

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

GU27 3DH

PINs Ref: APP/T3650/W/23/3327643

LPA Ref: WA/2022/01887

CLOSING SUBMISSIONS ON BEHALF OF WAVERLEY BOROUGH COUNCIL

(‘The Council’).

Introduction¹

1. The Council contends that planning permission should be refused for the appeal scheme. It is acknowledged that there is a great need for housing and that the proposal would deliver benefits. However, the proposal would cause fundamental and serious harm to a part of the Surrey Hills National Landscape (‘NL’) which has the highest level of protection in law and policy. National policy requires great weight to be given to that harm and the up-to-date policy context for delivering much needed housing is clear that development in NLs should be avoided save where an Appellant can demonstrate exceptional circumstances. Overall, the benefits are not sufficient to justify the grant of planning permission and exceptional circumstances have not been demonstrated.

¹ The following abbreviations are used: CC – Mr. Collins; IJ- Mr. Johnson; AS – Mr. Smith; CM – Mr. McDermott; RP – Mr. Petrow; DN – Mr. Neame; CP – Mr. Pullan; xx – cross examination.

2. The parties agree as to the key elements which should inform decision making in this case. In terms of NPPF² policy it is agreed that the determinative provisions are found in NPPF paragraph 190. In light of the evidence and law the following is common ground:
- (i) paragraph 11(d) NPPF is engaged due to the LPA's housing land supply ('HLS') position³;
 - (ii) The 'most important policies' are therefore deemed to be out of date⁴; this includes at least those policies which form the basis for the 1st (and only outstanding) reason for refusal;
 - (iii) However, even though relevant policies are deemed to be 'out of date' the weight to be accorded to such development plan policy remains a matter of judgment in light of factors such as the consistency of a given policy with government policy and the particular on the ground context in which a given policy falls to be applied.
 - (iv) Paragraph 190 NPPF is capable of constituting a "*strong reason for refusing the development proposed*" for the purposes of paragraph 11(d)(i).
 - (v) Whether that is the case here turns on the application of the exceptional circumstances test in NPPF 190 (it being common ground that the proposed development would be – if exceptional circumstances are shown – in the public interest)⁵;

² CD 8.1

³ As set out in NID 4.1 – a 1.28 year supply

⁴ By virtue of footnote 8 NPPF – CD 8.1

⁵ Both CC and IJ agreed that if there were found to be no exceptional circumstances as required by NPPF190 there would be a strong reason for refusal. Accordingly, the debate in the proof of CC

(vi) If the Council's case is accepted and the exceptional circumstances test is not met:

- the appeal scheme will not be in accordance with the development plan taken as a whole,
- paragraph 190 NPPF will provide a strong reason for refusing the scheme so that the tilted balance in paragraph 11(d)(ii) NPPF is not engaged,
- there are no other material considerations of sufficient weight to indicate a determination otherwise than in accordance with the development plan,
- therefore planning permission should be refused.

(vii) Equally if the Appellant is able to demonstrate exceptional circumstances in the sense envisaged in NPPF 190 then planning permission should be granted as the proposal would accord with the development plan as a whole, there would not be a strong reason for refusal and the adverse impacts would not significantly and demonstrably outweigh the benefits.

3. It follows that, as both CC and IJ accepted in evidence, the application of the exceptional circumstances test will determine the outcome of the appeal⁶. In deciding whether exceptional circumstances exist paragraph 190 NPPF requires that the following matters should be assessed:

“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;

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

⁶ See as recorded in the Planning St of CG – NID 4.11 at key issue II and at 5.3, p.20

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

4. As the Courts have made clear⁷ decision makers are not limited to assessing those specified matters. They are factors that must be considered, but all relevant considerations should be taken into account. In addition, the application of paragraph 190 involves a broad discretion and does not limit the decision maker to following any particular method/approach or course in exercising a planning judgment (especially in relation to the issue of alternatives which I address further below). As the CA noted in the *Wealden* case:

"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."

[paragraph 63, Lindblom LJ in *Wealden*]

⁷ As confirmed by the Court of Appeal in *Wealden DC v SSCLG* [2017] EWCA Civ 39 CD 10.1 esp at para 63. See also NID 13.26 - the recent case of *Frack Free BRA v S of S* [2025] EWCA 495 (16.2.25) at paragraph 71 reaffirming the approach in *Wealden*.

5. In light of the above these submissions are structured as follows:

I. Para. 190 (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 (including HLS matters) - **page 5**

II. Para 190(b): the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and - **page 25**

III. Para 190(c): any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated." - **page 31**

IV. Other appeal decisions, allocations and local determinations relied on by the appellant - **page 61**

V - other material considerations relevant to decision making - **page 69**

VI. Conclusion on 'exceptional circumstances' - **page 78**

VII. Development plan/statutory considerations and planning balance - **page 79**

VIII. Overall conclusions - **page 85**

I. NPPF Paragraph 190 (a)

6. It is common ground that The Council cannot demonstrate a 5 YHLS⁸ based on a newly required calculation inherent in the revised NPPF with objectively assessed need as an input. The total housing supply using that calculation is

⁸ As set out in NID 4.1 –

1.28 years. It is, however, relevant to note that because there has not been any significant under delivery of housing over the previous 3 years a 5% buffer is applied as part of the calculation rather than a 20% (in accordance with NPPF para 78). The most recent HDT measurements are set out in NID 4.1 at paragraph 4.10, p.8 and it is evident that Waverley has been consistently over delivering as table 1 indicates for several years.

7. Moreover, for the purposes of a 190 (a) consideration of - in particular - the newly calculated supply figure has got to be understood in context. This context was a critical point of dispute at the inquiry. The Appellant sought through CC to focus on the bare need figures/shortfall of supply derived from the housing land supply calculation. However, it failed entirely to put this in proper context adopting a somewhat myopic approach.
8. What it failed to consider is in fact crucial to a full understanding of up-to-date government policy when considering whether to place housing in a National Landscape and when considering whether a given situation is in fact 'exceptional'.
9. The Council submit that a fully informed approach to the application of 190 (a) requires consideration of **how and where** the government wants much needed new market and affordable housing to be delivered.
10. As CC accepted in xx and IJ explained in his oral and written evidence in principle decisions where houses should and should not go - especially when NLs are involved - should be plan led. The government has been quite clear about this ⁹. It is obvious that s78 inquiries/appeals are not an ideal forum for resolving whether and to what extent land should be developed in a National Landscape. In relation to the urgency of housing need and how it can be

⁹ The government has been quite clear that plan making is the preferred way to deliver houses: see eg CD7.1 – written ministerial statement from 30.7.24 from Dep PM: (at pdf 1, under heading 'restoring and raising housing targets', 1st para.

delivered with speed in the context of local authorities not having a sufficient current supply the government has made clear that:

*“we will therefore also make it clear that applications for sites not allocated in a plan must be considered **where they relate to brownfield and grey belt land**. This route will maintain restrictions on the release of wider Green Belt land, meaning it would remain possible for other Green Belt land to be released outside the plan-making process where ‘very special circumstances’ exist, but such cases would remain exceptional”¹⁰*

11. In short, in relation to release of land that is not plan led the government is quite specific about what kinds of cases it has in mind. The emphasis is on the release of brownfield and grey belt land as being the basis for delivering the immediate housing need in areas of undersupply. Beyond that, in areas of high sensitivity it should be plan led.

12. The new NPPF is also clear in this regard. As the government said when producing the new NPPF:

Meeting ambitious new targets relies on allocating sufficient land to do so. We have been clear that developers should first look to brownfield, or previously developed, land. That is essential to protect our most valuable countryside and agricultural land. And we have made changes to support that, making the default answer to proposals to build on brownfield ‘yes’ and expanding the current definition of brownfield land to include hard standing, ahead of further reforms planned for next year on the back of our brownfield passport working paper. Together, these changes will ensure that we make full and efficient use of previously developed land.

But we know that there are simply not enough sites on brownfield land registers to deliver the volume of homes that the country needs each year, let alone enough that are viable and in the right location. And that is why we have grasped the nettle and proposed a modernised, strategic approach to Green Belt land designation and release, fit for the 21st century. (Statement by Mr Pennycook on 12.12.24 at NID 7.5, pdf p.2)

¹⁰ NID 7.1 Ministerial Statement July 2024

13. The government does not wish areas such as NLs to be a first port of call for development. This has found form in policy in the new presumption in favour of development¹¹ on brownfield land in the NPPF at paragraph 125(c) – a radical change. The NPPF has also introduced new provisions relating to grey belt land which as IJ and CC accepted in evidence have already had a considerable impact on planning in England. Recently (27th February 2025) new guidance on the application and meaning of grey belt policy has been produced by the government which has indicated a much broader definition of what can constitute grey belt land than was previously thought.

14. This context is new. It has largely been ignored by the Appellant in seeking to make a case for exceptional circumstances. But it is in fact critical to an appreciation as to why the situation understood in context is not ‘exceptional’ in a way that would justify a major development in the NL .

15. The following submissions are made in the context of Waverley:

(i) In the context of delivering a new local plan which addresses such new government policy Waverley has recently (4th March 2025¹²) set out a timetable which will see the delivery and adoption of a new plan by July 2028¹³.

¹¹ To be approved unless ‘substantial harm would be caused’

¹² See Pl St of Cg at NID 4.11, paragraph 3.9

¹³ The current timescale for the local plan review are as follows (see IJ proof at 9.24, p.24):

- Engagement on visioning and the scope and content of the Plan - Early Summer 2025
- Engagement on issues and options - October/November 2025
- Consult on preferred options plan - November/December 2026
- Publish submission plan for consultation - August/September 2027
- Submit Plan for examination - December 2027
- Adopt plan - July 2028

- (ii) That process will of course deliver an evidence base relevant to decision making (which will include a full consideration of alternatives and site suitability) well before then.
- (iii) As CC explained in the very near future there will be a process of 'engagement' - timetabled for June/July 2025 - in which the Council will be directly seeking sites. This will build on a recent call for sites process.
- (iv) Given the radical change to policy it is inevitable that this process will deliver further - hitherto unknown alternative sites. 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.
- (v) Moreover, in relation to the new 'grey belt' definition the evidence before the inquiry suggested there might be in the order of 7-12% of land in Waverley that could be assessed to see if there were opportunities for grey belt¹⁴ (ie in land not subject to other national designations). In the context of a heavily constrained district that is on any view a large amount of potential land for a local plan process to consider or for developers to bring forward in advance of a new local plan in accordance with government policy aims.
- (vi) 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. As IJ explained in his evidence in chief it is highly likely that additional sites far preferable to the appeal site will emerge through such a process.

¹⁴ CC proof at 4.45, pdf 47 quoting from NID 7.31

- (vii) 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.
- (viii) In truth (and this matter is relevant both to 190 (a) in terms of national considerations and to 190 (b) in terms of the scope for meeting need) there is clear scope for housing need to be met by the delivery of grey belt land and or the delivery of brownfield sites in the near future and for the local plan process to fully and properly consider alternative and appropriate sites for development in a way that this s78 process could not hope to do¹⁵. It would, in short, be artificial for the inquiry to assume that the only sources of supply are those which it is possible to identify at this point in time. A full plan review is underway. That will result in a new housing requirement. A call for sites has taken place (with evidence currently being assessed) and an imminent new process of engagement is timetabled which will produce new evidence about potential sources of supply in light of recently produced government policy.
- (ix) Once that is appreciated, the claims of delay and the level of current supply can be understood in a proper context. The level of identified need is great but the situation is not exceptional for the purpose of 190 (a). Rather it is a current situation in which an up-to-date policy, recently changed, now indicates housing should not in principle go in NLs and should be delivered by a plan led process (which is being pursued with vigour and in relation

¹⁵ It can be noted that the previous Inspector formed a similar conclusion even before the new policy context in the recent NPPF existed – see NID 3.8 at paragraph 155.

to which a timetable and a process of engagement has been set) and in the interim via release of other land that is not so designated. Indeed, as I address below it is of note that in the rare cases where housing has been allowed in NLs elsewhere in the country the government/decision makers have invariably been faced with a situation where there has been a full or almost complete plan process underway. It is the very existence of such a process (and not the absence or the existence of the early stages of one) that has usually contributed to the finding of there being exceptional circumstances elsewhere in the context of developing in a NL.

16. But a full appreciation of context and national considerations for 190 (a) for a Borough like Waverley does not end there. A further fundamental point to appreciate is the plan led requirement that this Borough ends up with in following the plan process may be far less than the standard method used to calculate a 5yr supply at present suggests. This is highly relevant for the decision maker to consider in the context of a planning balance and in the context of 190 (a) in this Borough. In that regard the following submissions are made:

- (i) In Borough's like Waverley, which have large areas designated as National Landscape (as well as GB), it may not be possible to fully meet all of its objectively assessed housing needs.
- (ii) It 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 market or affordable housing need through the emerging Local Plan.
- (iii) That such matters should be considered material to decision making for development control is explained in caselaw and is important. In the CA case of **Hunston** [NID 7.33] much of the district was in the green belt. In that case the CA addressed the position where "*the housing requirements for the relevant area have not yet been established by the adoption of a Local Plan*

produced in accordance with the policies in the Framework.” In the context of a very constrained district (as we have here) it was in dispute as to whether the shortage of housing could constitute ‘vsc’ (in other words a similarly constrained designation which required a specific policy test to be overcome). The CA confirmed that the Inspector should not have used an earlier housing requirement figure from a revoked plan and at para 26 observed:

“it is not for an inspector on a Section 78 appeal to seek to carry out some sort of local plan process as part of determining the appeal, so as to arrive at a constrained housing requirement figure. An inspector in that situation is not in a position to carry out such an exercise in a proper fashion, since it is impossible for any rounded assessment similar to the local plan process to be done...”

But importantly the CA went on to make clear that (see at para 28-29) (my emphasis in bold):

*“However, that is not the end of the matter. **The crucial question for an inspector in such a case is not: is there a shortfall in housing land supply?** It is: have very special circumstances been demonstrated to outweigh the Green Belt objection? As Mr Stinchcombe recognised in the course of the hearing, **such circumstances are not automatically demonstrated simply because there is a less than a five year supply of housing land.** The judge in the court below acknowledged as much at paragraph 30 of his judgment. Self-evidently, one of the considerations to be reflected in the decision on “very special circumstances” is likely to be the scale of the shortfall.*

*29. **But there may be other factors as well. One of those is the planning context in which that shortfall is to be seen. The context may be that the district in question is subject on a considerable scale to policies protecting much or most of the undeveloped land from development except in exceptional or very special circumstances, whether because such land is an Area of Outstanding Natural Beauty, National Park or Green Belt. If that is the case, then it may be wholly unsurprising that there is not a five year supply of housing land when measured simply against the unvarnished figures***

of household projections. A decision-maker would then be entitled to conclude, if such were the planning judgment, that some degree of shortfall in housing land supply, as measured simply by household formation rates, was inevitable. That may well affect the weight to be attached to the shortfall."

17. That is of course the position here and the same principles are applicable. It is wholly unsurprising that there is not currently a 5 year supply in Waverley. Understood in context far from being exceptional it is in fact 'unsurprising'. Given the method of calculation in the new NPPF it is in fact inevitable.

18. Moreover, as the CA made clear:

.. "It would, in my judgment, be irrational to say that one took account of the constraints embodied in the polices in the Framework, such as Green Belt, when preparing the local plan, as paragraph 47(1) clearly intends, and yet to require a decision-maker to close his or her eyes to the existence of those constraints when making a development control decision. They are clearly relevant planning considerations in both exercises..."

19. As a result, the Council submits that not only should the inquiry properly conclude a shortfall is currently inevitable, but the weight to be given to such a shortfall should be reduced and a judgment made that in this particular context the shortfall in supply does not constitute exceptional circumstances. To close ones eyes to such a position would – as the CA indicated – be irrational. And yet that is exactly what the Appellant has done.

20. Such propositions are now also underpinned by up-to-date government guidance which provides¹⁶

¹⁶ 041 Reference ID: 8-041-20190721 – see at NID 13.17

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

21. This ‘national consideration’ indicates that the levels of need currently identified in Waverley may mean it is not possible to meet needs. It echoes the Hunston position. It also indicates clearly that areas such as the appeal site are unlikely to be considered ‘suitable’ for meeting the very needs the Appellant relies on. That acceptance is justified because of the importance of conserving and enhancing NLs. It is a policy choice the government has made. It is also a consideration directly relevant to 190 (a). Given this it was to say the least surprising that the evidence produced by CC, albeit extensive, had not mentioned or grappled with these particular aspects of government guidance at all. 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. When this context is understood the reference by CC to the leader of the Council¹⁸ indicating concerns about the achievability of unconstrained need figures is understandable.

22. With the above context in mind, I turn to address two aspects of the evidence relied upon by the Appellant which has also failed to understand or even refer to such crucial context.

¹⁷ NID 7.28

¹⁸ NID 7.18 – September 2024 – pre the new NPPF

23. First – the Neame ('DN') technical report (at CC appendix 3). In broad terms the Council submits, as IJ explained in evidence in chief, that this aspect of the evidence ignores the true context, fails to engage with relevant government policy and guidance and is of little if any assistance to the matters in hand. DN was not produced as a witness and so was not able to be cross examined. Various points were therefore put to CC and IJ addressed the evidence orally (it having been received for the first time at the exchange of proofs stage). The Council make the following submissions in relation to it:

- (i) DN claims, as the Council understands it, that the delivery of housing on the appeal site is needed for the current year period and in terms of the LPP1 plan period (up to 2032) (and adopts a number of scenarios to explain his position). His argument appears broadly to be that the appeal scheme is needed not only by virtue of the 5YHLS shortfall, but also in order to meet needs across the plan period - so that he says the 190 (a) 'requirements' (as he calls it) are 'met'. This approach is obviously flawed and demonstrates a fundamental misunderstanding of the operation of 190 (a) – which is not a test based policy that contains 'requirements'. In any event it is obvious that the delivery of housing on the appeal site will not resolve the currently identified shortfall in supply.
- (ii) DN does not engage at all with the latest government policy addressing how and where development should be permitted which I have addressed above. He does not engage, for example, with the context in which any shortfall must be seen. He does not engage or mention the proposition (derived from the CA in Hunston) that a decision maker is entitled to conclude that a shortfall is inevitable and reflect that in the weight he gives it as a consideration or that the CA indicated that it would be irrational for a decision maker to close his eyes to those constraints when making a development control decision (para 30 Hunston).

- (iii) Worse still perhaps he does not even mention relevant PPG – in the context of plan making – where it indicates it may not be possible to meet OAN– again plainly highly relevant to the exceptional circumstances test in para 190 (a) but not mentioned at all by DN. Nor does he mention the PPG where it indicates sites in NL are *‘unlikely to be suitable areas for accommodating unmet needs from adjoining non designated areas’*.
- (iv) In any event and quite apart from all that his argument is of little relevance. Local authorities are not required to demonstrate that the entire housing requirement is deliverable across the entire plan period, even for the purposes of plan making. The requirement in paragraph 72 NPPF is for strategic policies to identify *“specific, deliverable sites”* for years 1-5 and then developable sites – or even just *“broad locations for growth”* for years 6-10 and *“where possible”* for years 11-15. The NPPF therefore expects that in some cases it may not be *“possible”* for plans to identify *“broad locations for growth”* beyond 10 years
- (v) The requirements in paragraph 72 NPPF apply only to plan making. Nowhere does the NPPF suggest that the LPA must demonstrate the deliverability or developability of the full adopted housing requirement by the end of the plan period for the purposes of decision making.
- (vi) Not only is it not required, the NPPF does not indicate any consequences if it is not possible. For decision making purposes, the LPA is judged solely against the requirement to maintain a 5YHLS. Paragraph 11(d) NPPF sets out the very clear consequences for decision making if this cannot be done.
- (vii) Whilst it is the case that a housing trajectory needs to be produced to support the soundness of a development plan document, paragraph 78

NPPF is clear that this is meant to *“illustrate the expected rate of housing delivery over the plan period”*.

- (viii) More generally, issues around the ability of the development plan to deliver the adopted housing requirement by the end of the plan period are fundamental aspects of plan-making. They go to the heart of the adopted spatial strategy. Decisions about how to respond to such issues, for example by identifying further land for development, require Borough-wide assessment. They must be supported by sustainability appraisals and other evidence-base documents. They must go through a process which carries democratic accountability. Self-evidently, decisions on individual speculative planning applications are not an appropriate way to resolve issues about meeting the plan requirement by the end of the plan period.
- (ix) It follows that it is not appropriate to give positive weight to the delivery of new housing based on its ability to help address such issues.
- (x) The Appellant’s approach through DN is also artificial because it is predicated on the assumption that (i) the current housing requirement will remain in place throughout the remaining plan period and (ii) the only sources of supply are those which it is possible to identify at this point in time. Neither of these assumptions are valid. A full plan review is underway. That will result in a new housing requirement. A call for sites has taken place and new engagement will commence in the next few weeks which will produce new evidence about potential sources of supply.
- (xi) In relation to Haslemere¹⁹ the apparent suggestion that the new LHN for District will ‘most likely lead to an increase in the new minimum requirement for Haslemere in a new plan – with a suggestion of a new

¹⁹ see Neame at 3.4, p12 (in Collins Appendix 3)

figure of 2,900 dwellings is unexplained and unjustified – no regard has been made to relevant ppg guidance on reduction because of constraints.

- (xii) Overall the attempt to project the existing requirement and supply forward to help justify the need for the appeal scheme is flawed.

24. Second – the Tetlow King ('TK') report relating to Affordable Housing. The Council accepts that there is a significant need for more AH in the Borough. It has afforded the provision of AH significant weight. However, a sense of realism is needed about the provision of it – especially in the context of it being proposed in an area of high quality NL.

25. In so far as the TK work purports to pray in aid unconstrained AH need in the context of a 190 (a) assessment it falls in the same trap as the DN work. The needs that TK identify and assess²⁰ are based on unconstrained need figures.

26. It is uncontroversial that Waverley is one of the most expensive places to live outside London. The scale of AH need is such that it cannot realistically be met in full. This is made clear and explained in the development plan.

27. As the supporting text to policy AHN1 records²¹

“if Waverley were to theoretically meet a figure of 314 new affordable dwellings a year, then overall 897 new homes a year would be required in Waverley (based on a theoretical policy requirement of 35% of new homes on all housing developments to be affordable). This would not be realistic as it would result in delivery rates

²⁰ See esp : SHMA 2015 – CD 7.56; Waverley Aff study 2021 – CD 7.50

²¹ See – CD 6.1, para 9.7, p.65; pdf 33. See also at 9.9-10 of supporting text

higher than anywhere across England (over a sustained period) over the last 15 years, or over the pre-recession decade."

28. It is therefore that case that (i) there is no adopted requirement to deliver a certain number of affordable dwellings over the plan period and (ii) the AH need identified in the SHMA relied upon by TK cannot realistically be met through market-led schemes. Both of these factors must be borne in mind when considering the extent of the 'shortfalls' in the appendix relied upon by CC.
29. Under the umbrella of 190 (a) it is also relevant to consider what the impact of permitting the proposal would be in terms of delivery. Although CC tried to suggest²² (in a departure from the position he took at the earlier inquiry) that some elements of the proposal would be built within 5 years of any grant of permission this was not supported by the evidence. The Council submits, for the reasons explained by IJ, that only one dwelling (the lodge) would be delivered in the current 5 year period. The extent of the evidence relied upon by the Appellant was an assertion by CC and a letter from Elivia Homes²³ which provided no detailed analysis and was at best vague. As IJ explained by reference to Lichfield's latest publication 'Start to Finish' 3rd edition²⁴ the position in terms of the time to build out housing on larger scale sites such as this has got worse²⁵. As figure 3.2²⁶ in that study indicated the first dwelling completion for sites of the scale of the appeal proposal take well over 5 years to deliver any material dwellings with an average of 3-4.6 years to even deliver the first dwelling. In addition, as IJ explained this particular site requires significant engineering work to gain access and other matters, for example the Sang would need to be delivered prior to occupation and much of the scheme

²² CC proof at 8.40 appeared to suggest that if permission were granted – all the houses 'immediately fall within the 5 yr hls' – is simply wrong

²³ His appendix 6

²⁴ NID 7.12 – March 2024

²⁵ See by comparison with their 2nd Edition as described in the executive summary of NID 7.12 at pdf 2

²⁶ At pdf 7 of NID 7.12

is in outline. It would clearly be a complex development and even then the actual delivery would depend upon the housebuilder that acquired the site. In truth the principal contribution of the site could only ever be to future needs rather than the current 5 year supply.

30. Given that the shortfall in HLS is a significant aspect of the Appellant's need case, it is striking that, 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. It is right to give the provision of housing (both market and affordable) significant weight in principle as IJ has done in his evidence. But understood in context the provision of housing as proposed in this location is not acceptable and does not form a basis (either of itself or in conjunction with other matters) for exceptional circumstances existing as required by NPPF 190.

Other needs referred to by the Appellant

31. The need for housing, including AH, is by far the most substantial aspect of the Appellant's case under paragraph 190(a) NPPF. However, other elements of the development are also relied on by the Appellant as meeting a need.

32. This applies specifically to the SANG capacity which exceeds what is required to mitigate the effects of the appeal scheme and 'Phase 1', the Scouts facility. The Council's case on the need for each of those elements is as follows.

33. In relation to the provision of strategic SANG, such provision was not considered essential by the Local Plan Inspector. Nor is it essential now. Para 114 of the LPP1 Inspector's Report (CD7.57) states,

*'The town [Haslemere] is close to the Wealden Heaths Phase II SPA but, due to the amount of natural greenspace in the area, SANG is not the only potential mitigation measure and there is **no need for a strategic SANG**. Discussions have taken place with the National Trust to discuss possible projects that could mitigate development in the area. Development will be mitigated on a case-by-case basis as agreed with Natural England. The strategy is sound.'*

34. Para 16.28 of LPP1 (CD6.1) states that, *'In addition, if a housing proposal is capable of affecting the Wealden Heaths Phase I and II SPAs beyond 400 metres from the site, it will be considered on a case-by-case basis as to whether a project-specific Habitats Regulations Assessment (HRA) is required (this should be assessed at the HRA Screening Assessment stage).'*

35. Further, Para 7.14 of LPP2 (CD 6.2) states,

'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:

- *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.'*

36. Indeed, of the various allocations made in Haslemere²⁷ as IJ explained the Royal Junior School, Portsmouth Rd, Hindhead (DS 06 for 90 dwellings) site and Land

²⁷ There are 11 allocations in Haslemere / Hindhead and 3 in Witley, plus 5 allocations for Gypsy and Travellers in total

at Secretts, Hurst Fm, Milford (DS14 for 177 dwellings) are the only allocations that would require SANG under the thresholds above. As IJ explained the Secretts site has obtained permission and has obtained a consent for Sang elsewhere. In relation to the Royal Junior School site it has a proposed solution for Sang provision which is not dependent on the appeal site coming forward.

37. 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 specifically identified in the evidence before this inquiry as being necessary or in any way exceptional. Indeed in this context it is of note that Natural England have been at pains to make clear – even in the context of not being aware of any other strategic sang coming forward in Haslemere and acknowledging the potential benefits it could secure– that it continues to fundamentally object to the proposal “due to the clear direct and irreversible loss to the Surrey Hills National Landscape”²⁸. In the view of NE the Sang proposals are plainly not of such an importance so as to begin to meet their concerns about the environmental effects of the appeal proposal on the NL.

Scouts

38. The issue relating to the provision of a Scout facility has been mentioned on several occasions at the inquiry. In truth it is a red herring (at best). As Mr Buckler (Chairman of the Scouts) confirmed when asked questions on day 1 he (or at least representatives of the Scouts) were in negotiations with the Council over the terms of a new lease. He agreed that if one assumed a lease was in principle to be given then the Scouts would be content to stay. It follows that there would be no necessity for a new Scout facility in the NL.

39. Since then and faced with allegations that the Council were not minded to grant a new lease the position has been clarified. It is now clear (and in truth always

²⁸ NID 7.12 at pdf 5 and see other consultation responses referred to below.

was clear to the Scouts) from the letter dated 29th April 2025²⁹ to the Inquiry from DAC Beachcroft (solicitors who act for the Council) that a lease had in fact been 'substantially agreed' between the parties in January 2024. The Scouts then it appears chose in February 2024 to seek several substantive new amendments - departing from the previously agreed position. Whatever the rights and wrongs of such a change of position the solicitors instructed by the Council have now made clear that negotiations are ongoing but that:

However, we confirm that to accommodate both the Council's redevelopment plans for the site and the Tenant's requirement for security of tenure, it has been agreed in principle that the renewal lease will be for an initial 15 year term, contracted out of the Landlord and Tenant Act 1954 and will include the option for the Landlord, exercisable within the first ten years of the term, to terminate the lease and relocate the tenant to alternative premises of equivalent or better standard within the Wey Hill Estate

40. Moreover, it has been confirmed that *"in principle, the parties have agreed that the lease will be drafted in such a way as to provide that the tenant will have the benefit of LTA 1954 Act protection either at the current site or at the alternative site following the exercise of the Landlord's relocation rights"*.

41. There is in principle agreement for a new lease to be given to the Scouts and on favourable terms that will secure a future location even in the event of any site redevelopment. There is accordingly no basis for saying the proposed scout facility must be placed in the NL and it is not necessary in terms of 190 (a). Nor is it a benefit that can be given anything more than 'limited' weight as IJ has explained in evidence.

42. Finally in relation to 190 (a) issues I turn to the impact on the local economy. In this regard no issue is taken with the figures advanced by Mr Collins in the Savills infographic at his appendix 1. However, the following points are made about the impact of refusing/allowing the appeal on the local economy:

²⁹ NID 13.29. This responds to NID 13.28

- (i) There is no evidence as to the likely impact on the economy of refusing permission. It is not suggested that Haslemere's local economy will suffer – as CC confirmed in xx.
- (ii) LPP1 records that, like the other main settlements, it has “a good range of cultural facilities and shops”, a historic core which draws “visitors and residents alike, both during the day and into the evening” and shops which “retain a good percentage of residents' expenditure”. It is a thriving town, and its vitality will not suffer in the absence of the proposed development.
- (iii) The economic benefits from the construction phase are temporary. There will be long term benefits, principally through the additional expenditure in the economy generated by new residents. However such benefits arise from any new housing development anywhere, they are generic and not specific to the appeal scheme and its NL location; further, compared to the size of Haslemere and its existing population (approx. 17,000 people when LPP1 was adopted), the scale of the additional benefit is small. Finally, the new residents who would be spending money in Haslemere would presumably have been economically active elsewhere prior to moving; therefore, the benefit to Haslemere's economy will be accompanied by commensurate losses elsewhere (whether in Waverley or in another area). I address whether the full extent of the benefits are material considerations further below in the section on overall balance.

43. Overall, only limited weight should be given to the positive effects of the appeal proposal on the local economy and there is nothing exceptional proposed.

44. Considering 190 (a) in totality and understood in a proper context there is no need – and certainly no exceptional need – for this major proposal to be placed in the NL.

II.NPPF Paragraph 190 (b): *the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and*

Approach

45. As the Courts have made clear there is no prescribed way that must be followed in addressing matters in NPPF 190 (b).

46. No point was advanced by the Appellant to support an exceptional circumstances case that relied upon the cost of development. That is, it was not suggested that any weight be placed on the relative costs of developing in the NL as opposed to outside it as CC confirmed in xx.

47. Similarly, it is agreed that there is no other way to meet the need for housing other than by building houses. Plainly in terms of meeting the need ‘in some other way’ the submissions and evidence about the emerging local plan and the latest government policy are critical. As the last Inspector held – quite apart from the rather artificial debate about identified ‘alternatives’ there is plainly scope for additional and preferable sites to come forward outside the NL or to be met in some other way³⁰. That judgment, supported in the current appeal by the judgment of IJ is important and based on the evidence of what is planned and the impact of new government policies. It is not speculative, but rather an entirely reasonable judgment to make.

³⁰ NID 3.8, paragraph 155

48. Beyond that and insofar as particular alternative sites were considered at the inquiry the following initial submissions are made.
49. As the CA in Wealden³¹ made clear, while para 190(b) does not refer specifically to alternative sites, in many cases consideration of this issue may involve the consideration of alternative sites; the focus of para 190(b) is on alternatives “outside the designated area” so outside of the NL, rather than possible locations for development in the NL. However, it does also require consideration of ways of “meeting the need for it in some other way”; - so does not preclude considering relative benefits of other sites that may be in the NL.
50. The Framework does not seek to prescribe for the decision-maker how alternative sites are to be considered under para 190(b) in any particular case- as Wealden and more recently the Frack Free³² cases confirmed. 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.
51. There is thus a considerable discretion accorded to a decision-maker as regards the extent to which alternatives are considered and how they are considered.
52. Although the Appellant through CC and in xx sought to make great play of the use of the approach that the Inspector had adopted in Wealden this was of no particular relevance to the current appeal. As the CA made clear the approach chosen is not set in stone and can vary. In that case the CA upheld the approach as one that *might* lawfully be taken in that context (which was different from here) but did not say other approaches would be unlawful.
53. Indeed, for an example of taking the approach the Council submits is appropriate in the current context one need look no further than the previous Inspector. He adopted the approach now contended for by the Council at this

³¹ *Wealden DC v SSCLG* [2017] EWCA Civ 39 CD 10.1

³² NID 13.26

inquiry as is plain from his decision³³. Moreover, we know that the Secretary of State expressly indicated that in all other regards³⁴ (save for the procedural point upon which the challenge had been conceded which had nothing to do with the approach taken to exceptional circumstances) there was nothing she considered unlawful in the Appeal Decision. Indeed, no part of the legal challenge had even suggested the approach to alternatives was unlawful. Accordingly (and whether or not that previous decision is considered material in other regards) the inquiry can proceed on the basis that in a similar context in relation to the identical scheme before this inquiry the Secretary of State has indicated there is nothing unlawful or in error in relation to the approach taken to alternatives followed by the Council here. I address the case of Turnden (NID 7.19 - Nov 2024) in later submissions and explain how that case, contrary to the position of the Appellant at this inquiry, provides no support for the approach to alternatives it pursues at this inquiry.

54. Although that is sufficient in principle to deal with the approach point so far as alternatives are concerned the following submissions are made for completeness:

- (i) The appeal scheme proposes the delivery of 111 houses to contribute towards (mainly future) housing need.
- (ii) The Council submit that when considering paragraph 190(b) NPPF the focus should sensibly be the application before the inquiry (hence the reference to ‘applications’ in line 1 of paragraph 190) and on the scope for developing **that which is proposed** ie. a development of up to 111 houses (paragraph (b) expressly refers to the need for ‘it’).

³³ See NID 3.8 at paragraph 152

³⁴ NID 1.4 at paragraph 9 and NID 1.1 at paragraph 10

- (iii) 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.
- (iv) The appeal scheme proposes to deliver 111 houses to meet housing need. It does not purport to be a solution to the delivery of the full LPP1 housing requirement.
- (v) I have already submitted that it is relevant to consider the constrained nature of a Borough in context of balancing matters (Hunston, CA).
- (vi) The exercise carried out by CM (for the last inquiry – which is an approach still in part relied upon by the Appellant through AS) was to assess other sites in the District which might be capable of delivering a similar quantum of development to the appeal site, and which could therefore “achieve some or all that the Appeal Proposal can offer”.
- (vii) That approach compared like with like – that is it considers whether there is scope to develop a comparable scheme, which makes a comparable contribution towards meeting housing needs outside the NL. That is the right approach as a matter of common-sense planning judgment. It is one that IJ pursued. It is in any event certainly a lawful approach within the ambit of NPPF para 190 and properly focusses on avoiding harm to the NL. Although the Appellant has argued against the use of such an approach it has not indicated that the use of such an approach would be unlawful. In light of the relevant caselaw it could not properly so do.

(viii) 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.

55. In terms of the actual evidence it turned out that the Appellant, assuming one adopts the lawful approach contended for by the Council, agreed that there were indeed alternatives to developing within the NL. The various sites have been set out and assessed in evidence and the detail is not rehearsed again here³⁵. The numbers of available sites which could either on their own or in combination with others provide sequentially preferable alternatives for 111 homes were several³⁶. Although the exact number of preferable dwelling spaces available was not agreed there was on any view capacity for several hundred dwellings to be developed outside of the NL.³⁷ Even on the Appellant's own case there is clearly ample scope to deliver many more than the 111 houses on sites which are outside the NL³⁸ and which are preferable.

56. As AS accepted in his evidence³⁹ – there exist sites preferable to the appeal site in terms of landscape and visual considerations that existed outside of the NL. CC also accepted that there existed a number of sites that were sequentially preferable to the appeal site⁴⁰ outside of the NL.

57. As accepted by the Inspector at the last inquiry⁴¹ on the basis of similar evidence there exist less constrained sites that can either individually or in combination provide similar housing delivery as the appeal scheme. This is material and important in terms of consistency in decision making. Moreover

³⁵ See IJ proof NID 5.5 at p.24 and his appendix 7; compare CC table at his proof NID5.1 at p.68

³⁶ IJ considered some 18 sites and concluded that 13 of them could be considered preferable

³⁷ IJ put forward figures agreed in xx to be around 600 in total

³⁸ For example, CC accepted that Site 9 – Lower Weybourne (140), Site 8 – Old Park Lane (83); Site 5 - Former Longfields care home (25); Site 7 – St Nicholas Junior School (75)

³⁹ At his proof p. 39 para 4.105-108:

⁴⁰ His proof at 6.61, p.67

⁴¹ NID 3.8 at paragraph 152

given that there has been a recent call for sites which is currently being considered and a process of engagement timetabled in the next few weeks to consider the new government policies relating to grey belt and brownfield it is now even more likely that it was at the last inquiry that additional sites will come forward that are preferable and so able to meet such need.

58. If one focusses on the specific consideration in policy – that is NPPF 190 (b) – whether there is “*scope for developing outside the designated area*” – as opposed to the somewhat different issue of whether there are alternative sites which can meet the full housing requirement – the answer is clear.
59. It is of course acknowledged that the alternative sites identified by CC are not all currently deliverable to meet the immediate housing need. On the other hand, as discussed above, the appeal scheme also falls into this same category because in light of the evidence before this inquiry only one house will be delivered in the current 5 year period. The principal contribution would be towards future needs. That being the case, the sites assessed by IJ can be considered as genuine alternatives, not least because they and other sites will be considered alongside the appeal site in the ongoing plan-making process, where decisions will be appropriately made as to where development of the proposed scale is best located.
60. Equally it is of course the case that some of the preferable sites identified have been through the planning process and have been rejected. The Lower Weybourne Lane site (Site 9 – 140 dwellings) has also been dismissed at appeal. However plainly this does not mean that there is no scope for developing 111 houses on those sites. Clearly that site has historically not been considered acceptable when considered on their own merits and in isolation, either as planning applications or in s78 appeals. Yet it is sequentially preferable to developing within the NL as the Appellant accepts. It is entirely possible that it along with other sites will be identified for development in the current plan-

making exercise following comparison with other sites, notwithstanding it has not been preferred to date.

61. In summary whilst by necessity at a s78 appeal it is a broad-brush exercise there is scope to deliver a significant amount of housing outside the NL in a way that is preferable to developing on the appeal site.

III.Landscape (including consideration of NPPF 190 (c))

Overview

Context for Landscape assessments

62. The site falls wholly within the Surrey Hills National landscape (the 'NL'), situated at its northern extent and immediately adjacent to the southern edge of Haslemere. The starting point for any assessment in Landscape/Visual terms requires an appreciation that this scheme constitutes '*major development*'⁴² and is proposed to be sited in a nationally designated landscape which is accorded the highest status and the highest level of protection so far as landscapes are concerned in national planning policy. Such landscapes are in principle to be safeguarded for the benefit of current and future generations. It is common ground that because the site falls in such an important designation it is additionally to be considered a 'valued' one in NPPF 187 (a) terms⁴³.

63. I have discussed the broader planning policy and legislative context for decision making in National Landscapes above. This is particularly important in providing a context in which judgments as to landscape/visual effects must be made and weighed.

⁴² As it is agreed to be in terms defined by the NPPF; CD8.1, footnote 67

⁴³ Accepted by Smith – proof at NID 5.3, paragraph 3.8

64. The approach of the Appellant has not properly recognised this context, focussing solely on the numerical shortfall in housing numbers without accounting for how and where the government wishes to see housing actually delivered. From the outset the approach it has adopted has failed to appreciate or account for such a context.
65. In any event the test for allowing major development proposals in a NL is stringent and is to be applied robustly and with an appreciation of context. This is now more important than ever given the importance attached to the protection of NLs that the government has been at pains to make clear.
66. The circumstances underpinning any consent must be genuinely ‘exceptional’ and it must be demonstrated that what is proposed is in the public interest⁴⁴. ‘Great weight’ should be given to conserving and enhancing landscape and scenic beauty in NLs⁴⁵. Moreover, up to date government guidance emphasises the importance of protecting NLs in the express context of housing need. To that end it is made clear that NLs ‘are unlikely to be suitable areas for accommodating unmet needs from adjoining (non-designated) areas’ and highlights that in light of the policies promoted by the government to protect NLs ‘it may not be possible to meet objectively assessed needs for development’ when plan making⁴⁶. As I address further below there is now a strengthened statutory duty to grapple with and the terms of the NL management plan remain highly material to the assessment required by this inquiry.
67. The management Plan⁴⁷ indicates that the prime purpose of the NL is to *conserve and enhance the natural and scenic beauty of the landscape* (at p.32). The statement of significance in the MP⁴⁸ includes mention of a landscape ‘mosaic’

⁴⁴ NPPF 190, CD8.1

⁴⁵ NPPF paragraph 189, CD8.1

⁴⁶ NID 13.17; PPG at 041 Reference ID: 8-041-20190721

⁴⁷ CD 7.9

⁴⁸ CD 7.9, para 2.2, p11 pdf or 21 hard copy.

of farmland, woodland, heaths, downs and commons. Many of the key features it identifies are present on the appeal site.

68. Policies P1 & 2 ⁴⁹ in the MP provide (my emphasis in bold)

*P1 In balancing different considerations associated with determining planning applications and development plan land allocations, **great weight will be attached to any adverse impact that a development proposal would have on the amenity, landscape and scenic beauty of the AONB and the need for its enhancement.***

*p2 Development will **respect the special landscape character of the locality, giving particular attention to potential impacts on ridgelines, public views and tranquility.** 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*

69. This emphasis in MP policy on the protection of the existing character of the NL and of the locality in which the development is proposed is of particular importance in this case. As set out in the evidence of the Council, supported by submissions from the NL Board and others the appeal proposal conflicts with such policy and with the MP as a whole.

70. The Council also submit that the appeal site is characteristic of the Hindhead Wooded Greensand Hills Landscape Character Area (LCA GW5) as confirmed by RP in oral evidence.

71. The key characteristics (which accord with characteristic mentioned in the MP and also the Surrey Landscape Character Assessment⁵⁰) expressed on the appeal site include the “*heavily wooded*” character of Red Court Woods and also include the landform (“*complex topography, forming steep ridges and valleys...*”),

⁴⁹ Cd 7.9 at pdf 17. Hard copy 33

⁵⁰ CD 7.10 at pdf 64, p.60 esp

the “small scale, mainly pastoral, fields bounded by intact hedgerows” and the “gaps in woodland cover” allowing “long distance views”.

Assessment of impacts

72. There is agreement that the site can be divided into seven ‘landscape character units’ - LCAs 1-7⁵¹ to assist in a detailed assessment.
73. It was also agreed by all that adverse landscape effects post construction and with mitigation would occur if the development went ahead in LCAs 1 & 2.
74. LCA 1 & 2 cover about 22% of the site and AS confirmed in cross examination that the proposed area of built development would cover around 5.09 hectares of the National Landscape.
75. The Council submit that the focus should plainly be on the extent of proposed built development in the NL. 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. As I address below much of what is proposed on other parts of the site is of such a minor nature so as to be – even on the case of the Appellant – not to be considered particularly material to the decision-making process. Whatever the percentages, the reality of what is proposed is several hectares of harmful development on high quality NL constituting major development.
76. The Council submit that 5.09 hectares is a large area of development on any sensible view and in the context of development in the NL would constitute one of the largest developments proposed in the area. In terms of scale, as Clive Smith (the Surrey Hills national Landscape Planning Adviser) made clear⁵²:

⁵¹ NID 4.10, Landscape St of Cg at 2.4, p.3. See AS proof at NID 5.3 pdf 10 figure 3.0 for visualization of the areas.

⁵² NID13.1 – email of 11.3.25

“..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 following my retirement as Head of Planning at Mole Valley District Council, also a constituent Surrey Hills Planning Authority.”

77. In terms of landscape *sensitivity* there was very little in dispute between the parties. As is evident from the table in AS’s proof at p.35 (table 5) in relation to LCAs 1 & 2 both RP and AS agreed that they were areas to be assessed as being of ‘High Sensitivity’. The only caveat to this was that AS considered part of LCA1⁵³ (bottom western field) was of a ‘High to Medium’ sensitivity rather than purely High.

78. In relation to LCA3-7 RP and AS assessed their sensitivity to be either Medium or High as set out in Table 5, save that RP considered LCA7 to be of low sensitivity. In the end the differences as to value and susceptibility (ie the inputs to sensitivity in the methodologies utilised by each expert) were agreed by both RP and AS to be relatively unimportant given their measure of agreement as to high levels of sensitivity - especially in relation to LCAs 1 & 2.

Propositions - landscape effects

79. In light of the differences as to effects - albeit it is recognised even by the Appellant that the proposal would adversely effect many hectares of highly sensitive national landscape - it is important to address two matters.

80. First - matters which the Council submit are now clear in light of the evidence at the inquiry in relation to the site context and characteristics.

⁵³ AS had chosen to subdivide LCA1 into 2 parts for his assessment

81. Second - the evidence which underpins why the various experts differ in relation to the level of effects in relation to landscape character.

82. In relation to site character, the Council submits as follows:

- (i) It is right to note that there are some distinctly human interventions on parts of the site, for example the conifer plantation at LCA6 and the tennis court. These are however – as will have been observed on site – slight in nature.

- (ii) The northern fields (LCA2) are next to existing development – so there is to an extent a qualified sense of peacefulness and remoteness. Even so, as both RP and AS agreed such areas were to be assessed as being of high sensitivity. In truth as RP explained there is a “*clear break*” or “*divide*” between the developed edge of Haslemere and the undeveloped area beyond, including the northern fields. The appeal site is clearly undeveloped countryside. This will only become more marked in the future by virtue of the ‘advanced planting’, undertaken by the landowner in a bid to improve the prospects of developing the land.

- (iii) Although there was a dispute in evidence (with on occasion the Appellant referring to the fields as merely paddocks with a view to downplaying their importance), the Council submit that the value of the northern fields remains high and in evidence AS in fact agreed they were to be assessed as being of High sensitivity. Their role as a clear marker of the start of the NL and open countryside should not be undervalued.

- (iv) The Midhurst Road (part of the A286) runs – in parts level with the site near the proposed access. For much of its length as it runs by the site it is characteristic of a country lane in the landform and directly contrasts with the more urban character one finds in Haslemere to the north. This is a classic landscape feature – a key characteristic of the NL as noted in the MP⁵⁴ that contributes by way of context to the natural beauty and sensitivity of the site. It retains that character with tree lining and canopies either side as will have been observed on site.
- (v) Moreover, as RP explained and AS accepted in xx, in so far as the site has in parts a parkland feel and a variety of other characteristics it is entirely reflective of many ‘*key features*’ of the NL identified in the MP⁵⁵ which includes and highlights a varied landscape mosaic of woodland, open land, parklands and country lanes with elements of tranquility. The evidence is clear in that the appeal site including LCAs 1 & 2 is a part of the NL that contains and displays key characteristics of it.
- (vi) The site as a whole is also reflective of key characteristics identified in the Hindhead Wooded Greensand Hills Landscape Character Area (LCA GW5)⁵⁶ in which the site falls. GW5 is characterised by a complex and heavily wooded topography dotted with small scale fields – which wraps around Haslemere. As the character assessment makes clear accessibility is not a key characteristic of area GW5.

⁵⁴ CD7.9 at pdf p.9

⁵⁵ CD7.9 at esp 2.2, pdf p.11, and pdf p.9

⁵⁶ See in the Hankinson Duckett Associates Study – the Surrey Landscape character assessment) (April 2015): CD 7.10 at pdf 64 – key characteristics of GW5

- (vii) Such limited access contributes to tranquillity - as the Surrey Landscape character assessment emphasises⁵⁷ stating:

“but as a whole, 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.”

- (viii) In this context it is important to bear in mind that NLs are not designated for recreational opportunities they may offer. This is made clear by the Natural England publication: *Guidance for Assessing Landscapes for designation as National Park or Area of Outstanding Natural Beauty in England* (‘GALD’)⁵⁸. It is of note that Natural England have now on several occasions registered an objection to the proposal based on a careful assessment by it of the impact on the purposes of designation of the NL and because of the direct and irreversible loss of character to designated land that the proposal would entail⁵⁹. It has even more recently described this as a ‘*fundamental concern*’ in relation to the objection it maintains to the proposal⁶⁰. Indeed, contrary to the use which AS in evidence sought to make of GALD, when one actually looks at it it is quite apparent that it is not a document intended for use in development control or in assessing landscape effects of a proposal⁶¹. Indeed, as AS accepted in xx to the extent GALD addresses the concept of ‘natural beauty’ it makes it clear that natural beauty as a concept is “*assessed in terms of the current landscape, not some future potential for improvement*”⁶². It provides no support (and in fact is directly contrary in terms of explaining the concept of natural beauty) to the

⁵⁷ see CD 7.10 at pdf p.60, p.61 hard copy – re ‘key characteristics.

⁵⁸ See at para 7.1. pdf 16 of GALD at ID5.3: “*AONBs may fulfil a recreational role but the designation criterion for AONBs does not include the recreational opportunities they offer*”

⁵⁹ See at NID 2.3 (Dec 24)

⁶⁰ NID 13.20 April 2023 at pdf5, last paragraph

⁶¹ ID 5.3 at pdf 3

⁶² At paragraph 6.10, bullet 4, pdf15

contention pursued by the Appellant that the proposal should be seen as contributing to natural beauty. What needs to be assessed by way of baseline is the extant natural beauty and key characteristics on site which has nothing to do with proposed built development at all.

- (ix) The fields at LCA1 and LCA2 – each relatively modest and small scale in size – at least as landscape features – are also characteristic of this part of the NL, sitting as they do by woodland⁶³. The wooded areas (including areas of coniferous plantations) which provide landscape context to the open spaces are also key characteristics of the landscape area in which the site falls. As the LVIA noted the area in which the proposed access and major engineering works/road is proposed in LCA1 is rightly characterised as being a ‘high quality’ landscape and one which is perceived currently as being ‘a rural landscape beyond the road’⁶⁴.
- (x) The topography of the site as a whole also reflects the (as the previous Inspector put it) ‘distinctive undulating complexity of the NL’. Thus, by way of example, the northern fields represent part of a ridge in the landform and are notably higher than Scotlands Close.
- (xi) In essence, overall, the site is very much consistent with the characterisation of the landscape in both the MP and the SCLA. As such as RP explained it forms an important and scenic part of the wider NL⁶⁵. Some of the more recent planting that has taken place between the site and Scotlands Close serves to enhance that characteristic in the northern fields (LCA2) as AS

⁶³ See for example the SLCA at GW5, pdf 64, hard copy 60 in CD 7.10 – key characteristics – bullet 4.

⁶⁴ LVIA at CD 2.29 pdf 53 at 10.5.54-8

⁶⁵ RP proof at para 5.5, p.16

accepted in xx. There was no suggestion that it was to be removed even if appeal dismissed.

- (xii) The site has been designated for now over 66 years and quite apart from the characteristics highlighted and agreed in evidence it plainly is an area that has become valued and - as the last Inspector correctly put it - 'imbued with a perceptual scenic quality over time'.

Findings as to landscape effects

Evidence and approach

83. There are a considerable number of experts/statutory bodies that have presented evidence to the Inquiry as to the effects the proposed development would have on the nationally important landscape.

84. I turn first to the findings made by RP, AS and CM (Mr McDermott from Sightline - who was the author of the LVIA⁶⁶ relied on by the Appellant at the inquiry).

85. The differences on key matters are evident both in the proofs and from answers received in oral evidence. I attach a table⁶⁷ setting out what the Council submits are the key comparative findings relating to landscape character. In relation to LCA1 & 2 (which are the areas that it is agreed would suffer adverse effects it compares findings made by the LVIA through CM as well as these were discussed in evidence). The submissions below should be considered alongside such a table which derives from the totality of oral and written evidence provided by these three experts to the inquiry.

⁶⁶ CD 2.29

⁶⁷ Appendix to these submissions

86. Four initial contextual points are relevant to understand the findings.
87. First – methodologies. RP, AS and CM had all utilised methodologies that were similar in nature and which were agreed to be GLIVIA3 compliant⁶⁸. Elements of judgment are inherent in such methodologies and it is not unreasonable in principle for different experts to arrive at different judgments as there is of necessity an element of subjectivity in the process.
88. As developed in submissions below that does not account however for several of the key findings arrived at by AS which were founded on a misconceived approach in a number of regards.
89. For the avoidance of doubt AS confirmed in xx that he had adopted the methodology used by the LVIA⁶⁹ in producing his evidence. The situation is in fact unusual as the Appellant still in terms relies on the LVIA which has specific and highly relevant findings which differ considerably from those now produced by AS who claimed to use the same methodology.
90. Second – the relevance of design. RP, AS and CM had all utilised methodologies which had expressly proceeded on the basis that a high-quality design suitable for a proposal in the NL was a given and was factored in to any assessment. To use a phrase adopted during the inquiry it was agreed that high quality design was ‘baked in’ to the methodologies adopted. This, as it turned out, was a point of considerable importance.

⁶⁸ See RP proof – NID 5.7 - at section 3

⁶⁹ Explained in CD 2.29, pdf 1 ff at section 10.2

91. As agreed⁷⁰ design did not form a basis for refusal at the inquiry. In relation to the detailed element of the scheme the proposed design and layout is known. In relation to much of the outline elements, as explained in the officer report⁷¹

Design, layout, scale and landscaping are matters that are reserved for the main housing parcel and therefore do not fall to be considered under this application.

However, it is important to consider whether, notwithstanding the harmful impact of the proposal on the countryside and AONB, the scheme could be provided on this site that reflect the design, scale and density of development in the locality

92. In short, design as so understood is distinct from matters relating to landscape character and visual harm and design in that sense was never in issue. This distinction, commonly made in these kinds of cases, should be well understood.

93. That is not to say issues relating to design are unimportant in assessing landscape impacts. As GLIVIA3 makes clear design will need to be taken into account the context of the landscape and how it has been assessed and appraised⁷².

94. As CP accepted in xx this had been well understood by Sightline/CM in producing the LVIA. It is critical to understand that in this case the methodology adopted in the LVIA expressly assumed and factored into the assessments made that the design would be of a very high quality⁷³. As the LVIA explained amongst many matters considered as part of the 'inherent mitigation' in arriving at judgments was that there would be

⁷⁰ NID 4.11 – Pl st of cg at para 4.10

⁷¹ CD 4.2 at p.29

⁷² See GLIVIA3 at 4.5

⁷³ See CD 2.29 – Mr McDermott had worked with the designers (see at 10.2.45-6, pdf p.16 or p.10-16). See too esp at 10.4 at pdf 39

An urban design, in terms of layout, architectural character, use of materials and detailing which is consistent with the high-quality built form elements of the AONB⁷⁴.

95. Accordingly, it is crystal clear that the findings made by the LVIA/CM were ones that factored in the existence of a high-quality design. Despite that CM still found long term adverse effects to landscape character. Thus, for example his findings of a residual (long term) moderate to large adverse effect (a significant adverse effect) were delivered in relation to the northern fields⁷⁵ (in effect LCA2 and part of LCA1) despite having factored in a high-quality design before so concluding⁷⁶.

96. None of this is surprising. The Council at the last inquiry as it does here accepts the scheme would be capable of meeting design policies. And as should be uncontroversial Policy TD1 of the development plan requires high quality design and Policy P3 of the AONB Management Plan is to the same effect. Therefore, good design is a minimum requirement and would not 'mark the scheme out' in any way.

97. Because of this the evidence of CP added little to the issues in dispute - confined as it was to design matters. To the extent parts of his evidence appeared to extend into areas of assessing landscape character⁷⁷ CP fairly accepted in xx that was not really a matter for his evidence to grapple with. Many of his contentions as to the nature of the landscape character were not even consistent with other elements of the Appellant's evidence⁷⁸. Insofar as he made various

⁷⁴ CD 2.29 at pdf 39, last bullet

⁷⁵ CD 2.29 at 10-84 (pdf 84) in table 10.16

⁷⁶ CM then undertook a secondary 'netting off' process whereby he took what he assessed as beneficial changes to the rest of the site to make an overall conclusion on impact on the NL

⁷⁷ For example at proof paragraph 3.10

⁷⁸ For example at his p.22, para 3.31 he appeared to equate parts of the character of Scotland Close with parts of existing rural character of Midhurst Road by the site which was not only at odds with the LVIA but also frankly plain wrong.

conclusions on matters going to landscape character they were not based on any discernible methodology or proper assessment, and they were at best ill informed.

98. RP confirmed in oral evidence that he had also factored in a high-quality design into his assessments. They were 'baked in'. AS had accepted expressly that he had used/adopted the LVIA methodology. However, as became clear he had at various stages of his assessment in fact sought to bring design in again as a factor to further reduce harm in a way which undermined his judgments presented to the inquiry.

99. Third – the relevant baseline. A continual theme which the Appellant (through AS and others) sought to pursue related to what is commonly referred to as the baseline for assessment. This should not have been in issue. It is well established in the context of landscape and visual assessments - as RP explained - that a baseline⁷⁹ needs to be established in relation to which one undertakes an assessment. In landscape terms what is required is an assessment of the character of the area/site that is to be developed upon (understood of course in context). The issue (or at least a key one) in simple terms is whether in relation to the appeal site (which remains largely undeveloped, in the NL, displays many key characteristics of the NL and is in key aspects of high quality and sensitivity) - ie that landscape - will be preserved or enhanced by what is proposed. Put another way the natural beauty evident on the site derives from natural characteristics rather than for example elements of built form that are proposed for future development. As GALD makes clear (see above) natural beauty as a concept is “assessed *in terms of the current landscape, not some future potential for improvement*”⁸⁰.

⁷⁹ See GLIVIA3 at p.36

⁸⁰ At paragraph 6.10, bullet 4, pdf15

100. This did not stop the Appellant taking up a great deal of inquiry time seeking to pursue the proposition that natural beauty in a NL could also in principle derive from built structures – which exist elsewhere in the NL. The point goes nowhere because it sidesteps entirely the reality that the site we are concerned with currently displays natural beauty and key characteristics which derive from entirely natural qualities, and it is the impact on such characteristics that fall to be assessed. Seeking to replace or change the character with something that is said will be of high-quality design and found elsewhere in the NL (even if true) does not address the point of what effect there will be on the assessed existing character and natural beauty.

101. Fourth – the relevance of time. Although the Appellant sought to focus findings on the residual period (of either 10 or 15 years after completion) the relevance of effects on earlier stages (on completion in particular and in the following years) should not be ignored. Thus, even a claimed reduction of adverse effects after 10 or 15 years means that in the decade or more before that point there may well be higher levels of adverse effects which should not be ignored by a decision maker. Indeed, in the context especially of NLs and government policy these adverse effects all fall to be given great weight.

Character Areas – evidence of effects

LCA 1 (top northern field).

102. This area would house part of the main residential area along with LCA2. In relation to this area AS had concluded at year 1 a ‘Large to moderate Adverse effect’. In terms of the LVIA methodology he had adopted this as a result meant that he accepted it constituted to some extent a ‘very important consideration’ that was ‘likely to be material’ in decision making⁸¹ as that was

⁸¹ See LVIA methodology at CD 2.29, table 10.10, pdf 13

what – in that particular methodology – was meant by a ‘large’ adverse effect which was within the range of adverse effects as assessed by him.

103. However, at his ‘residual stage’ he had sought to reduce the effects to ‘moderate to slight adverse’. By contrast 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 evidence⁸² and so as to relay exactly the same level and seriousness of effects as he meant by ‘substantial adverse’) both at year 1 and at year 10⁸³ and beyond. There was accordingly a material difference of assessment at the residual stage.

104. It is of note that the judgment made by AS also differed significantly from that of CM/LVIA. The LVIA concluded that there would be a residual moderate to large adverse effects⁸⁴. Accordingly, both the LVIA/CM and RP are reporting significant adverse effects material to decision making at both year one and at a residual stage at least a decade later.

105. Moreover, as both of those experts had made abundantly clear they had factored in the existence of a high-quality design suitable for a NL in so concluding.

106. AS is plainly wrong in his assessment, particularly at the residual stage. He is at odds not only with RP but also with the LVIA his client also relies upon. His assessment appears to have been derived and informed by a number of misconceptions on his part. Many of these are matters of approach that have infected other judgments he has made in relation to other LCAs but I address them here for ease:

⁸² RP proof at p.33, table 6 – ‘significance of effects’.

⁸³ RP proof at Table 4, p.15

⁸⁴ As noted by AS in his proof at NID 5.3 4.45, pdf 36

107. In particular:

(i) Given that AS has accepted a high sensitivity for this part of LCA1 and (although he has not expressly indicated in a table) has accepted in xx a high degree/magnitude of change his adopted methodology if applied would indicate a finding of 'large to very large' adverse effect⁸⁵. Moreover, this would have taken into account matters of judgment as to value and susceptibility. In short, AS has departed from his own methodology without any rational explanation. In xx he said that it was a matter of 'judgment' but this does not explain how his judgments as to sensitivity (assessed as high) and magnitude of change are ignored in his process.

(ii) In his written and oral evidence he sought to explain his reduction in effects by indicating that:

*"positive balance is provided by the layout and design, where the high quality new homes/settlement will be characteristic of NL and will reflect the high expectations SHEDG"*⁸⁶

(iii) This further revealed the fundamental flaw in approach by AS. He had plainly sought to factor in 'high quality design' as a basis for reducing assessed effects. As explained above this is a factor already factored in by the methodology he purported to adopt and by CA/LVIA and RP. It was pure double counting by AS and a plain error.

⁸⁵ See LVIA methodology at CD 2.29, table 10.6

⁸⁶ AS proof at NID 5.3, para 4.45

- (iv) Relatedly AS sought to rely on the content of the Surrey Hills Environmental Design Guide: 'SHEDG'⁸⁷. One of his repeated and thematic contentions was that other experts had not taken this into account and that if one did it should lead to a reduction in any assessment of adverse effects. SHEDG is a design document principally aimed at providing guidance for conserving and enhancing country lanes and villages in the NL. It is produced by the Surrey Hills AONB Board who it can be noted vehemently object to the proposal because of the serious harm it will cause to the landscape despite being fully aware of SHEDG - not least because they wrote it. In truth the reference by AS to this document was a total red herring for at least two reasons. First a high-quality design had already been factored in by other experts who have assessed impacts. This document adds nothing that has not already been factored in. Second insofar as AS again sought to pray it in aid as demonstrating that some parts of the NL already have built development in he was in truth sidestepping the real task that faced him which was to assess the existing undeveloped baseline provided by this site. AS even ended up claiming that CM/Sightline/the LVIA were in error in not having referred to this document. Frankly this approach lacked any logic and is not credible.
- (v) Finally, AS had also sought to sidestep an analysis of the current character (baseline) of this (and other) parts of the site by indicating that the buildings proposed could be seen as contributing to natural beauty on the basis that elsewhere in the NL there were buildings that did this. In doing so he again failed to assess the harmful effects on the existing character of the site. The repeated reliance on GALD⁸⁸ to this end is misconceived for reasons I have addressed already.

⁸⁷ NID 7.20

⁸⁸ GALD at ID5.3

108. It is plain that the adverse effects both upon completion and in the longer term to LCA1 (top northern field) will be substantial/very large. This is in fact what AS's own methodology would have indicated had he applied it properly. Moreover every other expert has to some degree formed a contrary view to that of AS.

LCA2 (the Northern fields)

109. This area is proposed to contain the remainder of the main residential area. As with part of LCA 1 and as RP explained in evidence in chief there will be a wholesale change of character in the northern fields if the proposal is ever built. The appeal proposals would extend the urban edge of Haslemere into the NL.

110. RP assessed the harm to landscape character to be substantial adverse (or large/very large) both at completion and at years 10-15. This is obviously correct as a highly valued and sensitive part of the NL will be transformed into an urban environment.

111. By contrast AS assessed it as being 'large to moderate adverse' at year 1 but then reduced it to 'moderate to slight adverse' in the residual scenario. The differences were largely due to the same approach being adopted by AS to this area as he had done to LCA1 (top northern field). The suggestion that the high-quality design of the appeal scheme might be a factor reducing the adverse landscape character effects over time is again not credible. The effects of the design have already been assessed within the LVIA.

112. Realistically and applying common sense there can be no mitigation for the adverse landscape effects of development in the outline application area. They will not reduce over time.
113. Again it is of note that sightline/CM also took a different view to AS concluding a moderate to large residual effect⁸⁹ - having expressly taken design into account. AS had agreed the area to be of High sensitivity and that the magnitude of change would be large and so – again - his findings do not accord with his own methodology if it were properly applied. His reliance on design, (esp SHEDG⁹⁰) again underpin his flawed judgments.

LCA1 (bottom western field)

114. In relation to LCA1 (bottom western field) it was again agreed that the area (which would contain the access, necessitate major engineering works, require a car park, lodge and an entirely new access road running through the NL) was currently of High Sensitivity and that there would be a large magnitude of change.
115. As noted by RP and the LVIA this part of the site was a high-quality landscape which displayed several key characteristics of the NL.
116. The effects on the southern field of LCA1 would be extensive. Large areas of the field would require regrading; a significant piece of engineering work which would permanently alter the topography. Further substantial engineering works would be needed to create the site access and form the track climbing up the hillside. In addition, the proposals would involve the erection of a retaining wall approximately 50m in length, as well as a car park, a ramblers shelter and of course a new dwelling.

⁸⁹ See for example CM proof at ID2.3, appendix 2 at 10-91 (pdf 9) in table 10.15

⁹⁰ AS proof at NID 5.3, paragraph 4.50-51, pdf 36

117. RP correctly assessed the effects on landscape as being large/very large (substantial adverse) at year 1 and in the longer term (10-15 years). The overall effect of all of the interventions is a significant change to the character of the field, which RP rightly regards as substantial adverse on completion and beyond.
118. By contrast AS assessed the year 1 effect to be 'slight adverse'. On any view this is remarkable and not supported by the evidence.
119. Again, for the same reasons as I have addressed above in relation to other parts of LCA1 and LCA2, AS fell into error. Had he applied his own methodology he would have properly found a much higher adverse effect given his own assessment of High to medium sensitivity and a large magnitude of change.
120. He again fell into error by seeking to factor in high quality design when that had already been factored into the methodology.
121. The works to the southern field of LCA1 are within the detailed application area. It follows that those details (eg. the design of the dwelling, the associated planting and landscaping) had already been assessed by the LVIA - and according to his methodology by AS - in reaching his conclusions. These are not additional/secondary measures which can be relied on to reduce the assessed effects post-completion yet further.
122. Moreover, by again focussing on a subjective view of his support for the entirely different and 'designed' landscape character proposed he failed to address the effects on the existing site character. Indeed, in xx he recognised that if the issue was focussed on the effect on the current character of this area then an assessment should conclude there was a large adverse effect.

123. 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.

124. The fundamental differences here appeared stem not only from the methodological flaws of AS and an unwarranted design-based reduction but also from his insistence on ignoring the current baseline character as the proper basis upon which to assess the proposed change coupled with a judgment that what was proposed would be suitable for the NL.

125. He was wrong to ignore the baseline – a matter which goes to first principles in landscape assessment as discussed above. Moreover, his judgment that the new 'designed landscape' should be considered to be a 'cherished' one (he described the scheme in oral evidence as being a 'journey to a cherished landscape') was frankly unsupportable by the evidence and hard to understand from even a cursory examination of what was proposed. In relation to this area the Council make the following additional submissions:

- (i) Currently the section of the Midhurst Road running by the site is rural in character and defined with tree cover surrounding the narrow country lane
- (ii) The high-quality rural landscape visible beyond in the appeal site is highly sensitive and displays key attributes of the NL. It will be replaced of the proposal is allowed by a landscape of an entirely different character. Footpath 597 – will become sandwiched between the A286 and the road to the outline scheme.
- (iii) As RP explained, the proposal will entail and necessitate, the widening of part of the road, a diversion of the existing right of way and a significant loss of trees⁹² – affecting about a 180 m stretch of road.

⁹¹ CD 2.29 at 10.5.33, 10-46 pdf 46

⁹² tree removal plan at CD 1.33

- (iv) All this will open up views into the site where a new road with engineering features will be visible. As the various AVRs before the inquiry demonstrated⁹³ placing a hard surfaced road through this area with all the associated engineering works, a shelter and a retaining wall and associated development including a car park would fundamentally and seriously harm the NL. The narrow and enclosed character of the country road would be greatly weakened with material widening and a new right turn lane. Large areas of the field in LCA 1 would require regrading; a significant piece of engineering work which would permanently alter the topography. The landscape character will be fundamentally undermined. Indeed even the decision to try and create a country estate type entrance at the access point will clearly be at odds with the natural and scenic beauty of this area as it currently exists - representing a deliberate decision to change the character of the area rather than seek to preserve or enhance it. What the Appellant through AS has fundamentally failed to appreciate is the harm to the existing and acknowledged high quality NL which the proposal will cause.
- (v) As RP explained in his view this approach was entirely inappropriate for the NL. Rather than preserve or enhance the existing character of the NL in this area (which reflects key characteristics of the NL) the proposal will fundamentally and seriously harm it

126. In relation to LCA1 and 2 there are - as set out above - fundamental and serious differences in the evidence before the Inquiry.

127. The position adopted by AS in evidence was an entirely isolated one. Not even CM/the LVIA upon which the Appellant also relied supported his

⁹³ See for example at !D 2.3 at appendix 4

assessments of LCA 1 & 2. RP fundamentally disagreed. Indeed, so did every other expert body that has considered the proposals including Natural England, the NL Board and the previous Inspector.

AS approach to 'benefits' - LCA 3-7

128. Despite the serious flaws and failings in his assessment of harm to LCAs 1 & 2 AS still recognised there would be a degree of adverse effect to the areas⁹⁴. However, he then went on to conclude that because of benefits apparent elsewhere on the site this harm should be further 'moderated' resulting in a 'slight adverse to neutral' effect to landscape character overall.⁹⁵

129. Clearly there is no requirement to undertake this sort of netting off exercise. The balancing of harms and benefits is always a matter of planning judgment. It is certainly more straightforward to adopt a traditional approach of identifying harmful effects on one hand and weighing those, and the resulting policy conflicts, against all of the benefits in the overall balance.

130. The Council submit that even if the acknowledged benefits in areas LCA 3 -7 are viewed in the round they are at best minor or moderate in nature. Whilst of course welcome such 'benefits', as RP explained⁹⁶, do not significantly improve the landscape character and quality of the area so as to materially begin to 'offset' the severe adverse harm caused by the development proposed. In relation to the proposed benefits the Council make the following submissions:

- (i) Whichever approach is taken to the assessment of landscape harms and benefits, it is critical that (i) great weight is given to any harm to the NL and

⁹⁴ AS proof at NID 5.3 - 4.68-70 esp and in xx

⁹⁵ As proof at 4.70

⁹⁶ RP proof at 10.6-7, p.22 and at 5.6, p.16

(ii) there is no double counting of benefits – otherwise the approach required by the NPPF will be undermined

- (ii) AS had in fact sought to take into account a wide range of benefits⁹⁷ to found his overall conclusions which included tree planting, woodland enhancement, the scout hut, the opening up of the site, the provision of SANG, wetlands and improvements to biodiversity. However, even he had assessed the level of benefits as being initially only ‘slight’ or neutral at year 1 with some limited upgrades to ‘moderate’ for some areas in the longer term⁹⁸. Moreover, nearly all of these benefits overlap. Thus, the nature reserve is part of the SANG, the Restoration of Red Court Woods is an aspect of SANG creation, the walkers car park is a requirement for the SANG (and in any event the car park would be harmful to landscape character rather than beneficial). This is all one ‘benefit’, not five individual benefits.
- (iii) Applying his chosen methodology such levels of assessment are ‘not to be considered to be important considerations’ even on a cumulative basis and are at best ‘unlikely to be critical’ in any decision-making process⁹⁹. Accordingly, they should not on his own basis of assessment be accorded anything like the weight he indicated in his evidence so as to in some way further downgrade the harm to LCA 1 and LCA2.
- (iv) As both RP and others (including the previous Inspector) have explained the nature of such ‘benefits’ mean that they do not come close to significantly reducing or mitigating the serious landscape adverse effects identified on several hectares of high-quality NL in LCAs 1 & 2.

⁹⁷ See NID 5.3 at 6.6, pdf 43

⁹⁸ See his table 5.0 at p.35 of his proof

⁹⁹ See his adopted methodology - terms explained in LVIA, CD 2.29, table 10.10 at pdf 13

- (v) The landscape which is being 'enhanced' by the appeal proposals is already high quality, typical of the NL and in good condition. It is not a degraded landscape which is being significantly improved. Overall, the appeal scheme will have a harmful effect on this high quality, high value NL landscape and that must be given very great weight in the overall balance

- (vi) In any event, the process of seeking to net off or reduce identified harm by improvements elsewhere is inappropriate in this context. As I address in later submissions the process led to clear double counting as CC had tried again to weigh many of the same 'benefits' in his overall planning balance despite them already being factored in by AS in his overall judgment of harm.

- (vii) RP correctly adopted¹⁰⁰ the 5 principal reasons given by the previous Inspector in his carefully reasoned decision¹⁰¹ which addressed why the benefits would not in fact reduce or mitigate as the Appellant suggested. The Council submits that such reasoning remains entirely on point and relies on those 5 reasons as a further basis for undermining the approach of the Appellant.

Visual impacts

131. It is common ground that due to the topography, tree cover and limited public access around the boundaries of the appeal site, significant views are available in only a few locations.

¹⁰⁰ See RP NID 5.7 - proof at paragraphs 9.3 points (i) – (v)

¹⁰¹ See at NID 3.8 – Prev Inspector decision paragraphs 112-122

132. The most significant visual effects from the Council's point of view are to users of the public footpath along Midhurst Road. In this regard it is clear that there will be initially substantial adverse effects which will only over time reduce to a more moderate level¹⁰²

133. The views will be mainly of the site access and the new dwelling and the other associated development in the southern field of LCA1. The views across the field will change from an undeveloped scenic NL rural scene displaying key qualities of the NL to an engineered and developed landscape. Although the main housing areas would not be seen (or would perhaps be glimpsed), it would be clear that this was an access into a new development and a changed 'designed landscape'. Mr Petrow assessed the effects as being substantial adverse on completion and moderate adverse after 10 years. Looking at the verified views, it is hard to argue with that assessment.

Other expert Assessments

134. I have addressed above the disparity in evidence as between AS, RP and remarkably between AS and the LVIA upon which his client also relies. In essence the differences between AS and others results from an approach he has taken which is obviously flawed in not just one but several regards. As detailed above he had as part of his 'journey to a cherished landscape' :

- (i) Sought to take into account the benefits of 'high quality design' despite his methodology already factoring that into earlier judgments. In doing so he double counted design and failed to follow his own chosen methodology. By contrast other experts had not fallen into this trap. His constant and

¹⁰² See RP proof at table 6 – visual effects

related reliance on SHEDG served only to further underscore the inappropriateness of his approach.

- (ii) 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.
- (iii) His approach was further infected by an approach which ignored the current baseline and sought instead to impose a predetermined vision of natural beauty consisting of elements of built development which it was claimed could be found elsewhere in the NL. In doing so he failed to assess the existing character, misused GALD and it appeared misunderstood what GALD actually says.
- (iv) His approach to seeking to further moderate harm by taking into account minor benefits elsewhere on the larger site was contextually inappropriate and, in any event, flawed. As a process it gave too much weight to benefits and contradicted (again) his own methodology.
- (v) As I discuss later, his overall approach had taken into account a wide range of matters to reduce harm - an exercise then duplicated by Mr Collins in his overall planning balance.

135. Once this is understood the stark differences between AS and every other expert is easy to understand. It is of considerable importance to note that:

- (i) Natural England have carefully assessed the landscape and visual effects of the proposal and emphasized its fundamental objections to the proposal¹⁰³. NE is clear that the proposal would have:

“ a significant impact on the purposes of designation of Surrey Hills AONB and result in a direct and irreversible loss of Surrey Hills AONB designated land”.¹⁰⁴

- (ii) The NE objection is detailed and not just an in principle one. NE have carefully considered the evidence and policy/statutory context in arriving at the position it maintains.

- (iii) The NL Board have made considerable efforts to provide detailed and considered analysis of the proposal. The Chair of the Board has recently written to the inquiry¹⁰⁵ and indicated that she has extensive experience with National Parks and NLs. She was clear that allowing this proposal would:

“send shock waves throughout nationally protected landscape bodies and the Surrey public. In the circumstances of this case it would set a principle which would dent the great public value attached to protecting our most precious and much loved landscapes. It may very well undermine any public confidence in the British planning system”

- (iv) When the true harm that would be caused by the proposal is understood this is not in any way an exaggeration. The Chair has carefully assessed the previous Inspectors decision and rightly concluded his findings were

¹⁰³ NID 2.3 – December 2024

¹⁰⁴ NID 2.3, p.1 of 10

¹⁰⁵ NID 2.2 – 30.11.24

correct. She has assessed the proposal against the management plan and concluded clear breaches with MP policies P1 and P2 indicating that:

“The appeal proposal is directly contrary to the thrust of the Plan read as a whole and more specifically planning policies P1 and P2”

- (v) She has correctly identified the importance of the strengthened statutory duty which now applies.
- (vi) The Board’s planning adviser Mr Smith¹⁰⁶ has also provided clear evidence to the Inquiry over a considerable period of time¹⁰⁷ and most recently in an email dated 11th March 2025. His evidence provides yet a further clear basis upon which to conclude the level of harm is unacceptable and contrary to statutory duties, the development plan and the MP.
- (vii) The views of the Board are clear and amount to fundamental objections to the proposal.
- (viii) The previous Inspector carefully considered extensive landscape evidence from the Appellant, Council and others and rightly concluded that :

“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”

¹⁰⁶ Clive Smith BA(T&CP), MRTPI, DMS

¹⁰⁷ See esp at CD 3.10, 3.18 and Cd 3.19

- (ix) Such conclusions are highly material (for reasons I have submitted earlier) and weigh heavily against the proposal.

Conclusions on Landscape and Visual harm

136. 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 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.

137. The landscape-related benefits have been overstated by AS; the areas which are to be enhanced are already high quality landscape and there has been significant double counting of benefits. The appeal scheme as a whole does not conserve or enhance the NL; it causes significant harm.

138. The current rural character of the area would be transformed. The position remains the same as before the previous inquiry in that the proposal would cause 'fundamental and serious harm' to landscape and visual character. Every single independent body possessing landscape expertise has reported that the level of harm will be significant and adverse. The evidence of AS remains an exception and is flawed in approach.

139. The evidence of the Council and the numerous additional carefully submissions which weigh against the proposal (including those from NE, the NL Board and the previous Inspector) is to be preferred. In terms of NPPF 190

(c) there will be a severe detrimental effect on the landscape which cannot be mitigated.

IV. Other appeal decisions, allocations and local determinations relied on by the appellant

140. The Appellant sought to rely on a number of appeal decisions which it claimed were 'pertinent' to this appeal¹⁰⁸. The Council submits that in principle other Appeal decisions are rarely of material assistance to Inspectors as each case is to be considered on its own merits. The approach adopted by the Appellant which involved lengthy discussion by it during the inquiry in the end was one imbued with no doubt unintended irony. First because in fact the appeal decisions it relied on if anything served to highlight how the appeal scheme does not exhibit qualities or inhabit a context which can realistically be characterised as exceptional at all. Second because the one appeal decision which is truly material and which weighs heavily against this appeal is the recent consideration of the very same scheme last year - which I discuss further below. That decision discussed several of these appeal decisions (as they were relied upon then by the Appellant as well) and correctly distinguished them¹⁰⁹. As Inspector Bristow rightly concluded none of the appeal decisions grapple with development that would entail the extent of adverse effects that would result in this case and do not support the case for exceptional circumstances. As he also noted several of the cases involved sites that had been considered/proposed for allocation in a local plan process - a key factor that contributed to a findings of exceptional circumstances.

141. In relation to the various decisions relied upon the Council makes the following submissions.

¹⁰⁸ CC proof at 3.15 refers, p.19

¹⁰⁹ NID 3.8 at paragraphs 168-176

Sturt Farm, Haslemere¹¹⁰

142. This case related to a scheme for 135 dwellings (WA/2014/1054) that was approved some 10 years ago in a materially different context. The decision pre-dated the current development plan, the NL management plan, relevant parts of government guidance making it clear now such areas are unlikely to be suitable for such development and the strengthened statutory duty relating to NL. Moreover, it is a linear site with residential properties along the majority of its northern boundary¹¹¹. The approach to alternatives taken in that case was to look just at Haslemere area¹¹². The landscape effects were vastly different – there was a finding a moderate to minor adverse landscape impact was the finding at the permission stage. The access arrangements were far less extensive and did not involve anything close to the level of harm the appeal proposal would entail.

143. At the stage of that application there had not been any recent assessment of sites. By contrast it was not that long ago that LPP2 considered the potential for developing sites around Haslemere as part of the LPP2 process (adopted March 2023). During that recent process the appeal site was considered based on information in the LAA and a LAA addendum¹¹³. The appeal site was rejected as unsuitable through that process¹¹⁴. So – a more recently done exercise that that attempted in the Sturt Farm was undertaken in the context of a need for housing and provided no support for developing the appeal site.

Royal School LPP2 Allocation DS06 / DS08) (WA/2023/01309):

¹¹⁰ CC proof at p.20; report at CD 7.39; initial grant at CD 11.5

¹¹¹ See site plan in CD7.39, pdf 2 – which is the reserved matters applic report

¹¹² The case predated Wealden in the CA explaining that approach a matter of judgment

¹¹³ The latter is referred to in the LPP2 topic paper on housing numbers etc p4 para 3.5 CD 7.25

¹¹⁴ LAA pdf241 (site 987 – note that the Phase 1 site was separately assessed as site 1124 on pdf269 and identified as suitable for development) CD 7.40 (Nov 2020) See also LPP2 topic paper Nov 2020 p25 (second row of table) CD 7.24

144. Unlike the appeal site, both sites are allocated in LPP2. LP Inspector was satisfied the sites were appropriate for development. Policies DS06 and DS08 are therefore the first consideration under S38(6) of the PCPA 2004. The site is one of the alternatives considered by the parties (site 2). Much of the site comprises previously developed land and so the context is very different. The overall sensitivity in landscape terms has been assessed as 'Low to Medium Sensitivity', contrasting with the High sensitivity agreed for key parts of the appeal site. As discussed above it also proposes a solution for Sang.

Phase 1 Land off Scotland Lane

145. 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.

Land North of Queens Mead, Chiddingfold (Allocation HA3):

146. This relates to an approval for 78 dwellings (approved Nov 23). Unlike the appeal site, this site is within the Settlement Boundary and is allocated in the Made Chiddingfold NP. To that extent it serves to highlight how inappropriate it is for the appeal site to be pursued now having been recently assessed and found to be unacceptable. In any event the context is markedly different. The NP Examiner was satisfied the site in Chiddingfold was appropriate for development¹¹⁵. Policy HA3 is therefore the first consideration under S38(6) of the PCPA 2004. It was allocated through the Chiddingfold Neighbourhood plan and had community support, having been identified as a preferred location for new housing development. None of that applies to the appeal site which has been already through an appeal process and found to be unacceptable.

¹¹⁵ See pdf51 **CD 7.40** LAA - site was assessed and found suitable

Turnden Decision (NID 7.19 – November 2024 approval by the Sec of State)

147. Extensive reliance was placed by the Appellant on this case. In truth the more the case was examined the more it became clear that 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. The following submissions are made:

- (i) The case fell to be considered in a very different context. The finding as to exceptional circumstances were made (as is always the case) on very site specific and contextual matters that are materially different from the matter at this inquiry. Most notably the site was an emerging allocation. By the time of the S of S decision it has been most of the way through a local plan process and as the S o S noted (at para 20, pdf 7) that the proposed allocation was not to be subject to further consultation and no further modifications were proposed so that sig weight afforded to it in the context of finding exceptional circumstances.
- (ii) Referring to my initial submissions addressing policy context for making findings of exceptional circumstances (with particular reference to 190 (a) and ‘national considerations’) the emphasis on decisions relating to major development in the NL being plan led is clear. Here the site in issue had been considered thoroughly through a local plan process and was to be allocated. To that end at para 23 the S of S said:

“While the eLP may of course still be subject to change, she considers that, on the basis of the evidence currently before her, Policy STR/CRS 1 and draft allocation AL/CRS3, which are of most relevance to this application, are unlikely to change. Furthermore, she considers that Policy STR/CRS 1 and draft allocation AL/CRS3 are consistent with the relevant policies in the Framework. In the particular circumstances of this case, she therefore considers that policy STR/CRS 1 and draft allocation AL/CRS3 of the eLP are most relevant given they propose to allocate housing at the application site and carry significant weight.”

It is a world away from our situation.

- (iii) But the differences do not end there. In relation to landscape harm: the S of S held that any harm any harm arising would be limited, particularly in the longer term (by ref to IR732) and that overall there would be 'limited harm to the AONB' (paras 28 & 49 esp). Again - a world away from serious and fundamental harm which the Council contends would result here.
- (iv) In the context of housing need – the S of S found the need for housing **in this location** ie in Cranbrook) was based on the emerging allocation (see Para 42, p.11) again emphasising the importance of a plan led process – similar to the reasoning in the Chiddingfold case discussed above.
- (v) In terms moreover of a constrained borough the fact that it was an emerging allocation was key to the overall finding. In other words it was not a bald housing need but a process through an emerging local plan that provided the justification for the permission¹¹⁶. It was critical to her that it would be allocated in a short space of time.
- (vi) In relation to the issue of alternatives it is in fact clear – contrary to the contention of the appellant at this inquiry – that when the decision is read it was not really concerned at all with issue of alternatives in so far as the reasoning for finding exceptional circumstances is concerned. There is no endorsement of the approach contended for by the Appellant in the S of S decision. Of course – in Turnden, by virtue of the local plan process, there was a recent up to date evidence base for the emerging allocations which had looked at alternatives and which enabled the S of S to find except circumstances based on the lack of harm and the emerging allocation. That

¹¹⁶ – see para 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). She has found that the benefits of the scheme, which include landscape benefits and enhanced recreational opportunities, carry substantial weight (paragraphs 46-47 above). She has further found that policy STR/CRS 1 and draft allocation AL/CRS3, which allocates this site for this purpose, are unlikely to change and carries significant weight (paragraph 23 above). It is therefore likely that within a relatively short space of time, this allocation will form part of an adopted development plan

recent approach was (somewhat ironically) in fact relied on by the applicant¹¹⁷.

- (vii) In any event as it is agreed there is no mandated way of assessing alternatives¹¹⁸ the comparison with Turnden is not only flawed but also irrelevant.

Little Sparrows, Sonning Common (CD 9.25)

148. As recognised by the last Inspector the context of the site was again very different ¹¹⁹. Indeed, the inspector held in Sonning that :

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 (para 52)

Great Missenden (CD 9.26)

149. This case related to a scheme for 34 dwellings – on a part brownfield site. It also evidently entailed the ‘demolition of 3 4-bed houses, a disused industrial building (Use Class B2) and 20 garages’ – so again a very diff context to that

¹¹⁷ See Inspector reasoning at 596-99: at 599:

*Thus, the applicant says, the position is that there is an extensive and publicly available evidence base that the Council has been working on over many years to identify all possible, suitable locations for housing growth. That work is thorough, robust and comprehensive in the applicant’s view³³⁹. **It adds that an applicant for planning permission could not have hoped to undertake so comprehensive a process. In its opinion, a call for sites process can only really be done by the Local Planning Authority, and the same is true for the whole SHELAA process.** The applicant adds that it would be odd, given the work done, had it sought to replicate this work, and there is no reason why it would do so*

¹¹⁸ See AD Inspector at para 584 (setting out applicants submissions on approach to 177 (b) – (pdf p.157 or hard copy 128) – clear that it was even there submitted that there was no one way of doing it – will be context specific. In Turnden the Inspector (unlike the S of S) formed a judgment that (at AD802 – that other allocations are not alternatives as all are needed for OAN as it currently stood) – that was a judgment made. And Inspector relied heavily on the recent borough wide assessment of alternatives as part of the plan process (see AD 808)

¹¹⁹ NID 3.8 at paragraph 173

which we find here. Not only was it a much smaller development but in that case - the inspector determined that there would be no harm to landscape or scenic beauty in that case (para 40) - a world away from the current appeal. In addition, the Inspector there also identified that the site had been indicatively identified in the WBC's Draft Housing and Economic Land Availability Assessment as 'being appropriate in principle for accommodating housing.'(para 46). Again, that is not the case here, either in terms of the assessment of area HE05A in WBC's 2014 Study, or in other assessment work¹²⁰. Inspector Bristow correctly distinguished this case¹²¹.

Oakley farm, Cheltenham (CD 9.44)

150. This case is again materially different. In that case the site was very unusual in the AONB in that it was bounded by residential development on three and a half sides, and on the remaining fourth side is an engineered landscape. It was very different site-specific context.

151. In summary none of the case have the same level of landscape effects. Several rely on the site to have either been allocated or being assessed and close to being allocated as part of a plan process as a basis for establishing exceptional circumstances. Once that is appreciated, they in fact serve to illustrate how bare housing need should not in the context of a major development in the NL form a basis for constituting exceptional circumstances unless accompanied by other matters – such as an allocation, a particular location that does not cause serious harm or a combination of both. None of these exist in relation to the Appeal proposal before this inquiry.

¹²⁰ See CD 7.40 - LAA pdf241 - site 987 the this site was assessed as part of 'LAA 987' for a lesser number of units, and not supported on basis of adverse landscape effects

¹²¹ NID 3.8 at paragraph 170

V- other material considerations/statutory provisions relevant to decision making

The Previous Appeal

152. An issue between the parties is whether the previous appeal decision (NID 3.8) is a material consideration and if so what weight it should be afforded.
153. The Council submit that it is an obvious material consideration and that it should be afforded significant weight as a material planning consideration. The following submissions are made in support of such a position:
- (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.
 - (ii) It was a decision quashed solely on the basis of ground 2 of the claim made in the High Court (see consent order at NID 1.1) – which related to only a particular point of procedural unfairness.
 - (iii) In relation other grounds which raised issues of apparent bias, material cons/reasoning issues – none were conceded and none of which led to the quashing of the decision. Indeed, in relation to other matters raised beyond ground 2 and in relation to the decision generally the Secretary of State was at pains to make clear she did not consider it was unlawful.

- (iv) The subject matter underpinning ground 2¹²² related to an email sent to the HSRA explaining why the Inspector had liked a post of a consultant for the appellant which he did not copy into the appellant. It was accepted by S of S that this failure to copy in the appellant was a procedural error. The ground had nothing whatsoever to do with the substantive merits and findings made by the Inspector in relation to the case and the issue of exceptional circumstances. The S of S accepted that the Inspector should have told the appellant he had responded to the HSRA and given it an opportunity to make comments/ask him to reopen the inquiry. The failure to do so was a procedural error.
- (v) Importantly, the S of S took the view that the other grounds were unarguable – noting that the planning judgment made by the Inspector was lawful. In short the judgment made by that Inspector was that whilst there were various benefits which collectively may be described as “significant” collectively those benefits did not justify the harm identified¹²³ .
- (vi) All parties agreed that these other grounds were – given the concession on ground 2 – entirely academic¹²⁴. It is accordingly clear that the decision was quashed solely on the basis of a procedural error.
- (vii) There is clear authority that a quashed appeal decision can be a material consideration. If it is it is often material because consideration of it and weight given to it further the important the principle of consistency in decision making. This has long been recognised as an important principle in planning¹²⁵

¹²² Set out at NID 1.6 – st of facts – pdf p.11, para 34

¹²³ see PAP response at NID 1.4, para 10-11 – addressing grounds 1, 3 & 4)

¹²⁴ See para 11 of NID 1.1 – consent order

¹²⁵ The classic statement of the principle is set out by the Court of Appeal in *North Wiltshire District Council v Secretary of State for the Environment and Clover* (1993) 65 P&CR 137: (see quoted in NID 7.37 at paragraph 34 ff..)

"In this case the asserted material consideration is a previous appeal decision. It was not disputed in argument that a previous appeal decision is capable of being a material consideration.

The consistency principle is given practical effect in planning decision making via the test of material considerations. Whether a previous decision is a material consideration can be a matter of judgment.

- (viii) In the context of previous decisions having been quashed – in principle the High Court has made it clear (and this has been subsequently affirmed by the CA¹²⁶) that *“the decision maker must start the decision making again, with a clean sheet, having regard to the development plan and other material considerations, including material considerations which have emerged since the matter was originally considered”*¹²⁷
- (ix) It should not be a matter of dispute that as a proposition of law that the consistency principle can apply to previously quashed decisions. There is clear authority to that end and a comprehensive and useful discussion of principles in the Elmbridge case (NID 7.37) by Thornton J.

The proposition is in my judgment indisputable. **One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system.** I do not suggest, and it would be wrong to do so, that like cases must be decided alike. An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision. To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the inspector is to ask himself whether, if I decide this case in a particular way, am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there is disagreement then the inspector must weigh the previous decision and give his reasons for departure from it. These can on occasion be short, for example in the case of disagreement on aesthetics. On other occasions they may have to be elaborate."

¹²⁶ See NID 7.25 – Kinnersley case at paragraph 30

¹²⁷ *Kingswood District Council v Secretary of State for the Environment (1989) 57 P&CR 153* [see as discussed at para 42 of NID 7.37 – Elmbridge case

- (x) The question as to whether it is used as a material question will often depends on what the reason for the quashing was. This was made clear in *Elmbridge* (NID 7.37)¹²⁸. Thornton J quoted Coulson J in the case of *Vallis*:

*“if the first inspector decided a particular issue in such a way that his or her decision on that point was unlawful, the second inspector would be justified in dealing with that issue entirely afresh, without making any reference to the previous unlawful decision on that issue. If, on the other hand, the first inspector provided clear and cogent reasons for a conclusion on a specific issue, which explanation was nothing whatsoever to do with the subsequent unlawfulness of the decision, then the principles that I have outlined above must apply. In other words, **the mere fact that the first inspector's decision was quashed as being unlawful should not, without more, render the whole decision irrelevant to the second inspector.**”*

- (xi) The question for the Inspector in each case then is whether the previously quashed decision is a material consideration for the purposes of this second decision. This is a fact specific assessment. It would be unlawful for the subsequent decision maker to ignore the implications of a previously quashed decision, without further analysis. In relation to the current situation given the limited basis for quashing the previous decision and the fact that it was unrelated to the key issues alive at this inquiry which were materially the same at the last inquiry it is obvious that the previous decision is highly material and deserving of significant weight.

- (xii) Principles to apply are helpfully set out in *Elmbridge* at 56 ff (my emphasis in bold):

i) The principle of consistency is not limited to the formal decision but extends to the reasoning underlying the decision (North Wilts v Secretary of State ;

¹²⁸ See esp at para 51 ff (NID 7.37, pdf p.24ff):

Dunster ; Baroness Cumberledge ; Fox Stategic and Vallis).

ii) Of itself, a decision quashed by the Courts is incapable of having any legal effect on the rights and duties of the parties. In the planning context, the subsequent decision maker is not bound by the quashed decision and starts afresh taking into account the development plan and other material considerations (Hoffman La Roche ; and Kingswood).

iii) However, the previously quashed decision is capable in law of being a material consideration. Whether, and to what extent, the decision maker is required to take the previously quashed decision into account is a matter for the judgment of the decision maker reviewable on public law grounds. A failure to take into account a previously quashed decision will be unlawful if no reasonable authority could have failed to take it into account (DLA Delivery Ltd v Baroness Cumberledge of Newark)

iv) The decision maker may need to analyse the basis on which the previous decision was quashed and take into account the parts of the decision unaffected by the quashing (Fox and Vallis). Difficulties with identifying what has been quashed and what has been left could be a reason not to take the previous decision into account (as with the cases of Arun and West Lancashire).

v) The greater the apparent inconsistency between the decisions the more the need for an explanation of the position (JJ Gallagher).

(xiii) In our case it is clear that the previous decision was quashed only on the basis of a procedural error. The decision is recent. The same development plan policy context applies. A similar need context applies in that there is no 5 year supply.

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. 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.

154. The Appellant through CC has not treated it as material and given it no weight at all in the planning balance it has undertaken. That is a serious failing. I return to that issue below.

The statutory duty - ‘the protected landscapes duty’: S245 LURA 2023 (amended s85 Countryside and Rights of Way Act 2000)

155. A further issue between the parties relates to application of the statutory duty concerning NLs. The relevant provisions provide that:

(A1) In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

156. Since the last inquiry important new DEFRA guidance has been produced which is also highly material¹²⁹. The duty on the decision maker is an important one and requires that he/she ‘seek(s) to further’ the statutory purposes of NLs. We know that in this case that purpose is to primarily

¹²⁹ NID 7.11 dated 16.12.24

'conserve and enhance the natural and scenic beauty of the landscape'. In doing so a decision maker must consider information in the NLs management plan. The guidance indicates now that dialogue with the NL team can assist the decision maker. In that regard the representations from the Board which I have referred to above are clear in their fundamental objection to the proposal.

157. The duty now imposed on a decision maker is an active one. As has been confirmed by recent caselaw: *New Forest NPA* [2025] EWHC 725 (Admin) (NID 8.1 – a case addressing identical language as it related to National Parks) it is a 'strengthened' duty compared to what existed before¹³⁰. As the Court noted at para 58 (my emphasis in bold):

*The Claimant characterises the more forceful expression of a relevant authority's duty under section 11A(1A) of the 1949 Act as **the "strengthened" statutory duty. That seems to me to be a fair way of characterising the change from a requirement to have regard to the statutory purposes, to being required to seek to further those purposes.***

And at 61

*As a matter of ordinary English, to "further" a stated purpose is to promote or to facilitate that purpose. Therefore, the duty imposed by section 11A(1A) of the 1949 Act upon a planning authority determining a planning application **requires more than merely weighing the effect of the proposed development on the section 5(1) purposes in the overall balance. In order to discharge the strengthened duty, the planning authority must determine whether the proposed development is consistent with the promotion of the statutory purposes. If the planning authority determines that the proposed development is in conflict with the statutory purposes or would undermine the fulfilment of the section 5(1) purposes, they must the consider whether the grant of planning permission would be in accordance with their duty to seek to further those purposes.***

¹³⁰ See NID 8.1 at paragraph 58 of Mould J. Note that the recent DEFRA guidance was not available/addressed in that case.

158. The statutory duty as strengthened is however a qualified one. As the Court explained¹³¹ (at paragraphs 62 & 63):

The strengthened duty is expressed in qualified terms. The planning authority is required “to seek to further” the section 5(1) purposes. It is not under a duty necessarily to fulfil those purposes. Nevertheless, in my view, in any case in which the planning authority determines that a planning application proposes development which is in conflict with the section 5(1) purposes or will undermine their fulfilment, the authority ought both to consider whether and to explain why they have decided that planning permission may justifiably be granted. The planning authority’s consideration of those matters will necessarily be informed by the circumstances of the given case, including the size and scale of the development under consideration and the extent and severity of its conflict with the section 5(1) purposes. These are matters of judgment, but a duty “to seek to further” the section 5(1) purposes necessarily invests the planning decision maker with the responsibility to judge, firstly, whether the planning application before them for decision proposes development which interferes with the fulfilment of those purposes; and if it does, whether and if so why the grant of planning permission is justified.

63. The planning authority may need to consider whether and if so, how the proposed development may be mitigated in order to address the identified conflict with the statutory purposes. They may need to consider whether any compensatory measures are available which might offset the identified conflict with the statutory purposes. They will need to consider the imposition of conditions or the need to obtain planning obligations to secure such measures.

159. The Council submit that in complying with this duty, the Inspector must so far as is reasonably practical seek to avoid harm and contribute to the conservation and enhancement of natural beauty, special qualities and key

¹³¹ See also in particular paragraph 66 in relation to approach

characteristics of the NL. In light of the evidence relied upon by the Council that is not possible to do if permission is granted.

160. As the last Inspector correctly concluded¹³² (even without the benefit of the new guidance) there is a conflict with the clear expectations of s 85 as amended. That decision is material for the reasons explained above.

161. This statutory duty as a consideration weighs heavily against the proposal and further indicates a lack of exceptional circumstances.

The new PPG refs - Jan 2025

162. I have addressed some PPG references above. In addition, it is important to take into account new guidance produced in January 2025¹³³ by the government relevant to issues in hand. It provides as follows:

“What are the statutory duties of local planning authorities in relation to National Parks, the Broads and National Landscapes?”

Section 11A(2) of the National Parks and Access to the Countryside Act 1949, section 17A of the Norfolk and Suffolk Broads Act 1988 and section 85 of the Countryside and Rights of Way Act 2000 (as amended by section 245 of the Levelling Up and Regeneration Act 2023) require that ‘in exercising or performing any functions in relation to, or so as to affect, land’ in National Parks and National Landscapes, relevant authorities ‘must seek to further’ the purposes for which these areas are designated. Guidance on the operation can be found in Defra guidance on this duty.

This duty is particularly important to the delivery of the statutory purposes of protected landscapes. It applies to all local planning authorities, not just National Park authorities, and is relevant in considering development proposals that are situated outside National Park or

¹³² NID 3.8 at paragraph 179

¹³³ See at NID 13.17, page 2

National Landscape boundaries, but which might have an impact on their setting or protection”

163. This guidance is recent and emphasises the particular importance to the delivery of statutory purposes that the duty plays. It also provides further context relevant to NPPF 190 (a) by way of national considerations in the context of housing need and the use of NLs as places that are in principle unsuitable to provide housing¹³⁴.

VI. Conclusion on ‘exceptional circumstances’

164. The application of the exceptional circumstances test requires an exercise of planning judgment. The starting point must be that the NL is a nationally designated landscape which has the highest status and the highest level of protection, so far as landscapes are concerned – in national policy and guidance.

165. It is safeguarded for the benefit of current and future generations. Once NL land is lost to development, it is lost forever. It is therefore appropriate that the test for allowing major development is stringent and is applied robustly. The circumstances must be genuinely exceptional – which is a matter of planning judgment. That judgment must be informed by a proper understanding of context.

¹³⁴ Importantly as made clear recently by the CA in *Mead Realisations* [2025] EWCA Civ 32 PPG guidance can be treated as having similar importance and weight as a matter of judgment to NPPF policy – see at IJ proof appendix 2 at para 33-40 esp

166. In light of the submissions made in relation to NPPF 190 above it is submitted that there are no exceptional circumstances. The need for the proposal understood in the context of the latest NPPF policy and guidance is not such that a major development in the NL here is justified.

167. In simple terms it is not an appeal supported by a proper understanding of approach to development and how the government wishes to deliver housing in the right places. The examples from other appeal decisions serve to demonstrate that this appeal is not justified. Moreover, there are alternatives available and no exceptional benefits to the local economy or any particular cost related justification put forward. In addition, and of great importance the level of harm in particular to landscape character would be seriously harmful and not capable of material moderation. The existence of a recent process which led to the dismissal of the same proposal at appeal is for the reasons explained above material and indicates that it would be inconsistent and, in that sense, harmful to allow this appeal. That factor further indicates a lack of exceptional circumstances. Moreover, it is of fundamental importance to consider that allowing the appeal would be contrary to the aims of strengthened statutory duty as explained above and inconsistent with the previous Inspector's decision in a way that would undermine public confidence and the principle of consistency in decision making.

VII. Development plan/statutory considerations and planning balance

168. The Council contend that there is clear conflict with a range of key development plan policies (SP2, RE1 and RE3 of the LPP1, Policies DM11 and DM15 of the LPP2 and Policy H9 of the HNP) and with the development plan as a whole.

169. It is agreed between the parties that the appeal scheme would accord with or would be capable at reserved matters stage of according with, a large number of development plan policies. However, the policies in dispute are some of the most important policies in the plan.

170. It is accepted by the Appellant through CC that if there are not found to be 'exceptional circumstances' in NPPF 190 terms there will conflict with the development plan as a whole. I make the following brief submissions in relation to key policies.

171. **Policy SP2** contains the overall spatial strategy for the development plan and is therefore fundamental to the entire plan. The overarching aim is "*to maintain Waverley's character whilst ensuring that development needs are met in a sustainable manner*". The strategy seeks to "*strike a balance between economic, social and environmental considerations*".

172. That balance is apparent in the policy criteria, where the strategy is to "*focus development at the four main settlements*" (including Haslemere) but also to "*avoid major development on land of the highest amenity and landscape value*" (including the NL). The Council submit that 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 amendments¹³⁵ I have addressed above. It is also consistent aspects of the PPG addressing housing requirements - which note that NLs designation may mean it is not possible to meet objectively assessed needs for development¹³⁶. There is clear conflict with this policy.

173. At the first inquiry the Inspector¹³⁷ correctly found clear conflict with SP2 (criterion 1). He also - correctly found conflict with **SP1**.

¹³⁵ NID 13.17

¹³⁶ See extracts in NID 13.17

¹³⁷ NID 3.8 paragraph 179

174. The strategy of avoiding development on land of the highest amenity value is given detailed policy expression in **Policy RE3**. This policy is consistent with the NPPF/PPG and with the s85 CROW duty. The previous Inspector was correct to find conflict with it. RE3¹³⁸ is the key landscape policy of the development plan. It requires all development to “*respect and where appropriate, enhance the distinctive character of the landscape in which it is located*”, and then makes more detailed provision for designated areas. So far as the NL is concerned, RE3(i) essentially imports the relevant paragraphs of the NPPF by providing that the “*protection and enhancement of the character and qualities*” of the AONB “*will be a priority*” and “*will include the application of national planning policies together with the Surrey Hills AONB Management Plan*”. In that sense it imports the exceptional circumstances test in NPPF 190¹³⁹. Although CC tried to suggest that RES elevated AGLV considerations to the same status as NLs he was wrong to do so. As IJ explained both the policy and supporting text make clear that is not the case¹⁴⁰. The Council submit there is a clear conflict with this policy in light of the evidence addressed above.

175. Policy RE3 indicates that the AONB Management Plan will be applied. The following submissions are made about the Management Plan:

- (i) With one notable exception, the policies which are neutral or supportive apply to the proposals for the areas of the appeal site which would not be developed for housing. The Management Plan does not support the delivery of large housing developments in the NL. Indeed, of the pressures and threats identified during the development of the Management Plan, “*housing development*” is top of the list.¹⁴¹ The Plan returns to the theme in the text supporting the planning policies, referring to the “*substantial*

¹³⁸ CD 6.1, pdf 64

¹³⁹ Made clear in supporting text at 13.30, pdf 62 in CD 6.1

¹⁴⁰ LPP1 pdf 62 paras 13.33, 13.35 **CD 6.1**

¹⁴¹ pdf 10 p18 para 1.12 **CD 7.9**

demand for development” and the potential for cumulative effects from “many, often small, developments over decades”.

- (ii) The exception is in respect of affordable housing. Policy CE3162 supports the delivery of AH in the NL¹⁴² in a general sense. It is important to look carefully at the specific wording of the policy. It does not provide blanket support for building AH in the NL. Rather it supports *“the provision and retention of affordable housing for local people and key workers”*.¹⁴³.

Similarly, whilst Policy P4 provides some support for AH delivery, that is limited to *“small scale affordable housing”* and is subject to the proviso that the housing should *“not conflict with the aim of conserving and enhancing the beauty of the landscape”*. Whilst the Management Plan provides some support for AH in the AONB, when the policy wording is considered, it becomes clear that the policies do not provide support for the AH as proposed within the appeal scheme.

- (iii) Thus, the AONB Management Plan is supportive of the non-housing aspects of the proposed development, but the housing development is in conflict. In that respect the AONB Management Plan reflects the same split between the harmful effects of housing development vs beneficial effects to other areas of the appeal site which has already been discussed in the context of landscape effects

- (iv) Notwithstanding the support which elements of the appeal proposals can derive from the AONB Management Plan, it remains the case that there is conflict with policy in. As IJ has explained and as the Board have correctly submitted there is clear conflict with policies P1 and P2 in the Plan¹⁴⁴.

¹⁴² pdf 19 p37 **CD 7.9**

¹⁴³ The s.106 agreement does not restrict occupancy of the proposed AH to key workers or to local 'local' people

¹⁴⁴ See at CD 7.9, pdf 17

RE1 and DM15

176. Both RE1 and DM15(2) are in similar terms, requiring development to recognise/safeguard the intrinsic character and beauty of the countryside. Both are consistent with the NPPF (esp NPPF 189 and 187 (b)) and should be afforded full weight as IJ explained. It is common ground that the policies should be approached in the same way. There would be clear conflict with such policy as IJ explained in evidence. Even CC accepted partial conflict with RE1 given the identified level of harm. His position in relation to DM15 was less clear although he appeared to accept partial conflict again.

177. **Policy H9** is a long policy with many elements to it. The key focus for the Council is H9.2, which seeks to *“avoid damage to or loss of mature or semi-mature trees of value other than in exceptional circumstances”*. The policy does not define what ‘value’ means in this context. There is no justification for reading this narrowly as referring only to arboricultural condition.

178. Even trees which are regarded as in poor condition (and which may survive for many years to come) may still have value as a landscape feature or as part of a wildlife corridor. Plainly the trees which are to be removed along Midhurst Road to facilitate the site access would have value in these terms. There is clear conflict with this policy and no exceptional circumstances to justify their removal in light of the application of NPPF 190. Similarly, there will be conflict with policy **DM11**.

179. In terms of benefits in the context of an overall balance I have addressed most of the claimed benefits above. The various benefits have been addressed by IJ in evidence¹⁴⁵. It can be noted that unlike the Scouts there is no claim made that the Forest School is necessary to meet any particular need. In general terms

¹⁴⁵ IJ proof at p.36, table 3 at paragraph 11.7

it is clear as IJ explained that the range of benefits put forward whilst welcome do not seriously begin to outweigh the fundamental and serious harm to the NL that would be caused by the proposal. The differences as to the respective findings on landscape harm without more mark a material difference between the parties.

180. As CC fairly accepted in xx, if he were asked to adopt the findings of harm relied on by the Council (that is the overall characterisation of fundamental and serious harm to the landscape¹⁴⁶) then he would conclude that there were not exceptional circumstances so that the appeal should be refused. This concession is very telling. It reveals an appreciation that despite all the housing need relied upon by the Appellant it fully accepts that if the evidence relied upon by the Council and the conclusions arrived at by the previous Inspector in relation to landscape harm are accepted in this case there is no basis upon which the appeal should be allowed.

181. In truth the position in terms of the balance struck on behalf of the Appellant was entirely flawed quite apart from the failure to consider the true landscape effects. In particular the following submissions are made:

- (i) CC had failed entirely to treat as material the previous Inspector decision. For the reasons I have submitted above that position was wrong as a matter of law and judgment. Had he properly taken it into account it would have weighed heavily against the appeal proposal.
- (ii) CC also plainly double counted a number of benefits as he at least partially conceded in xx. In particular, given that (as submitted above) AS had relied on nearly all the scheme benefits to reduce the level of harm he had identified it was wrong for AS to take such a reduced level of harm and then weigh against it many of the same benefits. As I have submitted above the

¹⁴⁶ See RP proof at paragraph 9.5 (v) where he fully agreed with the prev Inspector's assessment in that regard. A view also shared by IJ - see his proof at 11.8

failure of the part of the Appellant is here a multi layered one. AS had already double counted matters relating to design in an entirely artificial and erroneous way. CC sought to rely on several matters (eg the Scout Hut, Sang provision etc) which AS had already relied upon as benefits to reduce his harm. This led to at best an entirely unclear overall balance which appeared to have double (or perhaps triple) counted the same benefits.

- (iii) 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).
- (iv) CC failed to address the strengthened statutory duty properly or at all in his balance
- (v) CC afforded weight to the Scouts facility when there is no 'necessity' for it at all on this site.

182. These errors in approach clearly resulted in a balance being undertaken by the Appellant which does not reflect either the law, policy or the evidence before the inquiry.

VIII. Overall conclusions

183. The exceptional circumstances test is determinative of the outcome of this appeal. It determines the planning balance which is required by s. 38(6) and by paragraph 11 NPPF. For the reasons given, the Council invites you to conclude that the Appellant has not demonstrated exceptional circumstances, having regard to the considerations in paragraph 190(a)-(c) NPPF and all other considerations. There is clear conflict with the development plan and a strong basis for refusal. Material considerations do not indicate permission should be granted. A refusal would accord with a correct application of the strengthened statutory duty.

184. Accordingly, planning permission should be refused and the appeal dismissed.

Tom Cosgrove KC

6th May 2025

Counsel for Waverley BC

Appendix

Landscape character area	Sensitivity	Year 1 effect	Residual effect (10 years and beyond)
LCA1 (Northern field)			
AS	High	Large to moderate Adverse effect	Moderate to slight adverse
RP	High	Large/very large adverse (Substantial adverse)	Large/very large adverse (Substantial adverse)
CM (LVIA)	High	moderate to large adverse effects	moderate to large adverse effects
LCA1 (bottom western field)			
AS	High to medium	Slight adverse	Slight adverse to neutral
RP	High	Large/very large adverse (Substantial adverse)	Large/very large adverse (Substantial adverse)
CM (LVIA)	High	large adverse effect on its current character (but slight adverse if future new	large adverse effect on its current character (but slight adverse if future new

		design taken into account)	design taken into account)
LCA2 (northern Fields)			
AS	High	large to moderate adverse'	moderate to slight adverse'
RP	High	Large/very large adverse (Substantial adverse)	Large/very large adverse (Substantial adverse)
CM (LVIA)		Moderate to large adverse effects	moderate to large adverse effects
LCA3 (Parkland)			
AS	Medium	neutral	Slight beneficial
RP	High	Minor adverse	Moderate beneficial
LCA 4 (Red Court Woods)			
AS	Medium	Slight beneficial	Slight to moderate beneficial
RP	High	Minor benefit	Minor to moderate benefit
LCA5 (Southern Fields)			
AS	High	Slight beneficial	Slight to moderate beneficial
RP	High	Minor beneficial	Minor beneficial
LC6 (conifer plantation)			
AS	High	Slight beneficial	Moderate beneficial
RP	Medium	Moderate beneficial	Moderate beneficial

LCA7 (Former tennis court)			
AS	Medium	Slight beneficial	Moderate beneficial
RP	Low	Moderate beneficial	Moderate beneficial