

Land off Midhurst Road at Scotland Park, Midhurst Road, Haslemere, Surrey

Planning Inspectorate No: APP/R3650/W/3327643

LPA reference: WA/2022/01887

**CLOSING SPEECH OF THE APPELLANT
REDWOOD (SOUTH WEST) LTD**

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1. Introduction

1. The Appeal Scheme, if consented, would deliver an exceptional package of benefits on a site located immediately adjacent to the settlement boundary of a top tier settlement¹ on the mainline trainline to Waterloo and only circa 850m from the town centre. It would deliver much needed housing and an above policy level of affordable housing in Haslemere, an area that suffers acute affordability problems, as well as enabling the delivery of other housing and affordable housing across the town through the creation of an "ideal" or "perfect"² SANG within the SHNL. Allied to that, it will generate significant landscape, recreational and ecological enhancements across five of the seven LCAs

¹ See Policy SP2, Mr Johnson inaccurately described Haslemere as second tier.

² Mr Eastham's description at the First Inquiry.

comprising the Appeal Site – some 78% of the Appeal Site. Moreover, it would create exemplar facilities for valuable community uses, whilst confining any adverse landscape effects to two LCAs within the Appeal Site (together comprising just 22% of the total area) where the housing and access is to be located. Moreover, it is agreed that 110 of the 111 of the new homes would be practically invisible from any public viewpoints and that the only new homes that would be visible – the lodge at the access – is an “*attractive*” building, a focal feature in keeping with the character of the SHNL, and of the highest design quality.³

2. The site is within the SHNL and the Appeal Scheme is agreed to be major development.⁴ As such, the Appellant must show EC but, if it does, then (i) the tilted balance would then apply, (ii) there would be compliance with the development plan and (iii) permission should be granted. This was all accepted by WBC at the last inquiry⁵. Mr Johnson did not agree⁶ but, as we will come to, his understanding of the operation of the relevant development management tests was fundamentally flawed and has not been pursued by WBC in XX or in closing⁷. The converse (that if there are no EC permission should be refused) is also accepted by the Appellant⁸. That there are EC, however, is plainly established in this case.

³ See Mr Petrow’s answers in XX

⁴ The definition of major development fn 67 of the NPPF says “[f]or the purposes of paragraphs 190 and 191, whether a proposal is ‘major development’ is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.” Mr Johnson, in XX, seemed to think that a planning application for just the lodge on its own would be “major development” for these purposes. That is not at all likely to be the case. In *R. (Forge Field Society) v Sevenoaks DC* [2015] J.P.L. 22 [NID.13.32] Lindblom J said at [67], “I think “major developments” would normally be projects much larger than six dwellings on a site the size of Forge Field”. Forge Field was about a third of a hectare. In the appeal decisions before this inquiry the smallest number of houses in issue are the 34 at Great Missenden and there the Inspector in fact concluded that this was not major development but applied the test in case he was wrong.

⁵ See para 2 of ID4.4

⁶ Although he accepted that there would be compliance with RE3.

⁷ See WBC closing at para 2.

⁸ Mr Collins in XX accepted that if EC are not shown then, footnote 8 of the NPPF is engaged so as to prevent the application of the tilted balance, that there would be conflict with at least some of the most important development plan policies, and that permission should be refused.

3. It should be emphasised at the outset that the Appeal Scheme falls to be assessed as a whole. Although WBC's focus in its evidence has – almost exclusively – been on the impact of the proposed housing and the proposed access, you sir are required to consider the development as a whole. The EC here derive not only from the benefits of the individual elements, but also from the way in which the overall package (i) combines to minimise and offset any harms to the landscape and special qualities of the SHNL and indeed across the majority of the Appeal Site to enhance these, whilst (ii) delivering on-site (and unlocking off-site) much needed housing and affordable housing (iii) delivering highly valuable and needed community facilities; and (iv) securing increased public access to the NL, contributing to many Management Plan objectives and facilitating increased access to the SDNP which lies to the south.
4. Before we turn to the evidence heard on the main issues of landscape, housing need, ecology and the planning balance/EC test, it is useful to start by identifying the correct approach to be taken to the (i) the quashed decision of Inspector Bristow and (ii) the relevant NL policy and statutory tests.

a) Approach to the quashed decision

5. The Appellant does not dispute that a quashed decision is *potentially* legally capable of being a material consideration. This is so if the decision is quashed for reasons which do not affect the conclusions being had regard to. That much was established by the court in *R (Kimmersley) v Maidstone BC* [2023] EWCA Civ 172 at §30⁹. However, we do say that in the circumstances of this case no proper reliance or weight can or should be given to any of Inspector Bristow's conclusions or assessments. This is due to the nature of both the ground on which the decision was quashed, which was a matter of procedural fairness going to the fairness of the decision as a whole, but also the other undetermined grounds which taint the decision generally (in the case of ground 1) and in

⁹ NID 7.25 “If a decision is quashed, that decision is not capable of giving rise to legal effect. But if the decision is quashed for reasons which do not affect the conclusions of the decision-maker on a specific issue, the conclusions on that issue may be a material consideration for subsequent decision-makers.”

relation to specific parts (in relation to grounds 3 and 4). The position here relating to the quashing is thus complex.

6. This puts the case in the category described by the High Court in *R (Davison) v Elmbridge BC* [2019] EWHC 1409 (Admin) where it was held that “*the complexity of discerning which elements of the decision remain [...] unaffected by the quashing ... entitles the decision maker to put aside the previous decision making, provided this is explained*”.¹⁰
7. It also puts the situation in a different category, unexplored in the caselaw, where the second decision-maker (you sir) risks tainting your own decision by placing reliance on conclusions or assessments in a quashed first decision (Inspector Bristow’s decision) which *may* itself be unlawful but where the second decision-maker cannot safely determine whether it is or not. The position is that:
 - (1) Inspector Bristow’s decision has been quashed and is no more.
 - (2) The conclusions within it were impugned by the Appellant who argued that they all were tainted by an appearance of bias and procedural defects and that other findings (on SANG and BNG) were specifically tainted by irrationality/failures of reasoning.
 - (3) Only one of those allegations formed the basis for the quashing by consent (such that the second decision-maker can be sure that it is a good one) but all of the others were undetermined.
 - (4) The second decision maker has therefore no means of knowing whether they are good challenges or not:
 - (a) The Secretary of State’s position¹¹ on this is immaterial – she is not the arbiter of lawfulness, which is the preserve of the Court.¹²

¹⁰ NID 7.37 at [55] and see summary of principles at [56], in particular (iv).

¹¹ The Secretary of State’s view on ground 1 is set out only in a most cursory way in a response to the letter before claim: see NID1.4. Of course, given the offer to consent on ground 2 made in that same letter, the matter was not looked at any further.

¹² Contrary to Mr Cosgrove KC’s suggestions in XX of Mr Collins.

(b) Nor is it right that the fact that the court has not determined the matter allows the second decision maker to *presume regularity*: the decision (which is what administrative law is concerned with) has been found to be unlawful. The presumption of regularity (which normally is what allows decision-makers to assume that public law decisions are lawful unless quashed) cannot apply.

(c) Nor is it right that the Appellant has in any way not chosen to pursue the other grounds: the court expressly discourages, and disallows, the pursuit of academic grounds of claim.¹³

(5) The court never engaged with the other arguments raised by grounds 1, 3 and 4 at all because they were rendered “*academic*” by the offer to consent on ground 2.

8. As such, there is not just complexity in how the allegations of unlawfulness affect the previous decision but in addition to safely put any weight on the quashed decision would entail having to make a decision about whether grounds 1, 3 and 4 were right or not: otherwise, how can the second decision-maker decide that it is untainted by those allegations? Such a decision would inevitably expose the second decision-maker to challenge.

¹³ See e.g. *R. (Samuel Smith Old Brewery (Tadcaster)) v Secretary of State for Communities and Local Government* [2009] EWHC 3238 (Admin) [NID13.30] “76 I leave this case by endorsing Mr Maurici’s submission on behalf of the [Secretary of State] that parties should be encouraged not to argue their corner once the Treasury Solicitor on behalf of the defendant is minded to consent to judgment on a particular ground. This, of course, occupies court time and acts as a disincentive to the Treasury Solicitor to concede cases which might be arguable.” A similar point had been made by Mr Holgate (as he then was) when acting for the Secretary of State in *Kingswood DC v Secretary of State for the Environment* (1989) 57 P. & C.R. 153 [NID13.31] – see bottom of 156. In that case the Secretary of State agreed to submit to judgment on two of the many pleaded grounds. The agreed grounds for quashing related to the imposition of a particular condition. The judge said that the case “... raises in a stark manner the question as to what is the effect or the result of a court quashing a decision by reference to certain specific identified grounds in a notice of motion whereas the court takes no action in relation to the remainder. Mr Burrell, on behalf of the applicants, expresses some anxiety that if the court restricts itself to the matters raised in grounds 9 and 10 of the notice of motion, it might put him in a position where he was unable to raise or re-emphasise matters relating to the green belt issue which is the issue with which his authority is primarily concerned, At the outset he indicated to me that he wished to argue the other grounds so as to ensure that the whole matter was considered by the Secretary of State. Mr Holgate has come to the assistance of the court yet again. He has told me what the practice of the Secretary of State is in these matters, the Secretary of State’s practice is to deal with the matter *de novo* ...”.

9. The approach of WBC at this second inquiry was, as became clear in the evidence of Mr Johnson, to effectively treat Inspector Bristow's decision as if it were never quashed at all such that this second inquiry was a (obviously difficult) further application and appeal¹⁴ made less than a year after a refusal of an earlier appeal. That approach is obviously and materially wrong and unfair. Inspector Bristow's decision should be set aside and the appeal assessed on its merits in the light of the evidence as it now stands.
10. In such circumstances, we suggest that the only safe approach is to conclude that the conclusions and assessments of Inspector Bristow cannot safely be regarded as material given:
 - (1) The breadth of the successful ground 2 of the claim. The decision of Inspector Bristow was quashed because it was agreed by the Secretary of State to be unfair. The consent order, quashing Inspector Bristow's decision, states that the Secretary of State "*accepts that Rule 18(3) of the Town and Country Planning Appeals (Determination by Inspectors)(Inquiries Procedure)(England) Rules 2000 required the Inspector to notify in writing the persons entitled to appear at the inquiry who appeared at it of the matter in question and to afford them an opportunity of making written representations to him or to ask for the re-opening of the inquiry. The Claimant was not notified of the issues, nor afforded an opportunity to make written representations, nor provided with the Planning Inspectorate's correspondence to the HSRA.*" A procedural error in an Inspector's decision only justifies quashing where "*the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements*": see s. 288(5)(b) of the Town and Country Planning Act 1990.¹⁵ So the view of all the parties who signed the consent order, including WBC, and also the view of the Judge who made the order, must have been that this was the case here. So this was not a quashing, as Mr Cosgrove KC constantly sought to portray it, on some highly technical

¹⁴ See Mr Johnson's proof at para. 8.2 and his answers in XX. Para 8.2 says "*I consider the First Appeal decision notice [NID3.8], which is less than 1 year old, is an important material consideration ...*".

¹⁵ NID13.33.

ground that did not affect the substance of the decision. If WBC considered that this was so then they should have, as they could have done, fought on in the s. 288 proceedings and argued that there should be no quashing. WBC's attempt at this Inquiry to downplay the importance of the fact of the quashing *by consent* of Inspector Bristow's decision is deplorable given that it was quashed on the basis that: (i) it was unfair; and (ii) substantially prejudiced the interests of the Appellant. Sir, you need hardly be reminded that PINS, in all that it does, seeks to reflect the "Franks principles" of openness, fairness and impartiality. Inspector Bristow's decision was quashed for a failure to adhere to these principles. The importance of this should not be downplayed.

- (2) The breadth of the other undetermined grounds (1, 3 and 4) and the lack of any finding from the Court that they were bad grounds, which means that you sir have no way of knowing whether Inspector Bristow's conclusions and assessments are also unlawful for the reasons alleged under them. This is especially acute in relation to ground 1 which alleges the appearance of bias because: (i) this ground was closely related to ground 2 on which the decision was quashed; (ii) it goes to the lawfulness of the entire decision; (iii) due to the fact that the Secretary of State *and* WBC conceded on ground 2 it was never subject to any pleaded response by the Secretary of State or WBC¹⁶ and (iii) after the decision had been quashed PINS, pursuant to EIR requests, provided to the Appellant with a series of internal emails within PINS which were relevant to the bias claim under ground 1.¹⁷ These are

¹⁶ The Appellant's pleaded case is at NID1.6 pp 9-11; the only response ever received on this ground was a couple of sentences at the pre-action stage: see NID1.4. The Claimant's pleaded case at NID1.6 post-dated this response which Mr Cosgrove KC sought to rely on in XX of Mr Collins. The pleaded case responded to what was said on ground 1 in the Secretary of State's pre-action response (see NID1.6 para. 31) "*The Claimant does not understand on what basis it is suggested that the LinkedIn matter itself makes a "difficult starting position" for the ground of claim and does not agree that the actions of the Inspector make the allegation in any way "technical". The Claimant acknowledges that a finding of apparent bias must be made having regard to all the available facts, not simply those within the knowledge of the Claimant. The Secretary of State has decline to disclose further information or documentation at this stage given his decision to concede (PAPL response §13 at Enclosure C2). This has the result that the Claimant is unaware of the full facts that the reasonable observer would have regard to.*" No grounds of defence were ever filed in response given the agreement to consent to judgment.

¹⁷ See NID7.46. These were raised in XX with Mr Johnson but he had not considered them.

pertinent to ground 1 as in law the reasonable observer, whom the Court uses to judge allegations of the appearance of bias¹⁸, would be deemed to have full knowledge of the content of these emails. These emails, had the proceedings been ongoing, would have necessitated amendments to ground 1 and would have strengthened the ground further.¹⁹

(3) The many changes in circumstances which have occurred since the matter was before Inspector Bristow.

11. The latter were set out in opening and explored in evidence, they will be explored further below, but include that²⁰:

(1) The Labour Government, which came into power in July 2024, has made it clear that significant increases in the supply of housing are required, see for example various Written Ministerial Statements/correspondence²¹ with the Government now aspiring to 1.5m new homes being delivered by 2029. In his EiC Mr Johnson expressed the surprising view that the national policy context had since the First Inquiry hardened against the Appeal Scheme. This betrays a total failure to understand the policy context as it stands today.²²

(2) A new NPPF in December 2024 which:

¹⁸ See NID1.6 at paras. 31, 32(1) and 33.

¹⁹ These documents show, inter alia, that: (1) PINS were concerned in February about the possibility of a legal challenge from objectors, based on the Inspector's liking of a LinkedIn post, and sought Counsel's advice; (ii) the appeal decision was nowhere near complete when the LinkedIn issue erupted (not even 'substantially drafted' as at 18th February) and (iii) it seems impossible that this matter would not have impacted upon the Inspector's subsequent writing up of the report and final decision, the concern at the time being that objectors would mount a legal challenge and (iv) that Inspector Bristow even queries if PINS are happy for him to proceed further with the appeal.

²⁰ See Collins' proof at 10.3.

²¹ NID 7.1 - 7.8.

²² WBC appears to take the view that recent changes in Government policy have, in the absence of an up to date Local Plan, somehow sought to limit new housing to brownfield and grey belt sites only. This is considered further below, but what we do know is that the Government has not changed or strengthened the tests for major development in the NL. That is so notwithstanding s.245 of the LURA. So, the position is not as Mr Johnson ventured that policy has since the last inquiry hardened against the appeal proposals. The position is that Government policy has actually improved the position in two ways: (i) a much strengthened focus on meeting housing needs; and (ii) there must now be a 'strong' reason to refuse an application in the NL.

- (a) Amended para. 11 of the NPPF in two important regards:
- (i) Amending para. 11(d)(i) such that whereas the footnote 7 policies used to have to provide a “clear” reason for refusal to disapply the presumption. Now, they must provide a “strong” reason for refusal. This was a deliberate change to the wording, as set out in the Government’s consultation response, in order to strengthen its effect;²³
 - (ii) An amendment to para. 11(d)(ii) to require consideration of “having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.” This is important given that the Appeal Scheme complies with all of these directives.²⁴
- (b) Has amended para. 61 to remove some key words “it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet ~~as much~~ of an area’s identified housing need ~~as possible~~, including with an appropriate mix of housing types for the local community”. This strongly supports the agenda of increasing housing delivery; it is no longer good enough merely to seek to meet “as much of an area’s identified housing need as possible”, instead the overall aim is now to meet that need. WBC’s case at this inquiry has failed to appreciate the significance of this change.

²³ See NID7.4 at pg 14, “[a] change has also been made to be clear that when assessing whether areas or assets of particular importance provide a reason for refusal, there should be a ‘strong’ basis for doing so when assessed against the policies in the National Planning Policy Framework (replacing the existing ‘clear’ reason). This reflects views that we heard about opportunities to strengthen the presumption’s wording, in the context of the government’s commitment to increasing the supply of homes, but still enables these key protections to be fully considered and enforced where it is appropriate to do so” and see Mr Johnson’s answers in XX. Moreover, Inspector Bristow when giving his decision, see NID3.8 at para. 180, concluded that there was a clear reason for refusing permission; that is no longer the test: see further Appendix 2 to this closing.

²⁴ As Mr Johnson accepted in XX.

- (c) Has very significantly amended para. 78 from the NPPF (2023) version. This new paragraph has strongly re-iterated the importance of maintaining a 5YLS; something that WBC has not achieved since *at least* 2015. Moreover, it adds a further kick that Mr Johnson, in XX, accepted would soon impact WBC by requiring it to from 1 July 2026 to, for the purposes of decision-making only, add a 20% buffer and which means that the 5YLS position will worsen yet still.²⁵
- (3) A new standard method²⁶ has been published the effect of which is to increase WBC's annual housing need to a mammoth 1,481 homes per annum. When faced with the draft new standard method the Leader wrote to the Secretary of State²⁷ complaining that "*the standard method therefore does not provide a credible basis for preparing our new Local Plan*" and that "[t]he level of growth required to meet the standard method assessment of need is simply unachievable in a Borough". In response the Secretary of State increased the number by 8% from 1,374 to 1,481. There could not be a clearer signal from Government that addressing affordability is now paramount and supply has to be increased, even where difficult decisions are necessary.
- (4) A considerable deterioration in WBC's 5YLS position and not just as a result of the new standard method (see below). Despite this WBC have come to this inquiry arguing that they are "*doing well*" in terms of improving completions "*year in and year out*".²⁸ This would be funny if it were not for the very severe real world impacts of WBC's persistent failings.
- (5) The significant falling further back of WBC's timetable for the adoption of a new Plan. When Inspector Bristow issued his quashed decision the LDS suggested adoption in late 2027, the new LDS says summer 2028 but that is

²⁵ See further below.

²⁶ See Collins' proof at section 8.

²⁷ See Mr Collins' proof at para. 4.44.

²⁸ It is incorrect to say there has been a year on year increase. National data, from ONS, indicates that WBC delivered 676 dwellings in 2020/21, 710 dwellings in 2021/22, 966 dwellings in 2022/23 falling to 729 dwellings in 2023/24: see Mr Collins' proof at para 8.18 and see in his App. 2 elec pg 146 at Table 4-1 in the Tetlow King report.

grossly optimistic and more likely to be 2029 and may never now be adopted given the impact of devolution: see below.

- (6) The approval by the Secretary of State of the highly relevant and closely comparable in a number of respects Turnden case²⁹.
- (7) The removal of trees³⁰ by Surrey County Council at the access to the Appeal Site (within adopted highway land) and which Inspector Bristow included amongst the losses of trees which would result from the Appeal Scheme. In addition, there has been further vegetation growth in relation to the vast amount of advance planting already undertaken by the Appellant which has necessitated the production of new AVRs not available to Inspector Bristow.³¹
- (8) The undertaking by the Appellant of a detailed design review, contributing to a more detailed Design Code condition.³²
- (9) A recognition by NE that their previous responses were liable to mislead; and in fact, they did mislead Inspector Bristow. This was, of course, one of the undetermined grounds of challenge in the s. 288 proceedings. Now NE have clarified their position and reconfirmed their agreement both that the

²⁹ NID 7.19.

³⁰ See Mr Smith's proof at para. 3.63, "[a]s reported in the Arboriculture note from CBA (Appendix 3.0 to this proof) two trees (tree ref T101 and T103), both categories as U category, (with associated cavities, decay for T101 and fungal fruiting bodies and major deadwood for T103, having been observed) have been removed from the side of the road for health and safety reasons. Again, a demonstration that these vegetative features are a dynamic part of the landscape, and such changes are best managed through having a wider species and age range to the tree stock, all managed through a targeted management plan."

³¹ See Smith's proof at Appendix 1 and see also para. 3.67 of his proof:

"Changes since LVIA

3.67 Since the Application with its associated reference to LVIA data, there have been changes on the ground, as follows:

- i. There has been growth of vegetation, notably to the peripheral buffer planting at the current urban edge and within the green infrastructure that subdivides the proposed residential parcels (LCA1 and 2).
- ii. To the southern margins of the residential parcels new bunding has been created and additional planting has been undertaken.
- iii. The construction of Scotland Park phase 1 is well underway and is now part of the visual outlook from LCA2 and LVIA view cones C and E. In essence another part of the urban edge that is apparent from the Appeal Site.
- iv. The route of the footpath through the Appeal Site, consented through the Scotland Park phase 1 permission. We have provided an assessment of this visual receptor."

³² See Pullan's proof.

SANG is capable of meeting wider needs for mitigation of recreational effects and that it is the only proposal that has been approved by NE in the Haslemere area to meet future development needs.³³

(10) The new offer of an additional off-site affordable housing contribution in the s. 106.

12. It is understandable that WBC seeks to hold on to Inspector Bristow's decision. Why? Because it did not expect to win the First Inquiry. How do we know that? Because counsel for WBC at the First Inquiry posted on LinkedIn, shortly after Inspector Bristow's decision was issued, saying "*... I have to say it's not one I was expecting to win! Most of the site is not visible from public land³⁴ and the Inspector found a HLS of just over 3 years. A significant package of benefits was put forward, strategic scale SANG capable of assisting with delivery of allocated sites, a new scout facility and forest school and landscape benefits. It just goes to show how it's pointless trying to predict the outcomes of appeals based on an impression of how the inquiry went ...*".³⁵ In other words, at the very least, those acting for WBC thought they'd struck it lucky with the decision they obtained from Inspector Bristow which was against the run of both the evidence and the merits. The Appellant's case is a strong one and it is happy that this case be judged on the evidence, and on its merits. It is telling that the Council instead seek to cling to a quashed decision – it never expected to win - as *the* fundamental plank of its defence of this appeal.³⁶

³³ See NID13.20 and the emails attached to the statement of Ben Kite.

³⁴ This is a correct observation. The evidence shows that there might be *at the very most*: (i) a limited view of the proposed housing at the northern end of CP597 within Haslemere itself but that this will be screened in time; and (ii) a barely discernible glimpse of the roofs of some housing in winter (but not summer) views from Midhurst Road: see AVR3.

³⁵ NID1.2 pg 5.

³⁶ Mr Johnson's proof at para. 8.2 referring to Inspector Bristow's decision as "*an important material consideration*", para 8.3 recording that he has "*given significant weight to the First Appeal decision*", para 11.4 and para. 11.9 "*I therefore attribute significant weight to the First Appeal decision*".

b) Approach to SHNL policy and law

13. As stated a number of times at the inquiry, the EC test for major development within a NL has existed in more or less identical terms since at least the first NPPF.³⁷ There are a number of points worth emphasising about this test.
14. First, the test under both the development plan and the NPPF are effectively the same. Local policy in RE3 i) provides that the SHNL in Waverley will be protected by applying national policy, together with the management plan. So, this policy, it is agreed, incorporates into it the EC test from the NPPF.³⁸ If there were any doubt about this the position is reaffirmed in the explanatory text.³⁹
15. Second, although the legal duty securing the protection of NLs has been amended to require public authorities (generally) to “*seek to further*” the purposes of the relevant landscape (rather than to have regard to those purposes in the exercise of its functions), this is primarily a duty of process rather than outcome:⁴⁰
- (1) As the High Court has recently confirmed in *New Forest National Park Authority v SSHCLG* [2025] EWHC 726 (Admin) in relation to the equivalent duty in relation to National Parks (which also applies here given the adjacent SDNP), the duty requires a planning authority to determine whether the proposed development is in conflict with the statutory purposes or would undermine their fulfilment but importantly that “[i]t is not a duty necessarily to fulfil those purposes”⁴¹.

³⁷ Indeed it long pre-dates it: see below.

³⁸ See CD6.1:

*“i. Surrey Hills Area of Outstanding Natural Beauty
The protection and enhancement of the character and qualities of the Surrey Hills Area of Outstanding Natural Beauty (AONB) that is of national importance will be a priority and will include the application of national planning policies together with the Surrey Hills AONB Management Plan.”* (emphasis added)

³⁹ CD6.1 para 13.30 “13.30 Applications for major development in the AONB will be refused unless where exceptional circumstances are demonstrated and the development is proven to be in the public interest. Proposals will be assessed against the criteria set out in NPPF paragraph 116 [now para. 190]”

⁴⁰ This is not a change compared to the position when Inspector Bristow issued his quashed decision as the LURA came into force in December 2023.

⁴¹ NID 8.1; see in particular [61]-[63].

- (2) A planning authority must then determine whether any compensatory or mitigatory measures are available which might reduce or avoid that conflict⁴², however, ultimately it will have to reach a judgement about whether to grant permission and in doing so will have to have regard to national and local policy by virtue of s.70(2) of the 1990 Act and s.38(6) of the 2004 Act. The DEFRA guidance⁴³ supports this stating that “[t]he duty does not prevent relevant authorities from undertaking their statutory functions and discharging their legal duties and other responsibilities”.
- (3) When applying that judgement, the lodestar for a planning decision (rather than the many other kinds of decisions which are also subject to the statutory duty) remains national and local planning policy. The Government has chosen to leave the policy tests wholly unchanged in both the December 2023 and December 2024 versions of the NPPF and has not introduced any PPG statements which otherwise alter the tests to be applied⁴⁴.
- (4) As such, the statutory duty does little, if anything, to change the balance of considerations. The statutory purpose of NLs and the impacts remain the same: the EC test already recognises the need to take account of any adverse effects on environmental and recreational value and for it to be moderated as far as possible.

16. Third, in considering whether there are EC, all of the benefits of the development in question can be taken into account⁴⁵. That will include features such as the

⁴² See in this regard the DEFRA guidance, NID7.11, at pg 6:

“What a relevant authority should consider

... Do measures which would further the purposes align with and help to deliver the targets and objectives in the Protected Landscape’s Management Plan? Are such measures appropriate and proportionate to the type and scale of the function and its implications for the area? For instance, are measures in keeping with the natural beauty, the special qualities and key characteristics of the Protected Landscape?”.

⁴³ NID7.11 pg 3.

⁴⁴ The PPG paras at NID 13.17 pg 2 do not purport to modify the policy tests.

⁴⁵ See *A practical Guide to Planning Law and Rights of Way in National Parks, the Broads and AONBs* (CD10.9) by Maurici, Dale-Harris et. al. at elec pg 10 referring to the CABI appeal decision citing *Wealden* and noting that “further considerations could comprise the benefits of the scheme”.

sustainability of its location, the kinds of facilities it offers and the suitability of its design or layout for the SHNL context in which it sits. It is not necessary to show that each benefit is itself “*exceptional*” nor that they would be unlikely to occur in a similar fashion elsewhere.⁴⁶

17. Fourth, it will also be necessary to consider carefully the actual extent of the landscape harms, balancing the different areas affected, their sensitivities, and the extent of any landscape benefit. In this regard, para. 189 of the NPPF is also relevant – confirming as it does the requirement to give great weight to aspects of the Appeal Scheme which will fail to conserve landscape and scenic beauty within the SHNL; but also those aspects which will enhance it.⁴⁷

18. Fifth, by way of examples of how EC can be established:

(1) In the *Wealden* case⁴⁸ the appeal scheme sought permission for 103 residential units in an AONB. The Inspector allowed the appeal having found EC. The Inspector’s decision was quashed by the Court of Appeal on habitats grounds but upheld on AONB grounds. The Inspector in allowing the appeal notes the extent to which the District was constrained by AONB⁴⁹ and there were acute housing needs, albeit not in any way as acute as those in Waverley now are.⁵⁰

(2) In the Sonning Common appeal⁵¹, the Inspector concluded that EC were demonstrated in part because, despite an NL location, there was only a “*localised landscape impact*” which “*would not cause material harm or conflict*”

⁴⁶ Also established in *Compton*, but see the summary in the Turnden Inspector’s report (CD9.28) at para 800:

“800. When assessing whether there are exceptional circumstances in the context of para 177 [now 183], the relevant legal authorities indicate that, while it is not a conventional balancing exercise, all of the benefits of the development in question can be taken into account, each benefit does not have to be exceptional alone and nor do they have to be unlikely to occur in a similar fashion elsewhere.”

⁴⁷ Agreed Mr Petrow XX.

⁴⁸ CD10.1, see, especially paras. 2, 4, 54, 55, 57, 62 and 65. The *Wealden* case is considered further below in relation to what is now para. 190(b) of the NPPF.

⁴⁹ CD10.1 para. 55.

⁵⁰ And the national policy context in terms of the drive to deliver more housing was far weaker than it now is.

⁵¹ CD9.25, see, especially paras.15-16, 25, 107 – 110 and 120-121 as explored in XX of Mr Johnson.

with special qualities". In this context, he accepted that EC for the delivery of a continuing care retirement care village of up to 113 units with ancillary communal and care facilities was shown. There the HLS was 4.21 years, much higher than WBC's position on this appeal. The Inspector also had regard to the other benefits of the scheme in concluding that there was a very strong case on EC.⁵²

- (3) In the Great Missenden appeal⁵³, a scheme for 34 dwellings was accepted to demonstrate EC⁵⁴ on the basis of a 2.97 year HLS . The Inspector noting that (like the Appeal Scheme) the proposed dwellings were located sustainably on the edge of settlement in a context where there was limited scope for developing outside of the NL⁵⁵ and where the land to be developed made *"no material contribution to the AONB in longer views"*⁵⁶.
- (4) In the Turnden decision⁵⁷, the Inspector concluded in his report that EC were met for a scheme for 165 dwellings on the edge of Cranbrook in the NL despite a HLS shortfall of only 77 homes. The Secretary of State agreed with his overall conclusion despite there no longer being a HLS shortfall at all⁵⁸. The other circumstances being (similar to this scheme) a real problem with high levels of affordable housing need a significantly constrained position as both borough and town level, and a *"limited"* level of overall NL

⁵² CD9.25 para. 121 *"These include contributing to the overall supply of housing which is under five-years; ... creating new employment and other economic investment (construction and operation); providing new facilities and services further reinforcing the role and function of Sonning Common; and additional net revenues from Council tax and new homes bonus receipt."*

⁵³ CD9.26, see, especially paras. 9, 16, 20, 27, 41 and 42 as explored in XX of Mr Johnson.

⁵⁴ The Inspector concluded that the proposal was not major development (see para 41) but went on to say that even if it was major development the EC test was met: see para 42 et seq.

⁵⁵ See para. 27 where the Inspector notes that *"land supply is constrained ... [a] s much of the District is indeed constrained by Green Belt and AONB ..."*.

⁵⁶ See para 40.

⁵⁷ CD9.28. See especially in the Inspector's Report IR702, 757, 762, 763, 764, 803, 805 and 824.

⁵⁸ NID7.19 at para. 33 of the Secretary of State's decision. Despite that she still concluded at para. 42 *"... it is undoubtedly still the case that the ability to respond to the need for housing is heavily constrained"* and that *"she agrees with the Inspector at IR810 that it is reasonable to conclude that there is a compelling case for the need for development of this type and in Cranbrook. She further agrees that there are considerable benefits associated with delivering market and affordable housing (IR810). In reaching this conclusion she has taken into account paragraph 60 of the Framework which sets out the Government's objective of significantly boosting the supply of homes."*

harm⁵⁹ given the approach taken to locating the housing and the significant amount of open green space provided (which we discuss further below). The proportion of the site developed as opposed to enhanced is remarkably similar to here: 20-80%. The Secretary of State paid especial regard to⁶⁰ the fact that “*only 20% of the site would be built on (IR730)⁶¹ and the proposed development would deliver landscape enhancements (IR826)⁶²”.* The position in this case is near identical in this regard. Moreover, it should be noted that the Secretary of State’s decision post-dated the coming into force of s. 245 of LURA.⁶³

- (5) In the Oakley appeal⁶⁴, 250 dwellings in a NL were accepted to demonstrate EC in a situation where the Inspector accepted that there would be “*some harm*”⁶⁵ to landscape but that this was justified in the light of an acute need

⁵⁹ See para 824.

⁶⁰ See para. 28 of the decision letter.

⁶¹ “730. *I note the criticism of Mr Duckett’s approach in this regard in terms of sites potentially being enlarged to try to justify inappropriate development, including from NE Nonetheless, I see nothing wrong, as a matter of principle, with devoting a large part of an application site to non-built form, including landscape enhancement. In this case the fairly modest size of the Development Area compared to the Wider Land Holding and the associated landscape improvements are unusual, especially as only some 20% of the site would be built on. Indeed, the GLVIA refers to mitigation offsetting or compensating for identified harm, and that enhancement which improves the landscape resource or visual setting of the site or wider area over and above the baseline condition are an integral part of the scheme and can legitimately be assessed as part of the proposal.*” (emphases added).

⁶² “826. To draw this section to a close I refer back to the points the Council puts by way of introduction to its case, which neatly summarise some of the key considerations that make this not only an acceptable development but a good development. It is not an overstatement to say that it is rare for a scheme to deliver such a package of exceptional benefits, on a site located adjacent to a second tier settlement, delivering much needed housing, including affordable housing above the rate required by the development plan, in a highly constrained area, and which delivers landscape enhancements with limited associated harm, as well as biodiversity enhancements, while developing only a small proportion of the overall site and in doing so provides a strong long term settlement edge.” All of this can equally be said of the Appeal Scheme.

⁶³ NID7.19: see paras. 11(e), 21 and 25.

⁶⁴ CD9.44, see, especially paras. 19, 20, 39, 110, 112, 113 (referring to the *sever constraints of the District*” because of the extent of AONB), 114 and 116. In para. 116 the Inspector said, emphasis added, “*There is no definition of what constitutes ‘exceptional circumstances’ and there is a danger of the term being judicially over-analysed. Ultimately, it must be a planning judgement. There is nothing in caselaw to suggest that a very serious shortfall of market and affordable housing, as well as the particular locational circumstances of a site, cannot amount to exceptional circumstances. Taking careful account of the various considerations in Paragraph 177 of the Framework, I consider there would be exceptional circumstances in this case to justify the development and that the proposal would be in the public interest. It would not offend restrictive policies of the Framework relating to the AONB. In reaching this conclusion, I have given great weight to the purpose of conserving and enhancing the natural beauty of the AONB as required by the Framework, as well as the Countryside and Rights of Way Act 2000.*”

⁶⁵ At para 39.

position including an agreed range of 1.6-2.9 years of HLS⁶⁶, again a better 5YLS than in this Borough.

So, it is clear from these appeal and call-in decisions that in relation to the EC test: (i) housing need can be part of, and indeed a very important part of, the EC case for major development in a NL;⁶⁷ (ii) a highly material consideration is the extent to which the local authority area concerned is heavily constrained by NL or other protective designations (see below); (iii) it is also relevant that the proposed development is in a sustainable location e.g. at the edge of a sustainable settlement; (iv) it is pertinent to consider the lack of, or relative lack of, landscape harm that would result from development on the proposed site e.g. because it is well-contained with limited inter-visibility; and (v) all benefits of the proposed scheme should be considered. The same pattern can be seen in local decisions, so in granting planning permission at Sturt Farm, WBC took this approach:⁶⁸

- (1) The application was for 135 units⁶⁹ all of which were located in the NL.
- (2) The site was not the subject of any allocation, draft allocation of positive assessment in a LAA.

⁶⁶ At para 14.

⁶⁷ See also what is said in the *Compton* case dealt with below.

⁶⁸ See CD11.5 at pp. 23, 25, 41, 45-46, 60, 62-63 as discussed in XX of Mr Johnson. The location of Sturt Farm relative to the Appeal Site is shown in Mr Collin's proof at pg 20. In XX of Mr Collins it was suggested by Mr Cosgrove KC that the policy position in 2015 when this permission was granted was very different. However, as Mr Collins explained in RX this is not so: see ID4.4 at para. 95(1) "*The difference between the circumstances at that time and the two sites is first there was no up-to-date Local Plan – the Local Plan at that time was the 2002 Waverley Local Plan – and with a lack of a 5 years housing land supply the site was vulnerable to development*": in XX Mr Eastham accepted that the position in this case was near identical given that: (i) LPP1 is more than 5 years old and so out-of-date; (ii) on WBC's own "ambitious" timetable there will be no new Plan until 2027; (iii) Sturt Farm was consented in 2015 when there was no up-to-date Plan and LPP1 was three years away from adoption; and (iv) there was both in that case and this no 5YLS (for Sturt Farm there was a 3.7 YLS, here between 3.1 and 4.1). So Mr Eastham accepted the position as regards vulnerability to development was near identical in both cases." And see also para. 95(2) and (3).

⁶⁹ Described by officers as a "substantial residential development" in the AONB. In fact it appears to be the largest number of residential units ever permitted in the SHNL.

- (3) The site was “*relatively visually contained*” and any impacts “*localised*” albeit it was recognised it was visible from a number of public viewpoints.⁷⁰
- (4) On need, WBC at that time has a HLS of 3.7 years⁷¹, a far better position than now.
19. Sixth, as just noted, in applying the EC test, it will always be relevant to look at the extent to which the area in issue is largely NL or has other major constraints such as Ancient Woodland or European Sites.⁷² In this regard it is highly relevant to note that not only is the majority of the borough already within either the Green Belt or NL, and within the zones of influence for the Thames Basin Heath or Wealden Heath Phase II SPAs, but a significant portion of the land currently identified as AGLV under the development plan is proposed for future inclusion in the SHNL itself⁷³.
20. Seventh, the Turnden case also confirmed/recorded the principle that while the test in NPPF 190 may be a high one, it exists in order to reflect the need for major development to be able to come forward where needs are not otherwise being met. The test is the same whether or not a site is allocated⁷⁴ and it is, in fact, lower than the very special circumstances test required for unplanned inappropriate

⁷⁰ CD11.5 pg 45 – 46. Sturt Farm is far more visible than the Appeal Site. Note also (ID4.4) at para. 96(4) which notes that in relation to Sturt Farm “[w]hile it is correct that having obtained permission Mr Lawson amended the access proposals the position is that when the WBC determined it should grant permission for Sturt Farm (see CD11.5 p 73) it was on the basis that engineering works were required for the access including retaining walls (indeed in CD5.28 p. 3 Mr Lawson accepts this in terms saying that the access “originally granted consent would have required significant engineering works, changing the streetscape irreparably”). The key point then is that despite this WBC granted permission.” See also CD11.5 p 77.

⁷¹ CD11.5 pg 63.

⁷² See further below.

⁷³ Across Surrey the AONB is to be extended by some 25% or 100km². See Mr Collins’ proof at 6.68 and the plan at NID13.25.

⁷⁴ So will also apply to sites like the Royal School.

development in the Green Belt⁷⁵. It is as the Court of Appeal held in *Luton* “less demanding”⁷⁶. Thus Inspector Jones noted at para. 798 of the *Turnden* case⁷⁷:

“...while it may be preferable for any new development sites to come forward initially via the plan-led process, para. 177 provides a mechanism by which major development can be delivered in AONBs via the development management process regardless of whether the site in question is allocated in the development plan or not, but only if that high test is met.”

21. Thus while the threshold for EC remains high⁷⁸, it is one which can be met in a context such as the present. Indeed, this is accepted by WBC which has

⁷⁵ CD10.2 *Compton v Guildford Borough Council* [2020] JPL 661 (emphases added)

“70. “Exceptional circumstances” is a less demanding test than the development control test for permitting inappropriate development in the Green Belt, which requires “very special circumstances.” That difference is clear enough from the language itself and the different contexts in which they appear, but if authority were necessary, it can be found in R. (on the application of Luton BC) v Central Bedfordshire Council [2015] EWCA Civ 537 at [56] per Sales LJ; [2015] J.P.L. 1132. As Patterson J pointed out in R. (on the application of IM Properties Development Ltd) v Lichfield DC [2014] EWHC 2440 (Admin) at [90]–[91] and [95]–[96]; [2014] P.T.S.R. 1484 ...

71. There is however a danger of the simple question of whether there are “exceptional circumstances” being judicially over-analysed. This phrase does not require at least more than one individual “exceptional circumstance”. The “exceptional circumstances” can be found in the accumulation or combination of circumstances, of varying natures, which entitle the decisionmaker in the rational exercise of a planning judgment, to say that the circumstances are sufficiently exceptional ...

72. General planning needs, such as ordinary housing, are not precluded from its scope; indeed, meeting such needs is often part of the judgment that “exceptional circumstances” exist; the phrase is not limited to some unusual form of housing, nor to a particular intensity of need ...

73. Mr Kimblin put forward Mr Cranwell’s contention that the supply of land for ordinary housing, even with the combination of circumstances found here to constitute exceptional circumstances by the Inspector, could not in law amount to “exceptional circumstances”. I cannot accept that, and I regard it as obviously wrong. These judgments were very much on the planning judgment side of the line; I do not see how they could be excluded from the scope of that phrase as a matter of law. This contention involves a considerably erroneous appreciation of the whole concept of “exceptional circumstances” and the role of the Inspector’s planning judgment. Mr Kimblin accepted in oral argument that he might be putting it too high, but he said there still had to be something exceptional about the need.

74. It is of a piece with Mr Cranwell’s further contention that the Inspector had ducked the issue of why the circumstances he found to be “exceptional” were “exceptional”. The phrase “exceptional circumstances” should be considered as a whole, and in its context, which is to judge whether Green Belt boundaries should be altered in a Local Plan review. It is not necessary to explain why each factor or the combination is itself “exceptional”. It does not mean that they have to be unlikely to recur in a similar fashion elsewhere. It is sufficient reasoning to spell out what those factors are, and to reach the judgment. There is a limit to the extent to which such a judgment can or should be elaborated.”

⁷⁶ CD10.12 at para 56. See also the discussion in CD10.9 of this and other cases.

⁷⁷ CD9.28.

⁷⁸ In the *Turnden* case, NID7.19, NE argued that what is now the para. 190 test was “stringent” as well as a high threshold (IR91); but the council in that case countered (IR277) that “this test is not the most stringent in the Framework and refers to *Compton PC v Guildford BC and Others* [2020] J.P.L. 661 [2]156, which states that “Exceptional circumstances” was a less demanding test than the development control test for permitting inappropriate development in the Green Belt, which required “very special circumstances”. The applicant made the same case (IR567) “[i]n this regard the applicant identifies what it calls five fairly fundamental points. First, it says a number of parties and advocates have suggested this is a “stringent” test. The

concluded that EC test, justifying major residential developments in the NL, was satisfied or was capable of being satisfied, by: (i) granting planning permission at Sturt Farm (in 2015) and more recently (in June 2024) at Queen's Mead, Chiddingfold⁷⁹ both of which are in the SHNL and (ii) by allocating a number of sites in LPP2 in the SHNL (e.g. the Royal School, Old Grove etc). All of those decisions were made in a context where the housing land supply was much better than now agreed.⁸⁰

22. Eighth, consideration is to be given to each of the matters listed in criteria a)-c), although that is not a closed list⁸¹ nor are those criteria tests in themselves.⁸²
23. Finally, and for clarity, despite Mr Cosgrove KC's suggestion in oral evidence, it is not the case that NPPF 189 statement that "*the scale and extent of development*

applicant says, however, that the courts have made clear that what is an "exceptional circumstance" is a lower test than the "very special circumstances" test for release of land from the Green Belt, and that it is the latter test which has been described as "stringent". The applicant adds, therefore, while it is not disputed that the exceptional circumstances test in para 177 is a high test, it is not one that is as stringent as that which applies to the grant of planning permission in the Green Belt, and is as the Court of Appeal held in Luton "less demanding" and IR584(v) "(v) Mr Slatford rightly refused to accept that para 177(b) imposed a stringent test, as the Court of Appeal in Wealden had made clear that there is considerable flexibility in how alternatives are considered by a decision-maker."

⁷⁹ See Mr Collins' proof at para. 3.20 & 6.81 and his answers in XX.

⁸⁰ The para. 190 test does not need to be satisfied *per se* on allocation as it is a development control test but it is to be considered as it has ramifications in plan-making when assessing the deliverability of allocations in a NL as these must still need the para. 190 test: see CD10.2 para 211.

⁸¹ See **Wealden** (CD10.1) at para 63 (emphasis added):

"63. The policy requires the exercise of planning judgment. The decision-maker must consider whether there are "exceptional circumstances" justifying the granting of planning permission for the development in question, and whether granting permission would be "in the public interest". The three bullet points do not exclude other considerations relevant to those questions. The first requires the decision-maker to consider the "need for the development", including "any national considerations" – for example, the considerations of national policy for housing need and supply. The second bullet point does not refer specifically to alternative sites. It refers to the "cost" and "scope" for development "elsewhere outside the designated area", and to the possibility of meeting of the need for the development "in some other way". In many cases, this will involve the consideration of alternative sites. But the policy does not prescribe for the decision-maker how alternative sites are to be assessed in any particular case. It does not say that this exercise must relate to the whole of a local planning authority's administrative area, or to an area larger or smaller than that. This will always depend on the circumstances of the case in hand. The third bullet point requires the decision-maker to consider potential harm in the three respects referred to – again, always a matter of planning judgment."

⁸² See NID13.25 at [68] where the Court of Appeal has very recently held in relation to what is now para. 190(a)-(c) are not "*a series of tests that the applicant for planning permission is obliged to satisfy*" but rather merely "*refer to matters that the decision-maker should take into account and assess*" with "*[t]hat assessment is directed to the overarching question, which is whether approval is justified by "exceptional circumstances" and "the public interest".*"

within [an AONB] should be limited”, and reiterated in the PPG⁸³, should also be applied as an additional test where permission is sought for major development. That was held to be wrong by the Court in *R (Advearse) v Dorset Council* [2020] EWHC 807 (Admin).⁸⁴

24. We now turn to the main issues in the order in which they were addressed.

2. Effect of Appeal Scheme on landscape character, in particular the SHNL and SDNP, and whether these landscapes will be conserved/protected and enhanced

25. The effect of the Appeal Scheme on the SHNL is a central issue on the appeal and was addressed by Mr Petrow and Mr Johnson for WBC, Mr Pullan and Mr Smith for the Appellant, and Mr Harrison for the R6P.

26. By the end of the oral evidence, it was clear that there is a significant amount of agreement at least between WBC and the Appellant. In particular the professional witnesses⁸⁵ agree that:⁸⁶

(1) There will be no adverse effects on the setting of the SDNP. Any impacts, in the form of improved access, will be entirely positive.⁸⁷

⁸³ See NID13.17, pg 3, Paragraph: 041 Reference ID: 8-041-20190721, *“The National Planning Policy Framework makes clear that the scale and extent of development in these areas should be limited, in view of the importance of conserving and enhancing their landscapes and scenic beauty.”*

⁸⁴ See paras 32-36, in particular 36 where Swift J states *“Reading paragraph 172 of NPPF 2019 as a whole, it is clear that the new words are not directed to the class of major development. Rather, those words are directed to development outside that class, and apply to such development the same principle of limited development that already applied to major development”*

⁸⁵ Messrs Smith and Petrow. Mr Harrison is excluded as he is not a professional witness. His evidence is dealt with briefly below.

⁸⁶ See also the Appellant’s fuller account of the agreed position on the evidence at Appendix 4.

⁸⁷ The increased linkage between Haslemere and the SDNP as a result of bringing people into the Appeal Site would in turn encourage access to and enjoyment of the National Park – something which is a statutory purpose of the National Park and thus something which you, sir, are required to *“seek to further”* under the amended s.11A of the National Parks and Access to the Countryside Act 1949. See CD10.18: *“s.11A (1A) In exercising or performing any functions in relation to, or so as to affect, land in any National Park in England, a relevant authority other than a devolved Welsh authority must seek to further the purposes specified in section 5(1) and if it appears that there is a conflict between those purposes, must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.”* Educational and recreational goals are also placed at the heart of the AONB Management Plan and for part of the objectives of what is now the National Landscapes Association: see CD7.9 para 3.3 and Policies RT1-2 and 4, CE1 W5, B3.

- (2) Adverse visual impacts will be limited (at least following mitigation). Views are “*very limited from the wider landscape*”⁸⁸ and the proposed housing will be “*well contained*”⁸⁹ and is indeed hardly visible from any public viewpoints. The adverse impacts are all “*localised*”.⁹⁰ The creation of the access, car park and lodge will result in Y1 effects to users of Midhurst Road and CP597 but Mr Petrow accepted that these (and indeed all visual effects) will reduce to no higher than slight adverse by Y15, or a combination of slight and moderate at Y10.⁹¹
- (3) For landscape impacts, the methodology set out and applied in the LVIA and by Mr Smith is appropriate⁹², including in its use of seven LCAs and its application of the principles in GLVIA3.⁹³
- (4) Applying the agreed methodology, the only LCAs where adverse effects would arise are LCAs 1 and 2, which are where the housing and access road is proposed.
- (5) Landscape has a visual component and as already noted, all of the new homes, save for the lodge, are barely visible from any public viewpoints.⁹⁴
- (6) The effect on all other LCAs (i.e. 3, 4, 5, 6, and 7) are agreed to be positive at Y10⁹⁵ This was accepted by Mr Petrow in XX who agreed a moderate beneficial effect for each of LCAs 3, 4, 6 and 7. Although he said in XX that the beneficial effect on LCA 5 was only slight, this appears to be at odds

⁸⁸ Mr Cosgrove KC’s words in XX of Mr Smith, reflecting the evidence of Mr Petrow.

⁸⁹ Ibid.

⁹⁰ Mr Smith’s proof, see para. 4.70, refers to adverse impacts being “*limited and localised*”. See CD4.2 where the officer referred, at pg 24, to “*the majority of the views of the site would appear to be more localised rather than far reaching, as a result of the screening surrounding the site ...*”

⁹¹ While Mr Johnson, who purported to give independent landscape and visual impact evidence without having actually visited the site, appeared at one point to be disagreeing with Mr Petrow in relation to the visibility of the houses to be sited in the northern part of LCA1 and the overall effect on users of CP597, he confirmed in XX that he was not seeking to disagree with any of Mr Petrow’s conclusions.

⁹² Both Mr Smith and Mr Petrow confirmed they had no issues at all with each other’s methodology or that set out in the LVIA.

⁹³ The methodology used for the AVRs is also fully agreed: see NID4.10 para. 3.3.

⁹⁴ And can be screened where there are very localised views available i.e. at the top end of CP597 within Haslemere itself.

⁹⁵

with his proof and the basis for only a slight effect from appropriate removal and replanting of the conifer plantation (which WBC accept is beneficial) is not really understood. For a comprehensive, and very largely unchallenged, account of the landscape benefits in LCA3-7 see Mr Smith's proof at pg 11, and section 4.

27. This limited landscape and visual effects reflect (i) the importance of the fact that the larger part (78%) of the Appeal Site is to be left undeveloped and instead dedicated and managed for appropriate public and/or community access and (ii) the very limited visibility of the main development areas with the wider landscape, and hardly any visibility from public viewpoints⁹⁶ – as Mr Petrow acknowledged this may be “*surprising*” but it is a very important feature of the Appeal Site. While to meet the EC test there is no need for there to be exceptionality in any one factor, see above, here it is quite exceptional that 111 homes can be delivered with such little impact. It can properly be said that it is difficult to imagine a location in the SHNL close to a settlement where there would be such limited and localised impacts. This in itself does make the Appeal Site quite exceptional in and of itself.
28. The scope of dispute is therefore focused almost on the landscape effects upon LCAs 1 and 2 with the central points being:
 - (1) The extent to which the change of character to the northern paddocks caused by the introduction of the housing is to be described as harmful and whether it can be mitigated over time;
 - (2) The impact of the access, lodge and limited car parking spaced adjoining Midhurst Road;
 - (3) The degree to which harm to LCAs 1 and 2 are offset by the landscape benefits elsewhere.

⁹⁶ Mr Petrow thought that they were not visible anywhere but accepted that they were just visible is “*not very noticeable*” in AVR View 2.

29. We will turn to these each in turn.

Introduction of 110 dwellings to the northern paddocks

30. It is a cliché of these kinds of appeals to acknowledge that, of course, the provision of housing in what are currently open fields (or, as here, paddocks) will entail a loss of the currently open/agricultural character of that land. That is inevitable in any kind of greenfield development.

31. The northern paddocks are valued in that they are within the SHNL, but that is really where it ends. There is “*nothing particularly distinctive*”⁹⁷ or attractive about them.⁹⁸ They are paddocks⁹⁹, influenced by the current edge of the settlement¹⁰⁰ and by the nearby presence of the busy Midhurst Road¹⁰¹. They are representative of the wider LCA area¹⁰² to some degree¹⁰³ but they so not represent the distinctive qualities of the SHNL.¹⁰⁴ There is no evidence whatsoever to suggest that the field boundaries are medieval¹⁰⁵. The paddocks are “*not particularly attractive*”¹⁰⁶ at the moment.¹⁰⁷ As noted above, they have extremely limited wider visibility. Further, no trees of any concern in landscape terms will be lost here, Mr Petrow’s concern on trees was only directed at the Midhurst Road.¹⁰⁸

32. The new homes will change the character of the paddocks and move the settlement boundary further into the SHNL. This will be harmful in landscape

⁹⁷ Mr Petrow’s words in XX

⁹⁸ Accepted Petrow in XX

⁹⁹ See Mr Johnson’s proof at para. 2.6 and his answers in XX.

¹⁰⁰ See CD2.54 Part 2 pg 41-42.

¹⁰¹ This fits with GLVIA3 (CD8.6 elec pg 96) at para. 5.47 and which says, “*If the area affected by the proposal is on the margin or adjacent to a designated area, thought may be given to the extent to which it demonstrates the characteristics and qualities which led to the designation of the area.*”

¹⁰² GW5.

¹⁰³ The only point that Mr Petrow put forward on this was as to their topography.

¹⁰⁴ GLVIA3 (CD8.6 elec pg 96 at para. 4.45) warns that “[t]he value of a landscape will to some degree reflect landscape designations and the level of importance that they signify but there should not be an over reliance of value on designations as the sole indicator of value”. Mr Petrow readily accepted, in XX, that not all land within a NL is of equal value. If one treated all NL as equally valuable that would cause particular issues in constrained areas like Waverley.

¹⁰⁵ A point floated for the first time by Mr Petrow in his oral evidence.

¹⁰⁶ Mr Petrow’s words in XX.

¹⁰⁷ See NID13.2 p.2.

¹⁰⁸ Petrow in response to Inspector.

character terms ¹⁰⁹ but that harm will, Mr Smith correctly assesses, be moderate (to moderate/slight adverse) over time.¹¹⁰

33. This is principally due to the high quality of design which can and will be delivered, and to the landscaping and buffering which are built into and secured by the Appeal Scheme.
34. Mr Pullan took the inquiry through the design in some detail:¹¹¹
 - (1) The Appeal Scheme has been informed by suitable grain / density studies as set out in the DAS, which demonstrate that the design team had a “*very good understanding*” of the local context.¹¹² The design coding can ensure use of appropriate built and material elements (identified by the DAS) so as to ensure development is characteristic of the positive elements of Haslemere and the SHNL.
 - (2) In layout, the DAS proposed a layout similar to that of Phase 1, having been informed by the same guidance and policy and designed by the same architects. Phase 1, it will be recalled, was an award-winning scheme.¹¹³ The proposed layout is structured by a series of connected spaces with carefully developed and reinforced wildlife/green space corridors. It will ‘feather’ densities towards the edges.
 - (3) The design makes use of the existing landscape features including in particular the ridge line which runs along the outer edge of the paddocks between it and the woodland and thereby forms a natural and legible

¹⁰⁹ Large to Moderate adverse at Y1. See the Summary Table at Appendix 3

¹¹⁰ Ibid.

¹¹¹ It should be noted that Mr Pullan’s design review and evidence were not before Inspector Bristow and he did not have the benefit of this careful and detailed evidence. Moreover, the design code condition has been significantly strengthened from what was proposed at the First Inquiry in this regard.

¹¹² Mr Pullan in EiC.

¹¹³ See Mr Pullan’s proof at para. 3.20, “[t]he award winning scheme (Scotland Park Phase 1 – Surrey Property Awards of the year) comprises a residential development of 50 units, including associated parking, landscaping, open space and infrastructure. It is under construction and provides a good indication of the design quality expected of the appeal scheme. The scheme was recommended approval in the Committee Report but refused by members. It was approved at appeal (CD9.1).”

boundary to the proposed open space and development. This was, Mr Pullan explained, a “*coherent solution to the challenges of visually integrating new edge of settlement development into its surroundings*”.

- (4) Overall, Mr Pullan explained why the proposals met the design requirements of not only the development plan (to which we come below) but also the SHEDG and the Management Plan and NDG.
35. After a fairly lengthy discussion in XX, Mr Petrow ultimately accepted, contrary to the view in his written evidence, that the high quality design and the extensive proposed planting at the access is at least capable of mitigating the impact of the Appeal Scheme in landscape terms¹¹⁴ but despite this he did not acknowledge that it had that effect here in any material way.
36. This is simply unsustainable. The design of the lodge is plainly of the very highest quality as accepted by Mr Petrow and explained by Mr Pullan and Mr Smith.¹¹⁵ There is no reason for refusal in relation to design and paragraph 4.10 of the Main SoCG records a commitment to agreeing a suitable design code condition, which has now been done¹¹⁶.
37. One of the key purposes of the design, as explained by Mr Pullan, is to produce a scheme which reflects and contributes to the character of the SHNL and hence its natural and scenic beauty. This is not a contradiction in terms (as Inspector Bristow wrongly thought¹¹⁷ and Mr Cosgrove KC appeared at times to suggest); natural beauty in the Surrey Hills can and does include development which contributes to it¹¹⁸ and indeed Mr Petrow accepted that buildings could be introduced without harming it.

¹¹⁴ His proof said, “[t]he landscape effects of the new housing and access road are judged to substantial adverse within the receiving landscape and are not capable of being mitigated”.

¹¹⁵ GLVIA 3 (CD8.6) elec pg 95 para. 5.37 says “the contribution to the landscape that the development may make in its own right, usually by virtue of good design, even if it is in contrast to existing character”.

¹¹⁶ See NID 4.10.

¹¹⁷ See Appendix 4 comments in relation to para. 120 of Inspector Bristow’s decision. Mr Petrow accepted in XX that Inspector Bristow’s views on this were contrary to NE’s definition of natural beauty in the GALD.

¹¹⁸ See ID 5.3 – see analysis of key passages in Mr Smith’s proof at 3.41-46.

38. While the expansion of Haslemere would clearly involve some erosion of an exceedingly small part¹¹⁹ of the SHNL’s natural landscape, a higher quality edge of settlement (which everyone agrees this would be) must be capable of mitigating that loss to a significant degree. This is essentially the point made by GLVIA at 5.37:

“5.37 One of the more challenging issues is deciding whether the landscape effects should be categorised as positive or negative. It is also possible for effects to be neutral in their consequences for the landscape. An informed professional judgement should be made about this and the criteria used in reaching the judgement should be clearly stated. They might include, but should not be restricted to:

- *The degree to which the proposal fits with existing character;*
- *The contribution to the landscape that the development may make in its own right, usually by virtue of good design, even if it is in contrast to existing character*

...”

39. This is something which Mr Smith grappled with in detail, including by considering the proposed design against the backdrop of the GALD, SHEDG and the Management Plan. While this did lead him to a view that the landscape impacts were lower than those assessed by the LVIA – his view was fully explained and, we submit, compelling. By contrast, Mr Petrow’s approach was cursory¹²⁰ and should not be preferred.

40. A point of principle emerged between the parties in relation to the relative focus which a decision-maker should have on short term as opposed to residual/longer term effects. Mr Cosgrove KC put the point that Y1 impacts are still material even if they are later mitigated, which is of course right. However, we do say that the focus should still be on the longer term position. Y1 (and indeed construction period effects) are likely to be unavoidable in nearly all cases

¹¹⁹ See Mr Smith’s para 4.102: *“In the context of the SHNL the area on changes of the site (LCA1 and LCA2) is, 5.13ha, 0.0513 of a square kilometre. Thus, it is 0.00012% of the potential SHNL extension, 0.00009% of the SHNL inclusive of a 30% extension. It is a very, very small area of change in that context. Again, a matter to be factored into balance”*.

¹²⁰ In addition to the multiple errors in his proof, a tendency to make contradictory statements and a tendency towards opacity it is noted and was agreed that his proof and evidence generally (i) contains no consideration to SHEDG; (ii) does not consider the land management points in the Surrey LCA in any detail, once these were put to him he agreed that almost all were met; (iii) accepts compliance with the Management Plan apart from P1 and P2, but gives no real analysis of this (iv) provides no consideration of GALD.

but the real question is what level of effects will be experienced once a development has had time to 'bed in'. This was the approach taken by the Secretary of State in the Turnden case who, when looking at the impacts on the NL, focused on "longer term" effects, which is to say Y15 not Y1: see NID7.19 para. 26 and the IR paras. 729 and 732.

Impact of access, lodge and limited carparking adjoining Midhurst Road

41. The land adjoining Midhurst road would be changed by the introduction of a single house, built in the style of a lodge; an access; a small carpark for the SANG; and related tree removal and replanting (including advanced buffer planting which is already underway and which Mr Petrow described as "*more than adequate*").¹²¹
42. The first of these elements, the house sited by the entrance (referred to variously as the "*lodge*" or the "*gatehouse*"), was agreed to be essentially positive. Mr Petrow said¹²² it was of the highest design quality, was "*attractive*", and would form a "*key focal feature*" of the new access. It was not clear whether he considered that it caused any harm in of itself, and he accepted that the introduction of a single well-designed house of appropriate character was not necessarily harmful to the SHNL landscape. Mr Smith and Mr Pullan explained how the building draws on appropriate antecedents in the wider SHNL landscape and meets the requirements of P2 of the Management Plan and the SHEDG.¹²³
43. Second, in terms of the wider entrance works, they would change the character of the lane for a period, particularly while planting¹²⁴ took time to re-establish. However, as Mr Smith explained a significant number of the trees are in fact category U or C (so with a lifespan of at most 10 years) and the proposed management will in fact ensure and support the longer term maintenance of its

¹²¹ See Mr Petrow's answers in XX.

¹²² Ibid.

¹²³ "*Development will respect the special landscape character of the locality, giving particular attention to potential impacts on ridgelines, public views and tranquillity.*" See Mr Smith's proof at pg 34 and Mr Pullan's proof at section 5.16

¹²⁴ Which will be secured, including through advanced planting, via the proposed conditions.

enclosed green character. Mr Smith's unchallenged evidence that in the absence of the Appeal Scheme many of the trees along Midhurst Road will become diseased or die in the next 10 years such that the treed character will inevitably further erode as the County Council take further positive action to preserve public safety.

44. The access itself is not in any way untypical of the local area¹²⁵ and perfectly acceptable in visual terms as shown by the agreed AVRs¹²⁶. It will not significantly impact on tranquillity which is limited in this area due to the presence of a "*very busy road*".¹²⁷ It will not disrupt a "*sunken*"¹²⁸ lane but will introduce a further access to a rural but busy/well trafficked road. Mr Petrow (and the R6P at various points) suggested that other AVRs might be needed but none have ever been requested by WBC or indeed any party prior to the commencement of this inquiry (including at the last inquiry). If these were really thought necessary they could have been requested at any time and indeed WBC could have produced its own.
45. Impacts from regrading works would be harmful in the shorter term, but it has been minimised by the "*contour sensitive*"¹²⁹ routes chosen and will also fade as time goes on. Moreover, as Mr Smith explained the internal access road will not have road markings.¹³⁰
46. Mr Petrow accepted that the impact of the retaining wall has been reduced by changes to the design and that planting, material and ageing will all help

¹²⁵ The Inspector will note the context created by the junctions to Bell Vale Lane and Fernden Lane, servicing residential roads, and encountered travelling south before entering the open countryside.

¹²⁶ The arrival priority junction has been designed in accordance with the DMRB and the advice of the County Council as highway authority: see Mr Smith's proof at para. 4.12i. Of course, any new housing in the NL will require an access and that this accord with highways standards.

¹²⁷ Accepted Petrow in XX.

¹²⁸ Mr Petrow in XX accepted it was not sunken in the vicinity of the access

¹²⁹ Mr Smith's term in XX.

¹³⁰ The position is shown in the AVRs attached to Mr Smith's proof, with the earlier AVRs before the First Inquiry being in error in this regard.

mitigate it after construction.¹³¹ Indeed, Mr Petrow struggled to discern the retaining wall when taken to the AVRs.¹³²

47. The limited amount of SANG car parking to be provided would have an adverse effect but this would be limited due to contained visibility, further there would be no lighting on the access and only limited need for white lines restricted to the bell mouth (except on the Midhurst Road itself)¹³³.
48. The limited effect of these detailed elements (which in Mr Smith's view lead to a slight adverse/neutral impact at Y10) is supported by the officers' view which was incredibly positive on the design choices taken. So:
 - (1) They accepted that the retaining wall had been softened via reduction in scale, appropriate materials and appropriate planting such that "*[o]verall, these amendments have addressed the above concerns regarding the harsh appearance of the retaining wall at the entrance to the site.*"
 - (2) The lodge notwithstanding that its function will simply be that of a residential dwelling) had been "*designed to appear as attractive landmark feature*" being a "*good example of a well-designed traditional arts and crafts movement style building of the late 19th and early 20th centuries*" with various design elements appreciated by the officers¹³⁴.

¹³¹ See Mr Petrow's answers in XX and see Mr Smith's proof at para. 4.12i. "*The space also facilitates improved recreational access through considered integration of the walkers' bothy, itself an attractive feature, integrated into the retaining wall, a wall that has been reduced in height in response to Officer comments and an element constructed of local Bargate stone (refer DAS addendum section 3.4 CD 2.15). All of the landscape hardworks are set into enhanced planting, where hedges, trees and shrubs all bring new native species and younger stock, improving the age range of the vegetation, into the location where there has been recent decline. A number of the trees are specified as semi mature stock and also specified for planting in advance of construction, thus advancing their visual benefit. Overall, the positive green infrastructure both visually assimilates the access drive into its context and allows the verdant edge to Midhurst Road to be retained. The arrival drive then heads northwards up the valley, where considered cut and fill and enhanced planting – trees and meadow grassland mixes, both allows the drive to be set successfully into the landscape but also aid biodiversity.*"

¹³² Mr Petrow in XX.

¹³³ Mr Cosgrove KC asked Mr Smith about the AVRs from the First Inquiry but these were inaccurate in showing white lines on the access road as it goes up the hill.

¹³⁴ See CD4.2 elec pg 27 of 64.

Degree to which harm to LCAs 1 and 2 are offset by the landscape benefits elsewhere

49. As set out above, a beneficial position is now agreed in relation to each of LCAs 3, 4, 5, 6 and 7.
50. These are (cumulatively) large areas and the benefits (most of which are agreed to be moderate at Y10) are therefore considerable.
51. Mr Petrow's written evidence downplayed these on the basis that most of areas are currently "*high quality*"¹³⁵. He also somewhat bizarrely identified adverse effects in LCAs 3, 4 and 5 at Y1 (something he stuck to in XX) – a point which is simply not understood.
52. On the longer term effects, he accepted that the planting and beneficial management secured by the LEMP, SCMP, the landscape planting specifications and landscape design strategies¹³⁶ (for all of which he had no criticism) would result in benefits, as would improve recreational and public access which would extend to the SDNP¹³⁷ as well as the Site and the wider SHNL¹³⁸. He did not raise concerns about the design of the Scout Hut and Forest School, consistent with officers who thought each be "*appropriate for its context*" subject to appropriate materials being secured by condition.¹³⁹ He also acknowledged that ecological¹⁴⁰ and heritage¹⁴¹ benefits including BNG and provision of a nature reserve could also be taken into account as part of the overall consideration of landscape

¹³⁵ See his proof at 5.6 bottom paragraph.

¹³⁶ See CD1.41, CD1.42, CD2.23 and CD2.24.

¹³⁷ The increased linkage between Haslemere and the SDNP as a result of bringing people into the Appeal Site would in turn encourage access to and enjoyment of the National Park – something which is a statutory purpose of the National Park and thus something which you, sir, are required to "*seek to further*" under the amended s.11A of the National Parks and Access to the Countryside Act 1949.

¹³⁸ Educational and recreational goals are also placed at the heart of the Management Plan and for part of the objectives of what is now the National Landscapes Association: see CD7.9 para 3.3 and Policies RT1-2 and 4, CE1 W5, B3.

¹³⁹ See CD4.2 elec pg 27 of 64.

¹⁴⁰ See e.g. GALD section 6.

¹⁴¹ The revealing of the spigot.

impact. Para. 189 of the NPPF makes clear that “wildlife and cultural heritage” are important considerations in NLs.¹⁴²

53. This led him to the agreed position reported above and in Appendix 4 to this closing speech.
54. Mr Petrow did not seek to reassess his overall view on the extent to which these benefits outweighed or offset harms to LCAs 1 and 2. However, they must do. Mr Smith was surely right to contend that overall landscape effect of the Appeal Scheme is “slight adverse to neutral”¹⁴³.

Visual impacts / other landscape points

55. Mr Petrow did not raise a separate concern about significant adverse visual effects, all of his identified effects were moderate or slight at Y10, reducing to slight at Y15. However, his position on the effects which he did identify turned out to be unsustainable:

- (1) The “substantial impacts” he identified in relation to the private views for residents of Red Court (and maintained in XX) are impossible to reconcile with the extremely limited intervisibility which is secured by the covenants

¹⁴² See CD8.1: para 189 says “... The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas ...” and this includes NLs (see the sentence preceding this). Mr Johnson accepted this in XX. Moreover, GALD (ID5.3) says (emphases added):

“6.3. It is Natural England’s view that fauna and flora (i.e. wildlife), geological and physiographical features and cultural heritage can contribute to the perception of natural beauty of all landscapes and that any assessment of natural beauty must take these factors into consideration, whether in relation to a National Park or an AONB designation. For example, the presence of particular wildlife or cultural heritage features can make an appreciable contribution to an area’s sense of place and thereby heighten the perception of natural beauty. There is now express statutory clarification that wildlife and cultural heritage may be taken into account in assessing natural beauty for National Park designations (s.59(1)) of NERC.”

6.4. During the passage of the NERC Bill through Parliament, Lord Bach for the Government explained that the intention, and the current practice, is that wildlife and cultural heritage considerations are factored into the natural beauty assessments rather than being free-standing tests in their own right. Whilst this statement was made in connection with National Parks, past and present practice has been to treat the practical assessment of natural beauty in National Parks and AONBs in the same way.

6.5. Notwithstanding the differences in the express statutory provisions, the Government’s formal position during the passage of the NERC Act was that the natural beauty required of a National Park and an AONB are the same. Natural England considers that there is no material difference between the requirements in practical terms of the natural beauty criterion in the two pieces of legislation. Accordingly, if an area meets the natural beauty criterion, Natural England will normally consider it to have natural beauty of a standard suitable for either National Park or AONB designation”

¹⁴³ See Smith’s proof at 4.104.

preventing removal of boundary planting, or indeed with WBC's own view that there is no heritage harm. The views are private (and hence of only medium sensitivity) in any event, but Mr Petrow's persistence on this point did him no credit.

- (2) Likewise, the alleged impact on road users and others from increased traffic movements was not well thought through. Mr Petrow, accepted in XX that the point was not a strong one. Mr Smith confirmed as much having looked at the traffic evidence in Mr Collins rebuttal at the First Inquiry¹⁴⁴.
- (3) There are no visual effects on Bell Vale Lane. Mr Petrow and Mr Harrison both accepted that built development will not be visible from here.
- (4) On CP597, the only footpath in issue, the footpath currently runs alongside an A road, there are some improvements proposed to it by moving it to the other side of a new hedge – a more peaceful and enjoyable walk and in terms of what footpath users would see it was¹⁴⁵: (i) the access; and (ii) the gatehouse – not the main housing site. This appears to have been poorly understood by members of the public, many of whom seem to have written their letters of objection on the basis that the Appeal Scheme would cause the loss of the footpath rather than its enhancement. The evidence shows that users of the new footpath would not find it any less commodious, scenic or enjoyable than the existing. Indeed in many respects it would, as officers noted in the officer report, provide enhancement.¹⁴⁶

56. It is also important in considering the landscape harms, confined as they are to LCA1 and 2, to have regard to the following matters:

¹⁴⁴ ID3.1 See para 8.4 and Appendix 1. The increases will be within the average daily variation (see last two paragraphs of Appendix 1.

¹⁴⁵ Officers, see below, recognised that the footpath would be enhanced by the Appeal Scheme. They were right to do so.

¹⁴⁶ CD4.2 pg 47 “... An existing public right of way (Footpath 597) is proposed to be diverted alongside Midhurst Road, to facilitate the site access. This is outlined in the Transport Assessment. The diversion is minor, and would still facilitate movement on a north/south axis alongside Midhurst Road. The footpath created would act as an enhancement over the existing, which is narrow, and directly adjacent to Midhurst Road.” See also CD2.7 as to the proposals for this footpath being a net benefit.

- (1) WBC commissioned landscape experts AMEC in 2014 to assess the ability of land around towns and villages to accommodate future residential development.¹⁴⁷ This considered an area encompassing the Appeal Site and the Phase 1 site as “HEO5” and recognised, despite the fact that much of HEO5 is in the NL that it only has “*some*” landscape qualities, and “*medium*” landscape value and sensitivity. AMEC noted the low intervisibility and its proximity to Scotland Lane and Red Court. These conclusions by experts instructed by WBC certainly support Mr Smith’s views on LCA1 and 2.¹⁴⁸
- (2) In relation to the Surrey LCA¹⁴⁹ Mr Petrow’s evidence drew attention to the 27 criteria it sets out¹⁵⁰. He accepted that the Appeal Scheme complied with, and drew support from, almost all of these criteria.
- (3) It is worth pausing briefly to consider the future for the Appeal Site if permission is refused. It has little, if any, alternative economic function. The northern paddocks would be suitable at most for horsiculture. The Appeal Site was previously unmanaged for decades, and only improved as part of the land promotion by the Appellant. However, if planning permission is refused for the Appeal Scheme there is little realistic prospect of any of the land contributing towards public benefits/policy initiatives. Legal obligations for its management are limited to the basic measures secured under the Phase 1 permission in respect of the 2.3km route identified there.¹⁵¹ The issues with vegetation reaching the end of life without management and replacement as well as the issues with invasive species would continue unabated and the vast majority will remain inaccessible to the public.

¹⁴⁷ See NID7.24, see elec pg 9, 11-12, 14, 23-24 and 103 as discussed in XX of Mr Petrow.

¹⁴⁸ WBC at this inquiry have been keen to play down the AMEC study, Mr Petrow (see his proof at para. 4.2.3) fails to mention the conclusions it reaches on HEO5 as regards value and sensitivity. The AMEC Study considers the whole of HEO5 as only “medium” value and sensitivity, whereas Mr Smith’s evidence in this regard is focussed on LCA1 and 2.

¹⁴⁹ Which Mr Petrow suggests is of “*limited use*” as it is at such a broad scale: see his proof at para. 4.3.

¹⁵⁰ See Mr Petrow’s proof at para 4.2.2. and his answers in XX.

¹⁵¹ See Appendix 2 of Mr Collins’ second rebuttal at the first inquiry for a comparison of the SPA mitigation proposals as they stood at the end of the last inquiry (ID3.2)

- (4) It is agreed that in terms of considering the impact of the Appeal Scheme on the NL that the Management Plan is a key consideration.¹⁵² This is because it is: (i) referred to in Policy RE3; and (ii) is emphasised as being of importance in the DEFRA guidance. In relation to the Management Plan the following are the key points:
- (a) The Management Plan acknowledges that change will occur;¹⁵³
 - (b) The Appeal Scheme draws strong support from a number of policies in the Management Plan including¹⁵⁴: Policy W1 which encourages woodland management;¹⁵⁵ policies B1-B5 encourage BNG, Policy RT1 seeks to encourage access to the SHNL and Policy RT2 seeks to make information available for visitors to the NL; Policies HC3 and P3 seek high-quality design and that development respects local distinctiveness; Policy HC2 looks to conserve and manage heritage assets; Policy CE3 concerns the provision of affordable housing;¹⁵⁶ and Policy CE6 encourages community activities in the NL.
 - (c) WBC allege breach of Policy P1 but this policy does little more than reflect paras. 189 and 190 of the NPPF and Policy RE3 in LPP1.¹⁵⁷

¹⁵² The reason for refusal does not cite any breach of any Management Plan policies.

¹⁵³ See Mr Petrow's proof at para 8.6 and his answers in XX.

¹⁵⁴ See Mr Smith's proof at pg 33-34. None of these policies are alleged by WBC to be breached: see Mr Petrow's proof at para. 8.7 and his answers in XX.

¹⁵⁵ CD7.9 pg 45.

¹⁵⁶ The Management Plan notes:

"A Defra study (2013 unpublished), by Professor Peter Bibby of the University of Sheffield, has identified the Surrey Hills as an "Elite Residential Enclave" with 43.1% of dwellings in the AONB having a registered company director in residence. This relative prosperity creates major issues relating to affordable housing and means that local people who do not have access to everyday facilities, jobs or a car can be excluded from participating fully in community life.

The AONB Management Plan seeks to ensure that the protection and enhancement of the environmental quality of the AONB leads to the Surrey Hills being an attractive place to live in, invest in and visit for all members of the community. Particular regard needs to be given to promoting those sustainable forms of social and economic development, such as sustainable tourism, affordable housing and the development of local food initiatives, which in themselves contribute to conserving the environment by generating income for land management and a reduction in the need to travel ..."

¹⁵⁷ The Management Plan acknowledges the possibility of major development in the NL, see pg 11 "AONBs and their Management Plans are material considerations in the planning system. The 'great weight test' is significant and one of the most stringent legal tests that can be applied under planning law. In specific

(d) The only other policy alleged to be breached is P2.¹⁵⁸ In so far as this policy is concerned with detailed design and Dark Skies it is accepted by WBC to be complied with.¹⁵⁹

57. This brings us on to the “community landscape” evidence presented by Mr Harrison. As with Mr Petrow, his evidence was hampered by a number of factual errors and he had not in fact ever been onto the site (something he shares with Mr Johnson). His landscape impacts largely echoed those of WBC but it is worth noting that:

- (1) His contention that the site would be visible from Gibbets Hill is based upon a zoomed photograph from Mr Brown, using a 200mm lens. All the professional witnesses have accepted that this view, which is reached across the settlement of Haslemere is not a material one and would be extremely difficult to discern with the human eye.
- (2) He argued that the Appeal Scheme would erode the sense of Haslemere’s boundary but had to accept that the sign for Haslemere is to the south west at the Bell Vale Lane/Midhurst Road. This was also not a point made by WBC. There are several existing houses fronting the Midhurst Road running immediately south from the proposed new access¹⁶⁰ and the permission granted at Dene End Farm¹⁶¹ will add to this urbanisation that continues on to Fernden Lane.

relation to major development the NPPF states that planning permission should be refused for major developments in AONBs except in exceptional circumstances and where it can be demonstrated that the development is in the public interest. It then sets a series of tests that have to be assessed in relation to major development.”

¹⁵⁸ This provides “Development will respect the special landscape character of the locality, giving particular attention to potential impacts on ridgelines, public views and tranquillity. The proposed use and colour of external building materials will be strictly controlled to harmonize within their related landscape and particularly to avoid buildings being incongruous. In remoter locations, with darker skies, development proposals causing light pollution will be resisted.”

¹⁵⁹ See Mr Petrow’s answers in XX and see Mr Smith’s proof at pg 34 and Mr Pullan’s proof at para. 5.1.6

¹⁶⁰ Some of these are shown in NID13.2

¹⁶¹ See CD2.54 elec pg 24.

- (3) He acknowledged that the effect of the s.106 agreement would be to secure a significant and permanent green gap between Haslemere and Bell Vale Lane in perpetuity.
- (4) He was wrong to suggest that Haslemere was the only settlement surrounded by the SHNL; there are many other settlements entirely washed over by it (i.e. Chiddingfold, Hambledon, Albury).
- (5) He accepted the influence of noise on the site.
- (6) He argued in his proof that the Appeal Scheme would produce *“light pollution to an area which currently records the second darkest night sky categorisation in the country.”* However, in XX, he accepted when presented with the evidence that this was incorrect.¹⁶² Mr Petrow confirmed, in XX, that WBC pursued no case on Dark Skies.
- (7) Despite waxing lyrical on the literary and artistic associations of Haslemere he accepted that there was no evidence of any of these with the Appeal Site itself.
- (8) He accepted that built form can form part of the value of the SHNL.

58. Overall, his evidence provided no basis for departing from the position advanced by Mr Smith.

3. Ecology

59. Ecology issues were raised by WBC on the application and formed their second reason for refusal¹⁶³. However, the Appellant had already committed to providing further information which was then supplied in stages as detailed in

¹⁶² See CD2.29 paras. 10.3.84-89, elec pg 37 and Table 10.16 elec pg 84.

¹⁶³ See CD4.1:

“The ecological information submitted with the application fails to demonstrate that the proposed development would not negatively affect and/or fragment the wildlife corridors adjacent to Midhurst Road and within the northern central area of the application site. Additionally, the ecological information fails to demonstrate that there would not be a detrimental impact on protected species being great crested newts, hazel dormice and bat species, and Habitats of Principal Importance. The proposal is contrary to Policy NE1 of the Local Plan Part 1 (2018), Policy DM1 of the Local Plan Part 2 (2023), Policy H12 of the Haslemere Neighbourhood Plan and paragraphs 174 and 179 of the NPPF.”

the agreed chronology¹⁶⁴. This has resolved WBC/SWT's concern whose position as set out in the Main SoCG at para. 4.23¹⁶⁵ is not only that the Appeal Scheme is acceptable in ecological terms (subject to imposition of suitable conditions, also agreed) but also that the creation of a "nature reserve" and delivery of BNG will be a benefit. Further questions from Inspector Bristow at the First Inquiry resulted in a joint note between the Appellant and WBC¹⁶⁶ which also confirms their position that the Appeal Scheme provides for adequate information and mitigation to address impacts on the SPA.¹⁶⁷

60. The ecological benefits are dealt with further below. You, sir, have the Ecology Technical Note¹⁶⁸ prepared by Engain for the Appellant which addresses the approach taken to calculating the projected BNG for the Appeal Scheme and discusses how any excess BNG (above the 20% for which the Appellant seeks credit for in this appeal¹⁶⁹) can be sold as credits to support the delivery of the LPP2 Town Centre Sites (see further below). Both the 20% to be secured on site and the additional credits to be sold attract weight as benefits of the Appeal Scheme.
61. Notwithstanding WBC's position, the R6P have continued to pursue a series of points, all of which echo the points first raised by WBC (on the advice of SWT) and then withdrawn following provision of further information.

¹⁶⁴ NID 13.35

¹⁶⁵ NID 4.11

¹⁶⁶ ID5.12.

¹⁶⁷ For the avoidance of doubt, it is agreed that you are required to carry out appropriate assessment under the Conservation of Habitats and Species Regulations 2017 ("*the Habitats Regulations*") but that all parties (including NE as relevant statutory consultee) agree that in the light of the provision of the SANG you are able to conclude that no adverse effects on the integrity of the Wealden Heath Phase II SPA (the only site identified on which the Appeal Scheme had been identified as likely to have significant effects absent mitigation) will arise. See in particular the Information for HRA (CD1.40) and Mr Kite's note appended to Mr Jack's proof.

¹⁶⁸ ID2.1.

¹⁶⁹ As secured under the s.106 agreement.

62. The R6P did this through a proof of evidence in the name (primarily) of Ms Diana Moses. However, it was then clarified¹⁷⁰ that the work was of a number of different authors, some of whom are professionals and others are not.
63. At the inquiry, Dr Guest was the only one of the authors to address the evidence set out in the R6P proof. The other authors' evidence has been addressed in detail by Mr Jack in his rebuttal proof and evidence in chief, which was not challenged in any material way through XX. As such, it does not need to be repeated here.
64. As to Dr Guest's evidence, it should be acknowledged that she was very fair witness and accepted the following:
- (1) First, that the beneficial management of the 78% of the site which will fall to be regulated by the LEMP and SANG Management Plan was both desirable and in accordance with the mission and vision of the Haslemere Biodiversity group she was representing.
 - (2) In particular, the increased total planting proposed would support existing wildlife corridors across and out from the site, in particular the east west routes which both she and Mr Jack thought were the most important.
 - (3) Second, that although she thought the introduction of the access road would lead to some fragmentation of the western and central wildlife corridors (as identified by the HNP and Haslemere Biodiversity Audits):
 - (a) Those corridors are identified for their potential function in linking habitats, rather than as ecological receptors in their own right.
 - (b) The work done in preparing the HNP/Biodiversity Audit was desktop. Subsequent work has been to examine their qualities as *habitat* rather than as wildlife links.¹⁷¹

¹⁷⁰ NID8.4

¹⁷¹ As demonstrated in the Ground truthing Report appended to CD5.9

- (c) There is thus no evidence before the inquiry to demonstrate that the corridors in question play any dispersal function.
 - (d) Given the location of the Site, the main dispersal of the western wildlife corridor¹⁷² for dormice is likely to be an east-west connection across the Midhurst Road. Generally east west links are more important here due to the presence of Haslemere to the north.
 - (e) The east-west connection will not be disrupted to the north and south of the area where trees are to be removed by the Appeal Scheme and any impact would be largely mitigated in the longer term by the recovery of planting to provide canopy cover.
 - (f) In any event, dormice (which were her primary concern in relation to the corridors) can, as Mr Jack explained¹⁷³, travel across both smaller, and medium-sized (<12m) roads and would be able to cross the access road notwithstanding that intact arboreal habitat connections will remain, both east/west, across Midhurst Road, and north/south, along its length.¹⁷⁴
- (4) Third, that although she thought the mammal tunnel was unlikely to be effective she was proposing no additional or alternative mitigation. Mr Jack explained that the tunnel was not in fact mitigation for dormice in any event, it is simply providing an alternative route for crossing the access road – primarily for other mammalian species.
- (5) Fourth, that her concerns about increased feline predation were relatively minor.
- (6) Fifth, that her particular concerns about dark corridors could be addressed via a suitable condition and impacts on dormice via suitable planting and mitigation.

¹⁷² The corridor identified in the HNP Plan 8 as running along the western edge of the site.

¹⁷³ See Mr Jack's rebuttal at 2.54.

¹⁷⁴ I.e. along western roadside vegetation.

65. This brought her to accept overall that impacts on species are capable of being managed under suitable conditions and indeed that, if appropriate management policies are approved and implemented, the result is likely to be beneficial rather than adverse – in particular in relation to dormice.¹⁷⁵
66. The R6P's suggested amendments to the conditions have been considered in the roundtable session. They are considered to be unnecessary and duplicative.
67. Dr Guest also agreed that neither she nor the R6P had provided any evidence to challenge the expert view from the Appellant's that tree T103¹⁷⁶ is a category U tree whose removal is advised. That view is set out in an appendix to Mr Collins' second rebuttal proof to the last inquiry¹⁷⁷ in response to an identical point made by Mr Brown (then a third party).

4. Exceptional circumstances and development plan compliance

68. We now turn to the central questions of the appeal, the EC test and development plan compliance.
69. On both, there were significant differences of approach between Mr Collins and Mr Johnson.
70. Some caution is merited before putting any weight on the evidence of Mr Johnson. As XX revealed, he has fundamentally misunderstood a number of the central and basic features of the planning development management system including (i) the operation of para. 11 of the NPPF in terms of the distinction between a policy being out of date or being given weight¹⁷⁸; (ii) the operation of

¹⁷⁵ The same position, namely beneficial long term effect on dormice, was acknowledged by WBC's ecology witness to the first inquiry (the head of SWT's Ecology Planning Advice Service): see ID5.2.

¹⁷⁶ Which was the tree / Dr Mathes had referred to as a veteran tree in the proof of evidence.

¹⁷⁷ ID3.2 Appendix 5. See pg 2.

¹⁷⁸ Mr Johnson was unable to accept that lack of a 5YHLS rendered most important policies out of date.

s.38(6) of the Planning and Compulsory Purchase Act 2004¹⁷⁹; and (iii) the distinction between weight and harm¹⁸⁰.

71. Further, his evidence betrayed a lack of understanding of the detail and context including:

(1) What can constitute major development in a NL;¹⁸¹

(2) The SANG offer¹⁸²; and

(3) The position of NE in relation to the SANG benefits of the Appeal Scheme¹⁸³.

72. Moreover, he had never been onto, nor ever asked to go on to, the Appeal Site.¹⁸⁴

Development plan compliance

73. As already set out, the better view is that if EC are shown then there will be overall compliance with the development plan.

74. LPP1, adopted in February 2018, is out of date. The Full Council agreed on 21 February 2023 that following a review of LPP1, the plan required updating in order to be broadly compliant with the NPPF.¹⁸⁵ In July 2023 the decision was

¹⁷⁹ He advanced the long discredited view that a proposal will fail to “accord with the development” if a single policy is breached. This is wrong and a serious failing in a planning witness.

¹⁸⁰ Both in his written evidence and EiC he suggested that he justified his view that the weight to be given to the harm to the SHNL should be “substantial” by reference to a (rather bizarre) analogy between great weight under NPPF 189 and the relationship (?) between great weight and substantial harm in heritage policy. This point makes no sense (great weight is given to any harm to designated heritage assets regardless of whether the harm is substantial or less than substantial) and reveals a fundamental misunderstanding of the distinction between (i) identifying extent of harm and (ii) ascribing it weight as a matter of planning judgement.

¹⁸¹ See fn5 above.

¹⁸² He thought it was only for 9.6ha.

¹⁸³ At various points he suggested that their position was that it was a neutral matter. Precisely the point which Inspector Bristow had misunderstood and NE have now clarified: see Mr Kite’s statement.

¹⁸⁴ For that reason alone his evidence on the landscape effects of the Appeal Scheme, see his proof at paras. 9.30 – 9.47, (which he described as being his “own assessment as an experience Chartered town planner”) was entirely confined to the access on Midhurst Road being the only part of the site to be developed that he had seen. He accepted, in XX, that he had never seen those parts of the Appeal Site on which the 110 homes would be placed. Mr Johnson never asked to visit the Appeal Site. He visited in the morning of 6 February 2025. There was an organised site visit for the R6P team later that very day.

¹⁸⁵ See Mr Collins’ proof at para. 4.35.

made to carry out a full, rather than merely a partial, review as this was what was needed to resolve the updates required to LPP1.¹⁸⁶

75. As Mr Collins explained, this does not mean that no weight can be given to its policies but the weight to be accorded will depend largely on degree of conformity with the NPPF. The same position applies to both LPP2 and the HNP¹⁸⁷ which are “*daughter documents*”¹⁸⁸ in that they seek to meet the housing requirements established in LPP1. Moreover, the HNP contained an obligation to assess review within six months, but this has not been complied with¹⁸⁹.
76. Of course, the policies most important to the determination of this appeal, are also deemed to be out of date given the absence of a 5YLS: see below.
77. All this being the case, there is perhaps less need than is usual to go through the parties’ positions on the individual policies comprising the development plan, but we set out them out nonetheless given their statutory priority and the position (however flawed) of Mr Johnson. In terms of approach to the question (which must still be determined) of whether the Appeal Scheme is in compliance with the development plan as a whole, the following matters are entirely orthodox and were agreed by WBC at the last inquiry:
 - (1) First, in relation to any particular appeal proposal, the policies in a development plan may pull in different directions: some policies point in favour of a development and some point against. The fact there is conflict with one relevant policy (or part of one relevant policy) in the development plan does not mean that a scheme is not in accordance with development plan as a whole.
 - (2) Second, in deciding whether the development plan is accorded with as a whole, a decision-maker must consider:

¹⁸⁶ Ibid, paras. 4.36-4.39.

¹⁸⁷ And in any event the HNP does not allocate any sites and so has little impact on housing delivery save to seek to restrict it.

¹⁸⁸ See Mr Collins’ proof at paras. 4.3, pg 38 and paras. 4.48 – 4.52.

¹⁸⁹ See para 4.4 pg 62 of CD 6.3. Mr Johnson confirmed in XX that there has been no review.

- (a) Which policies complied with;
- (b) Which policies breached;
- (c) The degree of any breach, in terms of how far the policy in question sets its face against what is proposed; and
- (d) The significance of the breach.

78. The relevant development plan policies are set out in the main SoCG.¹⁹⁰ There are 16 policies in LLP1, 12 in LPP2 and 11 in the HNP agreed to be relevant. Of those the reason for refusal alleges breach of only three policies in LPP1, two in LPP2 and one in the HNP albeit that WBC's witnesses also now allege breach of Policy H1 of the HNP which is not referred to in the reason for refusal. There are then 13 policies in LPP1, 10 in LPP2 and 8 in HNP which are all agreed to be relevant *and* fully complied with. These were discussed by Mr Collins and in XX of Mr Johnson who agreed that a number of these policies support the Appeal Scheme including:

- (1) In LPP1 this includes:
 - (a) ALH1 (Housing);
 - (b) AHN1 (Affordable housing);
 - (c) AHN3 (Housing mix);
 - (d) LRC1 (Leisure and recreational facilities);
 - (e) TD1 (Townscape and design);
 - (f) NE1(Biodiversity);
 - (g) NE2 (Green Infrastructure);
 - (h) CC1 and CC2 (Climate change); and

¹⁹⁰ NID4.11 para 3.12ff.

(i) ST1 (Sustainable transport).

(2) In LPP2:

(a) DM1 (Environmental Implications of Development);

(b) DM4 (Quality places through design);

(c) DM6 (Public Realm);

(d) DM9 (Accessibility and Transport)

(3) In the HNP:

(a) H2 (Housing Density);

(b) H4 (Affordable housing);

(c) H5 (Housing mix);

(d) H7 (Access and Transport);

(e) H10 (Dark Skies);

(f) H11 (Green spaces);

(g) H12 (Protecting and enhancing biodiversity)

79. Of the policies alleged to be breached within LPP1:

(1) SP2¹⁹¹:

(a) Explicitly allows for the development of sites “at” the edges of the four main settlements – which include Haslemere. It does not establish a hierarchy between those settlements.¹⁹²

¹⁹¹ CD6.1 at elec pg 19

¹⁹² Mr Johnson suggested that Haslemere was second tier, but then accepted it is within the top tier of settlements.

- (b) Is plainly and obviously out of date¹⁹³ given that it is the spatial strategy which is failing to meet the needs of the borough in terms of the requirement to maintain a 5YHLS.
- (2) For RE1 it is accepted that there will be some harm through loss of countryside, and so some conflict with this policy, but this is:
- (a) inevitable if housing needs are to be met and there should therefore be reduced weight given to any conflict given the absence of 5YHLS¹⁹⁴;
 - (b) there is no policy harm in respect of the 78% of the Appeal Site which will be dedicated to green infrastructure of various kinds; and
 - (c) ALH1 is agreed to be relevant ¹⁹⁵ and Mr Johnson agreed that there is no allegation of conflict (and it is not listed in the remaining reason for refusal) and it is in any event closely tied with SP2 and out of date. Like SP2, it recognises that it will be necessary to allow expansion of settlements via the development of suitable sites on the edge of the settlements.¹⁹⁶
- (3) Moreover, Policy RE1 is also clearly out of date.¹⁹⁷

¹⁹³ See Mr Collins' proof at p.27-28 "The policy is out of date, WBC have accepted that they need to review their spatial strategy as a part of a full Local Plan Review. In addition, this policy constrains development in a situation where the land supply is very poor. Despite the inclusion of policy SP2 in Reason for Refusal 1, the Appeal Site is located at one of the four principal settlements. The Reason for Refusal related to WBC's opposition to the principle of development, which is addressed in the Appellant's NPPF paragraph 190 case. The Appeal Proposal is clearly 'at' Haslemere, one of the four key settlements. In addition, the full Local Plan Review remains years away, adoption earliest 2028, thus the present spatial strategy remains the most recently adopted. Whilst I accept that on the basis of the 5YHLS that the weight to SP2 could be reduced, the credentials of the Site's sustainable location are material."

¹⁹⁴ Mr Collins in EiC.

¹⁹⁵ See Main SoCG

¹⁹⁶ See CD6.1 elec pg 23 at paragraph 6.16.

¹⁹⁷ See Mr Collins' proof at pp. 28-29 "The policy is out of date, WBC have accepted that they need to review their spatial strategy as a part of a new Local Plan. In my opinion this will inevitably include development of countryside land. The evidence of Mr Smith outlines adverse landscape impacts on two LCAs. Here, I recognise that the intrinsic character and beauty of the countryside is affected, though is localised. There is a significant change to the existing character owing to the Parameters proposed, and built form, typical for any Greenfield development. Though it is relevant to consider the parameters in light of the Surrey Hills Environmental Design Guidance (NID7.20). Overall, on the basis that 78% of the Appeal Proposal is Green Infrastructure, the impact

- (4) RE3 aligns with the NPPF tests for the NL and adds little to it. In relation to development in the SHNL, this does no more than apply the national policy tests. It is common ground that if EC are shown it will be complied with.¹⁹⁸

80. In relation to the LPP2 policies, two were alleged to be breached in the reasons for refusal:

- (1) On DM11, Mr Johnson agreed that it explicitly contemplates that trees can be lost through development if mitigated and /or compensated for¹⁹⁹. Factually, this Scheme will plant many more trees than are lost and was said. Mr Collins' approach was to balance tree loss (of what are primarily category C and U trees) against the large number of replacement trees so as to conclude compliance.²⁰⁰ In relation to this matter: (i) Messrs Petrow and Harrison confirmed their concerns as to tree losses were confined only to those being removed at the access and not elsewhere on the Appeal Site²⁰¹;

is mitigated and compensated. Thus, the majority of the Scheme does recognise (and indeed enhance) the intrinsic character and beauty of the countryside – and indeed through the high quality design the built form does recognise it to a degree. The high quality and respectful design and landscaping is in keeping with the surroundings. I therefore consider there to be partial compliance with RE1 and that any degree of conflict with this policy should be given reduced weight owing to the absence of a 5YHLS.”

¹⁹⁸ Agreed by Mr Johnson in XX.

¹⁹⁹ See CD6.2 ep40: ““Where significant harm to existing woodland and important trees and hedgerows cannot be avoided, **it should be adequately mitigated for, or, as a last resort, compensated for.**”

²⁰⁰ See Mr Collins' proof at pp. 36-37 “Despite the inclusion of policy DM11 in Reason for Refusal 1, the Proposal is considered to adhere to this policy. At the masterplanning stage, full account has been paid to the landscape and setting of the Site, including important features such as trees and hedgerows. A Landscape and Visual Assessment has also been carried out (included within chapter 10 of the ES) and the proposal has been designed to minimise impact on the landscape (see also the evidence of Mr Smith). Indeed, significant enhancements to woodland is proposed. Some of the trees to the west of the Appeal Site are subject to Tree Protection Orders (TPOs) as per the made TPO 20/24 on 14th February 2025 (NID 3.10). These will be preserved where possible, although some will need to be removed to facilitate the site access. This will be mitigated through the planting across the proposals. Two trees (tree 101 and 103) along Midhurst Road were removed by SCC due to highways safety implications. Appendix 3 to Mr Smith's PoE reflects this change. Through the management of the Site which can be secured through the S106, the loss of trees on the Site can be minimised. In design terms, it is noted that the development area has been confined to the three fields which are afforded good visual enclosure, and which are already visually influenced by the urban edge of Haslemere. In addition, development is in areas which minimise tree loss and avoid RPAs. Furthermore, maximum parameter heights of the buildings within the main development area are lower than the adjacent trees which provide screening to views from the SDNP.”

²⁰¹ NID8.5 shows the tree removals updated to take account of the two trees removed by the County Council.

and (ii) Mr Petrow, in XX, accepted the figures on new tree planting across the site.²⁰²

(2) DM15 is alleged to be breached by WBC but, as Mr Johnson agreed, this is only partially and in terms which overlap with RE1:

(a) The land is not in significant agricultural use and has been referred to as paddocks, so there is no conflict with criterion c)²⁰³.

(b) The site (being sustainable) will not be isolated so as to breach criterion a).

(c) The remaining criterion b) is strongly associated with RE1 and, like that policy, is breached but in a manner which is agreed to be inevitable harm from any development to meet needs. However, in terms of the detail of the criterion, it will achieve an improved urban edge to Haslemere and Mr Johnson accepted there is no issue regarding efficient use of land.²⁰⁴

81. On the HNP, only one policy is alleged in the reasons for refusal to be breached in the reason for refusal: H9 on trees. All other policies listed as relevant²⁰⁵ are supportive of the Appeal Scheme and complied with:²⁰⁶

(1) When questioned as to which part of H9 was breached, Mr Petrow accepted it was H9.2 which requires development proposals to “*avoid damage to or loss of mature or semi-mature trees of value other than in exceptional circumstances*”. As the underlined text indicates, the question is whether the trees are of

²⁰² So by reference to Mr Smith’s proof pp. 21 – 22: Figure 37 (76 new trees); Figure 38 (89 new trees); Figure 39 (14 new trees); Figure 40 (100 plus new trees); Figure 41 (24 new trees and a considerable amount of new scrub planting) and Figure 42 (63 new trees). That is in total over 366 new trees. And this leaves out of account the very extensive advance planting already undertaken on the Appeal Site.

²⁰³ It is recognised that there is some 4.4ha of BMV on the site. See Mr Collins’ first rebuttal Appendix 4. Mr Collins explained why there is no breach.

²⁰⁴ Mr Collins proof at pg 38 says “*This policy was included in Reason for Refusal 1. The Appeal Site is by definition, outside (though adjacent) to the settlement boundary of Haslemere. On the basis of the 5YHLS and absence of sufficient alternatives to 2032 (including within the existing settlement boundary), the Appeal Proposal accords with policy SP2, as the Site is ‘at’ Haslemere in a sustainable location. Reduced weight should be applied to DM15, on the basis of the absence of a 5YHLS.*”

²⁰⁵ CD5.3d at 3.24.

²⁰⁶ Mr Johnson accepted this in XX.

value. As we have explained and the relevant witnesses agreed the overall level of replacement tree planting will far outweigh any losses. Moreover, if the EC test is met under para. 190 of the NPPF it is impossible to suggest that the test in H9 is not also met.

- (2) H1 was not raised in the reasons for refusal²⁰⁷ and, when discussed by officers in the committee report, their advice was, “Policy H1.3 of the Haslemere Neighbourhood Plan outlines that development outside the settlement boundaries will only be supported which otherwise conform with national and local planning policies”.²⁰⁸ Mr Johnson and Mr Collins agreed that Policy H1.3 is qualified by reference to other national policies – so would be met if EC are shown. It is also relevant to note that the Old Grove, National Trust and Royal School allocations in LPP2 are outside of the HNP settlement boundary – further evidence that the boundary does not represent the limits of sustainable development at Haslemere.

82. To summarise the overall position reached, the underlying reason why a conclusion of EC would lead to a conclusion of compliance with the development plan is that (i) a very wide range of development plan policies actually provide support to the Appeal Scheme and (ii) of those that are alleged to be breached by it, the key policy is RE3 – the policy which protects the NL and which provides that national policy tests (which include the EC test) shall be applied. If the EC test is met, then the core objection raised by WBC has been overcome and, notwithstanding the potential for some limited conflict with less central policies, the basic thrust of the development plan can be said to be supportive. In particular, SP2, which sets out the spatial vision, recognises that it will be necessary to allow expansion of settlements via the development of suitable sites at the edge of the main settlements – and that the Appeal Site is

²⁰⁷ Note CD5.1 - 3.9. “Article 35(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 provides “when the local planning authority give notice of a decision or determination on an application for planning permission or for approval of reserved matters... (b) where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision”.

²⁰⁸ CD4.2 ep14

both (i) sustainable and (ii) located at the edge of a main settlement where no preferable alternatives have been evidenced to exist.

EC test

83. The sustainability and design quality of the Appeal Scheme is another point worth making before we turn to the EC test criteria. The location is agreed to be sustainable²⁰⁹ but the Appellant has gone beyond this. The Appellant intends that the dwellings should be built to Passivhaus standard and a condition²¹⁰ is suggested which will require a sustainability and energy statement to be approved in accordance with the statement before the inquiry²¹¹. This is understood to be the first time that Passivhaus has been achieved on a scheme of this size using traditional architectural styles, designed by architects of noted standing.²¹² Further, as already mentioned, the design work set out in the DAS and DAS addendum are, we would submit, exemplary and – as a mark of the Appellant’s commitment to ensuring that this quality is carried through into reserved matters and final design – it has committed to a design code (to be drafted with regard to the DAS and DAS Addendum) to be approved under draft condition 5. This is a much more extensive and comprehensive condition than that before Inspector Bristow.
84. The Appeal Scheme is therefore best practice for a scheme of its kind. While this will not on its own establish EC, it is, we submit an important starting point to that end.

a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;

85. Turning to the particular sub-paragraphs, para. 190(a) has two elements: (i) the need for development (including any national considerations) and (ii) the impact of permitting it on the local economy.

²⁰⁹ See DAS pg 17, 29 and 37. Discussed by Mr Collins in his EiC.

²¹⁰ Condition 30 in ID5.30.

²¹¹ See CD2.39.

²¹² Pullan in EiC.

86. We start with **need**.
87. “Need for the development” in 190(a) must mean the same as “need for it” in 190(b). So the decision-maker, in a case such as the present, is directed to looking at the scope for meeting housing need outside the designated area. How you go about examining that is the matter of judgement, but that is distinct from deciding that the “need for the development” is here no more than a “need for 111 homes”. It is also an area where the duty of consistency of approach between different inspectors/the Secretary of State would apply.²¹³
88. We rely on there being a national, borough, and local need for market and affordable housing. At a supra-borough level, the AONB Management Plan also recognises that declining affordability, including a lack of social housing, is a “major issue” facing the SHNL.²¹⁴
89. Nationally, there is an acute need. Indeed the Secretary of State has said “[w]e are in the middle of the most acute housing crisis in living memory. Home ownership is out of reach for too many; the shortage of houses drives high rents; and too many are left without access to a safe and secure home.”²¹⁵ This has been given particular focus by the Government’s commitment to build 1.5 million homes during the current Parliament – that is by 2029²¹⁶ and by the changes made to the NPPF.²¹⁷ The imperative to boost the supply of housing nationally has never been stronger.
90. Although Mr Johnson sought to distinguish what is relevant under 190(a) (“need for the development”) from what is relevant under 190(b) (“need for it”) that is simply unworkable and has no foundation in the language of the policy: plainly both refer to the relevant need which the development either meets or contributes to meeting.

²¹³ As per *North Wiltshire v SSE* (1993) 65 P&CR 137, NID7.36

²¹⁴ CD7.9. See the text to section 2.11 and policies P4, CE3.

²¹⁵ See NID7.1

²¹⁶ See Mr Collins’ proof App 2 at pars 1.8 – 1.12 and see NID7.1 – 7.8.

²¹⁷ See above.

91. At borough level, it is common ground that there is no 5YHLS. The housing land supply position has deteriorated very significantly since the last inquiry. Whereas WBC originally contended²¹⁸ for 4.1 years of HLS, a shortfall of 629 dwellings over the 5 year period, the agreed position is now only 1.28 years, a shortfall of 5,777 homes across the period 2024-29,²¹⁹ with no interim plan to assist housing delivery. Indeed, everything is being left to the Local Plan review, which is many years off.
92. This reflects not just a substantial increase in the housing demand now identified by the revised standard method for the borough; it also stems from a continuing and persistent failure by WBC to take meaningful steps to address the problem in either the short, medium or long term.²²⁰ Supply has fallen in absolute terms as well as relative²²¹. It is clear from the evidence that WBC has had no 5YLS since at least 2015.²²² Moreover, with average house prices at 17 times average incomes, Waverley is the least affordable place to live in the South East. Local house prices are simply beyond the reach of normal working local people to such an extent that home ownership is not even a pipe dream. House prices also have an impact on open market rents, which likewise are out of reach.
93. This is significantly worse position than that found in either the Sonning Common or Turnden decisions (even at the stage of the Inspector's report, noting that there was actually a 5 year supply by the time of the Secretary of State's decision) and worse even than the ranges of housing need found in the

²¹⁸ See CD 5.3f ep9.

²¹⁹ NID 4.1 elec pg 9.

²²⁰ See Collins' proof at 4.20, 8.36 and 14.4.

²²¹ NID 4.1 identifies agreed supply of 1,998 dwellings. This is down from a range of 2,936-2,228 as argued at the last inquiry (CD5.3f). The case put in XX by Mr Cosgrove KC, is that WBC will seek to adopt a very much constrained housing requirement in any new Plan, rather than seeking to meet its acute needs. This approach ignores the fundamental shift in Government policy since July 2024. The requirement – see para. 61 of the NPPF, is now meet as much of the need as possible. This must require, at the very least, exploring all greenfield capacity as far as is possible, not simply putting up the shutters because development may cause a small incursion into a protected landscape on the edge of a settlement. This is especially so given that the NL is about to increase in size by over 100 sq m. The Government has made plain that areas suffering acute affordability must be boosted in terms of housing delivery.

²²² CD11.5, see the Sturt Farm OR and see Mr Neame's technical report.

Great Missenden and Oakley decisions. Mr Collins was right to describe the position as “acute” and “critical”.

94. The starkness of the 5YHLS position is given further context by the five trajectories prepared by Mr Neame²²³ and discussed by Mr Collins. These show that against the current plan period (which runs for another seven years) WBC are not just failing to meet the needs set for them by the new standard methodology but are also failing to meet (i) the constrained requirement figures set in the LPP1 itself²²⁴ and (ii) the requirements set by the April 2014 based standard method.
95. So, in a scenario where the assumed requirement is the LPP1 minimum housing requirement²²⁵, the shortfall will be:
 - (1) -1,695 dwellings under Scenario 1 (where all sources of planned for supply are anticipated to come forwards including an allowance for Dunsfold Park);²²⁶
 - (2) -2,025 dwellings if Dunsfold is excluded (Scenario 2); and
 - (3) -769 dwellings even if all other potential sources of supply are assumed to come forwards (Scenario 3). A highly unlikely scenario but nonetheless included for completeness.
96. If the 2024 standard method is applied the same figures, as is logical, these increase to
 - (1) -2,784 (Scenario 1);
 - (2) -3,114 (Scenario 2); and
 - (3) -1,858 (Scenario 3).

²²³ See Section 7

²²⁴ See Mr Neame’s technical report at para. 7.7 “For the Inspector’s information if only the LPP1 minimum housing requirement is applied to this trajectory there remains a shortfall of – 1,695 dwellings.”

²²⁵ Mr Collins’ Appendix 3 see section 7 from pg 19 onwards..

²²⁶ See Mr Neame’s technical report at para 7.7, set out above.

97. Applying the new standard method for the last six years, the deficit rises to - 8,026 even with all other potential sources of supply included.
98. Mr Cosgrove KC made the reasonable point that none of these trajectories have the same status as the 5YHLS, which is something LPAs are required to maintain. However, this should not detract or distract from what the data shows: the depth and breadth of the housing supply crisis in WBC, and the extent to which this is a failure of past plan-making as much as the rise in the standard methodology. What the trajectories do highlight is the abject failure of the single most important allocation in the Local Plan namely the Dunsfold Aerodrome. The allocation of 2,600 houses was fundamental and the LPP1 Inspector in approving the Plan expected Dunsfold to be delivering housing from 2019.²²⁷ This is the first appeal since LPP1 was adopted in which WBC has conceded no supply whatsoever from Dunsfold for the purposes of the 5 YLS calculations. This is a particularly important concession, the LPP1 Inspector said that *“without a substantial allocation at Dunsfold Aerodrome, more greenfield housing sites would need to be identified, especially at the main towns”*.²²⁸ The situation with Dunsfold is undermining the extant Local Plan and is a major factor in driving WBC to decide on a full Local Plan review in July 2023. This must be an important and weighty matter in terms of the EC case on this appeal.
99. As we said in opening, the size of the overall housing shortfall position is only matched by scale of need for affordable housing shown in the data produced by Tetlow King.²²⁹ On their (apparently unchallenged) figures there is now a need for 770 affordable homes per annum across the period 2020/21-2033/32, about

²²⁷ See LPP1 at elec pg 103. The trajectory expected Dunsfold to have already delivered 1,044 new homes and to be delivering 257 per annum from 2025-2026 onwards.

²²⁸ CD7.57 at para. 78. The Inspector also says in the same paragraph *“[t]he Dunsfold Aerodrome allocation is therefore essential not only to relieve pressure on greenfield land but to ensure the delivery of sufficient housing to meet Waverley’s needs”*. This paragraph is in a section entitled *“The importance of Dunsfold Aerodrome to the overall spatial strategy and to housing delivery”*. The Inspector at para. 80 said that without Dunsfold coming forward there might well have to be development in the AONB around Haslemere. Para. 93 says *“[i]n conclusion, the allocation at Dunsfold Aerodrome is a key part of the sustainable growth strategy for the Borough”*.

²²⁹ Appendix 2 to Mr Collins’ proof.

50% of the overall housing need figure set by the standard method. In Haslemere itself, the figure is 118 affordable homes per year.

100. Mr Johnson's only answer to this (and Mr Cosgrove KC's in XX) was that the level of need is so high that no one could realistically expect it to be met in full, and that ultimately WBC could set a constrained housing requirement well-below its full OAN. This is an extremely poor argument. The scale of the deficit speaks to the cogency of the need and the weight that should be given to it. The fact that it cannot be met in full is simply a reflection of how bad things are. And again this ignores the revised wording in para. 61 of the NPPF which requires that authorities seek to meet their needs as far as possible.
101. Allied to this, WBC sought to maintain a line throughout the inquiry that full weight should (in some sense) not be given to the extent of the 5YHLS deficit because due to the constraints upon the Borough there is simply no possibility of WBC actually having to meet its needs through any local plan process.
102. While it is true that a Local Plan inspector could accept a lower housing requirement in Waverley, WBC's suggestion that this somehow reduces the requirement to look extremely hard at whether the Appeal Scheme before you is acceptable, or reduces the weight to be given to the provision of much needed housing, looks at the problem from the wrong end of the telescope:
 - (1) The need figures established by the standard method are the definitive figures for LHN. They reflect real world pressures and needs as well as the Government's targets for this borough as part of the overall drive to boost supply.²³⁰ Irrespective of what WBC may contend for at the Local Plan Review examination - in terms of a constrained housing requirement - not only is that debate many years away and hence largely conjecture as to its outcome, but the actual directive from national policy is also to assess the

²³⁰ Moreover, for the purposes of calculating the 5YLS, of course, with LPP1 more than 5 years old and no new Plan in place it is the full OAN and not a constrained figure as set in an uptodate Plan that must be used.

appeal proposals against the 5 year HLS position based on the standard method.

- (2) A situation of high constraint (which we agree applies in Waverley)²³¹ may indeed show that the Borough is unlikely to meet all its needs.
- (3) But failing to meet the needs does not reduce the need nor negate the requirement to try and look for more sites; it increases them.²³²
- (4) In particular, EC will be required to depart from the standard method and in practice, WBC will need to show that they have looked very hard at all options to meet need - including sites in the SHNL which are lower performing or have lower susceptibility, or where particular benefits can be unlocked.
- (5) Repeatedly at this inquiry WBC came back to paragraph: 041 Reference ID: 8-041-20190721 of the PPG²³³ and *Hunston v SSCLG*²³⁴. This very much

²³¹ See Mr Collins' proof at para. 6.46:

"Borough-wide constraints: I first outline the constrained nature of Waverley Borough, which is 92% rural, of which 61% is Green Belt, and 77% either NL and/or AGLV (Mr Smith notes the area is highly constrained). Geographically, and generally speaking, the only undesignated land is either within the four principal settlements, nearby (to the south east) of Milford and Witley, or on land around Cranleigh /Dunsfold. There is now limited known capacity for further development at Farnham and Godalming, and Cranleigh has present waste water capacity issues. This highlights the complexities associated with bringing forward sustainable development at locations such as Haslemere, a sustainable area for growth in the spatial strategy (in the top tier). Put bluntly, there are very few 'easy' sites left for development in the Borough - all in the context of the proposed expansion of the Surrey Hills NL."

²³² The Appeal Scheme prove that there is likely to be capacity within NL's to address housing needs where harms can be mitigated, bearing in mind that the SHNL boundaries were established in 1958 and had little regard then to the housing needs of the 2020's. Some expansion of settlements within/adjacent to NLs is thus possible without undermining the purposes of the designation.

²³³ NID13.17 "*The National Planning Policy Framework makes clear that the scale and extent of development in these areas should be limited, in view of the importance of conserving and enhancing their landscapes and scenic beauty. Its policies for protecting these areas may mean that it is not possible to meet objectively assessed needs for development in full through the plan-making process, and they are unlikely to be suitable areas for accommodating unmet needs from adjoining (non-designated) areas. Effective joint working between planning authorities covering designated and adjoining areas, through the preparation and maintenance of statements of common ground, is particularly important in helping to identify how housing and other needs can best be accommodated.*". Mr Collins, in XX, was wrongly accused of disregarding this part of the PPG in his proof, but that is not correct, see his proof at para. 4.33 and see also his App. 10 in response to Inspector Bristow's decision at para. 166.

²³⁴ See NID7.33. Inspector Bristow referred to this in fn 111 of his quashed decision (see NID3.8) in the context of referring to delivery and affordability remaining "*a stubborn and multi-faceted issue*". Mr Johnson's proof similarly seeks to rely on this case, see para. 7.1 which says "*[i]t is likely in the future a planning judgment is to be made on the weight given to housing need as it may be unrealistic to deliver all of the*

follows on from the position advanced by the Leader in his letter to the Secretary of State on 19 September 2024.²³⁵ That was given short shrift by the Secretary of State who increased the need figure for WBC further.

- (6) There are many constraints in Waverley but its situation is hardly unique. If all such authorities take the same approach the Government can forget about its 1.5 million homes target.

103. There are two points that lie at the heart of WBC's case at this inquiry that must be disposed of:

- (1) **That there has in some way in the new policy context been an increasing of the protection of NLs.** The new statutory duty is considered above but what is important to note is that s. 245 of LURA received Royal Assent in October 2023 and came into force in December 2023. Despite this neither the NPPF (2023) nor the NPPF (2024) made any change to what are now paras. 189 and 190 of the NPPF.²³⁶ This can only be because the Government take the view that compliance with these paragraphs of the NPPF will ensure compliance with the new statutory duty as well. Further, this context is unchanged from that which applied when Inspector Bristow made his decision. There has been published since the DEFRA guidance, and this has been considered above, but it provides no support for WBC's case. As a result WBC said very little about this guidance²³⁷ in its evidence and instead

*affordable housing need through the emerging Local Plan. The importance of understanding this in reaching the planning balance is reflected in the judgment in **Hunston Properties Ltd v SoS** [2013] EWCA Civ 1610 (see Appendix 3)". He quotes from para. 6 of the judgment where the Court of Appeal said, "[i]t seems clear, and is not in dispute in this appeal, that such a Local Plan could properly fall short of meeting the "full objectively assessed needs" for housing in its area because of the conflict which would otherwise arise with policies on the Green Belt or indeed on other designations hostile to development, such as those on Areas of Outstanding Natural Beauty or National Parks...". **Hunston** was considered in the more recent decision in **Compton** (see above) and which is the more pertinent authority in this context of an application relying on para. 190 of the NPPF.*

²³⁵ See NID 7.18. The letter states that "*the standard method therefore does not provide a credible basis for preparing our new Local Plan*" and it states that "*[t]he level of growth required to meet the standard method assessment of need is simply unachievable in a Borough*".

²³⁶ For example, the Government could have carved out NL from the para 11d change in the presumption from 'clear' to 'strong,' if, as WBC suggests the Government is only encouraging brownfield and grey belt land to provide interim land supply solutions pending local plan updates. Plainly para 190 remains available to support major development in NLs where the EC test is met.

²³⁷ See Mr Johnson's proof at para. 8.7 and his answers in XX. Mr Petrow does not even mention it.

focussed on a revision to the PPG in January 2025. But paragraph: 039 Reference ID: 8-039-20250129²³⁸ does nothing, save for providing a summary of the new statutory provision and referring readers to the DEFRA guidance.

(2) **That the Government’s drive to build 1.5 million new homes is to be delivered very largely via development on brownfield land and on grey belt:** this argument lies very much at the heart of WBC’s case before this inquiry.²³⁹ This is, however, all smoke and mirrors. So,

(a) There is nothing new in Government policy about encouraging the use of brownfield land. But there is in Surrey generally, and Waverley in particular, very little such land. This was clear from the LPP1 and LPP2 processes.²⁴⁰ Any strengthening of brownfield policy offers little assistance where there is, as here, an absence any material supply.

(b) In terms of grey belt, WBC’s own view is that, that the scope for building on grey belt land would be “*limited in Waverley*”²⁴¹. Indeed it is notable that despite Mr Cosgrove KC referring to there being new appeal decisions and local consents for grey belt every day since December 2024 there have been none in Waverley.²⁴² Moreover, as explored below nothing whatsoever has been done by WBC to advance the position on grey belt e.g. by commissioning a Green Belt review or re-opening its call for sites. The plan in NID13.25 further evidences the very limited grey belt potential in Waverley, and reinforces WBC’s position of limited capacity.

104. So, the need for more housing in the Borough is acute.

²³⁸ NID13.17

²³⁹ See Mr Johnson’s proof at section 7 and para. 9.4 and his EinC and answers in XX.

²⁴⁰ See Mr Collins’ EiC.

²⁴¹ See Mr Collins’ proof at para. 4.45, his EinC and NID 7.31 and NID13.25.

²⁴² See Mr Johnson’s answers in XX.

105. The same, or perhaps even a more profound, depth of need can be found at town level. Mr Collins' evidence is clear that not even the constrained 990 figure for Haslemere will be delivered. Haslemere is one of the most sustainable sites in the Borough but also has one of the worst affordability issues. Tetlow King again identify a level of need for affordable housing which it would be very difficult indeed to meet: 118 homes per annum 2021/21-2031/32.²⁴³ It should be inconceivable that any new Local Plan will not try and meet at least some significant portion of need at Haslemere and the experience of the LPP2 already shows that this is likely to need to use SHNL land.
106. Taking all of that into account, it should not be seriously disputed that the provision of market and affordable housing, including self-build, is a benefit of the highest order. This was accepted at the last inquiry, but here Mr Johnson maintained (without much in the way of reasoning) that the weight to be ascribed was no more than significant. Mr Collins described them both as substantial and has referred to the relevant appeal decisions to support his view. On affordable housing, it is to be noted that the Appeal Scheme secures provision at 35%, in excess of policy, and makes a further financial contribution towards off-site affordable housing in Haslemere/Hindhead. This should give it further weight.
107. WBC put significant emphasis on their compliance with the HDT. However, as Mr Collins explained the HDT figure looks backwards²⁴⁴ and as we know the period between 2019 - 2023 was affected by COVID and consequently adjustments were made by Government to the calculation during that time. Further, HDT is not representative of the current housing need, which has changed dramatically with the new standard method calculation of LHN. The HDT performance figures for the past are therefore of little or no relevance now other than for the purposes of informing the buffer % that is currently to be applied to the 5-year HLS calculation; and as noted above from July next year

²⁴³ Collins Appendix 2 at 3.15. The figure is drawn from the 2021 Waverley Housing Affordability Study.

²⁴⁴ CD8.1 para 79 page 22

the buffer will become 20% in Waverley²⁴⁵ The HDT scores in this Borough will very imminently fall off a cliff.

108. Mr Johnson did acknowledge that additional significant weight should be given to the provision of strategic SANG, due to its ability to deliver other allocated housing sites in and around Haslemere. This, he explained in XX, is based solely on the detailed application which includes provision for nearly 10ha, which will not only mitigate the impacts of the Appeal Scheme on the Wealden Heath Phase II SPA but will also allow another 343 dwellings to come forward. However, the Appellant has now committed to bringing forwards an increased 12ha SANG by including part of the parkland area. As Mr Collins explained, this can be done within the para. meters of the consent applied for and there is already in principle agreement on this from NE²⁴⁶. The detail of this will be designed and approved as part of the reserved matters application but NE's agreement shows that once built the Appeal Scheme's SANG will be able to mitigate the impacts of 464 dwellings and be able to do so over a larger distance (up to 4km from the Appeal Site).²⁴⁷ This will enable the Appeal Site to mitigate all of Haslemere's LPP2 allocations, not just the town centre sites, including the Royal School²⁴⁸ and the Old Grove²⁴⁹. It also adds a degree of future proofing for the Local Plan Review, providing immediate capacity for any further housing allocations for Haslemere, ensuring the town can continue to perform its housing function as a main settlement.

²⁴⁵ See para. 78 (c) of the NPPF (and Mr Johnson's answers in XX):

"Maintaining supply and delivery

78. ...

c) From 1 July 2026, for the purposes of decision-making only, 20% where a local planning authority has a housing requirement adopted in the last five years Framework, examined against a previous version of this and whose annual requirement average housing is 80% or less of the most up to date local housing need figure calculated using the standard method set out in national planning practice guidance."

²⁴⁶ See Mr Kite's statement at Appendix 1 to Mr Jack's proof.

²⁴⁷ See Mr Kite's Maps 1 and 2.

²⁴⁸ Allocation DS 06 for approximately 90 dwellings.

²⁴⁹ Allocation DS 08 for 40 dwellings.

109. While Mr Cosgrove KC in XX pointed out that most of the sites under the LPP2 fall below the 49 unit threshold for a SANG requirement under LPP2, this does not answer the point that:

- (1) An approach which simply assumes that development below 20 units will not have any adverse recreational impacts is legally dubious to say the least;
- (2) But even according to LPP2 sites between 20-49 units will still have to have mitigation which this SANG could solve ;
- (3) Moreover, it is highly doubtful whether an approach that allows the salami-slicing of development sites is in fact lawful given the close clustering of a number of allocated sites²⁵⁰, including in Haslemere, and their in-combination effect on recreational pressures²⁵¹; and;
- (4) There is simply no real prospect of any other mitigation solution being found in the next few years. In particular, NE have confirmed that they are not aware of any other SANGs coming forwards – although WBC have acknowledged this need by calling for sites.

110. WBC also failed to recognise the important point that SANG would be sold on a regulated basis and will match the current rate for the WBC owned Farnham Park SANG²⁵². This is far below the likely market value (and certainly well below comparable rates at nearby Hart and Rushmoor borough council schemes as detailed in Mr Collins proof) and confirms the substantial benefits arising. SANG management will be secured by an endowment, enabling a management company to maintain the land in perpetuity (125 years). The endowment is calculated on the basis of no contribution from off-site units. In practice, any SANG credits which are sold will simply go to reimburse the developer for (some of) the costs of delivery.

²⁵⁰ Individually providing less than 20 or 49 units, as the case may be, but cumulatively providing more than this.

²⁵¹ See comments of Mr Kite on this, based on his experience with NE elsewhere.

²⁵² See Schedule 3 of the s.106.

111. Other aspects of the Appeal Scheme, in particular the Scouts Hut and Forest School (see further below) are also needed facilities. While either *could* potentially be developed outside of the SHNL (unlike housing as per below) they are different in kind to the housing because Mr Petrow and Mr Smith agreed they are actually beneficial elements in their own landscape terms – providing as they do, not only high-quality appropriate design but also landscape enhancements in terms of recreational access and enjoyment. They are exactly the kinds of facilities which the SHNL and National Park need to fulfil their statutory functions as valuable landscape resources.
112. As to **local economic benefits**, the second limb of NPPF 190(a), the position has been set out by Mr Collins’ proof (Appendix 1) and is not challenged.
113. It is evident, as accepted by the Officer’s Report²⁵³, that due weight should be provided to the contribution in respect of on-site jobs, net additional jobs supported off-site, £1.7 million per annum Gross Value Added, increase in local residential expenditure, alongside circa £4.8m in CIL receipts with a range of other increased taxation benefits.
114. In Mr Cosgrove KC’s XX of Mr Collins, and also in Mr Johnson’s EiC, there was some suggestion that this part of para. 190(a) requires only consideration of whether refusing a scheme would have negative economic effects. However, it plainly extends to consideration of positive economic benefits.²⁵⁴

²⁵³ CD4.2.

²⁵⁴ See the Oakley decision (NID9.44) at para. 111 “*[a]lthough the Council has argued that the development has the potential to harm tourism and cause economic harm on the basis it would impact on the AONB and the setting of Cheltenham, there is no substantive evidence to support this view. Rather, I consider it would boost the local economy, creating investment in the locality and increasing spending in local shops and services. It would create jobs and investment during the construction phase, albeit for a temporary period. A summary of the headline economic benefits was set out by the appellant which was not disputed by the Council*”. See also the Sonning Common decision (CD9.25) at para. 113 “*I do not consider the impact of refusing the proposed development would be seriously damaging to the local economy, there is no clear evidence to that effect. There is no requirement that has to be demonstrated. However, I do accept that the proposal would deliver economic benefits to the local economy and jobs as well.*”

b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way;

115. We turn to the scope for alternatives. This was something discussed in some detail at the inquiry.

116. The Court of Appeal's decision in the *Wealden* case²⁵⁵ has laid down the following principles, which it is submitted, are applicable in considering para. 190(b) of the NPPF:

- (1) While NPPF 190(b) of the NPPF, does not refer specifically to alternative sites, in many cases this will involve the consideration of alternative sites;
- (2) The main focus of NPPF 190(b) is on alternatives "*outside the designated area*", so that means here outside of the SHNL. However, para. 190(b) does also require some consideration of "*meeting the need for it in some other way*" and that could include consideration of alternative sites within the NL. We will return to this below.
- (3) The NPPF does not seek to prescribe for the decision-maker how alternative sites are to be considered under NPPF 190(b), in particular it does not say that this exercise must relate to the whole of a local planning authority's administrative area, or to an area larger or smaller than that. There is thus a considerable discretion accorded to a decision-maker as regards the extent to which alternatives are considered. Thus, where there is, for example, a local need for housing in a particular town the search for alternatives can properly be limited to that town – which was the very approach taken by WBC in considering para. 190(b) when granting permission for the Sturt Farm development.²⁵⁶
- (4) The approach to what is an alternative for the purposes of para. 190(b) will be highly dependent on the nature of what is proposed and the need it is seeking to meet. So, to take an example, if one were considering a new

²⁵⁵ See CD10.1.

²⁵⁶ CD11.5.

sewage treatment works or a power station the need in issue could potentially be met by any other single site in the area to be served which was large enough to accommodate the proposed works. However, where the need is for housing the position is different. This is made clear by the Court of Appeal in *Wealden*. Thus at [62] the Court of Appeal said that in understanding what is now para. 190(b) of the NPPF “[o]ne must start with the words of the policy itself, read properly in context ... The context here includes the familiar and important policies of the NPPF directed to the identification and meeting of housing needs. The policy in paragraph [190] of the NPPF is a policy for development control. It applies to development of all kinds. Where the proposal in question is a proposal for housing development, it must be read together with the policies for housing need and supply in paragraphs 47 and 49 of the NPPF. The inspector was clearly well aware of those policies, and their importance”. There are two points to be made on this: (i) what were paras. 47 and 49 of the NPPF are now paras. 61 and 78 which mandate the boosting of housing supply and the maintenance of a 5 YLS; and (ii) this analysis of the position by the Court of Appeal is not, as Mr Cosgrove KC would lead you to believe, in some way fact specific to the Steel Cross development proposed in the *Wealden* case. It is an analysis applicable generally to where the need in issue is for housing and is based on a close examination of the housing policies in the NPPF. Moreover, in light of this the Court of Appeal held that the Inspector in that case had not erred in failing to adequately assess “alternative sites for the proposed development”.²⁵⁷ The Inspector had said in that case “ ... there is a lack of housing land to meet the full OAN ... The existence of other sites, which collectively still fall short of the full OAN, does not amount to an alternative and there are no plans ...”.²⁵⁸ This was upheld by the Court of Appeal which said:

“65. ... Nor is there now any challenge to his conclusions on housing need – that, both in Crowborough and in the district as a whole, there was a need for additional housing

²⁵⁷ See paras. 58 and 61 of the judgment.

²⁵⁸ See para. 56 of the judgment quoting from para. 89 of the Inspector’s decision letter.

and additional affordable housing, an identified planning need which the proposed development would help to meet (paragraph 83) ...

66. The relevant need in this case was not for a particular kind of development such as a new supermarket, school or sewage treatment works, for which only a very small number of potential sites might be available or suitable. It was a general need or housing and affordable housing. But because most of the district was within the AONB, there were few alternative sites suitable for housing development that were "not equally constrained" (paragraph 89 of the decision letter) – that is, in the language of the second bullet point in paragraph 116 of the NPPF, few such sites "outside the designated area". This was a matter of fact, as found by the inspector. His conclusion that there was "a lack of housing land to meet the full [objectively assessed need]" was not limited to Crowborough; it was explicitly a conclusion on the basis of a "search for alternative sites taken wider than Crowborough". He was not satisfied that such other sites as were available for housing development in the district would be sufficient to meet the need, or that the shortfall would be made up by development elsewhere. This was a matter of planning judgment for him. He also found that those other sites would "collectively still fall short of the full [objectively assessed need]", so they "[did] not amount to an alternative". This too was a matter of planning judgment ...

68. I do not think the policy in paragraph 116 of the NPPF obliged the inspector to deal in his decision letter with every potential site for housing in the district, one by one ... The decisive consideration was, clearly, the remaining need for market and affordable housing both in Crowborough and in the district as a whole"

- (5) This very same approach was taken by the Inspector in the Turnden case. Thus at para. 802 he referred to the evidence base for the emerging Local Plan and said that this work "*shows, conceptually at least, that there are very likely to be other sites in the Borough where housing of the scale and type here proposed might be delivered. However, as the proposed housing allocation sites in the eLP are all needed to meet the OAN as it currently stands, they cannot be considered to be alternatives to the application site*".²⁵⁹

²⁵⁹ It is clear from this that Inspector Jones considered himself bound to take that approach "*as the proposed housing allocation sites in the eLP are all needed to meet the OAN as it currently stands, they cannot be considered to be alternatives to the application site*" (emphasis added) rather than it being merely one that was open to him. Inspector Jones approach was, he considered directed, by the **Wealden** case: see further IR91, 97, 390, 575 ("*The applicant also states that it is important to note the existence of other sites, which collectively still fall short of the full OAN, does not amount to an alternative for these purposes*" citing in fn 310 **Wealden**), 584(iv), 587, 588 ("*... The applicant states, however, that that is contrary to the approach taken by the Inspector in the Wealden case and upheld by the Court of Appeal. On that basis the applicant maintains that this is not a search for a single possible alternative site for the proposed development but rather for sufficient sites to meet the OAN, and as the sites in the eLP are all needed to meet the OAN, they are not alternatives*") and 648 (iii) ("*There are no proposed ways to meet this need through alternative sites. 70% of the Borough is within the HWAONB, so sustainable options for meeting the agreed housing need, both locally and Borough-wide, are limited. Adjacent boroughs are struggling to meet their own need*"). See also IR806, 807 and 810 ("*There is, therefore, a very compelling case for the need for development of this type and in Cranbrook. Given the absence of evidence to support the existence of realistic genuine alternatives, it is also reasonable to conclude*

117. So, to be clear the Appellant's position is that where the need in issue is for housing then if all of the alternatives taken collectively still fall short of the full OAN, then this does not amount to an alternative and there is no need for a decision-maker to consider in any more detail the individual alternative sites.

118. If this is the correct approach, and it very clearly is, then there is in this case no alternative for the purposes of para. 190(b). This is because, as is explored in more detail below, all of the possible alternatives that have been agreed for the purposes of this inquiry come nowhere near meeting the full OAN. Mr Cosgrove KC's strenuous attempts to support a different analysis of the *Wealden* and *Turnden* cases at least indicates the importance of this issue. So, WBC's position is that "[p]aragraph 190 does not require the assessment to identify sufficient sites to meet the full 5YHLs shortfall and the LPP1 housing requirement within the Plan period, only to accommodate the proposed 111 dwellings proposed".²⁶⁰

119. We turn then to look at the arguments that have been advanced by WBC in this regard²⁶¹:

- (1) The starting point is para. 190 of the NPPF. The interpretation of which is ultimately a matter of law. Para. 190(a) requires consideration of "*the need for the development, including in terms of any national considerations*". The need is not a need for 111 new homes in this Borough; it is a need for many, many thousands of new homes: see above. Further, the "*national considerations*" in play where housing is proposed are those which the Court of Appeal drew attention to in the *Wealden* case at [62], see above, namely what are now

that this particular proposed development is needed. In addition to the considerable benefits associated with delivering market and affordable housing, the proposed development would also bring a number of other benefits. NE and CPRE Kent both acknowledge that there would be benefits associated with the development, as summarised in their respective SoCG.")

²⁶⁰ See Mr Johnson's proof at para 9.10(ii). See also para. 9.11 "[f]or the purposes of criteria b), I have undertaken a narrow assessment of whether there are potential alternative sites that could be developed for 111 dwellings as stand-alone sites or in combination, and that would outperform the Site, based on planning merit alone."

²⁶¹ It should be noted that if the approach taken by the decision-maker is to focus not on need across the whole Borough or District but just in one town, as WBC did in granting permission at Sturt Farm, then the need would not be the need for housing across the Borough/District but just the need in the town concerned. But it would not be just the need for the particular number of units the subject of the proposed development.

paras. 61 and 72 of the NPPF. This only further underlines that the need is not for 111 units but for sufficient new homes to meet the acute needs in Waverley. Mr Johnson in XX, rightly accepted, that “*the need*” for the purposes of para. 190(a) was not merely a need for 111 new homes but for many thousands of new homes. As we have already said (see the discussion of para. 190(a) above) the reference in para. 190(b) to “*meeting the need for it*” must be referring to the same need as identified in para. 190(a). Accordingly, one is looking under para. 190(b) at the scope for meeting the need identified in para. 190(a) – that is to say the need for thousands of units not 111 units - outside of the designated area or in some other way. And given the many constraints in Waverley that is just not possible.

- (2) Mr Cosgrove KC’s approach is to say that all aspects of the consideration of alternatives under para. 190(b) is a matter of planning judgment for the decision-maker including in terms of what the “*need*” is. There is no denying that the case-law, including the *Wealden* case itself, supports the view that para. 190(b) is not prescriptive and allows for judgement.²⁶² But for the reasons set out above the Court of Appeal in *Wealden* went further and set out what the correct approach was to “*the need*” for the purposes of para. 190(b) where the proposed development was housing on a Borough or District wide basis. The difficulty with Mr Cosgrove KC’s approach is that it would mean that in one case a decision-maker could focus the search for alternatives for proposed housing to the number of units proposed and in others could say that the search was for sufficient alternatives to meet the full OAN. There are many issues with this: (i) what could possibly be the justification for this? Certainly none has been suggested by WBC; (ii) in other areas of this case WBC’s witnesses and advocate emphasise the importance of consistency of decision-making but here they say that this should be wholly disregarded; and (iii) to suggest that the scope of the consideration of alternatives in respect of housing need can be different

²⁶² For example, the scope of the search for alternatives need not be Borough wide but can focus on a particular town.

from case to case puts one in mind of the warning of the Courts to be wary of an approach whereby decision makers can live in the planning world of Humpty Dumpty, making a particular planning policy mean whatever a local planning authority decides that it should mean in a particular case.

- (3) There is a further practical problem with the approach advocated by WBC. For housing schemes of around 100 units²⁶³ there is nearly always going to be *an* alternative site, or combination of smaller alternative sites in the chosen search area for such development. So unless the proposal is for a very large number of new homes, say 500+, there will almost always be *an* alternative. Such sites would, of course, be unlikely to be limited in scale and harm to a NL and hence WBC's approach is to effectively nullify para. 190 as a means of delivering housing. There is no support for this approach.
- (4) Moreover, if the focus of para. 190(b) is on alternatives to the proposed development then WBC have offered no justification for why the focus should be on just the 111 units. This Appeal Scheme proposes much more than this. On 78% of the Appeal Site what is proposed is strategic SANG (for which there is a need - see below), BNG (including the availability of BNG credits), a scouts facility (for which we say there is also a need - see below), and a forest school. None of the 18 alternative sites put forward could accommodate these aspects of what is proposed. Nor would they provide management in perpetuity for a large area of the SHNL as the Appeal Scheme does.
- (5) It is telling that in two inquiries in relation to this appeal WBC has failed to refer to a single appeal decision where the approach it advocates has been taken. Mr Cosgrove KC sought to suggest that Inspector Bristow's decision provided an example of this. But: (i) that decision has been quashed (see above); (ii) it is, as Mr Collins said in XX and RX, not at all clear that this

²⁶³ This is generally the largest that a housing scheme in a NL would ever be: so Turnden 165, Sturt Farm 135, Sonning Common 113, the Appeal Scheme 111, Royal School 110 and Great Missenden 34. The exception is Oakley at 250.

was Inspector Bristow's conclusion: see Appendix 1 below. Moreover, the major development test has a long history²⁶⁴ and has been part of the NPPF since 2012. but despite this there is, even Mr Cosgrove KC is correct in his reading of Inspector Bristow's decision, only one (quashed) decision which supports such an approach to alternatives under para. 190(b) of the NPPF when housing is proposed in the SHNL.

- (6) In XX of Mr Collins it was suggested that it was significant that Inspector Bristow had approached the matter on the basis of looking for alternatives for 111 units and that: (i) this was not a ground of challenge in the s. 288 proceedings; and (ii) that this approach was in some way endorsed by the Secretary of State in those proceedings. This is totally without merit. It is correct that there was no challenge in the s. 288 proceedings on this point. But that was because it was not apparent to the Appellant, and its advisers, that Inspector Bristow had taken an approach different to that in the *Wealden* and *Turnden* cases in his decision. But the suggestion that in some way the Secretary of State in the s. 288 proceedings endorsed the approach taken on alternatives is difficult to make sense of. First, the litigation is handled not by the Secretary of State but by the GLD. Second, neither the Secretary of State nor the GLD examine decisions challenged in s. 288 proceedings to see if there are other non-pleaded flaws in the decision. That is *a fortiori* in a case like this one where the GLD intimated very early on and in response to the letter before claim that it would not contest the fairness ground and so no full pleaded case was ever made by the Secretary of State.
- (7) The Appellant submits that it is significant that the approach of the Inspector in the *Wealden* case was endorsed by the Court of Appeal and not merely as being one that was open to him to take as a matter of judgement;

²⁶⁴ See the *Wealden* case at CD10.1, this was considering the 2012 version of the NPPF. The terms of the major development test are in identical form to that now found in para. 190 of the NPPF. The origins of the major development test is the so-called Silkin test laid down in 1949 for mineral development in AONBs. In the 1990s the test was incorporated into national policy as a test for all forms of major development in AONBs and National Parks in PPG7. It was then included in PPS7 and then in the 2012 version of the NPPF.

but rather as being one mandated by consideration of the housing policies in the NPPF. It is also important that the current Secretary of State in no way dissented from the approach of Inspector Jones on this issue in the Turnden case. If, as Mr Cosgrove KC, suggests the Secretary of State did depart from this view she would have had explain why and also would have had to examine the individual alternative sites in play in that case. She did not do these things. What is, however, notable about the Secretary of State's decision in the Turnden case is that by the time of that decision the local planning authority had a sufficient 4YLS (4YLS not 5YLS as a result of the NPPF (2023)) but she still considered there was a clear need for more housing: see paras. 42 and 52.²⁶⁵

²⁶⁵ NID7.19, emphases added:

"Housing Need and Delivery

42. In reaching her conclusions on housing need and delivery, the Secretary of State has taken into the account the effect of paragraph 226 of the Framework, which means that TWBC can now demonstrate a Framework-compliant housing land supply, and the progress of the eLP since the previous decision. As a result, she considers that some elements of the Inspector's conclusions at IR801-810 in respect of housing need and delivery are now out of date. However, it is undoubtedly still the case that the ability to respond to the need for housing is heavily constrained (IR803), and on the basis of the evidence now before her, in particular the significant weight which she attaches to policy STR/CRS 1 and draft allocation AL/CRS3 of the eLP, she agrees with the Inspector at IR810 that it is reasonable to conclude that there is a compelling case for the need for development of this type and in Cranbrook. She further agrees that there are considerable benefits associated with delivering market and affordable housing (IR810). In reaching this conclusion she has taken into account paragraph 60 of the Framework which sets out the Government's objective of significantly boosting the supply of homes. The Secretary of State considers that the delivery of 165 homes (40% affordable housing) carries significant weight

...

Application of policies concerning AONB

...

52. The Secretary of State has found that that the ability to respond to the need for housing in this Borough is heavily constrained, and that this particular development is needed (paragraph 42 above) ..."

WBC's case at this inquiry has sought to suggest that the explanation for the Turnden decision is that by the time the Secretary of State granted permission the site was the subject of a draft allocation at an advanced stage. That was a consideration, as para. 42 above, makes clear but there were other considerations which are closely analogous to the position in the present case. Moreover, Inspector Jones recommended the grant of permission at a time when the draft Local Plan was at a very early stage and attracted only limited weight. Mr Cosgrove KC, in XX, taking his lead from Inspector Bristor's comments in para. 155 of his decision, suggested that all of the appeal decisions where EC for housing have been found involve draft allocations or at least positive consideration "*through some form of evidence-based site assessment [e.g. a LAA] despite not being allocated*". But this is not correct. It is not true of the Wealden case, nor Sonning Common, nor Oakley.

- (8) There is a further point. In the Sturt Farm officer report²⁶⁶ the approach taken appears, contrary to what was intimated by Mr Cosgrove KC in XX of Mr Collins²⁶⁷, to reflect that taken in the *Wealden* and *Turnden* cases, so:
- (a) In that case the focus of the search was Haslemere not the whole Borough;²⁶⁸
 - (b) The consideration of need (under what is now para. 190(a)) is focussed on the need for “*new market and affordable housing*” that “*will assist in addressing the Council’s housing land supply requirements*”²⁶⁹ and the fact that WBC did not have a 5YLS but only a 3.7 YLS.²⁷⁰ The conclusion on need was that “*there is a need for market and affordable housing in Haslemere*”.²⁷¹ The finding was not, it is submitted, confined to there being a need for the 135 units proposed.²⁷²
 - (c) On what is now para. 190(b) the officer report refers to “*the draft Waverley SHMA December 2014*” as providing evidence of housing need namely an “*unvarnished need figure ... [of] at least 512 new homes per annum for the whole Borough.*”²⁷³ The report continues that there is no figure apportioning that need to individual settlements but that there was evidence of a need for 23 affordable homes per annum in Haslemere and that the overall number of homes needed to deliver that would be even greater.²⁷⁴ The officer report then looks at a number of other possible sites applying a RAG score to each and finding there were four other sites with the same rating as Sturt Farm.²⁷⁵ It is then recorded that “[*o*]fficers are of the view that the costs

²⁶⁶ CD11.5.

²⁶⁷ Mr Cosgrove KC did not go to the officer report in XX.

²⁶⁸ PP. 63-64.

²⁶⁹ P. 62.

²⁷⁰ P. 63.

²⁷¹ P. 63.

²⁷² WBC’s evidence, oral and written, has not at any point suggested that the position is otherwise in respect of the Sturt Farm decision.

²⁷³ P. 64.

²⁷⁴ P. 64.

²⁷⁵ P. 69.

*of, and scope for, developing elsewhere outside the designated area, or meeting the specific need for housing in some other way is very limited in and around Haslemere*²⁷⁶ and that *“the application site is relatively better placed to accommodate the proposed development”*. The same can be said here, and the 110 new homes in the Appeal Scheme are far less visible than those proposed at Sturt Farm. It is noteworthy that the originally approved Sturt Farm consent was based on a new access onto Sturt Road requiring very significant engineering works and large scale impacts.

- (9) Finally, nothing in the recent *Frack Free Balcombe*²⁷⁷ case in any way changes the approach. This case did not concern housing but a proposed hydrocarbon boring operation in a NL. The Court of Appeal essentially endorsed its approach in *Wealden* (see [71]) and made clear that para. 190 does not set a series of tests that an applicant must satisfy but rather sets out matters to be considered in determining the overarching question, which is whether approval is justified by EC in the public interest (see [68] of the judgment). Importantly, in *Frack Free Balcombe* the Court of Appeal said this of the Inspector’s approach in that case:

“50. ... Crucially, in paragraph 50 he concluded that “[there] remains a significant national need for onshore hydrocarbon exploration and assessment for [a] considerable time to come”, and that “[this] weighs greatly in favour of the appeal, given also the great policy weight attributed nationally to the benefits of mineral extraction”.

...

76. As for the consideration in Policy M13(c)(i), “the need for the development”, he concluded in paragraph 50, for the reasons given in the preceding paragraphs, that there remained “a significant national need for onshore hydrocarbon exploration”, and this would be so “for [a] considerable time to come”. He found that this need “weighs greatly in favour of [the] appeal, given also the great policy weight still attributed nationally to the benefits of mineral extraction”. That conclusion cannot be criticised.

77. In accordance with Policy M13(c)(ii), he assessed “the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for the mineral in some other way”. In paragraph 51 of the decision letter he considered the “Availability and Cost of Alternatives to the Proposed Development”. His conclusions

²⁷⁶ P. 70.

²⁷⁷ NID13.26

in that paragraph were based on his recognition of the need to which he had referred in paragraph 50. This was logical, and lawful."

So while dealing with a type of development other than housing, this is a clear endorsement of the approach taken in the *Wealden* case and in Turnden. The 'need' relates to national need; and that need was not limited to the amount of hydrocarbon proposed in that case. This then dictates the consideration of alternatives.

120. The position is then in this appeal that unless the alternatives are such as to meet the full OAN there is no alternative available and para.190(b) thus supports, albeit that is not determinative of, a finding that approval is justified by EC in the public interest.
121. What then is the position as regards alternatives in this case?
122. First, the parties have agreed a list of 18 potential alternative sites Borough wide albeit the Appellant disputes whether 5 of them are in fact "*alternatives*" for this purpose²⁷⁸. If all 18 sites were considered as preferable to the Appeal Site they would yield a grand total of 822 units across the whole Borough. On Mr Johnson's analysis there is capacity for only 584 units (822 minus 220 for sites 15 - 18 which he regards as less preferable in landscape terms and so not alternatives²⁷⁹ and minus 18 for the permission granted at Old Grove)²⁸⁰. On Mr Collins' analysis (excluding sites 1, 2, 3, 4 and 6 but including sites 15 - 18) there is capacity for 659 units. Whether it is 584 or 659 this comes nowhere near meeting: (i) the current 5YLS shortfall (-5777 units); (ii) the need to the end of the LPP1 period (2032) on any of Mr Neame's 5 trajectories (and which produce a range of shortfalls against need from - 769 to - 8952 dwellings)²⁸¹; (iii) one year's need for Waverley under the new standard method namely 1,433 units; and (iv) even applying LPP1's constrained requirement of 590 per annum the predicted

²⁷⁸ See NID4.11 p.30, Mr Collin's proof Table 6.1 pp 68-69 and Mr Johnson's proof at para. 9.26.

²⁷⁹ Mr Johnson XX.

²⁸⁰ We leave aside without further comment the multiple errors in unit yields for alternative sites and arithmetical failings in Mr Johnson's proof and which were explored fully in XX.

²⁸¹ See Mr Collins' proof at App 3 at Table 6.

1,695 shortfall.²⁸² So on applying the approach to alternatives from the *Wealden* and *Turnden* cases the analysis of these alternatives need be taken no further. There are plainly not sufficient alternative sites to meet the needs of this Borough. Despite this an appendix is attached that looks further at the evidence on the 18 alternative sites: see Appendix 4 of this closing. It should be borne in mind also that the 584/659 alternative sites potential capacity is just that – the alternative sites do not have the certainty of delivery or yield and clearly many of the sites will not perform. Sir, you have full vision of the Appeal Site’s potential and can form a judgement based on the substantive detail provided, noting the many aspects that often unsettle potential sites have all been resolved for ‘phase 2,’ namely access, utilities capacity, flood/drainage, SPA mitigation, BNG and housing design parameter plans/design code. This level of confidence is absent from all the alternatives and must weigh substantially in favour of the appeal proposals. Any decision to dismiss the appeal can only be made with a clear confidence that there are viable deliverable alternatives that can urgently begin to make inroads into the dire housing crisis that the Borough finds itself in, and, sir, we can find none.

123. Second, Mr Johnson labels the above a “*narrow*” assessment of alternatives.²⁸³ But it is interesting that for the purposes of this appeal, and having agreed a methodology, both parties combined could between them produce no more possible alternative sites than 18, totalling 822 units (and both parties have discounted a number of these as not being preferable alternatives). The situation at the First Inquiry was much the same and WBC has had a further year consider options for further alternatives. WBC has failed to publish an updated LAA but it has had the responses to the call for sites for well over a year.²⁸⁴ Indeed, it should not be forgotten that the list of 18 “*includes 6 sites identified by the Council (Sites 1 – 6) and a further 12 sites identified by the appellant*”.²⁸⁵ So, notwithstanding

²⁸² Ibid. para. 7.7 and see Mr Johnson’s answers in XX.

²⁸³ See his proof at para. 9.11.

²⁸⁴ And has shared information from this with neighbourhood planning groups: NID3.3 para. 32. Requests for information from the Appellant under the EIR have been refused: *ibid.*

²⁸⁵ See Mr Johnson’s proof at para. 9.12.

the relatively recent call for sites – and all the information that WBC must hold on possible sites for development – it only managed itself to identify a grand total of 6 alternative sites (with a total theoretical capacity for 210 dwellings). And of those 5 of which are already allocated and so properly analysed are not in the alternatives at all²⁸⁶ and one of which is for 5 units and so should not be in the list given the agreed methodology for site selection. This really does serve to underline the severe shortage of suitable sites to provide housing in this Borough. That is not surprising given the many constraints in the Borough (see above in the section on para. 190(a)).

124. Third, for nearly all the 18 potential alternatives Mr Johnson’s evidence is that they may be deliverable in 7 years,²⁸⁷ with one deliverable within 6 years²⁸⁸ and only two (amounting to a meagre 30 dwellings) said to be deliverable within 5 years.²⁸⁹ Mr Johnson says “*[t]he alternative sites have been subject to a broadbrush assessment as to whether they are ‘developable’, to ensure fair comparison with the timeframe for delivery of the appeal scheme, which I understand would extend beyond 5 years.*”²⁹⁰ That is wrong; Mr Collins evidence was clear and compelling that 51 units from the Appeal Scheme would be deliverable within 5 years.²⁹¹ Moreover, if one is looking at a 7 year timeframe for the alternatives to come forward that

²⁸⁶ The Appellant’s case is that all the allocated sites are in Mr Neame’s trajectories already and the need he calculates exists despite this and so it is double counting to also have these sites in the alternatives list for the purposes of this inquiry.

²⁸⁷ Sites 1, 3, 4, 7, 8, 9, 10, 11, 12, 13 and 14.

²⁸⁸ Site 2.

²⁸⁹ Sites 5 and 6.

²⁹⁰ See Mr Johnson’s proof at para 9.10(iii).

²⁹¹ See Mr Collins answers in XX and see also XX of Mr Johnson. So, Mr Collins evidence was clear namely that the Appeal Scheme could deliver 51 homes within 5 years. WBC’s attempt to rely on the Lichfields Report (3rd ed.) (NID7.12) to suggest otherwise is weak for a number of reasons: (i) the report is looking at average build out times and this means that some sites will deliver quicker than this (ii) moreover, the Lichfields report provides different average times for sites of 99 units below as compared to sites for 100 – 499 units – in this case the Appeal Scheme is very much at the lower end of that higher range and close to the below 99 category; (iii) there is evidence (see Mr Collins’ proof at App 6) that Elvia Homes who are building out Phase 1 that they could deliver homes on site by 2027; (iv) Mr Johnson accepted, in XX, that if Elvia Homes were to purchase the Appeal Site – and they have expressed a clear interest to do so, and roll over their construction from Phase 1 to Phase 2 this could lead to quicker build out times for Phase 2.

takes us to the end of the LPP1 period in 2032 and for which Mr Neame's trajectories suggest the shortfall may be as high as c. 9,000 units.

125. Fourth, beyond what Mr Johnson labels the "narrow" approach to alternatives his evidence was confined to saying that "[w]ith regard to the emerging Local Plan, this is another way, under criteria b), of seeking to meet the need for housing in the Borough".²⁹² However, the position with the emerging Local Plan is as follows:

- (1) LLP1 became five years old in February 2023, so over 2 years ago now.
- (2) WBC took until July 2023 to consider matters and resolve that it needed to undertake a full Local Plan review – that was nearly 2 years ago now.
- (3) A call for sites was launched 18 months ago and closed 15 months ago with no LAA published and it is uncertain whether one is currently even in draft²⁹³.
- (4) The December 2023 LDS set out a programme to adoption in November 2027²⁹⁴, but by March 2025 has already moved that back to July 2028²⁹⁵ (whilst significantly shortening the time budgeted for examination).²⁹⁶ So the timetable has fallen back considerably since Inspector Bristow looked at matters. The shortening of the time for examination by 6 months seems hopelessly optimistic not least because all the indications are that WBC will not seek to meet its OAN, or "anything near it" as Mr Cosgrove KC put it in XX of Mr Collins. This is likely to make the examination highly controversial as indeed LPP1 was.
- (5) Mr Collins' view was that there was no realistic prospect of a new Plan before 2029 at the earliest.

²⁹² See Mr Johnson's proof at para. 9.22. And see also paras. 9.23 – 9.25.

²⁹³ See Collins' proof at 4.41 (NID 5.1).

²⁹⁴ NID 7.15 elec pg 7.

²⁹⁵ Because the new LDS confirms no new Plan will be in place until at least July 2028 para 78 c) of the NPPF will therefore be engaged from 1 July 2026 and a 20% buffer will be required leading to an even greater HLS shortfall.

²⁹⁶ NID 7.47 Annex 1 elec pg 7: note the 2025 LDS anticipates eight months from submission to adoption; the 2023 LDS anticipated 13 months for the same stage.

- (6) Adding to this are the uncertainties created by local government reorganisation, and the fact that by mid-2027 WBC will highly likely no longer exist.²⁹⁷ Mr Johnson accepted that the new authority might choose not to adopt the draft Plan and instead start the whole Plan making process again from scratch.
- (7) Mr Johnson said that WBC were doing everything they could and sought to lay the blame for delays in the Plan process to the new NPPF, but WBC had nearly two years prior to the new NPPF being published following LPP1 becoming 5 years old and it has done virtually nothing to progress matters. The idea that WBC have done all they can to get a new Plan in place is little more than special pleading. And, as Mr Johnson accepted, WBC have not published any interim policy, nor published any action plan, nor even re-opened the call for sites to look for grey belt sites nor commenced a green belt assessment. Moreover, and most shockingly, WBC chose not to even apply for additional Government funding to accelerate its plan delivery.²⁹⁸ That failure speaks volumes.
- (8) Little wonder then that the Secretary of State's view is that the delivery of 1.5 million new homes she seeks "*cannot wait for all release to come through plan making*"²⁹⁹. That is certainly true in Waverley. If we wait for a new Plan to be adopted and then for any allocated sites to apply for permission and then go on and actually deliver housing, it is plain that none of these sites will contribute to the 1.5 million target being reached.
- (9) Finally, any sites allocated in a new Plan adopted in 2028 or 2029 are also not going to make any contribution to the current 5YLS deficit of - 5,777 new homes.³⁰⁰

²⁹⁷ See Mr Collins' rebuttal at paras. 2.11 -2.12.

²⁹⁸ See Mr Johnson XX.

²⁹⁹ NID7.1 p.2. Indeed the Secretary of State says in this Ministerial Statement, "[t]here is no time to waste. It is time to get on with building 1.5 million homes".

³⁰⁰ See Mr Collins RX.

126. So, it seems clear that there will be no new local plan in Waverley for many years to come. Mr Cosgrove KC's XX of Mr Collins majored on it being preferable that the matters being debated at this inquiry be determined through the Plan process. Mr Collins accepted that "*in theory*" this was so but it is not, as he said, reflective of the real world. In this regard what Inspector Jones said in the Turnden case, as set out above, is highly apposite.³⁰¹ WBC's plea that these matters be dealt with via the Local Plan process is understandable after all the NPPF reminds us that the planning system should be genuinely plan led³⁰² but the NPPF also says that "[p]reparing and maintaining up-to-date plans should be seen as a priority in meeting this objective."³⁰³ WBC have utterly failed to comply with this. The Development Plan in Waverley is out of date and a new Plan is a long, long way off – more years off now than it was said to be at the First Inquiry in January 2024. Its approach is such that it cannot take advantage of any of the transitional provisions the Government has put in place to accommodate LPAs on their journeys towards adopting a local plan.
127. Given the acute need for housing in Waverley, the Government policy drive to deliver more homes and the timetable for a new Local Plan in Waverley it is inevitable there will be speculative and windfall sites coming forward – absent that the housing supply will fall further behind in the coming years.
128. Taken all together, it is clear that meeting the needs of this Borough does absolutely *require* the grant of planning permission for the Appeal Scheme. This is, at root, the point identified by the Inspector in the Turnden case where he said, "*while it may be preferable for any new development sites to come forward initially via the plan-led process, para. [190] provides a mechanism by which major development can be delivered in [National Landscapes] via the development management process*

³⁰¹ See NID7.19 at para. 798 "*...while it may be preferable for any new development sites to come forward initially via the plan-led process, para 177 provides a mechanism by which major development can be delivered in AONBs via the development management process regardless of whether the site in question is allocated in the development plan or not, but only if that high test is met.*"

³⁰² NID8.1 at para. 15. See Mr Johnson's proof at para. 7.7 referring to para. 48 of the NPPF and the primacy of the development plan.

³⁰³ Ibid. para. 1.

regardless of whether the site in question is allocated in the development plan or not, but only if that high test is met."

129. One further matter on para. 190(b) Mr Johnson says that he has seen "*no evidence presented in the appellant's evidence on the cost of development within the National Landscape as opposed to outside of it.*"³⁰⁴ This is an odd statement:

- (1) Para. 190(b) refers to "*the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way*";
- (2) Cost in this context means the financial cost, see the *Frack Free Balcombe* case;³⁰⁵
- (3) As was noted by WBC in the officer report at Sturt Farm³⁰⁶ stated "*[i]t could be argued that "the cost of" element of this criterion relates mainly to nationally significant infrastructure projects and other developments that could not necessarily take place on other sites. In this context of this proposal there are no alternatives sites put forward by the applicant; however, it is considered by officers that the financial cost of carrying out residential development on a different site would be neutral*";
- (4) This observation is correct, the development of two different greenfield sites would not be different but it should be noted that on brownfield sites development costs tend to be higher which often means less affordable housing can be delivered and are less likely to be able to accommodate SANG and BNG on site.

c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

130. We turn to NPPF 190c). This involves assessing any detrimental effect on the environment, landscape and recreational opportunities and extent to which this can be moderated. We accept that this sub-paragraph as worded deals only with

³⁰⁴ See Mr Johnson's proof at para. 9.11.

³⁰⁵ NID13.26 at paras. 18, 23, 29, 71-73, 77-80.

³⁰⁶ CD11.5 pg 63.

any negative impacts and mitigation. But this matters not as any positive effects are taken into account in the general basket as per the *Wealden* approach.

131. The allegedly detrimental effects on the landscape have already been discussed under above. Both Mr Petrow and Mr Johnson accept the principle of weighing any negative landscape impacts against positive and neither suggest any way in which the negative impacts could be *further* moderated from that already achieved in the Appellant's design.
132. It is also important to a consideration of NPPF 190(c) that the Appeal Scheme does not negatively impact any recreational opportunities on the Appeal Site. To the contrary, it positively improves them, which is an additional benefit you can take into account. There is no dispute about this.

Other benefits in the EC balance

133. Moving on to other considerations beyond NPPF 190, the first port of call is the substantial BNG to be achieved on the Appeal Site. Mr Johnson agrees that the BNG on-site is a moderate benefit. His reluctance to give it more weight is surprising given the emphasis given to enhancement not just in national policy on ecology but also the SHNL context. Enhancement of biodiversity it forms part of the duty on the Secretary of State seek to further the purpose of conserving and enhancing the natural beauty of the SHNL, here references to conserving natural beauty include references to conserving its flora and fauna.³⁰⁷ Moreover, the Appeal Scheme will generate BNG credits that can be sold to assist in bringing forward town centre sites in Haslemere.³⁰⁸ Mr Collins gave these significant weight, while Mr Johnson denied should be given any weight at all. It should be remembered that the statutory requirement for BNG does not apply to the planning application as it pre-dates this hence the context for assessing weight needs to be cognisant of this fact.

³⁰⁷ See Countryside and Rights of Way Act 2000 s.85 and 92, CD10.8a.

³⁰⁸ See Mr Collins' proof at paras. 8.13 - 8.15, his EiC and what is provided for in this regard in the s. 106 Agreement.

134. A similar consideration applies to all of those aspects of the Appeal Scheme which will encourage access and enjoyment of not only the SHNL but also the adjoining National Park. These include:

- (1) The Scout Facility. This will provide a high quality replacement for their existing facilities at the Youth Campus site in Weyhill. It will be built out for them to shell and core (at the cost of c.£1 million) and was described by Mr Collins as being of “*significantly better*” for them – noting the limited quality of their existing premises. Mr Buckler’s statement and the letter from the Scouts’ solicitors set out the context for the Scouts and – although there is clearly some dispute – the basic picture is that they have no lease and their future at Weyhill is uncertain. The letter from WBC’s solicitors³⁰⁹ in response does not dispute that there has been no progress in the negotiations since the Scouts returned the draft lease with amendments on 29 February 2024. It is unclear why WBC has been unable to provide a response some 14 months on, but the situation offers no support for the contention that the Scouts’ need for a secure home is actively being resolved. Lease negotiations have been on-going for 10 years. This process has also been for some time against the backdrop of stayed Court proceedings. The evidence shows that the uncertainty has prevented for some considerable time the Scouts expanding and has meant that there is a waiting list in Haslemere.³¹⁰ The evidence at the First Inquiry was that the only lease on offer contained a clause allowing the Scouts to be relocated to facilitate the Wey Hill development³¹¹ and verified in the recent letter from WBC’s solicitors. That hardly provides the certainty that the Scouts so badly

³⁰⁹ NID13.29.

³¹⁰ See App 4a to Mr Collins’ proof (elec pg 256): “*a waiting list of more than 40 young people eager to join*”; ID5.9 pg 2 “*Large number active members with a constant waiting list of children wanting to join, unable to accommodate under current arrangements*”.

³¹¹ ID4.3 paras. 51 – 52, para. 52 of WBC’s closing at the First Inquiry said, “[*a*] *copy of the lease is not available. Mr Buckler said it contained a break clause allowing Waverley to relocate the Scout group. Clearly the draft lease remains subject to negotiation. If such a clause were agreed, it might allow for additional development on the Wey Hill site. Crucially, it would not leave the Scouts without a home. Mr Buckler did not suggest that the Scouts would reject the draft lease. It is acknowledged that the facility being offered by the Appellants may be more desirable in certain respects (the woodland location) ...*”

need. The Scout Facility to be provided as part of the Appeal Scheme would be provided to the Scouts freehold. It is a much superior facility. It will secure the future of the Scouts who have been based in Haslemere for many years. As Mr Collins observed, it should not be overlooked that the relocation of the Scouts also delivers further public benefit, enabling WBC to increase housing density at its Youth Campus site in line with the draft allocation DS12 proposed at Reg 18 stage of LPP2. It should not be doubted that there is a *need* for a new home for the Scouts.

- (2) The Forest School. This will also meet a pressing need by offering improved facilities that will allow the nursery (which is operated by a charity) to expand and improve its offer.³¹² The Grayswood Nursery and Forest School (“**the School**”) has been operating for 40 years and has a significant waiting list.³¹³ It is not currently threatened in its location but has no long term security³¹⁴. The new location would offer walkable access to the National Trust Blackdown (in the National Park) which is a significant draw for the School. The School has pro confirmed that it is the only local registered Forest School and distinguishes itself from ‘forest school’ offerings by other local establishments, which are generally in the form of ‘bolt on’ activities to curricular activities for the odd period from time to time. The School also provides for a number of special educational needs.³¹⁵ The School provide a year round facility and is rated Outstanding by Ofsted.³¹⁶

³¹² See NID13.20 “We are currently operating at capacity with a significant waiting list until September 2026. The facility at Scotland Park will enable us to increase our daily capacity and we also hope to increase the age range of our nursery, offering space not only to babies but also to open a small school for children to the end of Key Stage 1, or even 2, who are not able to attend mainstream education for a variety of reasons. At present we offer local schools opportunities to visit our facility but our ability to do so is restricted by the space available ...”

³¹³ Ibid.

³¹⁴ See ID5.10.

³¹⁵ See ID5.10 “[o]ur teaching method supports the learning of all children but it is particularly beneficial to children with additional needs and perhaps most particularly those with a diagnosis of ASD. Children with additional needs often find indoor classrooms highly stressful and consequently their learning is adversely affected. Educating children within a woodland environment reduces the sensory stimulation thereby enabling them to engage with their learning productively.”

³¹⁶ See ID3.2 Appendix 9.

- (3) Both the Scout Hut and Forest School would not only improve the recreational and access opportunities of the AONB within the Appeal Site but would also offer a springboard for positive youth engagement with the wider countryside – in particular the SDNP.
- (4) Open Space/SANG. As already set out, the SANG will have a key role in enabling wider housing development to come forwards but as a resource in itself it also deserves to be given significant weight. It further operates as buffer to any further housing development in perpetuity.
- (5) Wildlife corridors. Which will support and enhance biodiversity improvements.. These should be given moderate to significant weight.³¹⁷

135. Other benefits should also be added to the overall picture.

- (1) Wider Transport benefits. These include the contribution which the Appeal Scheme will make (if you deem it CIL compliant) to the DRBS, as well as a PROW payment and the upgrading of existing pedestrian provision to bridleway within the Appeal Site. The position of SCC and the Appellant in respect of the DRBS are set out in ID5.48.
- (2) CIL Monies to assist with local infrastructure shortfalls. Mr Collins was not challenged on his assignment of significant weight to this which he explained were likely to amount to c.£4.8 million in total³¹⁸. 25% of this sum will be directed to the Town Council. A substantial sum ensuring very localised infrastructure projects will benefit.

136. There was some suggestion by Mr Cosgrove KC that Mr Collins is guilty of double counting some benefits: that is to say including some in the landscape balance and the overall planning balance. But as Mr Collins explained this is not so. Thus, for example, the SANG on site provides a landscape benefit on the site itself but the ability of the site to provide strategic SANG carries a wider benefit in terms of allowing housing delivery of stalled allocated sites in Haslemere;

³¹⁷ Mr Collins' rebuttal proof, table 6.1.

³¹⁸ See Collins Appendix 1.

similarly the BNG on-site is a landscape related benefit but the SANG credits provide a wider planning benefit and the Scout Facility provides increased recreational access to the NP and SDNP which is a landscape benefit but in providing them with a new home it also provides a wider social and community benefit. Moreover, Mr Johnson's evidence appears to double count the harms. He cites both landscape harm and tree loss, but the tree loss is already accounted for in the landscape harm. There is no suggestion that the trees to be lost have any arboricultural as opposed to landscape value.

137. It is also important to bear in mind that in this regard Mr Johnson's evidence is said to "*provide [his] opinion on the contribution the development will make to the social, environmental and economic objectives of planning and other material planning considerations*"³¹⁹ and he accepted in XX that:

- (1) The only case advanced by WBC in terms of *adverse* impacts is in relation to the environmental objectives;
- (2) On the social and economic objectives the Appeal Scheme is entirely positive and beneficial; with no adverse effects at all being alleged by WBC;
- (3) In relation to the environmental objective, and having regard to the matters set out in para. 190(c) of the NPPF:

(a) WBC have "*not advanced any case relating to impacts on recreational opportunities or non-landscape related elements of the environment with regard to criteria c.*"³²⁰

(b) So, the Appeal Scheme is, on WBC's case, entirely positive in all environmental respects, save for landscape, so it provides BNG and enhances recreational opportunities.

³¹⁹ See Mr Johnson's proof at para. 1.9.

³²⁰ See Mr Johnson's proof at para. 9.3 and his answers in XX.

- (c) Moreover, in relation to landscape on WBC's own case 78% of the Appeal Site (c. 20 hectares) will, if the Appeal Scheme is permitted, result in a number of significant landscape enhancements.

5. Other issues raised by the R6P and third parties

Introduction

138. The R6P called two witnesses: (i) Mr Harrison on landscape; and (ii) Dr Guest on ecology. Their evidence on these matters is considered above. However, the R6P case went wider than these matters in terms of the questions asked in XX and the documents submitted. These other matters are considered briefly in this section.
139. Before so doing it is necessary to say something about the R6P generally:
140. The Appellant in advance of the Inquiry asked the R6P a number of questions focussed on the memberships, constitutions, officers of and meetings at which the organisations that make up the R6P determined to oppose the Appeal Scheme: see Mr Collins' proof at App. 12. These questions remain very largely unanswered save that the R6P's opening set out, but provided no evidence, of the number of members of some of the organisations.
141. The following points need to be made on the evidence as it stands:
142. The HSRA, it is said, has 291 "*locally resident members*", but neither of the R6P witnesses were members and almost none of all the third parties who spoke were HSRA members. Even if there are 291 members this is c.1.66% of the 17,300 residents of Haslemere³²¹; and the 291 may, of course, involve multiple members of one household.
143. The R6P Statement of Case says that the purpose of the HSRA is as "*an association of local residents in the southern part of Haslemere, among other things HSRA promotes the protection of the green spaces, National Landscape and areas of great landscape value which surround Haslemere*" but following a complaint about the conduct of certain councillors, WBC's Standards Panel appointed independent examiners whose

³²¹ See the R6P opening pp 2 - 3 and oral evidence of the R6P witnesses and third parties.

findings were published by WBC. The independent examiners concluded that *“it is impossible not to conclude that HSRA’s (maybe sole) raison d’etre, at least at its inception, was to resist development of the Red Court site [that is to say the area which includes the Appeal Site]”*. The independent examiners concluded also that *“based on the evidence available to us and the balance of probability, that HSRA was, to quote Section 5 (5 iv) of the Code of Conduct, a body “whose principal purpose [was] to influence public opinion or policy” in respect of Red Court.”*³²² This has not been disputed in any R6P evidence.

144. The HSRA has provided no information or evidence, despite requests, as to its written constitution /memorandum of association/articles of association, its officers, minutes of meetings at which there has been any discussion of the appeal scheme and the seeking of Rule 6 status, any information or presentations made to any such meetings; any documentation on what the requirements and procedure for membership of the HSRA are.³²³ As such, the views asserted to reflect the position of the HSRA and its members may in fact only reflect the views of those confirmed members that attended the Inquiry i.e. of a very small number of individuals.
145. As regards the Haslemere Society (**“the Society”**), the similar questions asked and information sought about it, have not been provided;³²⁴ save that Mr Harrison is its chair and Mr Brown, the driving force behind the HSRA, is on the Society’s committee;
146. Mr Harrison confirmed in XX that the Society, in its long 141 year history, had never supported a planning application in Haslemere. Mr Harrison grudgingly accepted that there was a housing crisis and acute need for more housing in Haslemere. But he was unable to accept that building more homes was needed to tackle the affordability issues in the town. He waxed lyrical about his first visit to the town and how having fallen in love with Haslemere he bought a house

³²² See Mr Collins’ proof at App. 11.

³²³ See Mr Collins’ proof App. 11 and Mr Harrison’s answers in XX.

³²⁴ See Mr Collins’ proof App. 11 and Mr Harrison’s answers in XX.

there in 1984 for a tiny fraction of what such a property would cost today. If others are to have the opportunities that Mr Harrison had to buy a house in this area then more need to be built.

147. The questions asked about Haslemere Vision ("HV") have also gone largely unanswered. Dr Guest accepted that HV was moribund and that that the only active aspect was the Biodiversity Group that had 4 members, which it was confirmed will soon be 'divorced' from HV.

148. Mr Harrison's proof sought to rely on the fact that there had been over 500 objections to the Appeal Scheme³²⁵. There are several points on this:

- (1) Mr Harrison accepted that there were a number of repeat objections from the same person so there are certainly not 500 objectors to the Appeal Scheme;
- (2) Even if there were 500 objectors that is only about 3% of the population of the town;
- (3) Of those 500 objections only 17 (c. 3%) raised concern as to the importance of Midhurst Road as a gateway to the town – one of the main issues pursued in Mr Harrison's evidence;
- (4) What matters, of course, is not the number of objectors or supporters but the underlying merits of the points raised. For the reasons set out above the landscape and ecology cases advanced by the R6P lack merit. Moreover, as Mr Harrison accepted the views of third parties, a number of which are recorded in his proof, are replete with misunderstandings of what the Appeal Scheme proposes.

149. Turning to the other issues that have been raised by the R6P and third parties.

³²⁵ See his proof at pp. 2 and 15.

Water supply

150. The R6P put in documents in relation to water supply but led no evidence on these matters. Thames Water's formal representations on the Appeal Scheme are at CD3.2 and CD3.24. A further note from Stantec is attached to Mr Collins' proof at appendix 7 which explains that there is sufficient water and foul drainage capacity for the Appeal Scheme. There is therefore no issue, nor need for a condition restricting the occupation of dwellings within the Appeal Scheme. This is agreed with WBC and Thames Water.

Flooding

151. One third party, Mr Page³²⁶, raised flooding issues raised in relation to the Phase 1 construction activities. But these issues have not been raised by either WBC as planning authority or the LLFA. The topography of the Appeal Site generally slopes down away from Scotland Close. In any event, they relate to a different site and are immaterial to what is proposed in the Appeal Scheme.³²⁷

Four phases

152. The suggestion was made by one third party that the proposals were originally for four phases. This is incorrect.³²⁸ This is another example of the many misunderstandings of the Appeal Scheme by those objecting.

Privacy

153. Mr Page also raised concerns as to separation distances between Scotland Close and the Appeal Scheme. This is not an issue raised by WBC and the separation distances are all shown in the DAS (CD2.15) pp 7 and 25. These distances are all sufficient to give rise to an acceptable position on privacy.

³²⁶ NID13.11.

³²⁷ See Mr Collins' second rebuttal for the previous inquiry at 9.8-9.9.

³²⁸ See NID13.12 and 13.13 and Mr Collins' EiC.

Highways

154. Despite no highways case being set out in the R6P's Statement of Case nor proofs for this Inquiry this topic was the main focus of the XX of Mr Collins by Mr Brown. The points raised are without merit. The following are the key points:

- (1) Detailed highways assessment work has been undertaken by the Appellant;³²⁹
- (2) Neither WBC nor the highways authority pursue any issues related to highways matters;
- (3) Mr Brown raised the level of traffic as a result of the Scout Hut and Forest School The Transport Assessment³³⁰ states that "*the transport impacts arising as a result of the development proposals will relate to the residential development. The scout facility and education facility will not give rise to material levels of traffic attraction during the weekday peak periods.*" This has never been dissented from by the highway authority or WBC. Moreover, as Mr Collins explained in XX the Transport Assessment is based on 130 dwellings and now only 111 are proposed so it is in any event robust.³³¹
- (4) Mr Brown then raised a whole series of questions related to highways drawing 17054-002 concerning visibility splays, tapers and distances. These same matters were raised late by the HSRA at the previous inquiry. They were fully answered by Mr Parsons in a technical note at Mr Collins' first rebuttal for the previous inquiry, ID3.2, Appendix 6 at paras. 2.23 - 2.41. The HSRA issues, raised with Mr Collins in XX, are the same as those responded to by Mr Parsons. In short the HSRA points raised rely on inapplicable trunk road design standards, and run contrary to the detailed consideration and advice given by Surrey County Council as highways authority.

³²⁹ See e.g. CD2.18, ID3.2 App 6.

³³⁰ CD2.18 para. 5.2.

³³¹ See also CD2.18 para. 5.2.

(5) The only other issue raised is as regards CP597 and its potential upgrading to bridleway.³³² The HSRA say that this is “*absurd and dangerous*”. But these works are to be carried out by the County Council and it is they who asked for a contribution towards this upgrade.³³³ The Officer Report recognised the proposals for CP597 to be a positive enhancement.³³⁴ Moreover, as Mr Harrison accepted in XX, many of the objections mistakenly proceed on the basis that CP597 is to be closed.³³⁵ Not only is that incorrect; it will, as officers concluded, in fact be enhanced.

155. Finally, on transport Mr Clark’s issues as raised in his late objection (NID13.27) are also totally without merit and have been responded to in full by Mr Parsons of Vision Transport Planning.³³⁶ In short, the Transport Assessment provides a detailed capacity assessment of the operation of the site access and key off-site highway junctions (that are likely to be subject to increases in traffic arising from the appeal proposals). It was concluded that the site access will operate well within capacity whilst the assessed off-site highway junctions will be able to accommodate any increases in traffic whilst continuing to operate within capacity (during all future year scenarios).

The views of NE and the SHNL

156. WBC has sought to make much of the objections to the Appeal Scheme by Mr Clive Smith, the SHNL Board Planning Adviser³³⁷ and also the Chair of the SHNL Board³³⁸, and to a lesser extent the objection of NE on NL grounds³³⁹. WBC say that these views should be given “*great weight*” or “*significant weight*”³⁴⁰. In

³³² See Mr Harrison’s proof at para. 8, pg 4.

³³³ See CD2.7.

³³⁴ CD4.2 pg 47 “... *An existing public right of way (Footpath 597) is proposed to be diverted alongside Midhurst Road, to facilitate the site access. This is outlined in the Transport Assessment. The diversion is minor, and would still facilitate movement on a north/south axis alongside Midhurst Road. The footpath created would act as an enhancement over the existing, which is narrow, and directly adjacent to Midhurst Road.*” See also CD2.7 as to the proposals for this footpath being a net benefit.

³³⁵ See Mr Harrison’s proof at pp. 7 and his answers in XX.

³³⁶ NID13.34.

³³⁷ CD3.18, 3,19 and NID13.1.

³³⁸ NID2.2.

³³⁹ NID2.3, NID13.20 and see also the statement of Mr Ben Kite attached to Mr Jack’s proof.

³⁴⁰ See Mr Johnson’s oral evidence.

relation to the SNHL this is said to be particularly because it is the author of the Management Plan and the SHEDG³⁴¹, in relation to NE because they are a statutory consultee. There are a number of reasons why great weight should not be given to these views:

- (1) Neither NE nor the SHNL Board have attended this inquiry to give oral evidence that could be tested.³⁴² Mr Cosgrove KC suggested that NE and the SHNL has objected in the strongest terms to the Appeal Scheme, but their objections are not so strong as to compel them to attend. The position is in stark contrast to the Turnden case where both NE and the AONB unit sought Rule 6 status and called a number of professional witnesses in opposition to the scheme. Having not attended, and there having been no opportunity to XX, the evidence of these bodies must carry reduced weight.
- (2) Moreover, it is not correct as a matter of law that the views of a body such as NE which is a statutory consultee must always carry great weight³⁴³, especially in the context of an inquiry where: (i) those bodies do not attend to give evidence and (ii) there is expert evidence called by the other parties on the issues on which those bodies object.
- (3)
- (4) NE have an in-principle objection to *all* major development in NLs.³⁴⁴ Moreover, Mr Clive Smith it appears also objects to almost anything proposed in the NL.³⁴⁵

³⁴¹ Ibid.

³⁴² Mr Clive Smith attended the Phase 1 inquiry (see C9.1) but has now failed to attend the First and Second inquiries on Phase 2. No reason for his non-attendance has been preferred.

³⁴³ See Mr Collins' proof at paras. 12.11 and 12.12 App. 5 and see also CD10.10 at para. 73-79 and CD10.11 concluding that "[i]n the context of a planning inquiry, the evidence of a statutory consultee on subjects within their expertise should be open to challenge and properly tested, in the same way that any other inquiry evidence is".

³⁴⁴ See NID7.19 at paras. 288, 291, 293 and 607.

³⁴⁵ See Mr Collins' answers in XX. WBC have pointed to the DEFRA guidance which refers to efforts being made to have dialogue with NL Boards (see CD7.1) but no meaningful dialogue can be had with bodies that object to everything. Indeed, it is noteworthy that WBC will have to set aside the arguably stronger objection from Mr Smith to the current planning application at Royal School, if it is to realise

(5) Mr Clive Smith's objections must also carry reduced weight as they are riddled with errors. Thus he says, "*the scale of this proposed development is the largest ever proposed across the entire the Surrey Hills AONB/National Landscape in my 16 years in this part time role*". But the Sturt Farm permission was for a larger number of units, and was also objected to Mr Clive Smith. Moreover, the Royal School application, to which he has also objected, is for almost exactly the same number of units.³⁴⁶ He also pursues a number of objections, such as Dark Skies, which are not any part of WBC's case. The objection from the Chair of the SHNL must also carry reduced weight given that: (i) she failed to attend and speak; (ii) she is not a landscape expert; and (iii) she concludes by saying that the grant of permission in this case would "*undermine any public confidence in the British planning system*".³⁴⁷ Planning permission will only be granted, sir, if you find EC in accordance with para. 190 of the NPPF, as did Inspector Jones and the Secretary of State in the Turnden case. So, this conclusion is pure hyperbole and should be rejected.³⁴⁸ Both the representations from Mr Clive Smith and the Chair reveal a wholly partial approach to the evidence. Neither party visited the site to assess the proposals and neither makes any mention of the landscape benefits that would arise to 78% of the Appeal Site. Further, Mr Clive Smith fails to address any policies in the Management Plan, and the Chair only raises, in the most cursory way, two policies (P1 and P2). She fails to consider any of the many other policies in the Management Plan which WBC agree support the Appeal Scheme. Neither even mentions the SHEDG. They are both objections in principle, rather than professional

the LPP2 allocation yield of at least 90 dwellings, necessitating development across the green fields on the site to which Mr Smith finds particular objection.

³⁴⁶ See Mr Collins' proof at para 7.11 "*the Royal School application (WA/2023/01309) for 99 dwellings and 11 apartments*".

³⁴⁷ See Mr Johnson's proof at para. 9.34.

³⁴⁸ She also states, "*This is the first time in my tenure as Chair of the Surrey Hills National Landscape (formerly AONB) that I have taken the step of writing to an Appeal Inspector, so important is this case to the integrity and future of the Surrey Hills National Landscape*". But she has only been in post since December 2022 and it is unclear if since then there have been any other appeals in respect of major development apart from the First Inquiry into this appeal. And the Chair did not write in objection at the First Inquiry.

assessments with careful weighing of the harms and benefits in landscape terms.

- (6) Very strong objections from both NE³⁴⁹ and Mr Clive Smith were overruled by WBC when it granted permission for Sturt Farm.³⁵⁰ Moreover, the views of NE and the relevant AONB unit were overturned by the Inspector and Secretary of State in the Turnden case.

6. Conclusions

157. For all these reasons, the Appellant considers that the test for EC is met and very clearly so.

158. The Appeal Scheme offers a truly exceptional opportunity to unlock much needed housing for Haslemere and the wider Borough. It is hard to envisage any greenfield sites in any proximity to any of the Borough's settlements impacted by Protected Landscapes which will have lesser harms or comparable benefits. The Appeal Scheme takes advantage of an edge of settlement site with limited visibility, improves that edge, preserves it in perpetuity and combines it with a detailed and thoughtful proposal to conserve and enhance a much larger and more valuable section of the SHNL, whilst also enabling a significant increase in access to the SHNL and the wider countryside including the SDNP. There are evidently insufficient alternative housing sites, either within Haslemere or the wider Borough, and none which will unlock the many benefits of the kind to be secured here.

JAMES MAURICI KC
MATTHEW DALE-HARRIS
Landmark Chambers

6 May 2025

³⁴⁹ On landscape not ecology grounds, as in this case.

³⁵⁰ See CD11.5 at pp. 23-27.

Appendix 1 - Abbreviations

Abbreviation	Meaning	Reference
AGLV	Area of Great Landscape Value	CD6.1
AONB	Area of Outstanding Natural Beauty	
Appeal Scheme	The development for which permission is sought	
CP597	Footpath C597	
The DEFRA Guidance	Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes (Published 16 December 2024)	NID7.11
EC	Exceptional Circumstances	
NL	National Landscape, the rebranded name for AONBs	
DAS	Design and Access Statement	CD2.14, CD2.15
DRBS	Demand Responsive Bus Service	
EC	Exceptional Circumstances	
EiC	Evidence in Chief	
EIR	Environmental Information regulations 2004	
ES	Environmental Statement	
The First Inquiry	The Inquiry before Inspector Bristow held 9-11, 16-18 and 23 January 2024	NID3.8
GALD	Guidance for Assessing Landscapes for designation as National Park or Area of Outstanding Natural Beauty in England (updated June 2021)	ID5.3
GLVIA3	Guidelines for Landscape and Visual Impact Assessment (v3)	
HLS	Housing Land Supply	
HNP	Haslemere Neighbourhood Plan	CD6.3
HV	Haslemere Vision	
HSRA	Haslemere South Residents' Association	
LDS	Local Development Scheme	NID7.15 and 7.47
LAA	Land Availability Assessment	
LEMP	The outline Landscape and Ecological Management Plan	CD1.41
LHN	Local Housing Need.	
LCA	Landscape Character Area	
LPP1	Part 1 Local Plan	CD6.1
LPP2	Part 2 Local Plan	CD6.2
LVIA	Landscape and Visual Impact Assessment, forming Appendix 10.1 to the ES	CD2.54
LURA	The Levelling UP and Regeneration Act 2023	CD10.8b
The Management Plan	The Surrey Hills AONB Management Plan 2020-2025	
NDG	National Design Guide	CD8.2
NE	Natural England	
NL	National Landscape	
NPPF	National Planning Policy Framework	

OAN	Objectively Assessed Need	
PPG	Planning Practice Guidance	
PROW	Public Right of Way	
RX	Re examination	
R6P	The Rule 6 Party, comprised of Haslemere Town Council, Haslemere Vision/Biodiversity, HSRA, Haslemere Society	
SANG	Suitable Alternative Natural Greenspace	
The School	Grayswood Nursery and Forest School	
The SCMP	The SANG Creation and Management Plan	CD1.42
SDNP	South Downs National Parks	
SHEDG	The Surrey Hills AONB Environmental Design Guidance - Guidance on conserving and enhancing country lanes and villages in the Surrey Hills	NID7.20
SHNL	Surrey Hills National Landscape	
The Society	The Haslemere Society	
SPA	Special Protection Area	
WBC	Waverley Borough Council	
XX	Cross examination	
Y10	Year 10 following completion of the Appeal Scheme	
Y15	Year 15 following completion of the Appeal Scheme	

APPENDIX 2 – COMMENTARY ON INSPECTOR BRISTOW’S QUASHED DECISION

This table draws on:

1. Appendix 10 to Mr Collins’ proof entitled “Charles Collins and Andrew Smith commentary on the quashed First Inquiry Inspector’s Decision”.
2. The proof of Mr Collins and Mr Smith more generally.
3. The oral evidence given at the Second Inquiry by Messrs. Collins, Smith, Petrow and Johnson.

KEY:

Agreed

Errors/Disagreements

Change of circumstances

<u>INSPECTOR BRISTOW’S CONCLUSIONS</u>	<u>APPELLANT’S RESPONSE</u>
<u>Decision</u>	
1: “ <i>The appeal is dismissed</i> ”	Disagree: see reasons below.
<u>Preliminary matters</u>	
<i>The development proposed</i>	
2 – 3	Agreed.
<i>Evidence</i>	
4 – 5	Factual matters agreed. Note – the updated TPO is now made. Also SCC has felled two trees within adopted highway, at the proposed entrance to the appeal site.
<i>The dispute between the main parties</i>	
6 – 9	Agreed. Note – updated SoCG and s. 106 provided to this inquiry.

<i>Notification error</i>	
10 - 17	These matters are wholly immaterial to the re-determination.
<i>Impartiality</i>	
18 - 23	These matters are relevant to the re-determination as they form part of the background to the successful s. 288 claim and the quashing of Inspector Bristow’s decision: see the main closing.
<u>Statutory context</u>	
24 - 31	<p>The statutory context is dealt with in the main closing speech.</p> <p>In relation to s. 85 of the CROW Act 2000 matters have moved on significantly as there has been: (i) DEFRA guidance for relevant authorities on seeking to further the purposes of Protected Landscapes (NID7.11, published December 2024); (ii) the DEFRA Protected Landscapes Framework (NID8.3, this was published January 2024, so after the close of the First Inquiry and not before Inspector Bristow. It is cross referred to in the DEFRA guidance); (iii) case-law: see NID8.1 and the main closing.</p> <p>Note that Inspector Bristow says at para. 27 “NPPF paragraph 182 [now para. 189] sets out how ‘great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues... the scale and extent of development within all these designated areas should be limited...’. That paragraph is the same as paragraph 176 of the previous iteration, albeit the second sentence is not relevant to considering major development”. This is correct and he refers to the <i>Advearse</i> case CD10.5 in support of that. Despite this Mr Johnson’s written and oral evidence wrongly argued that this applied to the Appeal Scheme.</p>
<u>Policy context</u>	
<i>The Local Plan, Part 1 (‘LPP1’)</i>	
32: “Waverley is highly constrained: 61% is Green Belt, 77% AONB or AGLV, and 92% is ‘rural’. Nevertheless the LPP1 was constructed so as to meet housing needs forecast to arise in Waverley and also a proportion of	Agreed. And as Inspector Bristow notes later on in the decision refer there is a proposal to extend the SHNL, which was amended in September 2024. At the time of Inspector Bristow’s decision the

<p><i>unmet needs in the wider housing market area. In that context LPP1 policy ALH1 makes provision for the delivery of ‘at least 11,210 net additional homes in the period from 2013 to 2032 (equivalent to at least 590 dwellings a year)’”.</i></p>	<p>proposal was for an increase of 25%. The proposal is now for an increase by 30% hence further constraining Waverley: see Mr Smith’s proof at para 3.45 <i>“The Surrey Hills NL cover an area of 422 square kilometres thus an increase of 30% would be an additional 127,000 square kilometres”.</i></p> <p>The constrained housing requirement based on 590 dwellings is now wholly out-of-date having regard to: (i) the fact that LPP1 is more than 5 years old and the subject of a full review; (ii) the absence of a 5YLS.</p>
<p>33 – 37: this gives an account of relevant policies in LPP1 namely Policies SP1, SP2, RE1 and RE3</p>	<p>These policies are considered in detail in the main closing.</p>
<p><i>The Local Plan, Part 2 (‘LPP2’)</i></p>	
<p>38-40: this gives an account of relevant policies in LPP2 namely Policy DM11 and DM15.</p>	<p>It is agreed (see para. 38) that <i>“LPP2 was designed to fulfil a role following on from the LPP1 rather than to review or to amend it. It describes itself as a ‘daughter’ document”.</i></p> <p>These policies are considered in detail in the main closing.</p>
<p><i>The Haslemere Neighbourhood Plan (‘HNP’)</i></p>	
<p>41: this gives an account of Policy H9 of the HNP</p>	<p>This is an incomplete and partial account of this Policy which is considered in the main closing.</p>
<p>42: this deals with Policy H1</p>	<p>This is an incomplete account of this Policy which is considered in the closing. This policy was also <i>not</i> cited in the RfR.</p>
<p>43: <i>“By virtue of the nature of the proposal, and the agreements under section 106 of the 1990 Act, the proposal would create a permanent ‘natural’ boundary to Haslemere. That is, however, incidental. As the site falls within the SHAONB, beyond the HNP settlement boundary, and as the southern boundary of the SDNP is by Bell Vale Lane, in terms of both policy and landscape designations there is already a clear boundary.”</i></p>	<p>It is factually the case that the Appeal Scheme creates a permanent boundary (in design parameters and the S106 securing SANG/ongoing management to the Green Infrastructure). The Appellant does not agree that this is simply <i>“incidental”</i>. To the contrary, it materially weighs in favour of the Appeal Scheme as a key feature to connect Haslemere with the National Park beyond, and create the permanent buffer via managed Green Infrastructure.</p> <p>The fact that land is within a NL does not prevent proposals for its development being granted if there are exceptional circumstances.</p> <p>The s. 106 will secure in perpetuity the land as SANG and thus ensure a permanent ‘natural’ boundary to Haslemere.</p>

	For a comparison of how much more attractive the new proposed edge of Haslemere would be when judged against the existing development on Scotland Close: see Mr Pullan's EiC presentation at NID13.2 at pp 4 and 32.
44: "A more stringent approach to controlling development outside the settlement boundary than HNP policy H1 was deleted pursuant to the HNP examiner's recommendation (in order to achieve the necessary consistency with other elements of the development plan). The HNP did not allocate sites, preceded the adoption of the LPP2, and at the time of the inquiry had not been reviewed as envisaged by HNP paragraph 4.4."	Agreed.
Interaction of the development plan and the NPPF	
45: "Some third parties find it hard to fathom how development such as the appeal scheme can be proposed within the SHAONB. That is understandable given applicable statutory and policy protections set out above. However, as reflected in paragraph 38 above, housing development within the SHAONB has been the necessary corollary of achieving the remit set by the LPP1."	It is correct that WBC has both granted planning permission (Sturt Farm) for and allocated sites in the SHNL (e.g. the Royal School, Old Grove etc). Moreover, other sites have been allocated in the SHNL by Neighbourhood Plans e.g. at Chiddingfold. The housing needs of Waverley have massively increased since these decisions - as a result of the new standard method - and the reality is that some land in the SHNL is going to have to be developed going forward.
46: "Moreover LPP1 policies RE1 and RE3, along with HNP policy H1, each refer to the application of national policy (which is, in any event, material). In addition to NPPF 182 ¹ as above, NPPF paragraph 183 ² sets out how planning permission should be refused for major development within AONBs 'other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest...'"	It is agreed that (notwithstanding the reduced weight that should be applied to certain LPP1/ LPP2 policies for the reasons set out in the main closing) that the core test is now NPPF 190 (formerly para. 183) of exceptional circumstances in the public interest.
47: "The public interest may or may not coincide with the prevailing sentiment of the local community. It is the function of planning to address the public interest. The Monkhill judgements have been referenced by many residents, which relate to a dismissed appeal at nearby Longdene House.	Agreed. However, this paragraph and others such as paras. 45, 58 and 71 are very odd and show what can be seen as a somewhat excessive level of concern by Inspector Bristow for the "sentiments" and impressions of local residents. This is relevant and important

¹ All references to para. 182 of the NPPF in Inspector Bristow's decision should be read now as references to para. 189 of the NPPF (2024).

² All references to para. 183 of the NPPF in Inspector Bristow's decision should be read now as references to para. 190 of the NPPF (2024).

<i>However, and setting aside any specific judgements reached by the Inspector in that case, the proposal there was not for major development”</i>	background to the appearance of bias ground of challenge in the s. 288 proceedings.
48: this gives an account of what is now para. 190 of the NPPF (2024)	Agreed.
49: <i>“The Inspector who reported on an appeal at Turnden set out how ‘the relevant legal authorities indicate that, while it is not a conventional balancing exercise, all of the benefits of the development in question can be taken into account, each benefits does not have to be exceptional alone nor do they have to be unlikely to occur in a similar fashion elsewhere. Whether or not exceptional circumstances exist may include the consideration of alternative sites across different geographies, as reflected in Wealden judgements. The test is ‘ultimately a matter of planning judgement’.”</i>	Agreed. The legal approach to alternatives is considered in detail in the main closing.
50: <i>“In respect of Sturt Farm, partially within the AONB, WBC acknowledged that some negative effects would result in respect of landscape character. In terms of the ‘the scope for’ developing outside the designated area, now referenced in NPPF paragraph 183.b), in that instance WBC reached a view based on an area of search limited to Haslemere only. The evidence before me in that regard, however, covers both Haslemere and Waverley.”</i>	In this second inquiry the scope of the alternative sites to be considered has been agreed. That was not the case at the First Inquiry. The evidence base on alternatives on this appeal is more comprehensive at this appeal than it was in 2015 for the Sturt Farm decision. The evidence base demonstrates a substantial shortfall in meeting both the LPP1 housing requirement, and up to date housing needs in the remaining plan period. The alternatives, based on the broader assessment of the whole Borough are limited. The situation on delivery, and (actively progressing) solutions, in Haslemere is also limited: see Mr Collin’s proof Table 8.1 and his EiC. Thus, at this appeal, the Appeal Scheme is supported by even more compelling evidence than when Sturt Farm was decided.
51: <i>“There is no dispute between the main parties that, if there are exceptional circumstances in line with NPPF paragraph 183, the scheme would accord with the development plan as a whole. The converse is also agreed.”</i>	Agreed. It was also agreed at the First Inquiry that if there were exceptional circumstances the appeal should be allowed. The same is agreed on the redetermination.
<u>Main issues</u>	
52: this sets out the main issues.	Agreed.
<u>The site and its surroundings</u>	

<p>53 – 64: this is an account of the site and its surroundings as well as the sustainability of the Appeal Site</p>	<p>Agreed. Three further comments need to be made:</p> <ol style="list-style-type: none"> 1. Inspector Bristow recognises (see para. 61) Haslemere’s residential expansion (urban morphology) over time and draws a parallel with the Appellant’s view that it is inevitable Haslemere will need to continue to expand outside the existing built up area boundary in order to meet local housing need. If that is correct it is really quite inconceivable that there will be a less visible location for 110 new homes than the Appeal Site. 2. Inspector Bristow rightly accepts the Appeal Site is in a sustainable location – that is agreed by WBC in the Second Inquiry also; 3. Inspector Bristow also notes at para. 63 that <i>“Some elements of Haslemere within the settlement boundary are significantly further away from the High Street and nearby train station than the appeal site, and are similarly set within an undulating topography.”</i> <p>The Appellant also agrees with para. 64 that there is no necessity for the S106 obligation securing Demand Responsive Bus.</p> <p>Para. 62 - one matter of disagreement, is to describe Midhurst Road as of <i>“strongly rural character”</i> – the Appellant’s evidence shows that it is semi-urban or semi-rural in the locality of the Appeal Site. There are many other accesses to residential dwellings along Midhurst Road: see NIID13.2 at pp. 18 and 20. There are other parts of the Midhurst Road that have larger accesses as well as road markings, lighting, bollards and concrete kerbs etc: see Mr Smith’s proof p 16 figures 25 – 27. See also para. 94 of Inspector Bristow’s decision.</p>
<p><u>Landscape and visual effects</u></p>	
<p>65 - 67</p>	<p>These paragraphs record a number of matters that are common ground</p>
<p>68: <i>“Up to 110 homes (the ‘outline element’) are proposed at LCA1, LCA2 and LCA7. Site access off Midhurst Road, which would bisect footpath 597, would be at LCA1. LCA1 would also accommodate the road serving the</i></p>	<p><i>This is largely agreed, save for the comment that “[a] significant stretch of Midhurst Road is to be widened”</i> Midhurst Road links centre of Haslemere to Midhurst, passing through Kingsley Green and</p>

<p><i>outline element of the scheme, tracking upwards in the rising topography from the A286. A significant stretch of Midhurst Road is to be widened. A gatehouse is also proposed close to the site access, as is a ramblers' shelter and parking associated with provision of the SANG."</i></p>	<p>Fernhurst. It is 11.75km in length. The area of change is 180m thus 0.015%. This is not a 'significant stretch'. Additionally the change to the road itself is locally characteristic: see above.</p>
<p>69: <i>"The SANG is proposed to mitigate the adverse ecological effects that would result from additional recreational pressure associated with a growing population to the Wealden Heaths Phase II Special Protection Area (the 'SPA'). The 9.69ha SANG would cover LCA5, LCA6 and part of LCA4.57 An enlarged SANG of 12ha, which Natural England endorse but which has emerged as a potential approach as the scheme has latterly evolved, would extend also into LCA3 and LCA7"</i></p> <p>70: <i>"Neither the 9.69ha nor 12ha SANG is limited in capacity to addressing the potential implications of up to 111 homes proposed; both contain headroom that could be used for SANG offsetting related to schemes elsewhere. The Scouts and Forest School are intended to be accommodated within LCA4. Allotment provision is to be off site, on the opposite side of the listed lodge."</i></p>	<p>The first sentence of para. 69 is agreed. The first sentence of para. 70 is agreed. The off-site allotment is no longer proposed. Matters have moved on considerably in relation to the larger SANG and the position of NE: see Mr Kite's statement which is appended to Mr Jack's proof and see also Mr Collins' proof at paras. 7.1 – 7.18. Through a proposed amendment to the s. 106 obligation the Appellant now offers to commit fully to the delivery of c.12ha of SANG.</p>
<p>71-72: <i>"The dispute between the main parties centres on the extent of landscape and visual effects, taking account of the degree to which those would be offset and mitigated. That dispute is underpinned by different judgements as to landscape sensitivity and visual effects. Whilst the representations of local residents may not reference the terminology in GLVIA3 or TGN02/21, those observations, founded on lived experience, are no less valid."</i></p>	<p>Para. 71 is disagreed. The views of local residents are, of course, a material consideration but landscape and visual assessment is to be undertaken according to well-recognised criteria set out in GLVIA3. It is not accepted that the views of local residents on such matters carry equal weight to expert evidence provided in accordance with a well-established assessment approach. It seems that many of the local objectors have a limited concept of the Appeal Site, probably because there is no public access, and have exhibited consistent and fundamental confusion about what is proposed (e.g. that there is proposal for a car park off Bell Vale Lane and some think footpath 597 to close). The Rule 6 community landscape witness had never even walked the site. Para. 72 is merely introductory to the sections that follow.</p>
<p><i>Methodology</i></p>	
<p>73: <i>"'Landscape' itself is a complex concept; the site, of some 23ha, is both a landscape and part of wider landscapes. GLVIA3 references the 'inclusive</i></p>	<p>Disagreed. This is just wrong. The concept of landscape is inclusive of settlements. Inspector Bristow's total failure to understand this matter</p>

<p><i>nature' of the term landscape as in the European Landscape Convention; 'landscape is an area, as perceived by people whose character is the result of the action and interaction of natural and/or human factors', closely intertwined with landscape history. Landscape character is therefore 'not just about the physical elements and features that make up a landscape, but also embraces the aesthetic, perceptual and experiential aspects of the landscape that make different places distinctive.'"</i></p>	<p>(see further below) is a major flaw in his approach and inflicts may parts of the decision. Mr Petrow accepted in XX that Inspector Bristow's approach in this paragraph was in conflict with NE's guidance in the GALD.</p> <p>Villages, towns and cities contribute to the concept of landscape and help to create the distinctiveness of landscapes.</p> <ul style="list-style-type: none"> • Definition provided (GLVIA para 2.2) <i>"Landscape is about the relationship between people and place. It provides the setting for our day-to-day lives. The term does not mean just special or designated landscape and it does not only apply to the countryside. Landscape can mean a small patch of urban wasteland as much as a mountain range, and an urban park as much as an expanse of lowland plain. It results from the way that different components of our environment - both natural (the influences of geology, soils, climate, flora and fauna) and cultural (the historical and current impact of land use, settlement, enclosure and other human interactions) - interact together and are perceived by us. People's perception turn land into the concept of landscape."</i> • Further that the European Landscape Convention (ELC) definition of landscape is inclusive and applies to: <ul style="list-style-type: none"> - all types of rural landscape, from high mountains to wild countryside to urban fringe farmland (rural landscapes); - marine and coastal landscapes (seascapes); and - the landscapes of villages, towns and cities (townscapes). • See further Mr Smith's proof at paras. 3.6 and 3.7.
<p>74 – 77: sets out matters of methodology related to GLVIA3.</p>	<p>Agreed.</p>
<p>Relevant landscape studies</p>	
<p>78 and 79: <i>"As above, the SHAONB was established in 1958. It stretches across Surrey's North Downs and covers about a quarter of the County. Whilst the SHAONB inevitably encompasses various settlements and buildings, it was nonetheless established for the purposes of conserving and enhancing 'natural' beauty, a point to which I will return."</i></p>	<p>Inspector Bristow refers to the SHNL statement of significance but notably does not refer to the latter part of this statement which states <i>"... and Surrey residents to enjoy outdoor pursuits, taste local food and drink, and to explore market towns and picture postcard villages"</i>. An omission that leads to subsequent overplay on rurality associated with natural attributes: see Mr Smith's proof at para. 3.40.</p>

<p><i>“The statement of significance in the Management Plan (‘MP’) includes the following high-level description of the SHAONB: ‘its landscape mosaic of farmland, woodland, heaths, downs and commons has inspired some of the country’s greatest artists, writers and architects over the centuries...’. TGN02/21 references that the National Trust, established in 1895, was ‘the first organisation to use the term natural beauty’. Local residents have drawn my attention to the association between Sir Robert Hunter, a founding member of the National Trust, and Haslemere (if not to the site specifically).”</i></p>	<p>Additionally, the GALD (a document referred to by Inspector Bristow elsewhere in his decision) provides an annex with an Evaluation Framework for Natural Beauty Criterion, and under the heading of Cultural Heritage, states that that example indicators could be “presence of settlement, buildings and other structures that make a particular contribution to the perceptions of natural beauty” and “...parkland or designed landscapes that provide striking features in the landscape contributing to perceptions of natural beauty”, see Mr Smith’s proof at para. 3.43.</p>
<p><i>80: “The MP lists the key features of the SHAONB as including woodland, country lanes, farmland, parkland and its tranquillity. ‘Sunken’ lanes are also mentioned elsewhere in the MP.69 MP policy P2 is that ‘development will respect the special landscape character of the locality, giving particular attention to potential impacts on ridgelines, public views and tranquillity.’ Although the original mapping, criteria and judgements that informed the designation of the SHAONB have passed into history, Natural England’s current advice in that respect is in GALD as referenced above.”</i></p>	<p>Disagreed. This is an incomplete and partial account of the Management Plan.</p> <ol style="list-style-type: none"> 1. It focusses on “Sunken Lanes”. Of course, it was accepted by Mr Petrow that, contrary to his written evidence, that Midhurst Road in the vicinity of the access to the Appeal Site is <i>not</i> a sunken lane. 2. It refers only to Policy P2 of the Management Plan which is one of two policies in that Plan which WBC allege are breached. It wholly and completely ignores the raft of other policies in the Management Plan which it is agreed are complied with: see Mr Smith’s proof at pp. 33 – 34.
<p><i>81: “Table 3 to GALD sets out the following ‘factors related to Natural Beauty’: landscape quality, scenic quality, relative wildness, relative tranquillity, natural heritage features, and cultural heritage. Table 3 is referenced in TGN02/21, which also sets out at table 1 ‘factors that can be considered when identifying landscape value’. It is not for me to reach a judgement as to whether the appeal site, or elements of it, should be within the SHAONB. However it is nonetheless relevant to consider landscape sensitivity in order to gauge the effects of the scheme”</i></p>	<p>Inspector Bristow seems to be saying that while GALD is focussed on designation, which is not what he is considering, it is relevant to consider the Appeal Site against GALD in “order to gauge the effects of the scheme”. If so that is agreed. This is the approach that Mr Smith contends for and is the opposite of the approach being put to him by Mr Cosgrove KC in XX.</p>
<p><i>82: “As set out in the Surrey Landscape Character Assessment (‘SLCA’), the site falls within landscape character type ‘GW5, Hindhead Wooded Greensand Hills’. That name derives from underlying greensand or sandstone, which remains visible as a building material on occasion. The SLCA sets out how GW5 is characterised by a complex and heavily wooded</i></p>	<p>Inspector Bristow takes a somewhat limited view of GW5: see Mr Smith’s proof at para. 3.18 to the effect that it is also evident that “infrastructure cuts through the area, and includes the rail line and A roads, notably the A3, which is in part tunnelled, the A286, the A287 and a number of country lanes and access ways to homes, either via short or longer drives.</p>

<p>topography dotted with small scale fields, often pastoral, with occasional expansive views from higher ground. At a local level the site is part of segment 'HE05A' of the WBC's August 2014 Landscape Study – Part 2: Haslemere & Godalming (the '2014 Study')."</p>	<p><i>The latter character is apparent both to the home accessed off Buch Lane, Grayswood Road and more locally to the Appel Site, access off Scotland Lane and Blackdown Lane."</i> Moreover, in relation to the SLCA Mr Petrow considered it important to look at the "Land Management" criteria for GW5: see his proof at para 4.2.2. and his answers in XX. In XX he accepted that the Appeal Scheme complied with almost all of the 27 criteria.</p>
<p>Landscape sensitivity</p>	
<p>83: " ... GLVIA3 and TGN02/21 refer to recreational opportunities as factors relevant to landscape value. Aside from footpath 597, and the path to be created in association with Scotland Park, the site has otherwise, in all likelihood, not been publicly accessible for a similar length of time"</p>	<p>Agreed. The baseline position of a lack of access to the Appeal Site is important given its location in the SHNL and close to the SDNP.</p>
<p>84: "At LCA6 there is a conifer plantation, a distinctively human intervention where native trees tend to prevail. At LCA7 there is a tennis court. There are power lines and infrastructure, including at LCA5. As noted above, the site has suffered from some colonisation by invasive species. Whilst Kirsten Ellis has referenced the historic connection between the wider area and various literary figures, that does not appear to extend as far as a specific associative or cultural connection with the site itself. There is, I acknowledge, little that is inherently distinctive in respect of the northern fields which form part of LCA1 and LCA2; WBC describe them as paddocks."</p>	<p>It is agreed that such variation in quality and value occurs across the Appeal Site and that there is little that inherently distinctive in relation to the northern fields. If there is to be housing development in and around Haslemere, given the acute housing needs, it is surely right that this take place on paddocks which have "little that is inherently distinctive" and which will result in 110 new homes that are virtually invisible from public viewpoints.</p>
<p>85: "There are also factors with a bearing on the susceptibility of the site to change, which are not expressly addressed in Robert Petrow's proof on behalf of WBC. The northern fields are next to mid-to-late twentieth century suburban development arranged so as to occupy a former hillside. Christopher McDermott argued on behalf of the appellant, evidentially as opposed to in terms of their being within the SHAONB, that there is little difference in respect of the character of those fields and those occupied by development now underway at Scotland Park."</p>	<p>Agreed that "[t]he northern fields are next to mid-to-late twentieth century suburban development arranged so as to occupy a former hillside" It is also correct that "that there is little difference in respect of the character of those fields and those occupied by development now underway at Scotland Park [Phase 1]". See further on this CD2.54 Part 2 electronic page 7. Both Phase 1 and Phase 2 were assessed together as HEO5 by WBC's consultants in 2014 as "medium" sensitivity: see the main closing.</p>
<p>86: "The SLCA sets out how the 'Devil's Punch Bowl and Gibbet Hill are popular visitor attractions but as a whole, this heavily wooded and undulating character area, is peaceful and remote...'. Here, on account of the presence of housing nearby, and of the A286, there is a qualified sense of</p>	<p><i>The suggestion that "on account of the presence of housing nearby, and of the A286, there is a qualified sense of peacefulness and remoteness around the northern and western fringes of the site" is strongly refuted.</i></p>

<p><i>peacefulness and remoteness around the northern and western fringes of the site (suggesting a degree of susceptibility to development). The south of the site is more tranquil, the centre more tranquil still. I note that the 2014 Study describes the landscape value of HEO5 as 'medium'."</i></p>	<p>Given the very busy arterial road and the housing in Scotlands Close there is nothing remote or tranquil about these areas. Inspector Bristow is correct that the south of the site is more tranquil and of course that is not to be developed at all. It is also correct to note that "the 2014 Study describes the landscape value of HEO5 as 'medium'."</p>
<p><i>87: "Midhurst Road is part of the A286, an arterial route. Around where access is proposed the site is effectively level with the carriageway. As above, Midhurst Road serves various other residential roads and accesses between the appeal site and the HCA (and also to the south at Bell Road). Five Gate Cottage, which appears inter-war, is immediately to the south of the proposed access next to footpath 597. The factors above are relevant to landscape value and susceptibility. Nonetheless, for 10 principal reasons, I do not consider that they are particularly meaningful."</i></p>	<p>All but the last sentence is agreed. The last sentence is flawed for reasons set out in detail below.</p>
<p><i>88: "Firstly the key features listed in the MP related to the SHAONB refer to parkland as well as farmland. Whilst the site has not been actively used for agriculture for many years, that is comparable with many historic estates peripheral to Haslemere and has no clear effect on landscape value."</i></p>	<p>This is a very odd paragraph. The Appeal Site is not farmland. There is nothing of a parkland character to the Appeal Site at present but there would be if the Appeal Scheme was allowed.</p>
<p><i>89: "Second, accessibility is not characteristic of landscape character type GW5. The SLCA notes in that respect how there is 'limited access within the majority of the character area'. Limited access contributes to tranquillity. Moreover GALD table 3 does not specifically refer to recreation in terms of establishing landscape value. GALD paragraph 7.1 goes further in explaining how 'AONBs may fulfil a recreational role but they are not designated for any recreational opportunities they may offer.'"</i></p>	<p>Disagreed. There are multiple errors in this:</p> <ol style="list-style-type: none"> 1. It is correct that the SLCA (CD7.10) at electronic page 65 says "this heavily wooded and undulating character area, is peaceful and remote due to its enclosed nature and limited access within the majority of the character area." 2. However, encouraging access to the SHNL is encouraged by the MP (CD7.9) see Policies RT4 and TT1 3. Moreover, the NPPF in paras. 189 and 190 emphasises the importance of recreational opportunities in NLs as well as NPs. 4. Inspector Bristow refers to GALD para. 7.1 but para 7.10 says "Particular attention should be paid to public access to the land. While it is a matter of judgment whether a lack of public access to an area of land precludes satisfaction of the statutory criterion in a particular case, it is clearly unreasonable as a matter of principle to expect all land to be accessible, whether situated within the main body

	<p><i>of a National Park or at its margins. Where there is no access, land may still be visually appreciated and enjoyed by those engaged in open-air recreation elsewhere in the National Park. It has been established that a designation may 'wash over' (ie include) an area of land even when there is no public access to it for recreational purposes." And this matter is considered further in GALD in Appendix 2: Evaluation Framework for Recreation Criterion.</i></p>
<p>90: <i>"Third, conspicuous human interventions are very slight. LAC7, where the domestic influence of Red Court is most clear, is a fractional element of the site. Power lines and infrastructure are very limited in nature (and also visually being set next to existing trees in the undulating landform). The SLCA also refers to 'extensive coniferous plantations' in GW5."</i></p>	<p>Disagree. This section is considering the whole Appeal Site. The emphasis on the domestic influence of Red Court in LCA7 is really quite bizarre as it ignores the heavy human influence on LCA1 and 2 from existing housing in Haslemere and the A286. Moreover, there are tracks through 'Red Court Woods' are shown on old OS maps. There is also the gun spigot.</p>
<p>91: <i>"Fourth, there is a degree of historic landscape structure and continuity shown through map regression (notably in respect of the boundaries of the northern fields). The SHAONB itself reflects a complex overlay of human intervention in the landscape."</i></p>	<p>This paragraph is difficult to fathom, albeit it is agreed that the SHNL <i>"reflects a complex overlay of human intervention in the landscape"</i>.</p>
<p>92: <i>"Moreover, fifth, as aptly noted in the appellant's LVIA 'for practical reasons designated landscapes cover a block of land and do not exclude smaller area of landscape within the blocks areas that might not meet the criteria'. It would be illogical to suggest that each and every element of the SHAONB, however small, should in some way be clearly distinctive in itself or a fractal of the overall whole. Moreover, topographically the site strongly reflects the distinctive undulating complexity of the SHAONB. The northern fields represent part of a ridge in the landform, being at a notably higher level than Scotlands Close."</i></p>	<p>Disagree.</p> <ol style="list-style-type: none"> 1. No one is suggesting that <i>"designated landscapes cover a block of land and do not exclude smaller area of landscape within the blocks areas that might not meet the criteria"</i>. However, as Mr Petrow accepted in XX not all land within a NL is of equal value. 2. There is not much in LCA1 and LCA 2 that is redolent of, or characteristic of, the SHNL as Mr Smith explained in RX. And as Inspector Bristow finds (see above) LCA1 and LCA2 show <i>"little that is inherently distinctive"</i>. They are non-descript paddocks. 3. The only matter that Inspector Bristow alights on as being characteristic of the SHNL in terms of LCA1 and 2 is topography, and the ridge line. But as he noted at para. para. 63 that <i>"[s]ome elements of Haslemere within the settlement boundary are significantly further away from the High Street and</i>

	<i>nearby train station than the appeal site, and are similarly set within an undulating topography”.</i>
93: <i>“I recognise the finding of the previous Inspector in relation to the site at Scotland Park in its former condition, and have reviewed the photographs provided of that. However, sixth, the Scotland Park site is opposite Scotland Lane next to the listed lodge formerly associated with Red Court, opposite Haslemere Recreation Ground. Those are factors which, to my mind, point to a greater degree of susceptibility to residential development relative to the way in which Haslemere has evolved historically. Whilst HE05A is scored ‘medium’ in terms of landscape value in the 2014 Study, that must be read as a relative judgement which takes account of Haslemere being encircled by various protective landscape designations.”</i>	<p>Disagreed.</p> <ol style="list-style-type: none"> 1. Inspector Bristow seeks to distinguish the Scotland Paek Phase 1 site from the Appeal Site. He says the Phase 1 site <i>“is opposite Scotland Lane next to the listed lodge formerly associated with Red Court, opposite Haslemere Recreation Ground. Those are factors which, to my mind, point to a greater degree of susceptibility to residential development”</i>. But: (i) LCA1 and 2 lie close to the boundary of existing housing in Haslemere; and (ii) the A286 which surely provide a stronger degree of susceptibility to residential development than associations with Red Court. 2. As Inspector Bristow acknowledges WBC’s own 2014 study assessed both the whole of the Appeal Site and the Phase 1 site under HE05 as <i>“medium’ in terms of landscape value”</i>. 3. Inspector Bristow says that this is a <i>“relative judgment”</i> given that Haslemere is <i>“encircled by various protective landscape designations.”</i> But that only underlines the importance of allowing housing on a site like the Appeal Site -where it is agreed that 110 of the homes will be almost invisible from public view. Given that the constraints are considerable and the need acute sites like the Appeal Site must be made best use of.
<i>“94. Seventh, although there are various accesses off the A286 nearby, for much of its length Midhurst Road is sunken in the landform. As above, country and sunken lanes are characteristic landscape features which, in turn, contribute to the intimacy and seclusion of the SHAONB. By LCA1 I saw that Midhurst Road very much retains that character, including by virtue of the canopies of trees either side of it.”</i>	<p>Disagreed. It has been agreed by the main parties that the area of the Midhurst Road impacted by the Appeal Scheme is not sunken. Inspector Bristow’s acknowledgement that there are other accesses and road infrastructure on the Midhurst Road is noted. This is set out in more detail above.</p>
95: <i>“Four of the trees proposed for removal are classed by the appellant as ‘B’ with reference to British Standard 5837:2012,74 setting aside that the officer report associated with TPO 06/24 suggests a higher value of some. In my view those trees have a value and importance, both by virtue of that</i>	<p>Matters have moved on as regards tree loss: see the main closing. Moreover, the evidence of Mr Smith was that the Midhurst Road has many existing urban influences: see further above.</p>

<p><i>categorisation and by their contribution in terms of landscape character as part of the tree line flanking Midhurst Road here. I note that Christopher McDermott's proof sets out how the A286 in this location has a 'strong rural character'. I agree"</i></p>	<p>Inspector Bristow here gives no consideration to the considerable amount of new tree planting proposed (and already advance planted) which dwarfs the few trees to be lost. Moreover, Mr Smith made the point in his oral evidence at the Second Inquiry that the proposals reset a new tree lined road for the future, in the absence of which, the current tree line will gradually be lost (many of them being C grade trees with circa 10 years life remaining). Thus, in terms of the arboricultural merit the Appeal Scheme puts in place an improved age and species range, and places both existing and proposed trees into proactive management thus improving resilience. In relation to the landscape function, as evident in the AVRs, the scheme ensures 'green flanking' of Midhurst Road in this location.</p>
<p>96: <i>"Eighth, as a whole, the appeal site is very much consistent with the characterisation of the landscape in the MP and SCLA. Much of the site is wooded. As noted above a woodland buffer has recently been planted between the site and Scotlands Close enhancing that characteristic at the northern fields. That planting, albeit currently immature, in my view serves to create some physical and visual separation with Scotlands Close (and there is little realistic prospect of it being removed regardless of the outcome of this appeal). LCA4 is extensively wooded, and to some extent that is true of LCA3 and LCA7 where trees are sparser. Similarly modest fields as at LCA1 and LCA2 are commonplace throughout the AONB, many of which are reclaimed from former woodland or sit by it."</i></p>	<p>Inspector Bristow relies on the advance planting undertaken by the Appellant which improves the current edge of Haslemere. But:</p> <ol style="list-style-type: none"> 1. Scotlands Close itself provides a very poor quality current edge to the town. The Appeal Scheme will provide a much better edge: see Mr Pullan's EiC NID13.2 and pp. 4 and 22. 2. The advance planting was done to support this appeal. If the appeal fails there is no legal requirement whatsoever for it be retained and no legal obligations to manage it and maintain it. 3. There are parts of the Appeal Site that are heavily wooded. These will be retained and enhanced. Inspector Bristow ignores this here. Also the existing woodland is not subject to any management obligations at present other than the 'Circular Walk' for Scotland Park Phase 1 where the Appellant will be required to maintain a footpath when the development completes - but imposes no positive woodland management. 4. The suggestion that <i>"modest fields as at LCA1 and LCA2 are commonplace throughout the AONB"</i> somehow makes the site <i>"consistent with the characterisation of the landscape in the MP"</i>

	<p><i>and SCLA" is bizarre given that Inspector Bristow also finds at para. 84 that "[t]here is ... little that is inherently distinctive in respect of the northern fields which form part of LCA1 and LCA2; WBC describe them as paddocks."</i></p>
<p>97: <i>"Ninth, in my view 'susceptibility' is a concept which cuts both ways. The existence of contextual development does not necessarily justify further development diverging from landscape character. If susceptibility were to function in that manner, it would inevitably serve to reduce that landscape value which remains over time."</i></p>	<p>There is confusion here by Inspector Bristow in relation to two parameters that feed into sensitivity. The presence of adjacent development does indeed influence landscape character value. The Appeal Site's location is adjacent to a main settlement edge, projecting the backs of 'ordinary' houses, (houses that are not of locally intrinsic character) onto two fields that in themselves have little that is 'inherently distinctive'. That is the route to value. Susceptibility is then to be related to changes related to the receiving landscape due to the scheme, thus something very distinct from value. Inspector Bristow looks at susceptibility to change, in effect capacity, and in this way conflates value and susceptibility. And the current NL boundary review has no brief to consider any areas for removal from the SHNL. Over washing will generally bring designated land boundaries up to physical features such as settlement edges. Not all land within protected landscapes is of equivalent quality or contribution to the purposes.</p>
<p>98: <i>"Furthermore and tenth, it is inescapable that the site has been within the SHAONB now for 66 years. It has therefore become valued in terms of NPPF paragraph 180.a) and imbued with a perceptual scenic quality over time. TGN02/21 notes how 'people today value different aspects of landscape than they did in the past or may do in the future...'. Reflecting that the site is within the SHAONB the appellant's Landscape and Visual Impact Appraisal ('LVIA') rationally starts from the position that prevailing landscape quality is 'high'."</i></p>	<p>The reliance on the mere fact that the Appeal Site has been in the SHNL for a long time is a neutral matter given that there has not it seems been any reviews since designation; and the review now under way looks only at expanding the SHNL.</p>
<p>99: <i>"In respect of LCA1 and LCA2 specifically, on account of the foregoing, in terms of the landscape as a resource their sensitivity may fairly be summarised as medium to high (taking account of landscape value and susceptibility)."</i></p>	<p>Reference should be made to Mr Smith's evidence written and oral at the Second Inquiry.</p>
<p>Visual sensitivity</p>	

<p>100 – 108:</p>	<p>Inspector Bristow rightly finds:</p> <ol style="list-style-type: none"> 1. <i>“the housing would be relatively visually contained”</i> (para. 100); 2. Views from Gibbet Hill of the Appeal Scheme would <i>“be barely appreciable”</i> (para. 101); 3. There would be no visibility from the SDNP (para. 102); 4. <i>“LCA4 is extensively wooded and is at a lower contour than the northern fields. Visually, compared to the periphery of the site and more open areas, there is greater susceptibility for change to be accommodated there without being obtrusive (or perhaps even apparent from certain vantage points). In visual terms, provision of the Scout and Forest School facilities would have little appreciable effect.”</i> 5. <i>“the visual sensitivity of those passing along Midhurst Road or footpath 37 to reach elsewhere may fairly be described as medium or medium to low”</i> apart from immediately at the Site access (para. 108) <p>Inspector Bristow went on to say that there was a mixed picture on visibility but the position has moved on given Mr Petrow’s acceptance that: (i) all visual impacts would be slight by Year 15; and (ii) the proposed housing (save for the lodge) is very largely invisible from any public viewpoints.</p>
<p><i>Landscape and visual effects</i></p>	
<p>109: <i>“The appeal site represents a small element of the SHAONB, potentially smaller still depending on the outcome of Natural England’s work. It also represents a small element of GW5. Only around 22% of the site itself would be built upon. Visually, as above, the effects of the scheme would be comparatively localised on account of the topography and intervening features.”</i></p>	<p>Agreed.</p> <p>Mr Smith’s proof records at para. 4.102 <i>“[i]n the context of the SHNL the area on changes of the site (LCA1 and LCA2) is, 5.13ha, 0.0513 of a square kilometre. Thus, it is 0.00012% of the potential SHNL extension, 0.00009% of the SHNL inclusive of a 30% extension. It is a very, very small area of change in that context. Again, a matter to be factored into balance.”</i></p>
<p>110: <i>“Nevertheless, crudely, less ‘landscape’ would exist. Combining a medium to high landscape sensitivity at LCA1 and LCA2 with the introduction of substantial built development across around 4.69ha would entail at least a ‘moderate to large’ magnitude of impact in terms of the landscape as a resource.⁸⁰ That categorisation applies similarly as in respect</i></p>	<p>Disagreed.</p> <p>It was, and still is, common ground, that there are only adverse landscape effects on two of the Landscape Character Areas (LCAs 1 & 2) on the Appeal Site. It is noted, that LCAs 1 & 2 are where the Parameter Plans propose built form / most of the infrastructure, is of</p>

<p><i>of sensitive visual receptors, i.e. users of footpath 597. In respect of other local visual receptors the magnitude of change may fairly be summarised as medium (in that there would be a partial alteration to existing features screened to varying degrees by natural features)."</i></p>	<p><i>'Medium' landscape quality, in contrast to other on-site LCAs which are of higher quality. So the evidence is that the impact is localised, and also that LCAs 1 and 2 are relatively well screened.</i></p> <p><i>In response, and pursuant to the definition (see para. 73 above) exactly the same amount of landscape would remain but its character would change, so edge of settlement paddocks change to homes and their associated green infrastructure. Mr Smith's evidence was clear that in landscape and visual terms Inspector Bristow's conclusions here are wrong.</i></p>
<p><i>111: "The appellant advances what might be characterised as various landscape benefits. Much of the site would be opened up as a public and community resource. The proposal would better reveal a second world war spigot gun emplacement near Midhurst Road and would entail significant tree planting, management of invasive species, woodland management, and the creation of richer habitat throughout the site. No requirements in those respects exist presently. However, for 5 principal reasons, I am not of the view that the proposed benefits would significantly reduce or mitigate adverse landscape and visual effects in this specific instance"</i></p>	<p><i>Disagreed. The reasons given by Inspector Bristow are considered below. The account given here of what are, on any view, significant landscape benefits is very limited. Mr Smith's proof provides a proper account of the many benefits. None of these are disputed: see Mr Petrow's answers in XX.</i></p>
<p><i>112: "Firstly, better revealing and providing information in respect of the spigot gun emplacement would add to the appreciation of the history of the site. However arguably any human intervention in the landscape has a degree of significance; there is very much a sliding scale. In that context better revealing an early-to-mid twentieth century concrete emplacement would not represent a particularly meaningful contribution. The emplacement embodies very little that speaks to the past in the present. Physically that element of the landscape is, and would remain, extremely small"</i></p>	<p><i>This is one of the smallest benefits but as Mr Smith explained in XX the spigot is part of the cultural heritage of the Appeal Site and its treatment within the Appeal Scheme is "the right thing to do".</i></p>
<p><i>113: "Secondly, I have noted above that recreational opportunities are relevant in terms of landscape value in general terms. They are also referenced in NPPF paragraph 183.c). However recreation is not specifically referred to in GALD, as referenced above. Opening up the site to greater public use, including by virtue of the Scouts and Forest School provision, would</i></p>	<p><i>Disagreed: see response to para. 89 above.</i></p>

<p><i>intrinsically reduce tranquillity. A sense of tranquillity is characteristic of much of the SHAONB"</i></p>	
<p>114: <i>"Moreover 110 homes along with access and the proposed road tracking through LCA1 would markedly reduce tranquillity at the western and northern boundaries of the site compared to present. Footpath 597, proposed to be upgraded to a bridleway and relocated further away from the A286, would nonetheless become sandwiched between the A286 and the road to the outline element of the scheme for much of its length."</i></p>	<p><i>Disagreed. The OR notes (CD4.2, electronic page 47) "In terms of pedestrian access, the site layout has been developed with a high degree of pedestrian permeability, with pedestrian access accommodated from Midhurst Road, Bell Vale Lane (through the SANG) and Scotland Lane. An existing public right of way (Footpath 597) is proposed to be diverted alongside Midhurst Road, to facilitate the site access. This is outlined in the Transport Assessment. The diversion is minor, and would still facilitate movement on a north/south axis alongside Midhurst Road. The footpath created would act as an enhancement over the existing, which is narrow, and directly adjacent to Midhurst Road"</i></p>
<p>115: <i>"Whilst I acknowledge one of the purposes for which National Parks are established is to promote opportunities for public understanding and enjoyment, the SDNP is nevertheless presently accessible via footpath 597 and also via Byway 104 which spurs off Scotland Lane near the Recreation ground. In respect of recreation, the proposal appears to be intrinsically premised on creating a very different character (as opposed to enhancing that which already exists and is characteristic here)."</i></p>	<p><i>Disagree, see the Appellant's closing in the First Inquiry ID4.4 at para. 25(4) "The increased linkage between Haslemere and the South Downs National Park as a result of bringing people into the Appeal Site would in turn encourage access to and enjoyment of the National Park – something which is a statutory purpose of the National Park and thus something which you, sir, are required to "seek to further" under the amended s.11A of the National Parks and Access to the Countryside Act 1949."</i></p> <p><i>See also CD10.18: "S.11A (1A) In exercising or performing any functions in relation to, or so as to affect, land in any National Park in England, a relevant authority other than a devolved Welsh authority must seek to further the purposes specified in section 5(1) and if it appears that there is a conflict between those purposes, must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park."</i></p>
<p>116 <i>"Third, I accept that tree planting, management of invasive species, woodland management and the creation of a richer habitat throughout the site would forestall further decline and prevent other uses from occurring. However in large part those measures would relate to elements of the site which are already of higher value in landscape terms (in addition to LCA1 and LCA2)."</i></p>	<p><i>Disagreed. These conclusions are clearly wrong and the findings of Inspector Bristow on ecology were subject of grounds of challenge in the s. 288 claim.</i></p> <p><i>These parts of the site may be of higher landscape value now but they are subject to management obligations and are threatened by invasive</i></p>

	<p>species. So, they will not remain of higher value without such interventions. The Appeal Scheme is the only way to secure such.</p>
<p>117: "Building on that point, that 78% of the site would be left undeveloped and become subject to landscape management relative to 22% which would be developed is a quantitative equation. It belies that built development and its associated impacts in terms of domestic activity, greater recreational use, along with vehicular movements, would be more impactful in qualitative terms than landscape enhancements. I have also reasoned above that detracting features, notably at LCA5, LCA6 and LCA7 are, in my view, slight."</p>	<p>This is directly contradicted by the approach of the Secretary of State and Inspector in the Turnden case (see NID7.19):</p> <p>DL28 "she has taken into account that only 20% of the site would be built on (IR730) and the proposed development would deliver landscape enhancements (IR826)"</p> <p>IR 730. "I note the criticism of Mr Duckett's approach in this regard in terms of sites potentially being enlarged to try to justify inappropriate development, including from NE Nonetheless, I see nothing wrong, as a matter of principle, with devoting a large part of an application site to non-built form, including landscape enhancement. In this case the fairly modest size of the Development Area compared to the Wider Land Holding and the associated landscape improvements are unusual, especially as only some 20% of the site would be built on. Indeed, the GLVIA refers to mitigation offsetting or compensating for identified harm, and that enhancement which improves the landscape resource or visual setting of the site or wider area over and above the baseline condition are an integral part of the scheme and can legitimately be assessed as part of the proposal."</p> <p>IR826: "... It is not an overstatement to say that it is rare for a scheme to deliver such a package of exceptional benefits, on a site located adjacent to a second tier settlement, delivering much needed housing, including affordable housing above the rate required by the development plan, in a highly constrained area, and which delivers landscape enhancements with limited associated harm, as well as biodiversity enhancements, while developing only a small proportion of the overall site and in doing so provides a strong long term settlement edge."</p> <p>The 78% landscape enhancements proposed as part of the Appeal Scheme are not in any way token in nature (if they were, one may have sympathy with the argument that adding land to a scheme merely masks the actual impacts). They have been as thoroughly planned as the built development areas - there have been many years of discussions with NE to reach agreement on the SANG, which does not</p>

	<p>merely mitigate the housing on site but has been designed in a manner that offers wider strategic benefits. Considerable thought has gone into making the SANG headroom available on a low cost basis to ensure delivery of WBC's housing ambitions via LPP2. If the appeal is refused, the deliverability of sites in and around Haslemere will be brought into question. Critically, the 78% provides a defined and much improved settlement edge, secured in perpetuity. BNG benefits also on offer, both on site and strategically. Bristow woefully under characterises the benefits of the 78%.</p>
<p>118: <i>"I accept that as tree planting matures the visual effects of the proposal would be reduced to some extent, aiding the assimilation of development in what is an extensively wooded area. However, fourth, I have reasoned above that Midhurst Road here is characteristic of country or sunken lanes within the AONB. The LVIA explains how around 180 metres of 'enclosed character' at Midhurst Road would be changed. It would, more accurately, be lost"</i></p>	<p>Disagree:</p> <ol style="list-style-type: none"> 1. Mr Petrow's evidence, in XX, was that at 15 years even at the access the impact in visual terms would be slight because of the new planting. At 10 years his evidence is that the visual impacts would be moderate or slight. 2. It is now agreed the Midhurst Road in the area impacted is not a sunken lane, nor is it any real sense a "country lane" for the reasons explained by Mr Smith in XX and RX (see also above).
<p>119: <i>"The widened nature of the A286 near the proposed site access itself would be clearly at odds with prevailing character. A number of semi-mature and mature trees would need to be felled to provide for access and visibility, such that it would be many years before even advanced nursery stock approaches comparable maturity (as shown in Accurate Visual Representation view 1 at year 10). Moreover, by consequence of road widening, tree canopies would, in all likelihood, fail in time to provide a similar level of enclosure to present. Existing character would not, therefore, be regained"</i></p>	<p>Disagreed:</p> <ol style="list-style-type: none"> 1. As above, Petrow's evidence, in XX, was that at 15 years even at the access the impact in visual terms would be slight because of the new planting. At 10 years his evidence is that the visual impacts would be moderate or slight. 2. Mr Smith's evidence, in XX, was that with the advance planting and the use of hazel the access would be green and verdant within 7 years. 3. In terms of the comment that "[e]xisting character would not, therefore, be regained". There will be a change in the character but nonetheless one befitting the SHNL landscape - the lodge will be "attractive" and Mr Smith's evidence refers to a parkland setting, with focal lodge entrance.

<p>120 <i>"Fifth, as the LVIA puts it, around the site access, road to the outline element, gatehouse and rambler's shelter the intention is to 'achieve an alternative landscape character'. I acknowledge the gatehouse would emulate gatehouses found throughout the SHAONB. Architecturally it bears much similarity with the lodge formerly associated with Red Court. However, I question the use of the word 'landscape' in that LVIA phrase. As reasoned in paragraph 78 above, the SHAONB was designated as regards 'natural' beauty rather than for its built environment."</i></p>	<p><i>This is fundamentally flawed and fails to appreciate that settlement, including lodges and parkland, are part of the character of and natural beauty of this NL.</i></p> <p><i>In XX Mr Petrow accepted that Inspector Bristow's approach in this paragraph was contrary to NE's approach as set out in the GALD.</i></p>
<p>121: <i>"Moreover, as Christopher McDermott's proof puts it, there is a conscious choice to create the 'perception of an entrance to a country estate'. Setting, aside the intrinsic design merits of that element of the scheme in landscape and visual terms the intensity of built development around the site access would be clearly at odds with natural and scenic beauty. As with accessibility or recreation, the scheme again appears consciously premised on altering character."</i></p>	<p><i>Disagreed. Mr Smith's view is as follows (see his proof, p 32):</i></p> <p><i>"The scheme shows that it has also understood just how heavily wooded the Surrey Hills landscape is. Overall, this green infrastructure has been conserved and enhanced, and is to be perpetuated through the provision of a significant amount of new tree planting, both within the wider landscape, woodland, parkland and grassland and also within the streets and spaces around the homes ... The design of the arrival area results in a new element of 'designed landscape', continuing the tradition of human intervention in the landscape, where it creates an area of parkland adjacent to the arrival drive. Alongside the parkland landscape features, characteristic boundary walls, fencing and the lodge at the immediate arrival to the site, are all very reminiscent of the Surrey Hills 'cherished designed landscapes.' A scheme that celebrates local distinctiveness."</i></p>
<p>122: <i>"By consequence the proposal would in my view fundamentally and seriously adversely affect landscape and visual character here (which presently contributes towards the landscape and scenic beauty of the SHAONB). There are, as above, various moderating factors. Nonetheless, particularly as regards implications for Midhurst Road, footpath 597 and LCA1, the effect of the scheme may fairly be termed significantly adverse, reducing only slightly from that gradation over time"</i></p>	<p><i>In terms of visual impact the evidence at the Second Inquiry cannot sustain a conclusion that there would be such a level of harm and that it would only slightly reduce overtime.</i></p> <p><i>The language used here by Inspector Bristow is not GLVIA language. It is as Mr Smith said, in XX, "emotive language". It is the kind of language used by local objectors.</i></p>
<p>123: <i>"GLVIA3 also references cumulative landscape and visual effects, i.e. related to 'incremental changes caused by other past, present or reasonably foreseeable actions together with the project.' Here, as noted above, Sturt Farm has secured permission and allocations have been made within the</i></p>	<p><i>The are no cumulative visual effects thus any such effects would only be in relation to landscape character. Quantitatively harm may be added to but to a very limited degree at the SHNL level.</i></p>

<p><i>SHAONB around Haslemere. To some degree delivery there has adversely affected the landscape and scenic beauty of the SHAONB or, on the appellant's evidence, would do so. The proposal would add to that harm."</i></p>	
<p><u>Implications of forecast housing supply</u></p>	
<p>124 - 145</p>	<p>The position has changed utterly from the First Inquiry:</p> <ol style="list-style-type: none"> 1. The housing land supply position has deteriorated very significantly. Whereas WBC originally contended for 4.1 years of HLS, a shortfall of 629 dwellings over the 5 year period, and Inspector Bristow found a 3.19 year supply, a shortfall of 1,291 dwellings over the 5 year period the agreed position is now only 1.28 years, a shortfall of 5,777 homes across the period 2024-29. At Turnden the HLS was close to (but below 5YLS). 2. This is not just a result of a substantial increase in the housing demand now identified by the revised standard method for the Borough; it also stems from a continuing and persistent failure by WBC to take meaningful steps to address the problem in either the short, medium or long term. The affordability element was specifically increased for Waverley between the consultation NPPF draft and the final issue in December 2024. 3. In the short term, WBC has failed to enable the progression consents for the sites which are already allocated under the local plan, effectively reaping the rewards of the problems inherent in the strategic choices it made in LPP1 and LPP2. At the Borough level WBC has finally come to accept that its major strategic allocation (Dunsfold Park) is not deliverable; at the local level, Haslemere has seen an almost total stagnation of its LPP2 sites - partly because of the individual problems with those sites but also because WBC has failed to identify a proper form of strategic mitigation for recreational pressure upon the SPA. 4. The affordability ratio continues to be poor. In Waverley 17.11, higher than Guildford and England.

	5. Affordable housing completions remain poor, 47 completions in 2013-2023 (21% of total completions in that period of 229 dwellings)
<u>Whether or not there are exceptional circumstances</u>	
146: this is an introductory paragraph	N/A.
<i>Housing</i>	
147: <i>“There are evidently clear and pressing needs for market and affordable housing nationally, in Waverley, and at Haslemere. Provision of housing resulting from the scheme, 35% affordable housing in excess of the minimum 30% set via LPP1 policy AHN1, and also 5 self-build plots, would clearly be beneficial socially, and economically,107 in the light of delivery challenges set out above. Given the emphasis in the NPPF on ‘significantly boosting’ the supply of homes and building a strong competitive economy, amidst what the appellant aptly terms as a housing crisis, those are important national considerations.”</i>	Agreed in so far as it goes. As for paras. 124 – 145 matters have moved on significantly in relation to housing, not least national policy and the emphasis of the need to boost housing delivery. There is now also an off-site affordable housing contribution in addition.
148: <i>“However, in respect of ‘the need for the development’ referenced in NPPF paragraph 183.a), many authorities are similarly struggling with housing delivery. Many authorities are also unable to demonstrate a forward supply of deliverable sites approaching 3.19 years. Housing delivery in Waverley has also recently increased markedly, more so than in many other areas. In 2019/20 to 2021/22 HDT data indicates delivery of 605, 690 and 820 dwellings, 139% of requisite ‘requirements’. There is no indication that recent uplift arose principally, or meaningfully, by virtue of allowing development with comparably adverse landscape effects as would arise here. The social and economic benefits of housing provision, as well as landscape protection, are both national considerations.”</i>	As for paras. 124 – 145 matters have moved on significantly in relation to housing. In terms of Inspector Bristow’s comment that “[m]any authorities are also unable to demonstrate a forward supply of deliverable sites approaching 3.19 years” there are two points: (i) the HLS has worsened considerably in Waverley; and (ii) the approach of the Government to driving housing has changed. The system may have previously tolerated shortfalls, but those days are over under the new Labour Government. The grant of permission in the Turnden case is important for this reason. The numbers tell the story. So, not only is the 5 year HLS shortfall massive (-5777 dwellings) if one considers the period to the end of 2032 (the LPP1 period) the evidence shows a potential shortfall of 8,026 dwellings. While HDT results have been good, the number of deliverable outstanding planning permissions has fallen substantially: for large sites from 2,008 dwellings to 1,115.

	<p>WBC seek to point to their HDT results to suggest the picture is not as negative as all that. The HDT is, of course, backward looking over the past 3 year period and, as we know the period between 2019 – 2023 was affected by COVID and consequently adjustments were made by Government to the calculation during that time. More importantly the HDT is not representative of the current housing need, which has changed dramatically with the new standard method calculation of LHN. Looking forward over the next 5-years it is clear, and agreed, that WBC’s shortfall is massive. The HDT performance figures for the past are therefore of little or no relevance now. The boost to supply arising from adopting LPP1 in 2018 has peaked and now falling. The completion figures Inspector Bristow refers to included 260 dwellings at Aarons Hill, Godalming on land taken out of the Green Belt. Future delivery from the LPP sites relies on delivery of 130 dwellings at Chididngfold within the SHNL, 190 dwellings at Milford on land removed from the Green Belt and 90 dwellings at Royal School within the SHNL. Completions at Sturt Farm (consented in 2015, pre LPP1) began showing up in 2024 and will continue into this year.</p>
<p>149: <i>“Affordability in Waverley is acute, more so than in many other areas, despite a remarkably buoyant housing market. However there is some force in the argument that house prices in the Borough are likely to remain high relative to local income come what may (on account of the strength of the local economy, the proximity of Haslemere to London, and its desirability). The implications of either allowing or refusing the appeal would have little effect on the local economy or housing market in contrast to the significant of adverse effects to the SHAONB.”</i></p>	<p>Disagree: matters have moved on. This is the antithesis of the approach of the Government in the new NPPF and in the many written ministerial statements and other documents published since July 2024. Specifically, the affordability adjustment has been designed to boost supply to address house prices. The new Government does not endorse the concept of supply and demand that Inspector Bristow took namely that <i>“some force in the argument that house prices in the Borough are likely to remain high relative to local income come what may...”</i>. Indeed the Government has purposefully increased the standard method housing number for Waverley.</p>
<p>150: <i>“As above, the statutory basis for decision taking is section 38(6) of the 2004 Act. NPPF paragraph 15 builds upon that in setting out how the planning system should be genuinely ‘plan-led’. That must also be a national consideration. Moreover, even in the absence of a 5YHLS development plan policies do not cease to exist.”</i></p>	<p>Agreed in so far as it goes. Notable further delays with the emerging local plan and still no updated LAA.</p>

<p>151: <i>“In that context it is relevant that the LPP1 was not founded on meeting anything near full affordable housing needs, notwithstanding an uplift to the housing requirement to take account of market signals.1 It is therefore unsurprising that affordability issues persist and are now more acute. Moreover, inherent in my reasoning in paragraphs 124 to 126 of this decision, some 46% of the LHN figure of 713dpa (324.6 dwellings annually) is itself a factor of housing affordability as opposed to deriving from household projections. Housing delivery and affordability evidently was, and remains, a stubborn and multifaceted issue.”</i></p>	<p>Inspector Bristow has misinterpreted national policy which is to ensure that the planning system boosts housing supply, to address affordability and facilitate/ enable affordable housing. The weight provided to the range of housing proposed was not reflective of the evidence/ nor issue. Inspector Bristow again seems to be applying lesser weight, or at least some form of different approach, to the affordability contingent, for which there was no national policy support at the time and which is now flat contrary to national policy and the new standard method.</p>
<p>152: <i>“Turning to NPPF paragraph 183.b), Christopher McDermott’s evidence sets out an analysis of possible alternative housing sites in the Borough capable of delivering 50 or more dwellings. It rationally concludes that there are few sites that would be preferable in landscape and visual terms, none at the urban edge of Haslemere. Nevertheless the corollary is that there are such sites with potentially lesser effects in landscape terms alone (now the sole matter in dispute between the main parties). The appellant explains how ‘on the face of it Farnham and Cranleigh are less constrained..’. There is, moreover, nothing in respect of sites capable of delivering fewer than 50 units that might collectively amount to similar housing delivery as the appeal scheme.”</i></p>	<p>The evidential position on alternative has changed: see the main closing.</p> <p>Inspector Bristow does say <i>“Christopher McDermott’s evidence sets out an analysis of possible alternative housing sites in the Borough capable of delivering 50 or more dwellings. It rationally concludes that there are few sites that would be preferable in landscape and visual terms, none at the urban edge of Haslemere”</i>. That is agreed and supported by the further evidence at the Second Inquiry.</p> <p>Inspector Bristow then says that <i>“there are such sites with potentially lesser effects in landscape terms alone (now the sole matter in dispute between the main parties). The appellant explains how ‘on the face of it Farnham and Cranleigh are less constrained..’. There is, moreover, nothing in respect of sites capable of delivering fewer than 50 units that might collectively amount to similar housing delivery as the appeal scheme”</i></p> <p>If this is to be read – and it is very unclear - as Inspector Bristow finding that the need being considered is merely for 111 units then that is incorrect and contrary to the approach taken in the <i>Wealden</i> case and the <i>Turnden</i> case.</p>
<p>153: <i>“I acknowledge housing provision of a minimum of 11,210 overall or 990 at Haslemere acts as a floor rather than ceiling, and that there is no 5YHLS. However permissions and allocations have been made in pursuit of the remit set by the LPP1 (paragraphs 38 and 50 of this decision). It is part of the appellant’s case that provision in that regard provides some support for the development proposed. However, and recognising the particular</i></p>	<p>Disagree: Notwithstanding that the spatial strategy (SP1/ SP2) is out of date by virtue of the severe 5YHLS shortfall, the evidence before the Inquiry indicates that at least 990 dwellings will not be met by 2032. There is also nothing which should prevent actual delivery exceeding ‘at least’ 990 – the opportunity to achieve this would be heightened through a sufficient amount and variety of land.</p>

<p><i>landscape constraints at Haslemere, the LPP1 was nevertheless constructed so as to apportion a far lesser proportion of housing at Haslemere than other settlements less constrained by the SHAONB. Numerically 990 is less than 10% of the overall figure of 11,210; the smallest apportionment of any main settlement."</i></p>	<p>The proposed NL boundary changes will add a further 100 + sq. km to the SHNL, further limiting unconstrained areas.</p> <p>Undelivered LPP2 allocations at risk total 227 dwellings: Royal School - 90 Old Grove - 40 National Trust car park - 13 Central Car Park key site - 30 Youth Campus - 34 Fairground car park - 20</p>
<p><i>154: "Whilst 77% of Waverley is AONB or AGLV, that nonetheless indicates that 23% of the Borough may be less sensitive in landscape and visual terms. I note that the appellant argues that high-level landscape studies are of 'limited use' in assessing the particular implications of a given scheme in any event. There is also, in my view, a temporal issue. As at 1 December 2023, nearly 6 years since the LPP1 was adopted, some 805 dwellings have been delivered or received permission at Haslemere. Numerically that is over 80% of the minimum figure of 990 set via LPP1 policy ALH1. Although there are presently deliverability issues with allocations, if built out over the remaining 8 years to 2032, LPP2 allocations have sufficient capacity to more than surpass the figure of 990 numerically (setting aside any delivery from windfalls). A number of the LPP2 allocations are, in part, previously developed land. That is also strongly suggestive that some would have lesser landscape sensitivity than the site in this instance."</i></p>	<p>Mr Collins has presented further evidence in respect of the delivery challenges of a number of LPP2 allocations in Haslemere, notably no strategic SPA mitigation. This continues to place sufficient doubt on the deliverability of sites to achieve the minimum 990 to 2032. It is accepted that, Borough-wide, there may be some alternative areas (albeit limited known sites) that would be less sensitive in landscape and visual terms, though this is only one factor of many in reaching an overall planning judgement. The most compelling evidence is in respect of the onward (known) housing land supply, which indicates a now substantial Borough-wide shortfall and insufficient land to meet anything like this need.</p> <p>There is no evidence therefore this Inquiry that the Haslemere allocation of 990 dwellings will be met, let alone exceeded as Inspector Bristow assumed. Irrespective of this the 990 allocation to Haslemere is evidently out of date, given the acute 5YHLS shortfall of 5,777 dwellings, and even greater need to end of the Plan period. Allocations in Waverley have shown a poor degree of certainty and often underperform when site specific constraints are exposed through promotion ie Dunsfold/Royal School. There is much doubt over the delivery of many LPP2 sites, particularly in Haslemere where</p>

	<p>no SPA mitigation proposals, strategic or site specific, have been identified. The level of detail accompanying the appeal proposals gives a high degree of confidence that the site can deliver, which should weigh strongly in the balance against many uncertain allocations.</p>
<p>155: <i>“I accept that plan-making in Waverley has not previously been quick. However WBC have recently undertaken a call for sites in advance of preparing a revised LPP1 intended to be adopted before 2032. A full LPP1 review was committed to on 18 July 2023, with WBC intending to adopt a replacement in late 2027. Whilst late 2027 may be optimistic, there may nevertheless be scope for other sites to come forward before the end of the plan period as a result of that process and WBC’s recent call for sites. In that context I note in respect of appeals at Great Missenden and Turnden it was relevant that the sites there had been through some form of evidence-based site assessment despite not being allocated. In short there is some, albeit I accept limited, scope for the housing proposed here to come forward outside of the SHAONB or to be met in some other way.”</i></p>	<p>The position now is:</p> <ol style="list-style-type: none"> 1. Inspector Bristor was correct to suggest that adoption of a new Local Plan by 2027 <i>“may be optimistic”</i>. 2. 15 months on from the First Inquiry there is no update on the Land Availability Assessment (LAA), despite the call for sites closing in March 2024 and it is uncertain whether one is currently even in draft.³ 3. The December 2023 local development scheme (“LDS”) set out a programme to adoption in November 2027 , but the March 2025 LDS has already moved that back to July 2028 (whilst significantly shortening the time budgeted for examination) yet still projected to take longer than the Government’s target of 30 months. 4. Adding to this the uncertainties created by local government reorganisation where Surrey has applied for fast track unitary status to be completed in 2027 i.e. before Waverley will adopt a new Local Plan, it seems clear that there will be no new local plan in Waverley for many years to come 5. What is clear is that there remains a limited pool of known potential development sites across the Borough (this directly affects the scope to develop outside of the SHNL).

³ See NID3.3 at para. 32 *“[t]he Appellant intends to address the lack of any scope through its evidence. However, it is aware that the Council has prepared a new land availability assessment (“LAA”) which has been provided to neighbourhood planning groups but is not currently in the public domain. If the Council intends to rely on the existence of other sites capable (collectively) of meeting the housing needs of the District then those sites should be identified prior to the exchange of proofs so that the Appellant can have an opportunity to address those sites in the context of NPPF 190. The Appellant’s housing expert has previously requested disclosure of the land availability assessment under Freedom of Information Act legislation ...”*

	<p>Inspector Bristow here, and elsewhere in his decision, does not make clear whether what he is considering for the purposes of alternatives is the need for the 111 units proposed (contrary to the approach taken in the <i>Wealden</i> case and the <i>Turnden</i> case) or the full OAN. His failure to examine the individual alternative sites in any detail might suggest that he was taking the approach in <i>Wealden</i> and <i>Turnden</i>. But it is unclear. It is, of course only if the need is the full OAN that it becomes unnecessary to examine the individual alternative sites.</p> <p>Inspector Bristow said “<i>there may nevertheless be scope for other sites to come forward before the end of the plan period as a result of that process and WBC’s recent call for sites</i>” but over a year on there is, as a result of WBC’s delays, not one jot of further evidence to support that conclusion.</p> <p>Finally, Inspector Bristow says, “<i>I note in respect of appeals at Great Missenden and Turnden it was relevant that the sites there had been through some form of evidence-based site assessment despite not being allocated</i>”. As discussed in the main closing it is not correct to suggest that in all of the other appeal decisions where EC for new housing has been found that the site was either subject to a draft allocation or a positive “<i>evidence-based site assessment</i>”: see e.g. <i>Wealden</i>.</p>
SANG and BNG	
<p>156: “<i>By virtue of the proposed SANG, whether 9.69ha or 12ha, it is common ground between the main parties that no adverse effects of the scheme to the ecological integrity of Wealden Heaths Phase II SPA would occur. Notwithstanding the critique of biodiversity net gain (‘BNG’) calculations in respect of Scotland Park, there is no robust evidence before me indicating that the level of BNG proposed in this instance (20%) is unachievable given the nature of the site. SANG provision and BNG above 20%, would also have broader benefits in that more capacity is proposed relative to the implications of a scheme for up to 111 dwellings. SANG provision would, potentially,</i></p>	<p>As noted above the position on a larger SANG has moved on considerably with NE making clear that their previous representation on which Inspector Bristow heavily relied was misleading. Inspector Bristow’s conclusions on SANG and BNG were subject to legal grounds of challenge in the s. 288 proceedings that have not been resolved.</p>

<p><i>contribute towards delivery of LPP2 allocations where the lack of suitable environmental mitigation has forestalled delivery."</i></p>	
<p>157: <i>"However there appears to be at least some SANG capacity elsewhere, albeit 'fast running out' at Farnham, and limited at Sturt Farm. Provision of SANGs and BNG is, importantly, not necessarily contingent on allowing harmful development; in this instance SANG and BNG provision is argued to be beneficial in terms of landscape implications. Furthermore much of Waverley is not within the buffer zones of the Wealden Heaths Phases I or II Special Protection Areas (including Cranleigh, along with parts of Farnham and Godalming). That has informed Natural England's position, in summary that SANG is not necessarily a benefit per se, in that it may be unnecessary by locating development elsewhere.¹ There is no substantive evidence that provision of BNG is hampering development in Waverley."</i></p>	<p>Inspector Bristow concluded that the provision of a SANG capable of enabling the housing allocated at Haslemere under the LPP2 was not a benefit and hence gave it no weight. However, this proceeded on a misunderstanding of NE's position and showed no recognition to the context of the arguments and evidence advanced at the First Inquiry. This was one of the grounds of challenge (unresolved) in the s. 288 proceedings. The updated evidence of Mr Jack and Mr Kite should take precedence here. WBC did not contend that either their Farnham SANG or Sturt Farm was available to mitigate the LPP2 allocations at Haslemere. The only person who raised a suggestion the Sturt Farm was an alternative was the third party owner, Mr Lawson, but this was rebutted by Mr Collins and not further challenged by any party. The Farnham SANG mitigates a different SPA (the Thames Basin Heaths SPA) and is fast running out of capacity (171 dwellings currently and needed to deliver Neighbourhood Plan sites) and Sturt Farm does not meet current NE requirements (it has no car park, no 2.3km walk).</p>
<p><i>Environmental and ecological effects</i></p>	
<p>158: <i>"It is also common ground between the main parties that the scheme would not have a detrimental effect in terms of ecology or biodiversity (subject to adherence to conditions and obligations). However, setting aside BNG, that effectively secures a scheme which is acceptable rather than weighing significantly in favour of allowing the appeal. Similarly I note the intention to achieve high environmental performance in compliance with or exceeding approach in LPP1 policies CC1 and CC2 in respect of buildings: Passivhaus standard, Building with Nature, Sustainable Drainage Systems ('SUDS') and Electric Vehicle ('EV') charging. Those measures would go some way to offsetting emissions inherent in undertaking development.¹ However achieving those standards are not intrinsically reliant on the landscape harm that would result. They are not inherently unachievable elsewhere. In respect of SUDS and EV, they are also now effectively the expectation."</i></p>	<p>Again this conclusion appears to be based on a misunderstanding of NE's position on SANG. Moreover, these conclusions were the subject of grounds of challenge (unresolved) in the s. 288 proceedings.</p> <p>The suggestion by Inspector Bristow that matters required by policy cannot be a benefit is contrary to case-law see <i>Vistry Homes Ltd v Secretary of State for Levelling Up, Housing and Communities</i> [2025] P.T.S.R. 60</p>

Scouts and Forest School	
159: <i>“The proposed Scout facility and Forest School would undoubtedly be of benefit to those organisations in line with LPP1 policy LRC1. They would both operate from a better environment than currently. The proposal would also enable their community-oriented work to expand. In respect of the First Haslemere Scouts, I heard extensively regarding the difficulties that they have had in securing a lease from WBC. I acknowledge their relocation to elsewhere may improve prospects of development at LPP2 allocation DS 04.”</i>	Agreed.
160: <i>“However, and setting aside the fraught history of negotiations between the First Haslemere Scouts and WBC, I understand they have been offered a lease in relation to their current facility (albeit short term and with a relocation clause). I understand that the Forest School would effectively relocate from a facility at which they have greater security in terms of tenancy, rather than the scheme representing a new community use. There is therefore some scope for those organisations to continue their work elsewhere. Similar to my reasoning above, securing an alternative facility for either organisation is not intrinsically reliant on adversely affecting the SHAONB.”</i>	<p>Disagreed. The offer of a new lease was disputed and remains disputed. Moreover, it seems that a previous offer included a clause allowing the scouts to be relocated so it can be redeveloped as part of the Wey Hill allocation and so this provided no certainty for the Scouts’ long term future. See ID4.3 in WBC’s closing for the First Inquiry: <i>“52. A copy of the lease is not available. Mr Buckler said it contained a break clause allowing Waverley to relocate the Scout group. Clearly the draft lease remains subject to negotiation. If such a clause were agreed, it might allow for additional development on the Wey Hill site ... It is acknowledged that the facility being offered by the Appellants may be more desirable in certain respects (the woodland location), but that does not mean it is needed and the location may also have drawbacks (eg. less convenient for existing members to access, greater reliance on cars).”</i></p> <p>The Second Inquiry has, in any event, heard much further evidence on this.</p> <p>At the last inquiry, WBC vociferously denied that the Scouts might be left without a home and insisted that the grant of a new lease to them was imminent but it is revealing that 15 months on the issue appears not to have progressed one jot.</p>
Community Infrastructure Levy (‘CIL’) contributions	
161 - 162: CIL	No comment, Inspector Bristow recognised some benefit.
Allotments	
163:	These are no longer part of the scheme.
Consideration	

<p>164: <i>“In summary I have reasoned, given the specific nature of the site and that the proposal consciously intends to create a different character here, that the scheme would fundamentally and seriously adversely affect landscape and visual character. That significant harm, which would only slightly lessen in time, is to be accorded ‘great weight’, and is relevant in respect of NPPF paragraph 183.c).”t</i></p>	<p>The landscape evidence presented by Mr Smith is the relevant evidence for this Second Inquiry, which reduces the relevance of Inspector Bristow’s conclusions.</p> <p>Landscape witnesses on both sides agree on a number of matters in relation to landscape including the following:</p> <ul style="list-style-type: none"> - Based on the agreed methodology, the only LCAs where adverse effects would arise are LCAs 1 and 2, which are where the housing and access road is proposed. - The effect on all other LCAs (i.e. 3, 4, 5, 6, and 7) is agreed to be positive – this was accepted by Mr Petrow in XX. - The focus of adverse landscape effects reflects (i) the importance of the fact that the larger part (78%) of the Appeal Site is to be left undeveloped and instead dedicated and managed for appropriate public and/or community access and (ii) the limited visibility of the proposed development areas with the wider landscape – as Mr Petrow acknowledged this may be “surprising” but it is a very important feature of the Appeal Site. <p>Inspector Bristow rightly held (see above) that <i>“there is, I acknowledge little that is inherently distinctive in respect of the northern fields which form part of LCA 1 and LCA 2: WBC describe them as paddocks.”</i></p> <p>No objection received on proposed design and proposed design condition would have had regard to DAS & DAS Addendum.</p> <p>Appeal Scheme is compliant with all the relevant policies within the AONB Management Plan, and this was not challenged under XX at the First Inquiry.</p> <p>The Appeal scheme positively responds to the SHEDG.</p>
<p>165: <i>“There is a clear need for the development proposed, in respect of housing and affordable housing provision in particular, in terms of NPPF paragraph 183.a). There is nevertheless some, albeit limited, ‘scope for’ developing outside the SHAONB or meeting the various needs the proposal seeks to respond to in ‘some other way’, which serves to qualify the benefits to some extent”</i></p>	<p>Housing position has moved on: see above and see the main closing. Inspector Bristow concluded ‘some limited’ scope for developing outside of the SHNL. But the majority of the borough is already within either the Thames Basin Heath or Wealden Heath Phase II SPA and a significant portion of the land currently identified as AGLV under the development plan is proposed for future inclusion in the SHNL itself.</p>

	<p>Even if the issue was whether the Appeal Scheme (which we firmly dispute) could be accommodated 'in some other way' clearly appropriate weight needs to be factored to all elements of the Appeal Scheme, for example the lack of any alternative sites for a Strategic SANG, or Scout provision. The weight to the pressing housing needs in the Borough, and in Haslemere. By definition, the various Green Infrastructure management arrangements (and benefits arising) could only be located on the Appeal Site.</p> <p>It is doubtful if there is another site in the SHNL that if developed for 110 new homes would have less public visibility than the Appeal Site. Generally, Inspector Bristow gave inadequate attention to the other benefits discussed by the Appellant (and not questioned by WBC) at the First Inquiry including BNG, Scouts/Forest School, SANG provision.</p> <p>Here again also Inspector Bristow is unclear on whether he is proceeding on the basis that the need relates only to the 111 dwellings proposed or the full OAN</p>
<p>166: <i>"It is also relevant to note how the apportionment of housing to Haslemere via the LPP1 was in the context of seeking to meet some housing needs arising from the wider housing market area. The PPG, however, indicates that policies for protecting AONBs, National Parks and the Broad 'may mean that it is not possible to meet objectively assessed needs for development in full through the plan-making process...'. The MP, furthermore, sets out how development in the AONB should be 'shown to be a last resort'."</i></p>	<p>Elements of the PPG relevant for plan making are not relevant considerations for this appeal.</p> <ol style="list-style-type: none"> 1. It was the case that the LPP1 housing requirement of 590 dpa factored some unmet needs arising from Woking. It is not possible to say, nor was evidence shared on this point at the First Inquiry, whether the minimum housing requirement for Haslemere was adjusted to account for this. 2. Nonetheless, the updated Local Housing Needs under the standard method sit significantly above the LPP1 requirement, without factoring any unmet needs. 3. Policy SP2 allows for the development of sites at the edges of the four main settlements, including Haslemere, and it does not establish a hierarchy between those settlements. Mr Johnson accepted in XX that SP2 recognises that it will be

	<p>necessary to allow expansion of settlements via the development of suitable sites on the edge of the settlements.</p> <p>4. The PPG needs to be considered in light of Labour policy which aims via the amended Standard Method to deliver an average of 370,000 consents per annum in order to deliver an average of 300,000 completions per annum or 1.5m dwellings over life of this Parliament. There is simply no scope for all constrained authorities to significantly lower their housing number at Plan making stage. Waverley's Market Housing area includes Woking and Guildford, all constrained boroughs.</p>
167: <i>"What results is a fine balance between adverse and positive implications relevant to the public interest, a tension also at the heart of successive plan-making in Waverley."</i>	Noted.
168: <i>"Although each scheme turns on its merits, other Inspector's decisions are nonetheless relevant. In addition to Great Missenden and Turnden referenced above, appeals at Sonning Common and Oakley have been brought to my attention by the appellant. They are argued to support the case for exceptional circumstances existing here. It is worth paying close attention to those instances where Inspectors have found that exceptional circumstances existed elsewhere."</i>	This is introductory. No comments.
169, 170 and 173 and 175: Great Missenden, Sonning Common and Oakley appeal decisions	These appeal decisions have been further considered in oral evidence. These are addressed in the main closing.
171 and 172: The Turnden decision.	<p>There is a further Secretary of State decision since Inspector Bristow considered the matter. This is addressed in the main closing.</p> <p>In relation to para. 172 the landscape evidence presented by Mr Smith is the relevant evidence for this Second Inquiry, which reduces the relevance of Inspector Bristow's conclusions.</p> <p>1. Mr Smith: There is no allegation at the Second Inquiry that the Appeal Scheme would result in any form of unchecked future expansion into the wider countryside. The built development would be located in LCA1 and LCA2 only, retained by the</p>

	<p>inherently characteristic feature of Red Court Woods and its associated underlying topography. The woodland to be conserved and enhanced and proactively managed through the LEMP, so that its physical and visual containment function is perpetuated. The majority of the Appeal Site remain as Green Infrastructure.</p> <p>2. While the Appeal Site is not allocated in the Development Plan. It cannot however be an emerging allocation as there remains no emerging Local Plan, nor any updated LAA.</p>
<p>Having in para. 173 having noted that the Inspector at Sonning Common had said <i>"I do not consider the appeal site or its local landscape context to be representative of the special qualities as set out in the Chilterns AONB Management Plan."</i></p> <p>174: <i>"Here I have instead reasoned that there is a clear affinity between LCA1 and LCA2 and the key features of the SHAONB defined in the MP. The Inspector there also set out that there was 'no formal access' to the appeal site, as opposed to footpath 597 in this instance, and that a neighbouring complex was 'institutional in scale'. Circumstances there are not, therefore, directly comparable."</i></p>	<p>The Inspector says that at <u>Sonning Common</u> there was 'no formal access' to the appeal site and that is different to the Appeal Site because of FP597. This is just wrong FP597 is outside the Appeal Site.</p>
<p>176: <i>"In summary none of the foregoing appeals grapple with development that would entail the extent of adverse effects that would result in this case (nor do any others to which my attention has been directed). In short the body of appeals before me do not support the case for exceptional circumstances here."</i></p>	<p>Of course each case and decision is made on its own merits. The parallels that do exist in the range of other appeal decisions cited is the types of considerations which may/ can lead to a conclusion that exceptional circumstances are demonstrated. The Turnden appeal is the most relevant, given scale, and the similar overall ratio of development/ Green Infrastructure proposed: see the main closing.</p>
<p>177: <i>"The scheme would entail various benefits. As noted throughout this decision there are various elements of the development plan that would be complied with. The benefits of the proposal may fairly collectively be described as significant. I acknowledge the proposal has met with some local support with those in mind. However, and building on paragraph 77 of this decision,</i></p>	<p>Agreed that the benefits are at least significant. Disagree with conclusion. Bristow states benefits are significant but omits to assess the benefits individually and it is clear many benefits were not included in his weighing up – so arguably if correctly approached, Bristow may have reached a conclusion of substantial.</p>

<p><i>balancing different factors counting for or against a scheme is not reduceable to a formula."</i></p>	
<p>178: <i>"There would also be fundamental and serious harm to the SHAONB. Having considered all the benefits of the scheme along with the scope for developing elsewhere, in some other way, and the consequences of dismissing the appeal, and even were I to reach a finding that the scheme were acceptable in all other respects, in my view exceptional circumstances have not been demonstrated. Collectively the benefits of the scheme are not sufficiently compelling to justify the harm that would result. Allowing the appeal would not be in the public interest."</i></p>	<p>The landscape evidence presented by Mr Smith is the relevant evidence for this Second Inquiry, which reduces the relevance of Inspector Bristow's conclusions.</p> <ol style="list-style-type: none"> 1. Exceptional circumstances do exist; indeed many factors have worsened since the First Inquiry - such a housing delivery, affordable housing provision, limited (if any) progress on relocating the Scouts, absence of SANG sites etc. 2. Clearly substantial weight should be given to the provision of strategic SANG, due to its ability to deliver other housing developments across Haslemere. 3. Inspector Bristow did not pay sufficient nor detailed attention to the benefits arising. For example, he only briefly touched on the proposed SANG (and SANG elsewhere) contrary to the evidence of both WBC and the Appellant (each of whom placed it in the top rung of their assessment of benefits) and in reliance on a misinterpretation of the advice given by NE. Furthermore, Inspector Bristow gave no weight at all to Biodiversity Net Gain significantly exceeding the current policy requirement (DL/156), or offsite (DL/157) or the substantial and enduring nature conservation benefits that the SANG proposal would deliver, again contrary to the evidence of both WBC and the Appellant. Further, given the age of the original application there are no legal requirement for the delivery of BNG in relation to the Appeal Scheme.
<p>179: <i>"The proposal would conflict with the expectations of section 85 of the 2000 Act and the approach in LPP1 policies SP1, SP2 (criterion 1), RE1, RE3 (criterion i), LPP2 policies DM11 (criterion a), DM15 (criterion b), and HNP policies H9 (criterion 9.2) and H1 (criterion 1.3). Following on from paragraph 51 of this decision, there would be conflict with the development plan as a whole."</i></p>	<p>Disagreed.</p>

180: *“Whilst there is no 5YHLS, inherent in my reasoning above is that there is nonetheless ‘clear reason’ for refusing permission with reference to NPPF paragraph 11.d)i. Having taken account of the development plan as a whole and all relevant material considerations, I therefore conclude that the appeal should be dismissed.”*

The policies in a Development Plan may pull in different directions: some policies point in favour of a development and some point against. The fact there is conflict with one relevant policy (or part of one relevant policy) in the development plan does not mean that a scheme is not in accordance with development plan as a whole. In addition, under the NPPF (2024) the relevant test to disapply paragraph 11d is a ‘strong reason’. This is a stronger test to dismiss an Appeal in the circumstances whereby paragraph 11d may be triggered, which in this case will be via the application of paragraph 190 exceptional circumstances. This also pushes back against WBC’s contentions on LURA s245, which instructs decision makers to have regard to all of its responsibilities, not just protecting landscapes.

APPENDIX 3 - ALTERNATIVE SITES ANALYSIS

<u>SITES</u>	<u>NOS.</u>	<u>EVIDENTIAL POSITION⁴</u>
1 - Haslemere Key Site, West Street Haslemere	30	<ol style="list-style-type: none"> 1. Already allocated under Policy DS01 of LPP2 and therefore not an alternative: see Mr Collins' PoE pp. 68 and 83 (also included in Mr Neame's Trajectories - Appendix 3 - Table A2). As a result of this it is not assessed by the Appellant for a Landscape Score. 2. Mixed ownership, including WBC: see Mr Johnson's PoE⁵ and XX. No evidence of land assembly agreement, no development brief, no planning application in contemplation. 3. In the Wealden Heaths II SPA 5km zone and no SANG / HIP solution which is required under LLP2 as for 30 units. 4. Site currently in use as the car park for Waitrose and other town centre shopping: see Mr Johnson XX / Mr Collins Table 8.1. 5. Redevelopment of this site been under discussion for 20 years: see Johnson XX. 6. Its capacity is limited to 30 units, and cannot offer benefits such as strategic SANG, BNG credits or scout hut.
2 - The Royal Junior School, Portsmouth Road, Hindhead	90	<ol style="list-style-type: none"> 1. Already allocated under Policy DS06 of LPP2 and therefore not an alternative (see Mr Neame's Trajectories - Appendix 3 - Table A2). 2. Appellant's Landscape Score 4: this is the same as Appeal Site so not preferable (NB: a score has been included for this site as a result of Mr McDermott's previous work see Mr Collins' PoE p. 68). 3. In the Wealden Heaths II SPA 5km zone and above 50 units, will require mitigation and may require SANG under LPP2.⁶

⁴ Sources of evidence: Mr Collins' PoE NID5.1; Mr Smith's PoE 5.3; Mr Collins' EiC and Mr Johnson XX.

⁵ NID5.5 Appendix 7 "Part of the site is owned by Waverley Borough Council who are actively working with other landowners to bring the site forward for development."

⁶ CD6.2 para. 7.14:

"For sites that lie between 400m and 5km of the Wealden Heaths SPAs, a project-level HRA may be required to ensure there would be no likely significant impacts on the SPA, in accordance with Local Plan Part 1 Policy NE1. Natural England has advised that all net new residential development between 400m and 5km of the SPA the following should apply:

		<ol style="list-style-type: none"> 4. LPP2 allocation requires school relocation: see Mr Johnson’s PoE at p. 24 and Mr Collins’ PoE at p. 83. Royal School has now confirmed it will close, issue of any reprovision not yet addressed. 5. This site is subject to a planning application (WA/2023/01309) submitted in June 2023 – and still undetermined. Outstanding objections from Natural England (rejecting the proposed on and off site SANG solution) and Sports England: see Mr Collins’ PoE at paras. 3.18, 6.81, 7.11 and p. 83. 6. The planning application still requires EC to be demonstrated under para. 190 of the NPPF. The EC test will have to be measured against many more harms than the Appeal Scheme including: heritage/loss of school/loss of playing fields/landscape impacts/unsustainable location the fact that it is not adjoining the settlement. 7. Mr Clive Smith from the AONB unit has objected to the application despite allocation. 8. Buildings on site also spot listed and so likely to lead to reduced scheme: Mr Johnson EiC and XX (also Mr Collins’ XX / RX) 9. Mr Johnson says (NID5.5 Appendix 7) “[t]he submitted scheme is currently being amended which may result in a lower number of dwellings so capacity conservatively assessed at 90 dwellings”. No evidence in the public domain to support this. The Appellant made an EIR request seeking further information on progress on the application and the response did not provide any information on any new Masterplan or new SANG solution made: see Mr Collin’s RPoE at paras. 2.4 & 2.5. 10. Mr Johnson not acting for the developer - Cala. Cala view is the site remains “stalled” as a result of Natural England objection: see Mr Johnson XX and Mr Colins’ EiC. 11. No capacity on the site to offer benefits such as strategic SANG, BNG credits or scout hut.
3 - Fairground Car Park, Wey Hill, Haslemere	20	<ol style="list-style-type: none"> 1. Already allocated under Policy DSO7 of LLP2 and therefore not an alternative: see Mr Collins’ PoE at pp. 68 and 84 (see Mr Neame’s Trajectories – Appendix 3 - Table A2). So not assessed by the Appellant for a Landscape Score. 2. WBC owned site and still being actively used as a car park: see Mr Collins’ PoE p. 84 and Johnson XX. Mr Johnson says (NID5.5 Appendix 7) the car parking will be retained. There is

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- Less than 20 dwellings would be unlikely to need mitigation.
 - 20 to 49 dwellings may require some form of mitigation such as Heathland Infrastructure Projects (HIPs) and an associated appropriate assessment for any planning application.
 - 50 dwellings and more may require a SANG and an associated appropriate assessment for any planning application.”

		<p>no evidence as to how such a small site could deliver 20 units and retain the parking and be viable.</p> <ol style="list-style-type: none"> 3. Funding approved for a high level assessment of site potential in April 24 – results not published and no progress in the public domain since, no development brief and no developer on board: see Mr Collins’ PoE p. 84 and Johnson XX. 4. No developer known to be engaged: see Mr Collins’ PoE p. 84 and Johnson XX. 5. In the Wealden Heaths II SPA 5km zone so even alone would require mitigation (as not lower than 20) and the site is directly opposite the Youth Campus site allocation for 34 units so on a cumulative assessment, as required by the Habitats Regulations, would be above 50 units and will need mitigation and may require SANG. No SANG solution: see Mr Collins’ PoE p. 84. 6. Its capacity is limited to 20 units, and cannot offer benefits such as strategic SANG, BNG credits or scout hut.
4 - The Old Grove, High Pitfold Hindhead	18	<ol style="list-style-type: none"> 1. Already allocated under Policy DSO8 of LLP2 and therefore not an alternative. So not assessed by the Appellant for a Landscape Score: see Mr Collins’ PoE pp. 68 and 84. WBC say (see NOD5.5 Appendix 7) “Landscape Value: Low/ Medium Landscape Susceptibility Medium Landscape Sensitivity Medium” see also Mr Neame’s Trajectories – Appendix 3 - Table A2). 2. Planning permission very recently granted for 18 units. However, the OR says, see NID13.24 that mitigation required for all the units once reaches 20⁷. 3. Total capacity of this site in allocation is for 40 units maximum. Its capacity is thus limited and it cannot offer benefits such as strategic SANG, BNG credits or scout hut.
5 - Former Longfields	25	<ol style="list-style-type: none"> 1. Agreed by the Appellant to be in landscape terms as a preferable site (Landscape Score 1).

⁷ “In Chapter 7: Housing Sites - Haslemere of LPP2, paragraph 7.14 describes Natural England’s advice that all net new residential development between 400m and 5km of Wealden Heaths SPA of less than 20 dwellings would be unlikely to need mitigation. Factually, that is the case here, although it is important to note that this portion of the site forms a wider allocation for 40 dwellings. Natural England consider that the 18 dwellings proposed by this application in combination with the C2 care home would result in the site having over 20 net additional dwellings, thereby requiring mitigation. They are also of the opinion that this proposal partitions off the Old Grove site and mitigation is therefore required to ensure this application would not result in an adverse effect on site integrity.

The applicant’s case is that parts of the allocation have to come forward at different times because this part of the site is disused whereas the other part is currently occupied as a care facility and will take time to become available. Officers raise no objection to the site allocation coming forward in two phases and certainly since no bedspaces are within the buildings to be demolished, there is no justification for requesting mitigation for this application. However, it is important to ensure mitigation is provided as soon as the 20th dwelling is applied for, likely to be part of the second phase of development comprising the remaining 22 dwellings. This commitment to mitigate for all dwellings in the allocation is considered to resolve Natural England’s concern that the site is being ‘partitioned’ to avoid mitigation. This will be secured by a S106 Agreement to provide certainty that the commitment for mitigation is deliverable and enforceable against any future owner of the site.”

Care Home, Killicks, Cranleigh		<ol style="list-style-type: none"> 2. Identified in the LAA 2020 (ref. 942) but not taken forward for allocation in the Cranleigh Local Plan. 3. The County Council own the site and there is no development partner, nor development brief: see NID5.5 Appendix 7. 4. Its capacity is limited to 25 units, and cannot provide strategic SANG, BNG credits or scout hut for Haslemere scouts. 5. Mr Neame includes the site in Trajectory 3 – Appendix 3 - Table A5 – thus not an alternative.
6 - Land East of Longfields, Horseshoe Lane, Cranleigh	5	<ol style="list-style-type: none"> 1. This site is below the 10 dwelling threshold, of the agreed methodology. So not assessed by the Appellant for a Landscape Score.: see Mr Collins’ PoE p. 68 and NID4.11 at paras. 4.9 and 5.9.⁸ 2. No development partner: see NID5.5 Appendix 7. 3. Its capacity is very limited, and cannot offer benefits such as strategic SANG, BNG credits or a scout hut for the Haslemere scouts. At 5 units it would not produce any affordable housing.
7 - St Nicholas Junior School, Cranleigh	75	<ol style="list-style-type: none"> 1. Agreed by the Appellant to be in landscape terms as a preferable site (Landscape Score 1). 2. Draft allocation in the Cranleigh Neighbourhood Plan which was dropped in final Plan: see Mr Johnson XX and Mr Collins’ PoE p. 68. 3. Subject to a refusal for 91 units in 2019: see Mr Johnson XX and NID5.5 Appendix 7 “<i>Application WA/2017/1389 was refused in relation to over development of the site, impact on character and amenity, loss of trees and the absence of a legal agreement to secure delivery of necessary infrastructure and relocation of the school</i>”. 4. Its capacity is limited, and it cannot offer other benefits such as strategic SANG, BNG credits or a scout hut for the Haslemere scouts. 5. Still an active school (see Mr Collins EiC). 6. Mr Neame includes the site in Trajectory 3 – Appendix 3 - Table A5 – thus not an alternative.
8 - Old Park Lane, Farnham	83	<ol style="list-style-type: none"> 1. Greenfield site sitting in very open landscape. Appellant’s Landscape Score 4: same as Appeal Site. WBC say (see NID5.5 Appendix 7) “[t]he site is located outside the National Landscape but within an area of landscape sensitivity ... Landscape Value: Medium Landscape Susceptibility: High Landscape Sensitivity: High”.

⁸ There is a windfall allowance in Mr Neame’s Trajectory 1 that accounts for sites with under 10 units, allowing for 360 units: see

		<ol style="list-style-type: none"> 2. Within Thames Basins Heath 5km Buffer Zone: thus needs mitigation (as SANG based on established TBH SPA criteria)see Mr Collins’ PoE at p. 83. Sits in very open landscape (see Mr Collins, Table 6.1). 3. Recently opposed at appeal by WBC on basis, inter alia, that scheme conflicts with the Farnham Neighbourhood Plan – that Plan allocates sites but did not allocate this site. Decision still awaited: see Johnson XX. 4. Mr Neame includes the site in Trajectory 3 – Appendix 3 - Table A5 – thus not, in any event, an alternative. 5. It cannot offer other benefits such as strategic SANG, BNG credits or scout hut for Haslemere scouts.
9 - Lower Weybourne Lane, Badshot Lea, Farnham	140	<ol style="list-style-type: none"> 1. Countryside Beyond the Green Belt. Outside of Built up Area Boundary. A marginally preferable site (Landscape Score 3 vs Landscape Score 4 for the Appeal Site). 2. Appeal dismissed on the site in 2023 (WA/2022/01433) – key issue is settlement coalescence – which may mean any resubmission would be a smaller scale. Would require SANG (as in Thames Basins Heath SPA catchment zone). Not suitable scale for SANG (see Mr Johnson XX. Mr Collins EiC). Not suitable for scouts (see Mr Collins EiC). 3. 3 appeals and a High Court case concerning this site: see Mr Johnson XX and NID5.5. App 7. 4. Mr Neame includes the site in Trajectory 3 – Appendix 3 - Table A5 – thus not an alternative in any event. 5. Its cannot offer other benefits such as strategic SANG, BNG credits or scout hut for Haslemere scouts.
10 - Land east of Longdene House, Hedgehog Lane	30	<ol style="list-style-type: none"> 1. Not preferable in landscape terms, Landscape Score 5 (so higher than Appeal Site). Part NL, and part AGLV, Countryside beyond the Green Belt. WBC assesses as “medium to high landscape sensitivity” (see Mr Johnson’s App 7). And see Mr Johnson’s PoE at p. 28-29 “Greenfield site adjoining the settlement boundary of Haslemere. <u>Western part of site within the National Landscape and NDP Policy H11 Green Finger (24 Sturt Farm). Potential for acceptable scheme in landscape terms that also meets Neighbourhood Plan policy requirements. <u>Development would need to be located outside the National Landscape</u>” (emphases added)</u> 2. Dropped draft allocation in LPP2: see NID5.5 Appendix 7. 3. This site has a long history of planning refusals and refused appeals the latest leading to the <i>Monkhill</i> case going to the Court of Appeal.

		<ol style="list-style-type: none"> 4. Its capacity is also very limited, and it cannot offer benefits such as strategic SANG, BNG credits or a scout hut. 5. In the Wealden Heaths Phase II SPA 5km zone and above 20 units, so will need some mitigation. 6. Mr Neame includes the site in Trajectory 3 – Appendix 3 - Table A3 – thus not an alternative in any event.
11 - Land south east of Haslemere WWTW, Sturt Road	25	<ol style="list-style-type: none"> 1. Not preferable in landscape terms, Landscape Score 5 (so higher than Appeal Site). Countryside beyond the Green Belt, AGLV. WBC acknowledge (see Mr Johnson’s PoE at p. 29) “[t]he site comprises greenfield land outside and adjacent to the settlement boundary of Haslemere. Site is located outside the National Landscape but within possible extension area. Site within Neighbourhood Plan Policy H11 Green Finger and would need to comply with criteria ... The site has a medium to high landscape sensitivity.” 2. Dropped draft allocation in LPP2: see NID5.5 Appendix 7. Site is proposed for inclusion in the SHNL, via the ongoing Surrey Hills NL Review. 3. Its capacity is limited, and cannot offer benefits such as strategic SANG, BNG credits scout hut. 4. In the Wealden Heaths II SPA 5km zone and above 20 units so will need some mitigation. 5. Mr Neame includes the site in Trajectory 3 – Appendix 3 - Table A3 – thus not an alternative.
12 - Land north of Haslemere Saw Mills, Sturt Road	21	<ol style="list-style-type: none"> 1. Not preferable in landscape terms, Landscape Score 5 (so higher than Appeal Site). beyond the Green Belt. 2. Dropped draft allocation in LPP2: see NID5.5 Appendix 7. 3. Site is proposed for inclusion in the SHNL, via the ongoing Surrey Hills NL Review. 4. Its capacity is limited, and cannot offer benefits such as strategic SANG, BNG credits or scout hut. 5. In the Wealden Heaths II SPA 5km zone and above 20 units, need some mitigation. 6. Mr Neame includes the site in Trajectory 3 – Appendix 3 - Table A3 – thus not an alternative.
13 - 38 & 40 Petworth Road, Haslemere	15	<ol style="list-style-type: none"> 1. Appellant’s Landscape Score 4: same as Appeal Site. Within the Wealden Heaths II SPA 5km Buffer Zone and the East Hants SPA 5km Buffer Zone. Below 20 units so no mitigation required by LPP2 but would be by the Habitats Regulations. 2. Issues related “to appropriate design in relation to impact on conservation Area”: see Mr Johnson’s PoE p. 30. Site promoted through 2020 LAA but not allocated and subject to unsuccessful

		<p>planning application in 2018: see Mr Johnson's PoE at p. 30. Thus, dropped draft allocation in LPP2: see NID5.5 Appendix 7.</p> <ol style="list-style-type: none"> 3. Site comprises existing dwellings - once of which has recently been extended. No evidence still available for development. 4. TPO on site and mature woodland located to the rear: see Mr Collin's PoE at p. 68. 5. Its capacity is limited, and cannot offer benefits such as strategic SANG, BNG credits scout hut. 6. Mr Neame includes the site in Trajectory 3 - Appendix 3 - Table A3 - thus not an alternative in any event.
14 - Longdene Fields	25	<ol style="list-style-type: none"> 1. Not preferable in landscape terms, Landscape Score 5 (so higher than Appeal Site). Site is countryside beyond the Green Belt, NL. WBC say "<i>Greenfield site adjoining the settlement boundary of Haslemere. Western part of site within the National Landscape and NDP Policy H11 Green Finger (24 Sturt Farm) ... Development would need to be located outside the National Landscape ... The site has a medium to high landscape sensitivity</i>". 2. Dropped draft allocation in LPP2: see NID5.5 Appendix 7. 3. Subject to a recent (now withdrawn) planning application (see Mr Collins RPoE). Withdrawn on ecological grounds. The officer report, however, recommend refusal on two grounds including an in principle objection given NL location. 4. In the Wealden Heaths II SPA 5km zone and above 20 units, so will need some mitigation. 5. Its capacity is limited, and cannot provide strategic SANG, BNG credits or scout hut. 6. Mr Neame includes the site in Trajectory 3 - Appendix 3 - Table A3 - thus not an alternative.
15 - Land at Mousehill Mead, Milford	30	<p>Agreed by WBC and Appellant not to be preferable in landscape terms (site in NL and Green Belt). Notwithstanding this, Mr Neame includes the site in Trajectory 3 - Appendix 3 - Table A3 - thus not an alternative.</p>
16 - Land at Manor Lodge, Milford	30	<p>Agreed by WBC and Appellant not to be preferable in landscape terms (site in NL and Green Belt). Notwithstanding this, Mr Neame includes the site in Trajectory 3 - Appendix 3 - Table A3 - thus not an alternative.</p>
17 - Land at Coneycroft, Milford	100	<p>Agreed by WBC and Appellant not to be preferable in landscape terms (site in NL and Green Belt). Notwithstanding this, Mr Neame includes the site in Trajectory 3 - Appendix 3 - Table A3 - thus not an alternative.</p>
18 - Land at Old Elstead	60	<p>Agreed by WBC and the Appellant not to be preferable in landscape terms (site in NL and Green Belt).</p>

Road, Milford		Notwithstanding this, Mr Neame includes the site in Trajectory 3 – Appendix 3 - Table A3 – thus not an alternative.
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APPENDIX 4 - APPELLANT'S TABLES RECORDING THE PARTIES' POSITIONS ON LANDSCAPE & VISUAL IMPACTS

Data taken from:

1. Fabrik PoE (CD NID 5.3) Tables 5.0 and 6.0
2. Sightline PoE (CD 2.3) Table 10.15, Appendix 2.0
3. CD 2.29 LVIA paras. 10.5.91,10.5.97, 10.5.100 and 10.5.105
4. Mr Petrow's ("PH") PoE (CD NID 5.7) Tables 4 and 6
5. PH concession in Oral xx

Table 5.0 Summary Landscape Attributes and effects adjusted post Landscape and Visual evidence

Landscape Character Area	Value	Susceptibility	Sensitivity	Year 1 Effect	Residual Effect
LCA1 top Northern Field					
Fabrik PoE 2025	Medium	High	High	Large to moderate adverse	Moderate to Slight Adverse
Sightline					Moderate to Large Adverse
PH written evidence (2023/5)	High	[Not apparent]	High	Substantial Adverse	Substantial Adverse
PH Oral Evidence 2025				Large Adverse	Large Adverse
LCA1 bottom Western Field					
fabrik PoE 2025	High	Medium	High to Medium	Slight adverse	Slight Adverse to Neutral
Sightline					Slight Adverse

PH written evidence (2023/5)	High	[Not Apparent]	High	Substantial Adverse	Substantial Adverse
PH Oral Evidence 2025				Large Adverse	Large Adverse
LCA2 Northern Fields					
fabrik PoE 2025	Medium	High	High	Large to moderate adverse	Moderate to Slight Adverse
Sightline					Moderate to Large Adverse
PH written evidence (2023/5)	High	[Not apparent]	High	Substantial Adverse	Substantial Adverse
PH Oral Evidence 2025				Large Adverse	Large Adverse
LCA3 Parkland					
fabrik PoE 2025	High	Low	Medium	Neutral	Slight Beneficial
Sightline					Moderate Beneficial
PH written evidence (2023/5)	High	[Not apparent]	High	Low Adverse	Neutral
PH Oral Evidence 2025					Moderate Benefit
LCA 4 Red Court Woods					
fabrik PoE 2025	High	Low	Medium	Slight beneficial	Slight to Moderate Beneficial
Sightline					Moderate Beneficial
PH written evidence (2023/5)	High	[Not apparent]	High	Low Adverse	Neutral
PH Oral Evidence 2025					Moderate Benefit
LCA 5 Southern Fields					
fabrik PoE 2025	High	High	High	Slight Beneficial	Moderate Beneficial
Sightline					Moderate Beneficial
PH written evidence (2023/5)	High	[Not apparent]	High	Low Adverse	Neutral

PH Oral Evidence 2025					Slight Benefit
LCA 6 Coniferous Plantation					
fabrik PoE 2025	Medium	High	High	Slight beneficial	Moderate beneficial
Sightline					N/A
PH written evidence (2023/5)	Low-Medium	[Not apparent]	Medium	Moderate Beneficial	Moderate Beneficial
PH Oral Evidence 2025					Moderate Beneficial
LCA 7 Former Tennis Court					
fabrik PoE 2025	Low to Medium	Medium	Medium	Slight Beneficial	Moderate Beneficial
Sightline					N/A
PH written evidence (2023/5)	Low	[Not apparent]	Low	Moderate Beneficial	Moderate Beneficial
PH Oral Evidence 2025					Moderate Beneficial

Table 6.0 Summary Visual Attributes and effects adjusted post Landscape and Visual evidence

Visual Receptor	Value	Susceptibility	Sensitivity	Year 1 Effect	Residual Effect Year 10	Residual Effect Year 15
Residential Properties (private views)						
Existing Properties within Scotland Close						
fabrik PoE 2025	High	Medium	High	Moderate Adverse	Slight Adverse	
Sightline					Slight Adverse (summer)	
PH written evidence (2023/5)	[Not apparent]	[Not apparent]	Medium	Substantial Adverse	Moderate Adverse	
PH Oral Evidence 2025						Slight Adverse
Properties under construction within Scotland Park (Phase 1)						
fabrik PoE 2025	Medium	Low	Medium	Moderate	Slight adverse	
Sightline					N/A	
PH written evidence (2023/5)	[Not apparent]	[Not Apparent]	Medium	Substantial Adverse	Moderate Adverse	
PH Oral Evidence 2025						Slight Adverse
Residential properties adjacent to the Midhurst Road						
fabrik PoE 2025	Medium	Low to Medium	Medium	Slight	Neutral	
Sightline					N/A	
PH written evidence (2023/5)	[Not apparent]	[Not apparent]	Medium	Substantial Adverse	Moderate Adverse	
PH Oral Evidence 2025						Slight Adverse
Residents of Red Court						
fabrik PoE 2025	High	Low	Medium	Slight	Slight	
Sightline					N/A	
PH written evidence (2023/5)	[Not apparent]	[Not apparent]	Medium	Substantial Adverse	Moderate Adverse	
PH Oral Evidence						Slight Adverse

2025						
Residents along Bell View Lane						
fabrik PoE 2025	High	Low	Medium	Slight	Neutral to Negligible Beneficial	
Sightline (relates to Lowder Mill)					Slight beneficial	
PH written evidence (2023/5)	[Not apparent]	[Not apparent]	Medium	Moderate Adverse	Slight Adverse	
PH Oral Evidence 2025						Slight Adverse
Public Highways and Transport (public views)						
Users of the Midhurst Road (A286)						
fabrik PoE 2025	Low	High	Medium	Slight	Slight to Negligible	
Sightline					Slight Adverse	
PH written evidence (2023/5)	[Not apparent]	[Not apparent]	[Not apparent]	Substantial Adverse	Moderate Adverse	
PH Oral Evidence 2025						Slight Adverse
Users of Bell Vale Lane						
fabrik PoE 2025	Low	Low	Low	Slight Adverse	Neutral	
Sightline					Moderate to Large Beneficial to Neutral Effect (*1)	
PH written evidence (2023/5)	[Not apparent]	[Not apparent]	Medium	Substantial Adverse	Slight Adverse	
PH Oral Evidence 2025						Neutral
Public rights of way (public views)						
Public Footpath along Midhurst						
fabrik PoE 2025	High	High	High	Moderate to Slight Adverse	Slight Adverse to Negligible	

Sightline					Slight Adverse	
PH written evidence (2023/5)	[Not apparent]	[Not apparent]	High	Substantial Adverse	Moderate Adverse	
PH Oral Evidence 2025						Slight Adverse
SP1 Path						
fabrik PoE 2025	High	Medium	High	Moderate Adverse	Slight Adverse to Neutral	
Sightline	[Not assessed]	[Not assessed]	[Not assessed]	[Not assessed]	[Not assessed]	
PH written evidence (2023/5)	[Not assessed]	[Not assessed]	[Not assessed]	[Not assessed]	[Not assessed]	

APPENDIX 5 - RESPONSE TO WBC CLOSING

<u>Para</u>	<u>WBC Closing Text</u>	<u>APPELLANT'S RESPONSE</u>
<u>6</u>	<i>"It is common ground that The Council cannot demonstrate a 5 YHLS^s based on a newly required calculation inherent in the revised NPPF with objectively assessed need as an input."</i>	See Appellant's main closing at para 91 et seq. The Council's agreed inability to demonstrate 5YHLS predated the new standard method. Other indicators of the depth of housing need in Waverley are discussed. The Appellant's main closing addresses the HDT test at para 107.
<u>7-15</u>	Argument that critical context for HLS position is Government's view that non-plan led release should only be on brownfield or grey belt land.	See Appellant's main closing at para 103(2): this is all smoke and mirrors.
<u>15(iv)</u>	<i>"As CC accepted in his oral evidence there is in principle areas of Waverley that could deliver further brownfield sites that would now benefit from the new policy context."</i>	Mr Collins qualified this by saying the opportunities are "limited".
15 (vi)	<i>"The Appellant claimed during the inquiry that there was limited scope for grey belt release but this is plainly wrong on the evidence it relied on which revealed a material percentage of the district could be looked at to deliver such land."</i>	It is WBC's own position that there is "limited scope for grey belt release" – see Appellant's main closing at 103(2)(b).
15 (vii)	<i>"Moreover, the claims by CC that the local plan process will take undue time are entirely hollow. Given that the process has had to restart to incorporate and consider new government policy relating to grey belt and brownfield release it is wrong to suggest (as CC sought to do) that there has been 'slippage'. The process is underway and will be adopted before any material level of housing could be delivered on the appeal site even if permission were to be obtained."</i>	This claim rings hollow. WBC had nearly two years prior to the new NPPF being published following LPP1 becoming 5 years old and it has done virtually nothing to progress matters. See Appellant's main closing at para 125.

21	<p><i>"Nor had he grappled with the various important contextual considerations raised by the Icen review¹⁷ of the NPPF implications for Waverley which also provides support for the contention that in context the suggested housing need for the Borough is far too high."</i></p>	<p>This point was not put to Mr Collins and is not correct. Mr Collins relied on the work by Tetlow King at his Appendix 2. This engages with the Icen work at paragraphs 2.45-2.55.</p> <p>In any event, the report was primarily produced to support WBC's objection to a higher standard method housing number – as addressed in the Appellant's main closing this was rejected by Government which then awarded a higher SM figure.</p>
23	<p>Various attacks on the evidence of Mr Neame</p>	<p>WBC's criticisms miss the purpose and effect of Mr Neame's report which is to provide a factual assessment of need as relevant to decision-making. This (and the division of labour with Mr Collins as planning witness) is made abundantly clear at his 1.10</p> <p><i>"This Technical Report explores the need for residential development in Waverley Borough including relevant national considerations such as the Government imperative to significantly boost the supply of housing. Mr Collins takes this analysis and considers it as part of his overall planning balance in the context of the requirements of Paragraph 190 as a whole."</i></p> <p>With this in mind the points made are entirely misplaced. Mr Neame does not engage with matters going to weight (such as the Government's recent policy announcements or WBC's "Hunston" argument) as these are not relevant to the basic questions which his evidence addressed. Those matters were dealt with by Mr Collins. Mr Neame's trajectories are factual and unchallenged. Their implications have been addressed in the Appellant's main closing at 94-102.</p> <p>None of WBC's points provide reasons why Mr Neame's evidence should be given any less weight. He did not appear at the inquiry because the evidence on housing need was agreed.</p>
30	<p><i>"30. Given that the shortfall in HLS is a significant aspect of the Appellant's need case, it is striking that,</i></p>	<p>This submission entirely ignores the fact that any sites identified by a local plan process will also face run in times. The argument that a</p>

	<p><i>as matters stand at the close of the inquiry, the appeal proposal will not make any material contribution to meeting that immediate housing need. At best the delivery of the appeal scheme would overlap with a plan-led resolution of the housing land supply position, which is a preferable way to determine whether and to what extent it is necessary to develop in the NL, and which sites should be preferred if it is necessary in principle."</i></p>	<p>5YHLS deficit can only encourage the delivery of schemes capable of delivering within the 5 year period tested is self-evidently wrong and without support in national policy.</p> <p>Further, as soon as the hybrid consent on the appeal site is converted to a detailed consent it will become 'deliverable' and the numbers immediately drop into the 5YHLS - so it will be supporting land supply whether or not houses are built within 5 years.</p> <p>For the Appellant's case on the quantum of anticipated delivery within the five year period see para 124 of the main closing and its footnotes. As Mr Collins explained, the Lichfields Report supports the Appellant's position on delivery timeframes.</p>
32-35	<p>Argument that SANG not needed.</p>	<p>WBC rely on statements from examining inspectors in relation to LPP1 and LPP2. These in themselves show that (i) the position of Natural England in relation to the need for mitigation of recreational pressures on the SPA has evolved, the latest evidence being set out by Mr Kite in his statement and (ii) that WBC have been looking for projects to mitigate development for a long period of time with limited success (see passage quoted from LPP1 inspector at para 33).</p> <p>There is unquestionably a need for mitigation not just under LPP2 but going forwards as WBC seek to meet further housing needs. For the reasons given in paragraph 109 of the Appellant's main closing, there is good reason to think this will need to be via a SANG. WBC continue to fail to point to any alternative SANG options despite this being included within their call for sites last year. HIP's options have also not been forthcoming.</p>
37	<p><i>"Accordingly, the provision of additional Sang while welcome and of potential future use (and as IJ agreed is to be afforded significant weight in a balance) is not</i></p>	<p>WBC's closing repeatedly suggests that each benefit is not exceptional itself, but that of course is not the test: see Appellant's main closing at para 16.</p>

	<i>specifically identified in the evidence before this inquiry as being necessary or in any way exceptional."</i>	
54(i)	<i>"The appeal scheme proposes the delivery of 111 houses to contribute towards (mainly future) housing need."</i>	It is not clear what point is being made by the bracketed " <i>mainly future</i> ". The scheme is proposed to meet needs which exist now. There is no way to meet these needs except for development which must necessarily take place in the future.
54(iii)	<i>"The approach which the Appellant contends for indicates that unless there are sufficient alternative sites to meet the full OAN, then there is no 'alternative' to developing in the NL. That is not appropriate to the current context. That is not least because meeting the full housing requirement across the plan period remains a matter for plan-making – a process underway in light of new government policy"</i>	This submission sets up a straw man. The Appellant's case is multilayered, identifying a range of different levels of need and then looking at all of the available sources which could be developed to meet that need. The primary decision-making tool is the 5YHLS figure and plainly there is nothing like enough possible land available to meet that deficit. However, the Appellant has also explained why the alternative sites identified are insufficient to meet even the restrained OAN figure from LPP1 within the current plan period – see Appellant main closing at paragraph 95.
54(viii)	<i>"Such a lawful approach would not preclude looking at allocations (or even emerging allocations as in Turnden). Nor would it be limited to looking only at the Haslemere area."</i>	The point is that when considering the scope for meeting need outside of the designated area, the question must be what need is being considered. Needs specific to Haslemere cannot be met in Farnham. Allocated sites are not alternatives ways to meet deficits in land supply where that land supply already includes those allocations.
56	<i>"CC also accepted that there existed a number of sites that were sequentially preferable to the appeal site⁴⁰ outside of the NL."</i>	Mr Collins accepted that three sites were sequentially preferable in landscape terms, and also made clear that the sum total of alternatives would not meet the need.
59	<i>"It is of course acknowledged that the alternative sites identified by CC are not all currently deliverable to meet the immediate housing need"</i>	It should also be noted that none of the alternatives, in the list of 18, is anywhere near as advanced through the planning process as the Appeal Proposal.
75	<i>"The much relied upon by the Appellant "22%" figure is in many senses a red herring. The Appellants have chosen to create a larger red line site to derive a 22% figure."</i>	This submission ignores (in common with many submissions by WBC and the R6 Party) the effect which the Appeal Scheme will have on the 78%. That land will be protected and secured in perpetuity by the s.106 and will be enhanced through the beneficial management which is agreed to result in landscape benefits to each of LCAs 3, 4, 5, 6 and 7.

		These benefits are far from a “red herring”.
82(viii)	<i>“In this context it is important to bear in mind that NLS are not designated for recreational opportunities they may offer.”</i>	This may be correct for NLS, but National Policy in the NPPF directs decision makers to consider impacts on recreational opportunities and opportunities to mitigate them. Educational and recreational goals are also placed at the heart of the AONB Management Plan and as part of the objectives of what is now the National Landscapes Association: see CD7.9 para 3.3 and Policies RT1-2 and 4, CE1 W5, B3.
96	<i>“good design is a minimum requirement and would not ‘mark the scheme out’ in any way.”</i>	What is being proposed is ‘High Quality design’ and it would indeed mark out the scheme.
103	<i>“RP maintained that the effects would be ‘substantial adverse’ (or as he explained in xx one could alternatively use the term ‘a large to very large’ adverse effect to accord with his terminology in table 6 of his evidence”</i>	Incorrect, in XX he accepted “large” not “large to very large”: see Appendix 4 of the Appellant’s main closing,
104, 106, 113 and 123	Mr Smith’s evidence is at odds with the LVIA.	See Appellant’s main closing: para. 39. And see also Mr Smith’s proof at Appendix 1 and see also para. 3.67 of his proof: <i>“Changes since LVIA</i> <i>3.67 Since the Application with its associated reference to LVIA data, there have been changes on the ground, as follows:</i> <i>i. There has been growth of vegetation, notably to the peripheral buffer planting at the current urban edge and within the green infrastructure that subdivides the proposed residential parcels (LCA1 and 2).</i> <i>ii. To the southern margins of the residential parcels new bunding has been created and additional planting has been undertaken.</i> <i>iii. The construction of Scotland Park phase 1 is well underway and is now part of the visual outlook from LCA2 and LVIA view cones C and E. In essence another part of the urban edge that is apparent from the Appeal Site.</i> <i>iv. The route of the footpath through the Appeal Site, consented through the Scotland Park phase 1 permission. We have provided an assessment of this visual receptor.”</i>

107(i), 119 and 134(ii)	Allegation that Mr Smith not followed own methodology.	This is refuted. See Mr Smith’s proof at para. 4.38 . His evidence has clearly borne in mind para 5.37 of GLVIA, see the Appellant’s main closing ta para. 38. thus this is a part of Mr Smith’s methodology and through following this he arrive at his outcomes. His response is then both tabulated and discursive (see his proof para 4.41).
98, 105 and 107 (iii)	The good design already “baked in” to the assessments.	This has been central to WBC’s case at this Second Inquiry: <ol style="list-style-type: none"> 1. The LVIA does not have regard to the SHEDG. There is no double counting by the Appellant. 2. It is said that good design is “baked in” to Mr Petrow’s assessment despite his silence on all of this in his proof. He does not refer at any point in evidence to either ‘high quality design’ or ‘good quality design’. But his proof for the First Inquiry was similarly silent. And in the First Inquiry he indicated in oral evidence that the lodge was harmful but at the Second Inquiry he said it was positive. So, it is not at all clear that good design formed any part of Mr Petrow’s assessment and if it did how he reached opposite conclusions on such matters. 3. Mr Petrow fails to make any mention of SHEDG in his proof. 4. It should be noted that Mr Pullan’s design review and evidence were not before Inspector Bristow and he did not have the benefit of this careful and detailed evidence. Moreover, the design code condition has been significantly strengthened from what was proposed at the First Inquiry in this regard. 5. In contrast see the Appellant’s main closing deals with the design evidence and its importance: see paras. 34 -36.
123	<i>“AS again differed from the LVIA/CM evidence which had assessed there being a ‘large adverse effect on its current character’91 – again having already taken into account the design proposed in the detailed part of the application.”</i>	The reference to large adverse effect is (see fn 91) to CD2.29 at 10.5.33 . However, if that para is read further it in fact says, <i>“However, the proposed design seeks to achieve an alternative landscape character which is considered to be appropriate for its location within the AONB in terms of character and quality. If this is taken into account the perceived harm to landscape is considered to be slight adverse.”</i> Thus, the same outcome as

		Mr Smith's and this is recorded in WBC's Appendix to its closing. Thus, para 124 of WBC's closing is very much weakened, indeed it is incorrect as indeed are the assertions at paras. 127 and 135, 138 of WBC's closing.
124	<i>"an unwarranted design-based reduction"</i>	Mr Petrow's first consideration of good design was in XX. He had not factored it in at all.
129 and 130	Playing down the agreed landscape benefits on LCA3-7	The approach advocated in WBC's closing urges that great weight is given to any harm to the NL from LCA1 and LCA2 but seeks to play down the benefits to LCA3-7. The benefits on all of these save for LCA5 were agreed by Mr Petrow to be "moderate". Those benefits – enhancements to the NL – must also be given great weight under para. 189 of the NPPF.
131 – 133	Visual impacts	It is truly exceptional for a site within a NL to have such little visual impact.
134(ii)	<i>"In addition, his judgments as to various inputs (eg value/susceptibility/sensitivity – which include elements of judgment as to for example vulnerability to change and the level of key characteristics) were not followed in a way that his adopted methodology indicated they should be. The tabular matrixes in his methodology were not applied but instead he inserted further unexplained elements of 'judgment' in concluding there were lower adverse effects"</i>	This is incorrect. They are explained in CD 5.3 para 4.44-4.73 re landscape receptors and para 4.74 -4.94 for visual effects and associated impact summaries para 4.95-4.104.
135(ii)	NE's objection one of detail not just in principle	NE's objection is in principle and is to all major development in NLs – para. 156(3) of the Appellant's main closing. See also the legal contentions set out in Appendix 5 to Mr Collin's proof.
135(iii) and (iv)	Reliance on views of the Chair of the SHNL	These views are pure hyperbole. See the Appellant's main closing at para 156(4). The suggestion that this is not exaggeration bears no scrutiny.
136	<i>"The appeal site is wholly within the NL. It is a 'valued landscape' in policy terms and is also a landscape of high value and quality having regard to its characteristics and features. It displays most of the</i>	The only harm is to LCA1 and 2 – 22% of the Appeal Site. There is enhancement and landscape benefit to 78% of the Appeal Site.

	<i>key characteristics of the landscape mosaic that makes up the Surrey Hills NL. RP's judgements on quality/value and resulting effects are to be preferred. The appeal proposals would be substantially harmful to LCAs 1 and 2 and this harm cannot be meaningfully reduced by mitigation measures."</i>	The harmed areas especially LCA2 and the northern part of LCA1 are paddocks and not of any great value. Indeed Inspector Bristow noted there is <i>"nothing particularly distinctive"</i> .
138	"fundamental and serious harm"	This is not GLVIA language, it is emotive language and should be rejected.
142-143	Sturt Farm	The attempt to distinguish Sturt Farm is erroneous: see ID4.4 paras. 90 - 96. One of the points of alleged distinction put forward is that Sturt had existing housing / settlement boundary along the northern boundary. That is, of course, also true of the Appeal Site.
144	Royal School	It is said <i>"As discussed above it also proposes a solution for Sang"</i> . This solution is opposed by NE. This has been one of the reasons holding up this site for many years. NE have confirmed in their email of 7 April 2025 (NID13.20) that no SANG or other mitigation options are known.
145	<i>"Phase 1 Land off Scotland Lane This is not comparable as it is located outside of the National Landscape and did not face the same exceptional circumstances test that parties agree is key to this case."</i>	Incorrect, see ID4.4 para. 14. Moreover, Phase 1 and Phase 2 were considered together by WBC's consultants as HEO5: see p. 9 of Mr Smith's proof.
147	Turnden	<ol style="list-style-type: none"> 1. The suggestion that <i>"it provided no support at all for the current appeal and in fact supported the case for the rejection of this appeal given that the circumstances leading to a finding of exceptional circumstances was so materially different"</i> is without any merit for the reasons set out in the Appellant's main closing at paras. 18(4), 20, 40, 93, 110(5), 118, 126, 128 and 156. 2. Paras. 147 (i) and (ii): Turnden was a draft allocation, but at the stage of the IR, it was at an early stage and the draft allocation was given "limited weight". So the view in the IR is not driven by the draft allocation. The Inspector still found EC on facts similar to the present.

		<p>3. Para 147(iii): The level of landscape harms found to occur at Turnden are similar to those assessed by Mr Smith</p> <p>4. Para 147(iv): the housing needs in terms of 5YLS shortfall was far less when the Inspector reported, and there was no shortfall when the S/S determined the matter. The housing needs in Waverley are far greater.</p> <p>5. Para 147(vi): this is incorrect for reasons set out in the main closing.</p>
153(i)	<i>"The decision is dated 24th May 2024 and so less than a year old. It considers the same proposal in the same development plan policy context. Although the national policy context has changed in a way that makes the proposal even less appropriate than before (as submitted above) many of the same considerations in evidence apply."</i>	<p>This is again the flawed approach of treating the quashed decision as if it were never quashed at all.</p> <p>The closing like all of WBC's evidence puts Inspector Bristow's decision at the heart of their defence of this appeal: see the reliance placed on the quashed decision in paras. 53, 82(x), 127, 130(iv) and vii), 135(iv) and viii), 138 - 141, 152 - 154, 167, 174, 180, 181(1) and fn15.</p>
153(xiii)	<p>There have been no changes in circumstance since the quashed decision.</p> <p><i>"It is true that there is a change in relation to the policy context - in that greater protection is now arguably afforded to NL's given new statutory guidance, new PPG refs and clarity by the government as to where and how it wishes to see new housing provided."</i></p>	<p>There have been many as set out in the Appellant's main closing.</p> <p>Wholly incorrect. There is no change in the protection for NLs since the quashed decision. This is explored in detail in the Appellant's main closing.</p>
153 (xiii)	<i>"It would in the submission of the Council be irrational to fail to consider it as a material consideration - with the application of the principle of consistency of decision making squarely in mind. It is also obvious that in so doing it will materially weigh heavily against the grant of planning permission."</i>	<p>Not so for the reasons given in the Appellant's main closing at paras 5 - 12 and see especially para. 6 "6. This puts the case in the category described by the High Court in R (Davison) v Elmbridge BC [2019] EWHC 1409 (Admin) where it was held that <i>"the complexity of discerning which elements of the decision remain [...] unaffected by the quashing ... entitles the decision maker to put aside the previous decision making, provided this is explained"</i>."</p>
158	New duty is a qualified one	That is agreed.

161	Allowing the appeal would be <i>“inconsistent with the previous Inspector’s decision in a way that would undermine public confidence and the principle of consistency in decision making”</i>	There is no public confidence consideration against you concluding, sir, as you should that a decision which has been quashed as being unlawful is subject to such complexity in terms of discerning which elements of the decision – if any - unaffected by the quashing such that you are entitled to put aside the previous decision making. The arguments made in favour of there being a public interest in consistency with a decision which has been quashed as unfair and unlawful is not accepted.
172	SP2 <i>“although technically out of date the policy should be afforded full weight given it remains consistent with the NPPF and with the recent January 2025 PPG amendments”</i>	WBC have now acknowledged this policy is out-of-date. The Appellant’s case on compliance with Policy SP2 is set out in the main closing.
173	SP1 said to be breached.	This is a generic Sustainable Development policy. If there are EC, para 11d, is engaged and hence there also be SP1 accordance. If the appeal is allowed, it is perfectly reasonable and proper to conclude SP1 accorded. This policy not alleged to be breached in the RfR. And not among the list of agreed relevant important policies in the SCG see NID4.11.
176	RE1/DM15	Some breach of these policies is acknowledged by the Appellant. However, there are out-of-date and deemed by the NPPF out-of-date. They carry reduced weight as these policies restrict the supply of housing. It is surprising, and unexplained, that WBC admit that Policy SP2 is out-of-date, but not RE1/DM15.
181(i)	Mr Collins ignores the previous appeal decision.	Incorrect: see Mr Collins’ proof Section 10/ Appendix 10. That said the Appellant’s case is that as a matter of law the quashed decision should be set aside.
181(ii)	Double counting benefits. (The same point is also made by the WBC in its closing at 130 vi).	Incorrect: see Appellant’s main closing. Mr Collins made clear in EiC the different aspects of some of the benefits (i.e. economic/ social) which made them distinct to the landscape/ environmental benefit that Mr Smith had factored in his ‘landscape balance’.

181(iii)	<i>"CC had also failed entirely in his balance to give weight to the constraints in the Borough as consideration leading to reduced weight to any shortfall (see submissions above on PPG and the CA in Hunston)."</i>	Hunston is addressed in the Appellant's main closing: see para. 100(5) and fn234. WBC's own delays and failings mean that there is no up-to-date Local Plan with a constrained housing requirement. There is no LAA, and no rebuttal of Mr Neame's evidence (which is simply an update of his previous work for the First Inquiry). There is no up-to-date constrained housing need figure, as the proper approach is to come to a Plan requirement via the plan making process. There isn't even a Reg 18 Plan to consider yet.
181(iv)	Mr Collins failed to have regard to the new statutory duty.	This is considered extensively in Mr Collins' proof: see paras. 4.24 - 4.30 and 6.4.
181(v)	<i>"CC afforded weight to the Scouts facility when there is no 'necessity' for it at all on this site."</i>	Even leaving aside the dispute on need. The new facility is preferable for a number of reasons and can be accorded weight.
Appendix		Re table. Mr Smith's assessment of the LCA5 residual effect (as per his proof table 6.0) was moderate beneficial not slight to moderate beneficial. So, the appendix is in error.

APPENDIX 6 – RESPONSE TO R6P CLOSING

<u>PARA NO.</u>	<u>R6P CLOSING</u>	<u>APPELLANT’S RESPONSE</u>
4	<i>“Each member organisation of the Rule 6 Party has duly authorised its participation as a member (by resolution of Full Council in the case of the Haslemere Town Council, by Committee resolution following communication with Members in the case of the Haslemere Society, by Members’ resolution in the case of the Haslemere South Residents’ Association, and by members’ consensus in the case of Haslemere Vision).”</i>	These assertions are not accepted. The Appellant has sought for some time evidence to support this e.g. constitutions, minutes etc. The R6P has refused to provide any such evidence.
5 and 8	Quoting the Ministerial Statement and having regard to <i>“local views”</i> and the R6P <i>“considers itself to be unequivocally representative of the majority of the local community”</i>	The documents sought, see above, were sought to try and understand the extent to which the R6P really did reflect widely held local views. The evidence has not been produced. There is no evidence that has been provided, as it could have been, to support these assertions.
6	A survey done for the NP rejected any major development outside the settlement boundary of Haslemere.	Given the lack of deliverable sites in the town the only location for meeting the acute needs of the town for more housing are outside the out-of-date settlement boundaries. The R6P argument is an argument for no development in Haslemere: see the R6P closing at para. 42 <i>“[t]he settlement of Haslemere is entirely surrounded by National Landscape and National Park.”</i> the R6P closing at para. 42 <i>“[t]he settlement of Haslemere is entirely surrounded by National Landscape and National Park.”</i> . That may suit those who already own their own homes but ill-serves those who do not.

6 and 7	No support for the scheme.	At the time of determination, the Officer's Report (CD 4.2) it states 183 letters raising objection and 7 letters of support were received (Charlie's Proof for First Inquiry ID2.1). Difficult to quantify the number of letters have been received in support during the time period of the Appeal but likely to be around 5-10. There are also a high number of repeated objections over the course of the Appeal.
16 and 17	The views of the chair of the SHNL	The chair is <i>not</i> an expert. Nor did she attend to have her evidence tested. For both these reasons her evidence must carry less weight
18	AONB designation is not dependent on public access.	Despite that recreational opportunity is an important consideration in NL: see paras. 189 and 190 of the NPPF and see also the AONB MP.
19	Reliance on GALD and "natural beauty"	See Mr Smith's proof at para. 3.41ff, and see especially para. 3.49 <i>"This positive association with built form, built form being an inherent part of the SHNL's character, extends to Lodges and the Parkland. We see this from both GALD (ref to para 3.43 of this proof) and from the 2023 Surrey Hills Environmental Design Guide (SHEDG) (CD 7.20). At its para 3.9 and under the heading of 'Cherished Designed Landscapes' it says; 'Parkland makes an important contribution to the area's picturesque scenery and provides a sense of continuity and grand scale. Retain estate and parkland character, boundary walls, gates, fencing, lodges and 'estate cottages.'"</i>
22	<i>"The Surrey Hills Environmental Design Guidance [Document NID 7.20] not only states that development should be inside the settlement boundary (at para 3.1) but also "avoid development on open slopes" (at para 3.2). LCA 1 and LCA 2 of the proposed development site are examples of open slopes that are characteristic of the Surrey Hills National Landscape. They are even virtually identical to the example open slopes featuring in the photographs in</i>	So, <ol style="list-style-type: none"> 1. This was not put in XX to Mr Smith by Mr Brown; 2. It is telling that when it comes to identifying ways in which LCA1 and 2 are characteristic of the SHNL the R6P has come up with one point only: slopes. That is it.

	<i>publications issued by the Surrey Hills National Landscape</i>	
26 - 27 and paras 47 - 50	Sunken Lane	The R6P accepts that Midhurst Road is a trunk road. That is correct. Contrary to what is said by the R6P it was established in evidence from the experts (both Mr Petrow and Mr Smith) that in the vicinity of the proposed access Midhurst Lane is <i>not</i> a sunken lane. The continued argument to the contrary is somewhat desperate.
30	Dark skies	Repeats erroneous evidence conceded as being incorrect by Mr Harrison in XX. Points not pursued by WBC.
32.	FP597 provides <i>“relative tranquillity”</i> despite proximity to Midhurst Road.	There is no tranquillity given the volume of traffic on this trunk road. The R6P ignores the enhancements to FP597 acknowledged by officers and which separates that FP from the busy road.
42	<i>“If permitted, the Appeal Scheme would cut a significant portion of outstanding Natural Beauty from this landscape and would irreparably harm its beautiful landscape and scenic quality on the approaches to the town from the South”</i>	See Mr Smith’s para 4.102: <i>“In the context of the SHNL the area on changes of the site (LCA1 and LCA2) is, 5.13ha, 0.0513 of a square kilometre. Thus, it is 0.00012% of the potential SHNL extension, 0.00009% of the SHNL inclusive of a 30% extension. It is a very, very small area of change in that context. Again, a matter to be factored into balance”</i> .
44 and 84	Suggestion that Sturt Farm lower quality NL than Appeal Site	This is a serious misunderstanding of the position, and has no support in any professional evidence.
46	Streetlighting	There will not be normal ‘streetlighting’ rather low level lights, all controlled by condition.
51 - 53	Reliance on Mr Maurici’s book	The legal analysis in this book is covered in the closing. The analysis is entirely consistent with the submissions made in the Appellant’s main closing. See the Appellant’s main closing at fn45 and see CD10.9 for the most relevant extract and referring extensively to the <i>Wealden</i> and <i>Compton</i> cases.
54 - 56.	Scout hut and forest school activities disturbing	These activities are clearly consistent with a NL location.

		There is no conflict.
61	<i>"The proposed development will entail the felling of many mature trees. They are not all category C, as Mr. Collins for the Appellant stated, but rather include category B trees and include trees which are the subject of Tree Protection Orders (see plan at NID 8.5)."</i>	Neither Mr Collins nor Mr Smith suggested that all the trees to be removed are category C. Some (but a small number) are category B, many more are category U. The arboricultural impacts overall will be significantly positive (see Appellant's main closing at para 43). The TPO merely reflects the fact of this planning application.
62	<i>"And, of course, even in 20 years' some the beauty of the felled ancient trees will not have been replicated."</i>	As set out in the Appellant's main closing there are no veteran or ancient trees which will be affected.
63-64	Harm to cultural heritage <i>"The erosion of the countryside surroundings of Haslemere by the Appeal Scheme would negatively impact the town's cultural heritage which is rooted in the beauty of the ridge and slopes of the development site."</i>	There is no proper evidence to make good this submission. There are no known cultural associations with the site itself and the landscape sensitivity of the site had been addressed. The Scheme will improve the edge of Haslemere beyond that currently offered by Scotland Close.
65	<i>"This nature of this duty has recently been emphasised by the Secretary of State's concessions in the Dedham Vale case"</i>	The Dedham Vale consent order adds nothing to the understanding of the duty - it was a case where the duty had been disregarded.
74	<i>"There is unlikely to be any net benefit from the Appellant's promise of improved management of the National Landscape on this land because the Appellant is already managing it, as current landowner. No doubt, as a competent manager of woodland, parkland and wetlands, the Appellant would intend to manage their land well, irrespective of whether or not planning permission is granted. Indeed, this is entirely consistent with the Appellant's existing commitments connected to the 'Phase 1' development."</i>	There is no obligation on the landowner to manage the land in any particular way beyond the limited obligation relating to the 2.3km route secured under Phase 1: see Appellant's main closing at 56(3). This is a significant benefit.
87	<i>"Furthermore, the evidence presented in the Rule 6 Party Ecology Proof of Evidence [Document NID 5.9] indicates that the proposed development may not pass the three tests of The Habitat Regulations, and as such would not receive a licence from Natural England."</i>	No evidence was called in relation to this issue which is barely more than an assertion in the R6P ecology proof. Mr Jack dealt with the matter and his evidence was not challenged in XX.

88	<i>“The evidence in the Rule 6 Party Ecology Proof of Evidence, supported by the expertise of Professor Tom Oliver, Mr. Gareth Matthes and Dr Philippa Guest, demonstrates that actually the harms are significant and hence the Applicant’s expert has not followed the Biodiversity mitigation hierarchy principles that underpin NPPF paragraph 193 and biodiversity net gain approach.”</i>	The evidence in the R6P does not establish any significant effects. Mr Jack addressed these issues and his evidence was not challenged in XX.
89	<i>“The majority of the proposed habitat units from the net gain and enhancement strategy are to be delivered not through the creation of new habitat but by restoration of woodland within the site boundary.”</i>	Incorrect. This point was corrected by Mr Jack in his oral evidence and not challenged. The majority of net gain is driven by better management of the existing woodland and grassland.
90-91	<i>“Mr Jack’s Ecology Rebuttal [Document NID 11.2] maintains that there will be no such loss in diversity. However, his reference at paragraph 2.10 to The Forestry Commission Practice Guide for the 'Management of Semi-Natural Woodlands' misinterprets that guidance; in fact, it pertains to removing areas of non-native conifers (e.g., Sitka spruce or Picea sitchensis) that crowd out light and lead to deep litter and humus layers, with a consequent species-poor understory. For the proposed development site, the area labelled coniferous woodland in Figure 8 of Document ID2.6 is actually mixed woodland, with a number of deciduous trees interspersed with conifers. The conifers are not densely planted and there is ample light for a species rich understory. The conifers themselves contain species deemed native to the UK (e.g., Scots Pine or Pinus sylvestris) and these mature trees provide important habitat for insect, bird and mammal species, that would not be available if they were replaced with deciduous saplings.”</i>	These points (insofar as they go beyond the basic assertion that loss of conifer trees would “make the woodland less biodiverse” (see R6P Ecology Proof at 1.3 and 3.7)) were not made in the written or oral evidence. Mr Jack explained his position in rebuttal and orally but was not challenged. It is not appropriate for the R6P to seek to do so now.
95	<i>“The Appellant proposes that a tunnel at the access road will be sufficient mitigation”</i>	Incorrect. As addressed by Mr Jack and in the Appellant’s main closing at para 64(4), the tunnel is not in fact mitigation for dormice.