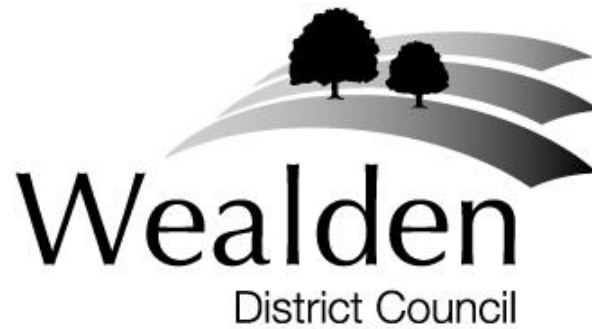




Town and Country Planning Act 1990

Appeal by Croudace Homes Ltd

**Land at Bird in Eye Farm,
South of Bird in Eye Hill
Framfield TN22 5HA**

Wealden District Council Ref:
WD/2021/2198/MAO

Planning Inspectorate Ref:
APP/C1435/W/22/3307820

HEARING STATEMENT

Contents	Page
List of Attachments	3
Introduction	4
The Application	5
Planning Policy Context	7
Councils Position on Appeal and Amendments to the Scheme	10
Case for the Local Planning Authority	15
Comments on Appellant's Statement of Case	28
Conditions and Legal Agreement	29
Conclusion	30

Attachments –

1. Previous Appeal Decision at the site from 2009
2. Summary of consultation responses to the application
3. List of documents lodged with the planning application
4. Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government [2015] EWCA Civ 681
5. Visao Ltd v The Secretary of State for Housing, Communities and Local Government [2019] EWHC 276 (Admin)
6. Development Plan extracts including Local Plan extract map (three sections)
7. MAGIC map extract
8. Natural England and Forestry Commission Standing Advice on Ancient Woodland
9. Guidance from Woodland Trust on Ancient Woodland matters
10. R. (on the application of Preston) v Cumbria County Council [2019] EWHC 1362 (Admin)
11. Baroness Hale in R. (on the application of Morge) v Hampshire County Council [2011] 1 W.L.R. and R. (on the application of Prideaux) v Buckinghamshire County Council [2013] Env. L.R. 32
12. Lord Justice Beatson in R. (on the application of Mott) v Environment Agency [2016] 1 W.L.R. 4338.
13. Wealden Design Guide (two sections)

1.0 Introduction

- 1.1. Wealden District Council ('the Council') submits this statement in respect of the forthcoming Hearing into the appeal ref APP/C1435/W/22/3307820 by Croudace Homes Ltd ('the Appellants') pursuant to section 78 of the Town and Country Planning Act 1990 ('the 1990 Act').
- 1.2. The appeal is against the Council's non determination of the application for outline permission given Council reference WD/2021/2198/MAO with all matters reserved, except for the means of access from Bird in Eye Hill. The scheme is for the erection of up to 290 dwellings, associated landscaping, informal open space and a strategic SANG with access from the B2101 on Land at Bird in Eye Farm, South of Bird in Eye Hill, Framfield, East Sussex, TN22 5HA.
- 1.3. This statement sets out the case to be presented by the Council at the Hearing. It is confirmed that had the Council made a determination it would have refused planning permission. The statement sets out the grounds why planning consent should not be granted and the appeal be dismissed.
- 1.4. The Appellants have drafted a Statement of Common Ground ('SoCG'). It has been reviewed by the Council and sent to the Appellants for comment. It will be forwarded in due course.
- 1.5. It is highly material that the appeal site has detailed planning history and that includes appeal that was recovered by the Secretary of State ('SoS'). The Appellants do not seek to ignore this and helpfully include a copy of that decision in their bundle lodged with the appeal (see their WB12). However, a copy can also be found as Appendix 1 to this statement.

2.0 The Application

- 1.6. This is largely covered in the SoCG and need not be repeated in any significant detail here.
- 1.7. The appeal scheme is for outline planning permission with all matters reserved for future consideration with the exception of access. The application was received on the 19 August 2021 and registered complete on 17 September 2021.
- 1.8. The appeal scheme proposes the construction of up to 290 dwellings including open space, landscaping and a strategic SANG¹.
- 1.9. The Illustrative Site Layout and Landscaper Strategy and SANG Design Plan seeks to demonstrate the extent, scale and distribution of development for which outline planning permission is sought.
- 1.10. In addition to the plans, form and certificates, the application was accompanied by the following supporting supplementary reports for consideration:

Planning and Affordable Housing Statement
Design and Access Statement
Energy Statement
Air Quality Assessment and Emissions Mitigation Assessment
Transport Assessment
Travel Plan
Road Safety Audit
Flood Risk Assessment
Utilities Appraisal
Ecological Impact Appraisal
Biodiversity Net Gain Report
Biodiversity Checklist
SANG Design and framework Management Plan
Statement of Information to Inform Habitats Regulation Assessment
Landscape and Visual Impact Assessment
Arboricultural Impact Assessment and Tree Survey
Agricultural Land Circumstances and Quality Report
Archaeological Desk Based Assessment
Heritage Assessment
Land Contamination Assessment
Draft Heads of Terms for Legal Agreement
Statement of Community Involvement

- 1.11. The total site comprises 42.8 hectares. This is clearly shown on plan Ref: PRB/BIE/PA1L May 2020 with the application site boundary outlined in red and then an area of land retained for Bird in Eye Farm in blue.

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

The Environmental Information

- 1.12. A request for a Screening Opinion was submitted in March 2021. The Screening Opinion was undertaken in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 as amended and Planning Practice Guidance.
- 1.13. The Screening Assessment was carried out to determine whether the proposed development would be likely to result in significant environmental effects. Wealden District Council was of the opinion that the nature, scale and location of the development, taking into account the selection criteria for screening Schedule 2 Development as set out under Schedule 3 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017 (as amended), would not give rise to significant environmental effects and that an Environmental Impact Assessment was not required for the development.
- 1.14. A full list of the drawings which formed part of the planning application can be found at Appendix 3.

Planning History

- 1.15. It is already noted that the site has planning history. Application WD/2006/3564/MAO made by Heron Land Developments, Persimmon Homes and Gallagher Estates dated 12 April 2007 was for 197 dwellings, including affordable housing, with associated access, structural landscaping and recreational space (including 4 LAPS and one LEAP); on a substantially similar part of the application site. That scheme is, in part, reproduced by the Appellants in their appeal bundle at WB12 and WB13.
- 1.16. The 2006 scheme was considered at Inquiry, conjoined with two other sites elsewhere at Uckfield, Bird in Eye North and Downlands. The Inquiry sat variously between 15 January and 18 July 2008, which closed in writing 14 October 2008. The appeal was recovered by the Secretary of State ('SoS') who issued her, as it was then, decision 24 February 2009.
- 1.17. The significance of this appeal and the planning history of the site will also be set out and reviewed in this statement.

Consultation Responses

- 1.18. At appendix 2 of this statement, a summary of the responses received in reply to the normal consultation procedures, both from within the Council, statutory consultees and from third parties. The responses were all sent with the appeal questionnaire.
- 1.19. The Council would draw the Inspector's attention to the fact that this is a controversial scheme which has attracted a great deal of public concern.
- 1.20. Comments from 127 households objecting to the scheme were received, coupled with objections from Framfield Parish Council and Uckfield Town Council.

3.0 Planning Policy Context

The Development Plan

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

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

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

CSLP – changes to WCS 12

- 3.2 On 28 March 2013 an application was made to the High Court under Section 113 of the Planning and Compulsory Purchase Act 2004 challenging the validity of the CSLP on the grounds that it failed to comply with the requirements of Directive 2001/43/EC on the Assessment and Effect of Certain Plans and Programmes on the Environment and the implementing Environmental Assessment of Plans and Programmes Regulations 2004. This was dismissed by Order dated 21 February 2014. However, an appeal on 3 grounds was made to the Court of Appeal. On 7 October 2014, the Court of Appeal dismissed Grounds 1 and 2 relating to the housing numbers in the Core Strategy (original ruling was upheld) but allowed the appeal on Ground 3².
- 3.3 Ground 3 related to whether the Council had considered reasonable alternatives to the use of a 7km zone in relation to the provision of mitigation in relation to Ashdown Forest Special Protection Area (SPA). On 9 July 2015 in response to the Court of Appeal decision, the Council published changes to CSLP Policy WCS12 as directed by the Court of Appeal relating to Ashdown Forest SPA.
- 3.4 Prior to the Court of Appeal Judgment, Policy WCS12 provided that any net increase in residential development between 400m and 7km of the SPA would be required to mitigate its recreational impact through the provision of Suitable Alternative Natural Green Space (SANGS) and on-site visitor management measures. The reference to the 7km zone and the specific mitigation identified in this policy was removed. However, all relevant planning applications continue to be subject to the Habitat Regulations which protect the Ashdown Forest SPA.

² Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government [2015] EWCA Civ 681 (copy at appendix 4)

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

WLP Saved Policies

- 3.6 Certain policies of the WLP (1998) were 'saved' via Direction of the Secretary of State dated 25 September 2007, under the provisions of Paragraph 1(3), Schedule 8 of the Planning & Compulsory Purchase Act 2004.
- 3.7 Under 'saved' policies EN1 (sustainable development) and EN27 (layout and design) of the WLP 1998, the Council has also formally adopted the Wealden Design Guide, November 2008, as a Supplementary Planning Document. Some 'saved' policies (and the Design Guide) continue to have material weight where they are in compliance with the NPPF and CSLP (having regard to paragraph 213 of the NPPF).

Relevant Development Plan Policies

- 3.8 The relevant development plan policies include:
- Saved Policies GD2, EN1, EN2, EN8, EN12, EN14, EN15, EN27, EN29, DC17, HG5, HG6, HG7, TR3, TR13, TR16, LR1, LR3, LR5, CS1, CS2, CS3, CS4 of the adopted Wealden Local Plan 1998 (WLP).
 - Policies WCS1, WCS2, WCS3, WCS4, WCS5, WCS7, WCS12, WCS13 and WCS14 of the adopted Wealden Core Strategy Local Plan 2013 (CSLP).
 - Policy AFH1 Affordable Housing Delivery Local Plan 2016 (AHDLP)

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

National Planning Policy Framework (NPPF)

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

Draft Wealden Plan

- 3.10 The Council had produced a new draft Wealden Local Plan which was submitted to the Secretary of State on the 18 January 2019 for examination. The Examination Hearings began on the 21 May 2019, but at the rise of Stage 1 of the Examination, the Inspector declared the plan to be unsound. It was withdrawn by the Council in early 2020.
- 3.11 Work has begun on a new Local Plan. A 'Direction of Travel' consultation took place between 23 November 2020 and 18 January 2021]. The Local Development

Scheme projected consultation on a Regulation 18 draft Local Plan in spring 2022. Although large sections of the Plan are drafted in response to the Direction of Travel consultation, the Regulation 18 draft is delayed by issues that have arisen nationally in respect of housing numbers and potential revisions to the NPPF.

- 3.12 An update on matters can be provided at the hearing if helpful though to be clear, the new Plan will not have progressed to Regulation 18 stage by the sitting day of the hearing.

4.0 Councils Position on Appeal and Amendments to the Scheme

Confirming objections and that planning permission should be refused.

- 4.1 Section 70 of the Town and Country Planning Act 1990 requires a planning authority (and any decision maker) to have regard the provisions of the development plan, so far as material to the application as well as any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that determination must be made in accordance with the development plan unless material considerations indicate otherwise.
- 4.2 The Council's Constitution was updated by Full Council on the 23 February 2023³. It includes at Part 7 – a Management Structure & Scheme of Delegation. Under Section H7, authority is delegated to exercise all the Council's powers duties and functions relating to the responding to appeals, whether or not subject of any determination made on behalf of the Council and to make arrangements for the holding of a public local inquiry or hearing or to attend any hearing arranged by the Courts and if necessary in relation to such matters to use or instruct consultants, internal or external solicitors or counsel to make submissions or represent or appear on behalf of the Council.
- 4.3 This appeal is made against the non-determination of the outline planning application lodged to the Council. Following the lodging of the appeal the Council confirms the view that planning permission should be refused by the SoS for the reasons set out below and to be augmented at the Hearing. As confirmed in the SoCG, the disputed items and broad areas of concern are as follows:
- Location of site beyond development boundary
 - Effect of development Ancient Woodland
 - Whether the scheme can realistically deliver up to 290 homes
 - Whether the scheme the subject of the planning application is in an accessible location.
 - Whether the scheme the subject of the planning application can provide safe access.
 - Planning balance and whether the issues left from the earlier appeal decision have been addressed.

³ The Council's constitution is lengthy and covers multiple matters so is not reproduced in this statement. However, it can be seen online at the following web link:

<https://council.wealden.gov.uk/ieListDocuments.aspx?CId=759&MId=5478&Ver=4&Info=1>

Amendments to Scheme

- 4.4 The PINS Procedural Guide (December 2022) provides guidance to all involved in planning appeals. Appendix M is clear regarding amendments to schemes. In particular:

M.1.1 If an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal they should normally make a fresh planning application. The local planning authority should be open to discussions on whether it is likely to view an amended scheme favourably.

M.2.1 If an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

(emphasis added).

- 4.5 As a matter of fact, the direct opposite of PINS guidance at Appendix M has occurred here. The appeal process has been used to evolve the proposal with changes to the substance of the scheme. This includes:
- a) On-going and multiple alterations to the highway scheme, the access and package of works off-site promoted to deliver pedestrian connections.
 - b) The surface water drainage strategy has materially changed during the life of the appeal.
- 4.6 For 4.5 a) above and access matters this is a significant issue. East Sussex County Council ('ESCC') is the statutory consultee for the purposes of highways within its control. It is effectively the 'overseeing organisation' for the purposes of assessing the suitability of Safety Audits under the Design Manual for Roads and Bridges ('DMRB')⁴. ESCC is to attend the Hearing and is preparing a separate and standalone statement of case. It will clearly set out and defend its views. In the context of the leading judgments *Visao*⁵ the views of ESCC should be given significant weight. The Courts are clear on the legal requirements upon decision makers, should they depart from such expert views.
- 4.7 The application is in outline for all matters apart from access. Therefore, the Inspector is having to decide the issue not only whether it is in principle possible for the access to be provided but also the offsite package of works tabled in order to demonstrate that incoming residents can access on foot or cycle key day to day facilities. The appeal is considering whether the scheme designs are safe and

⁴ <https://www.standardsforhighways.co.uk/dmr/b/>

Note that DMRB applies to trunk roads but no other suitable guidance applies to other roads. There is agreement that the guidance applies. Certainly the Appellant's Transport consultant variously and often quotes from DMRB. Para 1.2 of the Transport Evidence at WB2 says the scheme has been designed to DMRB.

⁵ *Visao Ltd v The Secretary of State for Housing, Communities and Local Government* [2019] EWHC 276 (Admin) (copy at Appendix 5)

suitable in relation to the volume of persons using them and also wider issues on the road network.

- 4.8 The view of ESCC is that insufficient information has been provided to enable a proper analysis of the safety and workings of the new access junction. Particular concerns (though not exhaustive) highlighted:

Site Access – this has been revised in terms of its position and is shown on drawing 5330/021 Rev. H. In fact, two access proposals have been produced, the first having a ghost right turn lane as recommended, and one as a simple priority working junction. This is different to the scheme lodged to the Council and consulted upon in the planning application.

Safety Audit - Paragraph 2.25 in the Transport Assessment Addendum dated September 2022 is incomplete. The Appellant at the time of compiling the addendum 2 had instructed a Road Safety Audit ('RSA') for the access provision, but to date this has not been provided. Email exchanges from the transport consultant to ESCC dated 14 October 2022 and then 27 March 2023 that the full RSA is still awaited. This includes for the proposed site access and the zebra crossing proposed on Framfield Road. 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 RSA is essential to ensure that what is being proposed is fundamentally deliverable and can support its demand. The need for information as to stopping sight distances are frankly obvious, particularly in relation to the zebra crossing which is proposed. The lack of information over users of the junctions, particularly vulnerable users, means that one can't assess the potential risks which may arise in relation to clashes between users of the junction. The expert view of ESCC is that without that information one cannot rely upon a safety audit which appears to indicate that it may be ok to leave these issues to stage 2 particularly where the volume of traffic (motorised and non) is likely to be high bearing in mind the scheme advanced up to 29- homes but also a strategic SANG. It is also relevant to consider that there have been repeated changes to both the access and off-site package over the past couple of months in the run up to the Hearing. All of this post dates the non determination appeal in September 2022. It demonstrates, at the very least, that there was significantly more work to be done. Indeed as of 29 March 2023, and on the eve of submitting this Hearing statement (as per the PINS timetable) the RSA work is still not complete.

- 4.9 In regard to 4.5 b) above, the 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 adjacent Ancient Woodland in order to discharge into the Framfield Stream to the south-west. This element of the scheme drew significant opposition. As an alternative approach, and to avoid any impact on Ancient Woodland, the potential for surface water to be dealt with via infiltration, was tabled. It proposed converting the SuDS basin to an infiltration area thus

avoiding the need for a surface water outfall into Framfield Stream. This was set out in an addendum to the Flood Risk Assessment and Technical Summary prepared by Stantec lodged in January 2022. In March 2022 concerns were relayed to the Appellant, via their drainage engineers of concerns regarding the revised infiltration-led surface water drainage outfall design as a seasonal peak groundwater level could not be determined through one test alone. Further soakage testing and groundwater monitoring at the proposed basin location were undertaken by Geotechnical Investigations Ltd after the appeal had been lodged and in November 2022. Oddly, this work is described as being done "...whilst awaiting determination of the outline planning application" (see para 2.2.16 of the Stantec January 2023 Technical Note update attached at Appendix 2 to the submitted Ecology Statement. This can be found at WB1 to the Appellants appeal bundle.

- 4.10 The Council draws the Inspector attention to the stark and frank admission on page 4 of the Stantec January 2023 update that :

"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".

- 4.11 The Council has not been sighted on this document and has had to search for it buried at appendix 2 of the ecology statement. Moreover, it materially changes the surface water strategy. This as *"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.."* As a direct result, a new alternative surface water drainage outfall design is table din the January 2023 technical note. This reintroduces the concept of a piped outlet but it shows it routed northwards away from the Ancient Woodland, before a turn towards the Framfield Stream. Of interest is the explanation that this outfall design does not completely follow the natural topography on site. To achieve a gravity fall it will require the surface water drainage infrastructure up to 6.0m below existing ground levels, depending on the size of outfall pipe used. Not only is this depth at the very limit of such infrastructure that would potentially be adoptable by Southern Water as the local sewerage undertaker; it is a deep and necessary excavation at the very edge of the Ancient Woodland buffer.

- 4.12 We are astonished at the Appellants claim the timescales in the ongoing appeal as justification for tabling the amendment without notice. We point out that the Appellants chose to appeal for non-determination. They were in charge of timescales. In doing so, they must have been confident of the merits of the case they had at that stage. Even if we are wrong on that, the Council has not seen this altered SuDS design before. Nor have consultees, residents and the local Parish and Town Council seen this change. They have not had the opportunity to comment on this seemingly ever changing aspect to the appeal scheme. It cannot be correct to absorb a material change to the drainage scheme pursuant to the appeal. To do so would be contrary to M.2.2 of the PINS Procedural Guide and the principles established in *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37.

- 4.13 As a matter of fact, the appeal scheme has been used evolve the appeal proposals and the scheme before the Inspector is not what was lodged to the Council. This is contrary to M.2.1 of the PINS Procedural Guide.
- 4.14 As M.2.3 of the PINS guidance sets out, whilst amendments to a scheme might be thought to be of little significance, in some cases even minor changes can materially alter the nature of an application and lead to possible prejudice to other interested people. That is the case here where almost 130 residents, the local Town and Parish Council have commented at the application stage and yet the scheme has evolved as the appeal has progressed. On highway matters is still not yet complete.
- 4.15 The Inspector is advised that the Council intends to address him early in the Hearing to seek a determination regarding acceptability of revisions to the appeal scheme. As M.2.4 points out, the Inspector has to consider if the suggested amendment(s) might prejudice anyone involved in the appeal. He may reach the conclusion that the proposed amendment(s) should not be considered and that the appeal has to be decided on the basis of the proposal as set out in the application lodged and consulted upon by the Council.

5.0 Case for the Local Planning Authority

Conflict with the development plan

- 5.1 In general terms the Council will be referring to the fact that the appeal site lies outside the development boundary as shown on the 1998 Wealden Local Plan, Proposals Map 53 where development is resisted in accordance with saved policies GD2 and DC17 (see appendix 6) . In this context the Council notes that Core Strategy Policy WCS2 in the CSLP states that land will be allocated at Uckfield for an additional 1000 dwellings up to 2027. The policy then goes on to confirm that broad locations for housing development are indicated on the Core Strategy Key Diagram but that individual sites to meet these housing provisions will be allocated in the Site Allocation DPDs There is no Site Allocations DPD. The Key Diagram (and Fig 6 on page 38 of the Core Strategy) shows a 'pink blob' which represent the said broad locations. This is to the west of Uckfield abutting the A26 and is the former Ridgewood Farm site. It is material that planning permission has been granted for a mixed use scheme here including up to 1000 dwellings, coupled with a school site, employment floor area but also retail uses. Application WD/2015/0219/MEA on the 24 March 2016. Subsequent Reserved matter shav been approved the first two phases of development and c.200 dwellings are on site, coupled with key infrastructures such as two new roundabouts and a cross site linking road.
- 5.2 The settlement or development boundary of Uckfield was not extended or changed in the Core Strategy, this being a matter left for later review within subsequent DPDs (see CSLP 6.11(2)). As of today, and notwithstanding attempts, no such review has occurred.
- 5.3 It is correct that the 1998 LP development boundaries have to be breached in order to deliver growth. That has happened including at Uckfield, not least with the Ridgewood Farm proposals (SD1 of the CSLP refers). The CSLP confirms that development boundaries are used to define built up areas (within the development boundary) and the countryside (outside the development boundary) and that in principle development in the countryside is subject to greater restrictions, to preserve the character of the rural area.
- 5.4 The CSLP therefore seeks to support appropriate development within the built up area contained within the Uckfield development boundary.
- 5.5 The Appellants rely heavily upon a case that the development plan does not deal with sufficient growth and also that other sites locally and elsewhere have been approved outside development boundary locations. The Hearing can be appraised on any of those sites preferred by the Appellants at their bundle WB8-10. Certainly the circumstances are different and should not be regarded as some form of precedent for approval. However, as a starting point for consideration, it is a fact that the appeal site evidently lies outside the development boundary.
- 5.6 To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see section 70(2) of the Town and Country Planning Act 1990 and section 38(6)

of the Planning and Compulsory Purchase Act 2004 – these provisions also apply to appeals). The appeal must be refused unless material considerations justify taking a different view.

Impact on Ancient Woodland

- 5.6 The site is bounded to the south and south west by an extensive area of ancient semi natural woodland ('ASNW') recognised by Natural England as Nightingale Shaw. It is described in the SoCG. The extent of woodland in so far as it abuts and constrains the appeal site is shown at Appendix D of the Landscape Statement lodged by the Appellants at WB3 of their bundle. It should be noted, however, that this extract from the MAGIC map does not show that Nightingale Wood is also on the DEFRA Priority Habitat Inventory - Deciduous Woodland (England). That designation is wider than the boundary of the Ancient Woodland (see Appendix 7 to this statement, which just shows Ancient Woodland designation with Priority Habitat Designation overlaid).
- 5.7 ASNW takes hundreds of years to establish and is defined as an irreplaceable habitat, important for its wildlife, soils, recreational value and cultural / historical / landscape value. It is any area that has been wooded continuously since at least 1600AD (Natural England and Forestry Commission Guidance, Ancient woodland, ancient trees and veteran trees: protecting them from development – January 2022⁶).
- 5.8 Paragraph 180 of the National Planning Policy Framework (NPPF) states that when determining planning applications, local planning authorities should apply the following principles, inter alia:
- “c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons.”*
- 5.9 Footnote 63 acknowledges that wholly exceptional circumstances 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.”*
- 5.10 Saved Policy EN13 of the WLP (see Appendix 6) relates to Ancient Woodlands and identifies that the Council will resist development proposals that involve the clear felling or otherwise prejudice the ecology of ASNWs.
- 5.11 Further, the standing advice of Natural England and the Forestry Commission (January 2022 – see Appendix 8) states that when making planning decisions,

⁶ The Inspector will be aware that the Standing Advice is a web based tool available here:

<https://www.gov.uk/guidance/ancient-woodland-ancient-trees-and-veteran-trees-advice-for-making-planning-decisions#ancient-woodland>

However a print of the guidance in so far as it exist as 5 April 2023 can be found at Appendix 8 of this statement.

authorities should consider reducing the level of impact of the proposed development on ancient woodland. Authorities should **refuse** planning permission if development will result in the loss or deterioration of ancient woodland unless there are wholly exceptional reasons and there is a suitable compensation strategy in place.

- 5.12 The Standing Advice maintains that where a proposal involves the loss of ancient woodland, you should not take account of the existing condition of the ancient woodland when you assess the merits of a development proposal. Its existing condition, regardless of quality, is not a reason to give permission for development.
- 5.13 As already described, the scheme when lodged to the Council involved the provision of a surface water drainage outlet running from north to south through the existing ASNW. This would involve the loss of an existing ASNW to facilitate this provision. It drew objection such that the Appellants sought to revise their proposal. The next iteration of the surface water strategy involved keeping the SuDs holding area in the same location but altering its design to an infiltration basin. That is the scheme lodged in March 2022.
- 5.14 The Council's concerns about that version of the drainage scheme are reinforced by the later admission from the Appellants (January 2023) that infiltration will not work. They know this from more detailed modelling. Unless the SuDs basin has an outlet, the water will not flow away. Rather it would overtop and direct flows of water directly into the ASNW. It will be seen on the site visit that this is generally lower than the appeal site. The concentration of flows as a single point and in volume is materially different than the predevelopment greenfield run off rate or through flow from the site at present. Allowing a SuDs basin in this location without a piped outlet cannot and will not be in the interest of the features of the ASNW, including its soil condition and linked ecology and biodiversity. Indeed, the Standing Advice is clear that decision makers should only approve sustainable drainage schemes if:
- they do not affect root protection areas
 - any change to the water table does not negatively affect ancient woodland or ancient and veteran trees

There is nothing in the appeal papers that talks positively to the effects of allowing the SuDS basin this close or, in the case of the SuDS basin without piped outlet, for water to wash through the ASNW. Stantec are clear in their January 2023 Technical Note 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"* (para 2.2.7 page 3 which can be found at Appendix C to the Appellants bundle WB1).

- 5.15 The concerns are such that embedded within the Grounds of Appeal is a new surface water strategy which talks to lining the SuDS basin and once again shows a piped outlet. However, that is not what the Council considered and was not the subject of consultation on the planning application. It is hoped this is rejected and

not considered and certainly Annexe M of the PINS procedural guide would support that. Even so, the January 2023 version of the SuDS basin pipe involves major engineering operations and at significant depths on the site in order to secure the required falls from the site. This is all having regard to the topography and falls towards Framfield Stream. These excavations are shown abutting the very edge of a 15m ANSW buffer.

5.16 Adherence to suggested buffer zones and the delivery of 'enhancements' through woodland margin planting and wider management enhancement represent circumstances which the Appellants says would justify provision of major urbanisation and deep engineering works on the edge of the ANSW.

5.17 The Council strongly disagrees. Standing Advice refers to buffer zones and accepts they can protect ancient woodland and individual ancient and veteran trees and provide valuable habitat for woodland wildlife, such as feeding bats and birds. 15m is the minimum distance but the size and type of buffer zone should vary depending on the:

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

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

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

5.18 It will be seen on the site visit that Nightingale Wood is a remnant from a much larger wooded area that is long since removed to facilitate other land based activity. The stretch of woodland surviving along the edge of the site and abutting Framfield Stream is very clearly an 'island' of woodland. It can only be described as less densely wooded since it is fragmented from other woods. Though there is no clarification of what 'steeply sloping' means in the context of the Standing Advice, the appeal site has a very pronounced change in levels. It will be for the Inspector to form a view on this, but the Council says the site is steeply sloping. Lastly, the scheme proposes up to 290 houses in the immediate context and vicinity of the ANSW. That is very clearly close to residential areas and a further aspect to the urbanisation of the ANSW edge.

5.19 An arboricultural impact assessment (AIA) carried out to BS 5837:2012 standards has been submitted in support of the application. It accepts Veteran trees ('VT') have been identified on the site, these are T6 Ash and G9 Oak. Like ANSW, VTs are recognised as irreplaceable habitat. The Inspector will note that the AIA describes in detail the current standing in advice in regard to VTs and the required buffer zones, which should be 15x the stem diameter of the trees with no cap. However in the initial AIA schedule both T6 and G9 have capped Root Protection Areas ('RPA') of 15m in line with BS standards, rather than using the current Standing Advice for VTs, which would in fact make the RPAs 21m and 23.8m

respectively. A later amendment to AIA showed the relevant VT buffer for the T6 Ash, but the G9 Oak tree has a footpath and part of the SANG walkway within the edge of its buffer. It has to be expected this walkway would be heavily used. Afterall, it links the northern and southern parts of the SANG space. That includes the proposed SANG car park in the north field. Most users of the SANG will pass in very close proximity to the veteran Oak tree. This would likely cause the direct effects listed in the Standing Advice which decision makers are told to avoid in regard to VTs. Namely:

- damaging or destroying all or part of them (including their soils, ground flora or fungi)
- damaging roots and understorey (all the vegetation under the taller trees)
- damaging or compacting soil
- damaging functional habitat connections, such as open habitats between the trees in wood pasture and parkland
- increasing levels of air and light pollution, noise and vibration
- changing the water table or drainage
- damaging archaeological features or heritage assets
- changing the woodland ecosystem by removing the woodland edge or thinning trees - causing greater wind damage and soil loss

- 5.20 Due to the close and lengthy interface between the existing ASNW habitat and the proposed development, the site has all the hallmarks and qualifying conditions justifying a much deeper buffer to protect the ASNW and VTs. It does not have that. In this regard reference to current Standing Advice recommends, in cases where impacts such as the significant increase in traffic and the effect of air pollution occurs, a larger buffer zone would be required. Given that at present there is no vehicular activity at all within this site, the effects during and post development would be immediate and sudden. A larger buffer zone would temper this abrupt change. The Woodland Trust has identified⁷ a number of cases where larger buffer zones were supported, ranging from 50-200m in the UK, to mitigate against effects such as noise, light, vehicle emissions, the transmission of garden waste and invasive species, all of which are relevant in this case.

Instead, the appeal scheme has minimum buffer of 15m and that buffer is key to demonstrating the quantum of growth sought in the proposal. Put another way, a deeper buffer would call into question the ability to deliver up to 290 homes and associated facilities. As it is, the numbers are only achieved using several uncharacteristic apartment blocks which we return to later.

- 5.21 There can be little doubt that ASNW is under threat directly and indirectly from the appeal scheme. It should be noted that the NPPF and the Standing Advice on ASNWs and VTs is materially different than when the SoS considered the previous appeal. The proposals do not represent an infrastructure project where the public benefit would clearly outweigh the loss or deterioration of habitat. On this basis alone, and in the absence of any wholly exceptional reasons, the appeal should be refused.

⁷ Woodland Trust – impacts of nearby development on the ecology of ancient woodland and Planners Manual for ancient woodland. (copies at Appendix 9)

- 5.23 However, there is another aspect of the scheme that will also cause direct impacts. This relates to the SANG proposal and pathways within and through the ASNW. In order to provide a suitable footpath configuration for the strategic SANG an existing informal footpath through Bird in Eye Shaw (ASNW) is proposed to be “improved”. The existing footpath runs from the main site to the northwest corner of the strategic SANG area. The proposals will include wood chip surfacing retained by timber edging boards held in place with timber pegs. In order to prevent access into the wider ASNW the path will be enclosed with chestnut pail fencing held in place with driven timber posts at appropriate (2-3m) centres. It is also proposed that an existing small bridge over the watercourse will be replaced with a new lightweight timber bridge.
- 5.24 To be clear, the matter of the path works have been reviewed by Natural England who commented on this in March 2022. They had recommended that boardwalks were installed through areas of woodland to ensure that the paths remained functional all year round. The Appellant is of the view 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 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.
- 5.25 The Council accepts that the views of a Statutory Consultees must not be challenged lightly (see para 4.6 of this statement for consistency of our argument). Decision makers are entitled, and can be expected, to give significant weight to the advice of an “expert national agency” with relevant expertise in the sphere of nature conservation, such as Natural England⁸. Decision makers may lawfully disagree with, and depart from, such advice. But if it does, it must have cogent reasons for doing so⁹ And when there are challenges to such assessments, the Court for its part will give appropriate deference to the views of expert regulatory bodies¹⁰.
- 5.26 The Council says the Natural England assessment of the footpath arrangement in the ANSW, simply makes no practical nor common sense. We were very surprised to read their qualified support for this aspect of the scheme. The Inspector will know that woodchip paths turn to mush very quickly, as wood naturally breaks down. There is no way to stop this, and topping up the wood chip eventually leads to a deep boot-sucking mush. So as a result, users would move into the immediately adjacent ANSW to navigate through. This will cause direct damage. We have to question why Natural England has not foreseen this situation. A gravel

⁸ see the judgment of Sales L.J. in *Smyth*, at paragraph 84, and the first instance judgment in *R. (on the application of Preston) v Cumbria County Council* [2019] EWHC 1362 (Admin), at paragraph 69 – copy at Appendix 10

⁹ see the judgment of Baroness Hale in *R. (on the application of Morge) v Hampshire County Council* [2011] 1 W.L.R. 268, at paragraph 45, the judgment of Sales L.J. in *Smyth*, at paragraph 85, and the first instance judgment in *R. (on the application of Prideaux) v Buckinghamshire County Council* [2013] Env. L.R. 32, at paragraph 116) Copy at appendix 11.

¹⁰ see, for example, the judgment of Lord Justice Beatson in *R. (on the application of Mott) v Environment Agency* [2016] 1 W.L.R. 4338, at paragraphs 69 to 77) Copy at Appendix 12.

path would need to be contained in some way with edging and have a membrane or similar beneath or this would become scattered or lost as well. If a path is to be permitted, something like cellular confinement system would be more appropriate for longevity, but if we are to approve that, we may just as well allow a formalised path, which as we know would be contrary to current Standing Advice. That specifically and deliberately guards against paths in NSW to deflect trampling pressure away from sensitive locations. The Inspector will have to form a view on this, but the proposal is ill thought through. That Natural England have given it qualified support is unhelpful in the circumstances.

5.27 Natural England comments further as follows:

“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”.

- 5.28 The Council agrees that for the scale of development involved, it seems highly likely that there would be recreational use and therefore disturbance in the NSW. Fencing will not prevent access. If Natural England believe there will still be impacts it is puzzling why they are not objecting or liaising further to resolve? It seems clear there is an issue with meeting para 180c to the Framework. It also appears that Natural England are suggesting considering compensation/mitigation for NSW. That is against Natural England's own Standing Advice unless exceptional circumstance AND suitable compensation strategy tests met first. As already noted, the wholly exceptional test is described as projects of national infrastructure importance. Those matters are simply not in play in this appeal.
- 5.29 There is a further issue which conspires against the appeal scheme, the NSW and is all shown outside the application site area. Controlling it through management – even if one accepted the appeal scheme ought to do that – is not possible in the detailed manner in which the appeal proposal have been advanced.
- 5.30 The comments of the Council's Tree and Landscape Officer of the 12 November 2021 support this position. The Officer shares the view that the proposed solution would be wholly unacceptable and contrary to both Paragraph 180 part c of the Framework and Saved Policy EN13 of the Local Plan. The comments of the Council's Biodiversity and Arboricultural Officer of the 30 November 2021 explicitly relating to the NSW further support this position. The recommendation provided is as follows:

“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”*

5.31 These points alone should result in the dismissal of the planning appeal.

Quantum of Development

5.32 As an outline application with all matters reserved other than access to the site (i.e. appearance, landscaping, layout and scale), the detailed position of particular buildings, internal roadways, parking, amenity space or proposed planting are all matters for later consideration. In terms of these aspects, this application simply has to demonstrate whether the quantum of development proposed, accessed from the locations detailed can be adequately accommodated within the constraints of the site.

5.32 An illustrative masterplan indicates one possible option of how the site could be developed and this has been lodged with the appeal.

5.33 The illustrative layout as shown would not be acceptable with regard to a number of issues. There is a heavy reliance on flat blocks and whilst it is noted there are public open spaces, no provision has been made for the communal amenity spaces that are required to be provided for flats in accordance with the Wealden Design Guide (copy at Appendix 13). The punctuation of the perimeter blocks with a series of internal parking courtyards is unacceptable not only with regard to issues of security, amenity for adjacent dwellings but also the poor relationship of parking to the associated dwellings. The layout as shown would not be able to accommodate the parking provision that would be required including the Council’s requirement for visitor parking of one space per three dwellings. Whilst it superficially appears that there is a lot of open space, much of this would be the ANSW buffers to which public access would not be permitted. Furthermore, only the minimum buffer of 15m to the ANSW has been provided which has been set out already in this statement.

5.34 Development on sloping sites results in considerable engineering works and retaining walls which exacerbates the impact of built form on the landscape. As a result there is greater need for structural planting belts within the public realm for example along the roads to mitigate visual impact of development as it steps down the slopes which does have an impact on the developable area.

5.35 Of course, reserved matters pursuant to an outline planning application are defined within article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, as part and parcel of the provisions under articles 5 and 6 of the 2015 Order which regulate applications for outline planning permission and applications for approval of reserved matters. The principle which obviously flows from these legal provisions is that a reserved matters application must be within the scope of the outline planning permission which was granted, and must provide for reserved matters details consistent with the grant of outline planning permission. These provisions support the proposition that the outline

permission sets the perimeters or framework for the consent which is being granted and following which reserved matters are then submitted.

- 5.36 The logic of this position is that in granting outline permission for “up to” a given number of dwellings it has been accepted by the decision maker that the number of dwellings specified in this formula is an acceptable quantum of development. As a matter of interpretation of such an outline planning permission firstly, any application for the specified number of dwellings would be within the scope of the outline but, secondly, it is open to the applicant for reserved matters to provide details for a smaller number of dwellings. What is not available to the local planning authority is to refuse an application for the specified number of dwellings on the basis that the site is not capable of accommodating that number in principle. By the same token it is open to the local planning authority to refuse a reserved matters application for the specified number of dwellings on the basis that it does not amount to the best means of achieving the delivery of the specified number of dwellings on the site of the outline planning permission.
- 5.37 Having regard to the above and the concerns regarding the likely layout but also direct and indirect effects on the ANSW, it is not considered that the site can accommodate the quantum of development proposed and secure a high quality development that relates well to the topographically challenges of the site.
- 5.38 It is noted that the Appellants refer to parts of the earlier appeal decision where the SoS considered the principle of development and effect of development on the landscape (see paras 2.2 – 2.9 of the Grounds of Appeal). We would politely point out the scheme considered by the SoS was for almost 100 fewer houses but the developable area is essentially the same. The principal difference here being the SANG land, but plainly, that does not contain housing.

Suitability of Location

- 5.39 It is disputed that the site and the package of off-site work mean the it is a sustainable location for the proposed development. It is highly material that the SoS previously considered the same issue in the previous appeal. It was in fact for the same pedestrian connection point onto the lower part of Bird in Eye Hill. Whilst the SoS accepted that the Bird in Eye sites had advantages over the other site (Downlands) they [the Bird in Eye sites] “...*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)*”. (emphasis added).
- 5.40 Whist noting the passage of time, the scheme is basically a recast of the scheme previously considered at appeal and rejected by the SoS as unacceptably “*dependent upon the narrow Framfield Road, which is frequently congested during peak hours*” (IR755). At that time, there was an offer of off site package of works on Framfield Road, together with contribution to enhance bus stops and the bus service. Still the scheme would “*fail to provide a high level of connectivity with the town*” (IR745). For the current scheme we have the same deficiencies previously rejected, but the prospect of more activity on the site in the from of an extra 100 houses coupled with a strategic SANG.

- 5.41 Notwithstanding the distance to services and facilities, the propensity to walk is not solely related to distance, but also the quality and character of the route and how it would be experienced.
- 5.42 The proposed pedestrian access link at the north west corner of the site is the same as before. It is still advanced as being of a suitable width to accommodate both pedestrian and cycle movements from within the site. However, unclear what pedestrians and cyclists will do thereafter in terms of being provided with a safe and suitable means of access into Uckfield and beyond. The Transport Assessment (TA) identifies the existing footways along Bird In Eye Hill to which the proposed pedestrian access point will link. The existing footway network is identified as being varied in width "generally in excess of 1.5 – 1.8m wide, and 1m at its narrowest" (TA Paragraph 4.8). The quality of the network itself is very poor, in particular the surfacing which is problematic for the elderly, those with children and those with mobility issues. The network runs very close to what is a busy and narrow carriageway with no parking or separation distance either side of the carriageway meaning moving vehicles will pass close to users of the footway. Walking along the footpath would be an unattractive option and thus it is clear that people will drive to the facilities in Uckfield or beyond.
- 5.43 It is suggested that the proposed extension to the 30mph speed limit will enhance the footway route. A zebra crossing is proposed which in combination would provide a *"safer and more attractive route for pedestrians and cyclists"*. The Council does not consider this to be the case as the quality of the footway would remain in a poor state and passing vehicles would remain close to users at what is still a high speed. It is also the case that no RSA has been provided for these works and there is no Traffic Regulation Order securing the reduced speeds.
- 5.44 The propensity to walk from this location would not feel attractive or safe and would be a deterrent to people choosing such.
- 5.45 Future occupants would not have convenient and practical travel choices and would therefore be reliant upon private travel to access services and facilities in their day to day lives. Even if residents did make use of the town's facilities and walked to them from time to time, it is considered that they would usually find it more convenient to access most of them by car.
- 5.46 The site is not in a location where it would be easy to make regular journeys on foot, by bike or by using public transport. In reality, future occupants would be highly likely to rely on a car as the most convenient means for carrying out their day-to-day activities. The site is therefore not in a suitable location for residential development and would be contrary to the objectives of planning policy at all levels.
- 5.47 Put another way, there is no material change to matters previously considered at appeal and agreed by the SoS. In this respect, the appeal scheme is considered to be an unreasonable one. We pick that up separately via an application for costs.
- 5.48 It might be different or rather a different case presented has the Bird in Eye South site liaised with Bird in Eye North. The Inspector will read the matter of the a pedestrian/cycle link to the north, over the River Uck and the railway line towards

Manor Park on the other side. The Bird in Eye North scheme was criticised for not delivering those links. In detail it was stated:

“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”.

- 5.49 Whilst that is plainly reference to the Bird in Eye north site, delivery of this pedestrian connections would seem to be the only credible and meaningful way of addressing the reliance on Framfield Road. However, that is not before the Inspector in this case. There is no application nor any other form of reliable delivery mechanism (allocation for example).

Highway Matters – safe access and effect on the town centre

- 5.50 The Inspector will note that the Highway Authority has objected to the development. Their broad stance is that:

- Access provision is not acceptable for this site as indicated on drawings
- 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.

- 5.51 The Highway Authority has submitted a separate detailed highway statement of case. This is by GTA Civils for and on behalf of ESCC. They are to appear at the Hearing to expand on the points raised.

Planning Balance

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

- 5.53 However, the Appellants case on Planning Balance is considered to be incorrect.

- 5.54 The starting point for determining planning applications is the Development Plan. Section 38(6) of the Town and Country Planning Act (TCPA) 1990 provides that

planning applications must be determined in accordance with the Development Plan unless other material considerations indicate otherwise.

- 5.55 Turning to address whether the presumption in favour of sustainable development applies and whether the tilted balance is therefore engaged, this section demonstrates the route taken through Paragraph 11 of the Framework having regard to footnotes 7 and in the context of irreplaceable habitats.
- 5.56 Framework Paragraph 11 c) provides that there is a policy presumption in favour of development that accords with an up-to-date Development Plan. In this respect, the Framework thus makes clear that it does not change the statutory position which makes the development plan the starting point in any determination. Many aspects of the development plan are consistent with the Framework when read as a whole. However, it is acknowledged that, by reason of the failure of the LPA to demonstrate a 5-year supply of deliverable housing land, those Local Plan policies relating to housing need and supply are deemed to be out of date (Saved Policies GD2 (Development outside the development boundaries) and DC17 (Housing development)). The SoCG reflects this.
- 5.57 In accordance with Framework Paragraph 11 part c), Policies WCS6 (Rural Areas Strategy) and SP07 (Spatial Planning Objectives) of the CSLP are considered to be consistent with the Framework's approach to locate development according to the range of facilities available within settlements and the need to encourage the use of sustainable modes of travel to access them. There are no policies in either the Local Plan or Core Strategy which favour development in this location. As there would be conflict with all the other up to date policies, the proposal would be contrary to the development plan as a whole, including Policy EN1, Policy EN13 and Policy EN22 of the Local Plan and WSC14 of the Core Strategy, which promotes sustainable development.
- 5.58 The submitted planning statement provides the Applicants own assessment on which policies in the development plan remain up-to date (at Paragraph 6.40). Curiously Policy WCS6 (Rural Areas Strategy) is omitted from this assessment.
- 5.59 The proposals do not comply with up to date parts of the development plan. Conflict with up to date development plan policies carries significant weight and thus, it is considered that Paragraph 11 part c) does not apply and the proposals should be refused in accordance with the TCPA 1990 Section 38(6). Nevertheless, if a contrary view is taken, we set out an assessment against the subsequent relevant sections of Paragraph 11 below.

Paragraph 11 part d) limb i) and limb ii) of the NPPF – Housing Land Supply

- 5.60 Paragraph 11 of the Framework part d) states that where there are 'no relevant development plan policies or the policies which are most important for determining the application are out-of-date', applications should be granted unless, limb i) the policies within the Framework that protect areas and assets of particular importance provides a clear reason for refusing the development. Only once limb i) has been assessed in accordance with footnote 7, does one then move to limb ii) which states that permission should be granted unless any adverse impacts of

doing so would demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

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

c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) **should be refused**, unless there are wholly exceptional reasons and a suitable compensation strategy exists (emphasis added).

We have already commented that Framework 180(c) has its own footnote, number 63, which identifies the type of project that might present wholly exceptional reasons. None are in play in this appeal.

- 5.62 Even if the Inspector accepts that the Appellants case that there would be **no direct loss** of Ancient Woodland (which to be clear, the Council does not accept), it is beyond any doubt or reasonable argument that the appeal scheme when viewed as a whole will lead to **deterioration** of the Ancient Woodland. Natural England themselves even accept that the appeal scheme will result in recreational activity in the protected woodland. There will be adverse effects on a Veteran Tree which the Standing Advice specifically talks against and tells us to avoid. This only comes as a direct result of the urbanisation of the edge and setting to these irreplaceable habitats. As there will, at the very least, deterioration of the Ancient Woodland and the protected area bent a Veteran Tree, the appeal scheme cannot comply with paragraph 180 (c). It has to be refused as the Framework directs refusal. It is therefore considered that the proposals should be refused in accordance with NPPF Paragraph 11 part d) limb i) and the tilted balance in favour of sustainable development does not apply (Paragraph 11 d) ii).

6.0 Comments on Appellant's Statement of Case

- 6.1 It is confirmed that the Council will work with the Appellants to draw up a SoCG. At the time of writing the Council has commented in a draft and sent it back to the Appellants.
- 6.3 The areas in dispute are set out in the SoCG and need not be repeated here.
- 6.4 Ultimately, the Council considers the appeal to be an unreasonable one. It advances development that does not comply with the Framework and re-tables aspects that have previously been considered at appeal and rejected by the SoS. There is nothing new in this part of the appeal scheme and it should not take another appeal to re-air these matters.
- 6.5 The Council draws the Inspector's attention to the guidance in Annex B of the PINS Procedural Guide with regard to the consequence of submitting new material at appeal stage. In addition, the scheme has, as a matter of fact, changed within and during the appeal process and this is notwithstanding the fact that the Appellant chose the non-determination route. They were clearly in charge of timings and didn't have to appeal. Using the appeal process to evolve the scheme is directly at odds with PINS Procedural Guide at Annex M. As a matter of fact, there is material before the Inspector that was not included within the planning application registered by the Council and indeed the subject of consultation responses by consultees. This is further doubt linked to the extent of information relied upon by the Appellants.

7.0 Conditions and Legal Agreement

- 7.1. At the time of writing, there is a suggestion in the SoCG that a list of conditions to be attached in the event of the appeal being allowed will be drawn up. These will include measures relating to issues upon which there is common ground that there is no objection subject to appropriate conditions. The main parties will also identify any difference between them on the conditions to be attached.
- 7.2. Prior to the Inquiry the Appellants have indicated they will submit Legal Agreement to provide on-site and off-site infrastructure under the provisions of Section 106 of the 1990 Act in the event of the appeal being allowed. The Council lawyers are instructed and an update will be provided at the hearing.

8.0 Conclusion

- 8.1. In conclusion, the Council will contend that for the reasons set out above, planning permission should be refused and the appeal dismissed. It is considered that these grounds are sound and clear cut having given the matter full and proper consideration in the light of Government advice, the provisions of the development plan, and other material considerations. That includes a previous appeal, recovered by the SoS and which was dismissed. The Council says the proposal does not accord with the current development plan, the guidance within the National Planning Policy Framework (NPPF).
- 8.2 It is also the case the appeal has been pursued contrary to PINS Guidance. The Appellant has abused the proceed and there are legitimate procedural complaints about their behaviour. In addition, the Council and consultees have well founded objections to the merits of the appeal case advanced, not least because some aspects have bene aired at appeal before. The Appellant has aired the appeal in the manner as if it were different or has a different solution to previous refusals. It isn't and should not take a new appeal to reappraise matters. This Appellant has acted unreasonably on both procedural and substantive matters. The Council seeks it costs. It is expected that the County Council as Highway Authority will do so too.