Land East of Ansty

Appellant's Closing Submissions

Appearances

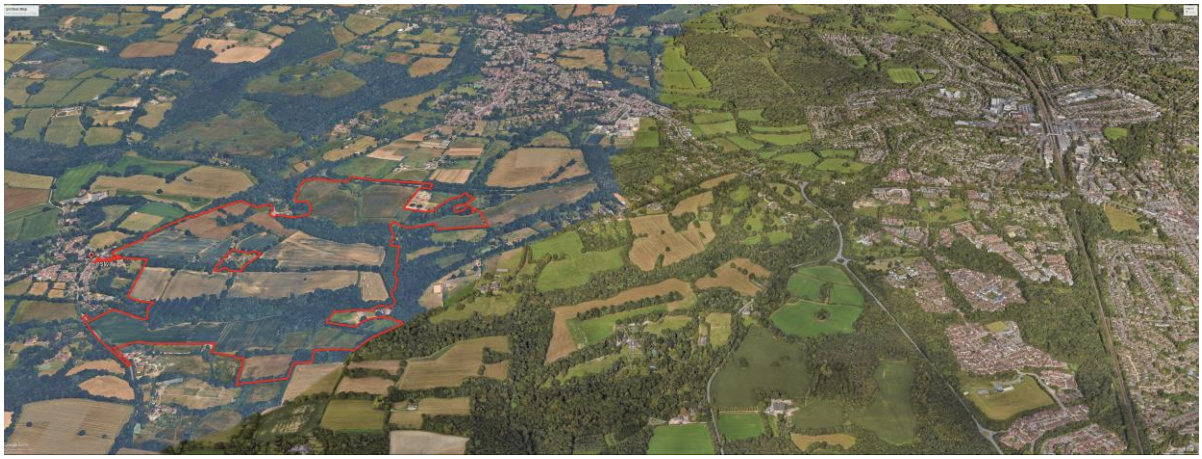
Zack Simons K.C. & **Anjoli Foster** instructed by **Steven Brown** of Woolf Bond Planning Ltd called:

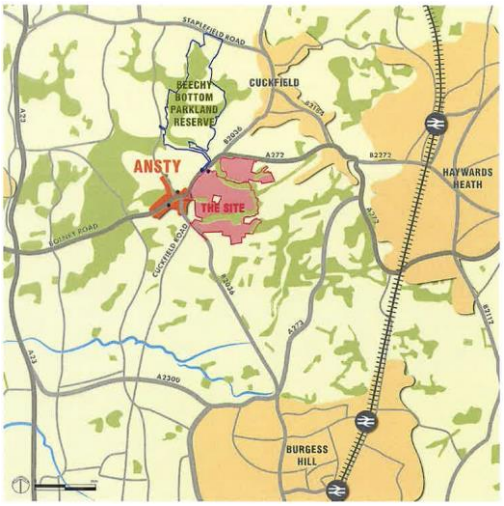
(i) **Matt Stevens** MIHT, Executive Director at Milestone Transport Planning Limited (highways and transport, locational sustainability).

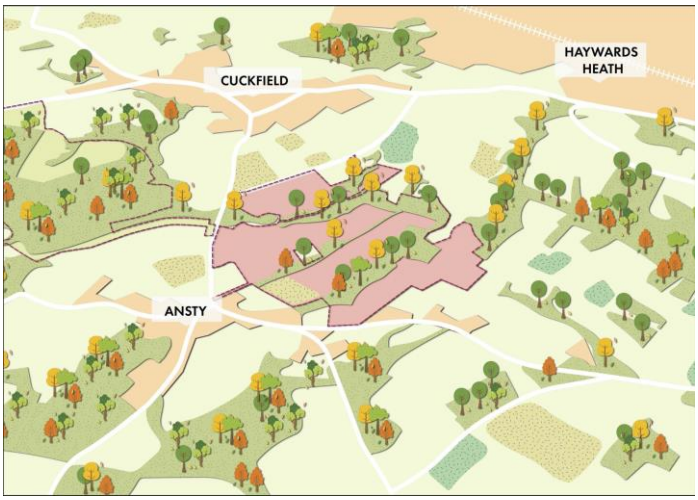
(ii) **Clare Brockhurst** FLI, BSc (Hons), Dip LA, Director of Leyton Place Limited (character and appearance, National Landscape, perceived coalescence).

(iii) **Steven Brown** BSc Hons, DipTP, MRTPI, Managing Director of Woolf Bond Planning Ltd (planning policy and the balance).

(iv) **Emma Hargreaves,** Managing Senior Associate at Pinsent Masons (section 106 and conditions).







Introduction

1. For all of the many documents before you, madam, the issues between the parties are narrow and have narrowed considerably throughout the evidence given at this inquiry. For a strategic scheme like this, it is remarkable how few issues remain outstanding between the parties.

2. Though it is perhaps not at all surprising that there is so much common ground. This is because this is a site and a scheme that professional officers of this Council have considered acceptable for residential-led development multiple times, on the basis of years of extensive and thorough analysis. First, when officers recommended the appeal site for

allocation in the emerging local plan in January 2022,[1] and second, when officers recommended the appeal scheme for approval in October 2025.[2]

3. The following points are now agreed between the parties:

i. The Council is unable to demonstrate a five-year housing land supply, and the shortfalls in housing delivery in Mid Sussex are substantial. This includes shortfalls in market housing, a persistent affordable housing need, self-build and care homes.

ii. No reliance can be placed on delivery from the 'long list' sites for the purpose of five year housing land supply.

iii. The most important policies in the development plan are deemed out of date and are also substantively out of date. There is an inevitable need to develop on greenfield sites outside of built-up boundaries in Mid Sussex in order to meet housing needs.

iv. It is agreed between the Council and the Appellant that the appeal site is in a sustainable location, limiting the need to travel and offering a genuine choice of transport modes.

v. The appeal site lies within the setting of the High Weald National Landscape, but is not within the designated area itself. The relevant question under §189 NPPF is whether changes in the setting would avoid or minimise effects on the land within the designated landscape in terms of its special qualities.

vi. It is agreed between the Council and the Appellant that the site is not a valued landscape, and the Council have disowned Mr Peacock's evidence in this regard.

[1] CD 5.10, pdf page 91.
[2] CD 3.1.

vii. Following Mr Peacock's evidence the issues on impacts on the National Landscape, perceived coalescence and landscape character have considerably narrowed. Including in relation to impact on the designated landscape itself (rather than land outside of the designated landscape), compliance with the requirement in paragraph 189 of the NPPF to avoid or minimise impacts on the NL, *at most* a "*limited*" "*residual*" level of harm to the NL, and the limited locations from which harm to perceived coalescence is alleged.

viii. It is agreed between the Appellant and the R6 party that the emerging local plan only has limited weight at this stage, and the Council agrees that spatial strategy and housing numbers policies in the emerging local plan receive only limited weight.

ix. It is not the role of this inquiry to predetermine or prejudice the outcomes of the emerging local plan, including in relation to the recently published 'long list' of sites.

x. Paragraph 11(d) of the NPPF is engaged in relation to the planning balance. It is agreed by all advocates that Ms Jarvis's approach, on behalf of the Council, to the interaction between paragraph 189 of the NPPF and paragraph 11(d) was unlawful.

4. In the end, this is a scheme which should have been approved a long time ago, had it not been for elected members of this Council ignoring the advice of its professional officers. This appeal represents an opportunity to correct that.

5. We close our case under the following headings:

(a) The housing shortfall is substantial.

(b) The scheme's benefits are very substantial.

(c) The scheme is in a sustainable location

(d) There will be no harm to the National Landscape, no coalescence between settlements and the landscape effects will be localised

(e) The proposal would not be premature to the emerging local plan

(f) The benefits clearly outweigh the harms

6. At this stage we make clear that we believe that any issues that may pertain to the reasons for the appeal being called in[3] are covered in the evidence that has been heard at this inquiry.

[3] ID 18.

(a) The housing shortfall is substantial

7. There is much common ground on this issue. The following is all agreed between the Appellant and the Council:[4]

   i. The Council is unable to demonstrate a minimum five-year supply of deliverable housing, contrary to the requirement in paragraph 78 of the NPPF.

   ii. Even on the Council's figures, the extent of the shortfall is at least 1,758 dwellings, equating to a maximum of 3.75 years.

   iii. The extent of the shortfall is therefore agreed to be substantial.

   iv. There is a significant under supply of market and affordable housing when assessed against local housing need.

   v. Delivery from the 'long list' sites is not relied upon for the purpose of five-year housing land supply.

   vi. Some of the long list sites "*could potentially*" be relied upon if the emerging local plan is found sound and adopted, but that is not a matter for this inquiry.

   vii. The Appellant has not had the opportunity to undertake a detailed review of the revised delivery assumptions now relied upon by the Council, but on the basis that there is a substantial shortfall, the matter need not be tested in evidence.

8. This failure to deliver anywhere close to sufficient housing in Mid Sussex has real consequences for real people. These substantial shortfalls in supply do not exist only on paper. We are talking about hundreds of individuals and families whose housing needs are not being met. The Council has repeatedly bristled at our description of its failures as

[4] CD 7.5 paragraphs 2.2-2.3, 5.3 and 5.7.

"persistent", before telling us in closings at §7 that "*it is true that the need for particular types of housing accommodation have been increasing for a longer period*". We agree. Persistently unmet needs.

9. Ms Jarvis's repeated references to the potential future supply of sites that come forward in the emerging local plan, and the reliance on paragraph 51 of *Hallam Land Management Ltd v Secretary of State for Communities* [2018] EWCA Civ 1808, goes nowhere in this regard.

10. First, as set out above, the Council has agreed that they cannot rely on the future supply from any sites on the long list, and they have agreed that this is categorically not a matter for this inquiry. This is the entirely sensible approach. As will be explored in more detail below, the sites on the long list do not form any part of the emerging local plan and there are numerous stages that need to be gone through before any sites on that list can conceivably become part of the emerging plan.

11. Second, again, as will be explored below, it is agreed between the parties that the spatial strategy and housing policies in the emerging local plan at the very least can only be given limited weight at this stage.[5] This is not a case where the Council can say that the substantial housing shortfall will soon be remedied by a new plan, and any veiled contention to this effect should be set aside.

12. Third, the passage of *Hallam Land* relied upon by Ms Jarvis and the Council is all about the weight to be given the benefit of housing, and whether that weight can be reduced by reference to various factors. However, in the present appeal, it is common ground among all three parties that substantial weight should be given to the benefit of the provision of up to 1,450 market homes as part of the appeal scheme. Ms Jarvis confirmed this was the

[5] As explained further below, this is the Council's position. The Appellant and the R6 party agree that only limited weight can be given to the whole emerging plan at this stage.

very highest level of weighting. On this basis, the Council is rightly not relying on any potential supply from sites on the long list to temper the weight to be given to the benefit of market housing. Nonetheless, at e.g. §§50–53 of its closings the Council makes a number of points that:

a. Go nowhere (because they agree housing should be given substantial weight); and also, more worryingly,

b. Ask you, in a way that presages what comes in their prematurity case, to assume how Mr Bore will find on a whole range of matters in the emerging EiP. An irrelevant and useless exercise given all the other points of agreement on 5yhls and weighting, along with the agreement on the limited weight the Council attributes to the housing numbers in the emerging local plan.

13. The position when it comes to shortfalls of affordable housing is even worse. Ms Gingell's evidence on affordable housing was unchallenged by the Council and the R6 party, and Ms Jarvis confirmed that she did not contest any of it. This unchallenged evidence[6] sets out the following:

i. The Council's most recent SHMA identifies a net need for 694 affordable homes per annum across Mid Sussex, equivalent to 13,186 affordable homes over the emerging Plan period.

ii. On 31 March 2025 there were 2,333 households languishing on the Council's Housing Register, with average wait times for families looking for 3 and 4 bedroom homes between 1.9 and 2.1 years.

[6] See Ms Gingell's proof of evidence and updated review document at Appendix SB1 of Mr S Brown's proof of evidence.

iii. On 31 March 2025, 101 households were housed in temporary accommodation by the Council, including 89 children in temporary accommodation.

iv. Historic delivery has consistently failed to meet identified needs. Between 2021/22 and 2024/25, only 1,563 net affordable homes were delivered against an identified requirement for 2,776 homes. This has resulted in a cumulative shortfall of 1,213 affordable homes in only four years.

v. The scale of under delivery is continuing to worsen. On the Council's own evidence, the cumulative affordable housing shortfall is projected to increase to 7,178 affordable homes by the end of the emerging Plan period in 2039/40, meaning that more than half of identified affordable housing needs would remain unmet.

14. This represents a substantial and persistent unmet need for affordable homes. The Council's constant gripe with the word "*persistent*" is entirely misplaced. As is its insistence (see §7 of its closings) that the crisis is not the Council's fault. The reason for the affordable housing crisis here and whether it is the Council's 'fault' or not is, with respect, totally irrelevant. There is a persistent and acute need and it needs to be addressed urgently.

15. Again, these are not just figures to be analysed in a planning appeal. The Inspector in the Dorking appeal explained the dire real life consequences for people where there is a failure to provide enough affordable homes.[7] This has a bearing on everyday life, financial security

[7] CD 11.3, paragraph 88.

and stability, physical and mental health, decreased social mobility and adverse effects on children's education and development.

16. Further still, there are significant shortfalls in relation to self-build and care needs.

17. In relation to self-build, Mr Moger's evidence is again uncontested by the Council and the R6 party. It is estimated that as many as 3,051 people may be interested in building their own home across the district when national survey data is applied to ONS adult population data, and there may be a need for between 1,710 and 2,448 self-build and custom housebuilding plots over the 18-year emerging period when national data on self and custom build is applied to the standard method figure for Mid Sussex.

18. The supply in Mid Sussex falls well short of these needs, and the Council is failing to meet its statutory duties in the Self-Build and Custom Housebuilding Act 2015. At best there are a mere 59 plots against a total of 599 Part 1 register entries to which the statutory duty applies, amounting to a shortfall of at least 540 plots over the relevant base periods.

19. With regards to care, Mr Warner's evidence is again entirely unchallenged. The Government has explained that the need to provide housing for older people is "*critical*". This critical need is present within Mid Sussex. Mr Warner identifies, on a quantitative approach, a cumulative need for a total of 465 extra care units and 502 care beds from 2026 to 2030, and 734.5 extra care units and 1,206 beds from 2026 to 2045. On a qualitative approach, the need would be 926 beds from 2026 to 2030 and 1,630 beds from 2026 to

2045. There is no doubt that this represents a significant need for C2 accommodation in the district.

(a) The scheme's benefits are very substantial

20. The benefits of this scheme are unlike many 'ordinary' housing schemes. The strategic scale of the proposal allows a wide package of benefits to be delivered as part of a new sustainable community (see the list of benefits from 5.11 of the Planning SoCG (**CD7.1**)).

21. In light of the substantial needs set out above, it is unsurprising that there is complete agreement between all three parties on the weight to be given to the following benefits:[8]

    i. Substantial weight to the provision of up to 1,450 market homes.

    ii. Substantial weight to the provision of up to 435 affordable homes.

    iii. Substantial weight for up to 30 custom/self-build homes.
    iv. Substantial weight for up to 90 C2 care units.

22. These benefits rightly receive the top level of weighting applicable. This is entirely consistent with the needs identified above, as well as the Government imperative to significantly boost the supply of housing, and to meet an area's identified housing need including an appropriate mix of housing for the local community.[9]

23. On housing specifically, the Council has spent much time criticising the delivery timescales of the appeal scheme, arguing that it would not contribute to five year housing land supply. Primarily, this point goes nowhere, as the Council does not seek to reduce or temper the weight given to housing on this basis. The Council rightly gives the highest weighting possible to the delivery of housing.

24. Further, there is no substance to the point. As set out by Council officers in the July 2024 site selections paper, when the appeal site was being considered for allocation, there were

[8] Detailed in the addendum SoCG at ID20.
[9] Paragraph 61 of the NPPF.

no significant constraints that would impact on the delivery of the site in principle,[10] and Ms Salisbury confirmed that this remains correct today. The site delivery estimates specific to this site[11] set out that 300 dwellings can be delivered in the five-year period ending 2030/31. Mr Brown explained that this was achievable given the single landowner, the lack of any constraints on delivery, and the ability to develop the site from multiple sales outlets. As Mr Brown explained, these delivery estimates are more conservative than the delivery timescales the Council is anticipating from some of the larger long list sites, which do not even have a live application in place.[12]

25. The remaining benefits, including economic benefits, land for education purposes, sports facilities, health hub, biodiversity net gain and enhanced connectivity, should all receive significant weight, for the reasons explained by Mr Brown.

26. Cumulatively these many benefits are very substantial, and should weigh heavily in the planning balance.

[10] CD 5.23, pdf page 16, para 3.10.
[11] CD 5.20.
[12] See CD 5.40.

(b) The scheme is in a sustainable location

27. There is no doubt that the proposal would be in a suitable location having regard to national and local transport policy and access to services and facilities. This is a matter that is common ground between the Appellant (through two separate expert transport consultants[13]), the Council (both through its officers[14] and corporately[15]), West Sussex County Council ("WSCC") as local highway authority (who have provided a SoCG,[16] are a party to the s.106 agreement and have provided a regulation 122 statement[17]), Active Travel England and National Highways, who have all carefully considered this issue.

28. The sole dissenting voice on this issue is Mr Lewis for the R6 party. He is the outlier. Before addressing the substance of the matters, it was remarkable that Mr Lewis in his evidence failed to acknowledge or properly engage with the fact that his opinions were at odds with the expert views of the Council and all relevant statutory consultees on this issue. The points now being made by Mr Lewis have already been put fairly and squarely by the R6 party to both the Council and WSCC, who considered and rejected these points.

29. In cross-examination, Mr Lewis repeatedly refused to give any opinion on the weight to be given to these views of statutory consultees. The legal position that must be followed is that decision-makers should give "*great*" or "*considerable*" weight to the views of statutory consultees, including highway authorities, and only depart from them if there are "*cogent and compelling reasons*" for doing so.[18] There are no such cogent or compelling reasons here.

[13] Ardent Consultant Engineers and Milestone Transport Planning Limited.
[14] Officer report at CD 3.1, paragraphs 12.193-12.244.
[15] SoCG between the Appellant and the LPA at CD 7.1, paragraph 4.44.
[16] SoCG between the Appellant and WSCC at CD 7.2.
[17] CD 19.7.
[18] *Shadwell Estates Ltd v Breckland District Council* [2013] EWHC 12 (Admin) at [72], and *Visao Ltd v SSHCLG* [2019] EWHC 276 (Admin) at [65] specifically on highway authorities.

30. Starting with policy, paragraph 110 of the NPPF provides that development should be focused on locations which are or can be made sustainable, through (i) limiting the need to travel and (ii) offering a genuine choice of transport modes. National policy acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and that this should be taken into account in decision-making.

31. Applying this to the appeal site, the relevant question is whether this location "*can be made*" sustainable. Mr Lewis confirmed that the facilities provided on-site by the appeal scheme (more on this below) do limit the need to travel to an extent. The nub of the dispute between the Appellant and the R6 party is whether there will be a genuine choice of transport modes. Mr Lewis also raised issues relating to paragraph 115(a) and (b) of the NPPF, although the issues he raised all relate to the same substantive points he made in relation to whether there will be a genuine choice of transport modes.

32. Mr Lewis confirmed that he did not allege any breach of paragraph 116 of the NPPF in relation to unacceptable impacts on highway safety or residual cumulative impacts on the road network and thus did not allege that development should be prevented or refused on highways grounds.

33. Turning to apply these policy tests, starting with matters on-site, the scheme truly does limit the need to travel and prioritises sustainable transport. As Mr Stevens explained, the scale of the proposal by its nature provides the opportunity to provide facilities and services within the sustainable neighbourhood on site, which also serves to vastly improve the sustainability of Ansty.

34. In addition to housing, the appeal scheme will provide a new primary school, land for a SEND school, a new GP surgery, village centre with retail, employment and community

uses, sports facilities (including all weather pitches and tennis centre), allotments and care units.[19] Within the site there will also be a comprehensive network of LTN compliant footways and mobility hubs (which will contain a range of sustainable travel facilities). This will all provide day-to-day facilities for new residents in the development and existing residents at Ansty to walk and cycle to, internalising a material proportion of trips. As mentioned above, the R6 party do not make any criticism of matters on-site.

35. Turning to off-site matters, there are four matters to address, namely, trips to and from (i) Cuckfield and Warden Park Academy, (ii) Haywards Heath, (iii) Burgess Hill, and (iv) deliverability of the bus services.

Cuckfield and Warden Park Academy

36. There are multiple ways of actively travelling to Cuckfield and the Academy, by formal and informal means.

37. Much of Mr Lewis's criticisms centred on the route along footpath 8aCU, using the signal-controlled crossing of the A272. Mr Lewis raised issues with the level of detail provided for the improvement works, the use of the path by vehicles and the part of the route which is unadopted.

38. These concerns are without merit. In relation to the level of detail necessary, the improvement works have been agreed and front-loaded through the s.106 agreement. WSCC, who have been involved in an ongoing dialogue with the Appellant, and who are the body that will carry out the improvement works e.g. to footpath 8aCU, are satisfied with the level of detail at this outline stage. Mr Stevens explained that he has never been required to provide the level of detailed drawings for off-site improvement works that Mr

[19] See the masterplan at CD 2.53.

Lewis appeared to be requesting at this outline stage of development. In relation to Mr Lewis's other complaints, the route is an extremely low traffic and low speed environment, with only two houses being served, and a permissive route through the church is available to avoid the short part of unadopted road.

39. Moreover, footpath 8aCU is patently not the only or principal walking and cycle connection between the site and Cuckfield and the Academy.

40. Another route is via the B2036, which represents a genuine choice for either walking or cycling. This route is lit and would be along a fully sealed surface, with the Appellant providing a contribution for WSCC to implement a revised speed limit of 30mph. Mr Lewis confirmed that he took no issue with this walking route, apart from the section along South Street, once already within Cuckfield. There is a continuous pedestrian route along the western side of South Street, and although narrow in some parts, this is an existing environment already readily used by pedestrians within the historic village, and the highway authority have not suggested that any improvements need to be made to this route.

41. In relation to cycling along the B2036 route, Mr Lewis could not point to any policy or guidance which supported his opinion that cycling on the carriageway of a 30mph road represented an unsafe environment. The most he could point to was a reference in a transport note that stated that in such circumstances it "*may*" be appropriate to provide a separate cycle lane.[20] This is a matter of judgment. The highway authority, who have been engaged in this scheme on an ongoing basis, have never viewed this as necessary or appropriate along the B2036 and Mr Stevens fully agrees.

42. Further, in respect of the Academy in particular, there would be a genuine choice to cycle along the new dedicated bespoke pedestrian/cycle way along the southern side of the

[20] CD 6.10, page 17.

A272, which will be delivered as part of the appeal scheme's commitment to prioritising sustainable transport. This will comprise a 3 metre, lit, shared pedestrian and cycle route, comfortably separated from the carriageway by a 2.5-metre verge. Mr Stevens explained that as part of reserved matters, the on-site cycleways will be routed towards this new pedestrian/cycle way.

43. Mr Lewis confirmed that he had no concerns with the use of this new route along the A272, but he took issue with matters at the Broad Street roundabout and the section of road further north towards the Academy where the separate cycleway ended. As to the latter point, as Mr Stevens explained there are no safety issues with cyclists sharing the carriageway along this section of Broad Street (which is 30mph and then 20mph at school times closer to the Academy). The highway authority similarly does not have any concerns and as mentioned above, Mr Lewis's position is not supported by any policy or guidance.

44. As to the roundabout, there is a signalised crossing that can be used to cross from the new pedestrian/cycle way along the south of the A272, onto the existing pedestrian/cycle way on the eastern side of Broad Street, which only requires a very short diversion. This proposal has already passed through the Stage 1 Road Safety Audit ("RSA"), which did not identify any safety issues in relation to pedestrians or cyclists' interaction with the Broad Street roundabout.[21] In any event, the recognised RSA process will provide further opportunities through detailed design, construction and post-opening monitoring to identify and address any issues should they be identified, all under the oversight of WSCC.

45. Accordingly, there are several ways to actively travel to Cuckfield and the Academy, which represent genuine choices for walking and cycling for residents. Mr Lewis contended that alternatives to the 8aCU footpath are not the most direct route. Firstly, this is not factually

[21] See Appendix A of CD 2.7.

correct. Secondly, 'directness' is not the correct policy test, and is not the only basis on which people make choices about which route they want to walk or cycle. The question is whether these other routes represent genuine choices to walk and cycle, which they obviously do.

Haywards Heath

46. The appeal site will be well-connected to Haywards Heath, by active travel routes and by bus. This is a significant benefit with regards to the sustainability of the appeal scheme, given the facilities and services within Haywards Heath, and the onward connections that are available at the train station.

47. As mentioned above, the proposal will deliver the new pedestrian/cycle along the southern side of the A272, which will provide a safe and comfortable bespoke cycle route all the way from the site to the Haywards Heath town centre and the train station, as a genuine choice. Mr Stevens accurately described this benefit of the scheme, and the connectivity it delivers to Haywards Heath, as having a "*game-changing*" effect. Mr Lewis's refusal to accept that this provided a genuine choice to cycle to Haywards Heath just goes to show that his evidence was not fair or objective.

48. Residents will also have the choice of using the designated bridleway 67CR / 50bCU via Copyhold Lane, as a more recreational route, which will be subject to improvement works as secured in the s.106 agreement. The differences in distances of this route compared to the new pedestrian/cycleway along the A272 routes are negligible.[22]

49. Additionally, the appeal scheme will provide a genuine choice of bus services as another way of sustainably travelling between the site and Haywards Heath.[23] There will be a

[22] Pages 18 and 19 of Mr Stevens's rebuttal proof.
[23] With the bus route ending at the hospital.

minimum of a half-hourly service between the site and Haywards Heath during weekday daytime hours and Saturdays, and a minimum hourly service on during evening hours and on Sundays. All residential dwellings within the site will be within a 400m radius of bus stops.

50. Mr Lewis accepted that this would offer a genuine choice of transport modes, and agreed that the proposed routing and timing was acceptable,[24] subject to his concerns as to deliverability (more on this below).

Burgess Hill

51. The appeal site will be sustainably connected to Burgess Hill via the new bus services, which will provide a minimum of an hourly service to and from the site during weekday daytime hours and Saturdays, as well as a minimum hourly service during evenings and on Sundays. There is common ground with the R6 party that the routing and timing of this service is acceptable, and that it provides a genuine choice of public transport options (subject to the issue on deliverability, which is addressed below).

52. Mr Lewis raised concerns with the lack of designed cycle connections to Burgess Hill. Mr Stevens explained that although a new cycle route was initially explored together with WSCC, this was demonstrated not to be feasible, and WSCC are fully content with the sustainable travel options offered as a whole. As referred to above, the site is well-connected to Haywards Heath, and that is the critical larger settlement to which it is connected.

53. Mr Lewis agreed with the principle that a genuine choice of transport modes does not require every destination to be accessible by every mode of transport. That principle is plainly correct, and the lack of a specific designed cycle connection from the site to Burgess

[24] See the latest s.106 at CD 19.9 (pdf page 8 for 'bus service' definition) and the bus strategy at ID 7.5.

Hill does not affect the overall conclusion that the appeal scheme, together with the package of on-site and off-site measures, is a location which can be made sustainable, limiting the need to travel and offering a genuine choice of transport modes.

Bus services

54. As referred to above, the only issue Mr Lewis raises in relation to bus services is its long-term deliverability. The viability and sustainability of the bus service strategy has been thoroughly assessed and discussed through ongoing dialogue with WSCC. The Appellant is providing a substantial contribution towards bus services, with a commitment to support services, as a minimum, throughout build out (assumed to be 10 years) and for a further two years post final residential occupation. The provision of the bus services is to be front-loaded and will be operational early in the process.[25]

55. WSCC have confirmed that this early delivery will influence travel behaviours and achieve modal shift targets, and that the level of contribution will enable the bus services to achieve commercial sustainability.

56. On the specific issue of mode share, WSCC have explained that although bus modal shares in West Sussex generally are lower, areas such as Crawley, where travel behaviours have been positively influenced by the provision of new bus services, have achieved levels of between 5% and 11.5% for buses. Taking into account the positive measures introduced with the appeal scheme (including the public transport design throughout the site, travel plans and trip monitoring strategy), WSCC have assessed that a combined modal share for public transport (including buses connecting to the train station) of 7.5% to 7.9% is realistic and appropriate.

[25] Route 1 service (to / from Haywards Heath via Cuckfield) will be operational prior to the occupation of 50 dwellings, and Route 2 service (to / from Burgess Hill) will be operational prior to 30% occupation of dwellings.

57. The inquiry has been given (literally) no reason whatsoever to look behind that expert advice. WSCC are the ultimate experts in commissioning and running bus services in West Sussex and in setting contributions at an adequate and appropriate level, and they are obviously best placed to reach macro-level judgments on the commercial sustainability of bus services. As set out above, on such matters, the judgments of WSCC as highways authority, should be given great or considerable weight, and cogent and compelling reasons are required for departing from their expert and considered views.

58. Mr Lewis's evidence does not provide any such cogent or compelling reasons. Far from it. He accepted that he did not have any expertise in running or commissioning bus services. His assessment solely relies on 2011 census data,[26] and replicates this looking forwards. This assessment fails to take any account of measures which can influence travel behaviour and deliver outcomes and is contrary to the vision-led approach required by national transport policy.[27] The position of WSCC as the experts, agreed by Mr Stevens, should be preferred.

59. Further, both Mr Stevens and Mr Lewis have taken an extremely conservative approach in only relying on revenue generated by new residents at the appeal site and not accounting at all for any use of the bus services by the thousands of existing residents living within the 400m catchment area of the bus services. Including the inevitable use of the bus services by thousands of existing residents will even further drive up revenue.

[26] Table 5.1 of his proof of evidence.
[27] Paragraph 109 of the NPPF requires a 'vision-led' approach, defined as "an approach to transport planning based on setting outcomes for a development based on achieving well-designed, sustainable and popular places, and providing the transport solutions to deliver those outcomes as opposed to predicting future demand to provide capacity (often referred to as 'predict and provide')."

60. Overall, the bus services provided will be deliverable and will further add to the comprehensive package of sustainable travel options provided by the appeal scheme, which will offer a range of genuine choices of sustainable transport modes.

(c) There will be no harm to the National Landscape, no coalescence between settlements and the landscape effects will be localised

61. As a starting point, following the evidence heard at the inquiry, it has become clear that the landscape evidence produced by the Appellant is the far more reliable and credible evidence.

62. There is a wealth of landscape evidence from the Appellant. The application documents include a comprehensive LVIA and updated LVIA,[28] the DAS and Mr Vernon-Smith's evidence which sets out the landscape-led approach to design of the masterplan,[29] a detailed response document by Fabrik,[30] as well as several related reports including lighting assessments.[31] In total the Fabrik team spent in excess of 24 days on site. Building on this, Mrs Brockhurst, whose landscape approach has been endorsed in numerous appeals, has produced her thorough proof of evidence and rebuttal. She has taken a diligent approach to preparing evidence, visiting the site for 4 full days, as well as having driven round the site at nighttime.

63. This stands in stark contrast to the evidence given by Mr Peacock, on behalf of the Council. He explained that his firm had accepted the instruction and committed him to giving evidence, before he had even been to site and carried out an assessment for himself. When he did eventually go to site, he confirmed that this only consisted of a 1-day visit, which did not include any experience during nighttime. During his evidence at the inquiry (which we will go into the detail below) he diverged from the Council's case, the statement of

[28] CD 1.44 and 2.16.
[29] CD 1.23 and Appendix LP3 to Mrs Brockhurst's proof.
[30] CD 2.18.
[31] CD 1.17 and 2.15.

common ground (which he had signed) and his written evidence several times. His evidence was neither reliable nor credible, and very little weight should be given to it.

64. Ms Hooper's evidence on behalf of the R6 party was clear and professional, however, as will be explored below, her evidence suffered from similar substantive flaws, particularly on the approach to valued landscapes.

High Weald National Landscape

65. The appeal site lies within the setting of the High Weald National Landscape ("NL"), but it does not lie within the designated NL. This may appear a statement of the obvious, but this distinction is crucial.

66. Section 82 of the Countryside and Rights of Way Act 2000 applies its protective provisions to the outstanding natural beauty of the designated area. Similarly, paragraph 189 of the NPPF provides that great weight should be given to conserving and enhancing landscape and scenic beauty *in* the designated areas, and policy DP16 in the District Plan refers to development not detracting from the visual qualities and essential characteristics *of the AONB*. The Landscape Institute[32] and the Courts[33] have confirmed that the setting of protected landscapes is not a designation in its own right. Where a development is proposed in the setting of a NL, the correct question is whether changes in the setting would affect the land within the designated landscape in terms of its special qualities.[34]

67. Given that the development will be in the setting of the NL, paragraph 190 of the NPPF is not applicable. In addition, the requirement in the first part of the last sentence of paragraph 189, to limit the scale and extent of development within the designated area,

[32] CD 17.1, pdf page 16.
[33] R *(Ardleigh Parish Council) v Tendring District Council* [2024] EWHC 648 referred to by officers at CD 3.1 para 12.102.
[34] CD 17.1, pdf page 16.

also does not apply. The requirement in the second part of the final sentence of paragraph 189 of the NPPF is applicable, namely that development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.[35]

68. Mrs Brockhurst has extensive experience with statutory protected landscapes, including having acted as an advisor to the South Downs National Park Authority. She explained that it is only land that meets the statutory criteria of outstanding natural beauty that is included within the designation, and that there is no assessment of setting or buffers in the process of boundary drawing.

69. The fact that the appeal site is not within the NL boundary is not arbitrary. It was the product of a conscious decision not to include it within the designated area, because it is not an area which exhibits the required outstanding natural beauty. Further, we also have the benefit of knowing that the appeal site was specifically examined by the Countryside Commission, Natural England's predecessor, in 1987, when the Council made representations which sought to have the NL boundary extended to include the appeal site. This extension to the boundary was rejected by the Countryside Commission.[36] Ms Hooper fairly explained that her view was that this process undertaken to decide whether to include the appeal site in the NL was "*thorough*".

70. Mr Peacock's purported assessment of NL harm was flawed from the outset. His approach was to look at the extent to which the core components of the NL are also exhibited in the appeal site, and to what extent there was 'continuity' (his word) between the NL and the appeal site, and to what extent the appeal scheme would adversely impact the core components (as he saw them) *on the appeal site*. This is totally the wrong approach (as he

[35] The debate as to the correct meaning of this paragraph between the planning witness is addressed below.
[36] Appendix LP4 of Mrs Brockhurst's proof.

ended up accepting in cross-examination), and should not be endorsed. He effectively treated the appeal site as part of the designated area. The purpose of this appeal is not to re-run arguments about whether the NL boundary should be extended to include this site. When confronted with this fundamental error in cross-examination, Mr Peacock conceded that his assessment of impacts on the "*rural context of the HWNL and continuity of shared landscape characteristics*"[37] was in reality an assessment of impacts on land outside the NL. He had not looked at harm within the NL at all. How, then, do the LPA deal with that hole in their case as we close the inquiry?

a. At §25(a), the Council notes that the appeal scheme would not have a direct effect on many of the core characteristics of the National Landscape. On that we agree.
b. And yet, the Council "*submits*" that there would be adverse effects on the NL. This is not a point that can properly be made by submission. It would have required evidence.
c. And that evidence would have been required to grapple with whether and to what extent the NL's special qualities or core components would actually be affected (either directly or indirectly).
d. As we explain in more detail below, Mr Peacock didn't do that, and (with respect to the LPA's counsel) it's far too late to start trying to do it now.

71. The lawful and correct assessment of effects on the NL was demonstrated by Mrs Brockhurst, namely whether changes on the appeal site in the setting of the NL would impact on land within the designated landscape in terms of its special qualities.

[37] Paragraph 3.56 of Mr Peacock's proof.

72. The eight special qualities or core components of the NL are set out in the High Weald Management Plan.[38] The majority of these relate to the physical components of the designated land itself.[39] It is only the components relating to dark night skies and aesthetic and perceptual qualities that could be impacted by changes within the setting.

73. In relation to dark skies, Mrs Brockhurst set out that the level of dark skies is not uniform across the landscape. The dark skies CPRE mapping[40] shows that the western extent of the NL, which the appeal site is located within the setting of, already experiences a relatively high level of light intrusion compared to the darker skies across the rest of NL. The light spill from the proposed development is assessed in the lighting assessments[41] which show that the effects will be highly localised. Lighting will be controlled by conditions and Mrs Brockhurst explained that the lighting from the appeal scheme would not materially adversely impact the dark skies core component of the NL. Neither the Council nor the R6 party have produced any light spill evidence, and Mr Peacock (who has never visited the site at nighttime) conceded that lighting was an issue which was capable of being minimised within the terms of paragraph 189 (we will return to paragraph 189 below).

74. Mr Parker, the R6 party's advocate, opportunistically sought in cross-examination, for the first time, and without any evidential basis, to criticise the Appellant's lighting assessment.[42] Mrs Brockhurst explained that the use of E2 as the environmental zone of the site in the assessment, rather than E1, reflected the reality of the higher levels of light intrusion in this area, as explained in her evidence and the CPRE mapping. In any event, the R6 party have not produced any of their own lighting evidence to contradict or challenge the Appellant's lighting assessments. No weight can be given to the R6 party's unevidenced

[38] CD 5.8, pdf page 17.
[39] i.e. components 1, 2, 3, 4, 5 and 8.
[40] Figures LP5.1 and 5.2 in Mrs Brockhurst's proof.
[41] CD 1.17 and 2.15.
[42] At CD 1.17.

new allegations in this regard. Mr Parker's improvisational exercise continues in his closings at §17 where he – quite illegitimately – seeks to introduce a range of new pieces of evidence on light spill through his closing submissions. This is advocacy, not evidence. No lighting witness was called, no competing lighting assessment was produced, and the only technical lighting evidence before the inquiry supports the Appellant's case that effects would be localised and capable of control. Baseless assertions from a barrister. No more. No less.

75. In relation to aesthetic and perceptual qualities, further detail on these qualities is set out in the Management Plan.[43] The vast majority of these qualities relates to land within the designated area. The only quality which could, in principle, be affected by change within the setting are the unexpected panoramic and long views at (k).

76. Mr Peacock also relied to (l) and (m) on tranquillity and soundscapes. However, these issues form no part of the Council's reason for refusal (which refers to 'scenic beauty') and the Council has not adduced any acoustic evidence to substantiate these new claims by Mr Peacock. In any event, he accepted that the existing car noise from the A272 already reduces the tranquillity in this part of the NL.

77. As to impact on views, it was Mr Peacock's viewpoints 1 and 2 where he alleged a higher level of harm (namely, moderate harm) to the NL would be caused.[44] Both of these viewpoints are along the A272 and are within land *outside* of the designated area. The harm Mr Peacock alleged here relied upon his 'continuity' approach, which as we have explained above is not the correct or lawful way to assess harm to the NL. In addition, these views

[43] CD 5.8, pdf page 45.
[44] See Mr Peacock's appendices.

are plainly not the unexpected panoramic and long views referred to as the key quality in the Management Plan.

78. The only relevant long view is Mr Peacock's viewpoint 5, which is shown as VVM viewpoint 8 in the LVIA.[45] As is evidenced in the VVM, the impact of the proposed development in this long view will be minimal. It will not change the composition of the view and will not adversely impact on the natural skyline or forested ridges, which are referred to as the key qualities in the Management Plan.[46]

79. On this basis, there would be no harm to the NL. In compliance with policy DP16 the proposed development would not detract from the visual qualities and essential characteristics of the NL, and in compliance with paragraph 189 of the NPPF the proposed development would avoid adverse impacts on the designated area.

80. Following Mr Peacock's evidence, our note of his evidence is that he did not identify any harm (that could not be effectively mitigated[47]) to the NL itself, rather than harm to land outside the NL.

81. In any event, he accepted on several occasions that the appeal scheme has minimised any residual adverse NL impacts in accordance with paragraph 189. The Appellant has produced the Technical Appendix on Urban Design by Mr Vernon-Smith[48] which explains how the scheme masterplan is landscape-led and all the ways in which the development has been sensitively located and designed to minimise impacts (even if there are any), and sets out the issues that can be dealt with at reserved matters. In light of this evidence, Mr Peacock agreed that he was not suggesting any further ways in which effects could be

[45] See Mr Peacock's appendices, and the LVIA at CD 2.15, pd pages 119-121.
[46] CD 5.8, pdf page 45.
[47] i.e. lighting impacts.
[48] Appendix LP3 of Mrs Brockhurst's proof.

minimised. When officers examined this issue, they similarly concluded that impacts had been minimised, and thus paragraph 189 was complied with.[49]

82. Ms Jarvis for the Council accepted that Mr Peacock's evidence had contained several concessions and had materially narrowed the issues between the parties, which has an impact on the planning balance. However, there are two ways in which her evidence was confused.

83. First, she accepted Mr Peacock's view that effects on the NL had been minimised. However, she surprisingly claimed that the final sentence of paragraph 189 contains a requirement for development in the setting of a NL to conduct an alternative site search for other locations, including for sites to suit a development of a different scale to that proposed. That is an interpretation of paragraph 189 that is contrary to its clear and plain wording. The first part of the final sentence applies to development within designated areas, and the final part then says that "*development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas*." The words are linked: sensitive location/design is not just for its own sake, it is directed to a policy purpose – that purpose is avoiding or minimising impacts on the designated area. If adverse impacts have been minimised, then this part of the paragraph has been complied with – there is no separate requirement to sensitively locate by looking at alternative sites. Ms Jarvis's interpretation would effectively subject developments within the setting to even stricter requirements than development within the NL (see paragraph 190). This would be a novel, and we say unlawful, approach.

84. There is also no support for Ms Jarvis's approach within the PPG, which sets out detailed guidance for when alternative site searches are required by national policy (see, for

[49] CD 3.1, paragraphs 12.104-12.105.

example, the approach to flood risk cases). The PPG[50] requires "*sensitive handling*" of development within the setting of designated areas, not an alternative site search. Ms Jarvis's approach is also not one that has been taken by other inspectors.[51]

85. Second, she thought that Mr Peacock, even after all of his concessions in evidence, still identified a "*limited*" and "*residual*" harm to the NL. As mentioned above, that does not accord with our note of his evidence. You will have your own note, madam. Nevertheless, even on Ms Jarvis's approach, she agreed that this "*limited*" and "*residual*" harm was a lesser level of harm than she had previously assessed in her planning balance in her proof. Ms Jarvis's use of this harm to justify a case that there is a strong reason for refusal in this case was legally flawed, and this is addressed further within the planning balance section below.

Coalescence

86. Policy DP13 in the District Plan requires the "*separate identity*" of individual towns and villages to be maintained, and that "*when travelling between settlements people should have a sense that they have left one before arriving at the next*". Development will be permitted where it does not result in the "*settlements which harms the separate identity and amenity of settlements, and would not have an unacceptably urbanising effect on the area between settlements*."

87. Policy AS2 in the Ansty Neighbourhood Plan requires development to demonstrate that it would not result in coalescence with any neighbouring settlement or result in the perception of openness being unacceptably eroded, including between Ansty and Cuckfield.

[50] Paragraph: 042 Reference ID: 8-042-20190721 of the PPG on the natural environment.
[51] See the Dorking appeal decision at CD 11.3, paragraph 46.

88. It is common ground that there is no alleged impact on the separation of Cuckfield and Haywards Heath.

89. It is important to look first at what policies DP13 and AS2 are saying. These policies do not prevent villages from changing or expanding. The policies envisage that there can be an acceptable level of urbanising effect on the area between settlements and reduction in the openness between settlements. The policies are only targeted at "*unacceptable*" urbanising effects or erosion of openness, with the ultimate aim of maintaining the separate identity of settlements, including when travelling between settlements.

90. As set out by Mrs Brockhurst, both Ansty and Cuckfield will maintain their separate identities. There would obviously not be any physical merging or coalescence of the two settlements. There would remain a clear spatial gap between the settlements, containing intervening countryside and with the A272 remaining as a strong linear feature between the two settlements.

91. There would further be no perceived coalescence. For those travelling between the two settlements there would still be a clear sense of leaving Ansty and arriving into Cuckfield, and of leaving Cuckfield and arriving into Ansty, on the journey along the B2036. Mr Peacock accepted that this would be the case and accepted that there would be no perception of coalescence along this journey. Those using the footpaths (e.g. the 8aCU) would similarly still have the sense of leaving one settlement and then arriving at the other.

92. The settlements would also maintain their separate identity in visual terms. The location from which intervisibility is experienced between Cuckfield and Ansty is limited to the specific spots within the cemetery of the Holy Trinity Church in Cuckfield. In this location currently the rooftops of the edge of Ansty are already visible, and there is clearly currently a sense of visual separation and separate identity. The principle of this will not change. The

visual material[52] shows that the rooftops of the proposed development will be visible from specific spots, but there will clearly remain the same clear sense of visual separation and separate identity, due to the intervening land, tree cover and difference in topography. In these limited views there will be a clear sense to someone (whether they are a resident or a visitor[53]) standing on the edge of Cuckfield that they are looking at a separate settlement, rather than a sense of standing within a settlement looking at part of the same settlement.

93. Mr Peacock also relied on views along the footpaths leading out from Ansty currently, which will be subsumed within the proposed development. This is a misconceived approach. As explained above, the policies do not prevent villages from changing or expanding. People standing within the new development, as part of the expanded Ansty, will know they are within Ansty. There is no intervisibility with Cuckfield in these locations, and no sense or experience of Cuckfield, and therefore no impact on the separate identity of settlements.

94. Accordingly, there is no conflict with policies DP13 or AS2, and no harm arising from coalescence to weigh in the balance.

Landscape value and character impacts

95. It is common ground between the Appellant and the Council that the appeal site is not a valued landscape within paragraph 187(a) of the NPPF. Officers made no claim that this was a valued landscape, the Statement of Common Ground[54] on behalf of the Council sets out agreement that the site is not a valued landscape, and Mr Brown KC confirmed during Mr Peacock's cross-examination this would remain the Council's case.

[52] Appendix 4 to Ms Stoten's proof of evidence at CD 8.7C.
[53] Mr Peacock accepted there would be a sense of separate identities for residents from this location, but not visitors.
[54] CD 7.3, para 1.6.

96. However, Mr Peacock's evidence, which Ms Jarvis relies on for her planning balance, as revealed for the first time through cross-examination, is based on the appeal site being a valued landscape within paragraph 187(a). He accepted that this was not set out explicitly in his proof (he argued it was implicit) and accepted that this was flatly contrary to the Statement of Common Ground that he signed on behalf of the Council. Ms Hooper for the R6 party also alleged that the appeal site was a valued landscape.

97. On any reasonable view, the appeal site is not a valued landscape. Paragraph 187(a) of the NPPF states that valued landscapes should be protected and enhanced "*in a manner commensurate with their statutory status or identified quality in the development plan*." The site does not have any statutory status and it does not have any identified quality in the development plan. There is no designation or identification for its protection to be commensurate with.

98. The Landscape Institute's guidance defines a valued landscape as having sufficient landscape qualities to elevate it above more everyday landscapes.[55] As explained by Mrs Brockhurst, the site does not have qualities that elevate it above the everyday, and there is no weight of evidence to support recognition as a valued landscape. (Notably, it is very likely that the new NPPF due this summer will be removing the valued landscape policies, however these submissions are on the basis of the NPPF currently in force.)

99. The Landscape Institute aptly warns that the identification of landscape value needs to be applied proportionately to ensure that it is not over-used.[56] The need for proportionality is particularly pertinent in Mid Sussex. It is common ground that this is a highly constrained district, with nearly 60% of the district covered by a national level landscape designation.[57] There are no high areas for capacity to develop at all in the district.[58] In fact, bringing all

[55] CD 17.5, pdf page 46.
[56] CD 17.5, pdf page 47.
[57] Capacity of Mid Sussex to accommodate development at CD 17.14, pdf pages 18 and 19.
[58] CD 17.14, pdf page 68.

the various constraints to development together, the appeal site has been objectively judged by the LUC capacity study carried out for the Council to be one of the least constrained areas in Mid Sussex.[59] This context provides even more justification for not treating the site as a valued landscape.

100. The Council and Ms Jarvis have chosen to disown Mr Peacock's assessment of value to the site, however they have continued to rely on his judgment of impacts. The Council cannot simply cherry pick his evidence in this way. Mr Peacock's assessments of value inevitably feed into his impacts, which renders the rest of these judgments also unreliable. Ms Hooper also treated the site as a valued landscape, which similarly feeds into her judgments on impacts too, such that these also cannot sensibly be supported.

101. Even looking at Mr Peacock's judgments on impacts (which as set out above cannot be reliable), his judgments as to impacts are all either negligible, minor or moderate adverse apart from his assessed impacts on the assarted field system and landscape character/sense of place.[60] In this regard, Mr Peacock accepted that he had not undertaken any analysis to ascertain whether the fields in the appeal site actually are associated with the medieval period. Taking this out of the equation, the assessment of level of impact must necessarily reduce, even on his judgments.

102. The judgments as to impacts that can be relied upon are those set out in the LVIA, followed with Mrs Brockhurst's evidence. It is common ground that there are no methodological issues with the LVIA. The LVIA does fairly find some localised and long-term significant effects. These are contained to the site itself and its immediate setting, and are inevitable given the need for greenfield development in this highly constrained district. As set out in Mrs Brockhurst's evidence there are also landscape benefits to the appeal scheme, including 33.5ha of Green Infrastructure, which will deliver a range of benefits. These must all be factored into the planning balance and are relevant to weight.

[59] CD 17.14, pdf page 88.
[60] Appendix D of Mr Peacock's proof.

(d) The proposal would not be premature to the emerging local plan

103. National policy on the relevance of emerging local plans in decision-making is contained in paragraphs 49, 50 and 51 of the NPPF.

Paragraph 49

104. Paragraph 49 is the key policy on weight to an emerging plan. This sets out that decision makers may give weight to "*relevant policies in emerging plans*" according to several criteria, including the stage of preparation of the plan, the extent of unresolved objections and the degree of consistency with the NPPF.

105. Despite the extraordinary reluctance from the Council to engage with this policy throughout the appeal (until mid-cross examination of Ms Jarvis on the penultimate day of evidence at the inquiry), we now finally have a measure of common ground on this matter. Both Mr S Brown for the Appellant and Mr Connell for the R6 party agree that only limited weight should be given to the emerging plan (see the planning SoCG addendum at ID20). Ms Jarvis for the Council agrees that limited weight should be given to the spatial strategy and housing numbers policies, and that moderate weight should be given to the other development management policies.

106. A position of limited weight to the emerging plan is clearly the most reasonable judgment to make. It is clear from the recent hearing sessions that Inspector Bore's view is that the current version of the emerging plan (CD 5.18) does not allocate enough housing. Therefore, the current version of the emerging plan would not be sound. Inspector Bore has asked the Council to look at testing for an overall housing target in the range of 1,200 to 1,300 dpa (CD 5.35), which involves allocating a further circa 4,000 homes.

107. The Council has started this process with the publication of the long-list. However, the long list does not form any part of "*relevant policies*" in an "*emerging plan*". The long-list is what it says it is. It is simply a long-list of additional sites that the Council has identified for potential allocation subject to further testing. The list is not part of the emerging plan, and it does not modify the emerging plan. Some or all of these sites may become part of the plan, or they may not. We simply do not know. Unless and until modified, the "*emerging plan*" for the purposes of the NPPF paragraphs remains that as submitted at CD 5.18.

108. Not only is the long-list not part of the emerging plan. There are numerous stages that need to be gone through before any sites on that list can conceivably become part of the emerging plan. The long-list has not yet been subject to consultation and so the extent of unresolved objections is not yet known.

109. At this stage it is likely that objections will be raised given the number of sites that would constitute major development in the National Landscape. The long list includes no fewer than 9 sites within the NL amounting to 1,192 homes,[61] which include several sites which constitute major development in the NL, including proposals for 700 and 196 homes at Pease Pottage.

110. What Inspector Bore thinks of this approach is at this stage unknown and is a matter for his judgment and the EiP. This inquiry certainly does not and must not seek to prejudge this, and it forms no part of the Appellant's case to criticise or predetermine the local plan process. All that can be said now is that this approach to sanctioning development within the NL is undeniably antithetical to the approach set out in the submission version of the emerging plan. It is also clear at this stage that the Council is yet to determine whether there are "*exceptional circumstances*" to justify such development as required for consistency

[61] CD 5.44, pdf page 8, table 2.

with paragraph 190 of the NPPF. The need for this assessment to still be carried out is made clear within the long-list documentation,[62] and Ms Salisbury confirmed that this assessment work was still yet to be done. This is all highly relevant when it comes to assessing the weight that can be given to the long-list process at this stage.

111. There is also further work to be done in addition to the "*exceptional circumstances*" assessment for all of the long-list sites. The sites have not been subject to in-combination testing, including through Sustainability Assessment, Habitat Regulation Assessment and transport assessment, have not been tested against reasonable alternatives (which will inevitably include the appeal site) and, most importantly perhaps, it has not been subject to any views or scrutiny from Inspector Bore and we cannot and must not prejudge what his views will be. According to the Council's timetable, this may include further hearing sessions scheduled for later this year.

112. Drawing all of this together, the emerging plan can only receive limited weight at this time. The Council, through Ms Jarvis, has also confirmed that it does not place any reliance on conflict with policies in the emerging plan, and this forms no part of their objection against the appeal scheme.

Paragraphs 50 and 51

113. Paragraphs 50 and 51 of the NPPF set out national policy on prematurity. Paragraph 50 explains that prematurity is "*unlikely*" to justify a refusal of planning permission other than in the "*limited circumstances*" specified, particularly in the context of the presumption in favour of sustainable development. This is the only place where the NPPF specifies that a particular matter is "*unlikely*" to justify refusal.

[62] CD 5.44, paragraphs 27 and 28; and CD 5.44A, for example see the Pease Pottage site at pdf page 351: "*High impact on the AONB/ Likely major development in the AONB with no identified exceptional circumstances*."

114. It is relevant to note that paragraph 50 does not state that permission ***should*** be refused whenever a prematurity objection is made out, and it does not specify the weight that should be given to a prematurity objection. There are plenty of occasions where the NPPF does specify this for other matters, and the Government has chosen not to do so here. Further, prematurity is not specified in paragraph 11(d)(i) as one of the policies that is capable of constituting a strong reason for refusal.

115. On this basis, even if prematurity is made out (which the Appellant firmly denies) then this would amount to a consideration to weigh in the planning balance, but no more than that.

116. In order to justify a prematurity objection both paragraphs 50 and 51 need to be made out. In this respect, there are several fundamental problems with the Council's case on prematurity.

117. First, as is clear from the chronology and Ms Salisbury's evidence, the Council have only belatedly raised a prematurity objection upon the publication of the long-list. It is the publication of the long-list that the Council say now makes the appeal scheme premature. However, as explained above, the long-list is not part of the emerging plan and there are numerous stages that need to be gone through before any sites on that list can conceivably become part of the emerging plan. The Council's closing at §33(a)(iii) suggests that the trigger was because the plan had become "*sufficiently advanced*" vis-à-vis the EiP. But that is, with respect, wrong. The publication of the unexamined and untested long list did not make, and has not made, the plan any more advanced. And yet it was that publication which triggered the Council's decision to try to change it case.

118. That was an error. 'Prematurity' is not a concept that exists in a silo. The allegation is that granting permission is premature to an emerging plan. In circumstances where the "*emerging*

plan" does not include any part of the long-list, the publication of the long list cannot rationally substantiate a prematurity objection.

119. Second, following on from this, when correctly analysed against the emerging plan, which unless and until modified, is the emerging plan as submitted (CD 5.18), there is no justifiable prematurity objection.

120. Prior to the publication of the long-list the Council did not have any concerns that granting permission for the appeal scheme would undermine or prejudice the emerging plan. As explained above, the emerging plan is still the same now as it was prior to the long-list publication. The Council was quite right to consider that granting permission for the appeal scheme would not undermine or prejudice the emerging plan, and that still remains the case now. There are several reasons for this.

121. Paragraph 50(a) requires that a proposed development be "*so substantial*", or its cumulative effect would be "*so significant*", that to grant permission would "*undermine*" the plan-making process by predetermining certain decisions central to an emerging plan. Paragraph 51 requires the local planning authority to "*indicate clearly*" how granting permission for the development concerned would "*prejudice the outcome of the plan-making process*".

122. As agreed by Mr S Brown and Ms Salisbury, the meaning of these policies is that the onus is on the Council to clearly indicate and evidence some harmful consequence that would result to the emerging plan from granting permission for the appeal scheme. Bizarrely, the R6 party suggests at §60(4) of its closings that clearly indicated how the outcome of the plan-making process will be prejudiced can be done without examining any of the relevant "evidence". That is, with respect, the sound of a barrel being scraped, and shows quite how desperate the prematurity objection has become.

123. In the end, as Ms S Brown explained, the appeal scheme amounts to only 6% of the overall housing needs set out for the emerging plan by Inspector Bore. This is not a development that is "*so substantial*" that granting permission will undermine decisions that are "*central*" to the emerging plan.

124. Moreover, the Council has not put forward a shred of evidence that granting permission for the appeal scheme will cause any harm, or prejudice or undermining to the plan or the plan-making process. Neither Ms Salisbury nor Ms Jarvis were able to explain how or why granting permission for this development would lead to the de-allocation of any sites in the emerging plan or prejudice the selection of any of the long-list sites. The Council's rhetorical flourishes in its closings about "nonsense" (e.g. at §36) are not a substitute for evidence.

125. If the Council actually had any evidence that granting permission for the appeal site would lead to any preferred sites being removed, then they would have produced it. They have not. That is because no harm would be caused, and any grant of permission here can perfectly co-exist with the emerging plan.[63]

126. There would be no harm resulting from any supposed 'oversupply' of housing. Policy DPH1 of the emerging plan sets the housing requirement as a "*minimum*". There is no ceiling or cap on housing numbers. Indeed, emerging policy DPH1 currently includes an oversupply of housing, as against assessed housing need, in order to "*add resilience to housing delivery in Mid Sussex, should any commitments not be delivered as expected*" and to meet unmet need arising in the Housing Market Areas as a whole. Oversupply and an excess of housing is viewed as a positive in the emerging plan. This is an entirely sensible approach to the national policy imperative to boost the supply of housing, and it discloses that there would be no harm or prejudice to the emerging plan if granting permission for the appeal scheme would result in an oversupply in housing. The Council makes a number of points about the emerging plan's housing numbers at §30(a), (b) and (c) – but time and again, they proceed on the assumption that Inspector Bore will agree with them. Their approach, and not ours, rests on prejudging matters that Inspector Bore will be looking at, and (as we've

[63] On the contrary, the evidence that has been produced by the Appellant (see Appendix 1 of Mr S Brown's rebuttal proof at CD 8.10) indicates that the combination of the appeal scheme with all the allocated sites and the long-list sites does not result in any unacceptable highways harm. Of course, the in-combination testing will be an exercise for the emerging plan, but this indicates that there will no prejudice. Further, as already mentioned, paragraph 51 of the NPPF places the onus on the Council to indicate prejudice, and the Council has failed to do this.

already said) there is not a shred of evidence that any long list sites will need to be removed as a result of our permission. They have not shown any harm from a simple 'oversupply' of housing.

127. There would also be no harm to the spatial strategy in the emerging plan, which comprises four key principles: (1) protection of the High Weald NL, (2) making effective use of land, (3) growth at existing settlements where it is sustainable to do so, and (4) opportunities for extensions to improve sustainability of existing settlements. As explained by Mr S Brown, and agreed with Ms Salisbury, the appeal scheme would be consistent with and align with these principles in the spatial strategy, particularly in relation to the first and fourth principle (and NB the Council does not assert anything different in its closings). This is totally different to the linked Wirral appeal decision,[64] where the proposed developments in the Green Belt were wholly contrary to the spatial strategy being advanced.

128. This judgment that the appeal site is consistent with the spatial strategy is a judgment that was reached previously by officers, who recommended the appeal site for allocation in the regulation 18 version of the emerging plan in January 2022.[65] At this stage, officers identified the appeal site as one of the "*most suitable and sustainable sites*", based on the same four principles in the spatial strategy, following a detailed and robust site selection process. As part of the site selection and recommendation for allocation,[66] officers were of the view that there was high growth potential at Ansty, that development at the appeal site for 1,600 dwellings plus the range of community facilities would improve the sustainability of Ansty and that there were no significant constraints on the site that would impact the deliverability of the site. Notably, this proposed allocation co-existed together with draft policies on preventing coalescence and protecting the High Weald NL.[67]

[64] CD 11.17.
[65] See CD 5.9 at paragraphs 36, 51, 59, 60 and 75; and CD 5.14 at paragraphs 3.3, 3.8 and 3.9.
[66] CD 5.10, pdf pages 17, 22, 23 and 91.
[67] CD 5.10 pdf pages 55 and 57.

129. Ms Salisbury agreed that nothing has changed since this officer judgment to make the appeal site any less sustainable. She agreed that if anything, the case for development at the appeal site is stronger now, as the highway issues causing concern at that time have now fallen away.

130. Third, during the inquiry the Council have repeatedly tried to draw a distinction between the emerging plan and the emerging plan process. Even though they could not indicate any harm to sites currently in the emerging plan or the long-list, the Council alleged that there would be harm to the plan "*process*", due to a site being granted permission which the Council has chosen not to allocate, a lack of public engagement and a delay that might be caused to adoption. The Council get, its closings say, the ability not just to choose what goes into a plan, but also what is also left out: see §36 of its closings. This now seems to be the high point of their case on prematurity.

131. These points are misconceived. Even in other parts of the country where there are up-to-date plans, unlike Mid-Sussex, the effect of those plans does not draw up some notional draw-bridge, or freeze an area in aspic. The operation of section 38(8) of the 2004 Act permits permission to be granted although it may be contrary to a development plan, and the very nature of a s.78 appeal is a determination where the Council has chosen not to grant permission. This is part and parcel of the development management process. There is nothing prejudicial about this, and it is not contrary to the plan-led system. It is *part of* that system. Indeed, this is fully recognised in the emerging plan, which makes provision for windfall sites to come forward.[68]

[68] CD 5.18, pdf page 138.

132. There will also be no detrimental impact on public engagement. People will still be able to engage with the local plan and there has been material public engagement in this appeal, including through the participation of an active Rule 6 party.

133. Finally, as to delay, it is true that in-combination testing may have to be re-run, if permission is granted for the appeal scheme before the emerging plan has been adopted. However, the Council has failed to clearly indicate exactly what that extent of delay would be (i.e. how many days or weeks it would be). This would not amount to material prejudice. Moreover, paragraph 51 refers to prejudice to the "*outcome*" of the plan-making process. The outcome of the process is the adoption of a plan, and on any party's case, granting permission here will have no impact on the outcome of the emerging plan being adopted.

134. It follows that the Council's prematurity objection is entirely misconceived. However, even if (contrary to the Appellant's case) a prematurity objection is made out, the necessary next step is to determine how much weight to give this objection in the wider planning balance.

135. As set out above, it is common ground between the Appellant and the R6 party that the emerging plan only receives limited weight, and the Council's position is that only limited weight can be given to the spatial strategy policies and housing numbers in the emerging plan. Again, prematurity is not a concept that exists in isolation – the allegation is that a proposed development is premature *to the emerging plan*. In circumstances where the emerging plan only receives limited weight, this must have a bearing on and be commensurate with the weight to be given to a prematurity objection. The two are inextricably linked. The LPA's closings e.g. at §37(e) suggest that "uncertainty" lies at the heart of §§50–51 on prematurity. That is wrong. The policy requires a plan to be sufficiently advanced, and thereby the outcome of its process adequately certain, such that development management decisions taken in the interim would actually cause *prejudice*, or harm. The approach to the policy taken in the Council's closings, which take an uncertain

outcome as a prerequisite that is supportive of a prematurity objection, is not supported by national policy. If the Council's approach were correct, most applications in advance of a local plan would be premature (because they would be able to rely on the same kind of uncertainty the Council cites here), and that would not follow the clear aim of the policy to limit circumstances in which a Council can rely on prematurity.

136. On this basis, the Council and R6 parties' cases that regard the weight to be given to the emerging plan is an irrelevant consideration is not a rational approach, and their approach of giving substantial weight to prematurity is infected by this error. Mr S Brown's approach of giving limited weight to a prematurity objection, even if one is made out, is the more reasonable approach that should be preferred.

(e) The benefits clearly outweigh the harms

137. The lack of a five year housing land supply means that the most important policies for determining this appeal are deemed out of date by operation of paragraph 11(d) of the NPPF.

138. The development plan is also substantively out of date. The development plan[69] provided for a far lower housing requirement than is needed now, and the built up area boundaries and protective policies were all predicated on this lower requirement. It is common ground now that these built up area boundaries will have to be breached in order to meet housing needs. On this basis, any policy conflict should attract limited weight.[70]

139. For these reasons paragraph 11(d) is engaged.

140. There is no strong reason for refusal within the terms of paragraph 11(d)(ii):

i. It is agreed that heritage does not form a strong reason for refusal as the less than substantial harm is outweighed by the public benefits.[71]

ii. In relation to impacts on the NL, the Appellant's primary position as set out above is that there is no harm to the NL, and that even Mr Peacock on behalf of the Council failed to identify any harm to the designated area and agreed that the impacts had been minimised in accordance with paragraph 189 of the NPPF.

iii. Ms Jarvis asserted that she had understood Mr Peacock to still identify some "*limited*" "*residual*" harm to the NL. If this is the case, then it is right that great

[69] CD 5.1.
[70] Of course, the Appellant does not accept policy conflict on a number of matters, including coalescence and the NL.
[71] CD 7.1, para 4.58.

weight can be given to any such limited residual harm in accordance with paragraph 189.[72]

iv. However, Ms Jarvis's approach to how this interacted with paragraph 11(d)(i) was legally incorrect. Ms Jarvis alleged that the existence of any NL harm automatically resulted in a strong reason for refusal, without any requirement to weigh this harm against the benefits. All advocates agree that this is an unlawful approach, as explained by the court in *Monkhill v SSHCLG* [2021] EWCA Civ 74[73] where it was confirmed that paragraph 189 is capable of forming a clear reason for refusal, but that the paragraph clearly envisages a balance being struck against the benefits. That is agreed by all advocates and this matter is included in the costs application.

v. In its closings, now that it can no longer rely on its *evidence* on this issue, the Council tries to re-construct its case through submissions from paragraph 42 onwards. In response:

a. It rests, NB §42(b), on a "submission" of harm to the NL, not on evidence of that harm.

b. It then rests, NB §42(e), on a new planning balance exercise (in effecting NL harm vs. all of the scheme's benefits) which the Council again "submits" falls in favour of a strong reason for refusal. Yet again, this is advocacy devoid of evidence. It is quite wrong for the Council to seek to run planning balances for the first time, nowhere in its written or oral evidence from either of its two planning witnesses, in its closing submissions. Of course, the "submission" at §42(e) was not subject to any

[72] The R6 closings at §10 suggest that this proposition is in dispute, but it is not.
[73] See paragraphs 29, 30 and 34 of the judgment. The judgment addressed a previous version of the paragraph with different number, and considered a 'clear' reason for refusal rather than a 'strong' reason for refusal, but nothing turns on these differences.

testing or questioning during the inquiry, because it was no part of the Council's evidence. The Council's barrister knows all of that. But he's running with it anyhow. Planning balances are matters of expert judgment and evidence. Not submissions from lawyers at the 11th hour. It is quite wrong for the Council to seek to advance this totally unevidenced position as part of its closings, and this attempt should be rejected outright by the Secretary of State.

vi. Applying the correct approach in law, even if there is a limited, residual harm to the NL, this would be comfortably outweighed by the substantial benefits of the appeal scheme, such that there would be no strong reason for refusal within paragraph 11(d)(i) (and the Council has no evidence to counter Mr Brown's approach on that).

141. Therefore, the correct lens through which the planning balance should be viewed is in paragraph 11(d)(ii). The core question is whether any adverse impacts of the scheme would both **significantly** and **demonstrably** outweigh its very considerable benefits.

142. In the end, the answer to that question is clear.

143. On the one side of the scales is the extensive evidence of the appeal scheme's numerous benefits which will be delivered as part of the new sustainable community in a sustainable location, many of which are agreed by all parties to attract substantial weight in light of the substantial housing need that exists.

144. On the other side of the scale, there is no credible evidence of harms anything like the benefits which would arise if the appeal is allowed and the scheme built out. There will be landscape harm, but this would be localised to the site and its immediate setting, and is inevitable given the acceptance that greenfield sites will have to be developed in the district.

Loss of agricultural land receives limited weight, and whilst there will be less than substantial heritage harm which carries great weight, this does not weigh heavily in the balance due to the limited level of impact.

145. The weight of evidence shows that there will be no harm caused in relation to prematurity, NL, coalescence and trees. Even if (contrary to the Appellant's primary position) these did result in harm, such harm would be limited and reasonably receive limited weight.

146. Finally, there are no additional matters raised by third parties which amount to any material planning impacts, given the Appellant's clear expert evidence.

147. This leaves a straightforward case. The impacts caused by the appeal scheme would not come anywhere close to outweighing the benefits, let alone significantly and demonstrably outweighing.

148. For those reasons, the balance at paragraph 11(d)(ii) weighs decisively in favour of granting permission, and we ask you to recommend to the Secretary of State that the appeal be allowed.

ZACK SIMONS KC

ANJOLI FOSTER

Landmark Chambers

24 June 2026