presumption in favour of the development plan: *Suffolk Coastal DC v Hopkins Homes Ltd* [2017] UKSC 37, per Lord Carnwath at [21].
28. Although the July 2018 edition of the Framework was still in force at the date of the Inquiry, the February 2019 edition had come into force by the date of the Inspector’s decision. For the purposes of this appeal, there was no material change.
29. Paragraph 11 applies a presumption in favour of sustainable development. For decision-taking, where there are no relevant development plan policies, or the policies which are most important for determining are out-of-date, permission should be granted unless:
- i) Framework policies that protect areas or assets of particular importance provide a clear reason for refusal; or
 - ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (often described as the “tilted balance”).
30. Footnote 7 to paragraph 11 amplifies the term “out-of-date”, stating:
- “This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.”
31. Section 5 of the Framework is headed “Delivering a sufficient supply of homes”, and it begins, at paragraph 59, with its overarching objective, namely:
- “To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is

needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.”

32. Ensuring a sufficient number and range of homes is identified as an element of the social dimension of sustainable development in paragraph 8(b) of the Framework.

33. Paragraph 73 provides:

“73. Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old [*Footnote 37: Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.*]. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

a) 5% to ensure choice and competition in the market for land; or

b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan; or

c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.”

34. Annex 1 to the Framework, headed “Implementation”, gives guidance on out-of-date policies, at paragraph 213:

“However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”

35. This guidance (which has essentially remained the same since 2012, despite some re-casting of the paragraphs) was considered in *Peel Investments (North) v Secretary of*

State for Communities and Local Government [2019] EWHC 2143 (Admin), per Dove J. at [58]:

“..... there is nothing in the relevant provisions of the Framework to suggest that the expiration of a plan period requires that its policies should be treated as out-of-date...It will be a question of fact or in some cases fact and judgment. The expiration of the end date of the plan may be relevant to that exercise but it is not dispositive of it.”

36. In *Gladman Developments Limited v Daventry District Council and Secretary of State for Communities and Local Government* [2016] EWCA Civ 1146, Sales LJ considered the approach to be taken to the older development plan policies in issue in the appeal, at [40] – [44]:

“40. I would formulate the position in this way:

i) Since old policies of the kind illustrated by policies HS22 and HS24 in this case are part of the development plan, the starting point, for the purposes of decision-making, remains section 38(6) of the 2004 Act. This requires that decisions must be made in accordance with the development plan — and, therefore, in accordance with those policies and any others contained in the plan — unless material considerations indicate otherwise. The mere age of a policy does not cause it to cease to be part of the development plan; see also para. 211 of the NPPF, set out above. The policy continues to be entitled to have priority given to it in the manner explained by Lord Clyde in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, HL, at 1458C-1459G.

ii) The weight to be given to particular policies in a development plan, and hence the ease with which it may be possible to find that they are outweighed by other material considerations, may vary as circumstances change over time, in particular if there is a significant change in other relevant planning policies or guidance dealing with the same topic. As Lord Clyde explained:

“If the application does not accord with the development plan it will be refused unless there are material considerations indicating that it should be granted. One example of such a case may be where a particular policy in the plan can be seen to be outdated and superseded by more recent guidance” (p.1458E).

iii) The NPPF and the policies it sets out may, depending on the subject-matter and context, constitute significant material considerations. Paragraph 215 sets out the

approach to be adopted in relation to old policies such as policies HS22 and HS24 in this case, and as explained above requires an assessment to be made regarding their consistency with the policies in the NPPF. The fact that a particular development plan policy may be chronologically old is, in itself, irrelevant for the purposes of assessing its consistency with policies in the NPPF.

iv) Since an important set of policies in the NPPF is to encourage plan-led decision-making in the interests of coherent and properly targeted sustainable development in a local planning authority's area (see in particular the section on Plan-making in the NPPF, at paras. 150ff), significant weight should be given to the general public interest in having plan-led planning decisions even if particular policies in a development plan might be old. There may still be a considerable benefit in directing decision-making according to a coherent set of plan policies, even though they are old, rather than having no coherent plan-led approach at all. In the present case, it is of significance that the Secretary of State himself decided to save the Local Plan policies in 2007 because he thought that continuity and coherence of approach remained important considerations pending development of appropriate up-to-date policies.

v) Paragraph 49 of the NPPF creates a special category of deemed out-of-date policies, i.e. relevant policies for the supply of housing where a local planning authority cannot demonstrate a five-year supply of deliverable housing sites. The mere fact that housing policies are not *deemed* to be out of date under para. 49 does not mean that they cannot be out of date according to the general approach referred to above.

41. In the particular circumstances of this case Mr Kimblin submitted (i) that the facts that policies HS22 and HS24 appeared in a Local Plan for the period 1991–2006, long in the past, and were tied into the Structure Plan (in particular, in relation to policy HS24, as set out in the explanatory text at para. 4.97 of the Local Plan), which is now defunct, meant that very reduced weight should be accorded to them; (ii) that the Local Plan policies in relation to housing supply, which include policies HS22 and HS24, are “broken” and so again should be accorded little weight; and (iii) that policies HS22 and HS24 have been superseded by more recent guidance, in the form of para. 47 of the NPPF, and so should be regarded as being outdated in the manner explained by Lord Clyde in *City of Edinburgh Council*. I do not accept these submissions.

42. As to (i), policies HS22 and HS24 were saved in 2007 as part of a coherent set of Local Plan policies judged to be appropriate for the Council's area pending work to develop new and up-to-date policies. There was nothing odd or new-fangled in the inclusion of those policies in the Local Plan as originally adopted in 1997. It is a regular feature of development plans to seek to encourage residential development in appropriate centres and to preserve the openness of the countryside, and policies HS22 and HS24 were adopted to promote those objectives. Those objectives remained relevant and appropriate when the policies were saved in 2007 and in general terms one would expect that they remain relevant and appropriate today. At any rate, that is something which needs to be considered by the planning inspector when the case is remitted, along with the question of the consistency of those policies with the range of policies in the NPPF under the exercise required by para. 215 of the NPPF. The fact that the explanatory text for policy HS24 refers to the Structure Plan does not detract from this. It is likely that the Structure Plan itself was formulated to promote those underlying general objectives and the fact that it has now been superseded does not mean that those underlying objectives have suddenly ceased to exist. As the judge observed at [49], "some planning policies by their very nature continue and are not 'time-limited', as they are re-stated in each iteration of planning policy, at both national and local levels."

43. As to (ii), the metaphor of a plan being "broken" is not a helpful one. It is a distraction from examination of the issues regarding the continuing relevance of policies HS22 and HS24 and their consistency with the policies in the NPPF. As Mr Kimblin developed this submission, it emerged that what he meant was that it appears that the Council has granted planning permission for some other residential developments in open countryside, i.e. treating policy HS24 as outweighed by other material circumstances in those cases, and that it relies on those sites with planning permission, among others, in order to show that it has a five year supply of deliverable residential sites for the purposes of para. 47 (second bullet point) and para. 49 of the NPPF. Mr Kimblin says that this shows that the saved policies of the Local Plan, if applied with full rigour and without exceptions, would lead the Council to fail properly to meet housing need in its area, according to the standard laid down in paras. 47 and 49 of the NPPF. Therefore, he says, no or very reduced weight should be accorded to policies HS22 and HS24.

44. In my view, this argument is unsustainable. We were shown nothing by Mr Kimblin to enable us to understand why the Council had decided to grant planning permission for

development of these other sites. So far as I can tell, the Council granted planning permission in these other cases in an entirely conventional way, being persuaded on the particular facts that it would be appropriate to treat material considerations as sufficiently strong to outweigh policy HS24 in those specific cases. Having done so, there is no reason why the Council should not bring the contribution from those sites into account to show that it has the requisite five year supply of sites for housing when examining whether planning permission should be granted on Gladman's application for the site in the present case. The fact that the Council is able to show that with current saved housing policies in place it has the requisite five year supply tends to show that there is no compelling pressure by reason of unmet housing need which requires those policies to be overridden in the present case; or – to use Mr Kimblin's metaphor – it tends positively to indicate that the current policies are *not* “broken” as things stand at the moment, since they can be applied in this case without jeopardising the five year housing supply objective. In any event, an assessment of the extent of the consistency of policies HS22 and HS24 with the range of policies in the NPPF is required, as set out in para. 215 of the NPPF, before any conclusion can be drawn whether those policies should be departed from in the present case.”

37. In *Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government and Central Bedfordshire Council* [2019] EWHC 127 (Admin), Dove J observed, at [19], that paragraph 44 of Sales LJ’s judgment in the *Daventry District Council* case, which I have set out above, was *obiter dicta* and he added, at [37]:

“... all that Sales LJ was suggesting was that the fact that the council had granted planning permission for some of the sites in the five-year housing land supply on sites in breach of policy HS 24 would not in and of itself justify a conclusion that that policy was out of date. That was an issue which would require, again, careful evaluation against the background of the terms of the policy, the available evidence as to its performance and scrutiny of its consistency with the Framework. That will inevitably be a case-sensitive exercise....”

38. In *Telford and Wrekin BC v Secretary of State for Communities and Local Government* [2016] EWHC 3073 (Admin), the Council submitted that an inspector erred in law in treating its grant of planning permission outside the settlement boundary as a factor supporting his conclusion that the policies on settlement boundaries were out-of-date. I held, at [25], that the inspector was entitled to have regard to other grants of planning permission as it was plainly a relevant consideration supporting the contention that current housing needs could not be adequately met within the settlement boundaries identified in the policies. The weight to be given to this consideration was a matter of planning judgment for the inspector, not the court.

Conclusions

Ground 1

39. In my judgment, the Inspector's reasons for concluding that the conflict with policies CP9, CP11 and CCO2 should be afforded 'significant' rather than 'full weight' were both intelligible and adequate, when read fairly, in the context of the decision as a whole.
40. In the decision, the Inspector gave detailed consideration to the relevant policies, and the extent to which the proposed development would be in conflict with them.
41. At DL9, he had regard to the fact that the Site is within a Strategic Development Location which is designated in the Core Strategy (adopted in 2010). Following adoption of a Supplementary Planning Document in 2014, the pre-existing development limits were extended. Policy CP19 provides for mixed use development in this area, including around 2,500 dwellings by 2026.
42. At DL9 and 10, the Inspector found that the housing element of the proposed development would not accord with CP11 or CC02, as it is outside the development limits in those policies. However, the SANG proposal would be in accordance with CP11.
43. At DL11 and 12, the Inspector found that the affordable housing element of the proposed development would accord with CP9, which permitted affordable housing adjoining the development limits, but that the market housing element would not be in accordance with CP9. The proposed development would meet the aims of CP9 because the location is accessible by sustainable means, and has good services and facilities. The Inspector identified that many of the services and facilities were new; the Second Defendant relied on the fact that these post-dated the settlement limits.
44. At DL13, the Inspector referred to the Shinfield Parish Neighbourhood Plan, made in February 2017, which supports development within the development limits. It only supports development adjacent to those limits where the benefits of the development outweigh its adverse impacts.
45. Under the heading 'Character and Appearance', the Inspector identified the 'less than substantial harm' to the heritage asset, by the reduction of its open setting, to which he gave weight. As required by the Framework, he went on to consider the public benefits to be weighed against the harm, namely, the SANG and the proposed affordable housing. He said, at DL27:

“27. I give further significant weight to the benefit of the proposed affordable housing because of the acute need for such housing in the area. There are over 1,800 households on the Council's housing register awaiting rented accommodation and at least 1,500 households on the shared ownership register. It is evident that although the Council is taking action to deliver the 441 affordable homes needed annually, as revealed by the Berkshire Strategic Housing Market Assessment (2015),

through its housing company, the past record of delivery has fallen short of that figure.”

46. The Inspector found, at DL36, that there would be “some harm to the character and appearance of the area in terms of the extension of built frontage along the road, the reduction of the gap between the settlements and the additional development close to the ridge”. He found that the extent of the harm would be limited, but nonetheless it would “introduce built development outside of the currently defined development limits and into open countryside” contrary to CP9, CP11 and CC02. However, the SANG provision would maintain or enhance the high quality of the environment, as required by CP1.
47. At DL52, the Inspector referred to the agreement between the parties that the housing numbers set out in CP17 were out-of-date, as they were based on the South East Plan which had been revoked. He explained, applying the Framework, that the housing need for the period 2018 to 2023 is 4,320 dwellings, including a 5% buffer. This would require delivery of 907.2 dwellings per annum (“dpa”), which significantly exceeds the 723 dpa specified in CP17.
48. The Claimant’s evidence to the Inquiry was that it was currently in the process of updating its Local Plan, with consultation due to take place in Autumn 2019.
49. At DL55, the Inspector found that the development limits in CP9, CP11 and CC02 were out-of-date because they were based on the outdated housing requirement in CP17. The Second Defendant’s evidence at the Inquiry, given by Mr Paterson-Neild, was that “the settlement boundaries for the [Strategic Development Location] were predicated on the now out-of-date Core Strategy housing requirement as acknowledged in the Settlement Separation and Development Limit Boundaries report prepared for the Claimant by David Lock Associates ...”. The Lock report, dated June 2012, was in evidence at the Inquiry, and stated:

“4.11 The new proposed boundaries do not allow more development than that which is set by the Core Strategy, nor do they allow less SANG than is required according to the formula set out in the Core Strategy.”
- I do not consider that the Inspector was required to set out this evidence in support of his conclusion, since there was no evidence to the contrary, and the link between the housing requirements and the development limits was not disputed by the Claimant.
50. In support of his conclusion, the Inspector referred, at DL54, to the Stanbury House appeal in which “the Inspector gave limited weight to the development boundaries on the basis that they were derived from Policy CP17”. He observed that the housing need in the instant appeal was even higher than the figure in the Stanbury appeal. The parties would have been aware that the Stanbury appeal related to the same policies in the same geographical area. The decision was in evidence at the Inquiry and it was not challenged.
51. The Inspector found, at DL52, that the Claimant had a 6.83 years supply of deliverable housing sites, and therefore the tilted balance in paragraph 11(d) of the Framework was not engaged on the basis of housing land supply. It was agreed

between the parties at the Inquiry that the Claimant met the minimum five year housing land supply specified in the Framework.

52. However, at DL53, the Inspector found that part of the 6.83 years housing land supply had been achieved by using land outside the development limits. Submissions were made on this issue at the Inquiry, and some evidence was adduced, which I refer to later on this judgment. The supporting evidence referred to by the Inspector was the decision in the recent Lambs Lane appeal where “the Inspector noted the use of land outside the development limits in achieving the housing land supply and considered that this could reduce the weight to be given to those limits”, though not to the aims of the policies. The Stanbury appeal inspector made a similar distinction between the development limits and the aims of the policies. The parties would have been aware that the Lambs Lane appeal related to the same policies in the same geographical area. The decision was in evidence at the Inquiry and it was not challenged.
53. At DL55, the Inspector reached a similar conclusion to the inspectors in the Stanbury and Lambs Lane appeals, namely, that the development limits were out of date because they were based on an outdated housing requirement, but the aims of CP9, CP11 and CC02 were generally consistent with national policy. He correctly directed himself that it was important to look at the underlying aims of the policy in deciding the weight to be given to the conflict with them. He summarised the ways in which the proposed development was in accordance with underlying policy aims, having addressed these matters addressed more fully earlier in the decision.
54. At DL56, the Inspector concluded that because the development limits were out-of-date, policies CP9, CP11 and CC02 were not fully up-to-date. He did not consider that the tilted balance in paragraph 11(d) of the Framework was engaged. However, he found that the conflict with them did not attract full weight. Applying paragraph 213 of the Framework, he took into account the significant degree of consistency between the proposal and the underlying aims. In the light of all these factors, he gave significant rather than full weight to the policy conflict. In my view, the Inspector’s application of the Framework to his findings would have been understood by the parties at the Inquiry.
55. The weight to be given to the policies was an important issue in the appeal, as the Second Defendant contended before the Inspector that the development limits in the policies were out-of-date, whereas the Claimant argued that they should be afforded full weight. It is apparent that the Inspector did not accept the Council’s submissions.
56. In my judgment, the Inspector’s reasons met the standards set out by Lord Brown in *South Buckinghamshire District Council v Porter* (No 2) and by Lord Carnwath in *Dover DC v CPRE (Kent)*. They explained his conclusions on the weight to be afforded to the policies, and I cannot accept that the Claimant did not understand his reasoning. I agree with Ms Lean’s submission, on behalf of the First Defendant, that, in reality, the Claimant’s complaint was that the Inspector’s reasons were not rational.
57. In *South Buckinghamshire District Council*, Lord Brown said that a reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision. No such prejudice has been demonstrated in this case.

58. For these reasons, Ground 1 does not succeed.

Ground 2

59. The Claimant submitted that, if the Inspector's reason for his conclusion was simply that the housing requirements in CP17 were out-of-date, he took into account an immaterial consideration and/or his conclusion was irrational.
60. As I have shown in my analysis of the Inspector's reasoning under Ground 1, his reasons were more extensive than the Claimant suggested, and they were based on a careful assessment by him, in accordance with the case law cited above. In my judgment, the fact that the development limits in the policies were derived from the out-of-date housing requirements in CP17 was clearly a relevant factor for the Inspector to take into account, and the Inspector's conclusion was a rational one which he was entitled to make. It was not analogous to deciding that the policies were out-of-date merely on the basis of their chronological age; there was an issue of real substance here. As Lindblom J. said in *Bloor Homes*, at [19]:

“The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court.”

61. For these reasons, Ground 2 does not succeed.

Ground 3

62. The Claimant submitted that the Inspector failed to have regard to a material consideration, namely, whether or not the development limits were preventing the Council from complying with national policy on the five year housing land supply.
63. The Claimant relied upon *Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government* and *Central Bedfordshire Council* [2019] EWHC 127 (Admin) and *Telford and Wrekin BC v Secretary of State for Communities and Local Government* [2016] EWHC 3073 (Admin), which I have referred to above. In my judgment, these cases turned on their own particular facts, and the challenge made to the inspectors' decisions. I do not accept the Claimant's submission that these cases establish a binding principle that a grant of planning permission outside settlement boundaries can only be accorded weight in so far as it indicates that the strict application of settlement boundaries would prevent the area's five year housing land supply being met. An inspector must decide in the context of the facts and circumstances of each case whether, and to what extent, the grant of planning permission outside settlement boundaries is a material consideration, and if so, how much weight to accord to that factor. In principle, an inspector is entitled to have regard to the area's housing needs and housing land supply beyond the five year minimum requirement, as significantly boosting the supply of a sufficient number and variety of homes is a key policy objective of the Framework (paragraphs 59 and 8b).
64. On my reading of the decision, the Inspector was clearly aware that the Council had a 6.83 years supply of housing, which was in excess of the minimum five year requirement in the Framework. At DL53, he found that part of the supply was

achieved by using land outside the development limits. He did not seek to specify precisely how much of the supply was achieved through sites outside the development limits.

65. In my judgment, the evidence adduced by the parties at the Inquiry was unsatisfactory, and prevented the Inspector from carrying out a more detailed analysis of the number of sites outside the development limits. Mr Church, Team Manager (Senior Specialist) in the Council's Growth and Delivery Team, gave extensive evidence on the Council's housing needs and supply, but only briefly touched on the development which had taken place outside development limits. He was asked by the Council's counsel whether the Council "had abandoned settlement boundaries in Strategic Development Locations" and he was asked about some specific sites outside development limits. He said that the Council had not abandoned settlement boundaries. He mentioned grants of permission at Shinfield, and at Bell Lane (128 dwellings) and Keephatch Beech (up to 300 dwellings) outside the settlement boundary, which were referenced in the Core Documents for the Inquiry, and confirmed that the Council would still have a five year housing land supply without these dwellings.
66. However, in his statement for the hearing in the High Court, Mr Church gave much more detailed evidence on this matter. He concluded that 1,113 dwellings across 8 sites are located outside settlement boundaries, of which 840 are included in the Council's five year housing land supply. The remaining 273 dwellings are anticipated to be delivered from 1 April 2023 onwards (paragraph 13). This material was not provided to the Inspector by the Council, apparently on the grounds that it had not been identified as an issue in the appeal.
67. The Second Defendant took issue with this evidence, and its planning consultant claimed in evidence that around 1,400 dwellings were derived from sites outside settlement boundaries, though this figure was subsequently reduced to 1,203 dwellings in the Second Defendant's draft closing submissions, prior to final amendment. A table setting out the evidence in detail was submitted, but the Claimant objected to its admission on the grounds that it had been produced too late for it to have a fair opportunity to respond. The Inspector upheld the Claimant's objection and refused to admit the evidence.
68. In their closing statements, the Claimant and the Second Defendant made competing submissions. The Second Defendant criticised the reliability of Mr Church's evidence, submitting that "a number" of the projected dwellings to be delivered in the years up to 2026 related to permissions on land outside development limits, so the claim of a significant boost to housing being achieved solely within current limits was not accepted. It could not specify the number as its table of evidence had been excluded. The Second Defendant also emphasised the serious failure to deliver sufficient affordable housing, within the overall supply.
69. In response, the Claimant submitted in its closing statement that the Second Defendant had misunderstood Mr Church's evidence, and summarised the reasons for grant of permission in the three major developments referred to by Mr Church. It concluded, at paragraph 51:

“The grant of such permissions in the past does not demonstrate that reduced weight should now be given to settlement boundary policies. Firstly, because they represent the normal working of the planning system and the flexibility of the strategy of the plan, rather than some general indictment of the policies in the plan. Secondly, because even if (as in the case of a former lack of 5 year housing land supply) they do relate to historic problems of housing delivery, however caused, that is no reason to give reduced weight to settlement boundary policies *now*. They are not preventing any obstacle to delivery *now*.”

70. In my view, the unsatisfactory way in which the parties conducted their respective cases (as described above) placed the Inspector in a difficult position, as he was faced with conflicting evidence and submissions as to the number of sites outside development boundaries, in relation to the housing land supply, but he did not have sufficient evidence before him to make a detailed assessment. The parties did not present the relevant evidence to him fully, and in accordance with the timetable. He reasonably decided it was unfair to the Council to admit the Second Defendant's evidence at such a late stage, when the Council had not presented detailed evidence on this matter. In those circumstances, I consider the Inspector was entitled simply to rely upon the unchallenged conclusions of the inspector in the recent Lambs Lane decision, at the same village (Spencers Wood), who “noted the use of land outside development limits in achieving the housing land supply and considered that this would reduce the weight to be given to those limits”, in support of his conclusion that part of the housing land supply of 6.83 years had been achieved by using land outside the development limits (DL53). The Inspector did the best he could in the circumstances in which he found himself, which were not of his making.
71. I do not consider that the Inspector failed to have regard to the brief evidence of Mr Church, and the Council's closing statement; rather, that in the unusual circumstances of this Inquiry, he could not resolve the dispute on the figures.
72. In my view, the Council misunderstood the witness statement made by the Inspector in which he said, at paragraph 7, that he was not presented with any evidence during the course of the inquiry as to whether the development limits were preventing the achievement of a five year housing land supply. I accept the First Defendant's submission that the Inspector was responding, in paragraph 7, to a different point, namely, the controversial pleading in the Council's Statement of Facts and Grounds, at paragraph 28, that the Inspector was “apparently not concerned with the relevant question of whether the Development Limits remained appropriate in light of current needs”. Both Defendants firmly submitted that it was neither appropriate nor possible for an Inspector hearing an individual appeal to determine whether development limits in a local plan were appropriate in light of current needs. That was a matter which ought properly to be assessed and determined when a proposed local plan was considered (which was already under way in this local planning authority's area). I agree with the Defendants' submission on this point.
73. For the reasons set out above, Ground 3 does not succeed.

Ground 4

74. The Claimant submitted that the Inspector acted unfairly in relying upon the fact that some of the sites in the Claimant's five year housing land supply fell outside settlement boundaries without requesting evidence and/or submissions on this matter from the Claimant.
75. I repeat paragraphs 64 to 71 of my judgment which describes events at the Inquiry. In my judgment, the Inspector did not act unfairly. The Claimant must have been aware that the extent to which development had occurred outside settlement limits was potentially relevant, not least because of the previous inspector's decision in Lambs Lane which was part of the evidence at the Inquiry. The Claimant adduced evidence on this matter in its evidence in chief, and made submissions on it. The Claimant was given a fair opportunity to address this matter and chose not to do so in any detail. The Inspector acceded to the Claimant's submission that the table of evidence produced by the Second Defendant was to be excluded because the Claimant had not had an opportunity to respond to it. If the Claimant wished the Inspector to take an alternative course (e.g. adjourning the Inquiry to give the Claimant time to adduce further evidence), it could have requested the Inspector to do so.
76. For these reasons, Ground 4 does not succeed.

Final conclusion

77. For the reasons I have given above, the claim is dismissed. Therefore, the question of whether or not to grant relief does not arise.



Department for
Communities and
Local Government

Our Ref: APP/K3415/A/14/2224354

Mr Richard Brown
CBRE Ltd
55 Temple Row
Birmingham B2 5LS

13 February 2017

Dear Mr Brown

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY IM PROPERTIES DEVELOPMENT LIMITED, THE GREAVES
FAMILY AND THE HOLLINSHEAD FAMILY
LAND AND BUILDINGS OFF WATERY LANE, CURBOROUGH, LICHFIELD WS13 8ES
APPLICATION REF: 14/00057/OUTMEI**

1. I am directed by the Secretary of State to say that consideration has been given to the report of John L Gray, DipArch, MSc, Registered Architect, who held a public local inquiry on 10-13 and 17-20 March 2015 and closed in writing on 26 January 2016 into your clients' appeal against the decision of Lichfield District Council ('the Council') to refuse planning permission by notice dated 16 January 2014 for the removal of buildings and other structures and construction of up to 750 dwellings, primary school, care village, neighbourhood facilities to include retail development (Use Classes A1, A2, A3, A4, A5), community building (use Class D1), parking, comprehensive green infrastructure comprising formal and informal open space, footpaths, cycleways, water areas (also including sustainable drainage systems) and landscaping, new access points to Watery Lane and Netherstowe Lane and improvements to Netherstowe Lane (all matters reserved except points of access) in accordance with application ref: 14/00057/OUTMEI dated 20 May 2014.
2. On 24 September 2014 this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals for residential development of over 150 units or a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed.
4. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

5. On 23 May 2016 the Secretary of State referred back to the parties to invite representations on: the five year land supply position; the Court of Appeal judgment in the cases of *Suffolk District Council v Hopkins Homes Ltd & Secretary of State for Communities and Local Government* and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168; the adoption by Lichfield District Council of its Community Infrastructure Levy Charging Schedule on 19 April 2016, and the impact of the proposal on the integrity of the Cannock Chase SAC, alone or in combination with impacts from other development. The Secretary of State has taken the representations received (listed at Annex B below) into account in reaching his decision. As these representations were circulated to the parties the Secretary of State does not find it necessary to reproduce them here. Copies may be obtained on written request to the address at the foot of the first page of this letter.
6. In September 2016 the Council published on its website its Strategic Housing Land Availability Assessment 2016 and Five Year Housing Land Supply Paper 2016.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the development plan consists of the saved policies of the Lichfield District Local Plan (1998) (LP), and the Lichfield District Local Plan Strategy 2008-2029 (2015) (LPS). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR22-28.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended.
10. In accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess.

Main issues

11. The Secretary of State agrees with the Inspector that the main issues are those set out at IR232.

Highway matters

12. For the reasons set out by the Inspector at IR233-240, the Secretary of State agrees that walking and cycling distances are longer than could be desired, but also that the appeal site is better placed than many other locations in the Lichfield area. He considers that there would be appropriate public transport provision, owing in particular to the improvement in bus connectivity proposals. Having considered paragraph 32 of the Framework, he does not consider that permission should be refused on transport grounds in this case.

Landscape character

13. For the reasons set out at IR241–246, the Secretary of State agrees that the landscape and visual harm from development should not weigh heavily against the appeal proposals.

Trees and hedgerows

14. For the reasons given at IR248-250, the Secretary of State agrees that while translocation of the historic hedgerows would be a poorer conservation option than retaining the hedgerows in their historic location, the visual character of the hedgerow need not be lost. He further agrees that the proposed access using an improved Netherstowe Lane remains the least harmful of the proposed options.
15. For the reasons given at IR251-2, the Secretary of State agrees with the Inspector that trees T134 and T125 should be accepted as veteran trees. For the reasons given at IR253-255 the Secretary of State agrees that even were harm to the root systems of the trees avoided, their appearance would be harmfully diminished. The Secretary of State concludes, in agreement with the Inspector (IR258) that there would be harm to the ancient hedgerow along the west side of Netherstowe Lane. He further agrees that the loss of the hedgerow on the east side of the road would be modestly harmful. He further agrees that one could only be confident that hedgerow trees, including T134 and T135, would survive only if very limited works to widen the road were carried out, and that it is unclear that, even if acceptable in highway terms, these would leave the trees unharmed.

Curborough Grange

16. For the reasons given at IR259-265, and having considered paragraphs 131 to 134 of the Framework, the Secretary of State agrees that there is harm to the setting of the Grade II listed Curborough Grange, a farmhouse dating from the early to mid 18th century. He agrees that the farmland setting is an important aspect of the significance of the listed building, with the combination of the setting and the basic fabric of the buildings (farmhouse and farmstead) conveying the original function of a working farm. It is no longer a working farm and the traditional farmstead buildings to its east have been converted to dwellings. Overall, the Secretary of State agrees that the harm is 'less than substantial' for the purpose of paragraph 134 of the Framework.

Views of Lichfield Cathedral

17. For the reasons set out at IR266-268, and having applied paragraphs 131 to 134 of the Framework, the Secretary of State agrees that the harm to the setting of the Grade I listed Cathedral would be so slight as barely to cause any harm at all to the significance of the Cathedral as a listed building. He also agrees that, while there would be conflict with Policy CP14, there is only one publicly-available view of the Cathedral from Netherstowe Lane. However, having given special regard to the desirability of preserving the setting of the Cathedral, he gives considerable weight to the slight harm to the setting. He agrees with the Inspector that, as this harm is 'less than substantial', paragraph 134 of the Framework applies.

Housing Land Supply (HLS)

18. As part of the reference back exercise (referred to at paragraphs 5-6 above), the Secretary of State has taken into account the representations made by all the parties on this issue. He notes too that in September 2016, both the Lichfield District SHLAA 2016 and the Council's Five Year Housing Land Supply Paper 2016 were published on its website by Lichfield District Council. He has taken all the above evidence and the Inspector's analysis (IR 269-300) into consideration in his assessment of the HLS position.

Housing Requirement

19. The Council has a recently adopted Local Plan, the Lichfield District Local Plan Strategy 2008-2029 (LP) which was adopted on 17 February 2015. The Secretary of State considers that the LP provides a robust housing requirement figure of 10,030 dwellings for the plan period, or 478 dwellings per annum (dpa).

Addressing shortfall

20. Since the beginning of the plan period (2008), the Council has accumulated a shortfall of 1,943 dwellings. This is set out within the Five Year Housing Land Supply Paper 2016. There is a need for this shortfall to be met in addition to the on-going requirement for housing in the area.

21. There are two commonly used methods for addressing an accumulated shortfall. The 'Liverpool approach' apportions the shortfall across the remaining years of the plan period, whilst the 'Sedgefield approach', seeks to make up the shortfall during the next five years. The Secretary of State has had regard to the Guidance which advocates the 'Sedgefield approach' stating that Local Planning Authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible.

22. However, he notes that this was an issue recently considered by the Local Plan Inspector who found, following rigorous examination, that the 'Liverpool approach' was more appropriate in the case of Lichfield notwithstanding the advice in the PPG. The Local Plan Inspector's conclusion was reached having regard to past rates of delivery in the district, including prior to the recession, and the requirement for completions far in excess of the highest levels ever achieved in the district if the 'Sedgefield approach' were adopted. The Local Plan Inspector highlighted that plans are required to be realistic as well as aspirational and that the Local Plan would likely fail if the Sedgefield approach was used.

23. The Secretary of State further notes that the Local Plan Inspector recognised the potentially critical impact of using either the Liverpool or Sedgefield approaches, and the Guidance, before reasoning that the required housing trajectory using Sedgefield was highly likely to prove unrealistic due to the serious doubt about the necessary high rate of delivery over five years would be attainable in market terms.
24. The Secretary of State has carefully considered the parties' submissions in favour of the 'Sedgefield approach' being adopted. These are, in summary: That past rates of delivery were constrained by policy to direct development towards the urban area; That the Council has published increased housing projections; and that in the period since the LP Inspector considered this issue, it has become clear that the under-provision of housing in Birmingham will lead to increased housing demand in Lichfield.
25. Having carefully considered the parties submissions in favour of the 'Sedgefield approach' being adopted, the Secretary of State considers that these matters do not represent sufficient grounds to not follow the 'Liverpool approach' to addressing shortfall adopted within the LP following rigorous examination and, therefore, agrees with the LP Inspector for the reasons given by the LP Inspector that the shortfall should be apportioned across the remaining plan period.
26. Accordingly, the Secretary of State therefore finds that addressing the shortfall over the remaining plan period would give an annual requirement of 627 dpa, or 3,135 over the 5 year period.

Buffer

27. Paragraph 47 of the Framework requires that an additional buffer of 5% be added to this figure (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery, it states the buffer should be increased to 20% for the same reason, and to provide a realistic prospect of achieving the planned supply. Having carefully considered the evidence and the parties' submissions on the issue, the Secretary of State considers that a 20% buffer is appropriate in this case, given the historic under delivery of housing in the District and that the 20% buffer should also be added to the shortfall. This leads to a 5 year requirement of 3,762 dwellings or 752 dpa.

Supply

Windfalls

28. Paragraph 48 of the Framework and paragraph 3-24-2-140306 of the Guidance states that Local Planning Authorities may make an allowance for windfall sites in the 5 year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. It states any allowance should be realistic having regard to the SHLAA, historic windfall delivery rates, and expected future trends. Having had regard to the average historic delivery of windfall permissions in the District, as set out in the SHLAA 2016, the Secretary of State considers that a windfall allowance of 50dpa is reasonable and consistent with paragraph 48 of the Framework.

Lapse rate

29. The Secretary of State considers that given the historic low rate of non-implemented permissions in the District, as set out in the 5 year HLS Paper 2016 that a 5% lapse rate is appropriate.

Delivery

30. Having regard to footnote 11 of paragraph 47 of the Framework and the relevant paragraphs of the PPG, the Secretary of State has gone on to consider the deliverability of the disputed sites in this matter.

East of Lichfield (Streethay) SDA

31. The Secretary of State has considered the submissions of the parties, and of the Pegasus Group, who act for the developers of the site, and the 5 Year Housing Land Supply Paper 2016, and noting that planning permission is in place, concludes that 40 units can be delivered at this site during the reporting year and 640 units over the five year period.

South of Lichfield (Short Butts Lane) SDA

32. The Secretary of State has carefully considered representations of the parties and the 5 Year Housing Land Supply Paper 2016, and, given the presence of an outline planning permission subject to a s106 agreement, concludes that 450 homes can be delivered at this site in five years.

South of Lichfield (Cricket Lane) SDA

33. The Secretary of State concludes that the trajectory within the SHLAA 2016 remains robust given that the public consultation has taken place and an application is anticipated shortly.

Fradley SDA

34. The Secretary of State concludes that the number of homes built at this site will be determined at reserved matters stage of the planning permission. He further notes that a number of other applications within the Fradley SDA will contribute to the total number of homes: 13/00633/OUTM; 14/01038/OUTM; 16/00272/OUTM. The Secretary of State concludes in agreement with the Inspector (IR283) that the site could deliver 475 dwellings.

East of Burntwood Bypass SDA

35. The Secretary of State has carefully considered the representations of the parties and the Five Year Housing Supply Paper 2016, and noting that the SDA is under construction the Secretary of State concludes that it is reasonable to assume that the position on build out rates and lead in times found sound by the LP examination is robust and that 351 homes will be built at this site by 2019/2020.

East of Rugely SDA

36. The Secretary of State has had regard to the representations of the parties and the 5 Year Housing Land Supply Paper 2016 and notes that this site is currently under

construction and thus concludes that it is reasonable to assume that the site could deliver 56 dwellings over the period.

South of Lichfield (Dean Slade Farm)

37. The Secretary of State concludes that while dwellings on these sites have been allocated in emerging or made Neighbourhood Plans, in the absence of extant planning permissions it is too early to conclude that 275 dwellings could be delivered over the five year period. He thus excludes them from his Housing Supply calculations.

Contributions from Small Sites

38. The Secretary of State has had regard to the likely delivery of 100 dwellings at a site at Tolsons Mill. He has considered the representations of the parties and the Five Year Housing Land Supply Paper 2016 and considers that there is no clear evidence that the site will not be developed within five years, given that an extant planning permission is in place, subject to a s106 agreement, and has, therefore, included 100 units in his calculations.

Land to the North of Dark Lane

39. The Secretary of State has had regard to the delivery of 121 units at land to the north of Dark Lane, Alrewas, which was granted planning permission by the Secretary of State on the date of this letter.

Birmingham's unmet housing need

40. The Secretary of State agrees with the Inspector (IR294) that while there is a distinct possibility of Lichfield having to provide for some of Birmingham's housing need, there is a mechanism for a review in the Local Plan and that it would be inappropriate now to speculate on any contribution by Lichfield. As such the Secretary of State agrees that this should not be considered when assessing the merits of this appeal scheme.

Conclusions on five year HLS

41. The Secretary of State concludes that an annual target of 478 dpa leads to a 5 year requirement of 2,390 dwellings (478×5). Addressing the shortfall of 1,943 dwellings over the remaining plan period ($1,943 \div 13 = 149$) gives an annual requirement of 627 dpa ($478 + 149$), or 3,135 over the 5 year period.

42. To this the Secretary of State has applied a 20% buffer to this figure, including the shortfall, for the reasons set out above, thus finding a total housing requirement of 3,762 over the five year period, or 752 dpa.

43. The Secretary of State notes from the 5 year Housing Land Supply Paper 2016 that the Council states it has 4,149 net deliverable capacity in the 5 year period. For the reasons given above the Secretary of State has deducted 307 units from the net deliverable capacity for the disputed Dean Slade Farm and King Edwards School sites leaving a total of 3,842 net deliverable capacity.

44. As such, the Secretary of State finds that there is a surplus of 307 dwellings, or a 5.11 years housing land supply.

45. For the reasons set out above the Secretary of State disagrees with the Inspector and concludes in his judgement that the local planning authority can now demonstrate a 5 year supply of deliverable housing sites. In these circumstances, paragraph 49 of the Framework is not engaged and the Secretary of State concludes that the relevant policies of the development plan are up to date.

Biodiversity

46. The Secretary of State agrees with the Inspector at IR307 that subject to suitable conditions, no compelling objection on biodiversity grounds remains.

Special Areas of Conservation (SACs)

47. The Secretary of State has carefully considered the Inspector's conclusions at IR308-311. In respect of the River Mease SAC and the Cannock Extension Canal SAC, the Secretary of State agrees with the Inspector at IR308 that, due to the lack of any hydrological connection between the proposal and these SACs, the proposal would have no likely significant impact on those sites.

48. In respect of the Cannock Chase SAC, the Secretary of State considers that an Appropriate Assessment is required in view of the likely significant effects of the proposal, in combination with other plans and projects, on this site. The Appropriate Assessment is at Annex C to this letter and sets out his independent consideration of the relevant technical information.

49. In carrying out this Appropriate Assessment the Secretary of State has had regard to conclusions of the Inspector at IR310 and representations from Natural England dated 7 June 2016. For the reasons given in the Appropriate Assessment, he concludes that the mitigation measures will suffice to prevent any adverse effects from the proposal (including in combination effects with other plans and projects) on the integrity of the Cannock Chase SAC.

Planning conditions and obligations

50. The Secretary of State has given consideration to the Inspector's analysis at IR312-315 of the recommended conditions at Annex A and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and the relevant Guidance.

51. The previous planning obligations submitted to the Inspector have been superseded by the s106 agreement dated 20 December 2016 to take account of the introduction of the Council's Charging Schedule. Having carefully considered the provisions of the s106 agreement, national policy set out at paragraphs 203-205 of the Framework, the relevant Guidance, and the CIL Regulations 2010 as amended the Secretary of State considers that the provisions are necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development and, therefore, the requirements of paragraph 204 of the Guidance and Regulation 122 of the CIL Regulations are met.

Planning balance and overall conclusion

52. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Core Policies and Policies NR3, NR4, NR5 and BE1 of the

adopted Local Plan Strategy, Policies DC1, DC1 or H3, E3 and E18B, and Core Policies 14 and C1 of the Lichfield District Local Plan 1998. He thus concludes that the proposal is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

53. He attaches very substantial weight to the benefits of the provision of affordable and market housing. In doing so he considers that the appeal proposal advances the social and economic roles identified in paragraphs 7 and 8 of the Framework (IR302) which are not diminished owing to the Council now being able to demonstrate a five year supply.
54. He gives modest weight to the landscape and visual harm from development. However, he gives considerable weight to the harm to the setting of Curborough Grange and Lichfield Cathedral, albeit that this is less than substantial for the purpose of 134 of the Framework. He also gives considerable weight to the loss of veteran trees and ancient hedgerows.
55. However, the Secretary of State concludes that the social and economic benefits of providing affordable and market housing are of such importance that they outweigh the environmental harm, and that the proposal would thus represent sustainable development. Overall, therefore, he concludes that the material considerations indicate that the appeal should be allowed.

Formal decision

56. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby allows your clients' appeal and grants planning permission for the removal of buildings and other structures and construction of up to 750 dwellings, primary school, care village, neighbourhood facilities to include retail development (Use Classes A1, A2, A3, A4, A5), community building (use Class D1), parking, comprehensive green infrastructure comprising formal and informal open space, footpaths, cycleways, water areas (also including sustainable drainage systems) and landscaping, new access points to Watery Lane and Netherstowe Lane and improvements to Netherstowe Lane (all matters reserved except points of access) in accordance with application ref: 14/00057/OUTMEI dated 20 May 2014.
57. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
58. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

Right to challenge the decision

59. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

60. A copy of this letter has been sent to Lichfield District Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by Secretary of State to sign in that behalf

Annex A – conditions

Commencement and phasing of development

1. No development (other than demolition or ground works) shall take place within any relevant phase of the development without the prior approval of the details for that phase of the siting, design and external appearance of buildings and structures, the means of pedestrian, cycle and vehicular access (save for vehicular access into the site from Watery Lane and Netherstowe Lane and improvements to the northern section of Netherstowe Lane) and landscaping (hereinafter called “the reserved matters”) which shall be obtained from the local planning authority in writing before any development in that phase is commenced.
2. The development in any relevant phase hereby approved shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last reserved matter to be approved for that relevant phase, whichever is the later.
3. The first reserved matters application shall be made within three years of the date of this planning permission. Applications for the approval of all reserved matters shall be made before the expiration of five years of the date of this permission.
4. The reserved matters to be submitted in accordance with condition 1 for any relevant phase shall include:
 - (i) details of all earthworks, mounding, finished floor levels of all buildings and details of existing and proposed site levels in that phase;
 - (ii) the disposition of roads, buildings and other site features in that phase and their relationship with land and buildings adjacent to that phase;
 - (iii) sample details of facing, roofing, boundary and hard surfacing materials for that phase;
 - (iv) details of the means of pedestrian and cycle access and parking layout in that phase; and
 - (v) details of soft landscaping in that phase in accordance with other conditions attached to this permission including those concerned with landscaping, trees, and ecology.
5. Plans and particulars of the reserved matters in any relevant phase referred to in conditions 1 and 4 above shall be submitted to and approved in writing by the local planning authority and the development shall be carried out in accordance with the approved details.
6. On or before the submission of Reserved Matters in relation to a relevant phase of the development hereby approved, a phasing plan shall be submitted to the local planning authority for approval. This shall include a plan or plans and associated information to set out details of:
 - (i) the timing of the provision of infrastructure to serve the proposed development or phase thereof, including the proposed haul road and permanent distributor road to the development from Netherstowe Lane, other off-site and on-site highways works, drainage and other utilities provision and improvements;
 - (ii) the timing of the provision of green infrastructure within the site and off-site habitat creation/enhancement works to serve the proposed development or phase thereof, including the ecological mitigation and compensation areas and other formal open space, informal open space, allotments, biodiversity, sustainable urban drainage and strategic landscaping features; and
 - (iii) the timing of the provision of the proposed primary school, community hall building, local neighbourhood centre, care facility and public transport facilities associated with the development or phase thereof.

The phasing plan shall be prepared in accordance with other conditions attached to this permission relating to the timing of specified highways works and community facilities. The development or phase thereof shall be carried out in accordance with the approved phasing plan.

7. No more than 250 dwellings shall be occupied until the community hall hereby approved has been completed in accordance with the details approved under condition 1 above.

Drawings, plans and design

8. All applications for approval of reserved matters shall be broadly in accordance with the following drawings:
 - (i) C1650 / PP / 001 Rev A - Parameter Plan 1: Land Use;
 - (ii) C1650 / PP / 002 Rev A - Parameter Plan 2: Areas of potential built development;
 - (iii) C1650 / PP / 003 Rev A - Parameter Plan 3: Building Heights;
 - (iv) C1650 / PP / 004 Rev A - Parameter Plan 4: Landscape and Open Space Structure;
 - (v) C1650 / PP / 005 Rev A - Parameter Plan 5: Access and Movement.
9. On or before the submission of reserved matters in respect of any relevant phase of the development hereby permitted, a design brief concerning that phase shall be submitted to the local planning authority for approval. The design brief shall include the following information:

Urban design details:

- (i) general building form, heights and housing mix;
- (ii) street types and road hierarchy;
- (iii) footpath and cycle networks;
- (iv) parking strategy;
- (v) landscape , open space, SUDS and boundary treatment design principles, including how landscaping proposals will take account of the setting of the Grade II listed Curborough Grange;
- (vi) how the development seeks to maintain and enhance public views of Lichfield Cathedral; and
- (vii) details of how the development broadly accords with the approved Parameter Plans and the Indicative Master Plan.

Detailed design principles:

- (viii) building materials palette;
- (ix) elevational composition;
- (x) corner treatments;
- (xi) placement of entrances;
- (xii) types of refuse and recycling storage;
- (xiii) boundary and surface treatment palette; and
- (xiv) planting and soft landscaping palette.

Reserved matters shall be in accordance with the approved design brief.

Roads, parking and travel

10. No development (other than demolition and ground works) shall take place within any relevant phase of the development until details of a Pedestrian and Cyclist Connectivity Scheme, including a timetable for the provision/improvement of linkages to footpaths, footways and cycleways adjacent to that phase, have been submitted to and approved in writing by the local planning authority. The development or phase thereof shall be carried out in accordance with the approved details.
11. No dwelling shall be occupied until a Public Transport Connectivity Scheme has been submitted to and approved in writing by the local planning authority. The Scheme shall include details of the duration, routing, frequency and delivery of bus services serving the development in accordance with the following:
 - On or before the occupation of the 50th dwelling, a half-hourly bus service shall be provided into and out of the development via Watery Lane, linking the development with the town centre and Lichfield Trent Valley railway station;
 - On or before the occupation of the 250th dwelling, a half-hourly bus service shall be provided through the site linking the development with the town centre, Lichfield Trent Valley railway station and Fradley Park.

Development or the relevant phase thereof shall be carried out in accordance with the approved details.

12. No development (other than demolition and ground works) shall take place within any relevant phase of the development until the engineering details and specification of the proposed roads, cycleways, footways, footpaths and highway drains required for that phase have been submitted to and approved in writing by the local planning authority. No building shall be occupied until the road works necessary to provide access from the publicly maintained highway to it have been completed in accordance with the approved details.
13. No buildings in any relevant phase of the development hereby permitted shall be occupied until the individual vehicular accesses, entrances, turning and manoeuvring areas and driveways/parking spaces to serve it have been completed in accordance with details first submitted to and approved by the local planning authority. These features shall thereafter be kept available for their approved use.
14. Before the construction of any buildings within any relevant phase of the development is commenced, a scheme for the provision of secure cycle parking for any apartments, commercial premises, primary school, care facility or community hall provided within that phase shall be submitted to and approved in writing by the local planning authority. The cycle parking shall be implemented in accordance with the approved details prior to the first occupation of those buildings and shall thereafter be kept available for that use.
15. Development shall not commence before a scheme of highway improvements relating to the junction of Netherstowe Lane and Wood End Lane and improvements to the northern section of Netherstowe Lane has been submitted to and approved in writing by the local planning authority. The scheme shall be broadly in accordance with drawing no. Figure 9 (Issue 02), or an alternate scheme as may be required as a result of the alignment of HS2. No building in any phase relying on access by way of Netherstowe Lane shall be occupied before the improvements have been completed in accordance with the approved details.
16. Development shall not commence before a scheme of highway improvements for the southern section of Watery Lane has been submitted to and approved in writing by the local planning authority. The scheme shall include a signalised priority arrangement and dedicated footway beneath the Watery Lane railway bridge and shall be broadly in accordance with drawing no. Figure 08 (Issue 04). No building in any phase relying on

access by way of Watery Lane shall be occupied before the improvements have been completed in accordance with the approved details.

17. Development shall not commence before a scheme of highway improvements for the junction of Watery Lane and Eastern Avenue has been submitted to and approved in writing by the local planning authority. No building in any phase relying on access by way of Watery Lane shall be occupied before the improvements have been completed in accordance with the approved details.
18. Development shall not commence before details of the distributor road between Netherstowe Lane and Watery Lane have been submitted to and approved in writing by the local planning authority. The details shall be broadly in accordance with drawing no. C1650 / PP / 001 Rev A - Parameter Plan 5: Access and Movement. The distributor road shall be completed in accordance with the approved details on or before occupation of the 250th dwelling in the development.
19. The distributor road shall not come into operation before a traffic management scheme designed to prevent or limit vehicular traffic using the southern section of Netherstowe Lane has been completed in accordance with details first submitted to and approved in writing by the local planning authority.
20. On or before occupation of the 500th dwelling in the development, a scheme of highways improvements at the junction of Capper's Lane and Europa Way, Lichfield, shall have been completed in accordance with details first submitted to and approved in writing by the local planning authority. The scheme shall be broadly in accordance with drawing no. Figure 34 (Issue 02).
21. Before any relevant phase of the development is commenced, full details of ground levels, earthworks and excavation within that phase within 10 metres of the boundary of land associated with the West Coast Mainline railway, including a risk assessment and method statement for those works, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
22. The development shall not restrict access to the land and infrastructure associated with the West Coast Mainline railway such as may be required for necessary maintenance and other associated operations.

Construction management

23. No development, including demolition, shall take place within any relevant phase of the development until a Construction Environmental Management Plan (CEMP) for that phase has been submitted to the local planning authority for approval. The CEMP shall be adhered to throughout the construction period and shall include details of:
 - (i) a risk assessment of construction activities with a potentially damaging effect on ecological receptors;
 - (ii) the methods to be used to control the emission of dust, noise and vibration from construction works, including details of any mitigation measures required for that phase;
 - (iii) a scheme for dust deposition monitoring;
 - (iv) the disposal of surface water during construction;
 - (v) measures (including wheel washing facilities) to control the deposit of mud and similar debris on adjoining public highways;
 - (vi) site fencing and security;
 - (vii) pedestrian and cyclist protection;
 - (viii) measures to identify and protect 'biodiversity protection zones', SUDS and other green infrastructure during construction;

- (ix) temporary contractor's buildings, plant, storage of materials, lighting and parking for site operatives;
- (x) the location and timing of sensitive work to avoid harm to biodiversity features;
- (xi) working and delivery hours;
- (xii) the use of generators;
- (xiii) the construction of a temporary haul road from Netherstowe Lane broadly along the route of the proposed Distributor Road to the site, as shown on Drawing No. CH003 (Issue 01); the temporary haul road shall be provided before the construction of any buildings within the development;
- (xiv) measures to control the routing of construction traffic, including measures to limit the potential for bridge strike impacts from development traffic on the Watery Lane Railway Bridge;
- (xv) arrangements for the turning of vehicles within the site so that they may enter and leave the site in a forward gear;
- (xvi) restrictions on burning; and
- (xvii) roles and responsibilities for the implementation of CEMP requirements and measures.

Noise and odour

- 24. No development shall take place within the proposed local neighbourhood centre until a scheme for noise attenuation of any operational noise emitting from fixed or mobile plant or machinery, and a scheme to control odour relating to any Class A3, A4 or A5 uses, has been submitted to and approved in writing by the local planning authority. The approved noise attenuation and odour control schemes shall be implemented in accordance with the approved details prior to the first occupation of the commercial uses contained within the local neighbourhood centre and shall thereafter be operated and maintained in accordance with the manufacturer's instructions.
- 25. Before the construction of any buildings within any relevant phase of the development is commenced, a scheme for protecting existing and proposed residents from operational noise shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of any noise mitigation measures required for that phase, a timetable for the implementation of the approved measures and provision for a validation report to be submitted to and approved in writing by the local planning authority. The validation report shall ensure that all noise issues have been adequately addressed prior to the buildings in that phase being first occupied.

Contamination

- 26. No development shall take place within any relevant phase of the development until that phase has been the subject of a detailed scheme for the investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings, including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings, shall be submitted to and approved in writing by the local planning authority. A validation report shall be submitted to the local planning authority for approval within three months of completion of the remediation works. If further evidence of contamination is revealed during the course of the development, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the local planning authority, have been implemented.
- 27. No development shall take place within any relevant phase of the development until full details of any soil or soil-forming material, whether taken from elsewhere within the development site or imported from outside the site, for use within garden areas, soft landscaping, filling and level-raising within that phase, have been submitted to and approved in writing by the local planning authority. Where the donor site is unknown or is

brownfield, the material shall be tested for contamination and suitability for use on site. Full donor site details and proposals for contamination testing, including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment), shall be submitted to the local planning authority for approval prior to importation to the site. The approved testing must then be carried out and validatory evidence submitted to and approved in writing by the local planning authority prior to any soil or soil-forming materials being brought on to site.

Archaeology

28. No development shall take place within any relevant phase of the development until the applicant has secured the implementation of a programme of archaeological work for that phase, including excavation, post-excavation analysis and publication of a report, in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the local planning authority.

Landscaping, trees and ecology

29. The development hereby approved shall be carried out in full accordance with the protection, mitigation and compensation measures outlined within the Framework Ecological Mitigation and Compensation Strategy dated March 2015.
30. Before the construction of any buildings within any phase of the development is commenced, a Landscape and Planting Scheme, including a Landscape and Ecology Management Plan connected with that phase, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall include:
- (i) a description and evaluation of the features to be managed;
 - (ii) long term landscape and ecology design objectives and management responsibilities;
 - (iii) a plan showing the planting layout of proposed tree, hedge, shrub and grass areas;
 - (iv) a schedule of proposed planting, indicating species, size at time of planting, numbers/densities of plants and a proposed implementation timetable;
 - (v) a written specification outlining cultivation and other operations associated with plant and grass establishment, including adherence to current Sport England design guidance for the proposed playing pitches;
 - (vi) existing and proposed finished levels or contours;
 - (vii) means of enclosure and boundary treatments;
 - (viii) a schedule of maintenance for all landscape and ecology areas other than privately owned domestic gardens for a period of five years from the date of first planting;
 - (ix) details of the body or organisation responsible for implementation of the plan; and
 - (x) ongoing monitoring and remedial measures.
31. On or before the submission of reserved matters in respect of any relevant phase of the development hereby permitted, a Tree Protection Plan, Arboricultural Method Statement and Arboricultural Implications Assessment for that phase shall be submitted to the local planning authority for its written approval. The details shall include a scheme setting out specific tree and hedgerow protection measures in accordance with BS 5837 and a specification and programme for the translocation of existing hedgerows, as may be required in relation to that phase. The measures shall be implemented in accordance with the approved details prior to the commencement of any construction works within that phase and maintained for the duration of construction works in that phase.
32. Any tree, hedge or shrub planted or translocated within the site as part of the approved landscaping and planting scheme which dies or is lost through any cause during a period of five years from the date of first planting or translocation shall be replaced in the next planting season with another of a similar size and species, unless otherwise agreed in writing by the local planning authority.

33. No works for any phase of the development, including site clearance and demolition works, shall commence until details of an Ecological Design Strategy (EDS) to serve that phase have been submitted to and approved in writing by the local planning authority. The approved EDS shall be broadly in accordance with details set out in the Framework Ecological Mitigation and Compensation Strategy dated March 2015. The mitigation, compensation, management and other detailed measures and requirements, including a programme for implementation, set out in the approved EDS shall be implemented in accordance with the approved details. The EDS for each phase shall include the following:
- (i) the purpose and conservation objectives for that phase of the proposed works;
 - (ii) a review of the ecological potential and constraints in that phase;
 - (iii) detailed designs and/or working methods to achieve the objectives, including the extent and location of proposed works; where relevant this will include details of a Hedgerow Translocation Strategy and Tree Management Plans;
 - (iv) the type and source of materials to be used;
 - (v) a timetable for implementation demonstrating that works are aligned with the proposed phase of development; and
 - (vi) identification of the persons responsible for implementing the works.
- The EDS shall be implemented in accordance with the approved details and all features shall thereafter be retained as approved.
34. No works for any phase of the development, including site clearance and demolition works, shall commence until details of mitigation proposals under GCN Mitigation Option 2, as set out in the Framework Ecological Mitigation and Compensation Strategy dated March 2015 (the Strategy), have been submitted to and approved in writing by the local planning authority. The proposals shall address the medium population of great crested newts recorded at Pond P3 within the Strategy and Reasonable Avoidance Measures to be implemented in relation to Pond P6, as set out in the Note Regarding Pond P6 dated April 2015. A method statement, including timescales, shall be submitted to and approved in writing by the local planning authority prior to commencement of any of these works. All works shall be carried out in accordance with the approved details and method statement.

Renewable energy and sustainability

35. Before the construction of any buildings within any relevant phase of the development is commenced, details of the sustainability measures/technologies to be used within that phase shall be submitted to and approved in writing by the local planning authority. The approved sustainability measures/technologies shall thereafter be implemented in accordance with the approved details.

Lighting

36. No phase of the development shall commence until details of a lighting scheme to serve that phase, including a timetable for implementation, have been submitted to and approved in writing by the local planning authority. The lighting scheme shall be designed to reduce effects upon sensitive species and upon sensitive habitats to be retained or created on the site. The lighting scheme shall be provided in accordance with the approved details.

Drainage and flood risk

37. No development shall take place until a scheme setting out measures to deal with flood risk, surface water drainage, foul sewage and outfall for the development or any phase thereof has been submitted to and approved in writing by the local planning authority. The scheme shall include:
- (i) how the development or phase thereof shall limit surface water run-off from the site to a 1 in 100 year flood event plus an allowance of 30% for climate change;

- (ii) details of the hydrological and hydrogeological context of the development and the sustainable drainage strategy to be implemented for the development or phase thereof, including details of SUDS elements and attenuation, storage and treatment capacities, future maintenance and management;
- (iii) a plan showing the proposed layout and types of surfacing for any relevant phase, as an integrated part of an overall sustainable urban drainage system, and a written specification of proposed surfacing materials and operations;
- (iv) the results of site porosity tests for any relevant phase to assess the suitability of the ground for infiltration purposes; and
- (v) details of flood mitigation and resilience measures for the development or phase thereof, including a timetable for the implementation.

The development or phase thereof shall be carried out in accordance with the approved measures.

Local neighbourhood centre

38. The total permitted floorspace in the approved local neighbourhood centre for Class A1-A5 uses shall be a maximum of 1,500 square metres gross. Within this total, the maximum floorspace for a Class A1 convenience foodstore shall be 400 square metres gross. Other Class A1 retail units shall have a maximum floorspace of 100 square metres gross for each unit. The total maximum floorspace for Class A1 uses shall be 750 square metres gross.

Annex B

Representations received before the Secretary of State's letter of 23 May 2016

Party	Date
Bal Nahal, Solicitor, Lichfield District Council	23 May 2016

Representations received in response to the Secretary of State's letter of 23 May 2016

Party	Date
Bal Nahal, Solicitor, Lichfield District Council	31 May 2016 (identical letter to one dated 23 May 2016)
Bal Nahal, Solicitor, Lichfield District Council (enclosing one shown above dated 31 May 2016)	03 June 2016
Antony Muller, Natural England	7 June 2016
Richard Brown, Director Planning, CBRE Ltd	7 June 2016

Representations received in response to the Secretary of State's letter of 8 June 2016

Party	Date
Antony Muller, Natural England	14 June 2016
Bal Nahal, Solicitor, Lichfield District Council	15 June 2016
Richard Brown, Director Planning, CBRE Ltd (enclosing response by Pegasus Group dated 7 June 2016, and one by CBRE dated 15 June 2016)	15 June 2016

Other representations received after 23 May 2016

Party	Date
Christopher Moulton, Town Clerk, Lichfield City Council	9 June 2016

Annex C – Appropriate Assessment

RECORD OF THE HABITATS REGULATIONS ASSESSMENT UNDERTAKEN UNDER REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010

Project Title and Location:

Recovered planning appeal No. 14/00057/OUTMEI Land at Watery Lane, Curborough,
Lichfield WS13 8ES

Project description:

The removal of buildings and other structures and construction of up to 750 dwellings, primary school, care village, neighbourhood facilities to include retail development (Use Classes A1, A2, A3, A4, A5), community building (use Class D1), parking, comprehensive green infrastructure comprising formal and informal open space, footpaths, cycleways, water areas (also including sustainable drainage systems) and landscaping, new access points to Watery Lane and Netherstowe Lane and improvements to Netherstowe Lane (all matters reserved except points of access) in accordance with application ref: 14/00057/OUTMEI dated 20 May 2014.

Completion Date: 31/1/17

Introduction

1. The above project, being a 'recovered appeal', is to be determined by the Secretary of State for Communities and Local Government using his powers under section 78 of the Town and County Planning Act 1990. The Secretary of State is therefore the 'competent authority' for the purposes of the Conservation of Habitats and Species Regulations 2010.
2. This assessment has been prepared for the purpose of determining whether the proposed project would have any adverse effect on the integrity of the Cannock Chase Special Area of Conservation (SAC), either alone or in combination with impacts from other development.
3. An Appropriate Assessment was prepared by the Cannock Chase SAC Partnership to inform the Local Plan making process (November 2012). This concluded that, in order to prevent adverse effects on the integrity of the SAC, a package of mitigation measures was required for the purpose of all applications for new dwellings within the 15 km zone of influence.
4. During the course of the inquiry, the Council endorsed the Cannock Chase SAC Guidance to Mitigate the Impact of New Residential Development. The SAC Partnership acknowledges a 15 km Zone of Influence but requires financial contributions towards mitigation only from developments within 8 km. In completing this assessment the Secretary of State has given careful consideration to the mitigation measures which are referred to in more detail below.
5. He has also consulted Natural England in line with Reg 61(3) (7/6/16 & 14/6/16) and has taken to account their advice as summarised below. In preparing its advice, Natural England took into consideration:
 - The Conservation of Habitats and Species Regulations 2010 – Regulation 62
 - Cannock Chase Special Area of Conservation Guidance to mitigate the impact of residential development
6. He has taken into account the Inspector's Report dated 21 March 2016 and subsequent representations from Lichfield District Council and the appellant.
7. The Secretary of State has also drawn on guidance contained in the NPPF, Circular 06/2005 and the EC publications 'Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC', and 'Assessment of plans and projects significantly affecting Natura 2000 sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC'.

Cannock Chase SAC

8. The distance between the location of the proposed project and Cannock Chase SAC is 10.5km).

9. The Cannock Chase SAC is an area protected because of its unique heathland habitat. (European dry heaths Annex 1 habitat). Conservation objectives are to maintain:-
- dwarf shrub heath
 - broadleaved, mixed and yew woodland

Assessment

10. The Cannock Chase SAC experiences pressures through road traffic air pollution and disturbance or erosion caused by visitors and recreational users. These pressures are likely to increase as a result of population growth. In the absence of sufficient mitigation measures, the proposed project could be expected to contribute to increased road traffic air pollution and recreational use.
11. This assessment therefore focuses on whether the existing and proposed mitigation measures will be sufficient to prevent any adverse effects on the integrity of the Cannock Chase SAC arising from this proposal either alone or in combination with other plans or projects.
12. The proposed project was not considered as part of the housing provision of the adopted Local Plan Strategy. However, Local Plan Policy NR7 requires mitigation measures to be secured from developments within 15km. This policy is qualified by the Cannock Chase SAC Guidance to Mitigate the Impact of New Residential Development (March 2015), which the Council has endorsed, as this requires financial contributions towards mitigation only from developments within 8 km.
13. A set of Strategic Access Management Measures (SAMM) to prevent harm to the SAC from new housing development have been costed and agreed. The total cost of this mitigation strategy is now estimated at £1.97 million. The Cannock Chase SAC Partnership concluded that the SAMM will enable the delivery of the planned housing provision within the Local Plan Strategy within Lichfield District and the other local authorities within the SAC Partnership.
14. Existing mitigation measures include:
- Engagement of three of four key sectors: walkers and dog walkers; cyclists; horse riders.
 - Development of volunteering and education programmes.
 - An overarching strategy for visitors and nested strategies for car parking, track and footpath management and each visitor sector, plus a monitoring strategy
 - Physical management: improvement of paths and tracks
 - Implementation of parking plan; way marking and on-site interpretation panels
 - Two aerial survey of paths and tracks,
 - Ground truthing and targeted biological monitoring as necessary
 - Two visitor surveys
15. The Council states (3 June 2016) that, subject to an additional mitigation package referred to below, the 'in combination' impact of proposals involving a net increase of one

or more dwellings within a 15km radius of the SAC would have an adverse effect on its integrity, as increased visitor numbers would cause additional damage from site use and vehicle emissions.

16. An additional mitigation package for this proposal provides for a new visitor hub, including circular walks, car parking provision, cycleway provision, visitor information and interpretation and additional habitat creation. The Council considers that these measures will prevent any adverse impact on the integrity of the SAC. The Appellant has agreed to this mitigation, if necessary, and a mechanism for contributions towards Strategic Access Management Measures (SAMMs) exists via the CIL Charging Schedule and the s106 agreement.
17. The Secretary of State has given careful consideration to the representations of Natural England (NE) dated 7 & 14 June 2016. In their letter of 7 June, NE state that the air quality impacts of increases in traffic volumes, and the recreation impacts, would have an adverse effect on the integrity of the SAC.
18. In their letter of 14 June, NE noted that the appellant and the district council appear to have sought to re-negotiate the terms of the submitted mitigation package in that it appeared to omit a developer contribution in respect of residual impacts because the appeal proposal site lies outside the 0-8km zone where SAC contributions are levied. Without a developer contribution to address these residual impacts, NE advised that it cannot be ascertained that the appeal proposal would not have an adverse effect on the integrity of Cannock Chase SAC.
19. In the circumstances, NE advised that:
 - o a developer contribution should be secured (using for example a Section 106 agreement); or
 - o CIL funding is secured to address the residual impacts

and either option may allow the Secretary of State to ascertain there is no adverse effect on the integrity of the Cannock Chase SAC.

20. Having taken into account the Section 106 Agreement of 20 December 2016, the Secretary of State has had regard to clause 4.1, which sets out that in the event of the SAC mitigation contribution not being covered by the Council's CIL Regulation 123 list the Owners covenant to pay the SAC Mitigation Contribution prior to occupation of 25% of the dwellings.

Conclusion

21. Having had regard to the above evidence, the Secretary of State concludes that the existing and proposed mitigation measures, being secured by s106 Agreement of 20 December 2016 between Lichfield District Council, Staffordshire County Council, IM Properties Ltd, Valerie and Wendy Hollinshead and Kay Wrigton and John and Margaret Greaves will prevent any adverse effects from the proposed project on the integrity of the

Cannock Chase SAC either alone or in combination with other plans or projects, including the proposed development at land north of Dark Lane.

Report to the Secretary of State for Communities and Local Government

by John L Gray DipArch MSc Registered Architect

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 21 March 2016

TOWN AND COUNTRY PLANNING ACT 1990

LICHFIELD DISTRICT COUNCIL

**APPEAL BY I M PROPERTIES DEVELOPMENT LIMITED,
THE GREAVES FAMILY AND THE HOLLINSHEAD FAMILY**

Inquiry held on 10-13 and 17-20 March 2015

Inquiry adjourned on 20 March 2015 and closed in writing on 26 January 2016

Land and Buildings off Watery Lane, Curborough, Lichfield, WS13 8ES

File Ref. APP/K3415/A/14/2224354

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ANNEX A: APPEARANCES

ANNEX B: DOCUMENTS

ANNEX C: SUGGESTED CONDITIONS

File Ref. APP/K3415/A/14/2224354

Land and Buildings off Watery Lane, Curborough, Lichfield, WS13 8ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by I M Properties Development Limited, the Greaves family and the Hollinshead family against the decision of Lichfield District Council.
- The application, ref. 14/00057/OUTMEI, dated 16 January 2014, was refused by notice dated 20 May 2014.
- The development proposed is "Removal of buildings and other structures and construction of up to 750 dwellings, primary school, care village, neighbourhood facilities to include retail development (Use Classes A1, A2, A3, A4, A5), community building (use Class D1), parking, comprehensive green infrastructure comprising formal and informal open space, footpaths, cycleways, water areas (also including sustainable drainage systems) and landscaping, new access points to Watery Lane and Netherstowe Lane and improvements to Netherstowe Lane (all matters reserved except points of access)".
- The appeal was recovered for decision by the Secretary of State on 25 September 2014.
- The reason for the direction was that "the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities".

Summary of Recommendation: that the appeal be dismissed

PROCEDURAL MATTERS

1. The inquiry opened on 10 March 2015 and sat for eight days. I made an accompanied site inspection on 19 March 2015. I also made unaccompanied visits that day to the surroundings of the site and viewpoints of it as well as to Strategic Development Allocation (SDA) sites around Lichfield, as allocated for housing in the Local Plan Strategy, and their relationship to city centre.
2. The business of the inquiry was concluded on 20 March 2015 with closing submissions on behalf of the Council and the appellants. I nevertheless adjourned the inquiry rather than concluding it. There was a primary reason for this and three secondary reasons.
3. The first and primary reason for the adjournment was that the appellants had challenged the adopted Local Plan Strategy under s.113 of the Planning and Compulsory Purchase Act 2004 and a High Court hearing date had been set for 22 April 2015.^A That date came before this report would be submitted to the Secretary of State and it was acknowledged that the success or failure of the challenge could have major implications for the conclusions to be drawn from the evidence to the inquiry.
4. The second was the anticipation that Highways England (the Agency Highways as it then was) would imminently indicate that it no longer held any objection to the proposals, thus clarifying the approach to be taken in this report. That indeed was the case.^B
5. The third was the need to seek the views of the parties on the impact, if any, of the 2012-based household projections. I set dates for the submission of representations, reported upon at paras. 193-199 below.

^A Document 2.

^B Document A5 contains all of the relevant correspondence.

6. The fourth was that two nearby ponds had yet to be surveyed for great crested newts, there having been difficulties in gaining access to them; the revised Framework Mitigation and Compensation Strategy submitted to the inquiry^A was expected by both the appellants and the Council to cater for whatever was found; even so, I considered it would be helpful to know of the survey results, which would be available by the time of the High Court hearing, again clarifying the approach to be taken in this report.^B
7. A section 106 obligation was to have been submitted by 20 March 2015. In light of the adjournment, however, it was not necessary for it to be executed by that date. It was convenient to allow time for further negotiation on the covenants to be included, whether by agreement or unilateral undertaking. In the event, both an agreement and a unilateral undertaking were submitted, on an either/or basis, on 22 May 2015^C – reported on at paras 190-192 below.

The s.113 challenge

8. It transpired, subsequent to my adjourning the inquiry, that the High Court hearing on 22 April 2015 would consider only an interim suspension of the Local Plan Strategy (and other matters not directly related to the appeal) and that the substantive hearing would be on 10 June 2015. Since it would have been inappropriate to submit a report to the Secretary of State on which no action could sensibly be taken before the High Court judgement, I adjourned the inquiry for a further period, initially to 30 June 2015 and then to 7 August 2015.
9. On 20 July 2015, the Honourable Mr Justice Cranston refused the application to quash the Local Plan.^D Leave to appeal to the Court of Appeal was not granted but IM Properties sought permission directly. I adjourned the inquiry first until 29 October 2015 and then until 8 January 2016. On 27 November 2015, the Court of Appeal refused permission to appeal.^E
10. I then sought written representations from the appellants and the Council to provide an update on any material changes in circumstances since 20 March 2015.^F The gists of those representations are reported at paras 200-215 (Lichfield District Council) and 216-231 (IM Properties). The inquiry was closed in writing on 26 January 2016.
11. In fact, the appellants renewed the application for permission to appeal to the Court of Appeal. It was considered at a Court of Appeal Hearing on 25 February 2016 and permission was again refused.

The refused planning application

12. The application was refused for seven reasons. Reason for refusal 6 (relating to the wind turbine approved on an adjacent site) was withdrawn prior to the inquiry.^G No evidence was adduced on ecological matters (part of reason for refusal 5) and retail matters (reason for refusal 7), those matters having been resolved outside the inquiry, subject to agreed conditions to be attached to

^A Document 26.

^B Document A8 has the survey results and related material. In particular, the matter is covered in the Second Statement of Common Ground: Ecology.

^C Document A8 contains all that was submitted on 22 May 2015.

^D Document A10 – IM Properties Development Limited v Lichfield District Council [2015] EHC 2077 (Admin).

^E Document A11.

^F Documents A12-A16.

^G See the Council's Statement of Case at 5.6.1.

outline planning permission, were it to be granted. Evidence on highways and transportation matters (reason for refusal 2) was limited to a round table session during the inquiry and the objections resolved, again subject to conditions and also to the Highways Agency being able to withdraw its holding objection.

THE SITE AND SURROUNDINGS^A

13. The site lies north-east of the West Coast Main Line railway, which passes immediately north of Lichfield and, to date, acts as a north-east boundary to the built-up area of the city (the exception being Streethay, on the former A38 road to the north-east of the railway line). The site extends to virtually 50 hectares (ha) and lies between Watery Lane to its west and Netherstowe Lane to its east. Those two roads run between Eastern Avenue, in Lichfield, and Wood End Lane, which passes a little to the north of the site and runs from Fradley and the A38 trunk road (to the north-east of the site) towards Rugely (to the north-west).
14. The site may be described as Y-shaped. The arms run broadly south-to-north with a frontage to Watery Lane of close to 850m and a width varying between about 320m and 450m; the leg extends east to Netherstowe Lane, by roughly a further 300m with a width of about 220m. A ribbon extension of the northerly arm of the 'Y' runs north-east to Netherstowe Lane and thence to Wood End Lane; its inclusion is solely to cater for one of the proposed accesses.
15. The majority of the site is in agricultural use. Also within it are Curborough Antiques and Craft Centre and the farmhouse and associated buildings of Curborough Hall (both at the mid-point of the Watery Lane frontage), a number of man-made fishing and associated lakes (the Curborough Fishery, also used by a private angling club, located centrally within the site) and areas of trees and shrubs, both natural and planted (primarily associated with the lakes). There are two public footpaths across the site, running broadly north-south and east-west (the latter forming part of the Darwin Walk).
16. The south-westerly leg of the 'Y' extends as far as the West Coast Main Line railway and the northerly leg to the Curborough waste water treatment works (operated by Severn Trent Water). Otherwise the boundaries are with agricultural land, although there are various houses (of various ages) along both Watery Lane and Netherstowe Lane. More particularly, the buildings of Curborough Grange stand in the angle of the easterly leg and northerly arm of the 'Y'. Curborough Grange is listed in grade II;^B it is now a private dwelling and the traditional farm building range associated with it has been converted for residential use.
17. A little to the north-east of the site is the Curborough Sprint Course, a local motor sports track which makes use of hardstanding areas of the former Fradley Airfield. Beyond that is the safeguarded route of the High Speed 2 (HS2) rail link from London to the north. North-east again is Fradley Park employment site, also largely on the site of the former airfield, and Fradley village.

^A Document CD118, the Statement of Common Ground, has a description at p.8.

^B Document CD88b contains the list description.

18. The existing hedgerows and associated verges and ditches along Netherstowe Lane, where it is proposed to be improved for access to the site, are a locally-designated Site of Biodiversity Interest (SBI).^A Some of the hedgerow trees along this section of the road were included in a Tree Preservation Order (TPO) made in February 2015.^B The hedgerow along the Watery Lane site boundary, from the Curborough Craft Centre south to the West Coast Main Line, is a locally-designated Biodiversity Alert Site (BAS).^C Further afield are three Special Areas of Conservation (SACs) – Cannock Chase SAC (10.5km distant),^D Cannock Extension Canal SAC (11.2km) and the River Mease SAC (5.6km). The Stowe Pools and Walkmill Clay Pit Site of Special Scientific Interest (SSSI) lies 1.28km from the site and the Christian Fields Local Nature Reserve (LNR) 630m away.

THE PROPOSALS^E

19. The application description (at the head of this report) is comprehensive. The development is proposed as a 750-dwelling extension of Lichfield.^F Up to 25% of the dwellings would be affordable. The care village would provide up to 200 bed-spaces. A 1-form entry primary school would be provided on a site large enough for extension to a 1.5-form entry plus a nursery school. The Curborough Antiques and Craft Centre would be retained and expanded as a Neighbourhood Centre. The proposals include 2.25ha of formal open space, including provision as part of the proposed primary school, and just over 12ha of informal open space, which would include retention and remodelling of the existing lakes, a sustainable drainage system and improvement of the green corridor along the course of the Curborough Brook.
20. A distributor road through the site would run between Watery Lane, south of the Craft Centre, and Netherstowe Lane, towards its northern end. There would be priority junctions on the existing roads; the distributor road would be the priority road, the northerly leg of Watery Lane and the southerly leg of Netherstowe Lane giving way to it.^G The length of Netherstowe Lane from the priority junction north to Wood End Lane would be widened and improved. Watery Lane beneath the West Coast Main Line would become signal-controlled so that the carriageway could be reduced to 4.0m wide, enabling a 2.0m-wide footway.
21. Development would be phased.^H Timing of the improvements to Watery Lane and Netherstowe Lane would be aligned to the development phases. Parameters plans define land use and areas of potential built development, building heights, landscaping and open space structure, and access and movement.

^A Document LDC6, Appendix 7.

^B Document 7.

^C Document 26 – Fig. 15.2 identifies SBIs and BASs on or in the vicinity of the appeal site.

^D Document 16 indicates the relationship of the appeal site to the Cannock Chase SAC.

^E Document CD118, the Statement of Common Ground, has a description at p.6. Documents CD1-CD6 are the application plans. Document 36 supersedes CD3 (the illustrative master plan) and CD5 (the parameters plans).

^F Although there were earlier proposals for new settlements on larger areas of land which included the appeal site.

^G Document CD6 has the drawings for the access junctions.

^H Document CD4.

PLANNING POLICY

22. The Lichfield District Local Plan Strategy was adopted on 17 February 2015,^A following receipt of the Inspector's Report on 16 January 2015.^B Many of the policies referred to in the Decision Notice have thus been superseded. For clarity, the relevant Local Plan Strategy policies relating to the remaining reasons for refusal are now these:
- Reason for refusal 1 (no residential allocation, contrary to spatial strategy) – Policies CP1 and CP6;
 - Reason for refusal 2 (highways matters and sustainability, in so far as they still obtain) – Policies CP1, CP3, CP5, CP10, ST1 and BE1;
 - Reason for refusal 3 (scale of development and impact in countryside location) – Policies CP1, CP3, CP13, CP14, NR1 and BE1;
 - Reason for refusal 4 (heritage matters) – Policies CP1, CP3, CP14, NR5 and BE1;
 - Reason for refusal 5 (trees/hedges/habitats/biodiversity, in so far as they still obtain) – Policies CP1, CP3, CP13, NR3, NR4 and BE1.
23. Policy CP1^C is the spatial strategy for the District. In particular, it seeks "sustainable development to deliver a minimum of 10,030 dwellings between 2008 and 2029 within the most sustainable settlements, making best use of and improving existing infrastructure". Table 4.1, following it, defines the settlement hierarchy. Lichfield is the "Strategic Centre"; approximately 38% of housing development would be accommodated in Lichfield and on the four Strategic Development Allocation (SDA) sites south and east of the city.^D
24. Policy CP6^E refines this strategy. It sets a target of 478 new homes each year and overall figures for the SDAs – including 450 on each of the three SDAs south of Lichfield, 750 at Streethay (east of Lichfield and also east of the appeal site) and 1,250 at Fradley (east of both Lichfield and the appeal site). Table 8.1 following Policy CP6 sets out the intended distribution and delivery of new homes.
25. Policy CP2^F (not mentioned in the reasons for refusal) in effect restates the NPPF's presumption in favour of sustainable development; Policy CP3 sets out in 17 bullet points how development should address the achievement of sustainability. Most relevant to this appeal are to "be of a scale and nature appropriate to its locality", to "reduce the overall need to travel ...", to "... conserve, enhance and expand natural, built and heritage assets and improve understanding of them wherever possible" and to "maximise opportunities to protect and enhance biodiversity ... and green infrastructure ...".
26. Policy CP5^G seeks to ensure that all new development is "well served by an attractive choice of transport modes" providing alternatives to the private car and promoting "healthier lifestyles". Following it, Policy ST1 identifies the ways in which more sustainable travel patterns can be secured, including by locating development accessibly, by requiring travel plans and by ensuring compatibility with the transport infrastructure of the area. Policy CP10^H deals more specifically

^A Document CD39.

^B Document CD49.

^C Document CD39, pp.22-25.

^D South of Lichfield – Shortbutts Lane, Cricket Lane and Dean Slade Farm; East of Lichfield – Streethay.

^E Document CD39, pp.49-50.

^F Ibid, p.32.

^G Ibid, pp.44-45.

^H Document CD39, pp.66-67.

with healthy and safe lifestyles, including by providing ease of access to various facilities, including footpath and cycle connections, open space, recreational spaces and “greenspaces”.

27. Policies CP13 and CP14^A seek to protect/conserv/enhance natural resources and the built and historic environment, respectively. Following CP13, Policy NR1 deals with countryside management, Policy NR3 amplifies CP13 in terms of biodiversity and protected species and their habitats, Policy NR4 does the same in terms of trees, woodland and hedgerows and Policy NR5 enables development which does not “negatively impact upon ... archaeological and historically important landscapes”. Following Policy CP14, Policy BE1 seeks high quality development; among the seven areas on which development should have a positive impact is the historic environment, including “archaeological sites, sites of historic landscape value, listed buildings and skylines containing important historic, built and natural features”.
28. In addition, reference was made at the inquiry to Planning for Landscape Change,^B adopted in 2001 by Staffordshire County Council as Supplementary Planning Guidance to the Staffordshire and Stoke on Trent Structure Plan 1996-2011.^C Also to be borne in mind are the Supplementary Planning Documents entitled Trees, Landscaping and Development (draft, 2014), Residential Design Guide (2007), Planning Obligations (2006), Trees and Development (2005), and Open Space, Sport and Recreation (draft, 2005).^D

PLANNING HISTORY^E

29. The history of approved planning applications relates entirely to development associated with the Curborough Antiques and Craft Centre and the Curborough Hall Fishing Lakes.
30. A planning application submitted in March 2008, which included land within the northern part of the appeal site, sought planning permission for a new community of up to 5,000 dwellings. It was withdrawn in February 2011. Other versions were subsequently put forward; a 2,000-dwelling new settlement was being promoted at the time of the initial hearings of the examination into the emerging Local Plan Strategy Proposals, with the appeal scheme for 750 dwellings being the subject of pre-application discussions at that time and being envisaged by the Inspector as the first phase of the new village.^F
31. An application to erect a single wind turbine within the site of the Curborough Waste Water Treatment Works was refused by the Council but allowed at appeal in February 2013. It is the subject of representations (but not an objection) by Severn Trent Water.^G

^A Document CD39, pp. 78 and 89 respectively.

^B Document CD43.

^C Document CD118, the Statement of Common Ground, lists five other Supplementary Planning Documents

^D Documents CD42 and CD44-CD47.

^E Core Document 118, the Statement of Common Ground, itemises the planning history.

^F Document CD49, paras 168-175.

^G Severn Trent’s letter, together with appeal decision APP/K3415/A/12/2174564 and a location plan are in the red folder in the appeal file.

THE CASE FOR THE COUNCIL

Set out here is the gist of the original case for Lichfield District Council, drawn primarily from closing submissions made on 20 March 2015 (Document 33) and elaborated upon where appropriate by reference to the proofs of evidence and what was said at the inquiry. The gist of the Council's representations on the 2012-based household projections is at paras 193-19.5 The gist of the January 2016 updating representations at paras 200-215.

32. In essence, the case for the Council is that the proposal is not in accordance with the Development Plan and that there are no material considerations to outweigh a decision in accordance with the Plan. The appeal site lies outside the settlement boundary in both the now superseded Local Plan and the very recently adopted Local Plan Strategy. It is not an allocated site in the Local Plan Strategy.
33. An allocation for up to 750 units at the appeal site was promoted as an alternative to the proposed Strategic Development Allocation (SDA) sites for Lichfield City during the examination of the Local Plan Strategy. The adopted Plan has not accepted the case for allocation of the site, on the basis of meeting objectively assessed housing need, either as an alternative SDA or as an additional one. That is the spatial choice the very recently adopted Plan has made. It has reviewed the directions of growth for Lichfield and decided which sites should properly comprise the planned growth of the settlement and fall within its boundaries.
34. The following policies of the recently adopted Local Plan Strategy are engaged by the proposal: CP1, CP3, CP5, CP6, CP14, NR1, NR3, NR4 and NR5.
35. It is clear that the proposal conflicts with Policies CP1 and CP6. The appeal site is not a location to which development is directed; it is neither to the south or the east of Lichfield; it is not an SDA; and it is not identified as being "at the most accessible and sustainable locations" in accordance with the Settlement Hierarchy in Table 4.1.
36. The Local Plan should make the major development choices. The present proposal for 750 dwellings is plainly strategic in scale. The very recently adopted Local Plan has consciously chosen not to incorporate the appeal site within the spatial strategy. The appeal site is in the countryside, not the urban area. The case the appellants now seek to make, that there is a fit with the strategy, is entirely misplaced.
37. The original proposal was for a new settlement, not an urban extension. That approach continued through the Local Plan hearings in 2013. Indeed, the present proposal is noted by the Local Plan Inspector as a first phase of the new village. It is clear from the evidence to this inquiry that the appellants continue to 'have an eye' to the larger scheme. Within that earlier process, the 'critical mass' of the new settlement was put forward as a key element of its sustainability credentials.^A The appeal scheme removes the original landscape buffer between Lichfield and the new settlement and now presents itself as an urban extension. The scale of the proposal is said to be generated by the desire to provide a primary school and other elements of the mixed use in order to enhance the self-containment credentials in sustainability terms and sought

^A Accepted by Mr Brown in cross-examination.

originally to provide greater levels of retail use with the same in mind. All of that signals the absence of inherent relative sustainability in this location.

38. The Local Plan Strategy targets approximately 38% of the 10,300 housing requirement to Lichfield. That is around 3,800. The appeal proposal is for about 20% of that. Plainly, to allow this proposal to proceed would be prejudicial to the adopted spatial strategy. The scheme falls to be assessed as the appellants have done in their Statement of Case.^A It is a scheme to meet the shortfall of 900 homes identified in the Local Plan Inspector's interim findings; and it is the "lion's share" of that.
39. The Local Plan Strategy has a review mechanism in place to meet any unmet housing needs emanating from Birmingham. The appeal proposal seeks to predetermine the level of that need and the spatial choices in response thereto.
40. Policy CP6 identifies that the Council will plan, monitor and manage the delivery of around 478 new homes each year. It provides the focus for the distribution of development, including the identification of the SDAs around Lichfield. The number of SDAs, the number of dwellings to be derived from SDAs over the plan period and the direction of growth identified by the SDAs can be found in the policy. Moreover, there is a policy mechanism for addressing the levels of delivery. Policy CP6 also cross-refers to the Settlements Chapter – but the proposal conflicts with that too,^B because it is not an SDA and does not extend the city to the south or east.
41. The attempt by the appellants to show a fit with the above policies is not properly to read them. The proposal is fundamentally at odds with the very recently adopted spatial strategy.

Highways and Accessibility

Highways impact

42. The appellants provided the VISSIM micro simulation modelling to the highway authority on 3 March 2015, clearly very late to allow for a carefully considered response. Concerns remain about the residual impact of the proposed development on three junctions.^C The pre-mitigation impact on one of those junctions (the A38 link road with Wood End Lane) would be, in terms of the NPPF at para. 32, "severe". The solution proposed by the appellants has previously failed following a safety audit in relation to a different development proposal.
43. That said, the matter is under review by the Highways Agency and, more importantly, the local highway authority has been able to confirm that there is an alternative means of mitigation, by way of measures at two other junctions at Fradley Park.^D Accordingly, subject to confirmation by the Highways Agency and the terms of the section 106 obligation, it is now agreed that the possibility of a severe impact on the local highway network can be overcome.

Sustainability

44. While the accesses to the site may be acceptable in vehicular terms, subject to conditions, the work that has been done to show the sustainability credentials of

^A Document CD111.

^B Primarily Policies Lichfield 5 and 6 (Document CD39, pp.101-103)

^C Document 23E, drawing CH013 – junction 'L' (Wood End Lane / A38 link road) and junctions 'P' (Cappers Lane on and off slip roads).

^D Ibid – junctions J and K.

the proposal for the full range of non-car modes of transport is desultory. There is no detailed consideration of relevant walking and cycling distances to Lichfield. The Transport Assessment (TA) deals with sustainable travel patterns in the most general of terms. The only comparative exercise is by the landscape witness, not an expert. There is no reference to relevant guidance, no consideration of the quality of connectivity, no measurement of distances against recognised standards and no equivalent to the work of Geoffrey Evenson, for the Council, which shows the poor quality of pedestrian and public transport connectivity.^A

45. Following refusal of the application, the appellants have sought to bring forward proposals for sustainability improvements. The bus connectivity proposals have improved. The highway authority has responded constructively but considers that the appeal scheme, particularly because of the poor pedestrian connectivity, is still likely to be unduly reliant on the private car, more so than the allocations in the Local Plan Strategy. In other words, the proposal remains relatively inaccessible and unsustainable. Whilst the comparative work now includes a comparison with Fradley,^B the SDA there is not an urban extension to Lichfield and is justified quite separately in planning terms.
46. The only evidence of substance on this issue, especially on pedestrian and cycling connectivity, has been provided by Geoffrey Evenson for the Council. That provides relevant distances and compares the position with other SDAs. It also shows:
- public right of way 79 as no more than a recreational route;
 - a constrained access along Watery Lane (which it will remain post-improvement); poor connectivity to existing bus stops;
 - no existing facilities for day-to-day needs (the Craft Centre has a specialist offer);
 - significant and unacceptable distances to local facilities; and
 - noticeably greater distances than the SDAs to both Lichfield town centre and a main-line railway station.
47. The appeal scheme conflicts with Policy CP5 because it is not located within the most accessible settlements and relies heavily on the private car, thus promoting unsustainable travel behaviour. It is not in Lichfield – it is outside it, in the countryside. It is not in the most sustainable location – the Local Plan Strategy determines that by way of the allocated SDAs. It is not the role of the Secretary of State to retrace the steps of his own Inspector, who considered the spatial choices in examining and reporting on the Local Plan Strategy.

Landscape

48. Scale of development is very obviously a landscape issue. There is plainly a difference between a scheme for 50 houses and one for 750. The impact on the landscape will be different and the level of harm must be individually assessed.^C Any proper assessment of landscape harm must entirely disregard the planning arguments that may be put as justification for it. The need for a development and the impacts of a development are separate and discrete

^A Document LDC5 – section 6 deals with the sustainable travel audit; the tables at 6.31, 6.32, 6.6.5, 6.8-6.10 and 6.11.2 set out walking and cycling distances to various destinations.

^B Document 28, adding to the original information in Table 7.2 in Document LDC5.

^C For the appellants, Mr Grantham-Wright accepted in cross-examination that his written evidence was wrong in that respect.

issues. It is quite obvious that the landscape evidence in support of the scheme conflates the two issues.

49. The SDA sites did give rise to degrees of harm, including to landscape, but the case for those sites was made within the plan-making process and accepted. It is for the Development Plan to make those choices and to make allocations. It is then for the decision taker to make decisions in accordance with the plan unless material considerations indicate otherwise. The appellants do not properly engage with the primacy of plan-making as the central tenet of the statutory scheme – they seek instead to castigate the local planning authority for misunderstanding the position in a s.78 appeal; at the same time, however, they fail to recognize the full import of the absence of the strategically-scaled appeal site from the recently-adopted plan.

Landscape character

50. The appellants' Landscape and Visual Impact Assessment (LVIA) under-estimates the impact on landscape character at the local level. The Council's evidence is correct in terms of magnitude and severity of impact at that level. The LVIA addressed the Landscape Character Area (LCA) as a whole. It is agreed that that impact would be negligible, inevitably so given the size of the LCA – but it is the more immediate impacts that are key to the weight that should go to the degree of harm to landscape character.^A
51. In fact, the LVIA and the appellants' evidence to the inquiry under-valued the landscape as a resource, under-valued the appeal site with its public access and recreational value, over-estimated the acknowledged detractors in the landscape, under-estimated the positive characteristics of the appeal site reflecting the wider landscape type and ignored the policy objectives^B that prompted the character assessment.
52. The landscape quality of the zone in which the appeal site lies is accepted as low. However, to derive low landscape value from that is incorrect. The proposal would introduce incongruous features (adding to existing ones) at the expense of those features making a positive contribution to the character area. Housing, particularly on the scale of this proposal, is a manifestation of the threats described in the SPG^C and runs entirely counter to the objectives for this landscape. What the appellants have done is to undervalue not only landscape value but also sensitivity to change.
53. The appellants have chosen to look at the broad similarities between the appeal scheme and the SDAs. That approach is incorrect. This is a s.78 appeal and must be concerned with the impacts of the appeal scheme itself as a matter of degree. The Council's evidence is that the comparative impacts in landscape and visual terms are greatest for this site. Any urban extension will cause harm, it will vary in each case as a matter of degree (depending on scale and location) and the level of incongruity will vary from case to case. It is unduly simplistic to analyse the position as the appellants have done.

^A Document CD21 is the LVIA. Para. 8.236 confirms that it is harm to the LCA as a whole that is being considered. *Inspector's note* – I said, for the benefit of both the appellants and the Council, that impact on landscape character at the local level could not help but be severe, simply because there would be development where at present there was countryside. Mr Grantham-Wright accepted that.

^B Document CD43(1), pp. 2 and 8.

^C Document CD43(3) – "new housing development", p.17, and "urban expansion", p.187.

54. On the scale used by the appellants,^A the landscape value of the appeal site should be assessed as “medium”. To say that the residual effect on landscape character would be “minor beneficial” is untenable; to develop the site for 750 dwellings cannot possibly reflect the policy objective of landscape character restoration. It is quite a different thing to say that townscape will be different but not necessarily harmful in itself (though there is no urban design evidence by which to judge); what is proposed, though, would be substantially harmful in terms of what is protected by policy but would be lost.

Visual effects

55. A similar pattern emerges. The assessment of harm in the LVIA is agreed as undervaluing the impact of the proposal when properly assessing it at the more immediate and localized level. Moreover, the methodology adopted in the LVIA leads to an under-estimation of visual impact.^B
56. The Council’s evidence provides the more accurate visualization material. It focuses on eight viewpoints, considered and assessed in the context of the corresponding viewpoint within the 25 views assessed in the LVIA.^C There is a significant underestimation of visual effects from five of the viewpoints, two are broadly similar and from one,^D not assessed in the LVIA, there would be a major adverse effect. The Council’s high quality visual material enables a fuller understanding of the existing landscape under consideration. The baseline assessment shows the retention of important rural characteristics.^E
57. The site is accessible for recreational purposes but is otherwise visually and, to a degree, physically separate from the urban core of Lichfield. It cannot be considered as a natural extension to the existing urban settlement pattern. This is a site-specific issue not shared by the SDAs. While the Streethay SDA lies north-east of the railway line, the context in terms of the existing settlement and connectivity is quite different and less harmful. In this sense, an urban extension would be an incongruity over and above the incongruity to landscape character.

The comparison evidence

58. This responds to the Inspector’s request at the pre-inquiry meeting. The sites to be looked at were agreed. However, it is not, especially in the context of a recently-adopted Local Plan, for the Secretary of State to revisit the position and evidence base accepted by his own examining Inspector.^F

^A Document CD21, p.85, Table 8.1.

^B Document CD21 is the LVIA. Table 8.6 (p.87), dealing with magnitude of impact, tests it against a narrower range of criteria than considered appropriate by Mr Coe, for the Council (Document LDC2, para. 4.26). Table 8.7 (p.87), dealing with receptor sensitivity, omits railway users and visitors to attractions such as Curborough Hall. The photomontages are not in accordance with Landscape Institute (LI) guidance (see Document LDC2 at para. 4.29). And the extent of annotation of photographs is not as helpful as it could be, for example, in noting the location of the farm complex or the extent of the appeal site in any view.

^C Document LDC2.1

^D Viewpoint 7 – Netherstowe Lane, location of the proposed access road improvements.

^E It is accepted that HS2 will have an impact on the baseline. The extent of that impact will depend on the specific alignment and details of the scheme – but such infrastructure cannot be described as “urban” because it passes, in the main, through countryside.

^F Document CD103 is the note of the pre-inquiry meeting. *Inspector’s note* – I made it clear at the pre-inquiry meeting, and in the inquiry, that I was not revisiting what were rightfully the issues for the Local Plan Inspector; what I wished to understand was whether the reasons for refusal of the appeal scheme were, or were not, broadly comparable with any objections to the SDA sites but which were outweighed by need to find land to cater for housing requirements.

59. The exercise carried out by Thomas Grantham-Wright for the appellants is neither robust nor sound. It ranges well beyond his expertise, which is landscape. It uses criteria loaded in favour of the appeal scheme and reaches a highly contentious conclusion.
60. Most obviously, Green Belt is not a landscape designation.^A In addition, the approach does not appear to derive from any source-based document, contains somewhat arbitrary categories, contains an evaluation matrix that appears neither objective nor neutral, arrives at scores that are opaque, contentious and not a substitute for reasoned judgement and does not objectively engage with the evidence base for those comparison sites. Many of those criticisms were accepted but eventually 'batted away' on the basis that the appeal site was anyway a "good site".
61. By contrast, Mr Coe, for the Council, considers the evidence base and provides an appraisal. All of the comparison sites are acknowledged to have adverse landscape and visual effects but still amount to better locations for extensions to the settlement of Lichfield. The railway line constitutes a barrier which compromises the ability of the appeal site to integrate with the city centre. Development upon it would appear to be a major new settlement (or the first phase of one) rather than an extension to an existing settlement.
62. The historic elements of the landscape around the appeal site are considered separately. However, they add to and reinforce the harm that would be caused to landscape character.
63. It should be concluded that to allow the appeal scheme:
- would be to locate development in other than the most sustainable of locations, as spatially identified in Policy CP1;
 - would not have a positive impact on the natural and historic environment in landscape terms, contrary to Policy BE1;
 - would be contrary to Policy NR1, because it would be significantly harmful to the countryside as an asset in its own right (in terms of both character and visual impact); and
 - would cause related harm under Policies CP13 and CP14 (dealt with below).

Heritage

The setting of the listed building

64. The harm to the designated heritage asset, the grade II listed Curborough Grange, is properly to be regarded as "less than substantial" in the terms of paras. 132-134 of the NPPF, a step back from the initial view that there would be "substantial harm" to the setting of the building.
65. Curborough Grange is an example of a three-storey Staffordshire farmhouse designed to be prominent in the landscape, as a status symbol. The setting of the building should be considered to include the field to the north, the field immediately to the south (assumed to be the site of the deserted medieval settlement) and the curtilage of the Grange itself. The eastern section of the proposed housing on the appeal site would be within the immediate setting and would cause harm as a result of:

^A In any event, two SDA sites have been removed from the Green Belt on adoption of the Local Plan Strategy and, accordingly, are not to be considered as constrained by that designation.

- the loss of open green space within which the listed building is experienced;
 - the presence of a modern suburban housing estate within that setting;
 - the loss of context of the listed building within a loose cluster of farmsteads;^A
 - the loss of a crucial sense of distance from neighbouring development;
 - the significant impact on important views due to housing and additional screening;
 - the loss the visual prominence of a building designed to be seen in the landscape; and
 - the change from a predominantly landscape setting to an urban one.
66. There would be an impact on evidential value (through the loss of historic hedgerows), historical illustrative value (relationship to the landscape) and aesthetic value (compromise to views from Netherstowe Lane) in a manner not susceptible to successful mitigation. The harm to the setting of Curborough Grange would be at the upper end of “less than substantial”.
67. The Environmental Statement assesses the harm as low/minimal/negligible^B – clearly negative, even if not greatly so. The setting is not defined but the negative impact is acknowledged and the main reason for the low assessment is the role of the screen planting. The evidence to the inquiry acknowledges that the fields on all sides of the listed building form part of its historical setting, although greater significance is apportioned to those to the north and east.^C The conclusion that “retaining an agricultural setting is not of high importance in contributing to the significance of the listed building”^D shows that at least some importance is ascribed to the setting.
68. The supplementary proof^E contains a change of mind – to there being no harm to the setting. This is said to arise from a misunderstanding but derives mainly from the Secretary of State’s decision at Javelin Park.^F That, though, is a remarkably different context – and each case is to be considered on its own merits. At Javelin Park, characterization of context was pivotal to the Inspector’s view (the appeal site was described as “urban fringe rather than rural”) and there was a fall-back position of buildings “on the whole Javelin Park site” – and one of the experts had failed to follow the relevant English Heritage guidance.
69. If Nansi Rosenberg says she has misinterpreted guidance in giving evidence for the appellants, then Deborah Boffin, for the Council, is clear that she has not – a good reason for preferring her evidence. She says that Javelin Park endorses the stepped approach in the guidance, which she has followed and supported with properly sourced evidence. Her evidence is clear as to why there will be significant, if less than substantial, harm to the setting of the listed building, something to which considerable weight must be ascribed as a matter of law. She also assesses the SDAs and does not find in them the same degree of harm.

^A Document LDC1 – paras. 7.23-7.25 identify, and speculate upon, the nature of the loose cluster of farmsteads.

^B Document CD21, p.270.

^C *Inspector’s note* – the land to the north and east went with the farm; the land to the south and west did not.

^D Document IMP16, para. 3.1.36.

^E Document IMP19.

^F Document 5.

Views of Lichfield Cathedral

70. Harm to the views of Lichfield Cathedral is clearly in a more distant context. The housing on the eastern part of the appeal site would be constructed on a localized knoll of land. It would intrude into the presently open and rural view of the Cathedral from Netherstowe Lane.
71. Nansi Rosenberg was not involved in any way in the formulation of the illustrative layout plans.^A She was unable to say that the effect on views of the Cathedral might be either neutral or beneficial. In contrast, Deborah Boffin was clear that there would be harm and that there was little scope for mitigation.
72. There is also a contrast with the position at the Streethay SDA, where it was possible to show that existing views would be safeguarded. The opening up of alternative views, were that possible, does not address the requirement of Policy CP14 in relation to existing views.

Ancient hedgerows

73. The evidence plainly shows that the loss of historically important hedgerow is a material consideration in this appeal. Sixteen hedges meet the historic criteria under the Hedgerow Regulations in that they are recorded as an integral part of a field system pre-dating the Inclosure Acts.^B Their removal would require a Hedgerow Removal Notice to be submitted to the Council under the Hedgerow Regulations 1997.^C Of the sixteen, eight meet a further criterion in that they mark part of a boundary of a historic parish;^D and four of those can be dated to Tudor or pre-Tudor times.^E Thus, important elements of the historic landscape would be lost – 45m of parish boundary hedgerows H11 and H25 in the vicinity of Netherstowe Lane would be lost; 243 m of ancient parish boundary hedgerow H21 and 240m of ancient historic hedgerow H17 would be degraded.^F
74. The importance of these hedgerows is all the greater because of other losses due to 20th century farming practices. Moreover, the historic field boundaries within and surrounding the site are an integral part of the historic landscape, illustrating and linking back to past agricultural practices.

Trees

75. Reason for refusal 5 alleges harm to “designated and non-designated trees and hedges”. At that time, the only designated interest was the county-level important hedgerow. Subsequently, a tree preservation order (TPO) was made on 5 February 2015 covering most of the trees along Netherstowe Lane.
76. The implications of tree loss due to development are a material consideration, whether or not the trees are protected by a TPO. This is especially so when the evidence shows a clear need to consider whether any are veteran trees. Given that the loss of trees is in issue, whether they are designated or not, it is inexplicable for Thomas Grantham-Wright to say that he does not deal with tree loss because of the absence of a TPO when he wrote his proof of

^A Conceded in cross-examination.

^B Document LDC6, section 8.5 and Appendices 24 and 25.

^C Ibid, Appendix 23.

^D Ibid, section 8.6 and Appendices 26-29.

^E Ibid, section 8.7 and Appendices 30-32.

^F Ibid, Appendix 3 – the hedgerows affected by the proposals are numbered on the plan.

evidence. Concerns about losses because of works within the root protection areas (RPAs) of the trees in Netherstowe Lane have long been known.

77. For the Council, Portia Howe's evidence gives a clear explanation of the provenance of root damage, including why work within the RPAs is highly likely to result in root severance and a negative impact on the remaining roots; it gives a proper explanation of the approach to the plotting of RPAs; it considers the full remit of the works, and the expectation that information would be forthcoming on construction techniques, soils and drainage; and it considers the specific characteristics and vulnerabilities of individual trees.
78. All of that should have been done by the appellants but was not. Instead, the evidence is that there would be some (unascertained) losses which would have to be accepted because the proposed access is the least harmful of the options examined.^A The suggestion of a pinch-point in the highways round-table session (by a highways witness, not a tree expert) is unacceptable as the road would still be wholly within the RPAs of the trees concerned.
79. The Council's evidence should be accepted. The proposals would result in the long term in the decline of the tree stock and the loss of individual trees.

Veteran trees

80. The tree stock includes trees assessed as having "veteran" status. Such trees warrant specific mention in the NPPF (para. 118) and are themselves a material consideration. Trees T128 and T129 are veterans but their protection can be satisfactorily addressed. T148 is also a veteran, outside the appeal site and 25m from the proposed works; careful detailed design can ensure its protection. That leaves T134 and T135, which the Council considers to be veterans but the appellants do not.
81. These two trees are not identified as veterans in a hedgerow survey, which did look at Netherstowe Lane. It is regrettable that they were not identified – but hardly decisive. T135 (ash) has the girth of a veteran tree and various other veteran attributes.^B The girth of T134 (oak) is on the borderline^C but it displays other veteran characteristics.^D Age is a requirement for an ancient tree but not for a veteran. Nor do any of the 'flaws' evident in the two trees significantly reduce their life expectancy or biodiversity value.
82. These two veteran trees are likely to be damaged, if not lost, as a result of the proposed road widening.^E Even if the trees remained, the requirement for 5m clearance over the highway would see them, especially T134, deprived of a significant amount of their crowns. The loss of a veteran tree is considered incapable of mitigation, which must weigh heavily against the proposals. The high bar of para. 118 of the NPPF is not met.

^A Document CD87 is the Assessment of Alternative Access Options.

^B Document LDC6, Appendix 20 (pp. 97-100), with reference to Appendices 17 and 18. The tree has extensive trunk hollowing and part of its crown has been lost, though there is vigorous growth in the new crown.

^C *Inspector's note* – during my site visit, the girth was measured as slightly greater than said in evidence and met the criterion for a veteran.

^D Document LDC6, Appendix 20 (pp. 95-97), again with reference to Appendices 17 and 18. The tree has lost its original crown and upper trunk (probably due to lightning), and also some of its bark on the side away from the road, but has good growth in its secondary crown.

^E The RPAs of the two trees (about 14.4m for T134 and 8.40m for T135) extend well into the existing road. Impact on the trees would depend on the construction of the widened carriageway; any significant excavation could mean the loss of both.

Conclusion on heritage impact

83. The setting of Curborough Grange will not be conserved or enhanced, contrary to Local Plan Strategy Policy CP14. Based on the comparison evidence of Deborah Boffin, the Council has directed change to the most appropriate locations in heritage terms – and this location is not one of them. The appeal site does not perform as well as the SDAs. In addition, the appeal proposals would cause localised harm to views of Lichfield Cathedral, again contrary to Policies CP14 and BE1.
84. The appeal site is not within a designated landscape – but there are no elements of local landscape importance and historic interest which would be harmed, contrary to Policy NR5.
85. The appellants place considerable importance on the view of English Heritage. That, however, was not the product of a site visit with this application in mind;^A the weight given to it must diminish accordingly. What is clear is English Heritage's view that the "application should be considered in accordance with national and local policy guidance, and on the basis of your specialist conservation advice".^B It is absolutely clear that English Heritage considers that the appeal scheme "affects the setting of Curborough Hall Farmhouse" and Deborah Boffin has provided detailed evidence to show that the degree of that impact has been under-estimated by English Heritage.

Biodiversity

86. There are clear concerns about the ecological impact of the loss of historic hedgerows and losses from local conservation sites. The hedgerows on either side of Netherstowe Lane are locally designated as Sites of Biological Interest (SBI, a designation which includes the ditches and verges alongside them);^C the hedgerow on the appeal site boundary between Curborough Hall and the railway line is locally designated as a Biodiversity Alert Site (BAS).^D About a quarter of the 381 linear metres of hedgerow to be destroyed can be clearly demonstrated to provide very valuable habitat. Moreover, the appellants' ecology strategy originally failed to grasp that impact cannot be assessed purely in linear terms – ecological interest is to be found not only in a hedgerow and its component trees but also in the associated banks, ditches and verges.
87. That said, the appellants' and Council's ecological experts worked together in the lead up to the inquiry, and during it, on the basis that those concerns were accepted. A revised Framework Mitigation and Compensation Strategy and Statement of Common Ground^E were submitted which accept that there would be irreplaceable losses requiring compensation. Even so, the harm is considerable and would not be outweighed by planning benefits, contrary to Local Plan Strategy Policy NR3.

^A Document LDC1, Appendix 2-2.5 (p.91).

^B Document IMP16, Appendix 1, pp.26-27.

^C Document LDC8, para. 9.2 and Appendix 14.

^D Ibid, para. 9.2 and Appendix 15.

^E Document 25 is the updated Ecological Statement of Common Ground;
Document 26 is the Framework Ecological Mitigation and Compensation Strategy, Rev. B, March 2015;
Document 27 is the Great Crested Newt Habitat Suitability Index Assessment, March 2015.

Great crested newts, bats and farmland birds

88. There is no robust evidence on the presence or otherwise of great crested newts in circumstances where their presence can be anticipated from prior survey information. However, matters are now being addressed and a revised mitigation strategy will incorporate the findings of the up-to-date surveys now underway as a result of recently obtained access. Subject to revised and enhanced mitigation proposals, the Council is now able to accept that a grant of planning permission would not result in a negative impact on a European Protected Species.
89. Lighting along linear features and its potential impact on the bat population has also now been dealt with in the revised Framework Mitigation and Compensation Strategy.
90. The Environmental Statement (ES) identified eleven species of farmland bird resorting to the site or likely to use it for breeding, leading originally to a conclusion of detriment to declining species. The revised Framework Mitigation and Compensation Strategy now addresses this concern.

Net loss to biodiversity

91. The Council's evidence is clear and shows a significant net loss. This has eventually been recognised by the appellants by adding a series of measures to ensure a net gain. However, there would be clear harm, in terms of Local Plan Strategy Policies NR3 and NR4, and para. 118 of the NPPF, which should be accepted only if it is clearly outweighed by the planning benefits of the proposal.

The planning balance

92. The appellants' case is that the need for a development of up to 750 dwellings is a material consideration sufficient to justify a decision other than in accordance with the Development Plan. They sought to promote the appeal site as a site to be allocated within the Local Plan process. Their Statement of Case for this appeal, dated August 2014, put forward two bases of need^A – 750 dwellings would comprise the "lion's share" of the 900 dwellings identified as needed at that time by the Local Plan Inspector and there would be the additional need to accommodate a share of Birmingham's housing needs.
93. Both have been overtaken by events. The now adopted Local Plan Strategy makes provision for the 900 additional dwellings found necessary by the Inspector by identifying appropriate sites (with neither of the additional SDAs being of the scale of the appeal scheme); and any requirement for Lichfield to provide for Birmingham's unmet needs is dealt with by the mechanism for review in the Plan itself. The proposal is thus not in accordance with either central element of recently adopted Local Policy.
94. The Local Plan Strategy makes provision for a minimum of 10,030 dwellings over the Plan period – not 10,030 + 750. If the Local Plan Inspector had felt it necessary to recommend that the Council make further strategic allocations, he could have said so. He did not.
95. The Council accepts that securing 25% affordable housing is a planning benefit of significant weight. However, it is not the premise of the recently adopted Plan that it is necessary to make further allocations in order to

^A Document CD111, para. 7.

secure additional affordable homes; and a policy-compliant level of affordable housing does not come remotely close to justifying this strategic proposal.

96. Any suggestion that the most recent of the appellants' legal challenges may have greater success than previous ones must be disregarded. There is an adopted Local Plan. It was found sound following examination, in a report as recent as January 2015. The appeal should be determined in accordance with the adopted Local Plan unless material considerations indicate otherwise.
97. The Local Plan Inspector accepted the evidence base underpinning the Local Plan. He accepted that the objectively assessed housing need is properly catered for by the Plan. He accepted that there is a 5-year housing land supply, with a clear statement of the methodology used to calculate it. He accepted that the policies of the Plan are consistent with the NPPF. He accepted that the Council's strategy is the most sustainable one when compared to reasonable alternatives. Any attempt to airbrush these matters away is misconceived and wrong.

5-year housing land supply

98. Of the various scenarios postulated by the appellants,^A those premised upon the quashing of the Plan are not relevant. There is an adopted Plan and it remains so unless the Court orders otherwise. The appellants have elected to pursue the appeal knowing that the Plan must be presumed to be lawful. The Council reserves its position if the situation changes.

Liverpool v Sedgfield

99. The Local Plan Inspector deployed the Liverpool method in calculating the 5-year housing land supply.^B The rationale for using the Liverpool method has not changed since the Inspector reported. It would be perversely inconsistent, in the absence of a compelling reason, to use the Sedgfield method for the purposes of determining this appeal.
100. Housing land supply is accepted as a dynamic field. The modest variations tabulated by the appellants^C are immaterial in the context of the rationale for the Liverpool approach. Moreover, there is a very clear explanation as to why the net deliverable capacity of 3,678 within five years cannot be directly translated into either an annual requirement figure or the assumed figure for actual annual delivery.^D The target figure is clear and the 5-year calculations show an available supply to meet that target, with a 5% buffer plus flexibility. And the Inspectors report^E shows that the target figure is both aspirational and realistic, lying at the very top end of what has been achieved historically.^F A total of 3,678 over five years is very similar to both the 3,422 figure put before the Local Plan Inspector and the 3,867 figure identified in the SHLAA addendum.^G The variations do not undermine the reasoning behind the target in any way.

^A Document CD128, Appendix 1.

^B Document CD49, paras. 210-213.

^C Document 14.

^D Document LDC7.1 – the table at pp.8/9 shows net deliverable capacity at line F and the 5-year requirement plus a 5% buffer at line J.

^E Document CD49, para. 56.

^F Ibid, paras. 212/213.

^G Documents CD56 and CD48 respectively.

SDA delivery

101. The second main attack on the 5-year housing land supply figures was the assertion that the assumptions for delivery from the SDAs were unduly optimistic, based on the evidence of Mr Willet.^A However, to call a professional expert to review the local plan evidence base and the assumptions arising from that process, and to expect such market-facing evidence to be accepted, amounts to a subversion of proper plan making and decision taking.
102. CBRE was a participant in the hearings and could have, but did not, call this evidence within that process. Delivery rates were part of the evidence base in the hearings. Mr Willet's evidence, had it been adduced there, would have received the testing of the house-building sector in a proper context. It was that context, in which the development industry, house-builders and agents took part, that led to the rates now criticised. The evidence of the party responsible for delivery should be preferred and, plainly, the Local Plan Inspector considered reliable the views being expressed, all the more so as reservations about delivery were expressed by some participants.^B
103. Moreover, Mr Jervis was challenged by the appellants for an alleged failure to follow the SHLAA methodology^C when it was Mr Willet who had not done so – and his evidence is not such as to displace the assumptions in the methodology. Mr Jervis provided evidence^D from site developers, or their agents, which was a refinement of, but continued to support, the 5-year housing land supply figures put forward by the Council.
104. The assumptions being attacked are the sales per month and the number of sales outlets on large sites. The first is fully justified by the exceptional strength of the market, referred to in the evidence in a number of places and true of both city and non-city sites. The second relates to the number of sales outlets (flags). Mr Willett acknowledged that the assumptions used in the Plan and in the SHLAA methodology are based on the information provided by the builders or their agents. His simple contention was that the reality would prove different – for example, that Miller Developments would have only two flags at the Streethay SDA in direct contradiction of what its agent, on instruction, had said previously.^E Moreover, experience from Rugeley shows that large site delivery rates can entail the use of three flags and, in a reasonable market, 50 dwellings per annum per flag.
105. In any event, it may be noted that, even with just two flags per site, there remains a 5-year supply, with a 5% buffer and some flexibility.
106. The Shortbutts Lane SDA will make a contribution to this. The representations from Pegasus show a different view of delivery on its client's site than Mr Willet's, one that is consistent with the position accepted by the Local Plan Inspector. Pegasus also acts for Miller Homes, developer of the

^A Document IMP4.

^B Document CD49, para. 215-217.

^C Document CD50, pp.24-25 – para. 5.8 sets allowances for lead-in times for different scales of development with and without planning permission; para. 5.9 sets appropriate 'build out' rates, again for different scales of development; both are to be used in the absence of further information from those best placed to provide it.

^D Document LDC7.1.

^E Document LDC7.1 Appendix 1 – Matter 3 at 2.4-2.10.

Streethay SDA. Again, its evidence, that the delivery rates assumed in the Local Plan are realistic, directly contradicts the unchecked evidence of Mr Willet. Moreover, it is clear that the delivery assumptions for the other two Lichfield SDAs are pessimistic – both developments can be expected to commence in the latter part of 2016/17 and to provide 300 dwellings more than the assumptions.^A Accordingly, significant flexibility exists, which would be in accordance with the adopted strategy, not in conflict with it.

107. The Secretary of State's decision at Leeds^B is a material consideration. In particular, it notes that the base requirement of an up-to-date Development Plan amounts to an "indisputable basis for the determination of appeals" and that a 5-year land supply having been established in an up-to-date Development Plan means that para. 49 of the NPPF does not take effect (and the test at para. 14 does not come into play).
108. At a more nuanced level the Secretary of State's decision and the Inspector's report lend further support to the Council. Supply is not to be approached in a policy vacuum but in the context of the strategy, not only the directions for growth but also the assumptions for that growth, including, surely, the delivery assumptions. Moreover, the SHLAA assumptions were used in the Leeds case, where, unlike here, the development industry and the Council were at odds. As at Leeds, the policies of the adopted Local Plan Strategy should "be given the opportunity to bed down and form the framework for housing supply", particularly when there is a policy (CP6) to monitor and manage supply.

The decision

109. If there is a 5-year housing land supply, the presumption in para. 14 of the NPPF does not come into play. However, the absence of a 5-year housing land supply does not displace the presumption in favour of the Development Plan.
110. In this case, another statutory presumption comes into play. Para. 134 of the NPPF engages para. 132 and requires there to be clear and convincing justification for harm to the setting of a listed building. While the harm is less than substantial, the weight to be attached to it is considerable.
111. Para. 118 of the NPPF also comes into play. Within the mitigation hierarchy, it is the last resort of compensation that is being resorted to; that is an acknowledgement of harm, in this case considerable harm. A reverse presumption is created in relation to the loss of irreplaceable habitat (the veteran trees), which can only be permitted if the need for and benefit of the proposed development, in this particular location, clearly outweigh the loss.
112. Accordingly, in two respects, this is a case in which the specific policies of the NPPF indicate that development should be restricted. On both bases, without more, the appeal should fail.
113. In addition, the presumption in favour of sustainable development does not apply if para. 119 is engaged, as here. The Judgement in Smyth^C does, however, appear to offer support for a narrower interpretation if the competent authority

^A *Inspector's note* – these are the South of Cricket Lane and Dean Slade Farm SDAs; in the updating representations, the Council estimates 225 dwellings from the South of Cricket Lane SDA by 31 March 2020.

^B Document 12, paras. 10 and 13 in particular.

^C Document 13 – Dianne Smyth v SSCLG and others, [2013] EWHC 3844 (Admin).

(the Secretary of State) is satisfied with the appropriate assessment already undertaken.

114. Even if para. 49 were engaged and the second footnote to para. 14 were not, there is still the question of cumulative harm. That can be summarized as:
- significant harm to the plan-led system and public confidence in it by allowing this strategic proposal to proceed;
 - policy harm and significant harm in relation to more accessible development, in terms of pedestrian and cycle distances and quality of connectivity (Policy CP5);
 - policy harm associated with the less than substantial harm to the setting of the listed building, to which considerable weight should be ascribed (Policy CP14);
 - policy harm associated with the loss of irreplaceable ecological interest to which significant weight should be ascribed, notwithstanding the mitigation and compensation measures (Policies NR3 and NR4);
 - policy harm associated with the now acknowledged significant level of impact on landscape and visual character and a form of urban extension which would not relate well to the existing settlement pattern, albeit a matter of moderate significance because there is no landscape designation (Policy NR1);
 - policy harm to existing views of the Cathedral, which have not been shown to be addressed, a matter of moderate weight (Policy CP14).
115. The retail reason for refusal is withdrawn, subject to an agreed condition being attached to any planning permission. The revised Framework Ecological Mitigation and Compensation Strategy also ensures that there would be no unacceptable impact on protected species or net loss to biodiversity. Also, subject to confirmation from the Highways Agency, para. 32 of the NPPF is not engaged by the traffic impacts of the appeal scheme.
116. The reduction in weight to be accorded to the policies for the supply of housing, absent a 5-year land supply, is a planning judgment neither dictated by the NPPF nor fixed by case law. The judgement in *Crane*^A says that the weight “will vary according to the circumstances, including, for example, the extent to which the policies actually fall short of providing for the required five-year supply, and the prospect of development soon coming forward to make up the shortfall”. It also says that the critical question the decision-maker must ask is whether, in the particular circumstances of the case, the harm associated with the development proposed “significantly and demonstrably” outweighs its benefit, or that there are specific policies in the NPPF which indicate that development should be restricted. Here, there is no shortfall – but, if it were concluded that there was, the evidence shows that delivery from the SDAs not included in the calculations is actually anticipated to come forward more quickly, within five years.

Conclusion

117. It is acknowledged that benefits do flow from the proposals, including in respect of meeting housing need, making a policy-compliant contribution to affordable housing and responding to the social and economic dimensions of the NPPF. Nevertheless, if para. 14 of the NPPF is engaged, this is a case in

^A Document 21 – *Ivan Crane v SSCLG and Harborough DC* [2015] EWHC 425 (Admin).

which the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. However, it is not engaged – and the decision should be taken in accordance with the development plan, there being no material considerations indicate otherwise.

118. The appeal should be dismissed.

THE CASE FOR THE APPELLANTS

Set out here is the gist of the case for I M Properties Development Limited, the Greaves Family and the Hollinshead Family, drawn primarily from closing submissions made on 20 March 2015 (Document 34) and elaborated upon where appropriate by reference to the proofs of evidence and what was said at the inquiry. The gist of the appellants' representations on the 2012-based household projections is at paras 196-199 and the gist of the January 2016 updating representations at paras 216-231.

119. The appellants seek permission to develop the appeal site for 750 homes and associated facilities to create a sustainable urban extension of Lichfield. The application is in outline with all matters reserved for future consideration apart from access, which falls to be determined at this stage.
120. The legal and factual context for the consideration of the appeal is in a constant state of flux and the most the parties are able to do is state the position as it obtains at the time of the inquiry. The decision, however, is subject to more uncertainties than most and these submissions cannot be the last word. The Inspector has acknowledged that arrangements will have to be made to make further submissions to accommodate two large events, namely the publication of the 2012-based household formation figures and the resolution to the challenge made under s.113 of the Planning and Compulsory Purchase Act 2004 against the lawfulness of the Council's decision to adopt the plan.
121. It is sensible to contemplate a third event. A study will soon be published indicating the quantified scale and distribution of Birmingham's unmet housing need. This may well have serious implications for the Lichfield Local Plan Strategy, even assuming it survives the challenge, because it may transpire that it no longer makes provision for the full objectively-assessed needs of the District taking account of the duty to co-operate and the requirement to accommodate (some of) Birmingham's unmet housing needs. All that is for the (near) future and it is highly likely that the legal and evidential picture will change such as to generate the need for additional submissions. The most that may be achieved now is a discussion on the basis of the evidence heard at the inquiry.
122. Despite these complexities, the conclusion from the evidence to the inquiry may be reduced to a classic contest of need against harm. But what is the alleged harm? The reasons for refusal describe a picture of profound and varied harm, most of which has now evaporated. The original seven reasons for refusal each contained several separate complaints. It is common ground, however, based on what the Local Plan Inspector has said, that the scheme for 750 dwellings represents sustainable development; and, by the time the inquiry was adjourned on 20 March, the Council had accepted that all of its other concerns are either non-existent or can be satisfactorily addressed by conditions or a section 106 obligation.

The s.113 challenge

123. The parties have been careful to avoid any discussion of the merits of the challenge, which will be considered elsewhere. However, in the context of prematurity, there is a possible relationship between a decision to quash the main modifications to the Local Plan Strategy, leading to a need to identify land for 900 dwellings, and the size of the appeal proposal. It is therefore necessary to sketch the argument in support of a partial quashing of the plan and the consequences for the prematurity argument.
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124. The Council has been far too casual in its approach to the Green Belt, which it has treated as just one consideration to be weighed in the planning balance. Such an approach is wrong in law, as held by Hickinbottom J in *Gallagher*;^A it is clear from that case that the test of necessity is well beyond a balance of planning considerations one way or another. The appeal site was recognised by the Local Plan Inspector as a sustainable location at which to meet the housing needs of Lichfield District. Once this finding of fact had been made, it was no longer open to the Inspector to conclude that the legal test of necessity was met. The most that could be said is that the Green Belt sites were preferable – but that is not the same thing as the legal test of necessity.
125. Moreover, the scope for making main modifications to a plan is limited. It is not open to a council to introduce fundamental boundary changes in the Green Belt by way of that procedure.
126. If the Court upholds the challenge for either or both of these reasons, then it will not simply be a question of reconsidering the planning balance. The effect of the judgment would be to exclude a change to the Green Belt on the basis that the legal test for exceptional circumstances is not made out. This would exclude an approach of meeting the need for an additional 900 dwellings on land in the Green Belt.

Harm – overview

127. The Council's witnesses were each asked to describe the high point of the harm for which they contended. Taken together, the highest that goes is to suggest:

- less than substantial harm to a single grade II listed building because development would be within its setting;
- a possible effect on two trees, which may or may not be veterans; and
- a possible effect on an indeterminate length of hedgerow that may require translocation.^B

This harm would occur in a low-quality landscape of low sensitivity which includes some of the lowest lying land around Lichfield. When seen from its immediate environment, the effect on landscape character would be significant adverse but, in a wider appreciation of Landscape Character Area (LCA) 67,^C the impact would be negligible. It is remarkable how slight that harm is in the context of a proposal with this degree of public benefit.

Heritage

128. The Council has raised issues about the historic landscape, veteran trees, protected hedges and views of Lichfield Cathedral. None of these issues engages NPPF para. 134, although each is potentially significant in itself and has been

^A *Gallagher Homes Limited, Lioncourt Homes Limited v Solihull MBC*, [2014] EHC 1283 (Admin), subsequently upheld in the Court of Appeal, [2014] EWCA Civ 1610 (Document CD75).

^B The proposal on Netherstowe Lane is to translocate the boundary hedge on the west side of the road, leaving that on the east side in place, save for a gap for allow a cycle track along the other side of the hedge to pass through; translocation would be by a few metres, clear of the improved road and its services, in an area of very similar ground conditions.

^C Document CD21, Chapter 8, pp. 95-97, paras. 8.111-8.113; also Document CD43(3), pp.187-189. The appeal site lies within LCA 67, Cannock Chase and Cankwood. It is defined in CD43 as "settled farmlands" (CD43(3) at p.187) and an area for "landscape restoration" (CD43(4) Map 1). It is assessed in CD21 as of "low sensitivity".

taken into account. The only designated heritage asset which engages para. 134 of the NPPF is Curborough Grange, a grade II listed building.^A

Designated heritage assets

129. The issue is now limited to a narrow point, heavily contracted from the Council's previous view that there would be a substantial impact. It is now a question of less than substantial harm to the heritage asset or no harm at all.
130. "Setting is not a heritage asset, nor a heritage designation."^B The appeal proposal would not affect the asset itself, or its associated farmstead, so there would be no loss of evidential value. It would impact only indirectly on the asset. The Council's case is based on the question of inter-visibility.^C Its witness, however, was unaware of the Secretary of State's decision on Javelin Park^D and did not follow the two-stage analysis affirmed as correct in that decision. "First, the significance of the asset must be identified, including the contribution made by setting and second, the effect of the appeal proposal on that contribution must be assessed."^E The setting has already been so heavily compromised that it no longer makes any relevant contribution to the significance of the asset, so the analysis ceases at that first stage. Moreover, the farmland associated with Curborough Grange lay to its north and east and is entirely unaffected by the appeal scheme; and the land and buildings immediately around it, and the Grange itself, have been heavily modified by 20th century alterations and additions. Other developments within the setting include modern steel-framed buildings, the fishing lakes and the sewage treatment works. The net effect is to eliminate any contribution to the significance of Curborough Grange from the land surrounding it.
131. Even if that is wrong, the second stage of the process requires consideration of the effect of the appeal proposals (if any) on the contribution of the setting to the significance of the asset. That is a judgement to be made after taking into account mitigation. The indicative layout shows a 10m-wide landscaped buffer along the common boundary, securing a verdant setting for the listed building.
132. Accordingly, special regard has been paid to preserving and enhancing the character and appearance of the listed building. When the matter is approached correctly, as set out in the Javelin Park decision, the overall effect of the proposals is neutral – and neither s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 nor NPPF para. 134 has any role to play in the determination of the appeal.
133. If that submission is rejected, then a finding of less than substantial harm engages the balance invited by NPPF para. 134. The judgement in Barnwell Manor^F makes clear that even slight harm to a designated heritage asset must be given significant weight in order to respect the statutory regime. Bearing that in mind, the principle of consistency requires a comparison to be drawn with the

^A *Inspector's note* – that is incorrect if it is accepted that the appeal site lies within the setting of Lichfield Cathedral.

^B Document CD89, p.7 at 2.4.

^C Document LDC1 – for example, at paras. 8.2, 8.5, 8.13.

^D Document 5.

^E Document 5.1, para. 286.

^F *Barnwell Manor Wind Energy Ltd v East Northamptonshire DC, English Heritage, National Trust and SSCLG* and [2014] EWCA Civ 137.

scale of impact on heritage assets which the Council has found tolerable in order to meet housing needs by allocating land and granting permission for SDAs.

134. It is clear from the Council's evidence^A that other SDAs have been permitted which cause far greater harm to heritage assets than anything proposed at the appeal site. Permission has been granted at Streethay^B and elsewhere to proposals on sites which include heritage assets, as distinct from developing within their vicinity. Further, all of the SDAs involve a number of assets, as opposed to the appeal site, where there would be a marginal or nil effect on a single asset. In this context, it cannot sensibly or fairly be contended that harm to the significance of Curborough Grange is so great as to warrant the refusal of planning permission.
135. The Council also objects to the interruption of views of Lichfield Cathedral. English Heritage, on the other hand, noted that the proposed layout had taken into account the single view of concern to the Council. Policy Lichfield 1 in the Local Plan Strategy^C simply requires views to be taken into account. The matter can be addressed at the reserved matters stage and should not be a constraint to a grant of outline planning permission.

Trees

136. The Council's concern about adverse impact on trees has become more perceived than real. It has recently made a tree preservation order covering a number of trees on Netherstowe Lane, the intention apparently being to avoid pre-emptive felling and to focus attention on their sensitivity during the construction phase. No trees have been felled and the construction phase could be managed by conditions dealing with working methods. The tree preservation order is thus not a constraint on approval of the appeal scheme.
137. It was argued that several trees were "veterans", though agreed that all but two could be safeguarded from harm. Those two are an oak and an ash on opposite sides of Netherstowe Lane;^D they are of indeterminate age, health and status. Whether they can properly be said to be "veterans" is distinctly dubious.^E They are nowhere registered or recorded. As the Council's witness agreed,^F it is a matter of speculation (though she took view that they were veterans).
138. These two trees were expressly considered in the highways round table session, when an important point was made about the difference between highway construction and traffic management. It would be both acceptable and desirable to introduce a pinch point on Netherstowe Lane to control traffic speeds and enhance highway safety. The pinch point could be designed to coincide with the location of the two trees and could, in turn, avoid the need to carry out any construction works for the road within their root circumference. The effect would be to avoid any adverse impact. In addition, there are a number of technical solutions to drainage matters so that there is no prospect of detriment to the trees. Accordingly, there are design solutions that could avoid causing any harm.

^A Document LDC1, section 9.

^B Where there is a listed building within the site which the access road would pass close by.

^C Document CD39, p.96.

^D T134 (oak) and T135 (ash), most easily located in Document LDC6, Appendix 3.

^E Documents IMP9, paras. 114-121, and IMP9A, paras. 68-79.

^F In cross-examination.

139. Even if the two trees were to be treated as veterans, there is still a balance to be struck against the benefits of the proposed development.^A Two matters specific to arboricultural interests suggest that the balance should weigh in favour of the grant of consent. Firstly, a great deal of thought has been applied to finding access options and alignments which minimise impacts on trees and hedges.^B The Council's witness agreed that the proposed route is, overall, the least harmful. Secondly, it is relevant to have regard to the sheer scale of proposed tree planting, hedge planting and habitat creation within the proposals that can compensate for this loss.

Landscape

140. The parameters are set by the need to meet housing requirements and the absence of land within the built-up urban area on which that need may be met. It is inevitable, therefore, that impact on landscape will have to be tolerated in meeting housing needs. The appellants, however, do not adopt a complacent or cavalier attitude to landscape impact. The evidence demonstrates the considerable skill and care applied to the issue.

141. The first step is to appreciate the magnitude of the harm. Planning for Landscape Change^C assesses the character and quality of the landscape throughout the District. Map 7^D provides a helpful summary. It shows the appeal site to be the lowest quality in the District – and also of low sensitivity. The Council agreed. The corollary, purely in landscape terms, is that there is no better location in which to meet the District's housing needs. In addition, the appeal site occupies some of the lowest land around Lichfield, further reducing its sensitivity to change.

142. Thus, it is inevitable that land must be found in the countryside to meet housing needs – and there is no land around Lichfield that provides, in landscape terms, a better location than the appeal site. These propositions arise from agreed evidence to the inquiry; accordingly, landscape impact cannot be a basis for withholding consent in the context of an established need for housing land.

143. The Council raises two other landscape-related issues. The first is that the appeal scheme would be an "incongruous urban intrusion" into the countryside. The landscape character type which includes the appeal site also includes Sreethay, where the SDA for 750 homes will create its own defining impact on the character of the landscape. In this context, it is wrong to suggest that the appeal proposals are incongruous. In any event, there are already diverse urban influences around the appeal site, including the railway and the sewage works. Moreover, all of the SDAs brought forward in the Local Plan Strategy involve an "incongruous urban extension into the countryside" and in no case was that found to be an acceptable basis for withholding consent in the context of the scale of housing need.

144. Secondly, the Council is concerned that the appeal proposal will close the gap between Lichfield and Fradley. However, there is no policy recognising the gap as deserving of any special protection; HS2 will create a permanent barrier

^A NPPF, para. 118 (penultimate bullet point).

^B Document CD87 is the assessment of access options.

^C Document CD43, Supplementary Planning Guidance (SPG), Staffordshire County Council, 2001.

^D Document CD43(2), between pp. 32 and 33.

between the two settlements;^A and there is anyway a vast amount of land that will continue to provide that separating function, even if the appeal succeeds.

Housing need and land supply

145. There are four determining issues – the Liverpool-Sedgefield dichotomy; the timing of delivery of the SDAs; the rate of delivery of the SDAs; and residual disputes about smaller sites. The period for assessment of these issues is agreed as 2014-2019; further written representations will be made about the effect of the recently published 2012-based household projections.
146. The inquiry has been held in the shadow of the recently approved Local Plan Strategy, which is presumed to have been lawfully adopted. It is obviously a highly material consideration – but it is not decisive. If the High Court quashes some or all of the Local Plan, then the context changes radically. Even if it does not, the conclusions of the Local Plan Inspector must be carefully considered. Factual circumstances may have changed so materially that different conclusions should now be reached on issues considered by the Local Plan Inspector – or it may be possible simply to disagree (for good reasons) with his analysis.
147. It may also be noted at this point that there are those^B with an interest in the outcome of the appeal who have chosen to make only written representations about this key issue. The appellants have been denied the opportunity of cross-examining that evidence whereas its own has been fully exposed to examination. Where there is a conflict, the appellants' more weighty evidence should prevail.

Liverpool-Sedgefield

148. It is agreed that, if the Sedgefield method is to apply, then the Council cannot demonstrate a 5-year supply of deliverable housing land. If so, then the NPPF (para. 49) operates so as to exclude the housing restraint policies of the Local Plan Strategy.
149. It is also agreed that Sedgefield is the norm. or default position, in accordance with the national Planning Practice Guidance (PPG) and the central objective of national housing policy to boost significantly the supply of housing land, as the Local Plan Inspector understood in his report.^C The question is therefore whether there is particular justification for not applying Sedgefield. The Local Plan Inspector found that there was and the Council has adopted his reasoning.
150. However, that reasoning should be seen as wrong and/or overtaken by events. His approach, and thus the Council's, should be rejected. Expectations for the delivery of housing land should be both realistic and aspirational. The Local Plan Inspector rejected Sedgefield solely because it would be unrealistic – but does that remain a viable conclusion on the evidence before this inquiry?
151. The primary data is agreed. The backlog is 1,413 dwellings. The annual housing requirement is 478. When these figures are converted to a 5-year requirement and adjusted to include a 5% buffer, the figure is either 2,980 using Liverpool or 3,925 using Sedgefield, annually 596 and 785 respectively. The Council's case is that 785 is unrealistic but 596 is both realistic and aspirational; the appellants' is that Liverpool gives an artificially constrained supply of 596 when the deliverable supply is far higher than that. In other words, using

^A See document IMP10, Figures 8.23-8.25.

^B Essentially Pegasus Planning Ltd – see its letters dated 5 November 2014, 5 March 2015 and 17 March 2015.

^C Document CD49, para. 210.

Liverpool prevents the market from bringing forward land to meet local needs contrary to the whole thrust of national housing policy.

152. The Council's annual deliverable supply was 684 when the Local Plan Inspector was considering the matter but had risen to 773 by January 2015, before falling back to 738 at the time of the inquiry.^A Liverpool constrains supply to 596^B – the opposite of aspirational, preventing 142 dwellings annually which are agreed to be deliverable. Sedgefield, on the other hand, brings an annual requirement of 785 – broadly the same as the Council's deliverable figure of 773 in January 2015 and only slightly higher than the revised figure of 738. That is both realistic and aspirational. The small shortfall can be closed by bringing forward more land instead of erecting unnecessary barriers to the approval of applications for what would be sustainable development.
153. The facts have clearly changed since the Local Plan Inspector wrote his report. He did not have an opportunity to take account of this radically different set of circumstances. For example, the agreed delivery rate of 773 (now 738) dwellings per annum (dpa) entirely undermines his conclusion on this issue.^C Alternatively, for the reasons discussed above, his analysis is wrong. Either way, the Secretary of State is entitled to, and should, depart from that reasoning and reject the evidence presented to the inquiry by the Council on this issue.

The timing of the SDAs

154. The Council has been unfair in the way it has applied the general assumptions in the SHLAA. It applies those assumptions to the appeal site despite three years of information about its deliverability; on the other hand, it has accepted unsupported assertions from self-interested parties and does not apply the same general assumptions to the SDAs. The Secretary of State should apply the SHLAA assumptions – because they derive from a clear view of the public and private sector participants in the panel exercise, all of whom have a particular familiarity with the operation of the housing market in this area. On that basis, the agreed evidence is that the Council's calculated supply should be discounted by 590 dwellings. The remaining surplus of only 108 is accounted for by Tolson's Mill and other small sites (see below).
155. Consistent application of the SHLAA assumptions thus creates an inadequate 5-year supply even assuming the Liverpool method. The Council contends that the SHLAA assumptions may be rejected in favour of more particular information about each site. But such specific information could give figures either lower or higher – making the evidence on the matter very important.
156. Looking simply at the Shortbutts Lane SDA, a resolution to grant consent was passed in May 2014 but, to date, the parties have been unable to conclude the section 106 obligation on which the resolution was based. That in itself should raise serious concerns about deliverability. The site is in multiple (fractured) ownerships, which has led (amongst other things) to a dispute over access on to London Road. Contrary to the representations from Pegasus, Lichfield City Council controls the access; it had an in-principle objection to the grant of planning permission and it is not possible to say whether or at what price it would sell its ransom interest. This leads to serious doubts about whether any

^A Document 14.

^B Document LDC7.1, p.12, row L.

^C Document CD49, para. 56, incorporated into the conclusion at para. 212.

dwellings will be delivered on this site in the next five years. In addition, there are the delays inherent in resolving the planning, technical and infrastructure issues which inhibit delivery.

157. Pegasus responded with some bland assertions about negotiations continuing but the language used strongly suggests that there is no binding contractual position. Therein lies the difference between the Council and the appellants. The Council has been inclined to accept those assertions at face value; the appellants are more sceptical and realistic. This, taken together with the question of the rate of deliverability, should discount the Shortbutts SDA to zero.

The rate of delivery

158. For the appellants, Adrian Willet gave a market-facing appraisal based on the highest standard of professional authority and derived from over twenty years experience living and working in this area. His evidence is an unquestionably qualified source. It is important his evidence is not misunderstood. He offered his own professional opinion. He spoke to four land managers from nationally important house builders but was not reporting their views – instead, their views reinforced his own evidence.
159. The house-building industry has learned some difficult lessons from the market crash of 2008 and following recession. It has now adopted a cautious approach. Housebuilders will now restrict the circumstances in which they will expose themselves to competition. This militates strongly against having three flags (builders) on one site, in part because, irrationally, they tend to discount their product as year-end targets approach, introducing a degree of competition which they prefer to avoid. Against this, the Council relies on the self-serving statements of those with a vested interest in avoiding or restricting competition.
160. The appellants' evidence is extremely important. It establishes that the 'three flags' scenario is unreliable and should be reduced to two. The only evidence from the Council to set against it is the delivery from a site east of Rugely which, in fact, delivered 150 dwellings in only one year – which is no basis for a generalised assumption about consistent future delivery rates in the District.

Residual disputes

161. Tolson's Mill is a good example of the remaining issues, which account for around 200 dwellings. For the appellants, Richard Brown's familiarity with the site enabled him to say that there was no financially viable way in which development could be brought forward. He said it should be discounted to 20 dwellings within the 5-year period, recognising that a partial solution may be found in due course. The Council, without that familiarity, assumed it could deliver 100 dwellings.

Conclusion on 5-year housing land supply

162. The Secretary of State cannot sensibly be invited to reach a conclusion on precise housing land supply while the High Court's response to the s.113 challenge is unknown. The most that may be offered at this stage is a preliminary conclusion – but the only live issue is the extent of the undershoot. The Council cannot demonstrate a 5-year supply of deliverable housing land. That is agreed to be true in all situations where Sedgefield is applied. Even if Sedgefield is not applied, the evidence still suggests a deficit – because 1,190 dwellings have to be discounted when the alleged over-supply is around 700, a
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shortfall of nearly 500. Either way, the Council cannot demonstrate a 5-year housing land supply.

Policy

163. The most important point is whether the appeal proposals are in accordance with the underlying strategy of the Local Plan or at odds with it. The Secretary of State is invited to consider the issue in the context of the Council failing to demonstrate a 5-year supply of deliverable housing land and the constraint policies of the Local Plan thus not applying.^A What remains is the high-level abstract approach of the Local Plan towards meeting housing needs.
164. Policy CP1 provides the strategic approach. It requires the concentration of growth on the established settlement hierarchy, with the lion's share of new development being directed to Lichfield City, its urban areas and the SDAs. The strategy concentrates growth in and around Lichfield as this provides the best means of achieving of sustainable mixed communities with inter-connectivity to established centres. In locational terms, the development of the appeal site would fit neatly within this strategic approach.
165. The strategy identifies SDAs to the south and east of Lichfield – but that does not go to the context of the issue. If the Council cannot demonstrate a five year supply then more land must be found around Lichfield in addition to the designated SDAs. The policies in the Plan which restrict peripheral expansion only to those areas designated as SDAs are, on this analysis, “policies for the supply of housing” and cannot apply in the absence of a five year supply.^B Additional land must come forward to address the shortfall.
166. It was explained that the Council, and its strategy, had discounted a new village option of 2,000 dwellings to the north-east of Lichfield because of concerns about adverse impacts on ecology, landscape and views towards the Cathedral. To the extent that this may be regarded as a policy of strategic constraint, the appeal proposals do not conflict with it – because the appeal proposals would develop only a small part of the area proposed for the new village and because the three issues identified by the Council have been thoroughly examined in the course of the inquiry and have been found not to warrant refusal.
167. On top of all this, the overarching consideration of sustainability dictates the overall strategy of the Plan. This may be taken briefly – because it is agreed. The Local Plan Inspector notes the Council's agreement that the appeal site is in a sustainable location and that the proposal for 750 dwellings is sustainable.^C Accordingly, the appeal proposals constitute sustainable development in a location that exactly accords with the strategic priority for meeting housing need.
168. It may be true that the Local Plan Inspector rejected the north-east of Lichfield as a location for a SDA – but it is clear from his report that he was addressing his mind to the new village option for 2,000 units and was carrying out a comparative exercise in a plan making context; that differs from a s.78 appeal and its focus on a single site.

^A Because of para. 49 of the NPPF.

^B In the context of para. 49 of the NPPF.

^C Document CD49, paras. 99 and 170.

169. It is also important to note, in the context of addressing unmet housing needs, the agreement that the appeal proposals are deliverable, within the meaning of the NPPF.^A The evidence differs on how many units could be delivered within five years (175 or 225) but the key agreement is that the appeal site would be able to come forward immediately following a grant of consent.
170. Also to be considered is the possibility that there is found to be a 5-year housing land supply. In that event, Birmingham's housing needs become a crucial consideration. It is agreed that Birmingham is unable to meet its own requirements and the full scale of need required to be addressed in surrounding areas is still an open question. In fairness to the Council's case, the precise strategy for meeting that need is also undecided at present. As a matter of judgment and probability, it must be concluded that Lichfield will be required to accommodate some of Birmingham's housing needs and, for the reasons discussed above, there is no location throughout the whole of the District that is better suited to meeting those needs than the appeal site. When asked, Miss Eggington, for the Council, said that she could not advance any land that would be better than the appeal site for meeting Birmingham's needs.
171. The Leeds decision^B considered at the inquiry reflects the Secretary of State's view that it is desirable to include a degree of flexibility in housing provision beyond the 5% or 20% buffer. In general, that is a rational approach since an undersupply is far more harmful than an oversupply. It becomes highly desirable in the specific circumstances of Lichfield, when there is the high probability that housing needs are about to increase in order to accommodate some of Birmingham's overspill. This is reflected in the Local Plan Inspector's requiring the Main Modifications to be expressed as a minimum.
172. It is also important to consider the policy approach if there is not a 5-year housing land supply. Crane^C is a pedantic legal intervention which draws a distinction between no weight and limited weight. This is a piece of scholasticism adding nothing to decision making. Where para. 49 of the NPPF applies, very little weight should attach to the policies for the supply of housing.
173. The Council contended that there were other policies which excluded the grant of consent even in the absence of a 5-year housing land supply – CP14, CP5, NSR3, NSR4 and the heritage policies. The principle of consistency demands consideration of how those policies were applied at Streethay, an apposite comparator because that was also an outline proposal for 750 dwellings, in conflict with the Development Plan and in the context of there being no 5-year housing land supply. In that case, the Council noted that those policies were all engaged but found they could be satisfactorily addressed through conditions, contributions and the reserved matters process. The facts differ – but the key point is that the general degree of harm caused by Streethay and the other SDAs is broadly similar to that caused by the appeal proposals. None of the SDAs was excluded because of those specific policy requirements and the principle of consistency affords no proper basis for excluding the appeal proposals.

^A Footnote to para. 47.

^B Document 12.

^C Document 21.

Policy and the NPPF

174. If the Secretary of State, as the competent authority, finds from the appropriate assessment already undertaken that the proposals would not have any negative effect on an SAC, then para. 119 of the NPPF has no role to play in the determination of the appeal.^A The Council suggested that the broad approach is still permissible as an interpretation of the NPPF. It is not. The Court is the arbiter of the meaning of policy and it has excluded the broad interpretation.
175. Para. 118 of the NPPF is not controversial. The first question is whether the trees are veterans, the second is whether the proposals will cause their loss or deterioration and the third is whether the benefit exceeds the harm. For the Council, Simon Wood agreed that, if the third issue is reached and the conclusion is that the balance favours the proposals, then para. 118 is not a “specific policy” indicating that development should be restricted in the context of para. 14.
176. Para. 134 of the NPPF is agreed as being governed by a similar approach. There is a heritage question which must be considered. Firstly, does the proposal cause no harm or less than substantial harm to the heritage asset. Para. 134 is only relevant in the second situation. Even if it applies, the public benefit must be weighed. If the balance favours the proposals then para. 134 is not a policy which specifically indicates development should be restricted.
177. The structure of both policies is similar. Both require an initial decision on the facts to decide the threshold question of whether the policy applies at all. If they apply, both then require an assessment of harm against advantage. If advantage outweighs harm, then neither restrict the application of para. 14.
178. For the Council, Simon Wood’s approach to sustainability was confused. His concession that the proposals (in the absence of a 5-year supply) advance the social and economic roles was well made. The environmental harm is inevitable and of a scale similar to that found to be acceptable elsewhere, as a means of meeting housing needs. Applying para. 8 of the NPPF, the three limbs are addressed simultaneously and the Council was right to concede that the proposals are sustainable.

Conclusion

179. The precise basis for making the decision is unclear at the time of the inquiry but the decision itself is overwhelmingly obvious. There is a massive shortfall in housing land availability in Lichfield District. The appeal site is able to come forward now to address that shortfall – and it is in a location that respects strategic and national policy objectives for urgently increasing sustainable housing provision.
180. The appeal should be allowed.

^A Document 13.

WRITTEN REPRESENTATIONS

181. **Lichfield City Council** supported the District Council's refusal of planning permission, saying that the site had been considered and rejected in the (then) emerging Local Plan, that the development would be an incongruous spur into open countryside and that the proposed accesses were totally inadequate.
 182. **Staffordshire County Council** submitted a paper explaining how it calculated the Education Contributions it had requested and how they met the requirements of the Community Infrastructure Levy (CIL) Regulations.
 183. **Severn Trent Water** wrote on 9 March 2015, not in objection but drawing attention to its extant permission for a wind turbine on neighbouring land.
 184. The **Pegasus Group** wrote on 5 November 2014, again on 5 March 2015 (having seen the proofs of evidence for the inquiry), and again on 17 March 2015 (having seen the appellants' written response to the earlier March letter).
 185. Pegasus is agent to Persimmon Homes West Midlands Ltd, which has a controlling interest in two of the SDAs now allocated in the Local Plan Strategy – 'South of Lichfield' (Shortbutts Lane) and 'South of Lichfield – Cricket Lane' (the latter introduced by a Main Modification to the Plan). Persimmon operates under three main brands – Persimmon Homes, Charles Church and Westbury Partnerships. Pegasus also acts for Miller Homes in relation to the East of Lichfield (Streethay) SDA. Pegasus's views were these.
 186. The appeal proposals do not accord with the adopted Local Plan Strategy and the site is not as sustainable as the alternative deliverable options. By contrast, the Shortbutts Lane, Cricket Lane and Streethay sites are allocated in the now-adopted Local Plan Strategy and there is no significant impediment to the delivery of dwellings on any of them.
 187. The Council has resolved to grant planning permission for a development of up to 450 homes, a new country park and associated infrastructure on the Shortbutts Lane SDA. Good progress is being made on the section 106 obligation and Persimmon is working to ensure that pre-commencement conditions can be discharged expediently. All 450 homes can be delivered without the need to complete the Southern Bypass. Persimmon has contractual arrangements in place to acquire the property which must be demolished to enable the southern London Road access to the site. There is no dispute with Lichfield City Council over the London Road access; positive and proactive negotiations are proceeding and the site remains deliverable. The condition on outline planning permission requiring improvements to the A38/A5148 before first occupation does not raise any concerns; negotiations have taken place with the Highways Agency and it is proposed that an application will be made to vary the timing of the works once outline planning permission has been granted. A realistic assumption is that 100 dwellings will be delivered in 2016/17, and 150 in both 2017/18 and 2018/19.
 188. At Cricket Lane, an outline application is expected to be submitted in mid-2015 and completions may be expected in the latter part of 2016/17.
 189. Outline planning permission has been granted at Streethay and a number of pre-commencement conditions have already been discharged. Miller Homes has contractual arrangements in place to acquire the freehold interest in the listed Streethay House Farm. It is expected that around 40 homes will be delivered in 2015/16 and 150 homes, through multiple outlets, in subsequent years.
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CONDITIONS AND OBLIGATION

190. A list of suggested conditions was submitted to the inquiry. I made my comments and queries in writing for consideration of the parties. An amended list of suggestions was discussed on the penultimate day of the inquiry. A further list of agreed suggestions was submitted immediately after the inquiry and another on 5 May 2015, taking into account subsequent progress on highways and ecological matters. My comments on that final amended list^A and my recommendations on the conditions to be attached to a planning permission, should the Secretary of State allow the appeal, are at Annex C to this report.
191. Progress regarding a section 106 obligation is set out at para. 3 above, under the heading 'Procedural Matters'. Two obligations were submitted on 22 May 2015 (on an either/or basis) – an executed agreement, in counterpart form, and a unilateral undertaking.^B Both provide for the following:
- affordable housing amounting to 25% of the development;
 - open space within the appeal site, an open space contribution and a leisure contribution;
 - a travel plan and contributions towards various highways works;
 - primary and secondary education contributions, with the option, instead of making the former, of providing the new primary school on the appeal site.
- In addition, the unilateral undertaking provides for a contribution towards the mitigation of any impact on the nearby Cannock Chase SAC. The Council did not require this contribution, because of guidance adopted during the inquiry in March 2015. However, it was initially requested by Natural England and the appellants take the view that it may be payable.
192. I appraise in my conclusions below the merits of the obligation and the extent to which its provisions satisfy the tests in CIL Regulation 122.

^A Document A17.

^B Document A9.

REPRESENTATIONS ON 2012-BASED HOUSEHOLD PROJECTIONS

On adjourning the inquiry on 20 March 2015, I asked that written representations on the 2012-based household projections be submitted by 8 April 2015, with the opportunity to comment on the opposing representations by 17 April 2015. The conclusions were very similar and the parties agreed to my suggestion that there was no need for cross-comments. For clarity, I set out here the conclusions of the representations from the appellants and the Council (Documents A3 and A4).

Conclusions of report by Nathaniel Lichfield & Partners (NLP) for the Council

193. The latest Sub-National Housing Projections (SNHP) are the starting point in deriving an appropriate objectively assessed need (OAN) for Lichfield but they are not the whole picture. NLP has not been able fully to update its HEaDROOM modelling as the full datasets for the 2012 SNHP have yet to be released. It is nevertheless important that the 2012 SNHP and its implications are considered.
194. Given that the latest 2012 SNHP projections have generated household representative rates that sit between the 2011- and 2008-based SNHPs, albeit closer to the 2008-based figures, the outcome of any future modelling is not anticipated to be substantially different to that outlined in previous studies.
195. Taking the 2012 SNHP at face value, they do not appear to indicate that the suggested OAN range of 410-450 dwellings per annum (dpa) would be substantially altered had the latest household projections been available to use in NLP's earlier PopGroup model. This initial hypothesis may need to be reviewed once the Stage Two 2012 SNHP datasets are released.

Conclusions of report by Regeneris Consulting Ltd for the appellants

196. If the Council repeated its OAN analysis with the 2012-based, rather than the 2008- and 2011-based projections, it would still arrive at an OAN figure of at least 430 dpa.
 197. Whilst the 2012-based projections point to a need for 340 dpa, that should be only a starting point in assessing the OAN. It is inconceivable that the Council would leave the raw household projections unadjusted. They point to a substantial loss of working age residents over the plan period, which does not represent the sustainable future that the Plan seeks to encourage. This loss of working age residents is wholly incompatible with the Local Plan's quantified economic growth targets. Also, they allow for very little recovery on household formation rates. Nor do they factor in any market signals adjustments, for which the evidence for Lichfield strongly suggests a need.
 198. The Local Plan Strategy OAN figure of 430 dpa, only recently found sound by the Local Plan Inspector, provides some headroom within which the Council can respond to these various demographic, economic and market signals adjustment factors. The uplift to 478 dpa is still required to help meet needs in neighbouring areas (there is no suggestion that the 2012-based household projections will lead to a dampening down of housing need in Tamworth and Cannock Chase).
 199. Based on the above, the Local Plan Strategy requirement of 478 dpa should continue to be used as the basis for any current 5-year land supply calculations. In accordance with Policies CP1 and CP6, this should continue to translate into a minimum of 10,030 net new dwellings to be completed between 2008 and 2029.
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UPDATING REPRESENTATIONS – January 2015

The Court of Appeal having refused permission to IM Properties Development Limited to appeal against the judgement of the High Court, I asked that written representations to update matters since the adjournment of the inquiry on 20 March 2015 be submitted by the Council and the appellants by 15 January 2016, with a further week, until 22 January 2016, for comment on each other's representations. I give here the gist of those representations.

REPRESENTATIONS BY THE COUNCIL^A

200. The base date for the housing land supply evidence to the inquiry was 1 April 2014, as recorded in the 2014 SHLAA. This has been updated to 1 April 2015, as contained in the 2015 SHLAA.^B There are no methodological differences between the two SHLAAs, save for a slight difference in the windfall allowance.
201. Net completions in 2014/2015 were 226; those on allocated sites amounted to 82. The total is less than the 291 completions anticipated in the 2014 SHLAA. The total backlog has become 1,665 dwellings. Resolving that using the Liverpool approach gives a 5-year housing requirement of 2,985 (or 597 per annum).^C
202. Providing a 5% buffer, the requirement is 3,135; with a 20% buffer it would be 3,582. Net deliverable capacity of supply over five years is 3,995 dwellings – a 6.43 years supply using the Liverpool approach, 5.76 using Sedgefield.^D

Liverpool v Sedgefield

203. There are no grounds for suggesting that the Sedgefield methodology would now be more appropriate than Liverpool. Two appeal decisions^E support the Council's case that there is no need to change from the valid conclusion of the Local Plan Inspector that the Liverpool method is appropriate. The appellants use the Council's supply projections in arguing for the use of the Sedgefield method but, at the same time, criticise the lead-in times and build-out rates used in coming to those projections as overly optimistic.

5% or 20% buffer

204. At the inquiry, the appellants were perfectly content that a 5% buffer was appropriate. The additional shortfall accrued from a single monitoring year, 2014/15, does not suddenly render the Council a persistent under-deliverer. The robust approach is that of the Local Plan Inspector, who considered a longer period of years than the appellants.^F The decision in the case referred to by Mr Brown for the appellants is dated 13 February 2013, which raises the question of why it was not referred to at the inquiry but now is.

^A Documents A13 and A15.

^B Document A13b.

^C Document A13a – table at para. 1.8.

^D Ibid, para. 1.10 and the detailed table above it.

^E Documents A15b and A15c.

^F Eleven years to 2011, in the first seven of which (before the crash and recession) the Council met its targets.

SDA sites

205. On the South of Lichfield (Short Butts Lane) SDA, the information from Pegasus already before the inquiry^A has been used as the basis for the trajectory set out in the 2015 SHLAA. It remains the best available evidence on likely delivery. There is a resolution to grant outline planning permission subject to a section 106 obligation, which it is understood is shortly to be circulated for signature. The number of dwellings anticipated within five years (from 1 April 2015) is 450.
206. The East of Lichfield (Streethay) SDA has outline planning permission for 750 dwellings. The information from Pegasus has again been used in the 2015 SHLAA. Since then, two reserved matters permissions have been granted. Severn Trent Water has started sewerage works on the site. Delivery of 40 dwellings in 2015/16 is unlikely but there is clear progress being made broadly in line with the SHLAA trajectory, which anticipates 640 dwellings within five years.
207. There is outline planning permission for 750 dwellings on the Fradley SDA. A masterplan is presently with the Council for consideration. A reserved matters application has also been received. There is a resolution to grant permission on a scheme for 250 dwellings on a separate part of the site, subject to a section 106 obligation which is expected to be signed imminently. The present occupation of part of the site poses no constraints. Another part of the site has outline planning permission for 70 dwellings, again subject to a section 106 obligation. The number of dwellings anticipated within five years is 525.
208. Full planning permission for 351 dwellings was granted on the East of Burntwood Bypass SDA in July 2015. Site clearance has commenced. In line with the Council's trajectory, 350 dwellings are anticipated within five years.
209. Development is under way on the East of Rugely SDA, with 82 completions in 2014/15 and 60 to date in the current year (expected to rise to 69 in the full year). A separate part of the SDA has full planning permission for 71 dwellings, with a likely start on site in February 2016. Anticipated completions within five years amount to 163.
210. On the South of Lichfield (Cricket Lane) SDA, the information from Pegasus already before the inquiry indicated the potential for delivery as early as 2016/17. No application has been submitted but pre-application discussions have been held and an application is expected by Easter 2016. A cautious approach anticipates 225 dwellings from this SDA within five years.
211. The South of Lichfield (Dean Slade Farm) SDA was not, and still is not, expected to contribute any dwellings within five years.
212. In total, the SDAs are expected to yield 2,518 dwellings within the five years from 1 April 2015. That is a small increase of 26 on the numbers anticipated at the inquiry, for the five years from 1 April 2014.

Permissions and appeals since 31 March 2015

213. Since 31 March 2015, the Council has granted 57 residential planning applications for a total of 1,220 new dwellings. They include a mixture of dwellings expected to come forward on SDA sites and windfalls. There are four

^A Document LDC7.1.

residential appeals still to be determined, including one for up to 140 dwellings (north of Dark Lane, Alrewas) and another for up to 180 dwellings (Fisherwick Road, Lichfield).

Birmingham's future housing needs

214. There is already a mechanism in the Local Plan Strategy to deal with the allocation of any further sites that may be needed. This is not a new issue but one that is still evolving. There may be greater certainty about the quantum of overspill but the distribution is still very much unknown and undetermined.

Contributions from small sites

215. Firstly, there is no double counting with regard to replacement dwellings; the SHLAA does not count replacement dwellings as a component of supply.^A Secondly, Mr Brown questions the inclusion of non-policy-compliant sites within the 5-year supply; clear evidence is required that a site will not deliver and there are good reasons to indicate that seven sites are deliverable.

REPRESENTATIONS BY THE APPELLANTS^B

216. It remains the appellants' firm view that the Council is unable to show a 5-year supply of deliverable housing land. The requirement has increased since the adjournment of the inquiry because of the under-delivery in 2014/15. The Council has, over the past seven years, continually over-estimated the amount of housing to be delivered in a given year; that suggests it is being far too optimistic in its current housing delivery assumptions and raises significant doubts over its assessment of the deliverable supply for the next five years.

Birmingham's future housing needs^C

217. Since March 2015, Birmingham City Council has endorsed and consulted upon Main Modifications to the Birmingham Development Plan and the Greater Birmingham and Solihull Enterprise Partnership (GBSLEP) Strategic Housing Needs Study (SHNS) has been published. Despite an absence of detail, these allow the conclusion that the full OAN for Lichfield, which makes no provision for Birmingham's needs, is now unreliable. There must now be substantive support for the appeal site as a location for housing growth.

218. Further detail will emerge on publication of the GBSLEP Spatial Plan, expected during 2016. Indisputably, however, some of Birmingham's needs will be directed to Lichfield District. This is important since, even in the Council's most favourable scenario, supply exceeds OAN by only a relatively small amount. While there is a Local Plan mechanism to deal with Birmingham's needs, that

^A Document A15a has a list of replacement dwellings at attached Appendix 3.

^B Documents A14 and A16.

^C Document A14a, paras 2.1-2.26, supported by Document A14b, the GBSLEP SHNS Stage 3 Report. In short, Birmingham's housing requirement is 89,000, of which 51,100 would be provided within Birmingham, leaving almost 38,000 to be provided elsewhere. Under the Public Transport Corridors scenario, Lichfield, Bromsgrove and Redditch are specifically identified as having rail connections to Birmingham which could be further expanded. The appellants argue that, with the single exception of land north of Lichfield, all other potential land under this scenario is undeliverable. The SHNS notes Watery Lane as one of the few Strategic Urban Extension (SUE) proposals not in the Green Belt.

process will be lengthy, despite the national planning policy imperative to boost significantly the delivery of housing and to meet in full the OAN for the area.

219. The appeal proposal is advanced as a sustainable residential development independent of any wider new settlement proposal mentioned in the SHNS.^A Moreover, it is the only opportunity for further strategic housing development within the HMA which:

- is not in the Green Belt;
- is available, sustainable and able to start delivery in the short term;
- is located on the edge of a main settlement and accessible to a main line rail station with convenient links to Birmingham; and
- has adequate or readily provided highways and other infrastructure.

Liverpool v Sedgefield

220. The Sedgefield method is the correct approach in quantifying 5-year housing land supply requirements. That position is further validated by one particular appeal decision issued since the inquiry; other recent appeal decisions also support the use of Sedgefield rather than Liverpool.^B Here, the Council's own figures show the existence of a 5-year housing land supply capable of delivering the required numbers of dwellings even using the Sedgefield method.

5% or 20% buffer

221. There is now evidence of persistent under-delivery, warranting the application of a 20% buffer rather than 5%. It is clear from the SHLAA that the Council has failed to meet its annual housing target in any year from 2008/09 to date.^C Over a period of seven years, only around 50% of the required housing, based on the Council's objectively assessed need (OAN) has been delivered. The shortfall in 2014/15 was 247 and the cumulative total over seven consecutive years is now 1,665. That is to be set against a target of 3,346 (478 annually) and equates to an under-delivery of over 2,000 dwellings in terms of an annualised residual target. The position now is materially different to that considered by the Local Plan Inspector. The period and extent of continual under-delivery is now much more significant than he was able to assess. Moreover, applying a 20% buffer would be consistent with other appeal decisions,^D which support the appropriateness of using the previous five years' completions in assessing whether there has been persistent under-supply.

Contributions from small sites

222. The majority of the small sites still disputed by the parties should be removed from contributing to the 5-year housing land supply. So too should certain additional sites within the 2015 SHLAA – partly because they involve double-counting, partly because some are not policy-compliant and do not have planning

^A The SHNS refers to such a proposal at Watery Lane as being one of only two across the entire Housing Market Area (HMA). It acknowledges that only Lichfield District could potentially deliver a new settlement capable of contributing to housing needs in the short-medium term (the other candidate being Brookhay and Twin Rivers, also in Lichfield District but remote from the rail network).

^B APP/Y3940/A/14/2222641, para. 22 – the Local Plan Inspector's report and the evidence base supporting the Plan did not restrict the Inspector on a s.78 appeal from taking account of evidence which had subsequently emerged. APP/M1710/A/2226723, para. 25 – the Inspector concluded that Planning Practice Guidance and the existence of a 5-year housing land supply warranted the use of Sedgefield.

^C Document A16, Table RB1 at para. 1.7.

^D APP/F1610/A/11/2165778, para. 14 in the Secretary of State's decision, paras 14.19-24 of the Inspector's report, endorsed by the High Court in [2013] EHC 3719 (paras 42-52).

permission and should not, therefore, be regarded as being available for development. On this basis, the contribution from small sites towards the 5-year land supply should be reduced by 293.^A

SDA sites

223. There has been no delivery on any of the SDA sites in 2014/2015.^B The projected delivery over the 5-year period to March 2020 is 871 dwellings, a shortfall of around 500. The Council's position is at best fragile.
224. There has been mixed progress on the Fradley SDA since March 2015. The Evans of Leeds land (750 dwellings) has seen no progress. Brookfields (70 dwellings) has a resolution to grant planning permission from 24 August 2015 but the section 106 obligation is still being negotiated. Planning permission for Hay End Lane (250 dwellings) is still awaited, despite its being considered at Committee in December 2015. In addition to the conventional planning process, the Council requires the approval of a masterplan or design code before the submission of any reserved matters, which will cause further delay. Also, there is a commercial tenant who can remain on site contractually until 2017, with the intention to extend for a further three years. Thus, there is a real prospect of no housing delivery on this site; one may nevertheless reasonably assume 120 dwellings within five years – compared with the Council's projection of 525.^C
225. Reserved matters were secured on 24 June 2015 for 352 dwellings on the East of Lichfield (Streethay) SDA. Miller Homes anticipates a start on site in March 2016 and the first unit sale within a year. That suggests a total of 330 dwellings in five years (assuming two flags, not three, on the site) against the Council's estimate of 640.^D It is understood, however, that the Severn Trent sewer installation will not begin until April 2016, with commissioning at the end of June.
226. On the South of Lichfield (Short Butts Lane) SDA, there has been no resolution in terms of the many technical, planning, highways and legal ownership constraints. It is no more likely now to deliver housing within five years than it was in March 2015. The resolution to grant planning permission is now 20 months old, which begs the question of whether it is now time-expired. One of the landowners (Lichfield City Council) is not a signatory to the section 106 obligation. The delivery projection for this site should be zero, not 450.^E
227. There is still no planning permission on the South of Lichfield (Cricket Lane) SDA. It is difficult to see the delivery of more than 125 dwellings in the 5-year period, compared with the Council's projection of 225.^F
228. Detailed planning permission was granted on 21 July 2015 on the East of Burntwood Bypass SDA. The joint developers are now mobilising for site remediation and subsequent delivery. The site is part of a former colliery and remediation will include ground stabilisation. Vacant possession will be delayed by the presence of various leases and licences. Reflecting these matters, 240 dwellings may be expected within the 5-year period, compared with the Council's projection of 350.^G

^A Document A14c.

^B Save for East of Rugely – see para. 209 above.

^C Document A14a, paras 3.4-9.

^D Ibid, paras 3.10-14.

^E Ibid, paras 3.15-20.

^F Ibid, paras 3.22-23.

^G Ibid, paras 3.24-27.

229. There is no dispute about the East of Rugely SDA and the South of Lichfield (Dean Slade Farm) SDA. The former can deliver 56 dwellings within the 5-year period; the latter remains for delivery beyond the 5-year period.

230. Overall, there has been a clear deterioration in the Council's 5-year housing delivery projection. The Council continues to under-estimate planning and technical delivery constraints and legal ownership issues. The Council's projection is for the delivery of 2,246 dwellings from the SDA sites, the appellants 871 – a variance of 1,375 dwellings.^A In addition, the Tolson's Mill site is identified as delivering 100 units within the 5-year period but the site is still for sale, with no short or medium term prospect of contributing to housing numbers.

Conclusion on 5-year housing land supply

231. Even if disregarding Birmingham's housing needs, Lichfield does not have a 5-year housing land supply in virtually every scenario examined.^B Even if it did, however, and NPPF para. 14 were thus not engaged, it would still be necessary to undertake a balancing exercise of harm against benefits. There are a number of decisions allowing appeals where there has been a 5-year housing land supply but the proposals represented sustainable development contributing to meeting housing targets, including for affordable housing.^C Here, the appeal proposal would be sustainable development and the degree of harm from it would be limited, with much of it capable of being overcome by planning conditions and the section 106 obligation.

^A Ibid, para 3.30, Table 3.1.

^B Document A14a, Tables 2.4-2.13, with explanatory text at paras 2.50-55.

No Table shows a 5-year supply using the Sedgfield method.

No Table shows a 5-year supply if Birmingham's needs are taken into account.

Only if using the 2015 SHLAA is there a 5-year supply using either a 5% or 20% buffer.

Only if using a 5% buffer is there a 5-year supply based on two flags only on a site and using amended small site supply figures.

Inspector's Note – Tables 2.5, 2.7, 2.9, 2.11 and 2.13 are based on the Local Plan being quashed and may therefore be ignored.

^C APP/Y2810/A/14/2228921, paras 43 and 71;

APP/A0665/A/14/2226994, paras 56-62;

APP/A0665/W/14/3000528, paras 60-68.

INSPECTOR'S CONCLUSIONS

Superscript numbers in these Conclusions refer to earlier paragraphs in this report. Footnotes continue to be identified alphabetically.

232. The s.113 challenge having failed, the adopted Lichfield District Local Plan Strategy remains a lawful part of the Development Plan for the area. There are five considerations that can be assessed on their own merits, against the Local Plan Strategy and the provisions of the National Planning Policy Framework (NPPF), before then looking at the position on housing land supply. They are:

- highways matters;
- the effect on landscape character;
- the effect on historic trees and hedges;
- the effect on the significance of the listed Curborough Grange, and
- the effect on views of Lichfield Cathedral.

Highways matters^{36-41, 161}

233. There are no technical highways matters remaining to be resolved that cannot be dealt with by conditions attached to outline planning permission.³⁸ Highways England has withdrawn its holding objection.^A The local highway authority had indicated, in any event, that potential concerns relating to the junction of Wood End Lane with the A38 trunk road could be overcome by measures to adapt the junctions closest to its west.³⁷

234. The Council accepts that the proposed accesses to the appeal site would not be unsafe or otherwise unsuitable in highways terms.³⁸ The access from Netherstowe Lane is the most appropriate option from the north-east. Improvements to Watery Lane where it passes under the West Coast Main Line railway (using signal-controlled one-way operation and narrowing the carriageway to enable a wider footway) would overcome concerns about access from the south-west.

235. What remains is whether the location of the appeal proposal would be sustainable in highways terms – more particularly, in relation to non-car modes of transport.

236. The Council accepts that bus connectivity proposals have improved since the application stage.³⁹ The Travel Plan provides that a bus route would link the appeal site to Lichfield town centre via Eastern Avenue from occupation of the 50th dwelling and that the route would be extended to Fradley, giving links between the town centre and the Fradley Strategic Development Allocation (SDA) and employment site, from occupation of the 250th dwelling.^B The obligation provides that the service would be supported financially for a period of five years,^C after which the judgement on whether to continue it would be a commercial one for the operator. That represents appropriate (and constructive, in that it would bring the additional link with Fradley) public transport provision.

^A Document A5 has the correspondence leading up to withdrawal of the holding objection.

^B Document 23F (Issue 2 of the Travel Plan).

^C Document A7 (the relative merits of the agreement and the unilateral undertaking are considered below).

237. It may well be that pedestrian and cycle links would be such that residents of the proposed development would likely rely more on the private car than might be hoped.³⁸ Walking to existing bus stops would be further than desirable; walking to the town centre, or to either of the railway stations, or to the main employment locations, would be highly unlikely; walking to existing primary schools seems irrelevant when a new primary school is proposed on-site; and it seems inappropriate to consider walking to existing local conveniences when a certain amount of shopping is proposed on-site and has been limited in its area by the Council for fear of a harmful impact on those very facilities. Cycling times, naturally, would be lower and perhaps more acceptable.
238. The Council's objection, however, appears to be based more on comparative analysis than objective assessment⁴⁰ and seems fettered by the stance that the site is not in Lichfield, as defined in the Local Plan Strategy. It is true that the site is less sustainable and accessible from the town centre when compared with the SDA sites around the south of Lichfield. Detailed consideration, taking account also of the SDAs at Streethay and Fradley, reveals a rather more complex picture.^{39,A}
239. The appeal site is further from Lichfield town centre than any of the SDA sites around the town but considerably closer than Fradley SDA. (There are good planning reasons for that SDA but Fradley itself has limited facilities and did not score well in the Council's sustainability appraisal for the Local Plan Strategy.^B) It is a little closer to Lichfield Trent Valley railway station (on the West Coast Main Line) than four of the SDAs. On the other hand, it is further from Lichfield City station than all but Fradley. (The City station serves Birmingham but so too, though less regularly, does Trent Valley). As far as the three main employment areas (Eastern Avenue, Europa Way and Fradley) are concerned, there is not a lot to choose when they are taken all together. Also, if one were looking for a housing location around Lichfield (the main settlement in the District) additional to those allocated in the Local Plan Strategy, it seems that none would obviously be better placed than the appeal site.
240. Accordingly, looked at objectively, there must be concerns about walking and cycling distances. The SDAs score better, taken overall, but exactly those concerns would arise in considering any site around Lichfield additional to the SDAs. Transport sustainability cannot, therefore, weigh heavily in the balance against the appeal proposal – particularly so in light of the Local Plan Inspector having recorded the Council's agreement that the scheme for 750 dwellings represented, in broad terms, sustainable development.¹¹⁶

Landscape character^{44-57, 121, 137-138}

241. There cannot be any doubt that a development of 750 dwellings would have a significant effect on the landscape character of the appeal site and its immediate environs. The site itself would change from being part of the landscape to being a built-up area; its character would change dramatically and irrevocably. When passing close to the site, one would be passing a built-up area, not a rural area. It is difficult, however, to consider the effect on landscape character without also

^A The reference to para. 39 is really to Document 28, referred to in the footnote to that paragraph. The comparisons in the paragraph above are drawn purely from Document 28.

^B Document CD49, pp.28-29, paras. 152-158, summarises the position.

considering the need for the development.⁴² There appear to be two principal questions that help towards an objective assessment. The first is what is the landscape quality of the site itself? The second is how would the proposed development appear when seen from a little distance beyond the site?

242. The intrinsic quality of the landscape within and immediately surrounding the appeal site is not high. It is part of Landscape Character Area 67, an area assessed in the Environmental Statement, fairly reasonably in my opinion, as of low sensitivity.¹²¹ There may be criticisms of the appellant's Landscape and Visual Impact Assessment (LVIA)⁴⁴⁻⁴⁶ but I have used the evidence to assist my own visual assessment. The land is gently undulating, largely in agricultural use, its fields have mainly hedged boundaries, with numerous hedgerow trees, and there is some woodland a little to the north and north-east of the site. The landscape cannot be described as anything more than pleasant. Its rural quality is constrained by an assortment of urban or man-made influences – the West Coast Main Line railway, the sewage treatment works, dwellings of various types and ages, pylons and overhead electricity wires, the fishing lakes and even the Curborough Craft Centre, with its car parking and nowadays somewhat commercial character.^{9-11,137}
243. These intrusions heavily influence, and undermine, the visual quality of the landscape itself – and their nature means there is no real likelihood of their being reversed. If housing were to be built on the appeal site, it cannot be said (in broad terms) that something of significant landscape importance would be lost.
244. In that sense, while the advent of a substantial development might initially be seen as an "incongruous urban intrusion" (reason for refusal no. 3), it is a matter for debate whether it would be more incongruous than any other development beyond the existing urban boundary of Lichfield. The appellants' comparison evidence on the subject was hardly robust.⁵³ Even so, the four SDAs around Lichfield in the Local Plan Strategy might also be described as incongruous intrusions; all are acknowledged to have adverse landscape and visual effects,⁵⁵ though their impact would depend on detailed design and the extent, and location, of landscaping and open space. That may apply particularly to the Streethay SDA, which is in the same general area as the appeal site.¹³⁷
245. There is also the question of the gap separating the built-up areas of Lichfield and Fradley. The Council is concerned to maintain it – but there is no policy support for that concern in the recently-adopted Local Plan Strategy; also, the High Speed 2 (HS2) rail link, if it goes ahead as originally planned, on a high embankment, will be a very substantial man-made barrier between the two settlements.¹³⁸ Even if it were to be in a cutting, it would be an obvious physical barrier, if less of a visual one.
246. In summary, if housing land is needed, then the appeal site presents itself as a logical choice where development would do little harm to landscape interests of acknowledged importance. Even if it were not necessary to find housing land, the landscape and visual harm from development should not weigh heavily against the appeal proposals.

Trees and hedgerows

247. The access from the north-east would require the improvement of Netherstowe Lane for a distance of around 470m south from its junction with Wood End Lane.
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The carriageway would have to be widened to 6.5m.^A At present, it is little more than a single-track road with verges, ditches, hedges and a number of hedgerow trees on either side;^B the clear width between the hedges is 10.0m or less.

Ancient hedgerows^{67-68, 121}

248. The hedgerows on either side of Netherstowe Lane are historic, pre-dating the Inclosure Acts and, on the east side of the Lane, marking a former parish boundary.⁶⁷ They are also designated as Sites of Biological Interest, a designation that includes the ditches and verges alongside them.⁸⁰ Put simply, to widen the carriageway to 6.5m would leave a verge of little more than 1.5m on either side. It would be impossible to do that without affecting the biodiversity interest of the hedgerows and also, because construction would almost inevitably require a greater width, the hedgerows themselves.
249. The appellants' response to this is to translocate the hedgerow on the western side of the road, leaving the one on the eastern side (the former parish boundary) largely untouched.¹²¹ (I say "largely", because a gap would have to be introduced into the hedgerow to enable the cycle track to run on its east side; the length of hedgerow to be lost, however, does not appear unacceptable in the context of what would remain.) There appears to be scope for the translocation of the western hedgerow because adequate verge space could be left for the widened carriageway and its services (potentially, lighting and drainage) and ground and drainage conditions in the new location would be very little different. Translocation is clearly a poorer conservation option than retaining the hedgerow in its historic location but, in my experience elsewhere, it can work very well and the visual character of the hedgerow need not be lost.
250. Various access road options were assessed before the application was submitted but those that avoided any impact on the designated hedgerows had greater disadvantages for other reasons. In those terms, and accepting that translocation would be an appropriate measure in visual terms, the proposed access using an improved Netherstowe Lane remains the least harmful of the potential options.¹³³

Veteran trees^{74-76, 131-133}

251. There are three trees whose veteran status is not in dispute. Two of those are not threatened by the development proposals and potential harm to the third can be avoided, if it proved necessary, by means of a planning condition at reserved matters stage.^{74,131} There are two trees, almost opposite each other on Netherstowe Lane, whose status is disputed (T134, oak, and T135, ash).^{74,131}
252. It is true that these two trees are of indeterminate age¹³¹ – but age is not automatically a defining criterion for veteran status. What has happened to them might also put a question mark against their health¹³¹ – but the Council's evidence was clear that the damage they have suffered in years gone by is not a threat, to either their longevity or their biodiversity value.⁷⁵ They should be accepted as veteran trees.
253. The root protection areas (RPAs) of the two trees extend well into the existing road. Their nominal radii are about 14.4m for T134 and 8.40m for T135.⁷⁶ Impact on the trees would depend very much on the construction of the widened

^A Document CD6.1.

^B Document LDC6, Appendix 2 – the photographs on p.14 (internal p.10 of 19) give a good impression.

carriageway. If it were possible to rely on the existing carriageway construction, and make no significant change to the edge along its east side, then no harm might come to T134 (or the other hedgerow trees on the east side of the road). On the west side, however, while the hedgerow itself might be translocated, T135 (and the other hedgerow trees on that side) would almost inevitably be lost to a straightforward widening of the carriageway to 6.5m. Of course, and not unexpectedly at this outline stage, there are no details that could enable a firm judgement to be made.

254. The suggestion of introducing a pinch point (or more than one) was made at the highways round table session. Again not unexpectedly, there are no details of any standards for such pinch points. Also, no one with arboricultural expertise was involved in the session. One can, however, come to a judgement^A that the carriageway would probably have to be narrowed for a length of some 20m to ensure no significant damage to the root systems of the two trees (though a lesser length might prove acceptable, depending on constructional detail).
255. There is another potential problem. Roads generally require 5.0m vertical clearance and it is inevitable that pruning or cutting back of the crowns of the trees would be necessary. Thus, even if harm to the root systems could be avoided, and the trees remained, their appearance, especially that of T134, would be harmfully diminished by standard highway clearance requirements.⁷⁶

Other trees^{69-72, 130}

256. A recent TPO covers a number of trees in Netherstowe Lane.^{130,B} The intention in making the TPO was apparently to avoid pre-emptive felling and focus attention on their sensitivity. No trees have been felled. The question is whether the road improvements necessitated by the appeal scheme could have appropriate regard to their sensitivity.
257. With a straightforward widening of the carriageway, one could expect all of the trees on the west side of the road to be lost. Compensation for that could come only from new planting, a necessary measure, although new trees would take some time to grow and mature. Constructing the improved road with pinch points to slow traffic could only avoid some of those losses, and only if their spacing would be satisfactory in highway terms and the existing carriageway at those points was found to be adequate without improvement. As with T134, the hedgerow trees on the east side of the road could be guaranteed to survive if only modest construction/improvement works were necessary on that side of the road. Equally, as with T134 and T135, cutting back the crowns to give 5.0m clearance would be necessary and likely harmful.

Conclusion on trees and hedges

258. There would be harm to the ancient hedgerow along the west side of Netherstowe Lane, simply because it would have to be translocated; there must be some doubt as to whether it could retain or regain its biodiversity interest, even if its visual interest, as a hedgerow alongside the road, would be retained. The loss of a short length of hedgerow on the east side of the road would also be harmful, albeit modestly so. One might be confident that the hedgerow trees on the east side of the road, including the veteran T134, could survive, though only

^A By scaling from dwg. 13-22-17 in Document LDC6, Appendix 2 (from Document CD83, the revised Tree Survey).
^B Document 7.

if very limited works on that side were required to improve the existing road. Equally, one can be confident that the hedgerow trees on the west side of the road, including the veteran T135, would be lost in widening the existing carriageway to 6.5m. The possibility of pinch points was raised at the round table session but it is wholly unclear that, even if acceptable in highways terms, they would allow the trees to be left unharmed.

Curborough Grange^{58-63, 124-128}

259. Curborough Grange is listed in grade II, as a farmhouse dating from the early to mid 18th century.^A It has two storeys plus an attic and is a type of farmhouse designed to be seen in the landscape.⁵⁹ It is no longer a working farm and the traditional farmstead buildings to its east have been converted to dwellings. There is known to be a deserted or shrunken medieval settlement in the area, possibly within the appeal site.⁵⁹
260. The Council says that harm to the significance of the designated historic asset (the listed building) as a result of development within its setting would be "less than substantial" (in the terms of paragraph 134 of the NPPF).⁵⁸ That harm would come primarily from loss of prominence in the landscape (and thus views of it) because it would be close to a housing development rather than set in open land.⁵⁹ It would also result from the loss of historic hedgerows;⁶⁰ and it would arise from the loss of historic context, as one of a loose cluster of farmsteads.⁵⁹
261. The appellants, on the other hand, see no harm at all to the significance of the asset as a result of the proposed development. The proposals would not affect the listed building itself, or its associated (and now converted) farmstead; there would be no loss of evidential value; the development would not be on the farmland associated with it, which lay to the north and east; and the setting has already been heavily compromised by 20th century alterations, additions, conversions and nearby development.¹²⁴ In addition, the proposals include a landscape buffer to ensure a continuing verdant setting.¹²⁵
262. How one judges the effect of changes to the setting of the listed building depends in part on how one views the changes to the building itself, its farmstead and its immediate curtilage. The building was a farmhouse but no longer is; nevertheless, it remains essentially as built, though what one sees now may well be the product of a number of stages of development.^B The farmstead associated with it has been converted to residential use, although conversion has been carried out so that what one sees from Netherstowe Lane or the public footpaths retains the essence of its traditional agricultural character.^C Thus, the function of the listed building and its curtilage buildings has changed but, from a distance, both still convey a perception of that original function.
263. Because that perception of a farmhouse and farmstead remains – buildings one expects to see in the countryside, not in built-up areas – the proposed development must be considered to cause harm to the setting of the listed building. In one way, that harm is important, because it is the combination of

^A Document LDC1, Appendix 2.3 is the list description – though it is incorrect in saying "one storey and attic".

^B Document IMP16 – the photograph on p.33 shows the building as it is today, that on p.35 as it is seen from further afield; the diagram on p.32 shows a possible evolution of the listed building but one which cannot be confirmed without internal inspection of the fabric.

^C Ibid – the photographs on p.34.

the setting and the basic fabric of the buildings (farmhouse and farmstead) that conveys the original function; in another, it is less important, simply because the original function has now gone. Either way, that harm can only be less than substantial. If there were a scale within "less than substantial", the latter conclusion would be very much at the lower end. In my opinion, however, the farmland setting is an important aspect of the significance of the listed building.

264. The historic context of a loose cluster of farmsteads does not alter the thread of that assessment. That said, an archaeological evaluation condition, aimed at the deserted/shrunken medieval settlement, could lead towards a better understanding of the wider history.
265. The Council acknowledged that the SDAs identified in the Local Plan Strategy would cause harm to heritage assets. That would be particularly so at Streethay, where there is a listed building within the site.¹²⁸ That does not affect my conclusion on this matter – but it does show that impact on heritage assets has been tolerated elsewhere when catering for housing need.

Views of Lichfield Cathedral^{64-66, 129}

266. Policies CP14 and Lichfield 1 in the Local Plan Strategy seek to protect existing views of Lichfield Cathedral.⁶⁶ However, they give no indication of any priority to views from any particular direction or distance. I disagree with the appellants' apparent contention¹²² that paragraph 134 of the NPPF does not apply. In my opinion, because the Cathedral spires are so clearly seen from various points within the appeal site and its surroundings, the land comes within its setting.
267. In practice, however, there is just one publicly-available view of the Cathedral from Netherstowe Lane – and it can only be obtained by stepping off the carriageway towards a field gate. It is true that that view would probably be lost by the erection of new houses on the intervening land. On the other hand, there is very possibly the opportunity of new views⁶⁶ from the spine road before it enters the development, perhaps even from within the development itself.
268. Almost any development on any land that allows views towards the Cathedral would conflict with Policy CP14. In the absence of any definition of what might be important views, and in the absence of a clear view from within Netherstowe Lane, it is impossible to give any significant weight to this objection. The harm to the setting of the Cathedral would be so slight as barely to cause any harm at all to the significance of the Cathedral as a listed building.

Housing land requirement and supply^{92-102, 139-155, 193-231}

269. The appellants' evidence to the inquiry in March 2015 pointed to five main considerations in assessing whether there had been any material change in circumstances, in terms of either housing land requirement or supply, since publication of the Local Plan Inspector's report and the subsequent adoption of the Local Plan Strategy. They were:
- the Liverpool or Sedgefield methods of dealing with the backlog of housing under-provision;
 - the clear possibility of Lichfield having to provide for some of Birmingham's housing need;
 - the timing of the SDAs;
-

- the rate of delivery of the SDAs; and
- residual disputes about smaller sites.¹³⁹

An additional consideration arises from the updating representations submitted in January 2016 – the under-delivery of housing in 2014-15 and whether past performance now warrants a 20% buffer, rather than 5%, to be added to the nominal 5-year housing land supply.

Liverpool v Sedgefield^{99-100, 148-153, 203, 220}

270. The Local Plan Inspector accepted the case for the Council using the Liverpool method of dealing with the backlog (spread over the whole Plan period) rather than the Sedgefield method (over the first five years following adoption).⁹³ He rejected Sedgefield solely because he considered it unrealistic.¹⁴⁴
271. Using Liverpool, the requirement for the five years from 1 April 2014 would be 2,980 dwellings, or 596 dwellings per annum (dpa); using Sedgefield, it would be to 3,925, or 785 dpa.¹⁴⁵ Using Liverpool, the updated requirement, for the five years from 1 April 2015, would be virtually unchanged at 2,985 dwellings, or 597 dpa.^{201,A} To that must be added a 5% or 20% buffer, giving 3,135 or 3,580 respectively (627 or 716 dpa). Using Sedgefield, the requirement now would be 4,055^B, rising to 4,260 (851 dpa) with a 5% buffer or 4,866 with a 20% buffer (1,020 dpa).
272. The deliverable supply was 684 dpa when the Local Plan Inspector was considering the matter but had risen to 773 by January 2015 before falling back to 738 in March 2015¹⁴⁶ (3,678 in five years⁹⁴). At the time of the inquiry, the supply was not significantly less than the 785 dpa requirement using Sedgefield.¹⁴⁶ In January 2016, the Council put the 5-year supply of deliverable sites at 3,995²⁰² (799 dpa) – over 50 dpa below the requirement using Sedgefield and a 5% buffer.
273. The position now may well be different to what the Local Plan Inspector was considering. In itself, however, that cannot justify making a significant change to the way in which the 5-year housing requirement is calculated less than one year (at the time of writing) after adoption of the Local Plan Strategy. The Local Plan Inspector recognised the potentially critical impact of using either Liverpool or Sedgefield, and also the guidance that Sedgefield should be used where possible, before reasoning that the required housing trajectory using Sedgefield was highly likely to prove unrealistic.^C
274. The figures suggest that it is still unrealistic. Deliverable supply may well have increased according to the Council's figures but the appellants consider that forecast far too optimistic;²¹⁶ and, if they are correct, supply would fall well below the requirement using Sedgefield. On the other hand, even if all of the deliverable land did come forward, it would perhaps matter little – the housing requirement in a Plan is a minimum, not a maximum.^D

^A 478 dpa annual target x 5 = 2,390; 1,665 shortfall ÷ 15 (remaining years of Plan period) = 119 dpa; 478 + 119 = 597 dpa = 2,985 5-year requirement.

^B 2,390 (5-year target) + 1,665 (entire shortfall) = 4,055.

^C Document CD49, pp.38-39, paras. 210-213.

^D Document CD39 – the Local Plan Strategy recognises this in the words “at least” in Policy CP6 (on p.49), which conforms with the exhortation at para. 47 in the NPPF to “boost significantly the supply of housing”.

275. The Secretary of State's decision at Leeds^{165,A} took the view that an 8% over-supply gave "scope for some flexibility". The excess here could be much greater (over 30% on the Council's figures) but is not wholly inconsistent with that. Also, of course, if delivery did exceed the average annual requirement, then some of the backlog might be recouped earlier in the Plan period and a review could take account of what had actually happened.

276. To sum up, if the argument were accepted that Sedgefield should be used in preference to Liverpool, then the by-product, based on the appellants' supply forecasts, would be that more housing land would have to be found. However, the reason why the Local Plan Inspector thought that to use Sedgefield would be unrealistic was the serious doubt about whether the necessary high rate of delivery over five years would actually be attainable in Lichfield District in market terms, not in land availability terms. That doubt must remain, all the more so given the up-to-date requirement figures, meaning that Liverpool is still the more appropriate method.

5% or 20% buffer^{204, 221}

277. There was no disagreement at the inquiry that a 5% buffer was appropriate. It is only in the updating representations that a further year of under-delivery has prompted the appellants to argue that a 20% buffer should be applied. One of the appeal decisions referred to by the appellants pre-dates the inquiry and could have been raised then – but it was not. The argument, very simply, is whether one additional year of under-delivery should lead to the Council having to provide a 20% buffer in its land supply to meet its 5-year need.

278. The Local Plan Inspector looked at a period of eleven years, in seven of which (before the crash and recession) the Council had had met its targets; he concluded, reasonably, that the Council did not have a record of persistent under-delivery. The situation is now very different. The Council has failed to meet its targets in seven consecutive years – and by a substantial margin. The first four of those years were during the recession, when under-delivery may be argued as more to do with market forces than the performance of the Council. One would have expected to see an improvement over the last three years but that has not been forthcoming; and it is these three years of significant under-delivery in a period of improving economic circumstances, added to the previous four, that seem to provide sufficient evidence of the persistent failure that is necessary to justify a 20% buffer.

279. The position, however, is arguable. For that reason, I will look at overall supply in the context of both 5% and 20% buffers.

Land supply^{101-108, 154-162, 205-213, 222-231}

280. The SHLAA has a methodology for calculating delivery from identified sites. It includes both lead-in times and the delivery rates to be used in the absence of information from those best-placed to estimate.¹⁰³ If that methodology were used throughout, the Council's calculated supply at March 2015 would be reduced by 590 dwellings.¹⁵⁴ However, those methodological assumptions may be superseded by information from those in a good position to estimate 'build out' rates – which is exactly what the Council has taken into account. That is also what the Local Plan Inspector did; he had the advantage of hearing from various

^A Document 12, Appeal APP/N4720/A/13/2200640.

representatives of the development industry, some of whom questioned the robustness of the Council's delivery estimates whilst others thought them conservative.^A He was able to come to his conclusion on the basis of that broad sweep of evidence whereas, in this s.78 appeal, the evidence has come only from the appellants and the Council, plus written representations from one agent.

281. Before looking at individual sites, the likely rate of delivery on the SDA sites warrants consideration. The appellants do not believe that any of the SDAs will be built out by three house builders (three flags); thus, the maximum from any site would be 100 dpa (two flags), not 150 dpa (three). I expressed my concern on this point at the inquiry, because it seemed to me that it was perhaps a good one – that house builders had learnt a lesson from the 2008 crash and the recession and were more cautious about exposing themselves to competition.¹⁵⁹
282. The same evidence could, however, have been given to the Local Plan Inspector – but it was not.¹⁰² He concluded that the SDAs could deliver up to 150 dpa. At the inquiry, the only hard evidence for delivery as high as that came from a single site in a single year – not itself a particularly compelling endorsement of the general proposition. Nevertheless, there is no good reason to overturn the conclusion reached by the Local Plan Inspector on the evidence (some of it conflicting) of a cross-section of the development industry.¹⁰²
283. There has been some progress on the Fradley SDA since March 2015.^{207, 224} The commercial tenant on the site is on a part not to be developed until later, so may not pose a problem. There have been on-site works on the land for 750 dwellings but it is difficult to foresee the delivery of any houses at all in 2016/17. Section 106 obligations have still to be completed on the other two parcels of land (for 250 and 70 dwellings), so first deliveries on them may well be noticeably later. Given this, the Council's forecast of 525 dwellings by 31 March 2020 should be reduced to around 475.^B
284. On the East of Lichfield (Streethay) SDA, the first sale is expected by March 2017.²⁰⁶ That suggests a maximum of not many more than 450 dwellings by 31 March 2020.
285. The appellants queried the position on the South of Lichfield (Short Butts Lane) SDA at the time of the inquiry, when they understood that a section 106 obligation had still to be concluded, a piece of land affording access to the site had still to be acquired and multiple ownership was still a potential problem.¹⁵⁶ Despite all that, Pegasus, the agent for the house builder, asserted its confidence that site would come forward and 400 dwellings would be delivered within the (then) 5-year period.¹⁸⁷ One could not be certain from the information available what the true position was likely to be, all the more so as Pegasus did not appear at the inquiry and could not be cross-examined on what it was saying.¹⁴⁷ It seemed reasonable at that time, as with the SHLAA, to look to those who were best-placed to give guidance on the likely outcome.
286. In January 2015, however, there had been no obvious progress on this site. There was no evidence that the various constraints had been resolved and the appellants considered the site no more likely now to deliver housing within five years than it was in March 2015.²²⁶ The Council continued to rely on the

^A Document CD49, pp. 39-40, paras. 215-217.

^B By no means an exact science – but made up of 50, 100 and 150 in the 3 years of delivery on the site for 750 dwellings, possibly over 100 on the site for 250 dwellings and all 70 on the third site.

information available to the inquiry.²⁰⁵ What is certain is that the section 106 obligation has yet to be executed, some 20 months after the resolution to grant planning permission – though the Council understands it is shortly to be circulated for signature. The Council maintains that 450 dwellings can be provided in the five years from 1 April 2015, the appellants say it cannot be assumed that any at all will be delivered. One reasonable scenario is that matters will be resolved to enable a start on site in 2017 with the first houses being delivered in early 2018, giving up to 300 dwellings by 31 March 2020.

287. Although there is still no planning permission on the South of Lichfield (Cricket Lane) SDA,^{210, 227} the Council's projection of 225 dwellings by 31 March 2020 is not unreasonable.

288. On the East of Burntwood Bypass SDA,^{208, 228} clearance and remediation work has started on site. Vacant possession might be delayed by negotiations on various existing leases and licences but the first dwelling sales may reasonably be anticipated in the latter half of 2017/18. The Council's projection of 350 dwellings is thus not unreasonable.

289. It is agreed that the East of Rugely SDA^{209, 229} can deliver 56 dwellings; and also that the South of Lichfield (Dean Slade Farm) SDA^{211, 229} is not expected to deliver within the 5-year period.

290. Accordingly, from the evidence to the inquiry and then in the updating representations, one may reasonably anticipate the delivery of around 1,860 dwellings from the SDAs by 31 March 2020.^A That is to be compared with the Council's estimate of about 2,250 from the SDAs. On this basis, the Council's overall estimate of the 5-year housing land supply falls from 3,995²⁰² to 3,605. The housing requirement at 1 April 2015 was 2,985 using Liverpool, 4,005 using Sedgfield (both without any buffer).

291. At the inquiry, it was said that there was some flexibility in that two of the SDAs were not included within the 5-year figures but were nevertheless likely to come forward sooner.¹⁰⁶ That now becomes one, because the Council's updated figures include 225 dwellings from the South of Lichfield (Cricket Lane) SDA. The remaining SDA, South of Lichfield (Dean Slade Farm), even if it came forward very quickly, would be unlikely to contribute more than around 200 dwellings.

Contributions from small sites

292. In dealing at the inquiry with what they termed "residual disputes about smaller sites",¹³⁹ the appellants referred only to Tolson's Mill.¹⁵⁵ It was suggested that only 20 dwellings should be assumed, rather than the Council's 100; now it is argued that no dwellings are likely to emerge from that source within five years.²³⁰ It is also argued that the Council is wrong in the way it deals with windfall sites, with a potential over-estimate of 50 dwellings over five years.²²²

293. I do not dispute that the appellants' witness may have better knowledge of Tolson's Mill than the Council; I favour assuming 20 dwellings from that source. On windfall provision, I do not believe that the Council has got its calculations wrong. Overall supply may therefore be reduced by a further 80 dwellings, to 3,525, to account for the shortfall on Tolson's Mill.

^A 475+450+300+225+350+56 = 1,856 (rounded to 1,860), to be compared with the Council's estimate of 525+640+450+225+350+56 = 2,246 (rounded to 2,250).

Birmingham's unmet housing need

294. There is the very distinct possibility, almost certainty, of Lichfield having to provide for some of Birmingham's housing need.¹⁷⁰ That is a matter already addressed in the Local Plan Strategy, with the position recognised and a review allowed for when more is known.⁹³ There is now a report identifying the likely quantum of the unmet need (around 38,000 dwellings)²¹⁷⁻²¹⁸ but it will inevitably be some time before there is agreement between the local planning authorities involved on how much of that need should be met where. Accordingly, and especially given the mechanism for a review in the Local Plan, it would be inappropriate now to speculate on Lichfield's contribution and to allow for that in assessing the merits of this appeal scheme.

Conclusion on housing land requirement and supply

295. The Local Plan Inspector concluded that the appropriate way to deal with the housing backlog was by the Liverpool method.⁹³ The deliverable supply over five years now put forward by the Council is much greater than he was considering¹⁴⁶ – but the appellants, with some justification, consider the Council's figures unduly optimistic. More importantly, the Inspector's concern was with realistic market expectations rather than the ability to provide an adequate supply of land – and the requirement using Sedgfield would be significantly higher now than he was considering. Accordingly, the Liverpool method remains the appropriate one.
296. It might seem somewhat premature to say that there has been a record of persistent under-delivery of housing in Lichfield. My own view is that three years of significant under-delivery in an improving economic climate tips the balance away from the 5% buffer advocated by the Local Plan Inspector and towards a 20% buffer. It is arguable, however – so I address both scenarios.
297. The Council has not erred in the method it has used to calculate the potential supply of housing. The timescales and numbers in the SHLAA methodology may be superseded, if appropriate, by more specific information on any particular site. That said, the conclusions reached by the Council seem optimistic.
298. Using the Liverpool method, the housing requirement for the five years to 31 March 2020 is 2,985 dwellings (597 dpa).^{201,A} To that must be added a 5% or 20% buffer, giving 3,135 or 3,580 respectively (627 or 716 dpa). One may reasonably anticipate the delivery of around 3,535 dwellings over five years. With a 5% buffer, there is a more than adequate supply of housing land – about 5.64 years. With a 20% buffer, requirement (3,580) and supply (3,525) are closely matched – about 4.92 years.
299. The appeal proposal would bring forward 750 dwellings – a very substantial number indeed. Delivery would, of course, be spread over a substantial period of time. The appeal scheme was agreed at the inquiry as deliverable; the difference between the parties was in the estimated number of dwellings likely to come forward within the 5-year period – 175 or 225. That should be no different after the passing of a further year (at the time of writing). The deliverable supply would become 5.17-5.24 years, which might give some comfort but cannot itself justify allowing the appeal.

^A 478 dpa annual target x 5 = 2,390; 1,665 shortfall ÷ 15 (remaining years of Plan period) = 119 dpa; 478 + 119 = 597 dpa = 2,985 5-year requirement.

300. Also, the very distinct likelihood of having to provide for some of Birmingham's unmet housing need cannot directly affect these conclusions. There is a mechanism for a review of the Local Plan Strategy as and when there is the information to act upon.

Sustainability

301. The Local Plan Inspector notes in his report that it was common ground that the site at Watery Lane (then anticipated as a new village of up to 2,000 dwellings) was a sustainable one. The argument, and the conclusion, was that it was less sustainable than the sites in the strategy proposed by the Council.^A
302. At the inquiry, the Council conceded that, in the absence of a 5-year housing land supply, the appeal proposal advanced the social and economic roles identified in para. 8 of the NPPF. It did, however, argue harm in relation to the environmental role – to the setting of Curborough Grange and through the loss of historic hedgerows and veteran trees (although, to put matters in perspective, a certain amount of environmental harm has proved inevitable elsewhere in seeking to meet housing needs – for example, there is a listed building within the East of Lichfield (Streethay) SDA.¹³⁴)
303. Here, the development would be on land not historically part of the farmland going with Curborough Grange and a landscape buffer would mitigate against the proximity of the new housing. That said, the landscape setting is important to the significance of the listed building and, by eroding it, the proposed development would harm (less than substantially) that significance.
304. A successfully translocated hedgerow would largely retain its visual characteristics, in that its relationship with the improved road would remain broadly the same. It would, however, be on a new line, away from its historic location, and the disturbance from translocation would likely mean a loss of biodiversity interest, at least temporarily (even though, looked at overall, there would be biodiversity compensation from the proposed open space and landscaping within the development).
305. The loss of one veteran tree, probably two (depending on the constructional detail of the highway improvements, presently unknown), would certainly be regrettable; so too would be the loss of other hedgerow trees along the line of the improved road. Given appropriate replacement planting, the effect on the visual quality of the landscape would be diminished over time – but the historic loss could not be compensated.
306. Accordingly, there would clearly be environmental losses. At the same time, housing land supply would fall only marginally short of a 5-year supply. The Local Plan Inspector was conducting a comparative exercise in the context of the need to find housing land; he found that development of the appeal site would be sustainable but not as sustainable as the other options being considered. The assessment now must be on a different basis. The adopted Local Plan Strategy very nearly provides for the necessary land. The appeal site remains a sustainable location but the social and economic benefits of providing housing for which there no undue need do not outweigh the environmental harm that the

^A Document CD41, 168-175 and 204-207.

development would cause. On that basis, the appeal proposal would not be sustainable development.

Biodiversity

307. No compelling objection remains. Notwithstanding the specific harm that would arise, the suggested conditions^A represent a resolution acceptable to the Council – and one with which I agree.

Special Areas of Conservation (SACs)^{113,174}

This was not the subject of dispute at the inquiry, other than in the way the NPPF should apply. How policy has developed may be material in considering the alternatives of a section 106 agreement or unilateral undertaking. It is thus a matter to be considered by the Secretary of State in coming to a decision on the appeal.

308. There are three SACs relatively close to the appeal site – the River Mease SAC (5.6 km away), Cannock Extension Canal SAC (11.2 km away) and Cannock Chase SAC (10.5km away).¹² Para. 119 of the NPPF says that para. 14 (the presumption in favour of sustainable development) does not apply where appropriate assessment under the Habitats Directives is being considered, planned or determined. There is no hydrological connection between the appeal site and the first two of those, enabling the conclusion at the application stage that impacts would have no significant environmental effect and no appropriate assessment was required.^B

309. On the third, the Cannock Chase SAC Partnership (which includes Natural England and all Local Authorities within 15 km of the SAC) worked jointly on an Appropriate Assessment in 2009 to inform the plan-making process. One of the conclusions was that all applications for new dwellings within the 15 km zone of influence would need to identify a package of mitigation, because of the potential significant effects on the SAC. It was on the basis of that Appropriate Assessment that a specific one was not prepared for this proposal.

310. During the course of the inquiry, the Council endorsed the Cannock Chase SAC Guidance to Mitigate the Impact of New Residential Development.^C The SAC Partnership acknowledges a 15 km Zone of Influence but requires financial contributions towards mitigation only from developments within 8 km. Policy NR7 in the Local Plan Strategy requires mitigation measures to be secured from developments within 15 km; the 2015 Guidance can, however, be deemed to qualify the adopted policy.

311. The interpretation of paragraph 119 and whether or not it applies to the proposed development is a matter of law. Technically, the proposed development is one that would require an Appropriate Assessment. In practice, work already carried out for the plan-making process has meant that a specific assessment for this proposal was not required. In my view, the Secretary of State, as the competent authority, can rely on that work and the conclusion resulting from it and, in the event that he disagrees with my recommendation

^A Conditions 29, 30 and 31 of the recommended conditions at Annex C.

^B Document CD33, the Committee report, at p.B96, paras. 5.9 and 5.10

^C Document 16.

below and allows the appeal, he need not carry out an Appropriate Assessment for the purposes of that decision. It follows that the NPPF's presumption in favour of sustainable development may be applied, if it is appropriate to do so.

Conditions and obligation

312. Annex C below has comments on the suggested conditions and also my recommendations for the conditions it would be appropriate to attach to outline planning permission, were the appeal to be allowed. The conditions would ensure appropriate timing or phasing and a satisfactory standard or quality of development, generally in accordance with what was addressed at the inquiry.
313. Either/or section 106 obligations were submitted – an agreement and a unilateral undertaking. The agreement was submitted in counterpart form.
314. Essentially, the only difference is that the unilateral undertaking provides for a contribution towards the mitigation of any impact on the nearby Cannock Chase SAC. That was initially requested by Natural England, although the Council no longer requires this contribution because of guidance adopted during the inquiry in March 2015. Otherwise, the provisions of both – affordable housing amounting to 25% of the development; open space within the appeal site, an open space contribution and a leisure contribution; a travel plan and contributions towards various highways works; and primary and secondary education contributions, with the option, instead of the former, of providing the new primary school on the appeal site – all comply with Community Infrastructure Levy (CIL) Regulation 122 in that they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to it in scale and kind. All are site-specific (or development-specific) and there are no other contributions from elsewhere which could bring Regulation 123 into play.
315. The Council's Guidance supports Policy NR7 in the Local Plan Strategy. Given that there is no requirement for a contribution under the Guidance, the contribution in the unilateral undertaking may be considered unnecessary in terms of CIL Regulation 122. The agreement is therefore to be preferred.

Overall conclusion

316. There is no remaining highways or transportation objection. Highways England has withdrawn its standing objection. All outstanding matters can be controlled by planning conditions. There is no conflict with the policies referred to in reason for refusal no. 2^A or with the provisions of the NPPF.
317. Highways requirements are, however, inextricably linked with the objections relating to historic hedgerows and veteran trees. The inevitable harm to historic hedgerows from widening Netherstowe Lane may be alleviated, at least partially, by translocation; that would not be appropriate in conservation terms but successful translocation would at least enable the hedgerow to retain its visual character in relation to the improved road. Almost inevitably, however, those improvements would, mean the loss of certainly one tree, probably two, which can reasonably be classified as veterans. They would also, almost certainly,

^A Core Policies 1, 3, 5 and 10 and Policies ST1 and BE1 in the adopted Local Plan Strategy; Policy DC1 saved from the Lichfield District Local Plan 1998.

mean the loss of all of the hedgerow trees along the western side of Netherstowe Lane. That conflicts with Core Policy 13 and Policies NR3 and NR4 of the adopted Local Plan Strategy, Policies DC1, E3 and E18B saved from the Lichfield District Local Plan 1998 – and also, subject to weighing the benefits, the provisions of para. 118 of the NPPF.

318. Apart from these specific problems, the landscape character of the appeal site and its immediate surroundings is not itself of such quality as to provide a reason for objecting to the proposed development. Reason for refusal no. 3, that the proposed development would appear as an incongruous urban intrusion into the landscape, would likely apply to any large urban expansion into what is defined in the Local Plan Strategy as countryside, were further housing land found necessary – but I have concluded that there is an adequate supply (albeit only narrowly). The location is accepted as a sustainable one, although not as sustainable as the SDA sites to the south of Lichfield, and there is no policy to protect the gap between Lichfield and Fradley. If it is not necessary to find housing land at this scale, as I have concluded, then there is conflict with the Core Policies of the Local Plan Strategy, Policies NR5 and BE1 thereof, Policies DC1 or H3 saved from the 1998 Local Plan and the provisions of the NPPF.
319. The proposed development would impinge on the setting of the listed Curborough Grange. The building is no longer a farmhouse and its farmstead has been converted to dwellings. However, the outward character and appearance of the group, from beyond the curtilage, remains essentially agricultural; and the setting is undoubtedly a contributor to this. The harm to the significance of the listed building would conflict with Core Policy 14 and also Policy C1 saved from the 1998 Local Plan. In terms of the NPPF, the harm would be less than substantial, bringing paragraph 134 into play and requiring the harm to be weighed against the public benefits of the proposal.
320. One publicly accessible view of Lichfield Cathedral would be lost but there is the possibility that others would be created. The effect on views of the Cathedral is not such as to put the appeal proposal seriously in conflict with Core Policy 14 or Policy NR5 of the Local Plan Strategy, or with saved Policy L48. That also comes within the ambit of paragraph 134 of the NPPF – but the harm would be very small indeed and may be considered compensated by the public benefit of the new views very likely to be obtainable from the proposed distributor road serving the development.
321. Whether there is a 5-year supply of housing land depends on whether one adds a 5% or 20% buffer and on how one views the likely delivery from the SDA sites. My conclusion is that supply falls marginally short of the 5-year requirement. If that is so, the policies for the supply of housing in the adopted Local Plan Strategy are not to be considered up-to-date, in accordance with paragraph 49 of the NPPF. In this case, however, that does not bring the second bullet point of paragraph 14, in relation to decision-taking, into play. There are specific policies affecting this proposal – in paragraphs 118 and 134 (though not, I have concluded, 119) – which indicate that development should be restricted; and, considered on its own merits, the proposal would not be sustainable development. Accordingly, the balance to be undertaken is a straightforward one, not the weighted one to be found in paragraph 14.
322. Great weight is to be given in the planning balance to any harm to the significance of a heritage asset, whether substantial (paragraph 133 of the NPPF) or less than substantial (paragraph 134). In addition, planning permission should
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be refused for development resulting in the loss of veteran trees unless the need for and benefits of development in that location outweigh the loss (paragraph 118). Accordingly, the environmental harm in this case is significant. I have found that the need for the development is no more than marginal. In consequence, there are no public benefits from the proposed development which could outweigh that environmental harm.

RECOMMENDATION

323. I recommend that the appeal be dismissed.

324. If, however, the Secretary of State concludes otherwise, then outline planning permission should be granted subject to the executed section 106 agreement and the conditions at Annex C to this report.

John L Gray

Inspector

ANNEX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Gary Grant, of Counsel	instructed by Bal Nahal, Solicitor to the Council.
He called	
Deborah Boffin BSc(Hons) DipTP DipBldCons(RICS) IHBC	Senior Conservation Officer with the Council.
Portia Howe BSc(Hons) TechCertArborA DipArb(RFS) CBiol MSB	Arboricultural Officer in the Council's Development Plans and Implementation Team.
Pete Coe BA DipLA CMLI	Landscape Architect, Urban Vision Partnership Ltd.
Patrick Jervis BA(Hons) MA MRTPI	Planning Officer in the Council's Development Plans and Implementation Team.
Clare Eggington BA DipEIA MA MRTPI	Planning Policy Manager with the Council.
Simon Wood BA(Hons) BTP MRTPI	Regional Planning and Building Control Manager, Urban Vision Partnership Ltd.
For the round table session on highways	
Geoffrey Evenson HNC FIHE	Senior Engineer, Staffordshire County Council.
For the session on conditions	
Bal Nahal	
Geoffrey Evenson	
Simon Wood	
Christopher Walsh BSc MBS ALGE	Biodiversity Officer in the Council's Countryside Team.

FOR THE APPELLANTS

Anthony Crean QC	instructed by Shoosmiths LLP.
He called	
Nansi Rosenberg BA(Hons) MA MCIA	Managing Director, Prospect Archaeology.
Thomas Grantham-Wright BA(Hons) DipLA CMLI CertArb	Director, Bea Landscape Design.
Adrian Willet BSc(Hons) FRICS FCIH	Senior Director, CBRE Ltd.
Richard Brown BSC(Hons) MRTPI	Associate Director, CBRE Ltd.
For the round table session on highways	
Johnny Ojeil MSc CTP MIHT	Director, Ove Arup and Partners.
Jagit Riat	Ove Arup and Partners.
For the session on conditions	
Richard Brown	
Jagit Riat	
Tim Willis	Shoosmiths LLP.
Dr Katy Read CEnv MCIEEM MCIWEM CWEM DipSM	Executive Director, Middlemarch Environmental Ltd.

ANNEX B: DOCUMENTS

Core Documents^A

CDX List of all Core Documents, as at 9 March 2015.

Proofs of evidence, supplementary proofs and rebuttal proofs

Submitted by the Council

- LDC1 Deborah Boffin's proof of evidence, with summary and Appendices 1.1-1.10, 2.1-2.5, 3.1-3.2, 4.1-4.16, 5.1-5.3. 6.1 and 7.1-7.5.
- LDC2 Pete Coe's proof of evidence, with Appendices 1 and 2.
- LDC2.1 Figures 1-12 from Appendix 1 in LDC2.
- LDC2.2 Pete Coe's summary proof of evidence.
- LDC2.3 Addendum and Errata to Pete Coe's proof of evidence.
- LDC3 Clare Eggington's proof of evidence, with summary and Appendices 1-39.
- LDC4 Dr John England's proof of evidence on retail matters (*not presented*).
- LDC4.1 Dr John England's summary proof of evidence (*not presented*).
- LDC5 Geoffrey Evenson's proof of evidence, with Appendices A-L.
- LDC5.1 Geoffrey Evenson's rebuttal proof of evidence, with Appendices A-I.
- LDC6 Portia Howe's proof of evidence, with summary and Appendices 1-32.
- LDC7 Patrick Jervis's proof of evidence, with summary and Appendices 1-19.
- LDC7.1 Patrick Jervis's 5-year housing land supply rebuttal proof of evidence.
- LDC8 Christopher Walsh's proof of evidence, summary and Appendices (*not presented*).
- LDC9 Simon Wood's proof of evidence, with Appendices 1-3.
- LDC10 Statement in relation to IMP21.

Submitted by the Appellants

- IMP1 Richard Brown's proof of evidence.
- IMP2 Appendices 1-4 to Richard Brown's proof of evidence.
- IMP3 Richard Brown's summary proof of evidence.
- IMP3A Richard Brown's speaking notes for evidence in chief.
- IMP4 Adrian Willet's proof of evidence, with Appendices 1 and 2.
- IMP5 Adrian Willet's summary proof of evidence.
- IMP6 Richard Lemon's proof of evidence on retail matters (*not presented*).
- IMP7 Richard Lemon's summary proof of evidence (*not presented*).
- IMP8 *Not used*
- IMP9 Thomas Grantham-Wright's proof of evidence.
- IMP9A Thomas Grantham-Wright's rebuttal proof of evidence.
- IMP10 Appendices to Thomas Grantham-Wright's proof of evidence (Figures 8.1-8.29).
- IMP11 Thomas Grantham-Wright's summary proof of evidence.
- IMP12 Johnny Ojeil's proof of evidence, with Appendices 1 and 2.
- IMP13 Johnny Ojeil's summary proof of evidence.
- IMP14 Dr Katy Reid's proof of evidence, with Appendices (*not presented*).
- IMP15 Dr Katy Reid's summary proof of evidence (*not presented*).
- IMP16 Nansi Rosenberg's proof of evidence, with Appendix.
- IMP17 Nansi Rosenberg's summary proof of evidence.
- IMP18 Richard Brown's supplementary proof of evidence on 5-year housing land supply, with Secretary of State decision APP/W4515/A/2186878 and Tables 1-7.
- IMP19 Nansi Rosenberg's supplementary proof of evidence.
- IMP20 Johnny Ojeil's supplementary proof of evidence.
- IMP21 Richard Brown's supplementary/rebuttal proof of evidence, with Figure 8.30.

^A **Note.** Not all Core Documents are necessarily to be found in numerical order. Document CDX is annotated by hand to say whether documents are to be found in the green ring binders submitted with the appeal (numbered 1-5) or in the white ring binders containing the Environmental Assessment (EA). Those Documents not annotated in CDX are in bundled separately numerical order.

Documents submitted during the inquiry

- 1 Appellants' position statement in respect of section 106 obligation.
 - 2 Letter dated 6/3/2015 from HM Courts & Tribunals Service to Shoosmiths.
 - 3 Opening submissions on behalf of the appellants.
 - 4 Opening submissions on behalf of the Council.
 - 5.1 Appeal APP/T1600/A/13/2200210 (Javelin Park) – extracts from Secretary of State's decision and Inspector's report.
 - 5.2 Appeal APP/T1600/A/13/2200210 (Javelin Park) – (different) extracts from Secretary of State's decision and Inspector's report.
 - 6 Extract from conditions on permission 12/00182/OUTMEI (Shortbutts Lane SDA).
 - 7 Tree Preservation Order 382-2015 (trees along/near Netherstowe Lane).
 - 8 List of points not agreed by the Council for inclusion in the Landscape Statement of Common Ground.
 - 9 Map 7 from CD43 (Planning for Landscape Change SPD).
 - 10 Illustrative Masterplan at A3 size.
 - 11 Note submitted by the Council re. HS2.
 - 12 Appeal decision APP/N4720/A/13/2200640 (Farsley, Leeds).
 - 13A High Court judgement [2013] EWHC 3844 (Admin) – (Smyth).
 - 13B High Court judgement [2013] EWHC 3844 (Admin) – (Smyth) – extract.
 - 14 Chronology of 5-year housing land supply.
 - 15 Email dated 5/2/15 from Treasury Solicitor's Department re. service of claim form for previous challenge on the Secretary of State.
 - 16 Cannock Chase SAC – Guidance to Mitigate the Impact of New Residential Development (10/3/2105).
 - 17 Written response to letter of 5/3/2015 from A C Bateman of Pegasus Group.
 - 18 5-Year Housing Land Supply Scenarios – supplementary document.
 - 19 Deliverable supply of housing based on a '2-flag' scenario.
 - 20 Note on housing trajectory referred to at paras. 212-213 of Document CD49.
 - 21 High Court judgement [2013] EWHC 425 (Admin) – (Crane).
 - 22 Extract from officer report on application 12/00746/OUTMEI (Streethay SDA).
 - 23A Drawing no. CH003/02 – proposed Netherstowe Lane Site Access Layout.
 - 23B Emails of 6 and 16/3/2015 re. VISSIM modelling.
 - 23C Emails of 6, 9 and 13/3/2015 re. junctions on which the Highways Agency's views are awaited.
 - 23D Table 7.2 from Mr Evenson's proof of evidence (Document LDC5) highlighted to show similarities with SDA sites.
 - 23E Overview of highway network assessment, with plans.
 - 23F Travel Plan, Issue 2 (3/3/2015).
 - 23G Letter dated 28/4/2014 from the Highways Agency confirming no objection in principle to the proposed development.
 - 24 ProLogis Park, Fradley – Stage 1 Road Safety Audit.
 - 25 Statement of Common Ground – Ecology.
 - 26 Framework Ecological Mitigation and Compensation Strategy, Rev. B, March 2015.
 - 27 Ponds P1 and P3 – Great Crested Newt Habitat Suitability Index Assessment 2015 (March 2015).
 - 28 Table 7.2 from Mr Evenson's proof of evidence (Document LDC5) with Fradley Employment Park and Fradley SDA added (with explanatory map).
 - 29 List of Plans and Drawings (as at 6/3/2015).
 - 30 Note on chronology of preparation of retail evidence.
 - 31 Suggested conditions.
 - 32 Summary of provisions of section 106 obligation.
 - 33 Closing submissions on behalf of the Council.
 - 34 Closing submissions on behalf of the appellants.
 - 35 Extract (Lord Hoffman's speech) from *Tesco Stores Ltd v Secretary of State for the Environment and others*, HL21/06/1995.
 - 36 Bundle of plans (Illustrative Masterplan and Parameters Plans) on which outline planning permission should be granted (replacing CD3 and CD5).
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Documents submitted after the inquiry had been adjourned

- A1 Suggested conditions agreed between the appellant and the Council (25/03/2015).
 - A2 Letter dated 17 March 2015 from Pegasus Group (not seen by the Inspector until 30/03/2015).
 - A3 Note by Regeneris Consulting Ltd, for the appellants, on the implications of the 2012-based household projections for the Local Plan Strategy.
 - A4 Note by NLP, for the Council, on the implications of the 2012-based household projections for the Local Plan Strategy.
 - A5 Email dated 29 April 2015 from Richard Brown for the appellants with attached:
 - a. Technical note dated 27/03/2015 by JMP on behalf of the Highways Agency (now Highways England);
 - b. Email dated 01/04/2015 from Jagjit Riat (Arup) to Eiryl McCook (Highways England);
 - c. Letter dated 15/04/2015 from Highways England to Arup;
 - d. Original objection by the Highways Agency, 2 May 2014;
 - e. Email trail, 15-22 April 2015, in relation to potential planning conditions.
 - A6 Written response to Document A2 by Adrian Willet for the appellants.
 - A7 Draft section 106 obligation, submitted by letter dated 20 April 2015.
 - A8 Submissions for the appellants in relation to Ponds P3 and P6, comprising:
 - a. email dated 29 April 2015;
 - b. email dated 6 May 2015;
 - c. Second Statement of Common Ground: Ecology, dated April 2015;
 - d. Note regarding Pond P6, with Appendices, 29 April 2015;
 - e. Report by Middlemarch Environmental, dated April 2015, relating to Pond P3;
 - f. Illustrative Masterplan, drawing no. P001 Rev B;
 - g. Middlemarch Environmental drawing no. C114597-02-01, dated April 2015;
 - h. Middlemarch Environmental drawing no. C117616-03, dated March 2015.
 - A9 Material relating to planning obligations, submitted by the appellants, comprising:
 - a. letter to Pins dated 22 May 2015 enclosing obligations;
 - b. Position Statement, 22 May 2015;
 - c. Counterpart Agreement signed and sealed by Lichfield District Council;
 - d. Counterpart Agreement signed by the appellants;
 - e. copy of page signed and sealed by Staffordshire County Council;
 - f. email confirmation of County Council action;
 - g. Unilateral Undertaking by the appellants.
 - A10 High Court judgement on s.113 challenge – [2015] EHC 2077 (Admin).
 - A11 Copy of Court of Appeal decision refusing permission to appeal the judgement of the High Court.
 - A12 Inspector's request for updating representations.
 - A13 Council's response, comprising:
 - a. Statement;
 - b. Appendix 1 – SHLAA 2015;
 - c. Appendix 2 – planning permissions granted for new residential development, 1/4/15-31/12/15.
 - A14 Appellants' response, comprising:
 - a. Statement;
 - b. Appendix AAP1 – GBSLEP Strategic housing Needs Study Stage 3 Report;
 - c. Appendix AAP2 – Assessment of Small Site Delivery;
 - d. Appendix AAP4 – Assessment of SDA Delivery.
 - A15 Council's rebuttal of appellants' representations in Document A12, comprising:
 - a. Rebuttal statement;
 - b. Appeal decision APP/X1545/W/15/3003795;
 - c. Appeal decision APP/R0660/A/13/2209335;
 - d. Statement provided at the request of Richard Brown for the appellants.
 - A16 Appellants' rebuttal of Council's representations in Document A11.
 - A17 Suggested conditions agreed between the appellant, the Council and the County Council, taking into account progress on highways and ecological matters.
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ANNEX C: SUGGESTED CONDITIONS

COMMENTS ON SUGGESTED CONDITIONS

Suggested conditions were circulated during the inquiry. I distributed my comments and queries on those conditions. An updated list of suggestions (Document 31) was subsequently circulated and considered in a discrete session on 19 March 2015. An updated and agreed schedule was submitted after the close of the inquiry (Document A1). A further schedule was submitted on 5 May 2015, taking into account subsequent progress on highways and ecological matters (Document A17). The comments below are made on the basis of this last document; numbers are those of the suggested conditions in it. There follows a list of recommended conditions, should the appeal be allowed and outline planning permission granted; the numbers of the respective recommended conditions are given in brackets after each comment below; the construction or wording of the suggestions may be varied in the interests of clarity or precision.

- (1)-(7) These vary from the standard reserved matters conditions but put reserved matters in the context of a phasing scheme for the whole development. The way in which this has been done appears acceptable. There is no need for the reference to "any subsequently approved amendments to the Phasing Plan"; if any amendment is sought, its approval would be appropriately conditioned. (1-7)
 - (8)-(9) The drawing numbers are correct, save for an omitted 'C' from (iv). I queried the need for a design brief but see the merit in having one; it could be a single brief covering the whole of the site but the phrasing allows for phase-related briefs. As above, there is no need for the reference to "any subsequently approved amendments". (8-9)
 - (10)-(22) These conditions are reasonable and appropriate in principle. There is an element of duplication between (12) and (13). For the same reason as above, there is no need for reference to variations in timing or detail in any of the conditions.
 - (23) This condition is necessary and appears to be suitably comprehensive.
 - (24)-(25) These conditions appear to be appropriate. It is not clear that (25) is absolutely necessary but that may not preclude it.
 - (26)-(27) These conditions are necessary and deal appropriately with potential contamination.
 - (28) The principal concern is the deserted/shrunken medieval village believed to lie to the south of Curborough Grange; the condition is necessary and deals reasonably with all eventualities.
 - (29)-(34) These conditions are necessary and deal appropriately and reasonably with all landscape and ecology matters.
 - (35)-(37) These conditions are necessary, appropriate and reasonable.
 - (38) This condition is necessary, having been agreed as a means to overcome reason for refusal no. 7.
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RECOMMENDED CONDITIONS

Commencement and phasing of development

1. No development (other than demolition or ground works) shall take place within any relevant phase of the development without the prior approval of the details for that phase of the siting, design and external appearance of buildings and structures, the means of pedestrian, cycle and vehicular access (save for vehicular access into the site from Watery Lane and Netherstowe Lane and improvements to the northern section of Netherstowe Lane) and landscaping (hereinafter called "the reserved matters") which shall be obtained from the local planning authority in writing before any development in that phase is commenced.
 2. The development in any relevant phase hereby approved shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last reserved matter to be approved for that relevant phase, whichever is the later.
 3. The first reserved matters application shall be made within three years of the date of this planning permission. Applications for the approval of all reserved matters shall be made before the expiration of five years of the date of this permission.
 4. The reserved matters to be submitted in accordance with condition 1 for any relevant phase shall include:
 - (i) details of all earthworks, mounding, finished floor levels of all buildings and details of existing and proposed site levels in that phase;
 - (ii) the disposition of roads, buildings and other site features in that phase and their relationship with land and buildings adjacent to that phase;
 - (iii) sample details of facing, roofing, boundary and hard surfacing materials for that phase;
 - (iv) details of the means of pedestrian and cycle access and parking layout in that phase; and
 - (v) details of soft landscaping in that phase in accordance with other conditions attached to this permission including those concerned with landscaping, trees, and ecology.
 5. Plans and particulars of the reserved matters in any relevant phase referred to in conditions 1 and 4 above shall be submitted to and approved in writing by the local planning authority and the development shall be carried out in accordance with the approved details.
 6. On or before the submission of Reserved Matters in relation to a relevant phase of the development hereby approved, a phasing plan shall be submitted to the local planning authority for approval. This shall include a plan or plans and associated information to set out details of:
 - (i) the timing of the provision of infrastructure to serve the proposed development or phase thereof, including the proposed haul road and permanent distributor road to the development from Netherstowe Lane, other off-site and on-site highways works, drainage and other utilities provision and improvements;
 - (ii) the timing of the provision of green infrastructure within the site and off-site habitat creation/enhancement works to serve the proposed development or phase thereof, including the ecological mitigation and compensation areas and other formal open space, informal open space, allotments, biodiversity, sustainable urban drainage and strategic landscaping features; and
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- (iii) the timing of the provision of the proposed primary school, community hall building, local neighbourhood centre, care facility and public transport facilities associated with the development or phase thereof.

The phasing plan shall be prepared in accordance with other conditions attached to this permission relating to the timing of specified highways works and community facilities. The development or phase thereof shall be carried out in accordance with the approved phasing plan.

- 7. No more than 250 dwellings shall be occupied until the community hall hereby approved has been completed in accordance with the details approved under condition 1 above.

Drawings, plans and design

- 8. All applications for approval of reserved matters shall be broadly in accordance with the following drawings:
 - (i) C1650 / PP / 001 Rev A - Parameter Plan 1: Land Use;
 - (ii) C1650 / PP / 002 Rev A - Parameter Plan 2: Areas of potential built development;
 - (iii) C1650 / PP / 003 Rev A - Parameter Plan 3: Building Heights;
 - (iv) C1650 / PP / 004 Rev A - Parameter Plan 4: Landscape and Open Space Structure;
 - (v) C1650 / PP / 005 Rev A - Parameter Plan 5: Access and Movement.
- 9. On or before the submission of reserved matters in respect of any relevant phase of the development hereby permitted, a design brief concerning that phase shall be submitted to the local planning authority for approval. The design brief shall include the following information:

Urban design details:

- (i) general building form, heights and housing mix;
- (ii) street types and road hierarchy;
- (iii) footpath and cycle networks;
- (iv) parking strategy;
- (v) landscape , open space, SUDS and boundary treatment design principles, including how landscaping proposals will take account of the setting of the Grade II listed Curborough Grange;
- (vi) how the development seeks to maintain and enhance public views of Lichfield Cathedral; and
- (vii) details of how the development broadly accords with the approved Parameter Plans and the Indicative Master Plan.

Detailed design principles:

- (viii) building materials palette;
- (ix) elevational composition;
- (x) corner treatments;
- (xi) placement of entrances;
- (xii) types of refuse and recycling storage;
- (xiii) boundary and surface treatment palette; and
- (xiv) planting and soft landscaping palette.

Reserved matters shall be in accordance with the approved design brief.

Roads, parking and travel

10. No development (other than demolition and ground works) shall take place within any relevant phase of the development until details of a Pedestrian and Cyclist Connectivity Scheme, including a timetable for the provision/improvement of linkages to footpaths, footways and cycleways adjacent to that phase, have been submitted to and approved in writing by the local planning authority. The development or phase thereof shall be carried out in accordance with the approved details.
11. No dwelling shall be occupied until a Public Transport Connectivity Scheme has been submitted to and approved in writing by the local planning authority. The Scheme shall include details of the duration, routing, frequency and delivery of bus services serving the development in accordance with the following:
 - On or before the occupation of the 50th dwelling, a half-hourly bus service shall be provided into and out of the development via Watery Lane, linking the development with the town centre and Lichfield Trent Valley railway station;
 - On or before the occupation of the 250th dwelling, a half-hourly bus service shall be provided through the site linking the development with the town centre, Lichfield Trent Valley railway station and Fradley Park.

Development or the relevant phase thereof shall be carried out in accordance with the approved details.

12. No development (other than demolition and ground works) shall take place within any relevant phase of the development until the engineering details and specification of the proposed roads, cycleways, footways, footpaths and highway drains required for that phase have been submitted to and approved in writing by the local planning authority. No building shall be occupied until the road works necessary to provide access from the publicly maintained highway to it have been completed in accordance with the approved details.
 13. No buildings in any relevant phase of the development hereby permitted shall be occupied until the individual vehicular accesses, entrances, turning and manoeuvring areas and driveways/parking spaces to serve it have been completed in accordance with details first submitted to and approved by the local planning authority. These features shall thereafter be kept available for their approved use.
 14. Before the construction of any buildings within any relevant phase of the development is commenced, a scheme for the provision of secure cycle parking for any apartments, commercial premises, primary school, care facility or community hall provided within that phase shall be submitted to and approved in writing by the local planning authority. The cycle parking shall be implemented in accordance with the approved details prior to the first occupation of those buildings and shall thereafter be kept available for that use.
 15. Development shall not commence before a scheme of highway improvements relating to the junction of Netherstowe Lane and Wood End Lane and improvements to the northern section of Netherstowe Lane has been submitted to and approved in writing by the local planning authority. The scheme shall be broadly in accordance with drawing no. Figure 9 (Issue 02), or an alternate scheme as may be required as a result of the alignment of HS2. No building in any phase relying on access by way of Netherstowe Lane shall be occupied before the improvements have been completed in accordance with the approved details.
 16. Development shall not commence before a scheme of highway improvements for the southern section of Watery Lane has been submitted to and approved in writing by the local planning authority. The scheme shall include a signalised priority arrangement and
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dedicated footway beneath the Watery Lane railway bridge and shall be broadly in accordance with drawing no. Figure 08 (Issue 04). No building in any phase relying on access by way of Watery Lane shall be occupied before the improvements have been completed in accordance with the approved details.

17. Development shall not commence before a scheme of highway improvements for the junction of Watery Lane and Eastern Avenue has been submitted to and approved in writing by the local planning authority. No building in any phase relying on access by way of Watery Lane shall be occupied before the improvements have been completed in accordance with the approved details.
18. Development shall not commence before details of the distributor road between Netherstowe Lane and Watery Lane have been submitted to and approved in writing by the local planning authority. The details shall be broadly in accordance with drawing no. C1650 / PP / 001 Rev A - Parameter Plan 5: Access and Movement. The distributor road shall be completed in accordance with the approved details on or before occupation of the 250th dwelling in the development.
19. The distributor road shall not come into operation before a traffic management scheme designed to prevent or limit vehicular traffic using the southern section of Netherstowe Lane has been completed in accordance with details first submitted to and approved in writing by the local planning authority.
20. On or before occupation of the 500th dwelling in the development, a scheme of highways improvements at the junction of Capper's Lane and Europa Way, Lichfield, shall have been completed in accordance with details first submitted to and approved in writing by the local planning authority. The scheme shall be broadly in accordance with drawing no. Figure 34 (Issue 02).
21. Before any relevant phase of the development is commenced, full details of ground levels, earthworks and excavation within that phase within 10 metres of the boundary of land associated with the West Coast Mainline railway, including a risk assessment and method statement for those works, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
22. The development shall not restrict access to the land and infrastructure associated with the West Coast Mainline railway such as may be required for necessary maintenance and other associated operations.

Construction management

23. No development, including demolition, shall take place within any relevant phase of the development until a Construction Environmental Management Plan (CEMP) for that phase has been submitted to the local planning authority for approval. The CEMP shall be adhered to throughout the construction period and shall include details of:
 - (i) a risk assessment of construction activities with a potentially damaging effect on ecological receptors;
 - (ii) the methods to be used to control the emission of dust, noise and vibration from construction works, including details of any mitigation measures required for that phase;
 - (iii) a scheme for dust deposition monitoring;
 - (iv) the disposal of surface water during construction;
 - (v) measures (including wheel washing facilities) to control the deposit of mud and similar debris on adjoining public highways;
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- (vi) site fencing and security;
- (vii) pedestrian and cyclist protection;
- (viii) measures to identify and protect 'biodiversity protection zones', SUDS and other green infrastructure during construction;
- (ix) temporary contractor's buildings, plant, storage of materials, lighting and parking for site operatives;
- (x) the location and timing of sensitive work to avoid harm to biodiversity features;
- (xi) working and delivery hours;
- (xii) the use of generators;
- (xiii) the construction of a temporary haul road from Netherstowe Lane broadly along the route of the proposed Distributor Road to the site, as shown on Drawing No. CH003 (Issue 01); the temporary haul road shall be provided before the construction of any buildings within the development;
- (xiv) measures to control the routing of construction traffic, including measures to limit the potential for bridge strike impacts from development traffic on the Watery Lane Railway Bridge;
- (xv) arrangements for the turning of vehicles within the site so that they may enter and leave the site in a forward gear;
- (xvi) restrictions on burning; and
- (xvii) roles and responsibilities for the implementation of CEMP requirements and measures.

Noise and odour

24. No development shall take place within the proposed local neighbourhood centre until a scheme for noise attenuation of any operational noise emitting from fixed or mobile plant or machinery, and a scheme to control odour relating to any Class A3, A4 or A5 uses, has been submitted to and approved in writing by the local planning authority. The approved noise attenuation and odour control schemes shall be implemented in accordance with the approved details prior to the first occupation of the commercial uses contained within the local neighbourhood centre and shall thereafter be operated and maintained in accordance with the manufacturer's instructions.
25. Before the construction of any buildings within any relevant phase of the development is commenced, a scheme for protecting existing and proposed residents from operational noise shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of any noise mitigation measures required for that phase, a timetable for the implementation of the approved measures and provision for a validation report to be submitted to and approved in writing by the local planning authority. The validation report shall ensure that all noise issues have been adequately addressed prior to the buildings in that phase being first occupied.

Contamination

26. No development shall take place within any relevant phase of the development until that phase has been the subject of a detailed scheme for the investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings, including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings, shall be submitted to and approved in writing by the local planning authority. A validation report shall be submitted to the local planning authority for approval within three months of completion of the remediation works. If
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further evidence of contamination is revealed during the course of the development, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the local planning authority, have been implemented.

27. No development shall take place within any relevant phase of the development until full details of any soil or soil-forming material, whether taken from elsewhere within the development site or imported from outside the site, for use within garden areas, soft landscaping, filling and level-raising within that phase, have been submitted to and approved in writing by the local planning authority. Where the donor site is unknown or is brownfield, the material shall be tested for contamination and suitability for use on site. Full donor site details and proposals for contamination testing, including testing schedules, sampling frequencies and allowable contaminant concentrations (as determined by appropriate risk assessment), shall be submitted to the local planning authority for approval prior to importation to the site. The approved testing must then be carried out and validity evidence submitted to and approved in writing by the local planning authority prior to any soil or soil-forming materials being brought on to site.

Archaeology

28. No development shall take place within any relevant phase of the development until the applicant has secured the implementation of a programme of archaeological work for that phase, including excavation, post-excavation analysis and publication of a report, in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the local planning authority.

Landscaping, trees and ecology

29. The development hereby approved shall be carried out in full accordance with the protection, mitigation and compensation measures outlined within the Framework Ecological Mitigation and Compensation Strategy dated March 2015.
30. Before the construction of any buildings within any phase of the development is commenced, a Landscape and Planting Scheme, including a Landscape and Ecology Management Plan connected with that phase, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall include:
- (i) a description and evaluation of the features to be managed;
 - (ii) long term landscape and ecology design objectives and management responsibilities;
 - (iii) a plan showing the planting layout of proposed tree, hedge, shrub and grass areas;
 - (iv) a schedule of proposed planting, indicating species, size at time of planting, numbers/densities of plants and a proposed implementation timetable;
 - (v) a written specification outlining cultivation and other operations associated with plant and grass establishment, including adherence to current Sport England design guidance for the proposed playing pitches;
 - (vi) existing and proposed finished levels or contours;
 - (vii) means of enclosure and boundary treatments;
 - (viii) a schedule of maintenance for all landscape and ecology areas other than privately owned domestic gardens for a period of five years from the date of first planting;
 - (ix) details of the body or organisation responsible for implementation of the plan; and
 - (x) ongoing monitoring and remedial measures.
31. On or before the submission of reserved matters in respect of any relevant phase of the development hereby permitted, a Tree Protection Plan, Arboricultural Method Statement and Arboricultural Implications Assessment for that phase shall be submitted to the local
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planning authority for its written approval. The details shall include a scheme setting out specific tree and hedgerow protection measures in accordance with BS 5837 and a specification and programme for the translocation of existing hedgerows, as may be required in relation to that phase. The measures shall be implemented in accordance with the approved details prior to the commencement of any construction works within that phase and maintained for the duration of construction works in that phase.

32. Any tree, hedge or shrub planted or translocated within the site as part of the approved landscaping and planting scheme which dies or is lost through any cause during a period of five years from the date of first planting or translocation shall be replaced in the next planting season with another of a similar size and species, unless otherwise agreed in writing by the local planning authority.
33. No works for any phase of the development, including site clearance and demolition works, shall commence until details of an Ecological Design Strategy (EDS) to serve that phase have been submitted to and approved in writing by the local planning authority. The approved EDS shall be broadly in accordance with details set out in the Framework Ecological Mitigation and Compensation Strategy dated March 2015. The mitigation, compensation, management and other detailed measures and requirements, including a programme for implementation, set out in the approved EDS shall be implemented in accordance with the approved details. The EDS for each phase shall include the following:
 - (i) the purpose and conservation objectives for that phase of the proposed works;
 - (ii) a review of the ecological potential and constraints in that phase;
 - (iii) detailed designs and/or working methods to achieve the objectives, including the extent and location of proposed works; where relevant this will include details of a Hedgerow Translocation Strategy and Tree Management Plans;
 - (iv) the type and source of materials to be used;
 - (v) a timetable for implementation demonstrating that works are aligned with the proposed phase of development; and
 - (vi) identification of the persons responsible for implementing the works.

The EDS shall be implemented in accordance with the approved details and all features shall thereafter be retained as approved.

34. No works for any phase of the development, including site clearance and demolition works, shall commence until details of mitigation proposals under GCN Mitigation Option 2, as set out in the Framework Ecological Mitigation and Compensation Strategy dated March 2015 (the Strategy), have been submitted to and approved in writing by the local planning authority. The proposals shall address the medium population of great crested newts recorded at Pond P3 within the Strategy and Reasonable Avoidance Measures to be implemented in relation to Pond P6, as set out in the Note Regarding Pond P6 dated April 2015. A method statement, including timescales, shall be submitted to and approved in writing by the local planning authority prior to commencement of any of these works. All works shall be carried out in accordance with the approved details and method statement.

Renewable energy and sustainability

35. Before the construction of any buildings within any relevant phase of the development is commenced, details of the sustainability measures/technologies to be used within that phase shall be submitted to and approved in writing by the local planning authority. The approved sustainability measures/technologies shall thereafter be implemented in accordance with the approved details.
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Lighting

36. No phase of the development shall commence until details of a lighting scheme to serve that phase, including a timetable for implementation, have been submitted to and approved in writing by the local planning authority. The lighting scheme shall be designed to reduce effects upon sensitive species and upon sensitive habitats to be retained or created on the site. The lighting scheme shall be provided in accordance with the approved details.

Drainage and flood risk

37. No development shall take place until a scheme setting out measures to deal with flood risk, surface water drainage, foul sewage and outfall for the development or any phase thereof has been submitted to and approved in writing by the local planning authority. The scheme shall include:
- (i) how the development or phase thereof shall limit surface water run-off from the site to a 1 in 100 year flood event plus an allowance of 30% for climate change;
 - (ii) details of the hydrological and hydrogeological context of the development and the sustainable drainage strategy to be implemented for the development or phase thereof, including details of SUDS elements and attenuation, storage and treatment capacities, future maintenance and management;
 - (iii) a plan showing the proposed layout and types of surfacing for any relevant phase, as an integrated part of an overall sustainable urban drainage system, and a written specification of proposed surfacing materials and operations;
 - (iv) the results of site porosity tests for any relevant phase to assess the suitability of the ground for infiltration purposes; and
 - (v) details of flood mitigation and resilience measures for the development or phase thereof, including a timetable for the implementation.
- The development or phase thereof shall be carried out in accordance with the approved measures.

Local neighbourhood centre

38. The total permitted floorspace in the approved local neighbourhood centre for Class A1-A5 uses shall be a maximum of 1,500 square metres gross. Within this total, the maximum floorspace for a Class A1 convenience foodstore shall be 400 square metres gross. Other Class A1 retail units shall have a maximum floorspace of 100 square metres gross for each unit. The total maximum floorspace for Class A1 uses shall be 750 square metres gross.
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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

From: Jo Tucker
Sent: 22 November 2021 11:54
To: Claire Turner
Cc: planning
Subject: WD/2021/2198/MAO - LAND AT BIRD IN EYE FARM, SOUTH OF BIRD IN EYE HILL, FRAMFIELD

Categories: Consultee

Dear Claire,

Please accept this email as my formal consultation response on the above major application for outline planning permission.

I can confirm that I have viewed the application particulars. My considerations revolve around whether the setting of any heritage assets would be unacceptably harmed by any future development within the application site.

Heritage considerations

The Council has a duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses (Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990) (thereafter referred to as The Act).

The requirements of The Act are reinforced by the National Planning Policy Framework 2021 (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 206 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.

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

Considerations of proposals

The NPPF at paragraph 199 states that great weight should be given 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.

There is one listed building located in the vicinity of the application site and this is the Grade II listed Oast House at Bird in Eye Farm. A robust and comprehensive heritage statement has been submitted with the application that has considered the potential for impact on the setting of the listed building and has followed guidance set out with the Historic England Guidance on assessing 'Setting' within GPA3.

Subject to a layout at reserved matters that is informed by a thorough understanding of the setting of the listed building, it should be possible to accommodate development proposed within the red line area without harm to the significance of the listed building. I note all matters are reserved accept for access which would therefore allow the amount of units and their size (detached, semi-detached, terraced), layout (including positioning of buildings), appearance and landscaping to be properly considered at reserved matters stage, fully informed by the constraints of the setting of the listed building and to show heritage benefits in the development of this site.

Joanna Tucker

Joanna Tucker Bsc(Hons) Building Conservation Technology, MA Town Planning, MRTPI | Senior Heritage Officer

Planning and Environmental Services, Wealden District Council

jo.tucker@wealden.gov.uk

Council Offices | Vicarage Lane | Hailsham | East Sussex | BN27 2AX

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Please note given the recent guidance relating to Covid-19 the decision has been made for the majority of staff to work remotely. We will aim to provide you with the same level of service during this time, but to help, we would be grateful if you could contact us primarily by email, using planning@wealden.gov.uk.

Further details on the reponse of the Council's Planning and Building Control Services to Covid-19 are available here: <https://www.wealden.gov.uk/planning-and-building-control/planning-services-coronavirus-covid-19-update/>

From Monday 7th September the office reception will be open on a trial basis. All visits to the Council's reception will be by **strict appointment only** for customers with **a specific need** to see an officer in person. Social distancing measures will be in place and enforced at all times. Opening hours are limited to Monday, Wednesday and Friday from 10am until 1pm.

The Wealden website (www.wealden.gov.uk) remains the most convenient way to access Council services 24/7. The Contact Centre continues to operate remotely and is available during "normal" office hours Mon/Tues/Thur/Fri 08:30am – 5pm, Wed 09:00am – 5pm.