LAND AT NORTH COLWELL FARM, HAYWARDS HEATH, WEST SUSSEX

s. 78, Town & Country Planning Act 1990

Proof of Evidence of
Benjamin R Carpenter BSc (Hons) MCIEEM

ECOLOGY AND NATURE CONSERVATION

PINS ref: 6005786
Planning application ref: DM/25/0445

Bioscan Report ref: E2307r2
June 2026

APPOINTED BY
Richard Buxton Solicitors
on behalf of Ingrid Marson

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1 WITNESS BACKGROUND AND QUALIFICATIONS

1.1 My name is Benjamin Robert Carpenter. I am a Principal Ecologist at Bioscan (UK) Limited, a leading ecological consultancy established in 1984. I was engaged by Richard Buxton Solicitors on behalf of Ingrid Marson to assess the biodiversity impacts of the proposed development of the site known as Land at North Colwell Farm, Haywards Heath, West Sussex (PINS ref: 6005786) and have been asked by them to present evidence to this appeal inquiry based on my findings.

1.2 I hold an honours degree in Wildlife Management from Sparsholt College (validated by Portsmouth University) and am a full member of the Chartered Institute of Ecology and Environmental Management (CIEEM).

1.3 Prior to joining Bioscan in 2007, I gained experience as a volunteer at field centres in France and Portugal, as a trainee reserves officer at a local wildlife trust (BBOWT), and as an environmental researcher with the Centre for Ecology and Hydrology, followed by a period as a freelance ornithologist. I have practised as a professional ecologist at Bioscan for 19 years and was appointed Principal Ecologist in April 2024. Bioscan is one of the longest established and most respected names in ecological consultancy, with clients that include both developers and conservation organisations across the private and public sectors. The company is valued for providing impartial, and scientifically and technically robust, advice, and the principal staff have a great deal of experience in the delivery of development projects with minimal harm to biodiversity and in presenting evidence to inquiries and the courts.

1.4 My project experience ranges from surveys supporting simple planning applications to co-ordinating multi-disciplinary survey teams and reporting outputs for large and complex sites requiring EIA, including strategic housing, mineral extraction, and power generation sites.

1.5 My particular areas of expertise include ornithology, bats, habitats (including condition assessments for trees), biodiversity net gain and protected species surveys. I hold survey licences for bats and great crested newts. I regularly lead various wildlife walks, including for bats and birds, for local wildlife groups, am on the advisory committee for the management of a local nature reserve, and the co-author of a wildlife book chapter in respect of the local nature reserve.

1.6 In respect of this case, I was instructed to review the Appellant's ecological submission material, primarily the Ecological Impact Assessment (EcIA) and the BNG Habitat Management and Monitoring Plan, to determine whether it provided an adequate basis for decision-making. That review revealed significant omissions and errors, which I address in this proof.

1.7 As explained in later sections of this proof, attempts were made to gain full access to the Appeal Site for this purpose and to help particularise and/or narrow matters that might be in dispute. Notwithstanding that an agreed position on the baseline would no doubt assist the inquiry; these attempts were robustly refused by solicitors acting on behalf of the Appellant. In lieu of direct access, permission was obtained to access properties immediately to the north of the Appeal Site and view parts of the Appeal Site from there. This visit was undertaken in June 2026, and it permitted views into the Appeal Site, albeit limited to a narrow strip of wooded vegetation along the northern

boundary. I am therefore familiar with the Appeal Site even if not having been granted access to the totality of it.

1.8 I confirm that my evidence is given in accordance with the provisions of Annexe O of the Procedural Guide to Planning Appeals. My duty is to assist the Inspector on matters within my expertise and that duty overrides any obligation to those who have instructed me. The evidence which I have prepared and provide in this proof of evidence is true and I confirm that the opinions expressed are my true and professional opinions.

2 SCOPE OF EVIDENCE

2.1 Background

2.1.1 Miller Homes has submitted an appeal against Mid Sussex District Council's (MSDC) refusal of outline planning consent for a residential development of up to 80 dwellings on a site known as Land at North Colwell Farm, Haywards Heath. The refusal notice issued by MSDC [CD3.2] sets out five reasons why the application was refused. Pertinent to my Proof of Evidence, Reason 4 relates to the loss of a significant number of trees, and Reason 5 relates to the failure to provide *inter alia* the required biodiversity net gain requirements.

2.1.2 The Inspector will be aware that MSDC has entered into a Statement of Common Ground (SoCG) with the Appellant [CD 8.2]. Paragraph 1.2 of the SoGC states that: 1) MSDC '*would no longer be defending any of the Reasons for Refusal and 2) would not be submitting any evidence to the inquiry*'. Further, paragraph 3.18 states '*that the benefits of the development would outweigh the harm arising from the limited tree loss'*, and paragraph 3.20 states that the Council and Appellant will continue to progress a planning agreement to secure infrastructure requirements, with it stated that '*Subject to the conclusion of this agreement, the proposal will comply with policies* [...] *DP38* [Biodiversity]. My client's solicitors, Richard Buxton Solicitors, will seek clarification from MSDC as to why they agreed this position. This may be a point of relevance to the inquiry because in my view the Council was not provided with an adequate level of information on relevant material considerations related to ecology by the Appellants, as I discuss below.

2.1.3 Bioscan was engaged by Richard Buxton Solicitors on behalf of Ingrid Marson in April 2026 to examine whether the submitted ecological material (and on which MSDCs deliberations were based), provided a sufficient basis for the decision-making process to that point, and for this appeal.

2.1.4 My review of the Appellant's EcIA [CD 2.6] and BNG Habitat Management and Monitoring Plan [CD 2.15] very quickly identified significant omissions and errors. These fall into four categories (although there are overlaps and cross-overs in these points):

1) Whether the wooded and other boundary features within and around the periphery of the Appeal Site are ancient in origin- and therefore 'irreplaceable' for policy purposes;
2) Whether the proposed reptile receptor site is suitable to support a translocated reptile population;
3) Whether the Appellant's Biodiversity Net Gain (BNG) metric is accurate, including whether habitats are correctly recorded and scored;
4) Whether the impact on bats (both roosting and foraging) has been adequately assessed.

2.1.5 To assist in attempting to narrow down the points of suspected or actual dispute in regards to the above identified omissions and errors, and thereby avoid taking up unnecessary inquiry time, a joint site visit with the Appellant's ecologists was proposed.

However, this was refused by the solicitors acting on behalf of the Appellant (and similarly refused by the Appellant's ecologist). Bioscan subsequently suggested a solo visit; however, the solicitors stated that this would be viewed as trespass, and the Appellant's ecologists suggested it would be a breach of professional conduct. Bioscan asked the Appellant's ecologists why they disagreed that a joint visit would be useful, but no reply was given. Overall, it is unclear why access to the Appeal Site has been refused as many of the points raised in this Proof of Evidence may have been addressed during and following such a visit.

2.1.6 As highlighted above, in lieu of direct access, I visited properties adjoining the Appeal Site (comprising Colwell House, 92 Lewes Road and 90 Lewes Road) on 10 June 2026. During the visit, it was possible to view small sections of the Appeal Site from these properties; however, by virtue of the topography and the presence of a dense area of vegetation, the main area that I could view was the strip of woodland along the northern boundary.

2.2 Scope and Structure of Proof

2.2.1 My proof assesses whether the LPA (and by extension PINS) can rely on the Appellant's ecological submissions material and seeks to highlight and discuss areas where I consider that information to be deficient and/or unreliable. The subsequent sections of my proof are structured as follows:

2.2.2 In **Section 3**, I examine the wooded and boundary features, and consider whether the Appellant has properly considered the possibility that these are 'ancient' in origin and thereby fall to be considered as 'irreplaceable'.

2.2.3 In **Section 4**, I examine whether the Appellant's proposed reptile receptor site is suitable to support a translocated population of reptiles having regard to matters such as habitat suitability and carrying capacity.

2.2.4 In **Section 5**, I outline several errors and omissions in the Appellant's BNG assessment, with this resulting in incorrect BNG scores, and discuss the relevance of such errors to the determination of this appeal.

2.2.5 In **Section 6**, I examine the adequacy of the bat survey information and the impacts of the proposals on foraging bats (and the rare barbastelle in particular).

2.2.6 In **Section 7**, I examine whether the development as proposed accords with local and national planning policy set out the adopted Mid Sussex District Plan 2014-2031 and in the NPPF in respect of providing net gains for biodiversity (para 187 (d)) and avoiding significant harm to biodiversity (para 193 (a)), once the full, correct and relevant ecological information is taken into account .

2.2.7 Finally, in **Section 8**, I set out my conclusions.

3 WOODED BOUNDARY FEATURES

3.1 Background

3.1.1 The Appeal Site comprises three field parcels (hereafter referred to as Western Parcel, Central Parcel, and Eastern Parcel) separated by established linear wooded features, with further wooded features around the majority of the periphery of the Appeal Site- particularly along the northern boundary. **Image 1** below provides a recent aerial photograph of the Appeal Site.

3.1.2 Based on the proposals plan [CD 1.6], each of the two internal wooded features is to be breached in two locations to facilitate internal access for vehicular and foot traffic (four total). It is noted in the Arboricultural Impact Assessment Report [CD1.29], that the routes of these breaches fall within Root Protection Areas of the retained trees within these features.

3.1.3 If these internal features are derived from, or remnants of, ancient woodland, they fall to be treated as 'irreplaceable habitat'. That classification triggers a materially different policy framework, and a considerably higher threshold, than has been applied by the Appellant to date (and indeed MSDC).

3.2 Ancient woodland

Definition and policy.

3.2.1 Natural England states[1] [CD 20.21] that: "*Ancient woodland takes hundreds of years to establish and is defined as an irreplaceable habitat*" and defines this habitat as "*any area that's wooded continuously since at least 1600 AD. It includes: ancient semi-natural woodland mainly made up of trees and shrubs native to the site, usually arising*

[1] https://www.gov.uk/guidance/ancient-woodland-ancient-trees-and-veteran-trees-advice-for-making-planning-decisions

from natural regeneration; and plantations on ancient woodland sites - replanted with conifer or broadleaved trees that retain ancient woodland features, such as undisturbed soil, ground flora and fungi". Natural England goes onto state that "*'wooded continuously' does not mean there's been continuous tree cover across the whole site. Not all trees in the woodland have to be old. Open ground, both temporary and permanent, is an important component of ancient woodlands*."

3.2.2 The NPPF states at Paragraph 193 (c) the following: "*When determining planning applications, local planning authorities should apply the following principles: c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons[70] and a suitable compensation strategy exists*". Footnote 70 states that wholly exceptional reasons would be for infrastructure projects (e.g. NSIP) where the public benefit would clearly outweigh the loss or deterioration of the habitat. Ancient Semi-Natural Woodland and Plantation on Ancient Woodland Sites (PAWS) have equal protection in the National Planning Policy Framework (NPPF).

<u>Do the field boundaries on the site derive from ancient woodland?</u>

3.2.3 Having regard to the legal and policy context around ancient woodland, this question is, in my view, important to the disposal of this appeal. It was to try and reach a determinative position on this that requests to the Appellant for joint or independent visits to the Appeal Site were made, and it is the refusal of those requests in combination with the deficiencies in the Appellant's submission material on ecology, that has required the consideration and presentation of independent evidence below.

3.2.4 A review of the Appellant's baseline habitat map [CD 2.6] indicates that the wooded features within and around the periphery of the Appeal Site are classified as 'lowland mixed deciduous woodland'. Aerial photography appears to be consistent with this habitat type (albeit this cannot fully be determined from aerial photography alone). Importantly, MAGIC shows that these features connect directly to a woodland indisputably recognised as ancient woodland (PAWS) (Cains Woodland) immediately to the south of the Appeal Site [Figure BC1]. Sussex in particular is well known for its landscape of small irregular fields within a woodland setting with such field parcels typically having arisen from the practice of assarting. Assarting is the process of clearing areas of woodland to create enclosed private farmland (essentially 'bites' are taken out of the woodland), with assart woods the remaining pieces of the much larger woods which have been left between the cleared field parcels. Such a practice was particularly prevalent in the 12th and 13th centuries.

3.2.5 Therefore, in a landscape where assarting was historically common, as confirmed (amongst other sources) by the MSDC's own landscape consultee [CD 4.36], the possibility that these linear features are also ancient in origin is not merely speculative; it is a real and foreseeable possibility that ought to have been investigated as a matter of course.

3.2.6 The Appellant's EcIA is entirely silent on the question of ancient woodland status. Paragraph 4.2.3 of the EcIA lists only the tree species the Appellant's ecologists recorded in the 'lowland mixed deciduous woodland'; there is no reference to ground

flora, no assessment of ancient woodland indicator species, and no desk-based review of historic maps. This is fundamental omission.

3.2.7 Identification of ancient woodland requires[2] both field-based botanical surveys (optimally conducted in April/May), and a desk-based review of historic mapping. The Appellant has undertaken neither as part of their application submission. We sought to undertake the former- either jointly or by ourselves- but were refused permission.

3.2.8 MSDC's landscape consultee raised the possibility of assart origin in its response to the planning application [CD 4.36], noting that: "*The Site is located within the HW4 High Weald Fringes Landscape Character Area (LCA) of the West Sussex Landscape Character Assessment. Key Characteristics of this LCA which are relevant to the site include the wooded, confined rural landscape of intimacy and complexity, long views over the Low Weald to the Downs, significant woodland cover, dense network of hedgerows and trees,* ***pattern of small, irregular shaped assart fields***". And: "*The extent of intervening hedgerows and trees and the shapes of the three fields indicates that* [the] ***site comprises assarted fields*** *which are very characteristic of the LCA. Landscape and Visual Sensitivities for this LCA include "Older, small assart pastures contribute to the intimacy of the landscape", and Key Issues include "New development on the southern edges of Haywards Heath*". And "*It* [the site] *also contains features which are notably sensitive to change, including the assarted fields*." [My emphasis]. These observations, and their significance, were not recognised and/or in any event not addressed by the Appellant. Nevertheless, I note that FLAC's Arboricultural Impact Assessment[3] [CD 1.29] highlights that at least one of the field boundary features is historic in nature, with the following stated for Tree Group TG7001 (located along the north-eastern boundary of the Appeal Site): "*Overgrown/under-managed historic feature along site boundary/ditch. All trees have multiple stems where historic coppicing/copparding[4] has been performed. [...]*"

3.2.9 It should be noted that ancient woodland features smaller than 2 hectares may not appear on the relevant ancient woodland inventories or on 'MAGIC'. Natural England's standing advice explicitly states: "*Ancient woodlands smaller than 2 hectares may not appear on these inventories*" [CD 20.21]. Absence from the inventory is therefore not determinative.

3.2.10 More specifically, the Mid Sussex Ancient Woodland Inventory[5] [CD 20.19] states at paragraph 3.2.1 under 'Size of a woodland' the following: "*In general 0.25 hectares was the lowest size of woods considered, allowing the revised Inventory to be comparable with the Forestry Commission's NIWT. However each wood is considered separately and factors such as the location and historical extent of the woodland mean that some woods under 0.25 hectares may be included. This allows these woods to be considered when looking at the whole habitat matrix."*

[2] Sansum, P. & Bannister, N.R. (2018). A Handbook for updating the Ancient Woodland Inventory for England. Natural England Commissioned Reports NECR248

[3] FLAC (2025). Planning Submission (Arboriculture). Dated: January 2025.

[4] A tree management practice combining coppicing and pollarding techniques (with trees typically cut around shoulder/head height which reduces deer grazing effects).

[5] Westaway, S., Grose, M. & McKernan, P. (2007). A revision of the Ancient Woodland Inventory for Mid Sussex District, West Sussex. Report and Inventory Maps Revised February 2007

3.2.11 Also relevant here is Natural England's Handbook[6] [CD 20.18] which states: "*Generally, however, parcels of treed land less than 10m wide at their widest (i.e. that are not spatially contiguous with any wider wooded polygons) should be treated with caution. There may be circumstances when some such polygons should be assessed as 'woodland' and retained for further study or survey - e.g. if they derive from and are the sole fragments of a larger Epoch 1 woodland area, now gone. Conversely a narrow or simple hedge show 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). Thick hedge-like features which appear to lack 'body' or have any 'interior' and that are less than 10m wide can reasonably be assessed as 'not woodland'*."

3.2.12 As can be noted in the two references above, there is not a strict binary cut-off in respect of the minimum size of a woodland to be considered to be ancient; each wood should be considered separately and if a wood is small then caution should be applied (i.e. not a blanket rejection of ancient woodland presence). One reason why smaller areas are not fully rejected is that they can be remnants of a once larger woodland areas which have subsequently been removed. This is particularly relevant here- as noted above- due to the Appeal Site being located in an area where assarting was prevalent.

3.2.13 As mentioned above, a joint habitat survey with the Appellant's ecologist was proposed in order to view and survey the wooded features within the Appeal Site for ancient woodland indicator species to assist in understanding if any could be ancient in origin. However, this offer was resolutely refused by solicitors acting on behalf of the Appellant, with a solo survey also refused.

3.2.14 In lieu of direct site access, I undertook a visit on 10 June 2026 to view into the Appeal Site from adjoining properties to assist in determining whether ancient woodland vascular plant indicators are present. Although later than optimal (i.e. outside of the main April/May survey season), and hindered by lack of fuller access, I was able to identify several ancient woodland indicator plant species [CD 20.14] including bluebell, remote sedge, tutsan and wood sorrel within the northern boundary feature.

3.2.15 I should expressly highlight I entirely appreciate that this is not as robust as an on-site survey. But – given the Appellant's refusal of access – I was required to assist the Inquiry as best I could in relation to this point and the limitations do not mean this exercise is not useful. It does give an indication that ancient woodland *could* be present and should have further triggered the Appellant to investigate this point (and for the Inspector to be concerned by the lack of investigation).

3.2.16 None of the above listed species (and by extension their significance) was recorded by the Appellant's ecologists, despite their clear relevance to understanding whether this northern feature, and by extension the north-south aligned features within the Appeal Site, could be ancient in origin. I note that bluebell is visible within a photograph within the Appellant's Landscape Assessment[7] [CD 1.25] (bottom right photograph on Page 28). Although this species is not always a reliable ancient woodland indicator species,

[6] Sansum, P. & Bannister, N.R. (2018). A Handbook for updating the Ancient Woodland Inventory for England. Natural England Commissioned Reports NECR248.

[7] ACD Environmental (2024). Landscape and Visual Impact Assessment- Land at North Colwell Farm, Haywards Heath. Dated December 2024. Revision Dr_B

its presence here again nevertheless highlights the possibility that these features could be ancient in origin.

3.2.17 In respect of ancient woodland indicator species, the Handbook states [page 105]: "*Where low numbers of AWVP species accompany other evidence consistent with recent woodland this strengthens a case for exclusion of the site. Where high numbers accompany historical evidence that is finely balanced, ambiguous or sparse then the case for designating the site ancient becomes more robust*." Therefore, it is acknowledged that there is no cut off in respect of the number of AWVP; nevertheless, their presence or otherwise, and their abundance, can assist in determining the presence of ancient woodland alongside other evidence (such as desk-based survey data).

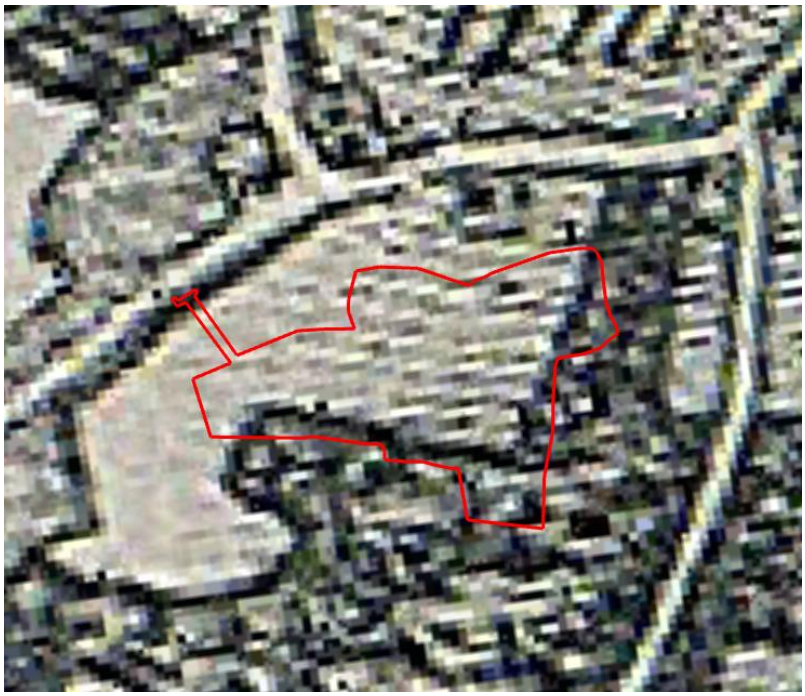
3.2.18 As highlighted above, identification of ancient woodland is a dual process between field and desk-based survey data. In respect of the latter, I attempted to understand whether the Appeal Site supported woodland historically via a review of archive maps. I outline below the results of this review.

3.2.19 The earliest map I have obtained is a map from 1795 (Gardner and Gream[8]); however, this map is not sufficiently detailed to fully understand the historic woodland extent on the Appeal Site at that point in time. In the extract from this map below, I have attempted to overlay as accurately as possible the Appeal Site boundary using road alignments as reference points. The results of this exercise suggest that that the south-eastern part of the Appeal Site may have been wooded in the late C18th.

3.2.20 Moving around twenty years forward in time, the Ordnance Survey (OS) 'Old Series' edition map (dated 1813), is again insufficiently detailed to be determinative as to the extent of woodland on the Appeal Site at that time. As above, I have attempted to overlay the site boundary on this map, and this again suggests that at least the southern and eastern boundaries comprised woodland at that time and that woodland may have

[8] Map titled: '*A topographical map of the county of Sussex, divided into rapes, deanries and hundreds, planned from an actual survey. Begun by W. Gardner and T. Yeakell, completed by Thos. Gream (Engraved by Thos. Foot).*'

extended into the south-eastern part of the Appeal Site. The image below provides the site boundary overlaid onto the 'Old Series' OS map.



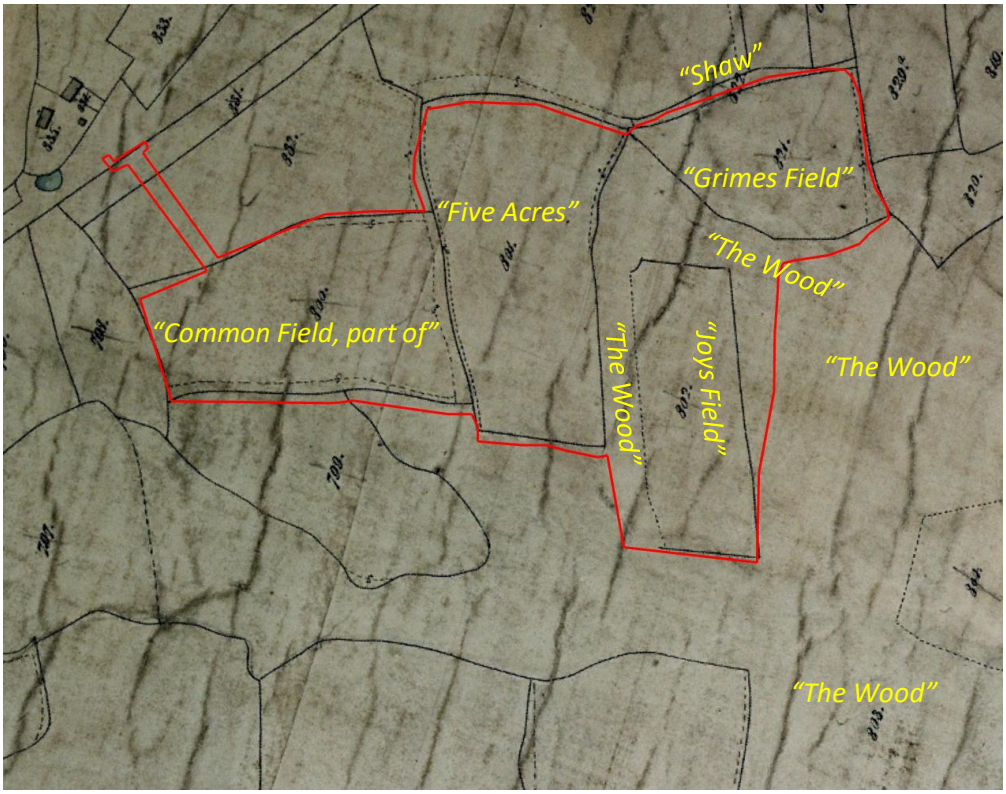
3.2.21 Moving another twenty or so years further forward in time, a tithe map (likely to be from around 1840[9]) for the Appeal Site and surrounding area has been sourced. As well as providing more finely detailed mapping evidence, this also provides etymological evidence in the names of the apportionments[10]. I believe this is an important piece of evidence in this case.

3.2.22 The tithe map divides the Appeal Site into individual land parcels (apportionments), the further detail on each of which is illuminating. As plot numbers are not easily discernible on the image below, I have annotated it (in yellow) with the individual parcel/apportionment names [Appendix BC1). The ones relevant to the Appeal Site are as follows:

- Apportionment 800 (Western Parcel): "*Common Field, part of*"
- Apportionment 801 (Central Parcel): "*Five Acres*"
- Apportionment 802 (southern part of Eastern Parcel): "*Joys Field*"
- Apportionment 821 (northern part of Eastern Parcel): "*Grimes Field*"
- Apportionment 822 (linear northern feature- along north of Eastern Parcel): "*Shaw*"
- Apportionment 803 (area between 801 and 802, between 821 and 802, and large extent to south of 802): "*The Wood*"

[9] The description of the map states: '*No date, but Award 1838*' with the apportionment details providing a date of 1843.

[10] The Natural England Handbook states the following in respect of tithe maps and apportionments: "*These* [tithe maps] *are individual parish maps showing the land which was eligible for Tithe payments under the Tithe Commutation Act of 1836"* And*: "Each parcel of land was allocated a reference number which was recorded in the Tithe Apportionment giving a description of the land, its size, owner and occupier and the amount of Tithe due*."



3.2.23 This piece of documentary evidence brings the following highly relevant information to this case:

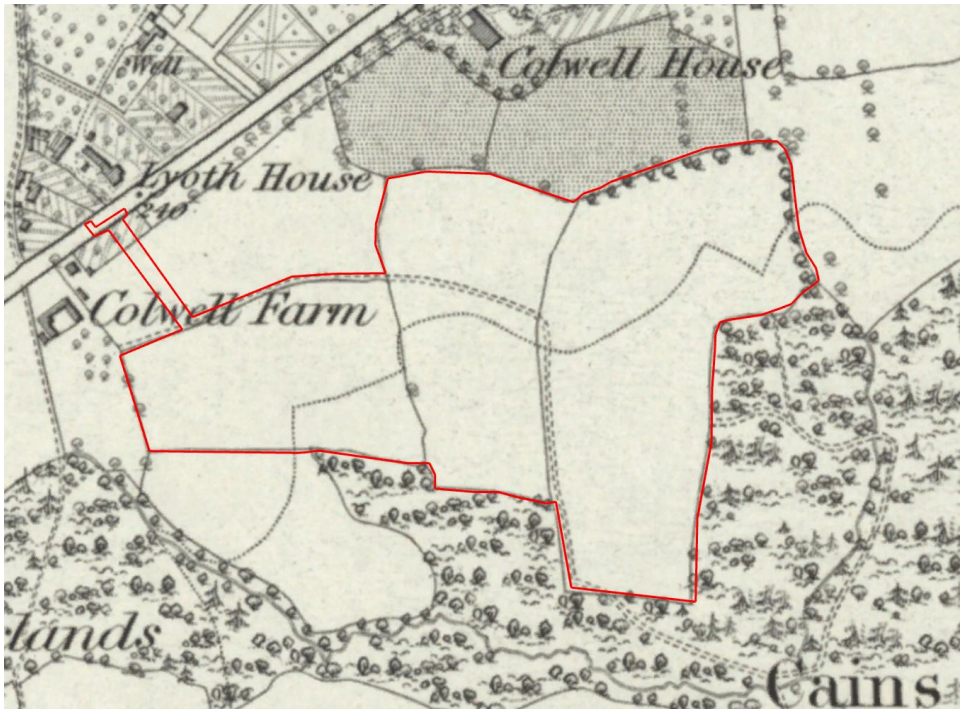
- "Joys Field" strongly appears to have arisen from assarting (whereby the field was 'cut' out of the surrounding woodland ('The Wood')).
- "The Wood" is clearly the larger former extent of the present-day ancient woodland of Cain's Wood [Figure BC1].
- At least until 1840, the boundary feature between the Central and Eastern Parcels of the Appeal Site comprised a 20m wide linear wooded feature (part of 'The Wood').
- The northern boundary of the Eastern Parcel was known as 'Shaw'.

3.2.24 The early 1800's tithe map and associated apportionments therefore provides evidence in favour of their being residual ancient woodland on the Appeal Site, rather than the opposite. Parts of the Eastern Parcel would strongly appear to have originated from an assarting event in the late C18th/early C19th, resulting in "Joys Field" being carved out from part of a formerly larger Cain's Wood, and leaving a strip of ancient woodland coterminous with what is today the western boundary of that field. That strip was subsequently denuded to its narrower present-day extent, but in the absence of evidence of it ever having been grubbed out, it is evidently of ancient woodland origin and may retain associated 'irreplaceable' features of biological interest and importance.

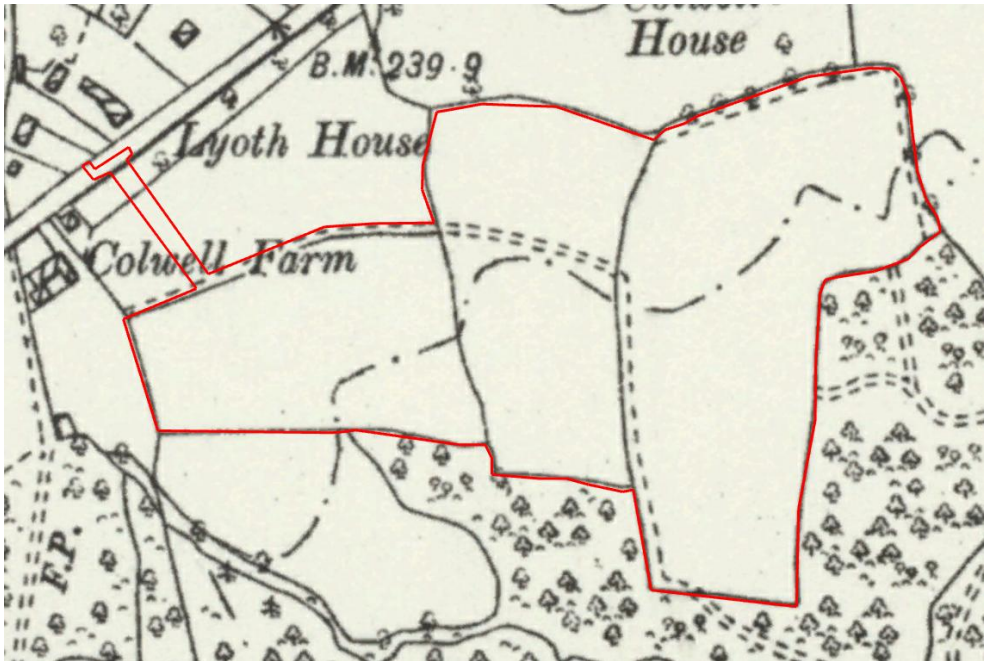
3.2.25 Furthermore, the north-eastern boundary of the Appeal Site is named 'shaw' on the tithe map. Shaws are typically narrow linear woodlands derived from assarting, and is therefore likely the remnants of a larger (likely ancient) woodland. This is explicitly recognised by Natural England in the ancient woodland handbook which provides a worked assessment example in respect of shaws and ancient woodland identification (Section 7.4- Forstal Shaw'). The case study summarises ancient woodland identification of Forstal Shaw as follows: "*In this case, reliance on generic map sources*

without employing the precautionary principle would have led to a misevaluation of the site. Non depiction of woods on maps must be interpreted in the light of knowledge about the quality and scale of those maps." The ancient woodland handbook therefore highlights the cautions that should be applied when dealing with small woods and only partial documentary or field evidence, and emphasises that if there is doubt, the precautionary principle should apply. That is not what the Appellant has done in this case.

3.2.26 By 1874, maps had become more accurate, and the image below shows a field pattern very similar to today. The internal field boundaries are shown in linear notation which may or may not imply narrow hedgerows, but in any event they show continuity with the early C19th tithe map and do not suggest those boundaries had been removed or replanted. It is also notable that some sections of the outer boundary (particularly in the north-eastern corner in the area known as 'Shaw' on the tithe map) appeared to still support double lines of mature trees in 1874 indicating that they remained as mature woodland features at this time.



3.2.27 A map from 1896 (see image below) again identifies the presence of an established peripheral linear strip of woodland or shaw in the north-eastern corner of the Appeal Site, with their greater width appearing to have been delineated by a boundary feature within the Appeal Site (as indicated by the dashed line).



3.2.28 Of relevance to the map above, and in particular the north-eastern corner of the site (the 'Shaw'), Natural England's Ancient Woodland Inventory Handbook for England[11] states (paragraph 3.3.3.8): "*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 and it pays to spend some time during the Phase 1 sweep of Epoch 1 to carefully consider linear features*." Although the above map would fall into Epoch 2, the referenced text above is still considered to be relevant here.

3.2.29 I note that the above map was relied upon within the FLAC Technical Note provided to the Inspector and R6 on 22 June 2026. The Handbook was also quoted from although not the specific reference above. It was stridently put that – based on this map – it was clear that I had failed to "undertake even basic cartographic investigations" and that the notion of this being ancient woodland can be 'dismissed immediately'. As is apparent from the analysis above that is not correct, but it is of particular concern to me that the Note relies on a map which <u>expressly supports</u> there is ancient woodland (by reference to the Handbook) but does not draw that to the reader's attention.

3.2.30 On the basis of the above documentary review, the balance of evidence is that the north-eastern boundary of the Appeal Site is a shaw that could be deemed to be ancient in origin by reference to the available map evidence and the interpretation of the Epoch 1 mapping as outlined in the above quoted paragraph from the Handbook. Access to the Appeal Site to establish whether that position is further supported by the biological and physical evidence on the ground would have enabled more complete conclusions to have been drawn.

[11] SANSUM, P. & BANNISTER, N.R. (2018). A Handbook for updating the Ancient Woodland Inventory for England. Natural England Commissioned Reports NECR248.

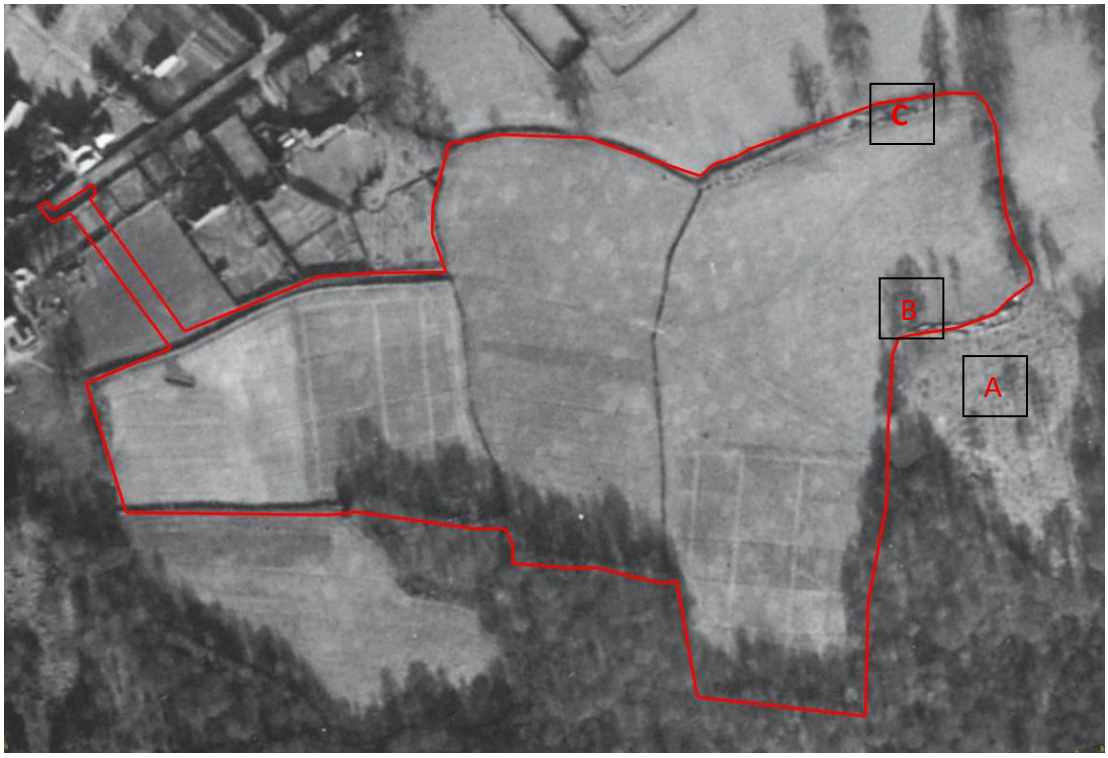
3.2.31 In respect of the other field boundaries – in particular the internal ones that would be directly impacted (breached) by the appeal scheme – the evidence points towards at least some of these being derived from linear ancient woodland strips created by assarting.

3.2.32 They may no longer be woodland as such, but in the absence of any evidence of their being cleared and replanted (and the evidence points the other way), these may therefore also be regarded as ancient.

3.2.33 Access for field survey would have enabled stronger conclusions to be drawn about whether these retain an ancient woodland ground flora indicative of long continuity and a lack of soil disturbance; however, this was denied by the Appellants. What is clear is that the Appellants' submission material on ecology does not assist as it lists no ground flora species at all. We have to look to photographs in the landscape assessment to find that, in fact, there is a species present in these boundaries (bluebell) that *could* be indicative of long continuity/antiquity. It is disappointing and unhelpful for this appeal that such access was denied.

3.2.34 It is acknowledged that historic aerial photography from 1944 shows that the wooded linear features through and around the periphery of the Appeal Site to have been significantly narrower than at present, which may reflect wartime agricultural intensification. It is conceivable that following the end of the Second World War that management of these features ceased and they have expanded back out over time. This intensification may have harmed residual ancient woodland interest but is unlikely to have destroyed it. Damaged ancient woodlands do not lose their importance and status in planning policy – plantations on ancient woodland sites (PAWS) are afforded the same policy protections as ancient semi-natural woodland (ASNW).

3.2.35 Consequently, it is possible that the internal features could be considered as equivalent to PAWS – i.e. likely to retain irreplaceable ancient woodland interest regardless of damage from inappropriate land-uses. It is also noted on the historic aerial photograph that an area of identified ancient woodland (PAWS in this case) immediately to the east of the site appears to have been cleared of trees shortly prior to the photograph being taken (marked as A on the photograph). Nevertheless, trees along this PAWS boundary (where it interfaces with the Appeal Site- marked as B on photograph) were retained at that time, with it noted that boundary features similar in structure are present around the north-eastern boundary (marked as C on photograph) and as known on the tithe map as 'Shaw'.



3.2.36 Finally, I would observe that the Mid-Sussex Ancient Woodland Inventory[12] states at paragraph 3.2.5 (Ancient Woodland Status): "*It is recognised that a desk based exercise will always be flawed and ideally ground survey work would be undertaken in every woodland. Due to time and financial constraints this is clearly impractical. Therefore the decisions are based on available data. Thus, whilst every effort has been made to make this revision as accurate as possible, the Inventory is still regarded as provisional*."

3.2.37 It is noted that both the Natural England Handbook and the Mid-Sussex inventory make reference to undertaking rapid large-scale (i.e. national/county) assessments to ascertain whether woodlands are ancient or otherwise. Nevertheless, this should not preclude the undertaking of detailed site-based analysis where the ancient woodland question is relevant (as here).

3.2.38 Further, of relevance, it is noted that the Natural England Handbook provides two paragraphs that apply here:

- Page 99: "*It is a central tenet of assessing the evidence for or against antiquity that sources are not judged in isolation and that designations are not made on the basis of a single fact. An holistic approach is required and a decision reached based on the balance of probability. The more pieces of evidence used and the higher the quality of the individual pieces of evidence the more robust the evaluation. In effect each site is a mini historical-ecological study though for many there may be an incomplete record. The process can be seen as 'building a case' for or against continuity and ancientness*".
- Page 100: "*Sometimes it will be necessary to weigh the evidence of a number of maps which show a wood against a number which do not. In this scenario it is essential to know something of the relationships between the maps. It is pointless*

[12] Westaway, S., Grose, M. & McKernan, P. (2007). A revision of the Ancient Woodland Inventory for Mid Sussex District, West Sussex. Report and Inventory Maps Revised February 2007.

to cite four maps all derived from the same survey data and published within the same few decades as outweighing three maps produced by different surveyors in three separate centuries." And: "*Some maps do not show woodland comprehensively – the accurate depiction of land-use or topography was not the concern of every type of mapmaker*." And: "*Some maps do not show woods below a certain threshold size or width, others do not show copses or wood-pastures and some only depict those woods which were significant landmarks* [...]"

3.2.39 Therefore, reliance on desk-based cartographic examination evidence alone is not determinative and is a flawed and overly narrow approach to the assembly and analysis of relevant evidence.

3.2.40 Summary. Irreplaceable ancient woodland derives from long continuity of land-use without substantive soil disturbance, which fosters a specialist suite of plants and other organisms. Vascular plant ancient woodland indicators are a known signpost to such soils, and therefore determination of ancient woodland is best achieved by reviewing a combination of **both** historic map and field evidence.

3.2.41 By extension, any field boundary derived from ancient woodland by assarting, could still retain that irreplaceable nature and undisturbed soils, provided it remained essentially 'wooded' (i.e. no change to another land-use) since 1600. It might not be a 'wood' as such, but such features can be wide (e.g. shaws) or narrow (e.g. ancient hedgerows) and are often recognisable by their ancient woodland ground flora.

3.2.42 Logic and science therefore drives in a single direction - that a field boundary that has been present since 1600 AD, has been derived from assarting, and which retains an ancient woodland ground flora indicative of a lack of substantive disturbance, is also 'ancient' and also 'irreplaceable'. This is entirely in line with Natural England's standing advice.

3.2.43 Even before one comes to review documentary evidence, various factors suggest that the possibility of at least some of these field boundaries deriving from assarting is high. They include the geographic location of this site, the presence of the adjacent ancient woodland, and the shape and pattern of the field units. Historic maps and related documentary analysis merely corroborates this high likelihood in respect of the north-eastern margins of the Appeal Site (the 'shaw'), and the boundary between the Central and Eastern parcels (by reference to the tithe map).

3.2.44 The missing piece of evidence for these and other boundaries is whether there are botanical indicators (higher or lower plant) that support or serve as evidence against an ancient origin. There are also physical features that can assist with determination (relationship of woodbanks to adjacent areas for example).

3.2.45 Consequently, the cumulative position is as follows: 1) the Appeal Site adjoins ancient woodland (PAWS) to the south and south-east; 2) the linear wooded features within the Appeal Site connect directly to that PAWS; 3) the Appeal Site is located in a landscape where assarting was historically common; 4) the northern boundary is likely to be ancient in origin (labelled as 'Shaw' on the tithe map with later OS mapping showing mature trees in this feature); 5) the tithe map shows that there was a wooded linear feature between the Central and Eastern Parcels, and with the retention of a feature at this location since, albeit narrower, indicates that it could be ancient in origin; 6) historic

mapping is consistent with- though not conclusive of- the presence of wooded areas on the site prior to 1600 AD; and 7) in the absence of adequate botanical field surveys at the appropriate time of year, the precautionary principle should apply[13] and these features should be treated as ancient in origin unless evidence demonstrates otherwise. That assessment has not been carried out. The uncertainty is entirely of the Appellant's own making.

3.2.46 The Appellant's refusal to permit site access- whether for a joint visit or a solo visit by Bioscan- has compounded this uncertainty and prevented matters from being narrowed. That refusal is a relevant consideration. The Inspector is invited to draw appropriate inferences from it.

Risks of harm to irreplaceable ancient woodland habitat on-site

3.2.47 Despite the absence of adequate botanical field surveys (and a search for physical historical features), the historic mapping would indicate that the feature in the north-east of the Appeal Site (the 'Shaw') is likely to be ancient in origin. Furthermore, historic mapping would also indicate that the two north-south aligned features through the central part of the Appeal Site (particularly the eastern feature) are also ancient in origin. The proposals for the Appeal Site include the breaching of the two north-south aligned features in two locations to facilitate internal access (vehicular and foot), with housing in the field parcels. Consequently, the proposals would appear to involve the loss (through the breaches of the features) of irreplaceable habitat and likely deterioration of the retained areas of these features through impacts on Root Protection Areas (on the sections either side of the breaches). In this case therefore it is considered that paragraph 193 (c) of the NPPF would apply. Further, it is unclear whether there is a sufficient non-development buffer from the Shaw that would reduce the impacts on this feature arising from the proposals.

Risks of harm to irreplaceable ancient woodland habitat off-site

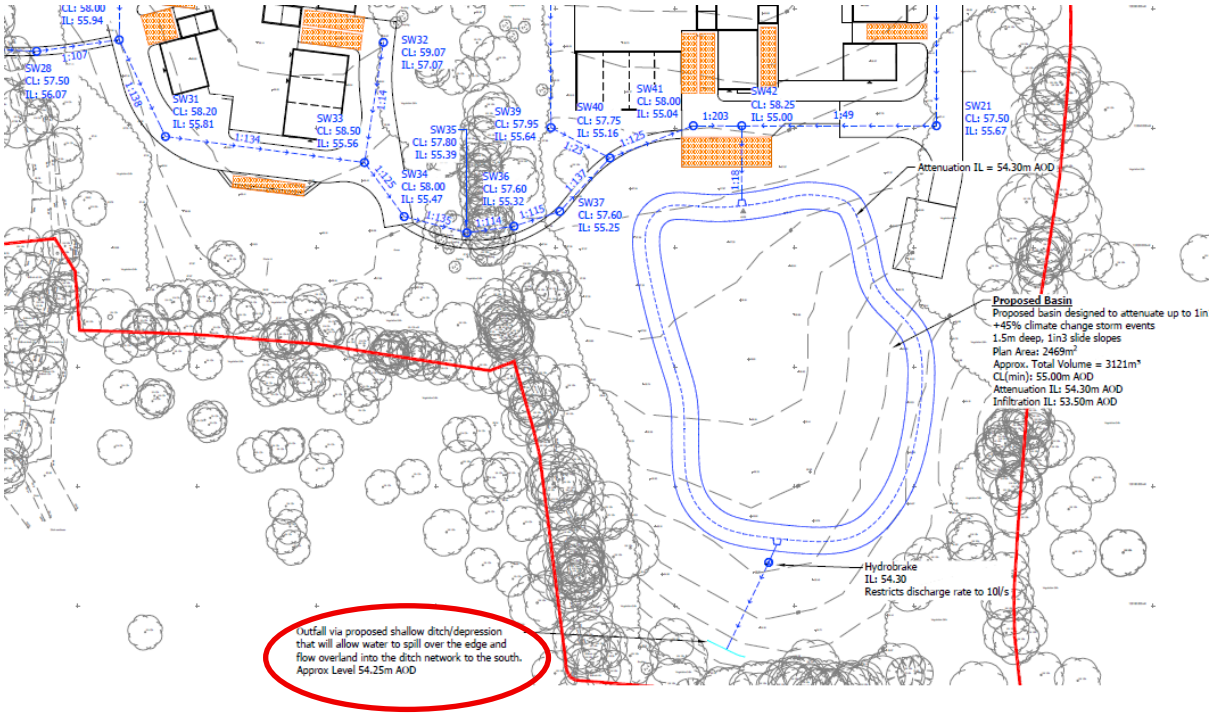
3.2.48 A further and distinct concern arises in relation to Cains Wood (the off-site PAWS to the south). The Appellant's surface water drainage strategy[14] [CD 1.13] states that the proposed SuDS basin will: "*Outfall via a proposed shallow ditch/depression that will allow water to spill over the edge and flow overland into the ditch network to the south* [i.e. the ancient woodland]". The EcIA makes no assessment of the hydrological impacts on Cains Wood arising from that outfall. This is a significant omission particularly given that Figure 7 of the EcIA [replicated at Appendix BC2] identifies ghyll woodland at this location- a habitat type that is highly sensitive to changes in hydrology. Further, based on the drainage drawings, not only will the shallow ditch/depression will be constructed in the Appellant's purported non-development 15m ancient woodland buffer with the pumping station also appearing to fall within the 15m buffer. There has been no consideration in the EcIA in respect of soil and/or root disturbance within this buffer arising from the construction of the ditch/depression and/or the pumping station (contrary to paragraph 6.2.7 of the EcIA[15]). Similar to the paragraph above, the proposals

[13] As per Paragraph 5.35 of CIEEM's EcIA Guidelines and outlined in the Natural England Ancient Woodland Inventory Handbook for England.

[14] Appendix I of Flood Risk Assessment and Drainage Strategy- Land at North Colwell Farm, Haywards Heath produced by Meyer Brown and dated February 2025.

[15] Paragraph 6.2.7 of the EcIA states: "*In order to safeguard the ancient woodland located to the south of the site, a 15m buffer will be set in which no construction works shall take place*".

would appear to lead to a deterioration of the irreplaceable habitat (with paragraph 193 (c) of the NPPF then applying).



3.3 Inconsistency in Habitat Classification

3.3.1 The uncertainty whether irreplaceable ancient woodland habitat is at direct or indirect risk from the appeal proposals is not helped by the Appellant's inconsistent classification of the wooded features on the Appeal Site.

3.3.2 Within the EcIA, the same features are variously described as 'Lowland Mixed Deciduous Woodland' (paragraph 4.2.3), 'woodland' (Table 12), 'mature line of trees' (paragraph 4.6.4), 'treelines' (paragraph 4.2.3) and 'treeline/scrub' (paragraph 5.2.1).

3.3.3 In its consultation response to the planning application, Place Services stated[16] [CD 4.30] that they were not satisfied that appropriate information had been provided and requested information in respect of several points including in regards to inconsistencies between the Appellant's BNG baseline habitat map and the BNG Metric, with specific reference made to lowland mixed deciduous woodland. The Appellant's ecologists[17] provided a response which purported to provide the requested further information regarding this habitat. This stated the following at paragraph 1.1: "*The majority of the site supports tree lines with well-developed scrub understoreys or bracken, however some shorter sections of hedgerow are present*", (i.e. there is no reference to woodland).

3.3.4 As also highlighted by Place Services, the above various references to treelines, line of trees and hedgerows are inconsistent, with the Appellant's baseline habitat map labelling the features as 'lowland mixed deciduous woodland' [CD 2.15- Appendix 1].

[16] Dated 21/03/2025.
[17] Dated 04/08/2025.

3.3.5 This is not a minor inconsistency. Each of these habitat types generates different ‘scores’ and trading requirements in the BNG Metric. Decision-makers are entitled to clear, consistent and accurate information about the nature and value of the habitats to be affected by the proposals. The Appellant’s submission does not provide it.

4 REPTILE RECEPTOR SITE SUITABILITY

4.1 Background

4.1.1 The Appellant conducted a reptile survey of the Appeal Site in April and May 2024. It should be noted that several survey visits were conducted under sub-optimal weather conditions (such as visits 2, 5 and 7) which may have depressed the numbers of reptiles observed and resulted in an underestimate of the population size. On the Appellant's own findings, low populations of three reptile species are present. The Appellant has identified an area of 1.117ha in the east of the Appeal Site as a reptile receptor site [paragraph 6.4.3 of CD 2.6], with this area proposed to receive reptiles captured during the translocation exercise from the remainder of the Appeal Site.

4.2 Assessment of Receptor Site Suitability

4.2.1 Aerial photography and the post-development map [CD1.15- Appendix 2] indicate that approximately 40% of the proposed reptile receptor area comprises closed canopy woodland and/or dense scrub. By virtue of the orientation of the site and the shading effect of trees within the adjoining woodland, the receptor site is also unlikely to receive full sun during the first part of the day. These conditions are well-recognised as sub-optimal for reptiles, which depend on direct sunlight for thermoregulation [CD 20.15 by reference to paragraphs 4.8 to 4.10 and 7.6].[18] Overall, it is therefore calculated that approximately 0.67 hectares of the receptor site — less than two-thirds — would appear to offer suitable reptile habitat. Finally, the Appellant has provided no carrying-capacity assessment to demonstrate that this area is sufficient to support the translocated population (contrary to Natural England Standing Advice [CD 20.17]).

4.2.2 The proposed management regime of the receptor site, as set out in BNG Habitat Management & Monitoring Plan, states the following:

- Table 6 states under 'modified grassland' the following: "*The grassland will be subject to regular strimming (not mowing due to reptile presence) to a height of 30-50mm during April-August and 50-70mm for the remainder of the year*". However, the post-development map (Appendix 2) shows the area for reptile receptor area is proposed to be Other Neutral Grassland. Therefore, there is an inconsistency between the BNG report and the post-development map. It should be noted that regular strimming of the reptile receptor site will render the area sub-optimal for reptiles.
- Under 'Other Neutral Grassland' (section 5.3.1 of the BNG Habitat Management & Monitoring Plan report), it states: "*Cutting a meadow and removing the clippings retains low nutrient levels in the soil and suppresses out-competing coarse grasses. It is recommended the wildflower grassland undergoes two annual cuts. The growth should be cut back to a height no lower than 15cm, and this cut grass should be dried on site. Cuttings should be left in situ for approximately one week, after this the arisings must be removed from the site*." This management regime is not consistent with ensuring the maintenance of the reptile population. As per the above point, cutting grassland twice a year within a reptile receptor site is not conducive for supporting a reptile population.

[18] To give further consideration regarding the suitability of the receptor site for reptiles, direct access to the Appeal Site to view this area during a joint visit within the Appellant's ecologist was suggested; however, this was refused.

4.2.3 Two additional risk factors compound the picture. First, the receptor site's proximity to the proposed housing development creates a material risk of domestic cat predation, which can threaten reptile population viability [refer paragraph 7.8 of the CD 20.15 (Reptile Habitat Management Handbook)]. Secondly, the Appellant has made no provision or reference to prevent deer from accessing the receptor area; the grazing of any deer population on site would likely be concentrated in the retained habitat areas and could consequently degrade the receptor site's suitability for reptiles.

4.2.4 In aggregate, the proposed reptile receptor site is not adequate to support the translocated reptile population. The combination of insufficient suitable habitat, an inappropriate management regime, and foreseeable predation pressure raises a serious risk that translocation will result in *de facto* offences under the Wildlife and Countryside Act 1981 (as amended) — specifically, failure to take reasonable steps to avoid injury or death following release.

5 BIODIVERSITY NET GAIN ASSESSMENT

5.1 Background

5.1.1 The Appellant asserts a habitat net gain of 0.72% (or +0.35 habitat units), and a hedgerow net gain of 441.54% (or +1.34 hedgerow units), with the Trading Rules not satisfied.

5.2 Review

5.2.1 My review of the Appellant's submitted BNG Habitat Management & Monitoring Plan report[19] [CD 1.15], and subsequent site investigation, identifies several material errors and inconsistencies that render the above net gain figures unreliable. The following provides these identified errors and inconsistencies.

5.2.2 Other Neutral Grassland. The Appellant records the baseline 'Other Neutral Grassland' as 'Poor' based on the grassland meeting only two of the six criteria for Medium distinctiveness grassland habitats. Bioscan conducted a shadow condition assessment, the results of which are set out in the table below.

Grassland: Other neutral grassland (MEDIUM distinctiveness)		
A	The grassland is a good representation of the habitat type it has been identified as, based on its UKHab description[20] - the appearance and composition of the vegetation closely matches the characteristics of the specific grassland habitat type. Indicator species listed by UKHab for the specific grassland habitat type are consistently present. **Note - this criterion is essential for achieving Moderate or Good condition.**	**Pass** (based on Appellant's information and photographs of the grassland would indicate that it could be a good representation of other neutral grassland)
B	Sward height is varied (at least 20% of the sward is less than 7 cm and at least 20% is more than 7 cm) creating microclimates which provide opportunities for insects, birds and small mammals to live and breed.	**Fail** (per Appellant's data; however, Photograph 3 of the Design and Access Statement[21] appears to show that the grassland is tussocky and could potentially meet this criterion. This could be confirmed if access to the site would be permitted).
C	Cover of bare ground is between 1 - 5%, including localised areas, for example, rabbit warrens. (This could include small, scattered areas of bare ground allowing for plant colonisation, or localised patches not exceeding 5% cover).	**Pass** (bare ground from grazing confirmed by Appellant; aerial photography show molehills consistent with 1-5% cover).
D	Cover of bracken *Pteridium aquilinum* is less than 20% and cover of scrub (including bramble) is less than 5%.	**Pass** (the majority of the areas of bracken within the Appeal Site would appear to meet the

[19] Ecosupport (2025). BNG Habitat Management & Monitoring Plan: Land at North Colwell Farm – Dated: 02/06/2025

[20] UKHab defines 'other neutral grassland' as a grassland which meets at least 3 of these 4 criteria: (i) >20% cover of broadleaved herbs/sedges; (ii) 9 or more species per m² (including forbs, grasses, sedges and rushes, and excluding bryophytes); (iii) ≥1 grass species that is not generally sown for intensive agricultural production (i.e. Rye-grasses *Lolium* spp., Timothy *Phleum pratense*, cock's-foot *Dactylis glomerata*, meadow fescue *Festuca pratensis*) is at least abundant; (iv) Cover of rye-grasses *Lolium* spp. and white clover *Trifolium repens*, where present, is <30%.

[21] Miller Homes (2025). Design and Access Statement- Land at North Colwell Farm, Haywards Heath. Dated February 2025.

Grassland: Other neutral grassland (MEDIUM distinctiveness)		
		UKHab definition [CD 20.11] of 'bracken', and therefore, should be mapped as a separate habitat in its own right in the BNG metric. Consequently, the remaining grassland habitat would comprise cover of bracken less than 20%.[22]
E	Combined cover of species indicative of sub-optimal condition[23] and physical damage (such as excessive poaching, damage from machinery use or storage, damaging levels of access, or any other damaging management activities) accounts for less than 5% of total area. If any invasive non-native plant species are present (INNS; as listed on Schedule 9 of Wildlife and Countryside Act 1981, as amended), this criterion is automatically failed.	**Pass** (based on the Appellant's information and a review of aerial photography)
F	*For non-acid grassland types only:* There are 10 or more vascular plant species per m^2 present, including forbs that are characteristic of the habitat type (INNS or species referenced in the Criterion E footnote cannot contribute towards this count). Note - this criterion is essential for achieving Good condition for non-acid grassland types only.	**Fail** (per Appellant's information)
Condition Assessment		
Good condition: passes 5-6 criteria, including essential criterion A and additional criterion F. **Moderate condition:** passes 3-5 criteria, including essential criterion A. **Poor condition:** passes 0-2 criteria, OR passes 3-4 criteria but fails essential criterion A & additional criterion F.		**Moderate** (4 including criterion A).

5.2.3 The shadow assessment indicates a 'Moderate' condition outcome — meeting four criteria including the essential criterion A. On the available evidence, the Appellant's 'Poor' assessment cannot be sustained. Upgrading the condition from Poor to Moderate would reduce the BNG score and may place compliance with mandatory BNG requirements in doubt. Verification by site access is precluded by the Appellant's refusal to permit inspection.

5.2.4 Table 3 of the Appellant's BNG report[24] [CD 1.15] (page 8) provides the habitats to be retained, enhanced and created on Appeal Site. It is notable that 'lowland mixed deciduous woodland' is the only habitat that is listed by the Appellant as 'retained', albeit Table 3 indicates that there will be a minor area loss (presumably arising from the four breaches through the woodland features to enable internal access routes to be constructed). By inference therefore, all other baseline habitats on the Appeal Site will be removed, with new habitats created as part of the proposals. Of note, the Appellant appears to be purporting that the existing/baseline Other Neutral Grassland around the

[22] I note that entering the area of bracken as that habitat in the BNG Metric is likely to favour the Appellant. Nevertheless, ultimately, it is considered preferable to ensure that the Appellant's BNG metric is accurate.

[23] Species indicative of sub-optimal condition for this habitat type include: creeping thistle *Cirsium arvense*, spear thistle *Cirsium vulgare*, curled dock *Rumex crispus*, broad-leaved dock *Rumex obtusifolius*, common nettle *Urtica dioica*, creeping buttercup *Ranunculus repens*, greater plantain *Plantago major*, white clover *Trifolium repens* and cow parsley *Anthriscus sylvestris*. There may be additional relevant species local to the region and or site.

[24] Ecosupport (2025). BNG Habitat Management & Monitoring Plan: Land at North Colwell Farm – Dated: 02/06/2025

inner periphery of the Appeal Site (which includes the area for the ancient woodland buffer[25]) will be removed (by means unknown) and then replaced with Other Neutral Grassland. The ecological and policy implications of removing habitat within the 15m ancient woodland buffer have not been assessed. Nor has the Appellant explained why this approach has been adopted rather than simply retaining, and/or enhancing the condition of, the existing grassland, which would improve their BNG score.

5.2.5 'Line of trees.' The Appellant's baseline habitat map identifies that there is a 'line of trees' along the proposed access route into the Appeal Site, with the underlying habitat classified as 'built-up areas and gardens (u1)'[26]. The post-development plan shows that this line of trees (and built-up area/garden) will be removed.

5.2.6 In respect of this habitat, the Appellant has failed to comply with the BNG User Guide[27] (Defra, July 2024, pages 53–55 [CD 20.12]). The Biodiversity Net Gain User Guide states the following (page 53): "*Do not use the hedgerow module classifications 'line of trees' and 'ecologically valuable line of trees' to record linear formations of trees in the urban environment. These classifications should only be used for rural lines of trees*." Of further relevance, the User Guide also states the following (page 53): "*Do not otherwise record individual trees if they occur within a habitat type characterised by the presence of trees, unless specified within the section on 'recording individual trees at baseline', which covers: - trees within private gardens; - removal of trees within hedgerows; - removal of trees within rural lines of trees; [...].*" Page 55 of the User Guide states: "*Recording baseline trees within private gardens: record all medium, large and very large individual trees within private gardens*." If the Appellant's ecologists are of the opinion that this line of trees is not within the urban environment (despite their baseline habitat map showing that it falls within 'built-up areas and gardens (u1)', then of relevance the User Guide states (page 53) the following: "*Recording baseline trees within hedgerows and lines of trees: if any medium, large or very large trees within a hedgerow or 'rural' line of trees are being removed, record these in the area baseline as individual trees*." Therefore, irrespective of the location of the line of trees (either in the urban environment or in a rural area), each individual tree within the size category of 'medium' or above should be recorded in the baseline habitat sheet.

5.2.7 To understand which trees are proposed to be removed, the Arboricultural Impact Assessment report[28] [CD 1.29] was reviewed. Following this review, I noted that 14 trees will be required to be removed to facilitate access into the Appeal Site. The Arboricultural Impact Assessment report also provides the stem diameter of each tree, and this was used, in conjunction with the BNG User Guide (in Table 14), to understand the number of trees within each size category. **Table 4** below provides the number of trees to be removed within each size category.

[25] The EcIA references an ancient woodland buffer of 15m (paragraph 6.2.3 and 6.2.7) and 20m (paragraph 6.8); however, measuring the distance, would indicate that there is a minimum 15m buffer.
[26] Although direct access into this area was not possible by Bioscan, the habitat would appear to be a domestic garden.
[27] Page 54 of: Defra (2024). The Statutory Biodiversity Metric- User Guide. Date: July 2024. [Note: this is the version in use at the time that the Appellant's BNG assessment was last updated].
[28] FLAC (2025). Planning Submission (Arboriculture). Dated: January 2025.

***Table 4**. Number of trees, and their size categories, proposed to be removed to enable access into the Appeal Site.*

Tree Size Class	Number Proposed to be Removed
Large	1
Medium	8
Small	5

5.2.8 Nine trees (one large and eight medium) should have been recorded individually in the BNG baseline. They have not been. This results in an understated baseline and an inflated net gain figure.

5.2.9 Aerial photography highlights that there is an existing track that runs along the western boundary of the Appeal Site. No reference to the mitigation hierarchy has been made in the EcIA regarding consideration for the avoidance of the removal of the trees by using this existing track. Not only would this avoid the need to remove these trees entirely but would also improve the Appellant's BNG outcome.

5.2.10 Baseline lowland mixed deciduous woodland. Based on the botanical species list collected by Bioscan on 10 June 2026, it remains possible and as yet undetermined that the woodland features could be ancient in origin. It should be noted that if this habitat is considered to be irreplaceable habitat, then it should not be included in the BNG Metric calculations.

5.2.11 I note that the EcIA references the presence of Priority habitats within the vicinity of the Appeal Site based on Figure 7 of the EcIA[29] [CD 1.14]; however, the appellant has failed to provide relevant information, based on site surveys, whether any of the habitats *within* the Appeal Site could be considered to be a 'Priority' habitat[30]. The presence of declining 'Priority' habitats (as well as biodiversity more generally) is material to the discharge of the biodiversity duty that is incumbent on public authorities under the NERC Act 2006 (as amended by the Environment Act 2021 under Section 102), which not only seeks for public authorities to conserve but also to enhance biodiversity.

5.2.12 Baseline mixed scrub. The Appellant's baseline habitat map shows areas of dense scrub (h3) within the Appeal Site, but these are not included in the BNG Metric.

5.2.13 Based on aerial photography, a photograph provided in the Design and Access Statement[31] [CD 1.5] (Photograph 3 on page 12), and the Arboricultural Impact Assessment (AIA) report[32] [CD 1.29] indicate at least two further areas of scrub within the Appeal Site, with these comprising blackthorn and pedunculate oak (comprising 35 and 45 trees) and bramble within Field 1, which have not been mapped as scrub habitat[33] or included within the BNG Metric. This is a further understatement of the baseline.

[29] Paragraph 4.1.3 of the EcIA.

[30] Despite section 1.1. of the EcIA stating that one of the objectives of the ecological survey work was to 'identify and classify any priority habitats'.

[31] Miller Homes (2025). Design and Access Statement- Land at North Colwell Farm, Haywards Heath. Dated February 2025.

[32] FLAC (2025). Planning Submission (Arboriculture). Dated: January 2025.

[33] Scrub centred at W3W location: 'kicks.stays.forgot' and identified in the AIA as 'TG7025' and 'TG7028'.

5.2.14 Proposed hedgerows. Table 4 of the BNG report states that 0.853km of native hedgerow will be created. The majority of these hedgerows appear to be located within or immediately adjacent to private gardens. The BNG User Guide[34] (page 51) is clear: "*The post-development private garden has no public access, and biodiversity net gains cannot be legally secured*". Therefore, it would appear that these proposed new hedgerows should be excluded from the Appellant's BNG Metric. Their inclusion inflates the net gain figure.

5.2.15 Further errors and inconsistencies

- Proposed modified grassland: The BNG metric records 0.256ha of modified grassland will be created; however, the post-development map indicates that approximately 0.13ha- a discrepancy of approximately 50%.
- Proposed individual trees: Condition is recorded as 'moderate' in the BNG Metric but 'Poor' in the BNG report- an unexplained inconsistency.
- Proposed Other Neutral Grassland: The Appellant asserts 'Good' condition will be achieved, but the number of individual trees to be planted in this habitat (which will cause shading), the inclusion of a children's play area, and the likely recreation use (including dog walking) by the residents, makes this condition highly unlikely.
- Strategic Significance: Section 2.4.1 of the BNG report states: "*Where ecologically valuable baseline and post-development habitats were located adjacent to or with connectivity to the ecological network these were listed as 'Location ecologically desirable but not in local strategy*". It is unclear where the Appellant's ecologist has sourced the information regarding the location of ecological networks as this has not been provided in the reporting.
- Delay in starting habitat creation: the Appellant's BNG metric leaves the 'Delay in starting habitat creation (years)' column blank, implying simultaneous Year 0 creation of all habitats within the Appeal Site. That is not credible.

5.2.16 Summary. The cumulative effect of these errors and omissions is to produce a BNG Metric that cannot be relied upon. The true position may be a net loss rather than a net gain.

[34] Page 12 of: Defra (2024). The Statutory Biodiversity Metric- User Guide. Date: July 2024. [Note: this is the version in use at the time that the Appellant's BNG assessment was last updated].

6 SURVEY INFORMATION AND MITIGATION FOR BATS

6.1 Background

6.1.1 The EcIA [CD 1.14] states[35] that a 'non-exhaustive' Ground Level Tree Assessment (GLTA) for roosting bats was undertaken of trees proposed to be removed as part of the proposals, and stated that the methodology followed the Bat Conservation Trust's (BCT) Good Practice Guidelines[36] [CD 20.3]. First, I am unclear why the Appellants did not undertake an exhaustive GLTA of the trees (particularly those identified to be removed) within the Appeal Site. Secondly, as a minimum, I would expect that the results of the GLTA to have been presented in a table which provides a list of each tree, the tree species, a reference number (which corresponds with a plan), and the roost suitability category of each feature (as per Box 11.1 of BCT's Good Practice Guidelines).

6.1.2 It is nevertheless noted that during the Appellant's GLTA, four trees were identified to support potential for roosting bats, with these all located along the main access route into the Appeal Site. However, four breaches through the internal wooded linear features are also proposed to facilitate vehicular and pedestrian access. The Appellant has not confirmed whether tree removal will be required to facilitate those breaches, or whether alternative routes could avoid mature trees (and by extension on potential roost features).

6.1.3 As I highlight in paragraph 5.2.9 above, aerial photography highlights that there is an existing track that runs along the western boundary of the Appeal Site. The use of this alternative route would avoid the tree loss, and by extension on any confirmed bat roosts that may be present, along the existing proposed access into the Appeal Site. It is unclear whether the Appellant has considered this first stage avoidance approach.

6.1.4 Paragraph 6.2.1.1 of the EcIA states: "*When all features have been fully inspected and no evidence of bats is identified, the tree must be immediately felled. If any features cannot be fully inspected, the tree must be soft-felled*". This approach is contrary to the Bat Mitigation Guidelines[37] which states in Figure 6.3 that where a tree is unsafe to climb/inspect, then emergence surveys should be undertaken, and in paragraph 6.5.8 the Guidelines states: "*When managing or removing trees with PRFs, it may be necessary to employ reasonable avoidance measure to reduce the likelihood of killing or injuring bats. These measures should only be used once all survey options have been exhausted, as they are time-consuming, costly and put the arborist at increased risk. The most widely used avoidance measure is section-felling.*" Therefore, the Appellant is proposing to move straight from not being able to inspect a feature to soft-felling (rather than undertaking relevant surveys and then section felling of the tree).

6.1.5 Paragraph 6.2.6 of the EcIA states: "*As light the* [sic] *sensitive Barbastelle Bat (Barbastella barbastellus), was recorded on site during static monitoring, dark corridors of at least 10m wide will be implemented into the scheme to preserve suitable commuting routes for this species. Within these areas light levels will be maintained at*

[35] At paragraph 3.2.3.1

[36] Collins (ed.) (2023; Updated March 2024). *Bat Surveys for Professional Ecologists: Good Practice Guidelines (4th edition)*. Bat Conservation Trust.

[37] Reason, P.F. and Wray, S. (2023). *UK Bat Mitigation Guidelines: a guide to impact assessment, mitigation and compensation for developments affecting bats. Version 1.1*. Chartered Institute of Ecology and Environmental Management, Ampfield. [Version in use at the time that the EcIA was last updated]

levels below 0.1 lux". With Figure 27 of the EcIA showing these dark corridors around the periphery of each field parcel; however, the Appellant has provided no assessment of how light levels within these corridors will be maintained at or below 0.1 lux at the points where the wooded belts are to be breached for access — precisely the locations where illumination is most likely to be an issue.

6.1.6 In summary, the Appellant's approach to bats falls short of industry standards in respect of assessing tree roosts and the proposed mitigation for their removal. Further, it is unclear how the field boundary features will not be illuminated by more than 0.1 lux in order to minimise impacts on foraging barbastelle in particular.

7 IMPLICATIONS OF APPELLANTS' ERRORS AND OMISSIONS FOR PLANNING POLICY COMPLIANCE

7.1 Local Policy

7.1.1 The Mid Sussex District Plan 2014 – 2031 was adopted by Mid Sussex District Council in March 2018, and covers the period to 2031. It is understood that the District Council have commenced a review of the District Plan, with 'District Plan 2021 – 2039' submitted for Examination on 8th July 2024.

7.1.2 The current Local Plan states at Policy DP37: Trees, Woodland and Hedgerows the following: "*The District Council will support the protection and enhancement of trees, woodland and hedgerows, and encourage new planting. In particular, ancient woodland and aged or veteran trees will be protected. Development that will damage or lead to the loss of trees, woodland or hedgerows that contribute, either individually or as part of a group, to the visual amenity value or character of an area, and/ or that have landscape, historic or wildlife importance, will not normally be permitted*."

7.1.3 As can be seen in the post-development plan [CD 1.14- Appendix 2], there are mature and semi-mature trees along the proposed access road alignment into the Appeal Site. Further, tree removal will likely be required for the breaching of the internal linear wooded belts. As highlighted above in my proof, determination regarding whether these wooded belts are ancient in origin or otherwise would assist here. Further, these internal features are assessed to be of wildlife importance due to their use by species such as hazel dormice and foraging bats (including barbastelle). Therefore, the proposals would not accord with Policy DP37.

7.1.4 Also of relevance is Policy DP38 which states: "*Biodiversity will be protected and enhanced by ensuring development:*

- *Contributes and takes opportunities to improve, enhance, manage and restore biodiversity and green infrastructure, so that there is a net gain in biodiversity, including through creating new designated sites and locally relevant habitats, and incorporating biodiversity features within developments; and*
- *Protects existing biodiversity, so that there is no net loss of biodiversity. Appropriate measures should be taken to avoid and reduce disturbance to sensitive habitats and species. Unavoidable damage to biodiversity must be offset through ecological enhancements and mitigation measures (or compensation measures in exceptional circumstances); and*
- *Minimises habitat and species fragmentation and maximises opportunities to enhance and restore ecological corridors to connect natural habitats and increase coherence and resilience; and*
- *Promotes the restoration, management and expansion of priority habitats in the District; and*
- *Avoids damage to, protects and enhances the special characteristics of internationally designated Special Protection Areas, Special Areas of Conservation; nationally designated Sites of Special Scientific Interest, Areas of Outstanding Natural Beauty; and locally designated Sites of Nature Conservation Importance, Local Nature Reserves and Ancient Woodland or to other areas identified as being of nature conservation or geological interest, including wildlife corridors, aged or veteran trees, Biodiversity Opportunity Areas, and Nature Improvement Areas*."

7.1.5 It is noted that the appeal proposals do not accord with each bullet point in DP38. For reference, and ordered by the bullet points above, I provide the following:

1) Based on the identified errors and inconsistencies within the Appellant's BNG Metric, it is likely that there will not be a biodiversity net gain. Further, it is unclear how the proposals will enhance and restore biodiversity.
2) As above, and there is a lack of information in the EcIA regarding the measures that will be taken to avoid and reduce disturbance to sensitive habitats, such as the linear wooded belts.
3) The breaches through the linear wooded belts will likely fragment these ecological corridors.
4) The proposals do not appear to restore or expand priority habitats.
5) The proposals will damage the linear wooded features, and depending on the ancient woodland question, this habitat will be damaged.

7.1.6 **National Policy**

7.1.7 The National Planning Policy Framework (NPPF) sets out, as a key principle of sustainable development, a presumption against significant loss of biodiversity and furthermore seeks to ensure that planning decisions not only avoid net loss but secure net gain in biodiversity wherever possible.

7.1.8 As I seek to show in my evidence above, the Appellant's biodiversity net gain calculations do not provide a reliable basis to determine that the Appeal Proposals accord with either the spirit or the letter of national policy, for example as set out at NPPF paragraphs 8(c), 187 (d), and 193 (a).

7.1.9 Paragraph 187 (d) states that: "*Planning policies and decisions should contribute to and enhance the natural and local environment by:*

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures and incorporating features which support priority or threatened species such as swifts, bats and hedgehogs;"

7.1.10 In particular, NPPF para 193 (a) requires that:

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

7.1.11 The clear flaws in assessment that I draw attention to in the above sections of my evidence afford no confidence that the Appeal Proposals will avoid significant harm, still less deliver net biodiversity gain. That is a conclusion that is furthermore consistent with long-standing but more subjective approaches to professional ecological impact assessment, and one that is reached even before considering the impact of such loss upon faunal species.

7.1.12 Further, and of relevance to the ancient woodland point, para 193 (c) states:

"*development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons[70] and a suitable compensation strategy exists*;"

[70] *For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.*

7.1.13 As highlighted in my evidence above, historic mapping would indicate that the feature in the north-east of the Appeal Site (the 'Shaw') is likely to be ancient in origin. Further, historic mapping would also indicate that the two north-south aligned features through the central part of the Appeal Site (particularly the eastern feature) are also ancient in origin. In addition, the breaching of the two internal features are likely to lead to the deterioration of the retained areas of these features through impacts on Root Protection Areas (on the sections either side of the breaches). Therefore, the proposals would appear to result in the loss and deterioration of an irreplaceable habitat.

8 CONCLUSION

(This section serves as my summary of proof)

8.1 My proof highlights clear failings on the part of the Appellant's ecologists to properly and accurately survey and assess the linear wooded features within and around the periphery of the Appeal Site, and whether these features could be ancient in origin. Given the irreplaceability and importance of this habitat, and the weight attributed to it in planning policy, it would be highly unsafe to proceed to the issuing of a decision absent a far more thorough and complete investigation into the matter.

8.2 A review of aerial photography and the post-development plan for the Appeal Site strongly indicates that the proposed reptile receptor site is not fit-for-purpose. Approximately 40% of the proposed receptor site comprises closed-canopy woodland or dense scrub and these habitat types will not provide the thermal conditions beneficial for reptiles. Further, the proposed management of this area is not conducive for the benefit of reptiles due to the regularity of the grass cutting regime. Finally, there has been no considerations for the implications of increases in domestic cat predation, and the impacts of deer foraging on the proposed reptile habitat.

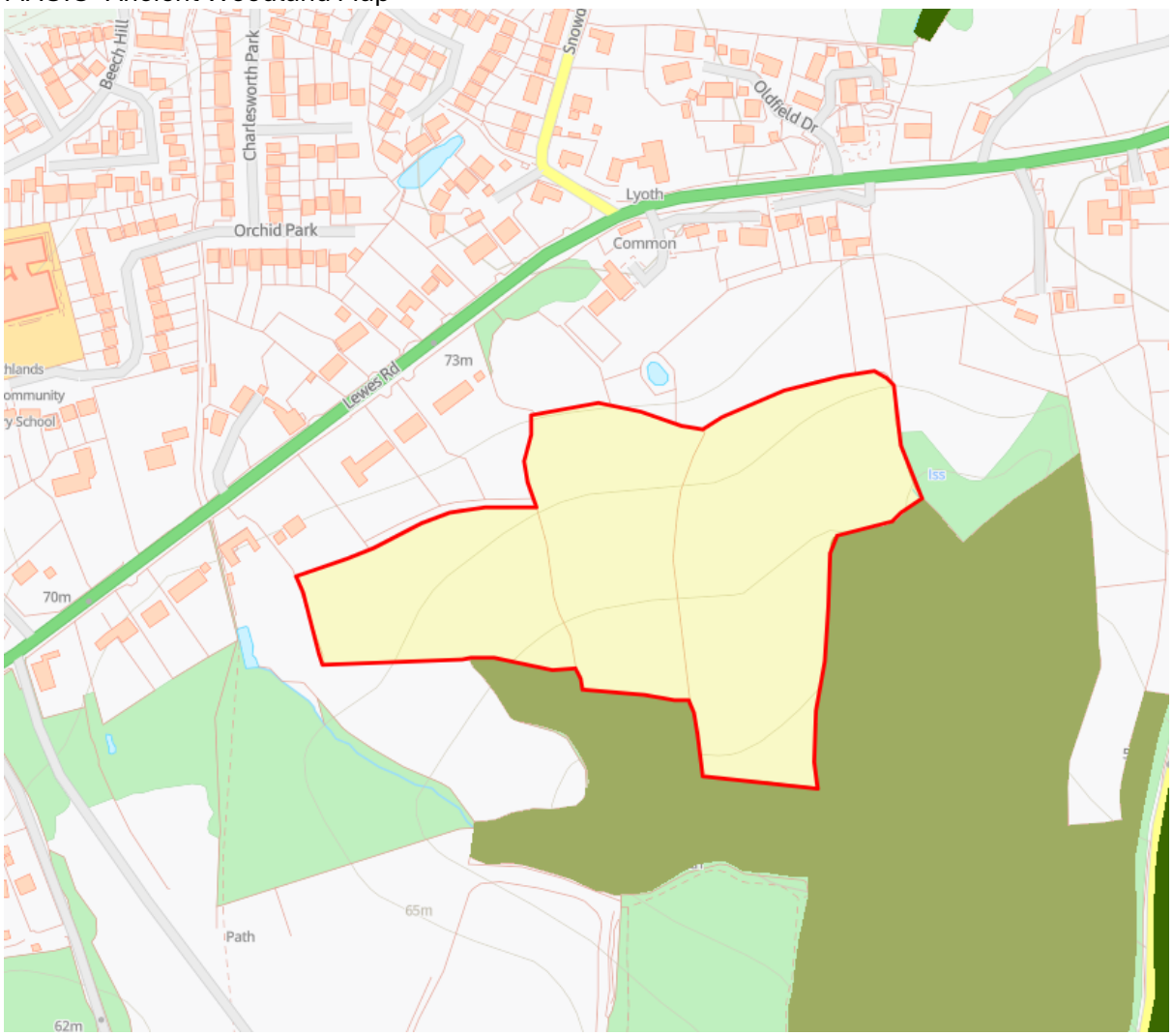
8.3 A review of the Appellant's BNG Metric and assessment highlights several inconsistencies and errors. In particular, the condition of the other neutral grassland (both baseline and post-development), non-adherence to the BNG User Guide (particularly in respect of the removal of the line of trees and the post-development hedgerow provision), the extent of baseline scrub, and the timing of when habitats will be created.

8.4 The Appellant's approach to bats falls short of industry standards in respect of assessing tree roosts and the proposed mitigation for their removal. Further, it is unclear how the field boundary features will not be illuminated by more than 0.1 lux in order to minimise impacts on foraging bats, and barbastelle in particular.

8.5 Notwithstanding these deficiencies, the balance of both subjective and objective evidence is that the proposals would result in a significant net loss of, and harm to, biodiversity on the site in clear conflict with the requirement of paragraphs 187 and 193 of the NPPF and contrary to policy DP38 of the Mid Sussex Local Plan.

Figure BC1

MAGIC- Ancient Woodland Map



Red polygon= Site boundary
Olive green polygon= Plantation on Ancient Woodland Site (PAWS) (Cains Wood).

Appendix BC1

Apportionment information, with relevant plots outlined in red for ease of reference.

Tithe map information - apportionments

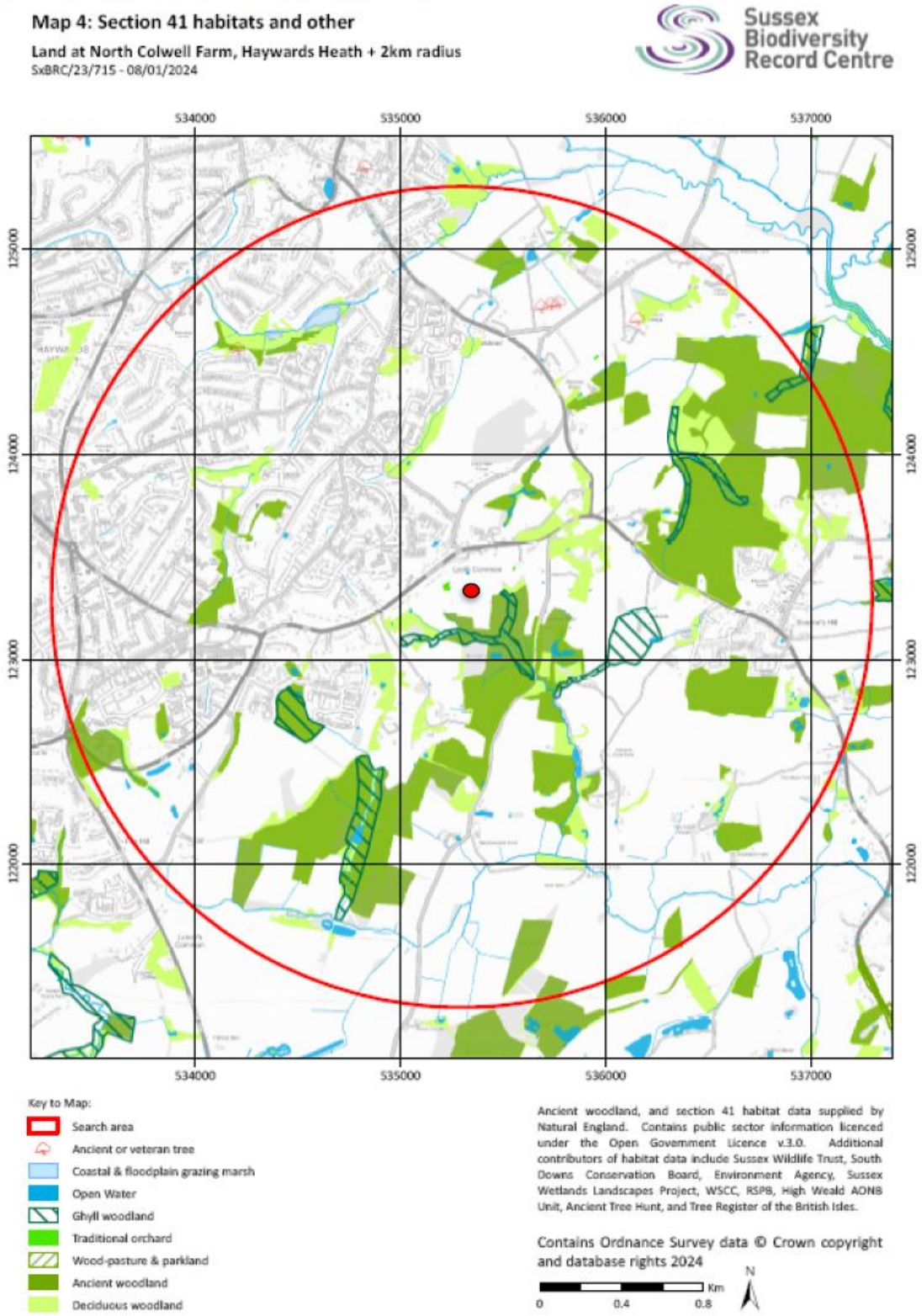
Title:	Wivelsfield tithe
Description:	No date, but Award 1838. Surveyor unknown. 20 in. to 1 m. 76 × 89
Date:	n.d., c.1838
Ref no:	TD/E23

Show map View details

Plot	Land owner surname	Land owner first name	Occupier surname	Occupier first name	Farm name	Land description	Cultivation	
800	Tanner	Jenny	Tanner	Richard	Colwell Farm	Common Field, part of	No data	Details
801	Tanner	Jenny	Tanner	Richard	Colwell Farm	Five Acres	No data	Details
802	Tanner	Jenny	Tanner	Richard	Colwell Farm	Joys Field	No data	Details
803	Tanner	Jenny	Tanner	Richard	Colwell Farm	The Wood	No data	Details
804	Tanner	Jenny	Tanner	Richard	Colwell Farm	Old Furze Field	No data	Details
805	Podmore	Henry	Welfare	Thomas	Late Berrys	Lower Wood	No data	Details
806	Lowdell	Stephen	Lowdell	Stephen	Cains Wood	Little Shaw	No data	Details
807	Lowdell	Stephen	Faulconer	Thomas	Cains Wood	Garden	No data	Details
808	Lowdell	Stephen	Faulconer	Thomas	Cains Wood	House and shaw	No data	Details
809	Lowdell	Stephen	Lowdell	Stephen	Cains Wood	Wood	No data	Details
810	Podmore	Henry	Welfare	Thomas	Late Berrys	Middle Field	No data	Details
811	Lowdell	Stephen	Welfare	Thomas	Late Ockendeans	Garden	Market garden	Details
812	Lowdell	Stephen	Welfare	Thomas	Late Ockendeans	Little Plot	No data	Details
813	Lowdell	Stephen	Welfare	Thomas	Late Ockendeans	House and garden	No data	Details
814	Lowdell	Stephen	Welfare	Thomas	Late Ockendeans	Cherry Garden	No data	Details
815	Podmore	Henry	Welfare	Thomas	Late Berrys	Hollow Field	No data	Details
816	Podmore	Henry	Welfare	Thomas	Late Berrys	Little Pasture Field	No data	Details
817	Podmore	Henry	Welfare	Thomas	Late Berrys	House and garden	No data	Details
818	Podmore	Henry	Welfare	Thomas	Late Berrys	Three Acres	No data	Details
819	Tanner	Jane	Mitchell	Henry	Cuthedges late Grannes	Barn Field	No data	Details
820	Tanner	Jane	Mitchell	Henry	Cuthedges late Grannes	Spring Plot Meadow	No data	Details
821	Tanner	Jenny	Tanner	Richard	Colwell Farm	Grimes Field	No data	Details
822	Tanner	Jenny	Tanner	Richard	Colwell Farm	Shaw	No data	Details

Appendix BC2

Figure 7. Ancient, ghyll and deciduous woodland are in immediate proximity to the site, in addition to a traditional orchard and running water (SxBRC, 2024).



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