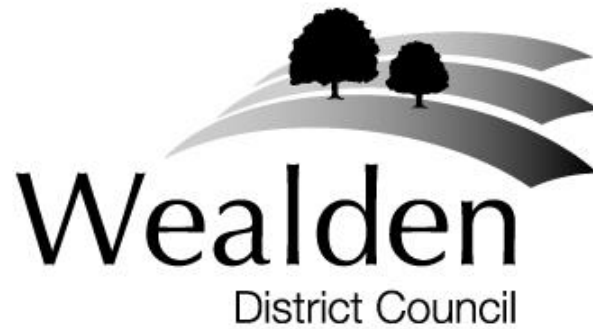




Town and Country Planning Act 1990

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

STATEMENT OF CASE

RULE 6

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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)
14. R. v Newbury District Council ex parte Chieveley Parish Council [1999] P.L.C.R. 51

1.0 Introduction

- 1.1. Wealden District Council ('the Council') submits this Statement of Case ('SoC') in respect of the forthcoming Inquiry into the appeal ref APP/C1435/W/22/3307820 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 proposes the erection of up to 290 dwellings, associated landscaping, informal open space and a strategic area of Suitable Alternative Greenspace ('SANG') with access from the B2102 on Land at Bird in Eye Farm, South of Bird in Eye Hill, Framfield, East Sussex, TN22 5HA.
- 1.3. This SoC sets out the case to be presented by the Council at the Inquiry. It is confirmed that had the Council made a determination, it would have refused planning permission. This SoC sets out the grounds why planning permission should not be granted and the appeal be dismissed.
- 1.4. The Inspector is advised that having revised it case between lodging what was the heating statement and this Inquiry Statement of Case, the Council has updated its position. It no longer complains about the effects of design, layout from the scheme as amended in August 2021.
- 1.5. In the absence of a completed Legal Agreement the Council has adopted a safeguarding position (see putative reason for refusal 6).
- 1.6. The Appellants have drafted a Statement of Common Ground ('SoCG'). It has been reviewed by the Council and sent to the Appellants for comment. Following a 10 week gap with no comment from the Appellant and repeated chasers by the Council, the Appellant sent the SoCG to the Council on the 13 June 2023. The Council has been unable to review the draft this week due to other commitments, not least a two day Hearing event (PINS 3317468) and a planning committee on the 15 June 2023. The PINS Start Letter requires the SoCG to be submitted on the 19 June 2023. That date looks challenging bearing in mind the Appellants did not respond for 10 weeks and sent the draft to the Council during a week when it signalled it had major time constraints. It is nonetheless agreed to be a useful document. The Council will update the Inspector at the Casework Management Conference (CMC).
- 1.7. The appeal site has detailed planning history which includes an appeal that was recovered by the Secretary of State ('SoS'). This decision is at appendix WB2 to the Appellant's SoC.

2.0 The Application

- 2.1 This is largely covered in the SoCG and need not be repeated in any significant detail here.
- 2.2 The appeal scheme is 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.
- 2.3 The appeal scheme proposes the construction of up to 290 dwellings including open space, landscaping and a strategic SANG¹.
- 2.4 The Illustrative Site Layout and Landscape Strategy and SANG Design Plan seeks to demonstrate the extent, scale and distribution of development for which outline planning permission is sought.
- 2.5 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

- 2.6 The total site comprises 42.8 hectares. This is 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

- 2.7 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.
- 2.8 The Screening Assessment was carried out to determine whether the proposed development would be likely to result in significant environmental effects. The Council adopted 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.
- 2.9 A full list of the drawings which formed part of the planning application can be found at Appendix 3.

Planning History

- 2.10 A previous application (WD/2006/3564/MAO) was made by Heron Land Developments, Persimmon Homes and Gallagher Estates on 12 April 2007 ('the 2007 Application'). This was for 197 dwellings, including affordable housing, with associated access, structural landscaping and recreational space (including 4 LAPS and one LEAP). The 2007 Application was sited on a substantially similar part of the application site to the current proposal. The 2007 Application scheme is, in part, reproduced by the Appellants in their appeal bundle at WB12 and WB13.
- 2.11 The 2007 Application 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 refusing the appeals on 24 February 2009.
- 2.12 The significance of this appeal and the planning history of the site will also be set out and reviewed in this statement. We mention purely in passing that a request for PINS to conjoin the current appeal with a recent refusal and appeal at Downlands has been rejected.

Consultation Responses

- 2.13 A summary of the responses received in reply to the normal consultation procedures, from within the Council, statutory consultees and from third parties is at appendix 2 to this SoC. The responses were all sent with the appeal questionnaire.
- 2.14 The Council would draw the Inspector's attention to the fact that this is a controversial scheme which has attracted a great deal of public concern.

- 2.15 Comments from 127 households objecting to the scheme were received, coupled with objections from Framfield Parish Council and Uckfield Town Council.
- 2.16 The Council notes that there has been a request from a third party – professionally prepared and represented – who has asked to address the Inquiry on behalf of local residents and to present evidence (see Town Legal letter 6 June 2023). The Council has no objection to this request.

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. The Council considers that the weight to be given to 'saved' policies and the Design Guide is dependent on the degree to which they are consistent with the NPPF (having regard to NPPF paragraph 213).

Relevant Development Plan Policies

- 3.8 The relevant development plan policies include:
- Saved Policies GD2, EN1, EN2, EN8, EN12, EN14, EN15, EN27, EN29, DC17, HG5, HG6, HG7, TR3, TR13, TR16, LR1, LR3, LR5, CS1, CS2, CS3, CS4 of the adopted Wealden Local Plan 1998 (WLP).
 - Policies WCS1, WCS2, WCS3, WCS4, WCS5, 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. However, the Council will work with the Appellant to draw up an Inquiry Core Document list.

National Planning Policy Framework (NPPF)

- 3.9 The latest iteration of the National Planning Policy Framework ('Framework') 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 Framework.
- 3.12 An update on the emerging Local Plan can be provided at the Inquiry if helpful. However, to be clear, the new Plan will unlikely to have fully progressed to Regulation 18 stage by the sitting days of the Inquiry.

4.0 Council's Position on the 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. As confirmed in the SoCG, the Council considers that the appeal should be dismissed for the following reasons:
- Location of site beyond development boundary
 - Effect of development Ancient Woodland
 - Whether the proposal can be properly drained without causing flooding offsite
 - Whether the scheme the subject of the planning application is in an accessible location so as to offer a genuine choice of transport modes.
 - Whether the scheme the subject of the planning application can provide safe access.
 - Whether the scheme will cause severe impact on the local road network, including Uckfield Town Centre

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>

- Whether a mechanism exists to secure necessary matters such as mix of dwelling types (affordable, custom and self-build) together with on and off-site infrastructure
- Planning balance and whether the issues left from the earlier appeal decision have been addressed.

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

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 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. These are :

- a) On-going and multiple alterations to the highway scheme, the access and package of works off-site promoted to deliver pedestrian connections and the suggestion of onsite works to deliver public transport connections.

and

- b) Material changes to the surface water drainage strategy.

- 4.6 For 4.5 a) above and the 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 will be called and will give evidence to the Inquiry. It

⁴

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

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

will clearly set out and defend its views. In the context of the leading judgment Visao⁵ 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 access⁶. Therefore, the Inspector is having to decide the issue not only whether it is in principle possible for the access to be provided, but is required to decide whether the detailed package of works proposed meets policy requirements, including with regards to the issue of highway safety.
- 4.8 The view of ESCC is that insufficient information had been provided at the time the appeal was lodged and at any time since to satisfy the highway authority that a safe means of access could be delivered or that the site could be considered sufficiently accessible for non-motorised users including pedestrians and cyclists. Furthermore, the means of mitigating the impact of the development on the highway within the town centre has not been agreed.
- 4.9 The safety and suitability of the access proposals go to the heart of the acceptability of any scheme. It is a technical matter which requires careful assessment by consultees. It is therefore imperative that all consultees have been given a proper opportunity to make representations on the access which is promoted. The amendments which are proposed are not minor in nature. The amendments include revision of the position of the site access but also the off site package of works. The full summary of changes are described in the separate Statement of Case from the Highway Authority. There is also a summary of the changes in the separate highway SoCG between the highway authority and highway consultant for the Appellants. The Inspector will note the breadth of changes to the highway package, all since the appeal was lodged in September 2022.
- 4.10 Further, key information on the amended proposals is still missing. No Road Safety Audit ('RSA') has been provided for the proposed access 021 rev K. The County Council indicate in their highway guidance for major new development that an RSA should be provided and supported with a designer's response. The lack of an RSA means that the local authority and consultees lack information to the safety of the junction for all users.
- 4.11 The fact that ESCC, the statutory consultee, is still not in position of sufficient information relating to the amendments which the appellant seeks to make demonstrates the clear prejudice which the proposed amendments have caused and will cause if they are allowed to proceed. It is imperative that the Inspector is fully apprised of the highway authority's view on any proposed measures.

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)

⁶ It is not open to the decision-maker to reserve matters of detail relating to access (see R. v Newbury District Council ex parte Chieveley Parish Council [1999] P.L.C.R. 51 (copy at Appendix 14))

However, the appellant's approach means that what is applied for is effectively a 'moveable feast' on a technical matter which requires time to be given to all consultees and members of the public to properly assess the proposals. This approach is wholly contrary to the PINS Guidance and is not conducive to ensuring that the Inspector and consultees are fully apprised of all relevant details concerning the application and have a proper opportunity to assess the proposals and to provide their views. This is also true of members of the public who have not been consulted on the revised proposals.

- 4.12 Ultimately, there is no good reason why the Appellant did not seek to make its highway amendments through a new application or by seeking to amend its scheme before appealing for non-determination. As already noted, these changes are extensive and cannot be described as minor. The effect is that all other interested persons are prejudiced and in making the decision the Inspector cannot be sure that all parties will have been properly consulted and have a fair opportunity to make representations.
- 4.13 The proposed amendments to the surface water drainage proposals are also a significant and material change which should not be allowed to be made. The surface water drainage proposals originally submitted under the outline suggested a new drainage outfall would 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. The Appellant subsequently tabled an alternative approach which is to deal with surface water via infiltration and thereby avoid impact upon Ancient Woodland. The Appellant 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, 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.
- 4.14 The Council draws the Inspector's 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".*
- 4.15 The Council had not been sighted on this document and has had to search for it buried at appendix 2 of the ecology statement. Again, it materially changes the surface water strategy. This is 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 result, a new alternative surface water drainage outfall design is tabled in the January 2023 technical note. This reintroduces the concept of a piped outlet but it shows it routed northwards alongside but not through 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 that the surface water drainage infrastructure is sited up to 6.0m below existing ground levels, depending on the size of outfall pipe used. The Appellant states that this depth is 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. Southern Water has not been asked to comment on the amended scheme. Nor have other key consultees. It is therefore unknown whether the Appellant’s revised solution is even workable.

- 4.16 The Appellants claim that the timescales in the ongoing appeal are 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].
- 4.17 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 in material respects. This is contrary to M.2.1 of the PINS Procedural Guide.
- 4.18 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, this is still not yet complete.
- 4.19 Council requests that the Inspector makes a ruling at the CMC regarding whether the amendments which the Appellant seeks should be allowed. As M.2.4 of the PINS guidance points out, the Inspector has to consider if the suggested amendment(s) might prejudice anyone involved in the appeal. She 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.

The remainder of this Statement of Case largely addresses the scheme as was submitted by the appellant with its application as that is the scheme which is before the Inspector.

- 4.20 To be clear, the following documents were accepted as revisions to the planning application before the appeal was lodged in September 2022:

Agent letter 2 December 2021 (ref SB/7336) refers to:

- Technical Drainage Note prepared by Stantec and submitted by email dated 4 November 2021.
- Arboricultural Response Note – Barton Hyett Associates (29 Nov 2021)
- Outfall Concept Design Plan No. 48494/2002/SK01A – Stantec (Nov 2021)
- Surface Water Drainage Outfall Photo Plan No. 48494/2002/SK02 – Stantec (Nov 2021)

Agent email 1 February 2022 refers to Stantec technical note revised drainage strategy is shown on Plan No. 48494/2002/510 included within the Note.

Agent email 16 February 2022 – amended application form

Agent letter 16 March 2022 (no ref) refers to:

- Illustrative Site Layout (Masterplan) No. PRB/BIE/PA2R
- Parameter Plan No. PRB/BIE/PA4D
- Indicative Streetscene Plan No. PRB/BIE/PA7B
- Addendum Design Statement (Paul Brown Architect) (March 2022)
- Landscape Technical Note (CSA Environmental) (March 2022)
- Updated Heritage Statement (RPS Group) (March 2022)

Agent email 29 March 2022

- Transport Assessment (“TA”) Addendum

Agent email 9 September 2022

- Transport Assessment (“TA”) Second Addendum (Sept); and
- Access Plan No. 5330-021 Rev H.

Agent email 15 September 2022

- Parameter Land Use Plan No. PA4E
- Illustrative Site Layout Plan No. PA2S
- Landscape Strategy & SANG Design Plan No. CSA/2646/114M
- Pre-notification form of intention to appeal

Appeal lodged 28 September 2022

- 4.21 Where appropriate the Statement of Case goes on to summarise why the changes suggested by the Appellant are also unacceptable and contrary to local and national policy. However, as there has not been consultation on the amendments proposed by the Appellant (after the non-determination appeal in September 2022) and as the Appellant has not released full details in respect of some of the

amendments it may be necessary for the Council to update this Statement of Case in the event that the Inspector allows the Appellant to amend its scheme.

5.0 Case for the Local Planning Authority

Conflict with the development plan

Putative Reason for Refusal 1:

The proposed development represents an unjustified and unacceptable form of development of a site that for planning purposes lies in the countryside, outside of the defined development boundary for Uckfield, contrary to Policies GD2 and DC17 of the Wealden Local Plan. It is accepted that the Council cannot demonstrate a five-year supply of deliverable housing sites. This means that policies most relevant to the determination of the application should not be considered up to date and that the proposals should be considered in the context of the presumption of sustainable development as set out in the Framework. However, effect of the development on the Ancient Woodland, which is the subject of a policy to protect an asset of particular importance provides a clear reason for refusing the proposed development, therefore the tilted balance does not apply. Even if the tilted balance does apply the harm identified, means that the proposals would not be sustainable development, its impacts significantly and demonstrably outweighing benefits when assessed against the policies in the Framework as a whole. The harm identified is: harm to Ancient Woodland (contrary to development plan policies EN13 and Framework paragraphs 180 (c)...), the failure to demonstrate a satisfactory drainage scheme (contrary to development plan policies CS2 and Framework paragraphs 167 and 169), the failure to provide a safe access (contrary to development plan policies TR3 and Framework paragraphs 104, 110 and 114.), the fact that the site is not in a sustainable location so as to offer a real choice of sustainable transport modes (contrary to development plan policies TR3 and Framework paragraphs 104, 110, 112 and 114.) and the failure to mitigate a severe traffic impact (contrary to development plan policies TR3 and Framework paragraphs 111).

- 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 matters have been approved for the first two phases of development and c.200 dwellings are on site, coupled with key infrastructure such as two new roundabouts and a cross site linking road.

- 5.2 The settlement or development boundary of Uckfield was not extended or changed in the Core Strategy, this being a matter left for later review within subsequent DPDs (see CSLP 6.11(2)). As of today, and notwithstanding attempts, no such review has 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 Inquiry can be appraised on any of those sites proffered 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. Those material considerations include the Framework, which must be taken into account in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.
- 5.7 There is no disagreement between the parties that the Council is unable to identify a five year supply of housing land (5YSHL). Accordingly, the most important policies for determining the application are accepted as out of date. Where relevant policies are out of date, permission should be granted unless the application of policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusing the development proposed or 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 unless certain circumstances apply.

The harm which the proposed scheme will cause is set out under the other putative reasons for refusal and as such, is not repeated here.

Impact on Ancient Woodland

Putative Reason for Refusal 2

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

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

- 5.8 The site is bounded to the south and south west by an extensive area of ancient semi natural woodland ('Ancient Woodland') 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).
- 5.9 Ancient Woodland 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 2022⁷).
- 5.10 Paragraph 180 of Framework 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.”*
- 5.11 Footnote 63 acknowledges that wholly exceptional circumstances include:

⁷

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.

“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.”

- 5.12 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 Ancient Woodlands.
- 5.13 Further, the standing advice of Natural England and the Forestry Commission (January 2022 – see Appendix 8) states that when making planning decisions, authorities should consider reducing the level of impact of the proposed development on ancient woodland. Authorities should **refuse** planning permission if development will result in the loss or deterioration of ancient woodland unless there are wholly exceptional reasons and there is a suitable compensation strategy in place.
- 5.14 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.

The proposed scheme is likely to result in the deterioration of ancient woodland in the following material respects: through the inappropriate drainage proposals, through the failure to provide adequate buffer zones, through the provision of a woodchip path through the ancient woodland and through the likelihood of recreational disturbance/damage. These are expanded upon below.

- 5.15 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 Ancient Woodland. 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 on the 1 February 2022.
- 5.16 The Council's concerns about that version of the drainage scheme are reinforced by the later admission from the Appellants (January 2023 and long after the appeal had been submitted) 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 Ancient Woodland. It will be seen on the site visit that the woodland here is generally lower than the appeal site and SuDs proposal. 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 Ancient Woodland, 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 Ancient Woodland . 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).

It is therefore clear that either of the proposals which were part of the scheme prior to the Appellant’s appeal were contrary to local and national policy in that they would lead to the loss and/or deterioration of Ancient Woodland which is an irreplaceable habitat.

- 5.17 The Appellant appears to accept this fact and has now proposed (with its Grounds of Appeal) 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. That the reasons why this amendment should be rejected are set out above. 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 Ancient Woodland buffer.
- 5.18 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 Ancient Woodland.
- 5.19 The Council strongly disagrees. The siting of development so close to Ancient Woodland (whether through the provision of residential development, roads and or the new drainage scheme which the Appellant has tabled) is wholly unacceptable. 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

- 5.20 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 considers that the site is steeply sloping. Lastly, the scheme proposes up to 290 houses in the immediate context and vicinity of the Ancient Woodland. That is very clearly close to residential areas and a further aspect to the urbanisation of the Ancient Woodland edge.
- 5.21 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 Ancient Woodland, 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. After all, 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
- 5.22 Due to the close and lengthy interface between the existing ASNW and VT 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 identified⁸ 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.

- 5.23 There can be little doubt that Ancient Woodland is under threat directly and indirectly from the appeal scheme. It should be noted that the Framework and the Standing Advice on Ancient Woodlands 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.
- 5.24 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 Ancient Woodland. In order to provide a suitable footpath configuration for the strategic SANG an existing informal footpath through Bird in Eye Shaw (Ancient Woodland) 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.
- 5.25 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.
- 5.26 The Council accepts that the views of a Statutory Consultees must not be challenged lightly. Decision makers are entitled, and can be expected, to give significant weight to the advice of an “expert national agency” with relevant

⁸ Woodland Trust – impacts of nearby development on the ecology of ancient woodland and Planners Manual for ancient woodland. (copies at Appendix 9)

expertise in the sphere of nature conservation, such as Natural England⁹. Decision makers may lawfully disagree with, and depart from, such advice. But if it does, it must have cogent reasons for doing so¹⁰ And when there are challenges to such assessments, the Court for its part will give appropriate deference to the views of expert regulatory bodies¹¹.

5.27 The Council disagrees with Natural England's position in relation to the footpath. 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 Ancient Woodland to navigate through. This will cause direct damage.

5.28 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".

5.29 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 Ancient Woodland. Fencing will not prevent access. Such recreational use is likely to lead to the deterioration or loss of ancient woodland and therefore is contrary to the Framework at paragraph 180 (c). It is not appropriate to rely upon compensation/mitigation for Ancient Woodland.

5.30 Further, the Ancient Woodland is located outside the application site area. The Council is concerned that even if management could protect the Ancient Woodland it is unclear how that management will effectively be secured and thereafter carried out.

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

¹⁰ 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.

¹¹ 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.

- 5.31 The comments of the Council's Tree and Landscape Officer of the 12 November 2021 support this putative reason for refusal. The Officer shares the view that the proposed solution would be wholly unacceptable and contrary to both Paragraph 180 para 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 Ancient Woodland 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”*

- 5.32 The terms of national policy and local policy are clear. The deterioration of ancient woodland and veteran trees should lead to the refusal of this appeal except for in exceptional circumstances, no exceptional circumstances exist here. Further, the application of policies which protect irreplaceable ancient woodland and veteran trees provide a clear reason for refusing the development proposed and, as such, the tilted balance in paragraph 11 does not apply. Even if it did apply the adverse impacts upon ancient woodland and veteran trees significantly and demonstrably outweigh the benefits of the proposed scheme.

Surface Water Drainage

Putative Reason for Refusal 3 – this reason for refusal is dependent upon the Inspector's *Wheatcroft* ruling on drainage details

Whilst the site is within flood risk zone 1, details in the flood risk assessment and surface water drainage strategy in relation to surface water flooding for this major development fail to demonstrate to the satisfaction of the Local Planning Authority that the proposed development on the site would not increase flood risk elsewhere.

The scheme, as amended in March 2022, relies on infiltration from the SuDS basin when it is not demonstrated that the site conditions will allow from infiltration. In the absence of proof that infiltration potential exists, insufficient information has been lodged to demonstrate water quality improvements will be provided to ensure that runoff from the application site will not result in the deterioration of the lower land. This includes to the adjacent Ancient Woodland, but also the Framfield Stream which is a tributary of the River Uck.

Whilst the Council cannot demonstrate (at the time of writing) an up to date 5 Year Housing Land Supply, and the proposed development would provide a contribution to addressing the undersupply, the potential effects of the proposal upon flood risk and the conflict with development plan policies significantly and demonstrably outweigh the benefits of development. The presumption in favour of development is, therefore, outweighed by the significant and demonstrable harm. The proposal therefore conflicts with Saved Policies EN1, EN8, EN13 and CS1 of the adopted Wealden Local Plan (1998), coupled with Policies WCS12 and WCS14 of the adopted Wealden Core Strategy Local Plan (2013) and the NPPF 2021.

- 5.33 There are no adopted, public, surface water sewers in the vicinity of the site, so this method of surface water drainage cannot be used. The initial proposed drainage strategy was to discharge into a watercourse, in this case the Framfield Stream. However, this discharge would be through Ancient Woodland and is therefore unacceptable due to loss or deterioration of irreplaceable habitats, contrary to the Framework at 180(c).
- 5.34 This meant that the Appellants tabled a scheme that relied upon infiltration as another possible drainage method for the site. As previously noted, the Geological Map states that the northern end of the site (which is the only half being considered here) is on the Lower Tunbridge Wells Sand Formation of sandstones, siltstones and mudstones, thus giving some theoretical infiltration possibility. The trial pits confirmed this geology.
- 5.35 The test pit results suggest that the majority of the area has infiltration potential which is too poor to be acceptable. The exceptions were test pit 7 (location unknown) and test pit 5 on the site of the proposed attenuation pond under the previous scheme. Although test pit 5 was able to be tested three times as recommended, test pit 7 only achieved two fills with a noticeably poorer result on the second fill, suggesting its possible use is marginal at best.
- 5.36 A deeper pit to test for groundwater was also carried out at test pit 5 which suggested the presence of groundwater at about 3.0 metres below ground level.

The report concludes that:-

“Surface water drainage using shallow infiltration systems (“soakaways”) is unlikely to be suitable across the majority of the site at the near surface soils owing to the very low infiltration rate observed at the weathered near surface soils.”

“However, shallow infiltration may provide a suitable drainage solution for the proposed drainage basin within the less weathered Tunbridge Wells Sand Formation in the southern part of the site as recorded in Trial Pit TP05. Based on the infiltration test results it is recommended that a soil infiltration rate of 1.0×10^{-5} m/s is used for the design of infiltration basin.”

“It is likely that the LLFA will require at least 1 m of unsaturated zone between the base of the infatuation (sic) basin and the highest groundwater level at this location. It is recommended that a groundwater monitoring well is installed at this location with groundwater monitoring undertaken during the winter months to confirm the long term groundwater level at this location.”

- 5.37 In essence, this summarises the problem of using infiltration at this location. It is common ground that the basin would overtop as water would not drain away. This overtopping would wash through the Ancient Woodland on its natural path towards the Framfield Stream below. The through flow of that water would lead to the loss or deterioration of irreplaceable habitats, contrary to the Framework 180(c).

Moreover, overtopped water would effectively bypass the basin (and any infiltration benefits). The appeal application does not talk to nor address the effect of pollution

concentrates from the surface water system. There is no confidence this scheme would not affect the replaceable habitat nor the adjacent Framfield Stream and therefore River Uck.

- 5.38 In the event the Inspector allows the post September 2022 drainage revisions, then the Council reserves its position, not least because it will need to liaise with the Environment Agency, Southern Water but also the Local Lead Flood Authority.

Highway Matters - Suitability of Location

Putative Reason for Refusal 4

When measured against the full objectively assessed housing need, the Council does not have a 5 year supply of housing land. It is accepted that the NPPF requires applications for housing to be approved without delay 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.

This greenfield site is located at edge but beyond Uckfield, within Framfield Parish. Framfield is an unsustainable settlement, not identified within the Settlement Hierarchy. The site's position at this point outside Uckfield and between Uckfield and Framfield makes it detached from any recognised service centres within which to make a make contribution to existing rural communities, with services relied upon being those within the urban centre of Uckfield. This, combined with the limited bus service and lack of convenient pedestrian or cycle links means that housing would create a need to travel to access services in urban areas, and make occupiers of these units heavily reliant on the private car. This harm significantly and demonstrably outweighs the benefits of the proposal.

The scheme would therefore be contrary to Saved Policies GD2, EN1, EN2, TR3 and TR13 of the Wealden Local Plan 1998, Spatial Planning Objectives SPO7 and SPO15 and Policies WCS7 and WSC14 of the Wealden Core Strategy Local Plan 2013 and the guidance within Chapter 9 of the Framework.

- 5.39 The Council and the highway authority are of the opinion that the site is not in a sustainable transport location and consider that the package of off-site highway measures proposed would not be sufficient to overcome the locational disadvantage. 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 Whilst noting the passage of time and the increase in units, the site accessibility issue remains and 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 an off site package of highway works on Framfield Road, which the SoS stated would “fail to provide a high level of connectivity with the town” (IR745). It is pertinent that the current development proposals have the same deficiency but would need to provide for and support more activity arising from an additional 100 houses coupled with a strategic SANG.

- 5.41 The Inspector’s attention is drawn to the separate Statement of Case prepared by the Highway Authority but annexed to this Statement. This gives further detail to be given by the Highway Authority to the Inquiry.

For the avoidance of any doubt, this Appended Statement of Case from the Highway Authority is relied upon by the Council and is an integral part of its case why planning permission should not be granted.

- 5.42 There is no material change to matters previously considered at appeal and agreed by the SoS with regards to this issue. In this respect, the appealed scheme is considered to be an unreasonable one.

- 5.43 It might be different or rather a different case presented had the Appellants liaised with those promoting the site at Bird in Eye North. The Inspector will read the matter of ‘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”.

- 5.44 Whilst that is plainly reference to the Bird in Eye north site, the feasibility of delivering this pedestrian and cycle connection, and its contribution to improving the overall accessibility of potential sites at Bird In Eye North or South is yet to be determined. 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).
- 5.45 The Council considers that the provision of a significant amount of housing in an unsustainable location represents a breach of the development plan as a whole and also significantly and demonstrably outweighs the benefits of the proposal (which are addressed below).

Highway Matters – safe access and effect on the town centre

Putative Reason for Refusal 5

The proposal does not satisfactorily demonstrate that there would be an acceptable impact on the surrounding highway network, particularly (though not

limited to) Uckfield town centre which is already heavily congested at peak times, nor that safe access can be secured for all parts of the site and scheme, contrary to, to SPO2, SPO12, SPO13 and Policy WCS14 to the Wealden Core Strategy Local Plan 2013, Saved Policies TR3 and TR16 of the adopted Wealden Local Plan 1998, coupled with the requirements of paragraph 110 of the National Planning Policy Framework 2021.

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

- 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 paragraph 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 paragraph 111 of the 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.
- Measures to mitigate the impact of the development on the wider highway network, including in the town centre where roads are already under pressure coping with traffic volumes, are not agreed.
- Measures to enhance the pedestrian/cycle facilities along Framfield are considered inadequate and are not agreed.

5.47 As noted, the Highway Authority has submitted a separate detailed highway Statement of Case and the Council relies upon their evidence and case in relation to the putative highway reasons for refusal.

5.48 The Council considers that the failure to ensure an acceptable impact on the highway network and the provision of a safe access represents a breach of the development plan as a whole and also significantly and demonstrably outweighs the benefits of the proposal (which are addressed below).

Mechanism to secure necessary policy compliance and key infrastructure

Putative Reason for Refusal 6

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

5.49 Putative Reason 6 is a matter that can be secured through an appropriate legal

agreement and SoCG. That being so, those reasons would not be contested at the Inquiry and this reason would fall away.

Planning Balance

- 5.50 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 their own planning balance.
- 5.51 However, the Appellants case on Planning Balance is considered to be incorrect.
- 5.52 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.
- 5.53 The Framework is a material consideration in planning decisions. The Appellant relies upon the tilted balance in paragraph 11 of the Framework.
- 5.54 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.
- 5.55 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.
- 5.56 The submitted planning statement provides the Applicant's 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. This is an error since it does not reflect the development plan strategy for housing in rural areas.
- 5.57 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) applies and the proposals should be refused in accordance with the TCPA 1990 Section 38(6). Material considerations do not

outweigh conflict with the development plan in this case. 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

5.58 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.

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

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

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.

5.60 Even if the Inspector accepts the Appellant’s 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. 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 around 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).

5.61 In the event that the Inspector considers that the tilted balance does apply then permission should still be refused as the adverse impacts of the proposal significantly and demonstrably outweigh the benefits.

5.62 It is acknowledged that the scheme does bring some benefits. The provision of market and affordable housing is a benefit. This includes the delivery of custom

and self-build units. These benefits should be afforded significant weight in a context where the Council cannot demonstrate a five year supply of housing land.

- 5.63 The proposal would lead to some separate economic benefits. Short term economic benefits from the construction phase should be given some limited weight. The Council considers moderate weight can be given to the longer-term contribution which new residents would bring to sustaining existing services.
- 5.64 Some environmental benefits have also been included in the proposals. These are through extra tree and hedgerow planting and ecology and biodiversity improvements. These benefits should be given low weight since they only arise because of the development. It could all be done as part of good land management rather than being parasitic on redevelopment of the site.
- 5.65 The site will deliver SANG in order to mitigate it's in combination impact upon Ashdown Forest. The SANG provided goes beyond that which is required to mitigate the impact of this scheme and the applicant states that the SANG provided could be relied upon to enable other development to come forward. Properly understood therefore the SANG is provided to mitigate impact and is not to be considered a benefit of the proposals.
- 5.66 Taken together these benefits are significantly and demonstrably outweighed by the adverse impacts when the scheme is assessed against the NPPF as a whole. The detail of the adverse impacts have been addressed above. In short summary they are: the effect of the proposal on Ancient Woodland and Veteran Trees, the failure to provide an adequate drainage solution, the failure to provide safe access, the impact of the proposals on congestion in the town, the fact that the site's location is unsustainable such that it fails to offer a real choice of sustainable transport modes and visual impact and harm to landscape character as a result of this form of development.

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.
- 6.2 The areas in dispute are set out in the SoCG and need not be repeated here.
- 6.3 Ultimately, the Council considers the appeal to be an unreasonable one. It advances development that does not comply with the Framework in key respects including the loss or deterioration of irreplaceable habitats and re tables aspects that have previously been considered at appeal and rejected by the SoS. Specifically, this is the accessibility of the site. It should not take an appeal to air these matters.
- 6.4 The Council draws the Inspector's attention to the guidance in Annexe 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 annexe 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 s106 of the 1990 Act in the event of the appeal being allowed. The Council lawyers are instructed and an update will be provided at the CMC.

8.0 Conclusion

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