

**APPEAL UNDER
SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING APPLICATION BY
MILLER HOMES LTD**

**OUTLINE PLANNING APPLICATION
WITH ALL MATTERS RESERVED EXCEPT FOR ACCESS,
FOR UP TO 80 DWELLINGS WITH ASSOCIATED LANDSCAPING, OPEN
SPACE, INFRASTRUCTURE AND VEHICULAR AND PEDESTRIAN ACCESSES**

LAND AT COLWELL FARM, HAYWARDS HEATH, RH17 7TB

**Appeal Ref: 6005786
LPA Ref: DM/25/0445**

Inquiry Sitting Days: 28-29 July and 4-6 & 13 August 2026

**CLOSING SUBMISSIONS
OF THE APPELLANT**

- 1) Introduction**
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Note 1: These Closing Submissions should be read alongside the Appellant's Opening Submissions (ID6), Proofs of Evidence (CD9.1-8) and Rebuttal Proofs of Evidence (CD9.10-12) as well as the Statements of Common Ground (CD8.1-5)

Note 2: Responses to the Rule 6 Party's and Council's Closing Submissions will be provided as a separate document

Note 3. All page number references throughout this document are to the PDF pages

1) INTRODUCTION

The Appeal Scheme

- 1.1. The Appeal Scheme will provide 80 homes, including 24 affordable homes, set within generous landscaping, open space and a play area (LEAP).
- 1.2. The Appellant's multi-disciplinary team worked extensively from pre-application discussions from August 2024¹ onwards, to submission in February 2025,² to the point of securing an Officer recommendation to grant permission in August 2025.³
- 1.3. The Council provided early confirmation that they would not defend any of the reasons for refusal, issued contrary to that Officer recommendation. On 2 June 2026, the Council confirmed that the Site's inclusion on the long list of sites for allocation indicated that the RfR no longer formed any basis for refusal.⁴ On 16 June 2026, they concluded a Statement of Common Ground confirming in express terms at [1.4]: *"the Council agrees that permission should now be granted for the Application"*.⁵
- 1.4. On 17 July 2026 (with the consultation opening on 27 July 2026), the Council confirmed that the Site would be allocated for the same number of homes in the forthcoming Local Plan.⁶ The Schedule of Main Modifications records the Site as MM66 and the Appeal Scheme matches all of the intended policy requirements.⁷

¹ CD14.1

² CD11.1

³ CD3.3

⁴ CD10.2

⁵ CD8.2, p5 and p7, [3.5]

⁶ CD7.15, pp25-26: The site reference is 844 within the table of site allocations.

⁷ ID12, pp56

The Right Location

- 1.5. There is a very substantial need for residential development in Mid Sussex District Council and in Haywards Heath. The Appeal Site is exactly the right location to address it.
- 1.6. With regard to the overall strategy, Haywards Heath is a Category 1 settlement, the highest tier within the Mid-Sussex District Plan, a settlement with ‘...a comprehensive range of employment, retail, health, education [and] leisure services and facilities...[and] good public service provision....’⁸ The District Plan demonstrates the Borough is heavily constrained (e.g. by National Landscape).⁹ So too is Haywards Heath itself.¹⁰ The Appeal Site is therefore one of the few available areas for growth.
- 1.7. The Appeal Site itself is within walking distance of a wide range of local services and facilities (a primary school, a Tesco convenience store, pharmacy and GP).¹¹ It is also within walking and cycling distance of the local Princess Royal Hospital and the Haywards Heath town centre and within cyclable distance of Haywards Heath Rail Station (with 20 services per day).¹²
- 1.8. The Appeal Site is also extremely well-enclosed. It is not visible from any public viewpoints. The Appeal Scheme will cause only very localised harm in landscape terms, which will be contained and mitigated by additional landscaping. There will be no coalescence with any other settlement. As the Officer’s Report recognised: “To meet the housing needs of the District, there will inevitably be a need to develop green field sites (this is particularly the case in a predominantly rural authority such as Mid Sussex).”¹³

⁸ CD5.3, p45

⁹ CD5.3, p21, Map showing Environmental Constraints

¹⁰ CD5.3, p27, [3.18] and see also CD5.5, Neighbourhood Plan Figure 3a Constraints Map

¹¹ Via both Footpath 29CU or Snowdrop Lane

¹² CD1.19 and CD8.5, Appendix – Services and Facilities

¹³ CD3.3, p3, [2.11] and p31, [12.81]

- 1.9. The Appeal Proposal has also had the support of key external consultees: the Local Highways Authority,¹⁴ West Sussex County Council, and Places Services, the Council's adviser on ecology matters.¹⁵
- 1.10. In summary, the Appeal scheme is an excellent one. Although there is conflict with the development plan (considered as a whole),¹⁶ national policy and the wider material considerations (including the draft allocation) clearly direct towards the grant of permission through the presumption in favour of sustainable development under NPPF 11d(ii). The adverse effects do not significantly and demonstrably outweigh the benefits. This is exactly the form of sustainable development that is urgently needed to address the local and national housing crisis, directly in line with the Government's national policy.¹⁷
- 1.11. This is explicitly recognised by the Local Planning Authority through their decision to now allocate the site, their decision not to contest this appeal and agreement that permission should be granted.¹⁸ The planning balance and overall s38(6) PCPA decision clearly lies in favour of a grant of permission in this case.

The Rule 6 Party's Objection

- 1.12. The Rule 6 Party's four remaining bases of objection have all been demonstrated during this inquiry to be (a) based on incorrect approaches to national policy; or (b) not borne out by the evidence.
- 1.13. First, the Appeal Site is a sustainable location in transport terms, for the purposes of NPPF 110 and 115(a)-(b). The Rule 6 Party's submission that the Site is somehow at "excessive distance" to services, or does not have "safe" pedestrian infrastructure, are flatly contradicted by the LHA position as recorded in the SoCG,¹⁹ Mr Marshall's evidence on walking/cycling and ultimately by the Local

¹⁴ CD4.21-26

¹⁵ CD4.30-33

¹⁶ Via the focussed conflicts with DP6 and DP12

¹⁷ CD9.6 Pycroft Proofs of Evidence (PoE) and CD9.7 Stacey PoE

¹⁸ CD8.2, p7, [3.4] and p9, [3.31]: *"it is agreed that the Appeal proposal should be granted permission."*

¹⁹ CD8.5

Plan draft allocation. Mr Marshall's rebuttal to ID18²⁰ also shows how the conclusions of Sustainability Assessment Main Modifications Report (SAM) informing the draft allocation are entirely consistent with the evidence presented by the Appellant.

- 1.14. Second, there is no ancient woodland on Site, nor will there be any deterioration of ancient woodland off-site, as comprehensively addressed through Mr Forbes-Laird. This late objection on the part of the Rule 6 Party (from 19 May 2026 only) has always been based in a misinterpretation of both the NPPF Glossary test²¹ and has failed to apply the Natural England Handbook.²²
- 1.15. Third, the Appeal Scheme will give rise to no harm and no breach of planning policy / legislation in respect of (1) Reptiles; (2) Bats; (3) Priority Habitats (specifically the line of trees). The Rule 6 Party have correctly withdrawn any objection on the basis of Biodiversity Net Gain.²³ As with transport, their position on ecology matters has always been notably at odds with the external statutory consultee, Place Services.
- 1.16. Fourth, the Rule 6 Party's residual objection on the basis of the planning balance rests on (1) a flawed/confused approach to the built-up area boundary policies and the weight to be accorded DP6, DP12 and DP15; and (2) a notable reluctance to engage with the benefits of providing market and affordable homes, and further economic benefits, including construction jobs and increased local spending in the locality.

Overview of Submissions

- 1.17. In structuring these Closing Submissions, we shall begin by addressing:

- Section 2: National planning policy, the housing land supply position and the affordable housing position;

²⁰ ID24

²¹ CD5.1, NPPF Glossary, p71: "Ancient woodland: An area that has been wooded continuously since at least 1600 AD"

²² CD21.2

²³ ID17

- Section 3: The current development plan's strategy and the consequences for the weight to be accorded to Policies DP6 and DP12 (as well as DP4 and DP15, to the extent to which they are engaged);
- Section 4: The emerging Development Plan and the draft allocation.

1.18. We shall then address those of the Inspectors' Main Issues which are contested by the Rule 6 Party, specifically:

- Section 5: Transport and Locational Sustainability
- Section 6: Ancient Woodland
- Section 7: Ecology (Reptiles, Bats, Priority Habitat (Line of Trees))
- Section 8: Trees

1.19. Following this, we shall cover the issues which are not contested by the Rule 6 Party, specifically:

- Section 9: Countryside and Character & Appearance
- Section 10: Heritage
- Section 11: Other Third Party Matters (Education, Water Supply, Traffic)

1.20. Finally, we shall address the planning balance:

- Section 12: Section 38(6) PCPA and the Presumption in Favour of Sustainable Development, including:
 - (a) NPPF 11d(i) and (ii)
 - (b) Benefits and Weight
 - (c) Adverse Effects/Harms and Weight
 - (d) Overall Planning Balance

2) NATIONAL PLANNING POLICY, HOUSING LAND SUPPLY AND AFFORDABLE HOUSING

National Policy

- 2.1. The Government's national planning policy on residential development now has a particular clarity and force. This must situate all consideration of the development plan and the Rule 6 Party's opposition in this case, particularly the weight to be accorded Policies DP6²⁴ and DP12²⁵ (plus DP4²⁶ and DP15²⁷).
- 2.2. Since the July 2024 General Election, Ministers have repeatedly emphasised their determination to see the delivery of 1.5 million homes within the Parliament's 5 years by mid-2029. To achieve this, the Government wishes to see a very sharp increase in grants of permission by all local planning authorities, and across a wide range of sites.
- 2.3. That policy imperative is reflected in the current NPPF (notably NPPF 61 and 78) and also in the Written Ministerial Statements of 30 July 2024²⁸ and 12 December 2024²⁹. Government is committed to reversing an *"acute and entrenched housing crisis"* across England, by addressing it with the *"urgency that this demands"*. This is renewed with just the same force in the draft NPPF Consultation document.³⁰ Chapter 6 notes:

*"Planning for the homes we need remains at the heart of the planning system to ensure everyone has access to safe and secure accommodation. That is why in December 2024, we published a revised standard method for calculating housing need, alongside other changes, to better align with government's ambition to deliver 1.5 million safe and decent homes."*³¹

- 2.4. The Government's policy objective is therefore to see a significant increase in grants of permission now, across a very wide range of locations, both on sites

²⁴ CD5.3, p44

²⁵ CD5.3, p66

²⁶ CD5.3, p40

²⁷ CD5.3, p69

²⁸ CD16.1: Letter to Housing Industry Stakeholders recording the text of the WMS (30 July 2024)

²⁹ CD16.2

³⁰ CD22.28, p9: *"The government is committed to tackling this country's housing crisis."*

³¹ CD22.28, p40

that are unallocated and through the progress of allocations in Local Plans (just like the draft allocation in this case, which has followed a detailed site assessment process).

- 2.5. The presumption in favour of sustainable development plays a vital role in ensuring that the Government's objective is met. As the WMS (12 December 2024) makes clear, if there is a housing shortfall below 5 years, then the presumption must have "*real teeth*".³² Any authority that cannot demonstrate a 5 year supply of housing is out of step with the Government's aims.

Mid-Sussex District's 5YHLS

- 2.6. The Council do not have a 5 year housing land supply, as agreed by the Rule 6 Party.³³
- 2.7. As set out in the Topic-Specific SoCG, the base date is 1 April 2026.³⁴ The Local Housing Need is 1,343 dwellings per annum, generating an overall requirement figure of 7,051. As the Council only have a deliverable supply of 5,293 dwellings, there is a shortfall of 1,758 dwellings, thereby generating a maximum supply of 3.75 years. The Council agree that this is a "substantial shortfall".³⁵ Mr Greaves accepted that description and that a shortfall at this level is a serious matter.³⁶
- 2.8. Whilst much reference has been made to the Council's historic good performance, it is important to note that that the Council have been unable to demonstrate a 5YHLS for the last 3 years.³⁷ Any earlier appeal findings must be seen in that light (Mr Greaves relied solely on the October 2023 Albourne case³⁸). Irrespective of earlier good performance, the Council has never delivered the LHN figure of 1,343 dwellings per annum before.³⁹

³² CD16.2, p3, paragraph 4: "*Therefore, where it applies, the presumption in favour of sustainable development must have real teeth. The changes we made yesterday ensure that the presumption carries real weight, acting as a significant adjustment to the decision-making balance in favour of approving development.*"

³³ CD8.3: SoCG on Housing Land Supply and CD11.3 Greave PoE, p9, [37] and p17, [63]

³⁴ CD8.3, p8, Table SOCG3

³⁵ CD8.3, p8, [2.13]

³⁶ Greaves XX (Day 5)

³⁷ CD9.6 Pycroft PoE, pp9-12, [3.1]-[3.13]

³⁸ CD11.3 Greaves, p23, [99] and Appeal Reference 3319542 (5 October 2023)

³⁹ Greaves XX (Day 5)

- 2.9. The Council's view is that it will be able to demonstrate a 5YHLS against its emerging housing requirement, as set out in Main Modification MM28: "*The housing requirement is 24,071 dwellings (an average of 1,267dpa over the whole plan period).*"⁴⁰ That figure is less than the local housing need and is proposed to be stepped once the Local Plan is adopted (and is itself subject to examination).
- 2.10. The Council's claimed deliverable supply upon adoption of the Local Plan is also subject to examination. The supply includes the Appeal Site⁴¹ and other proposed sites. Without the inclusion of the additional sites now proposed to be allocated, the Council will not be able to demonstrate a 5YHLS on adoption of the Local Plan. Even on its own figures, the deliverable supply would be 4.24 years.⁴²
- 2.11. This emphasises the importance of granting permission on deliverable sites like the Appeal Site. As the Council has noted in SSP8 Post-Hearings – Site Selection Review – Final Conclusions at paragraph 19:

"19. The Council also recognises the importance of maintaining a 5-year housing land supply in order to ensure that development is genuinely plan-led and reduce the risk of speculative development. In arriving at the sites to be tested in combination, the ability to contribute towards the 5-year housing land supply was considered. This has inevitably led to a focus on smaller, "oven-ready" deliverable sites being included but has not discounted larger sites which can contribute either longer-term, or across a longer timespan."

- 2.12. The starting point for consideration of the current Local Plan is that it is therefore out of date, such that restrictive policies (notably DP6 and DP12) must be subject to major reductions in weight. We shall address this further in Section 3 below.

Affordable Housing

- 2.13. Alongside the major housing land supply shortfall, there is already a massive shortfall in respect of affordable homes.

⁴⁰ ID12, p21

⁴¹ CD9.6 Pycroft PoE, p11, Table 3.2

⁴² CD9.6 Pycroft PoE, p14, [3.22]

- 2.14. The specific figures and key statistical indicators will be considered and tabulated in Section 12 below, by reference to Mr Stacey's detailed Proof of Evidence.
- 2.15. Two headline points stand out. First, the Council have already accumulated a shortfall of affordable housing delivery against the most recent identified need (2024 SHMA Update) of -1,760 (equivalent to an annual average shortfall of -352). Second, at the local level, there are 672 households of the 2,613 households on the Housing Register who have specified a preference for an affordable home in Haywards Heath Parish, equivalent to 26% of the Housing Register.
- 2.16. The wider housing land supply shortfall therefore has very serious impacts in the affordable housing context as well.

3) THE DEVELOPMENT PLAN

- 3.1. Whilst the development plan is the starting point for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the current development strategy is clearly out of date as a result of the major housing land supply shortfall. Footnote 8 renders the most important policies for determining the application out-of-date and activates NPPF 11d.
- 3.2. As the High Court observed in *Bloor Homes v SSCLG* [2014] EWHC 754 (Admin); [2017] PTSR 1283, 1298, [45]: *“And if the plan does have relevant policies these may have been overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy, or for some other reason, so that they are now out-of-date”*.
- 3.3. In this initial Section, we shall consider the three key policies relied upon by Mr Greaves in maintaining a general objection to the Appeal Scheme based on conflict with the development plan: DP6, DP12 and DP15.
- 3.4. Mr Greaves agrees that there will be no conflict with DP4.⁴³ It is however instructive to begin by examining the housing requirement which is set in DP4.
- 3.5. DP4 was based on an overall minimum District housing requirement of 16,390 dwellings between 2014 – 2031, with a stepped trajectory of 876 dwellings per annum (dpa) until 2023/24 and thereafter 1,090 dpa to be delivered between 2024/25 and 2030/31.⁴⁴ Accordingly, all of the “built-up area boundaries” in the subsequent policies were set by reference to a figure that is considerably below LHN at 1,343 dpa.
- 3.6. Policy DP6 (Settlement Hierarchy) both includes a “built-up area boundary” test and further restrictive tests: “where the proposed development is for fewer than 10 dwellings;”. A limit of “fewer than 10 dwellings” makes little sense now in the context of the major housing land supply shortfall and can no longer be afforded any real weight. It is plainly not the Government’s intention that

⁴³ Greaves XX (Day 5)

⁴⁴ CD5.3, p40

settlements of Haywards Heath's scale should be limited to 10 units at a time. As the policies restrict the delivery of housing and the achievement of a 5YHLS in accordance with NPPF 61 and 78, they are therefore inconsistent with the current NPPF for the purposes of NPPF 232.⁴⁵

- 3.7. The same applies to DP12 (Protection and Enhancement of Countryside) and its constituent test: "*Development will be permitted in the countryside, defined as the area outside of built-up area boundaries on the Policies Map,*". Mr Greaves confirmed that the Rule 6 Party has "no landscape case" and accordingly does not maintain any further conflict with DP12. We shall revisit this under Section 9 below, by reference to the Inspector's Main Issue 2.
- 3.8. Finally, the Appellant and the Rule 6 Party dispute the applicability of Policy DP15 (New Homes in the Countryside), but the nature of the Rule 6 Party's alleged conflict overlaps with DP6 and adds nothing further to their position. DP15 is effectively a reserve policy to cover (a) agricultural workers' dwellings; (b) isolated homes in the countryside and (c) rural exception sites.
- 3.9. The sole test of potential relevance here is the fourth bullet-point "The proposed development meets the requirements of Policy DP6: Settlement Hierarchy.", i.e. effectively defaulting to DP6 in all other cases. The text therefore adds nothing to Policy DP6 and therefore cannot add any weight to any argument based on conflict.
- 3.10. Mr Billington's position is straightforward and in line with many appeal decisions since NPPF 2024 was published where LPAs rely upon settlement boundaries / built-up area boundaries. DP6 and DP12 adopt a restrictive approach to development, which is inconsistent with the Framework and accordingly the (agreed) conflict with this element of their text must be accorded only limited weight. The same approach would follow in respect of DP15, to the extent that this is engaged.⁴⁶ Put simply, the Local Plan, and Policy DP6 and DP12 specifically, are seriously out-of-date, such that the weight that can be

⁴⁵ CD5.1, p67

⁴⁶ CD9.1 Billington PoE, p18, [4.48] DP12 and p30, [7.16]: DP6.

accorded to any conflict with those two policies must be substantially reduced, to limited weight

- 3.11. The weight to DP6 accords with the position in the Council's Position Statement (December 2025).⁴⁷ The Position Statement does not sub-divide the settlement boundary component and the landscape component. Accordingly, the Council's recommendation of "moderate" weight attached to the landscape / NPPF 187 component is not one that should be followed on the specific facts of this case.
- 3.12. The only recent appeal decision to consider this point in any detail was 3361729 Land off Mill Lane, Sayers Common BN6 9JA (2 October 2025). This was a written representations appeal in respect of a permission in principle appeal for 5 dwellings in Sayers Common (i.e. a lower tier settlement). The Inspector does not appear to have had the same full set of arguments presented in this case. However, it was concluded at DL24 that:

*Paragraph 232 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. The Framework aims to achieve sustainable travel and to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. **The Framework does not contain any policies which specifically prohibit development outside towns and villages.** District Plan Policies DP4, DP6, and DP15, insofar as they relate to the location of development, take a **more prohibitive** approach than that contained in the Framework. As such, the conflict between the proposal and these policies should be given **limited weight**.*

- 3.13. The critical finding is the first underlined and bolded above: the current NPPF does not positively promote settlement boundaries or policies (e.g. restriction on unit numbers) that restrict or prohibit development outside towns and villages.
- 3.14. As the Appellant makes clear, it does not agree that there is conflict with DP4 (and this was agreed by Mr Greaves), nor with DP15 (this was not agreed, but essentially overlaps with the DP6 position). However, the Inspector's finding that the "built-up area boundary" component of DP6 and DP12 must be accorded limited weight, on the basis of inconsistency with the NPPF should be followed in this case.

⁴⁷ CD6.5, p41

- 3.15. Mr Greaves' residual argument on weight is therefore hard to follow, and plainly out of step with established principle in respect of settlement boundaries and 5YHLS shortfalls. In respect of DP12, his Proof of Evidence accorded "moderate-significant level of weight" to DP12⁴⁸ and the same grading to DP15 "moderate-significant".⁴⁹ This departs from both the Local Planning Authority's published Position Statement⁵⁰ that of the Sayers Common appeal.
- 3.16. Mr Billington's weighting to both DP6 and DP12, and (if engaged) DP15, should therefore be followed: limited weight to conflict. In other words, such conflict is not a factor that could significantly and demonstrably outweigh a "substantial" or "very substantial benefit".
- 3.17. Mr Greaves sought finally to argue that weight should be accorded to DP6, DP12 and DP15 on the basis that they were to be continued through the emerging Local Plan. That is not a correct basis for attributing weight to policies that restrict the delivery of a 5YHLS now, and especially not where the Appeal Site is a draft allocation. We shall examine the emerging Local Plan as a material consideration in the next Section.

⁴⁸ CD11.3 Greaves PoE, p25, [108]

⁴⁹ CD11.3 Greaves PoE, p25, [111]

⁵⁰ CD6.5, Position Statement, Delivering Sustainable Development in Mid Sussex, p41, Appendix A Table

5) THE EMERGING LOCAL PLAN

The Draft Allocation

4.1. The Appeal Site is now a draft allocation under the following draft policies (as proposed for modification):

(1) Main Modification MM28 to Policy DPH1, inclusion in the Housing Allocations Table;⁵¹

(2) Main Modification 66 to Appendix 1.⁵²

4.2. In effect, there is therefore a draft policy which would render the Appeal Site inside any future settlement boundary to be introduced via Draft Policies DPC1,⁵³ DPC3,⁵⁴ and DPH2.⁵⁵

Other Draft Policies

4.3. Mr Greaves' Proof of Evidence raised the prospect of conflicts with other draft policies, as listed at his [114].⁵⁶

4.4. Mr Billington has, in turn, in Rebuttal, explained carefully why there will be no breach with these policies.⁵⁷

⁵¹ ID12, p22: MM

⁵² ID12, p37 and pp 56-58

⁵³ CD7.1, p90

⁵⁴ CD7.1, p92

⁵⁵ CD7.1, p139

⁵⁶ CD11.3, Greaves PoE, p26, [114]

⁵⁷ CD9.1 Billington PoE, p10-12, [3.8]-[3.19]

- 4.5. The Main Modifications document now proposes modifications to a number of those cited by Mr Greaves, including MM7: DPN1;⁵⁸ MM8: DPN2;⁵⁹ MM10: DPN4;⁶⁰ MM17: DPT1;⁶¹ MM19: DPT3;⁶² and MM29: DPH2.⁶³

NPPF 49 and the Draft Allocation as a Material Consideration

The Appellant's Position

- 4.6. The Appellant's position is that the draft policies of the emerging Local Plan should be accorded limited weight, in accordance with NPPF 49.
- 4.7. However, the fact that there is a draft allocation amounts to an independent material consideration which should be accorded substantial weight in its own right. The draft allocation follows (1) the Inspector's Interim Letter instructing a major increase in allocations;⁶⁴ (2) a recognition by the Council that it needs to allocate many more sites right now; (3) an extensive site selection process (documented in ID12-ID14). In short, there is a very pressing need to allocate the Appeal Site, and the LPA's detailed site assessment process confirms that the Appeal Site is exactly the right location to meet that need.
- 4.8. Main Modification 66 contains a number of draft requirements. The current Appeal proposal meets all of these: Policy Requirements 1-3 in respect of access and transport measures; Requirements 4-5 in respect of landscape and design matters; Requirements 6-7 in respect of ancient woodland and trees; Requirements 7-10 in respect of heritage; Requirement 11 in respect of drainage and Requirement 12 in respect of minerals. The exact wording of the requirements will be the subject of further consultation and representations. The Appeal Proposal cannot be assessed against all of these elements until adopted.

⁵⁸ ID12, p11

⁵⁹ ID12, p11

⁶⁰ ID12, p13

⁶¹ ID12, p17-18

⁶² ID12, p18

⁶³ ID12, p25

⁶⁴ CD7.5 Inspector Bore's Letter (published 26 March 2026)

- 4.9. For present purposes, what is highly material is that the Council considers that the Site is in a sustainable location (in transport terms) and can be delivered without any unacceptable harm in heritage or ecological terms. Mr Marshall's Note clearly Mr Russell's commentary in the ID18 Note.⁶⁵
- 4.10. For all these reasons, the draft allocation should be accorded substantial weight as a material consideration.⁶⁶

The Rule 6 Party's Position

- 4.11. The Rule 6 Party's position, by contrast, is not a correct application of NPPF 49. They seek, through Mr Greaves' Proof of Evidence to conduct a form of preliminary assessment against his list of draft policies,⁶⁷ whilst also assuming that the draft allocation will be deleted, thereby generating a conflict with draft policies DPC1 and DPH2.
- 4.12. For NPPF 49(a)-(c) purposes, whilst the Local Plan is advanced,⁶⁸ the text of the policies remains subject to consultation submissions (including in respect of MM66 itself). It is therefore not possible, until receipt of the Inspector's Report, to accord anything more than limited weight to the text of the individual policies.
- 4.13. The Rule 6 Party have no proper answer to the Appellant's broader submission that the fact of the draft allocation reflects a very detailed site selection process, in the context of a very substantial need as identified by the Inspector. Mr Russell's ID18 Note does not demonstrate any actual flaw with the site assessment methodology.
- 4.14. It will be recalled that in their original Updated Statement of Case, the Rule 6 Party proceeded under the misapprehension that the substantial increase in housing required might be delivered through the intensification of existing allocations: *"While there is a reappraisal ongoing, we understand the preference will*

⁶⁵ ID24

⁶⁶ CD9.1 Billington PoE, p41, [8.47]

⁶⁷ CD11.3 Greaves PoE, [114]

⁶⁸ Greaves XC and XX (Day 5)

*and should be to review and extend the yield of other existing sites rather than allocating additional sites.”*⁶⁹ That was plainly incorrect. The Council can only achieve numbers at the scale required by allocating many more new sites, especially in Category 1 settlements such as Haywards Heath. As Mr Billington noted, three major development sites have even been allocated in the National Landscape on the basis of exceptional circumstances. The Rule 6 Party have never properly acknowledged the significance of the scale of what must be allocated.

- 4.15. They have latterly moved to a submission that the removal of the 80 units would only amount to 10% of the headroom. However, Inspector Bore was clear that headroom is an essential part of the plan going forwards. As he observed: *“Adequate headroom ensures that a plan is resilient should, for example, delivery fall short one or more allocated sites.”*⁷⁰ Indeed, having a robust range of allocated sites in the past (albeit at a time when their housing requirement was significantly lower) has been a key reason the Council has, historically, had the robust supply that Mr Greaves points to. The Appeal Site is the largest such new allocation in Haywards Heath, larger than all the other three in the parish.⁷¹
- 4.16. The Council’s recognition in SSP8 Post Hearings – Site Selection Review – Final Conclusions at [19]: *“This has inevitably led to a focus on smaller, “oven-ready” deliverable sites being included”* reflects the singular importance at the present time of sites that are well-advanced and can deliver units rapidly within the next 5 years. A site that has already been the subject of an application and that is promoted by a housebuilder is particularly well-placed to come forward early.

“Speculative” vs “Plan-Led”

- 4.17. The Rule 6 Party’s further reserve argument is that the emerging Local Plan allocation should be preferred to the *current* application, on the basis that it is somehow better for the permission to be “plan-led” than the subject of a “speculative” application.

⁶⁹ CD11.2, p9

⁷⁰ CD7.5

⁷¹ MM77 (29) – Land off Snowdrop Lane - 50 dwellings; MM78 (1006) – Land to north of Lyoth Lane – 30 dwellings; MM65 (680) – Land north of Colwell Barn – 9 dwellings

- 4.18. Such a submission is plainly well out-of-step with NPPF 61 and the policy imperative to boost supply, and the Written Ministerial Statements (notably 12 December 2024). The Government clearly does not want applications which have reached the s78 appeal stage (especially those no longer resisted by the LPA) to be refused on the basis that they will be the subject of a draft allocation in a matter of months' time. Mr Greaves accepted that the application is not premature for the purposes of NPPF 50.⁷² There is no basis for refusing the application now purely to allow the Local Plan process to take its course. On the contrary, the fact of the draft allocation is a material consideration which strongly supports the grant of permission right now.
- 4.19. Put simply, there is simply no alternative to granting homes through the application and appeal process. This must occur in other deliverable locations, including Category 1 settlements with the highest sustainability credentials such as Haywards Heath.

⁷² Greaves XX (Day 5)

5) TRANSPORT

Whether the proposal would comply with the development strategy for housing with regard to access to services and facilities

5.1. The sustainable location of the Site has been explained in the Transport Assessment,⁷³ as further confirmed in Mr Marshall's Proof of Evidence⁷⁴ and Rebuttal Proof.⁷⁵

5.2. The sustainable nature of the Site has also been confirmed by West Sussex County Council (as the Local Highways Authority) and by Mid Sussex District Council (as LPA) on at least six occasions:

(1) First, West Sussex County Council, as Local Highways Authority confirmed their support for the proposal in their consultation responses (as concluded on 18 August 2025);⁷⁶

(2) Second, the Case Officer's Report to Committee (10 September 2025) then confirmed compliance at [13.21] with Policy DP21 (and no conflict with NPPF);⁷⁷

(3) The Council's Policy team then confirmed in their Site Selection documents (dated May 2026), the locational sustainability of the Site, most notably by reference to the Primary School, Health and Retail.⁷⁸

(4) The Council's further Sustainability Assessment Main Modifications Report (SAM) (July 2026) further confirmed locational sustainability in respect of access to the GP surgery, primary school, community facility, local facilities and retail provision;⁷⁹

⁷³ CD1.19, pp25-31 Section 6; Opportunities to Promote Sustainable Transport Modes

⁷⁴ CD9.2

⁷⁵ CD9.12

⁷⁶ CD4.26

⁷⁷ CD3.3, p66, [13.21] and see also summary p5, [2.24]

⁷⁸ CD7.4a, p263

⁷⁹ ID13, pp81-82 – as summarised in the Appellant's Note: ID24, pp4-5 2.1.14-17

(5) The LHA again confirmed via the Transport Statement of Common Ground (dated 1 June 2026) that: “5.2 *The site is in a location with good access to local amenities with a good network of paths and footways to help pedestrians navigate their way to amenities within a 10-minute walk.” (see also [5.3]-[5.9] with [5.8] confirming “Pedestrian connectivity via Public Right of Way Footpath 29CU is confirmed suitable for year-round use.”⁸⁰*

(6) Finally, the Council in its Master SoCG Addendum (16 June 2026), confirmed: “3.12 *It is agreed that the proposed development is in an appropriate location in terms of transport and accessibility.*”⁸¹

- 5.3. West Sussex County Council’s position on all transport and locational sustainability matters should be accorded great weight or considerable weight as the statutory consultee. It would require compelling reasons for any departure from their view (in line with very well-established authority in this field). That position is especially strong in this case, given the LHA’s extensive involvement from pre-application stage onwards,⁸² including no less than three consultation responses,⁸³ culminating in the detailed SOCG.⁸⁴

The Policy Framework: NPPF 110 and 115 and Policy DP21

- 5.4. Mr Marshall has explained extensively through his Proof and Rebuttal how NPPF 110’s test of “genuine choice” of transport modes, must both applied using the express wording and also in the context of the final sentence of that paragraph:

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

⁸⁰ CD8.5, p6, [5.2]

⁸¹ CD8.2, p5

⁸² CD14.5

⁸³ CD4.21 to 4.26

⁸⁴ CD8.5

115. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:

a) sustainable transport modes are prioritised taking account of the vision for the site, the type of development and its location;

b) safe and suitable access to the site can be achieved for all users;

- 5.5. It is not a requirement of NPPF 110, nor of NPPF 115(a) and (b), that all sustainable transport modes must be provided. Appropriate access by just one mode, notably walking, is entirely sufficient to make that a genuine choice, using the exact NPPF wording.
- 5.6. The Rule 6 Party's attempt to re-define "genuine" as "attractive" with the yet further addition of "for the majority of users"⁸⁵ is an attempt to read additional wording into the text that is not there. The text does not contain that term or require any specific level of modal shift. National policy is not written in such a prescriptive way in this respect.
- 5.7. Local Plan Policy DP21 merges various parts of the national policy tests but effectively provides for a similar pair of tests:

To meet these objectives, decisions on development proposals will take account of whether:

- The scheme is sustainably located to minimise the need for travel noting there might be circumstances where development needs to be located in the countryside, such as rural economic uses (see policy DP14: Sustainable Rural Development and the Rural Economy);

- Appropriate opportunities to facilitate and promote the increased use of alternative means of transport to the private car, such as the provision of, and access to, safe and convenient routes for walking, cycling and public transport, including suitable facilities for secure and safe cycle parking, have been fully explored and taken up;

- 5.8. The first limb recognises that sustainability will vary by location. The second limb recognises that the requirement is merely to explore and take up appropriate opportunities. All of this entails a broader judgement and is not fixed by the question of what is "attractive" to any kind of "majority". In any

⁸⁵ Russell XC and XX (Day 1)

event, as we shall see, when one examines Mr Russell's position on the quality of the walking route (via Footpath HAH-29CU), the Site is sustainably located even on his own interpretation of the test.

Services and Facilities

- 5.9. Mr Marshall and Mr Russell agree on the quality and range of services and facilities that can be reached from the Appeal Site, with the central dispute concerning (a) distance and (b) the nature of the route taken.
- 5.10. As a Category 1 settlement, Haywards Heath has an excellent range of services in walkable or cyclable distance, notably at the Walnut Park area.⁸⁶ Within the Walnut Park area, there is a Primary School, a Tesco Convenience Store, a GP and a Pharmacy, which can meet the day-to-day needs of most residents of the homes on the Appeal Site. There are also leisure facilities and two bus stops. Mr Russell agreed that this was a "very good" range of services, and indeed (absent the public transport element) would meet NPPF 110's requirements.⁸⁷
- 5.11. The Appellant's position is that these services are walkable such that residents of the Appeal Site can (a) educate their children at the primary school; (b) buy daily provisions at the Tesco; (c) visit the GP; (d) collect prescriptions/medication; and (e) socialise and congregate at the leisure facilities. This level, type and quality of the services is both excellent in its own right and entirely commensurate with the Appeal Development's size.
- 5.12. Within 15 minutes' walk from the Site is the Princess Royal Hospital, a major local employer, and a bus stop with over ten services per hour to a very wide range of destinations.⁸⁸
- 5.13. Haywards Heath Town Centre is within 2km (23 minutes walk) from the site access and only just over 2km from the midpoint.⁸⁹ It has a vast range of services

⁸⁶ CD8.5, p19: Figure 6.1

⁸⁷ Russell XX (Day 1)

⁸⁸ CD1.19, p29, Table 6.1

⁸⁹ ID2, p7, Table 1

that will have been observed and listed by Mr Marshall, including abundant retail and other destination facilities. There is clearly a range of destinations to make the walking trip worthwhile: Clarks, Card Factory, Holland & Barratt, Marks & Spencer, Next, Robert Dyas, and Superdrug.⁹⁰ The town centre also includes various retail, personal business, and leisure offerings, including banks, a range of chain and independent restaurants and cafes. In addition to the walkable distance of Haywards Heath Town centre, the Railway Station is within cyclable distance, providing regular rail services to Brighton and London. All of this represents an excellent range of services and facilities for the purposes of NPPF 110 and 115 and for the purposes of DP21.

Walking Distances

- 5.14. Faced with this sheer range of facilities, the Rule 6 Party have attempted to argue that either (1) residents would not walk the distances on the basis that they are “excessive”; or (2) they would not use Footpath HAH-29CU at “dawn, twilight and night” and would therefore have to walk the longer distance via Snowdrop Lane. It is important to note in that latter respect, just how narrow their position on NPPF 115(b) safety is.
- 5.15. We shall address the first question of overall distance and then turn to the specifics of Footpath HAH-29CU.
- 5.16. Mr Marshall’s evidence is that all distances to the Walnut Park area will be within 800m if measured from the site access and either within or just above 1000m if measured from the site mid-point.⁹¹
- 5.17. The CIHT guidance Table 3.2 “Preferred Maximum” is up to 2000m for Commuting/Schools and 1200m Elsewhere.⁹² However, the CIHT Planning for Walking guidance⁹³ states that about 80% of journeys shorter than 1 mile (c. 1600m) are made wholly on foot. MfS also refers to 800m as a ‘walkable

⁹⁰ CD9.2 Marshall PoE, p18, [5.3.20]

⁹¹ ID2, p7, Table 1

⁹² CD19.10, p52

⁹³ CD19.7, p4, [2.1]

neighbourhood’, but does not discount walking trips as being viable for up to 2km.⁹⁴ The 2024 National Travel Survey (NTS) indicates that the average walk trip distance was 1,120m; and that 78% of trips under 1 mile were completed by foot.⁹⁵

- 5.18. Appeal decisions have also confirmed that the use of a strict 800m cut-off is inappropriate, and that a higher, or more flexible, approach must be taken:

(1) Horsham, DL40-41, noting how few destinations outside London would be within a 800m walking distance;⁹⁶

(2) Maldon, DL36, emphasising the use of a 2km walking distance and noting the Manual for Streets’ observation that 800m is not upper limit and that walking offers the greatest potential to replace short car trips, particularly those under 2km.⁹⁷

- 5.19. Mr Russell further accepted that there are “no hard and fast rules” and properly accepted that qualitative aspects must be taken into account in individuals walking further, in line with the CIHT Guidance.⁹⁸

- 5.20. In summary, Mr Marshall’s position should be preferred that individual site residents will walk considerably further than 800m, particularly given (1) the quality of the footways within the Site itself (2) the quality of the footways and pedestrian infrastructure beyond all the way up to the Walnut Park area, (including Footpath 29CU (as upgraded)).

⁹⁴ CD19.1, p46, [4.4.1]

⁹⁵ CD9.2 Marshall, p10, [4.1.7]

⁹⁶ CD12.20 Appeal Decision 3355546 Horsham Golf Club, Denne Park, Horsham (11 July 2025), DL40-41

⁹⁷ CD12.25 Appeal Decision 6004910 Land west of the Cemetery, London Road, Maldon, Essex, DL36

⁹⁸ CD19.7, p16, [16.4]: “However, the propensity to walk or cycle is not only influenced by distance but also the quality of the experience; people may be willing to walk or cycle further where their surroundings are more attractive, safe and stimulating.”

The Section of Footpath 29CU

- 5.21. For Footpath HAH-29CU, the sole issue in dispute is whether the short section (measuring 175m) marked purple on Mr Russell's plan⁹⁹ is suitable to enable pedestrian access, once it has been re-surfaced. Mr Marshall explained that this would be a compacted limestone surface with timber edging to retain the material. He explained that this was an all-weather smooth surface and was a standard PRow treatment.¹⁰⁰ The type of resurfacing of the footpath has been expressly requested by the LHA. It will ultimately reduce the frequency of maintenance required, by inhibiting seasonal vegetation growth.¹⁰¹
- 5.22. This access via the Footpath provides the most direct route to majority of services and facilities, and a walkable distance to the Primary School.
- 5.23. The site visits will have confirmed the nature of that path, and that it provides an entirely appropriate pedestrian route towards Walnut Park from its entrance immediately opposite the Site. As noted already, it is relatively short (175m). The path is well over 2m in width. It has close wooden boards along its sides. Houses, at least at first floor level can clearly be seen through the middle section. The route is also straight, with good visibility ahead throughout its route.
- 5.24. Mr Russell therefore accepted (as he had to) that the majority of trips to the school, GP, pharmacy and Tesco would all take place in daylight hours.¹⁰² Accordingly, it is entirely safe and appropriate for those trips. Mr Marshall confirmed that this would be the vast majority of trips.¹⁰³ The trips at "dawn, twilight and night" form a very small minority of such trips. It should further be recalled that the LHA, who maintain the path, did not require lighting.
- 5.25. Once Footpath 29CU is approached correctly as a genuine choice for walking during the vast majority of relevant trips, it is clear that the Site is entirely sustainable for the purposes of NPPF 110 and 115 and DP21.

⁹⁹ CD11.4 Russell PoE, p15, Figure 4.1

¹⁰⁰ Marshall XC (Day 2)

¹⁰¹ Marshall XC (Day 2)

¹⁰² Russell XX (Day 1)

¹⁰³ Marshall XC (Day 2)

- 5.26. To the extent that some individuals may choose to go via Snowdrop Lane outside daylight hours, this merely underscores the fact that there are range of pedestrian routes from the Appeal Site.

Cycling

- 5.27. Both the Appellant and the Rule 6 Party position agree on cycling distances.
- 5.28. The Appellant's position (as explained by Mr Marshall) is that the Site would provide good access to the Town Centre on the main road.
- 5.29. Mr Russell also fairly confirmed that he himself had cycled this very road and was a confident cyclist. The road therefore cannot sensibly be described as "dangerous" as the Rule 6 Party attempted in opening, and certainly no accident data was presented to that effect.
- 5.30. CIHT Planning for Cycling states that 80% of cycling trips are less than five miles and 40% less than two miles, but also that majority of trips by all modes are short distances (67% less than five miles, 38% less than two miles).¹⁰⁴
- 5.31. Ultimately, Mr Marshall's position should be preferred. He has explained cogently how drivers are courteous locally and that the route does feel safe for a confident or regular cyclist. One should not assess site suitability purely by reference to an inexperienced cyclist. Mr Marshall's position is that the route up to Walnut Park is cyclable, but the walk is sufficiently short that this may not be necessary. The route to Princess Royal Hospital and thereafter towards the Town Centre is also cyclable.
- 5.32. Above all, the LHA never requested any cycle infrastructure improvements and accordingly determined the route is acceptable for the level of anticipated use.

¹⁰⁴ CD19.8, p4

Bus Service

- 5.33. The Appellant and the Rule 6 Party agree that the Northlands Avenue bus stop itself (at 770m from the site access and 1075m from the midpoint) is of good quality.¹⁰⁵ Equally, the Princess Royal bus stop has an extremely good range of destinations, at a very good frequency.¹⁰⁶
- 5.34. Whilst a distance of 400m is generally proposed for bus stops, the PTAL guidance does use higher distances. Ultimately, the key consideration should be both the regularity of the service and the ultimate destination of such journeys.¹⁰⁷ For those walking to Princess Royal Hospital, they will be able to pick up a bus very rapidly which can in turn take them to the Town Centre or a vast range of other destinations beyond, including Brighton and Crawley.

Railway Station

- 5.35. Both parties are agreed that Haywards Heath Station provides an excellent service, with up to 20 services an hour. The distance is cyclable (as explored above). The sole area of difference is therefore limited to whether the DfT's Better Connected document expressly supports developments with a "park and ride"-type component, including through low emission and zero emission vehicles.
- 5.36. Mr Marshall's position, by reference to headings (4) and (5) is that DfT policy supportive:

4 Park-and-ride schemes should be deployed with cars, motorcycles or cycles being used for first and last mile journeys where needed. Car sharing schemes and car clubs should be readily available, supporting a shift to a more circular economy for vehicles.

5 Use of electric vehicles should become the norm for journeys that people take using a car, with reliable charging infrastructure readily available.

- 5.37. The clear message is that the Site is well-located to ensure that longer journeys can be taken by a sustainable transport mode – even if the first element is taken

¹⁰⁵ ID2, p8, [5.8]

¹⁰⁶ CD1.19, p29, Table 6.1

¹⁰⁷ Marshall XC (Day 2)

by car. If an electric vehicle is used (and all dwellings will have an electric charger installed) then the whole journey will be by sustainable transport modes.

Connectivity Tool

- 5.38. Once the above “on the ground” assessments are considered, the limitations of the Connectivity Tool become very clear. It does not have any policy status, and this is not conferred by a brief reference in a Written Ministerial Statement from the DfT only.¹⁰⁸
- 5.39. Mr Marshall made clear the significant practical limitations of the Tool,¹⁰⁹ and this is confirmed by the guidance itself in its own terms: “*The score should be used alongside local evidence, site knowledge and professional judgement.*”¹¹⁰ As Mr Russell accepted,¹¹¹ the Connectivity Tool does not assess the quality of routes, it simply compares the location against the most well connected places in all of England and Wales (which is inherently city-centre biased). The addition of the Connectivity Matrix does not alter this, by providing a yet further comparison of similar “types” of location.
- 5.40. For all these reasons, the attempt to compare the site with others of a similar type is of no assistance in this case. As the Inspectors in the Langho¹¹² and Maldon¹¹³ Appeal Decisions both made clear, the Connectivity Tool was not to be accorded any real weight, and whilst not express on the face of the decision, it is clear that both Inspectors accorded it limited weight. In Langho, a score of 53 was not a basis for refusal.¹¹⁴

¹⁰⁸ CD16.5

¹⁰⁹ CD9.12, pp18-20

¹¹⁰ CD19.15

¹¹¹ Russell XX (Day 1)

¹¹² CD12.24 Appeal Decision 6002485: Land south of Longsight Road, Langho (11 June 2026)

¹¹³ CD12.25 Appeal Decision 6004910 Land west of the Cemetery, London Road, Maldon, Essex (6 July 2026), DL41: “*I find neither interpretation very helpful as my assessment of accessibility is focused on the site rather than a comparison with other land in the district, and includes the accessibility improvements proposed as part of the scheme which do not feature in the connectivity tool output.*”

¹¹⁴ CD12.25, DL14

Summary

- 5.41. The Appeal proposal is therefore in general accordance with the settlement hierarchy under DP4 and DP6, in being located at or contiguous to Haywards Heath. It fully accords with NPPF 110 and 115, and with Policy DP21 (as explored above). Future residents would have entirely appropriate access to facilities and services. As the emerging Local Plan exercise has demonstrated, there is a clear need for sites to come forward outside settlement boundaries and outside the town centre on deliverable greenfield sites.
- 5.42. Mr Marshall's evidence has therefore set out in very full terms how the Site is either sustainable in its own right and will be made sustainable, by offering a genuine choice of transport modes in accordance with NPPF 110 and NPPF 115.
- 5.43. There is no merit to the Rule 6 Party's varied submissions (a) that the distances are "excessive"; (b) the pedestrian and cycle infrastructure is unsafe/inadequate. This is clearly a sustainable location where future residents will have a genuine choice of travel modes to meet their day-to-day needs, as testified by the Council's and the LHA's support, and by the draft allocation of the appeal site.

6) ANCIENT WOODLAND

- (a) Whether there is ancient woodland on site and**
- (b) The effect on any such woodland should it be present on site**
- (c) Whether there would be any impact on ancient woodland off-site**

National Policy

- 6.1. The NPPF defines ancient woodland strictly:

Ancient woodland: An area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites (PAWS).

- 6.2. Mr Forbes-Laird explained fully how the presence of ancient woodland should only be determined in accordance with the methodology in the Natural England Ancient Woodland Inventory Handbook.¹¹⁵ This is the approach generally agreed by all specialists in this field. This being so, the Rule 6 Party have departed from both the NPPF definition and the Handbook.

The Rule 6 Party's Case

- 6.3. The first time that the ancient woodland allegation arose was on 19 May 2026.
- 6.4. In the Committee Report, the Case Officer expressly stated at [12.178]: "*The Ancient Woodland is not within the site*"¹¹⁶ Later on the Council confirmed in the original SoCG at [5.43]: "*It is common ground that the proposed development does not give rise to any adverse impacts to irreplaceable habitat trees or woodland.*" Neither the Council's Ecology (Place Services) nor arboricultural consultees referenced the presence of Ancient Woodland within the site.
- 6.5. The Rule 6 Party did not set out their case on ecology at time of the CMC. It was only in their Updated SoC (on 19 May 2026) that they first alleged, and only in extremely vague terms, that there might be ancient woodland on site. They

¹¹⁵ CD21.2

¹¹⁶ CD3.3, p50

provided no cartographic support for this suggestion, and did not specify any locations. No reference was made to the Handbook either.

- 6.6. The Appellant then informed them at least twice that there was no cartographic evidence of ancient woodland.
- 6.7. It was not until Proofs of Evidence were submitted on 30 June 2026, that the Rule 6 Party set out their three ancient woodland points.
- 6.8. None of their three points in respect of (a) the central/eastern overgrown hedgerows; (b) the north-eastern boundary area; (c) the off-site drainage matters is methodologically correct or based on a correct approach to the NPPF definition.
- 6.9. None of the Rule 6 Party's various attempts to bring NPPF 193c into play are correct. There will be no loss of or deterioration of ancient woodland as a result of the Appeal proposal.
- 6.10. We shall address all three elements in turn, starting with some preliminary observations on the Handbook's methodology.

The Use of the Natural England Handbook for Decision-Taking

- 6.11. Mr Forbes-Laird set out comprehensively both in his Proof of Evidence why the Handbook's complete methodology should be used in decision-taking, and the full Phased process should be followed. There is no other published methodology in existence, and certainly none from Natural England.
- 6.12. Mr Carpenter accepted in response to Inspector questions that the Handbook should be accorded a "high weight". His repeated answers in cross-examination that certain elements were only relevant to carrying out an exercise at a "County" level were based on just a single line of the Foreword and in all the circumstances demonstrated a striking inconsistency and selectiveness in citation.

- 6.13. As Mr Forbes-Laird illustrated, the Phased approach must be applied in a systematic way, with a particular focus on the Epoch 1 map as the agreed starting point,¹¹⁷ given Natural England's observation that these are some of the most accurate maps ever produced. Mr Forbes-Laird made clear that applying the methodology correctly, there was no need to go beyond Phase 1, but out of an abundance of caution he had proceeded to Phase 2 in examining the later maps and aerial photographs, which also reveal no ancient woodland beyond that already mapped by natural England.¹¹⁸

Continuity

- 6.14. At the outset, it is important to note that the NPPF requires continuity, as the NPPF Annex 2 definition makes very clear: "continuously wooded". There must be both (1) presence and (2) continuity of woodland throughout. If, at any material time an area does not comprised woodland, then it cannot be classified as ancient woodland.
- 6.15. This simple definitional point is not reflected in any of Mr Carpenter's various renderings of the test both in this Proof of Evidence and orally. In cross-examination, he first dismissed the NPPF definition as a "summary", and sought to deflect from the obvious need for continuity of the relevant habitat typology. Mr Forbes-Laird correctly described this as a "unique and fascinating approach" that was "unknown to specialists in the field". In reality, the "continuously wooded" test is not made out through retaining "ancientness" in the soil, nor by the presence of a hedge (it barely needs saying that this is a wholly different habitat typology). Moreover, and fundamentally in this case, there must be positive evidence of continuous coverage from 1600AD right the way through to the present day.

1600-1840

- 6.16. There is no cartographic evidence of ancient woodland existing at either the central hedgerows or in the north-eastern boundary. That is a very significant

¹¹⁷ CD21.2, p17, Section 3.1 Required Data: Epoch 1 Map

¹¹⁸ CD21.2, p16

gap of almost a quarter of a millennium in the cartographic record. It has never properly been addressed by Mr Carpenter beyond his general reference to a history of “assarting” in the landscape. The existence of areas of wood within the Site cannot be shown to the required standard (the balance of probability) to date back to 1600AD. The Appellant has provided extensive further evidence that the relevant areas were also not wooded beyond that date of 1840. However, it is vital to appreciate that the Rule 6 Party’s entire case arises in the context of a major evidential gap for a period of over half of the requisite 426 year period.

The Central/Eastern Hedgerows

- 6.17. Mr Carpenter’s first map is from 1795 and this does not show that the central/eastern hedgerows to be wooded at all.¹¹⁹
- 6.18. The 1813 Map relied upon by Mr Carpenter is more detailed than 1795. Again, this shows no woodland in this area either.¹²⁰
- 6.19. Remarkably, despite this cartographic silence, Mr Carpenter sought to maintain that these maps somehow supported his contention that woodland was present within the body of the site in this period. According to Mr Carpenter, even no evidence is somehow positive evidence.
- 6.20. The 1840 Tithe Map records the existence of an area termed “Wood”.¹²¹ However, as Mr Carpenter accepted and Mr Forbes-Laird also observed, it is not possible to date that specific element to 1600AD, rather than merely having grown in, say, the previous two decades (Carpenter) to three decades (Forbes-Laird).
- 6.21. Mr Forbes-Laird also noted that the existence of the hedge on the western boundary of the Tithe Map woodland could be explained as a boundary feature to that area. It did not indicate that the hedge should be treated as part of that area. That is readily apparent on the ground.

¹¹⁹ CD11.5 Carpenter, p12, [3.2.19]

¹²⁰ CD11.5 Carpenter, p12, [3.2.20]

¹²¹ CD11.5 Carpenter PoE, p [3.2.1]

6.22. One then turns to the 1874 Epoch 1 Map,¹²² which is where the Handbook expressly requires the investigation to begin. These maps are produced to a highly accurate standard. The Epoch 1 Map very clearly records a hedgerow as a single line, and no woodland. This continues consistently through 1896,¹²³ 1938¹²⁴ and 1954.

6.23. As the Handbook notes:¹²⁵

“a narrow or simple hedge shown on Epoch 1 that has expanded to become a thick strip of scrub or woodland on the current aerial photograph should not be assessed as woodland for Epoch 1 (and therefore not treated as long-established woodland)”,

6.24. The aerial photographs from 1940, 1944 and 1947 simply complete the picture and confirm the accuracy of the Epoch 1-3 maps. The hedgerow shows no shadow of any trees and is clearly a thin feature, measuring well under 10m. Mr Carpenter declined to accept this obvious visual evidence, stating that he “could not say” what the photographs show. The Appellant submits that they show that Mr Carpenter is wrong and he was failing to accept what most neutral observers would say was obvious, further revealing the flaws in his approach.

6.25. Bringing all of these elements together, the central overgrown hedgerows do not qualify as ancient woodland, as the areas they occupy have not been continuously wooded for the requisite period.

The North-Eastern Boundary Feature

6.26. The above chronology applies in a similar way to the north-eastern boundary feature.

6.27. The 1795 map does not record any wood in that area and nor, notably does the 1813 map.

¹²² CD9.3a, Forbes-Laird Appcs p13

¹²³ CD9.3a, Forbes-Laird Appcs p14

¹²⁴ CD9.3a, Forbes-Laird Appcs p13

¹²⁵ CD21.2, p41

6.28. The 1840 Tithe Map records an area termed “Shaw” for the first time. However, there is no positive evidence that this existed materially earlier than that date, and certainly it was not recorded on the more detailed 1813 map as just noted.

6.29. The Epoch 1 Map is key. It only identifies a double line of trees in that location. The Handbook expressly instructs that such a feature should be recorded as woodland at Phase 1. As the Handbook makes clear, the Epoch 1 cartographers took care to identify the individual bases of the trees and to map them to within approximately 1 metre. As the Handbook explains:¹²⁶

*“Rows of single, surveyed trees (see 5.2.1.1.1), even if confined both sides by a boundary feature should not be treated as woodland. Avenues - i.e. **double rows of surveyed tree symbols** with or without a routeway marked in between - should be **excluded** except where in the context of a larger containing polygon of long-established woodland, parkland or wood-pasture”*

6.30. The referenced section 5.2.1.1.1¹²⁷ confirms under “Keys and Accuracy”

*“ A very detailed map, which shows enclosed woodland annotated by tree type (conifer, broad-leaved or mixed), coppice and scrub as well as **individual trees within fields and field boundaries**, including boundary marker trees. Features within woodlands may be shown and the nature of external woodland boundaries – whether a formal enclosure or not – is often discernible.... Larger individual trees shown in parkland and on boundaries have been shown to closely correspond to individuals on the ground... **Trees** were shown unless they obscured boundary or other important symbols. The base of the plotted trunk marks the point of the tree to within one metre”.*

6.31. The Epoch 1 map, on a proper interpretation as advised by the Handbook, makes clear that the north-eastern boundary simply contained a line of trees and not a wood.

6.32. The Rule 6 Party, through Mr Carpenter and in cross-examination of Mr Forbes-Laird sought to make something of the 1896 map’s dashed line. However, as Mr Forbes-Laird made clear by reference to the Handbook, the dashed line simply connotes ownership. As the Handbook again makes clear:

¹²⁶ CD21.2, p41

¹²⁷ CD21.2, p53

“The Epoch 1 map is possibly the best of all sources available for distinguishing between thick hedgerows and narrow woods. In the latter the tree or shrub symbols are usually drawn with an indication of the extent of land occupied, typically a solid or dotted line. Even very small informal patches of unenclosed scrub will often carry a brace mark which shows to which larger parcel of land they belonged. These map features are valuable for deciding on whether a linear feature should be considered as woodland or not”.

- 6.33. Applying the approach in the Handbook’s Figure 5, the 1874 Epoch 1 map shows no dashed line, only the aforementioned single trees.
- 6.34. The 1896 map continues to show individual trees, not woodland symbols (see by contrast the Handbook’s Figure 6).¹²⁸
- 6.35. Mr Forbes-Laird made clear, through the introduction of the 25 inch Epoch 2 map that the extent of the brace marks to the eastern side, whilst retaining individual tree markers, demonstrated that the dashed line did not show the existence of a wood in that location, but was better explained by broad homogeneity of land use. When examined closely, as Mr Forbes-Laird explained, the absence of any depiction of secondary vegetation by (for example) stippling between the individual trees, confirms the surveyor’s understanding that only mature trees were present behind the dashed line.
- 6.36. The 1938 Map shows a dashed line but little further.
- 6.37. By 1940, however, the feature is recognisably a simple hedgerow, with just two singular trees. The 1944 aerial photograph is the clearest in this respect. The 1947 aerial photograph shows most of the growth on the northern side, i.e. within the garden of Colwell House, plus the crowns of the two individual trees referred to already.
- 6.38. By 1954 only a simple hedgerow is shown on that year’s OS map, the first in the decimal series.

¹²⁸ CD21.2, p33

- 6.39. In summary, the north-eastern boundary feature has not been positively shown to have been continuously wooded for the whole period. The four key factors are as follows: (1) no evidence prior to 1840 (indeed contradictory evidence in the 1795 and 1813 maps); (2) Epoch 1 mapping showing merely a line of trees; (3) the Epoch 2 and 3 maps are consistent with the Epoch 1 map position; (4) the aerial photographs show a simple hedge with no more than 2 trees.

Ancient Woodland Indicator Species and Botanical Surveys

- 6.40. The Rule 6 Party's case has never been properly grounded in the cartographic record. It has been premised on a complete misreading of the Handbook and established methodology to the effect that the identification of ancient woodland "requires" botanical surveys. The Handbook does not say this, indeed expressly warning against such an approach.¹²⁹ Forstal Shaw is an entirely different example, where it was the Epoch 1 map that was ultimately relied upon, rather than unofficial "generic" maps.¹³⁰
- 6.41. The Boughton Lane Decision confirmed this.¹³¹ The Rule 6 Party's entire position on site access was therefore wholly misconceived. They did not provide a single map to the Appellant explaining what they would survey and why. Mr Carpenter never contacted the Appellant and never issued a site survey brief. The entire premise of their position that AWI survey was "required" was wrong.

Precautionary Principle

- 6.42. Turning finally to the precautionary principle, it is important to note that this is not part of the NPPF definition. That definition requires a positive finding that a site has been continuously wooded for the full period. That must be established on the conventional civil standard of proof, the balance of

¹²⁹ CD21.2, p106

¹³⁰ CD21.2, p154

¹³¹ CD21.23 2227839 Land at Boughton Lane, Loose, Maidstone, Kent (3 March 2016), DL20 and IR257 and 259 see also 9.3 Forbes-Laird PoE, pp16-18, [4.5.2]-[4.6.5]

probabilities. This is confirmed in terms in the Handbook by Natural England.¹³²

- 6.43. The precautionary principle is only used in the Handbook in a very specific and limited sense:

“Where there are contrary indications within the evidence base for a site then the reliability of each source must be carefully considered and the most likely and most defensible explanation for the whole evidence base determined. Inevitably situations do arise where indications of antiquity and counter indications are too finely balanced to judge beyond doubt and then the precautionary principle must be applied pending further evidence.”

- 6.44. This is not a “finely balanced” case. The counter indications of any antiquity on both the central/eastern hedgerows and the north-eastern boundary feature are overwhelming. In this regard, Mr Carpenter’s assertion during evidence in chief that “there was no contrary evidence” to his hypothesis was wholly inaccurate.

The Ancient Woodland Off-Site

- 6.45. Mr Carpenter introduced the potential impact on ancient woodland off-site only with his Proof of Evidence. It is plainly not pressed with any conviction by the Rule 6 Party because there is no merit in it. As the Drainage Note by Mayer Brown¹³³ demonstrates, the SuDS system has been designed to match the existing position in terms of surface water run-off. The Standing Guidance permits SuDs to be constructed within the buffer area and there will be no impact on the water table.¹³⁴

Summary

- 6.46. In summary, there is no ancient woodland on site and would not be any impact on ancient woodland off-site. There is therefore no NPPF 193c issue in this case and NPPF 11d(i) cannot be engaged on this basis.

¹³² CD21.2, p102

¹³³ ID1

¹³⁴ CD21.1, p9

7) ECOLOGY

The effects on biodiversity interests including:

- (a) Suitability of the reptile receptor**
- (b) Effect of proposals on bats**
- (c) Effect of proposal on BNG**

The Application and Places Services' Consultation Response

- 7.1. The Application was supported by an Ecological Impact Assessment ("EcIA") and a Habitats Monitoring and Management Plan ("HMMP") which was progressively updated through the application in response to Places Services and the various third party consultation responses.¹³⁵
- 7.2. Place Services agreed with the content of the EcIA and HMPP and recommended that permission be granted.¹³⁶ The Council's Officers concurred in the Officer's Report at [12.216].¹³⁷ There was no ecology RfR. The Council's original SoCG further confirmed this position.¹³⁸

The Rule 6 Party's Case

- 7.3. On 19 May 2026, the Rule 6 Party originally set out three issues in its Statement of Case, confined to (1) reptiles; (2) biodiversity net gain and (3) bats, with only passing reference to "priority habitats".

Biodiversity Net Gain

- 7.4. The Rule 6 Party's position on BNG has now reverted to that set out in its Statement of Case at [3.27]: *"The R6 accept the Appellant will likely be able to achieve the biodiversity gain objective and that it will be corrected so the mandatory 10% post-*

¹³⁵ EcIA (CD2.8 (April 2025) and CD 2.20a (July 2025)) and HMPP (CD2.8 (April 2025) and CD2.15 (June 2025)) and the earlier documents (CD1.14 and CD1.15 (January 2025))

¹³⁶ CD4.3

¹³⁷ CD3.3, p54, [12.216]

¹³⁸ CD8.1, pp23-24, [5.63]-[5.67]

development value is achieved".¹³⁹ As the concluded SoCG (ID17) records, the Appeal Proposal will accord with Policy DP38, limbs (1) and (2) in full and will deliver the statutory 10% net gain.

- 7.5. Mr Carpenter's various references to both pre-development values and post-development values are not accurate, and strongly disputed by the Appellant. However, in light of the position recorded in the agreed statement, these are not addressed further here.

Reptiles

Assessments and Population Size

- 7.6. Mrs Barratt explained comprehensively why the reptile presence/absence surveys were entirely in accordance with the applicable guidance under Froglife Advice Sheet 10 (1998),¹⁴⁰ both in respect of temperature and cloud conditions. All of the temperatures were towards the upper end of the 9-18 degree range and she set out clearly why the bitumen refugia (refuges) had been laid in transitional zones at the edge of the site.¹⁴¹ Mrs Barratt was clear that she did consider that the temperatures were sufficient for the refugia to warm up. In any event, different species favour different weather conditions and covering a variety of different conditions is beneficial for detecting different species (as shown by the eventual results).
- 7.7. EcoSupport clearly set out a very substantial number of refugia, widely dispersed across the Site's transitional zones. The height of Mr Carpenter's complaint was that 5 more could have been laid in the middle of three parcels within the Site. However, Mrs Barratt has explained this was not necessary or appropriate given the nature of the grassland in those areas. Indeed, her view is that it was incredibly unlikely that vagrant reptiles would be found in that area.

¹³⁹ CD11.2, p8

¹⁴⁰ CD20.7, p3

¹⁴¹ CD2.20a, p45 Figure 17

- 7.8. The Rule 6 Party's complaint on assessment therefore goes nowhere. The population was accurately assessed and as Figure 17 demonstrates, there are already common lizards in the very area that will form the receptor locator, with slow worms and grass snake in similar locations.

Receptor Conditions

- 7.9. Mrs Barratt has further explained why the receptor size is appropriate at 1.117ha and that it includes areas which provide both warmth and shelter, exactly in line with the Reptile Habitat Management Book.¹⁴² As she explained, the ecotone consists of transition habitats between woodland and grassland where the grass is already longer. There is no fixed quantitative measure in respect of light/shade and Mrs Barratt's approach is to be preferred.
- 7.10. Mr Carpenter's criticisms in terms of "carrying capacity" were vague, as there is no external metric beyond that in the Standing Guidance.¹⁴³ The Appeal Proposal will meet each of the Standing Guidance requirements, as the receptor site has all of the required features:

(1) It is close to the development site (within or adjacent), and certainly within the same LPA;

(2) It is at least the same size as the habitat that will be lost;

(3) It will serve the same function as the habitat to be lost and will include hibernation features, including two hibernacula which is an enhancement;¹⁴⁴

(4) It will provide a similar habitat to the area that will be lost, including a water body in the form of the SuDS;

(5) It will be safe from future development and managed in the long term.

¹⁴² CD 20.13, p23, Section 5.1

¹⁴³ CD20.17, pp5-6

¹⁴⁴ CD2.20a, p73, [6.4.4]

- 7.11. The EcIA sets out in detail the intended approach to reptile re-location at Section 6.4.¹⁴⁵ This will be undertaken with a further Reptile Management Strategy which will in turn be approved and supervised by Place Services.

Management

- 7.12. The Rule 6 Party's objections on the basis of grass management appear to have been framed by reference to what is "ideal" not whether it is "appropriate" or "acceptable".¹⁴⁶ The Rule 6 Party have not established that there will be any harm, and indeed their position on cutting is ultimately contradicted by the Reptile Habitat Management Handbook. That document expressly states at Section 7.2 "Cutting and Mowing", page 32:¹⁴⁷

"On sites where botanical interest requires cutting during the reptiles' active season, then survey should be carried out to identify any foci to exclude these areas from the cut. The remainder of the site should be cut at intervals staggered over several weeks, so that there is always some vegetation cover available. The cut should be made as high as possible (minimum 15 cm)"

- 7.13. The HMMP confirms at Section 5.3.1, page 16,¹⁴⁸ that all cuts will to be a height of least 300mm. There will also be a phased approach to vegetation clearance conforming to the Handbook recommendations. Mrs Barratt made clear that cutting to ground level was not envisaged as likely at all and would only take place following checks for reptiles.

Predation

- 7.14. Mrs Barratt confirmed that the receptor location will comply with the Handbook in respect of both cat predation.
- 7.15. The Handbook recognises this as a general issue (including cats from existing development) and recommends the provision of refuge habitat, including bramble and gorse. As Mr Carpenter accepted, the receptor location will

¹⁴⁵ CD 2.20a, pp 71-75, Section 6.4

¹⁴⁶ Carpenter XX (Day 3)

¹⁴⁷ CD20.13, p32

¹⁴⁸ CD2.15, p16

provide a variety of forms of refuge: the hibernacula, the long tussocky grass itself and beyond this the wider woodland off-site (thereby confirming the site suitability).

Deer

- 7.16. The issue of deer entering the receptor and eating the vegetation there, can be surrounded by deer fencing – a matter for detailed design and potentially conditions at that stage. This could be installed in line with the BNG monitoring regime.

Summary on Reptiles

- 7.17. For all these reasons and those set out in Mrs Barratt's Rebuttal, the proposed reptile receptor is suitably located and was correctly approved by Place Services. Their professional judgement should be accorded great weight, and there are no compelling reasons not to follow their position.

Bats

Proposed Lighting Condition

- 7.18. The Rule 6 Party's original objection in respect of lighting and the impacts of barbastelles was correctly withdrawn, in agreement that a suitably worded condition (in exactly the form proposed) will ensure appropriate light levels and allow for 10m dark corridors.
- 7.19. The remaining objections are essentially two-fold, very narrow and based on either a misreading of the applicable guidance or a misunderstanding of what was done and how construction works will actually take place.

Ground-Level Tree Assessment

- 7.20. Mr Carpenter's primary complaint is that the original ground level tree assessments (GLTA) were limited to visible roosts. The short answer to that is

that all of the trees were low enough that potential roost features (PRFs) were visible from ground level and there was therefore no need to undertake further assessment, including through a cherry-picker.¹⁴⁹

Section Felling

- 7.21. Mr Carpenter's second complaint is that the EcIA refers to section felling, immediately following checks during the construction phase. As Mrs Barratt made clear, there is no basis to consider that the trees are unsafe to climb and the PRFs will be capable of being accessed. Accordingly there will be no need for emergence surveys.¹⁵⁰ The proposal for immediate felling is therefore entirely in line with the Bat Mitigation Guidelines flowchart at Figure 6.3.¹⁵¹
- 7.22. Moreover, all inspections will take place by someone suitably licenced and emergence surveys will be required by the licenced ecologist if the PRFs are considered of higher importance (PRF-M)¹⁵² or if the ecologist is not satisfied that they can thoroughly inspect the feature. This is fully compliant with the Bat Survey Guidelines: PRF-Is do not require further surveys and further surveys should only be completed for PRF-Ms.¹⁵³

Summary on Bats

- 7.23. For all these reasons, there will be no unacceptable impact on bats and no breach of DP38.

Priority Habitat (Line of Trees)

- 7.24. Mr Carpenter sought to argue that there would be a breach of DP38's fourth limb on the basis that the "line of trees" is "lowland mixed deciduous woodland".

¹⁴⁹ Barratt XC (Day 4)

¹⁵⁰ CD20.13, p64 and CD20.3

¹⁵¹ CD20.3, p88, Figure 6.3

¹⁵² CD20.3, p64, Table 6.2

¹⁵³ CD20.3, p64: Table 6.2 PRF-I is suitable for individual bats and PRF-M is suitable for multiple bats

- 7.25. Mrs Barratt set out her response in full in evidence in chief.¹⁵⁴ In essence, the Appellant has recorded the status of the feature using the BNG metric, but it is clear that the features are not woodland, drawing on all of the application findings, including consideration of the Arboricultural Assessment¹⁵⁵ and Mrs Barratt's considerations on the ground that the feature does not measure 5m in width. She had personally been on site and measured that width.
- 7.26. The EcIA, [4.2.3]¹⁵⁶ explains that the habitat is 'line of trees' denoted by secondary habitat code "33". This code is in turn explained in the UK Habitats Guidance.¹⁵⁷ "Line of trees" was removed as a 'primary' habitat code and made a 'secondary' habitat code (33). This meant that the only allowable 'primary' code is 'w' (woodland) (level 1). The UK Habitats 2.0 records: coding and architecture:¹⁵⁸ *"it is mandatory that each recorded habitat parcel (which can be a point, line or polygon using geospatial vector data terminology) is allocated a single Primary Habitat Code and to record the presence of all essential secondary code features associated with habitat parcels"*.
- 7.27. The HMMP Post-Development Value Plan¹⁵⁹ should not be used to measure or scale the width of the line of trees. The label accorded is simply a product of the real practical limitations of the BNG metric. As the key shows, the Appellant's position has always been that this is a line of trees, and not woodland.

Dormouse Mitigation Strategy

- 7.28. It is convenient at this point to respond to Mr Whaley's submission on Day 3, although this included no analysis or commentary on the application documents. It was not supported by the Rule 6 Party at all.

¹⁵⁴ Barratt XC (Day 3)

¹⁵⁵ CD1.29

¹⁵⁶ CD2.20a, p30

¹⁵⁷ CD 20.11, iii, Table 1.1

¹⁵⁸ CD20.11, page ii

¹⁵⁹ CD20.15, p36

7.29. As Mrs Barratt explained, a dormice mitigation strategy was drawn up during the application phase¹⁶⁰ and specifically approved by Place Services.¹⁶¹ The presence of dormice on site has been fully assessed and appropriate mitigation will be put in place, again all as part of the detailed stage and under the supervision of Place Services.

Summary

7.30. In summary, the Proposal complies with DP38 in full. Limbs (1) and (2) are agreed. As to Limbs (3)-(5) of DP38

(3) The Appeal Proposal has minimised habitat and species fragmentation and maximised opportunities to enhance and restore ecological corridors to connect natural habitats and increase coherence and resilience;

(4) There are no priority habitats on site;

(5) The Appeal Proposal will avoid damage to and protect all of the listed features within the limb, noting that there is no ancient woodland on site.

¹⁶⁰ CD2.22

¹⁶¹ CD4.33

8) TREES

The Application and the Council's Position

- 8.1. The Appeal scheme was the subject of a detailed Arboricultural Assessment, which identified the loss of 43 moderate quality trees.¹⁶² However, 100% of high quality trees will be retained and 87% of moderate quality trees would also be retained.¹⁶³
- 8.2. DP37 provides for a pragmatic and balanced approach to tree loss – it does not place a ‘bar’ on tree loss, nor does national policy where it relates to trees. The Case Officer accordingly confirmed no objection in respect of DP37.¹⁶⁴
- 8.3. NPPF 136 is also expressed in positive terms: looking largely to new planting, and also does not contain any prohibition on tree loss.
- 8.4. Mr Forbes-Laird’s position is set out in his Proof of Evidence at Section 3.¹⁶⁵ As he explains at [3.2.1] Policy 37 is “framed in balanced terms” and the trees that will be lost both (a) do not make a positive visual contribution; and (b) are not otherwise important for any other reason. Most notably, the trees that will be lost to the facilitate the access are not actually visible from the road at present and at least one is unretainable in any event (7069).¹⁶⁶

The Rule 6 Party's Position

- 8.5. Mr Greaves’ written objection in respect of loss of trees was narrowly expressed at [81]: *“There is no dispute that the proposals will result in a loss of trees and hedgerows, which is itself a contravention of this policy.”*
- 8.6. That is not a correct interpretation of DP37. His objection has not been properly evidenced, either in his own evidence or that of Mr Carpenter, which does not

¹⁶² CD1.29

¹⁶³ CD2.19, p1, [3]

¹⁶⁴ CD3.3, [12.174]-[12.179]

¹⁶⁵ CD9.3 Forbes-Laird PoE, pp9-12

¹⁶⁶ CD9.3 Forbes-Laird PoE, pp11, [3.2.5]-[3.27]

address DP37 outside reference to ancient woodland. The Rule 6 Party case have not called any arboriculturally qualified witness. No specific objection has been made to the loss of any specific tree (beyond the ancient woodland points already addressed above). Mr Forbes-Laird was not subject to cross-examination in respect of tree loss generally.

- 8.7. In summary, the effect of the proposal in terms of proposed loss of trees is entirely acceptable and in accordance with development plan (DP37) and national policy.

9) COUNTRYSIDE / GENERAL CHARACTER AND APPEARANCE

The effect of the proposal on the countryside/general character and appearance.

The Rule 6 Party: No Landscape Case

- 9.1. The Appellant's position on landscape impacts was set out in the LVIA,¹⁶⁷ as now further supplemented by Mr Cook's Proof of Evidence.¹⁶⁸
- 9.2. Mr Greaves confirmed in cross-examination that the Rule 6 Party does not pursue any landscape case, and at the same time accepted full compliance with all of the landscape components of the following policies:¹⁶⁹
- (1) Local Plan Policy DP12¹⁷⁰
 - (2) Neighbourhood Plan Policy E5¹⁷¹
 - (3) NP Policy E9¹⁷²
 - (4) NP Policy E11¹⁷³
- 9.3. Equally, he accepted full compliance with NPPF 187(b). The Rule 6 Party has never argued that this is a valued landscape for the purposes of NPPF 187(a).
- 9.4. Mr Greaves accepted that Mr Cook's evidence (as the only qualified evidence) should be accepted in full and that the Rule 6 Party does not argue that the harm to the countryside, or in character and appearance terms is any higher than that identified by Mr Cook.
- 9.5. Accordingly in closing, these closing submissions are targeted, summarising the evidence and Mr Cook and Mr Billington's position on policy compliance.

¹⁶⁷ CD2.13 (final version building on earlier CD2.11 and CD1.25)

¹⁶⁸ CD9.4 and Appendices (CD9.4a-c)

¹⁶⁹ Greaves XX (Day 5)

¹⁷⁰ CD5.3, p66

¹⁷¹ CD5.5, p20

¹⁷² CD5.5, p25

¹⁷³ CD5.5, p26

The Appellant's Evidence

- 9.6. The Appellant's LVIA was drawn up in accordance with GLVIA3 and was a robust and comprehensive assessment of the landscape and visual effects. The LVIA carefully set out the respective landscape effects and visual effects from 10 representative viewpoints.¹⁷⁴
- 9.7. The site is not designated nor a valued landscape. The development will not have any wider landscape effects given its substantial containment. The LVIA exercise has confirmed that this is a very well-enclosed Site, with no public views into it. Moreover, the Appeal Proposal has substantially mitigated any harm.
- 9.8. The Officer's Report [13.9] essentially concurred and emphasised that "*the site is well enclosed and would not be visible in wider viewpoints.*"¹⁷⁵ The Council's Master SoCG Addendum (16 June 2026) has further confirmed at [3.7]: "*3.7 It is agreed that any impact on local character (or any landscape and visual amenity matter) is not sufficient to outweigh the benefits of granting permission.*"¹⁷⁶

Policy Compliance

- 9.9. Mr Cook's Chapter 9 covers compliance with Policies DP12, E5 and E9.¹⁷⁷ It has been confirmed by Mr Greaves that the Rule 6 Party agrees compliance with E8 and E11. Mr Billington has confirmed his agreement of Mr Cook's approach in his own Proof of Evidence.¹⁷⁸
- 9.10. For completeness, Mr Cook's analysis in Chapter 9 is summarised here.
- 9.11. For the purposes of DP12, the proposal will maintain and enhance the quality of the rural character of the District. The Appeal Proposal has also considered the relevant landscape assessment documents, most notably the Mid Sussex

¹⁷⁴ CD2.13 (final version building on earlier CD2.11 and CD1.25)

¹⁷⁵ CD3.3, p65

¹⁷⁶ CD8.2, p5

¹⁷⁷ Cook PoE, pp40-44

¹⁷⁸ CD9.1 Billington PoE, p17, [4.38], p18-20, [4.51]-[4.66] and pp32-33, [7.48]-[7.49] and p44, [9.7]

Landscape Character Assessment. As Mr Cook makes clear at his [9.5]-[9.6], it is inevitable that development of a greenfield site on the edge of a principal settlement will give rise to a change from countryside character to suburban character. However, as he emphasises, many of the qualities associated with the site relate to the mature trees and hedgerows that define the site and these would be retained and enhanced. All of the relevant landscape assessment material has been assessed with regard to the potential development on the quality of the rural and landscape character.

- 9.12. As to Policy E5, the rural setting of the town will be retained and enhanced. The Appeal scheme will not unduly erode the landscape character of the area. This first limb of the policy expressly recognises a balance must be struck. Equally, it will not harm the setting of the town. Finally, the proposal would retain and enhance the separate identity of communities. In this latter respect, it should be noted that the Council never raised any conflict with the DP13, the Local Plan's policy on coalescence, and Mr Greaves never raised any such conflict and accepted that there was none in cross-examination.¹⁷⁹
- 9.13. Mr Cook's position at [9.13]-[9.16] is therefore unchallenged.¹⁸⁰ In summary, Policy E5 simply designates all land outside the built-up area as a 'local gap'. The proposal would still maintain the landscape character of the area beyond the site itself and it would maintain the individual identity of Haywards Heath as being separate and distinct from other neighbouring settlements. The proposed scheme would not unduly erode the landscape character of the area.
- 9.14. There would be no harm to the setting of the town, because the site is not capable of being appreciated from either the public areas within the town and settlement itself, nor from the adjacent countryside. It is completely contained and framed by woodland, tree cover and vegetation, so would not have a bearing upon the perceived setting of the town of Haywards Heath.
- 9.15. In terms of the wider questions of "separate identity", Mr Cook drew attention to the fact the site is not only very well-contained itself, but that Scaynes Hill is

¹⁷⁹ Greaves XX (Day 5)

¹⁸⁰ CD9.4 Cook PoE, pp42-43, [9.13]-[9.16]

located approximately 1km to the east and there will accordingly be no change to the physical or perceived separation between these two settlements. The same is true of Wivelsfield and Wivelsfield Green located 3km to the south, and in respect of Burgess Hill over 1km to the south-west.

- 9.16. Finally, as to Policy E9, the proposal will be well-designed in a manner that will protect and reinforce the local character within the locality of the site. It should be noted that Policy E9 refers largely to detailed matters. However, Mr Cook's additional observations at [9.28]-[9.29] are correct and unchallenged. As Mr Cook notes at [9.28]:

"The proposal has taken the contours of the site into account and the design and layout of the proposed residential neighbourhood would ensure that there would be minimal earthworks required across the site to accommodate the proposed scheme. The layout includes substantial green infrastructure as an integral part of the proposals to ensure that the scheme has sensitively incorporated the natural features on the site including trees and hedges that lie within the site itself."

- 9.17. Further as he notes at [9.29], the scheme would be *"a safe, accessible and well connected environment for the new residents and would not result in unacceptable levels of light, noise and air pollution., whilst ensuring the scheme makes best use of the site, mindful of the requirement of the NPPF to make efficient use of land."*

- 9.18. In summary, there will be full compliance with Policy E9 as well.

- 9.19. Finally, with respect to NPPF 187b, the Appeal development would clearly accord with this NPPF paragraph. The Appeal development has clearly "recognised" countryside and taken opportunities to contribute to the landscape through the maintenance of generous open space and retention of natural features on site.

- 9.20. To the extent that NPPF 135(a) and (c) are engaged (being primarily design policies but raised in passing by Mr Greaves at [45]¹⁸¹), the scheme will also add to the overall quality of the area and will be entirely sympathetic to local character and history including the landscape setting.

¹⁸¹ CD11.3 Greaves PoE, p13, [45]

Summary

- 9.21. In short, the answer to the original Main Issue 2 can therefore be answered simply: the effect of the proposal on the countryside/general character and appearance will be entirely acceptable and in accordance with the development plan (DP12, E5 and E9) and national policy (NPPF 18b).
- 9.22. This will be readily apparent from the plans and the overall scale of the site, as well as the LVIA. In the context of the wider housing crisis, the Council identified sensibly that they could not oppose development on open countryside and green fields which are not sensitive landscapes, and which are well-located with regard to access to the wider settlement.

10) HERITAGE

The effect of the proposal on:

(1) the character and appearance of the Conservation Area and on the setting of the Conservation Area

(2) The setting of the Grade II listed Colwell House

(3) The setting of the non-designated North Colwell Barn.

The Appellant's Heritage Assessment and Mr Smith's Evidence

10.1. The Appellant's position was set out in the original Heritage Assessment,¹⁸² as supplemented by Mr Smith's Proof of Evidence and oral evidence, which is also unchallenged by the Rule 6 Party and accepted by them.¹⁸³

(1) Lewes Road Conservation Area: Low level of less than substantial harm;

(2) North Colwell Barn: Low degree of harm

(3) Colwell House (Listed Building): No harm

The Conservation Area: DP35 and NPPF 215

10.2. Mr Billington's Proof of Evidence has set out the Appellant's application of the NPPF 215 test in respect of the Conservation Area.¹⁸⁴ His Rebuttal Proof confirms this position.¹⁸⁵ The public benefits clearly outweigh the harm. The Council's SoCG has confirmed agreement in this respect (as noted below).¹⁸⁶

10.3. As Mr Billington notes, there is a narrow issue in respect of DP35 that it does not contain a NPPF 215 balance. This is answered very simply by reducing the weight to any such conflict (effectively to zero) and applying the NPPF 215 balance. The result will comply with s72(1) of the 1990 Act and great weight will still be accorded the harm, albeit that that harm is clearly at a low level.

¹⁸² CD1.18, Chapter 5, pp20-22

¹⁸³ Greaves XX (Day 5)

¹⁸⁴ CD9.1 Billington PoE, p41 [8.44]-[8.46]

¹⁸⁵ CD9.1 Billington, p7, [2.39]

¹⁸⁶ CD8.2, p8, [3.15]-[3.17].

North Colwell Barn: DP34 and NPPF 216

- 10.4. Mr Billington's Proof of Evidence then further sets out how the Appeal Proposal would comply with DP34 and the NPPF 216 test in respect of North Colwell Barn, as a non-designated heritage asset.¹⁸⁷

Colwell House: DP34 and NPPF 215

- 10.5. Mr Smith's explanation that the Appeal Site does not form part of the setting of Colwell House is carefully set out in his Proof at Section 7.¹⁸⁸ There is no other evidence to the contrary by any other Party at the inquiry.
- 10.6. Mr Smith's position on Colwell House's setting is grounded in the NPPF definition of "setting", notably the first sentence: "*The surroundings in which a heritage asset is experienced.*" The Council had agreed this position in the original SoCG by express reference to the Historic England Good Practice Advice Note 3: *The Setting of Heritage Assets*.¹⁸⁹ The GPA Note 3 makes clear that a setting's importance also lies in "*what it contributes to the significance of the heritage asset or the ability to appreciate that significance*".¹⁹⁰
- 10.7. Mr Smith observed that, in those terms, there is no experience of the significance of Colwell House from the Appeal Site. There are only wintertime glimpsed views of a white building from the northern part of the Appeal Site's central field.
- 10.8. The Appeal Site is screened from Colwell House. It is at a distance of over 70m at its closest. Moreover, the Appeal Site is, at its highest elevation, 5m below Colwell House (at ground level) and a further 20m lower as the Site drops away to the south. All of this markedly constrains the ability to appreciate the asset's significance from within the Appeal Site, to the extent that there are glimpsed views only now (in winter).

¹⁸⁷ CD9.1 Billington PoE, p22 [4.93] and p44, [9.8]

¹⁸⁸ Smith PoE, pp17-18

¹⁸⁹ CD8.1, p21, [5.39] and CD18.4, p2 and p9, [20]

¹⁹⁰ CD18.4, p8, [9] GPA3 Setting of heritage assets, p8; [9]

- 10.9. Mr Smith also noted the main aspect of Colwell House. He noted that historically and currently this is from the House's double gable south-eastern elevation to the southeast (therefore, in part, over the north-eastern portion of the Appeal Site's eastern field).
- 10.10. Finally, in respect of potential noise and light from the proposed Appeal Scheme, Mr Smith noted that the proposed residential use would not have an impact on Colwell House (due to distance, screening, lower elevation and the nature of residential use). It should be noted that Colwell House itself is closer to Lewes Road.
- 10.11. As noted above, Mr Billington's Proof of Evidence sets out the Appellant's position on public benefits for the purposes of NPPF 215, even if harm were to be identified.¹⁹¹
- 10.12. The Appellant's (uncontested) position is that the public benefits clearly outweigh the harms, including in the context of the statutory framework under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and national policy framework under NPPF 215.¹⁹² The same would also apply even if any harm were identified to the significance of the listed building, applying s66(1) of the 1990 Act, however, for the reasons identified above, there is no such harm.¹⁹³

The Rule 6 Party's Position: No Heritage Evidence and NPPF 215/216 Balance

- 10.13. Mr Greaves confirmed, on behalf of the Rule 6 that they accepted Mr Smith's evidence in full and did not allege any harm different to or higher than his own.¹⁹⁴ The Rule 6 Party has produced no evidence on heritage matters and Mr Greaves has no heritage qualifications. The Rule 6 Party therefore (correctly) has accepted Mr Smith's evidence in full.

¹⁹¹ CD9.1 Billington PoE, p41, [8.44]-[8.46]

¹⁹² Billington PoE, p41, [8.44]-[8.46]

¹⁹³ Billington PoE, p41, [8.46]

¹⁹⁴ Greaves XX (Day 5)

10.14. Mr Greaves further accepted that the public benefits (notably the market and affordable housing) would outweigh the heritage harms, applying both 215 and the statutory tests.¹⁹⁵ As with Landscape (considered next), the Rule 6 Party have confirmed that heritage is not a basis for refusal.

The Council's Position

10.15. Whilst the Council's Committee Report had identified heritage harms at a different level, the Report concluded that these were clearly outweighed by the public benefits.¹⁹⁶

10.16. The Council's SoCG further confirms this at [3.15] and [3.16].¹⁹⁷

Summary

10.17. In summary, the Appeal Proposal will give rise to a low level of less than substantial harm to the character and appearance of the Lewes Road Conservation Area, from construction of the access within a very small part the area. However, on a correct application of s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and national policy framework under NPPF 215,¹⁹⁸ the public benefits clearly outweigh the harms, even applying great weight to those harms.

10.18. The Appeal Proposal will also give rise to a low level of harm to the significance of North Colwell Barn, which will be outweighed by the public benefits applying NPPF 216.

10.19. There will be no harm to Colwell House in heritage terms.

¹⁹⁵ Greaves XX (Day 5)

¹⁹⁶ CD3.3, pp4-5 [2.2]

¹⁹⁷ CD8.2, p8, [3.15] and [3.15]

¹⁹⁸ Billington PoE, p41, [8.44]-[8.46]

11) THIRD PARTIES

1) Highways Safety and Capacity

- 11.1. On Day 1, two members of the public (District Councillor Clarke) and the Chair of Wivelsfield Parish Council (Mrs Martin) made brief reference to the traffic surveys being out of date and not taking on board consented development.
- 11.2. The Highways Authority have expressly confirmed that they have no objection and that there are no highway safety or highways capacity issues with the proposals.¹⁹⁹ The Rule 6 Party also confirmed initially through their Statement of Case,²⁰⁰ Mr Russell's Proof of Evidence²⁰¹ and then finally through their Statement of Common Ground on Transport Matters.²⁰²
- 11.3. The Local Highways Authority's views should again be accorded great/considerable weight and it would require compelling reasons for any departure (in line with very well-established authority in this field). The Borough Council had also quite properly not raised any reason for refusal on highways grounds.
- 11.4. The scheme has also been subject to independent Stage 1 Road Safety Audit, with a designer's response.²⁰³
- 11.5. Mr Marshall directed to the Transport Assessment, and notably Sections 7.1 Assessment Scope, 7.3 Committed Developments and 7.4 Background Traffic Growth.²⁰⁴ i-Transport have expressly included consented developments within their analysis.

¹⁹⁹ CD8.5, pp8-9, [5.16]-[5.23]

²⁰⁰ CD11.1, p7, [3.22(7)] and CD11.2, p6, [3.20(6)]

²⁰¹ CD11.4, Russell PoE p4, [1.9]

²⁰² ID2, pp8-9, [5.12]-[5.22]

²⁰³ CD1.19, pp105-118: Appendix F

²⁰⁴ CD1.19, p32

2) Education and School Places

- 11.6. Mr Pockett and Ms Baker referred to school places. Mr Billington addressed this in evidence in chief.²⁰⁵ The County Council were the relevant consultee in this respect and confirmed that financial contributions should be made through the School Infrastructure Contribution now contained in the S106.²⁰⁶ There is therefore no objection from the County Council on the basis of school places.

3) Water Supply

- 11.7. Mrs Martin on behalf of Wivelsfield Parish Council referred to local water supply issues.²⁰⁷ Mr Billington responded in evidence-in-chief, noting that there was no objection from Southern Water as the statutory consultee.²⁰⁸

Summary

- 11.8. In summary, all the matters raised by third parties are answered by considering the position of the relevant statutory consultees.
- 11.9. Mr Billington's Proof of Evidence Appendix A contains a further summary response to third party matters raised at application stage.²⁰⁹

²⁰⁵ Billington XC (Day 5)

²⁰⁶ CD4.34, pp1-2

²⁰⁷ ID9a

²⁰⁸ Billington XC (Day 5)

²⁰⁹ CD9.1 Billington PoE, pp46-51

CONCLUSION

12) SECTION 38(6) PCPA 2004 AND THE PLANNING BALANCE

1) Section 38(6) of the Planning and Compulsory Purchase Act 2004

- 12.1. As set out in Mr Billington's Proof of Evidence and in Section 3 above, the Appellant accepts a degree of conflict with DP6's first limb based on the BUAB.²¹⁰ The Appellant further accepts conflict with DP12 in respect of the BUAB element only.²¹¹
- 12.2. The Appellant does not accept conflict with DP15, given its principal focus on other matters (e.g. agricultural worker's dwellings) and the fact that it simply cross-refers to DP6.²¹² However, even if a conflict were to be identified with DP15's fourth bullet, this overlaps entirely with DP6 and adds nothing to the Rule 6 Party's position.
- 12.3. On the basis of the above focussed conflicts with DP6 and DP12, the Appellant accepts that the Appeal Proposal does not accord with the development considered as a whole. However, the conflict is limited purely to the current built-up area boundary.²¹³
- 12.4. Mr Billington has also identified narrow conflict with DP35 in respect of the Conservation Area element, given the absence of any NPPF 215 balance within the policy.²¹⁴
- 12.5. For all the reasons explored in earlier Sections, the Appeal Proposal accords with DP21 in respect of transport, DP34 in respect of heritage; DP37 in respect of trees, DP38 in respect of ecology.

²¹⁰ CD9.1 Billington PoE, p30, [7.17]

²¹¹ CD9.1 Billington PoE, p31, [7.24]

²¹² CD9.10 Billington RPoE, p5, [2.20]

²¹³ CD9.1 Billington PoE, p44, [9.2]-[9.3]

²¹⁴ CD9.1 Billington PoE, p44, [9.8]

2) NPPF 11d

- 12.6. The presumption in favour of sustainable development under NPPF 11d is the most powerful material consideration in this case. When it is applied correctly, it is clear that the narrow development plan conflict identified above is outweighed by the benefits of granting permission and permission should be granted.
- 12.7. For the reasons explored at length above, NPPF 11d(i) is not engaged, including on the sole basis relied upon by the Rule 6 Party: NPPF 193c.
- 12.8. The Rule 6 Party have accepted that NPPF 11d(i) is not engaged as NPPF 215 has been satisfied in respect of the harm to the Conservation Area.
- 12.9. This appeal therefore falls to be assessed under NPPF 11d(ii).

3) The Benefits

(a) Market Housing / Meeting Housing Land Supply Shortfall

- 12.10. As set out in Section 2, the maximum housing land supply figure was agreed with the Council as 3.75 years:²¹⁵ *“It is agreed that the maximum level of supply the Council can demonstrate is 3.75 years and the shortfall in the 5YHLS is at least 1,758 dwellings. It is agreed that this is a substantial shortfall.”* The Appellant’s position is clear, given the shortfall, the development proposals should be accorded very substantial weight.
- 12.11. The Rule 6 Party accept the HLS figure. It was notable that Mr Greaves declined in his Proof of Evidence to state the exact amount of weight attributed to this benefit, or indeed to any benefit. Ultimately, however, in cross-examination, he confirmed that he accorded it “substantial” weight, i.e. in the highest bracket.

²¹⁵ CD8.3, p8, [2.13]

12.12. The Appellant maintains that the very highest weight should be applied, given the shortfall. The Written Ministerial Statement “Building the homes we need” accompanying the NPPF (12 December 2024) produced by the current (returning) Housing Minister noted both the “*acute and entrenched housing crisis*” in the country today and the “*urgency that this demands*”.²¹⁶ In that context, any LPA’s shortfall below 5YHLS is wholly at odds with national policy. Government policy could hardly be clearer: the national crisis means that a very substantial number of homes must be granted permission right now. Accordingly, the highest level of weight should be attributed.

(b) Affordable Housing

12.13. Mr Stacey’s Proof was uncontested by the Rule 6 Party. The Rule 6 Party have also not challenged the Affordable Housing SoCG with the Council, which sets out in terms the acute position locally, see notably [7.1]-[7.12].²¹⁷ Mr Greaves’ accepted that evidence but attributed “substantial weight” to the benefit.

12.14. The following statistics from Mr Stacey’s Proof of Evidence set out a very stark position:

Statistical evidence demonstrating an acute need	Source	Page	PDF page	Paragraph/ Figure
2,883 gross affordable dwellings delivered between 2014/15 and 2025/26	JS PoE	37	43	Figure 6.1
Average rate of 26% AH delivery between 2014/15 and 2025/26	JS PoE	37	43	Figure 6.1
Average delivery between 2014/15 and 2025/26 equivalent to 240 gross AH per annum	JS PoE	37	43	Figure 6.1
Taking account of RtB, net AH delivery between 2014/15 and 2024/25 is 2,855, equivalent to 238 AH per annum	JS PoE	39	45	Figure 6.2
Annual AH need of 694 AH per annum between 2021-2040	JS PoE	36	42	Figure 5.1

²¹⁶ CD16.1

²¹⁷ CD8.4, pp12-13

Shortfall in delivery of AH against all Housing Needs Assessments since 2016 HEDNA Addendum	JS PoE	44	50	Figure 6.7
Accumulated shortfall of AH delivery against most recent identified need (2024 SHMA Update) is -1,760 (equivalent to an annual average shortfall of -352)	JS PoE	42	48	Figure 6.5
Just 49% of AH needs met against 2024 SHMA Update need	JS PoE	42	48	Figure 6.5
Zero AH completions in Haywards Heath Parish in 2025/26	JS PoE	43	49	Figure 6.6
2,613 households on the Housing Register as of 31 March 2026	JS PoE	45	51	Paragraph 7.2 and FOI Response at Appendix JS2
Increase of 145 households added to the Housing Register between 31 March 2025 and 31 March 2026	JS PoE	45	51	Paragraph 7.2 and FOI Response at Appendix JS1
672 households of the 2,613 households on the Housing Register specified a preference for AH in Haywards Heath Parish, equivalent to 26% of the Housing Register	JS PoE	45	51	Paragraph 7.3
Average waiting times at 31 March 2026 between 319 days and 1,191 days	JS PoE	48	54	Figure 7.2 and FOI Responses at Appendices JS1 and JS2
43 households housed in temporary accommodation as of 31 March 2026	JS PoE	49	55	Paragraph 7.25 and FOI Response at Appendix JS2
14 of these households were housed in temporary accommodation outside of Mid Sussex District	JS PoE	49	55	Paragraph 7.25 and FOI Response at Appendix JS2
Mid Sussex spent over £2.5m on temporary accommodation between 1 April 2024 and 31 March 2025	JS PoE	50	56	Paragraph 7.26
Private rents in Mid Sussex have increased by 42% since 2014/15 (when records commenced)	JS PoE	51	57	Paragraph 7.33 and Figure 7.3

Higher median affordability ratio in Mid Sussex compared to South East and England	JS PoE	52	58	Figure 7.4
Median affordability ratio stood at 10.94 in 2025	JS PoE	52	58	Paragraph 7.36
Lower quartile affordability ratio for Mid Sussex stood at 11.23 in 2025	JS PoE	53	59	Paragraph 7.41
Higher lower quartile affordability ratio in Mid Sussex compared to South East and England	JS PoE	54	60	Figure 7.6
Higher median house price in Mid Sussex 008 MSOA compared to Mid Sussex, South East and England	JS PoE	53	59	Figure 7.5
Higher lower quartile house price in Mid Sussex 008 MSOA compared to Mid Sussex, South East and England	JS PoE	55	61	Figure 7.7
An Annual need of 1,046 AH per annum required over the next 5 years to address accumulated shortfall of -1,710 AH	JS PoE	59	65	Figure 8.1
Inadequate future supply of AH over the next 5 years	JS PoE	60 - 62	66-68	Paragraphs 8.13 – 8.23
Based on 30% of the deliverable supply coming forward as AH, would yield 307 new gross AH per annum	JS PoE	60	66	Paragraph 8.16
Based on the prevailing rate of gross AH delivery of 25% coming forward as AH, would yield 256 new gross AH per annum	JS PoE	60 - 61	66-67	Paragraph 8.18
A gross shortfall of -483 AH per annum measured against 2024 SHMA Update Need of 694 AH per annum over the next 5 years. Increasing the existing shortfall of -1,710 AH to -3,950 by 2030/31	JS PoE	62	68	Figure 8.4 and paragraph 8.22

12.15. As set out in opening, Mr Stacey's summary at [11.7] explains why the very highest weight must be attributed:

"11.7 Considering the Authority's past poor record of affordable housing delivery, the inability of the future supply to instigate a step change in delivery and high and rising numbers of households on the Housing Register, there can be no doubt in my mind that the provision of up to 24 affordable dwellings on this site should be afforded very substantial weight in the determination of this appeal."

- 12.16. The Appellant therefore maintains that “very substantial weight” should be accorded to this benefit.

(c) Economic Benefits

- 12.17. The economic benefits arising from the Appeal Proposal should be accorded significant weight, for the reasons set out by Mr Billington.²¹⁸

- 12.18. NPPF 85 states in express terms:

85. Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

- 12.19. The Rule 6 Party have submitted *Bewley Homes v SSLUHC* [2024] EWHC 1166 (Admin) and rely upon [43] and [48] of that judgment, which concerned the predecessor provision NPPF (2021) paragraph 81 (the original decision having been made on 23 August 2022).

- 12.20. It is however necessary to examine precisely the ground of challenge in that case, specifically at [30] that NPPF (2021) 85 “requires “significant weight” to be given to the economic benefits of any development.”

- 12.21. The Appellant’s position is not that NPPF 85 mandates “significant weight” to economic benefits in every case. However, equally, the *Bewley Homes* case should not be interpreted the other way as itself requiring *lower* than significant levels of weight in all cases.

- 12.22. *Bewley Homes* is a case in respect of a decision pre-dating the General Election of 4 July 2024, the subsequent Written Ministerial Statements of 30 July 2024 and 12 December 2024 and the panoply of policy announcements from the current

²¹⁸ CD9.1 Billington PoE, p39, [8.24]-[8.29]

Government in respect of both (a) the 1.5m homes target and (b) allied economic growth.

- 12.23. The Government is committed to a strong housebuilding sector, ensuring training, apprenticeships and overall continuity of employment. The Appeal Site is able to make a rapid start, and accordingly is well-placed to accord with this national policy objective. Just as in the Clappers Lane decision,²¹⁹ the fact that construction benefits are limited to the construction phase does not diminish the importance of every single project (and certainly one of the scale of 80 units), in continuing to support housebuilding in this region/area, as well as nationally.
- 12.24. The additional resident expenditure on local services (in line with NPPF 83) will also promote services and local employment. New homes also improve the local pool of available workers, which is especially important given the range of significant employers locally, including the hospital and the high range of businesses operating within Haywards Heath.
- 12.25. For all these reasons, the economic benefits should be accorded significant weight in this case, alongside the very substantial benefits in respect of market housing and affordable housing.

(d) Transport Benefits: Pedestrian Improvements

- 12.26. The Appeal Proposal will deliver a package of travel benefits (listed by Mr Billington at [8.36]):

(1) New crossing points over Lewes Road to improve the pedestrian travel experience to Haywards Heath centre (as detailed on Plan ITL19597-GA-011 Rev B).²²⁰

(2) Improvements to Lewes Road and Snowdrop Lane Footway to improve the pedestrian experience (as detailed on ITL19597-GA-021 Rev A)²²¹

(3) Lay-by reinstatement to footway on Lewes Road (ITL19597-GA-018)²²²

²¹⁹ CD9.1 Billington PoE, p39, [8.27] citing CD12.22 Appeal Reference 3291160, DL95

²²⁰ CD2.17b

²²¹ CD2.17c

²²² CD2.2a

(4) Contribution of £10,800 towards new surfacing of PRow 29CU, improving pedestrian experience to local facilities and the primary school, secured via the s106 legal agreement and agreed with WSCC via the THSoCG.²²³

12.27. The Appeal Proposal will also separately provide for:

(5) Contributions towards a TRO to reduce the speed limit on Lewes Road to 30mph

12.28. The Appellant accepts that whilst (1)-(4) these are necessary to secure development plan compliance with DP20 and DP21, they will also have wider benefits to the community that uses the surrounding footways and the Footpath.

12.29. Accordingly, the transport benefits should be accorded moderate weight.²²⁴

(e) Biodiversity Net Gain of 10%

12.30. The Appellant has attributed “moderate” weight to biodiversity net gain, irrespective of the off-site nature of the credits. This is still an overall betterment that will not otherwise be realised without the scheme.²²⁵

(f) Public Open Space Provision

12.31. The appeal scheme will provide a substantial amount of new open space (circa 2.78ha), including a Locally Equipped Area of Play (LEAP), in excess of current policy requirements.²²⁶ These public open spaces will also be open for the use of both new and existing residents, providing a benefit which will be enjoyed across the local community. The on-site public open space is a benefit that should also be attributed moderate weight.

²²³ CD8.5, [5.25]

²²⁴ CD9.1 Billington PoE, p40, [8.39]

²²⁵ CD9.1 Billington PoE, p39, [8.30]-[8.32]

²²⁶ CD9.9.4 – Table of open space requirements and proposed provision

(g) Community Infrastructure Contributions

- 12.32. Finally, the Appeal scheme's financial contributions (as listed in Mr Billington's [8.40]) in respect of education, sport and leisure, local police infrastructure and community buildings will also benefit wider residents.²²⁷

4) Harms / Adverse Effects

- 12.33. The Appellant has explained its position under the Main Issues above, in respect of both questions of development plan conflict and the overall level of harm.

- 12.34. The harms of the development would all very much be at the lower end: capable of being accorded no more than limited weight.²²⁸

- 12.35. Mr Billington has carefully listed these in his Proof of Evidence:

(1) Conflict with DP6 and DP12 (both of which are out of date): limited weight;

(2) The less than substantial harm (LSTH) to the Lewes Road Conservation Area, accorded "great weight" or "considerable importance and weight" but agreed to be outweighed by the public benefits for the purposes of NPPF 215 and s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990;

(3) The LTSH to the non-designated Colwell Barn, outweighed by the public benefits under NPPF 216: very limited weight;

(4) Localised landscape harm, arising from the development of open fields, in what is not a sensitive landscape: limited weight;

(5) Loss of Category B and C trees, mitigated by the provision of a significant net gain in overall trees on site: very limited weight.

²²⁷ CD9.1 Billington PoE, p37, [8.40]

²²⁸ CD9.1 Billington PoE, pp41-42, [8.47]

12.36. These harms are therefore nowhere near capable of significantly and demonstrably outweighing the package of benefits. Once it is correctly accepted that the benefits are very substantial, the Rule 6 Party's position on NPPF 11d(ii) is effectively untenable.

12.37. That is a powerful material consideration. We echo the Written Ministerial Statement (12 December 2024) accompanying the NPPF which made clear:²²⁹ *"the presumption in favour of sustainable development must have real teeth."* Government's intention is that *"the presumption carries real weight, acting as a significant adjustment to the decision-making balance in favour of approving development."*

Conclusion

12.38. In summary, the Appeal development is an excellent example of exactly the form of development which the Government wants to see coming forward right now: capable of delivering substantial benefits rapidly, well within the 5 years.

12.39. For all these reasons, the Appellant requests that the appeal be allowed and permission granted.

JAMES CORBET BURCHER
No5 Chambers

13 August 2026

²²⁹ CD16.2, p3