

RE: LAND AT BIRD IN EYE SOUTH FARM, UCKFIELD

**CLOSING SUBMISSIONS ON BEHALF OF THE
APPELLANT**

Introduction

1. These submissions are structured as follows. Firstly, they deal with the case in support of the grant of consent for housing development at the Bird in Eye South site. Secondly, they address the clear and overwhelming objections to the Downlands proposal. They conclude that there is no material objection to the grant of planning permission for both the Bird in Eye sites, as anticipated by the First Deposit Draft of the abandoned Local Plan, and this should be coupled with a clear housing need to reinforce the justification for permitting development.

Bird In Eye South

Policy background

2. The consideration of these applications has to start with the Development Plan. The Development Plan in relation to this case currently comprises the saved portions of the old Wealden Local Plan together with the saved policies of the Structure Plan and the current RSS. To deal with the weight to be attached to each of those is, for reasons which are set out below, little if any weight to the extant Local Plan, and significant weight to the Structure Plan and RSS, in particular

where those policies provide a strategic steer to development which is not gainsaid or overtaken by emerging policy.

3. The old Local Plan has to be given very little, if any, weight on the basis that it was prepared to meet the requirements of a long-since-deceased Structure Plan. The old Structure Plan was produced in 1991 for the period to 2004. It is therefore not only prepared against a superseded plan but also provides for development requirements for a plan period which has long-since elapsed. Given that the plan was prepared against a different Development Plan requirement for housing, little weight can attach to it, in particular where it seeks to set development limits against a long-superseded identification of need.
4. The Structure Plan remains part of the Development Plan and the policies within it which have recently been saved. As such they will have been tested against the parameters set out in PPS12 and the Secretary of State's guidance in respect of saving. The criteria for saving include ensuring that the policies are up to date and in accordance with current national and regional policy. As they have been the subject of that recent scrutiny and determination, it is clear that significant weight can attach to those policies, on the basis that they are consistent with current advice. For the reasons set out below, the saved policies provide material support for the Appellants' case.
5. The RSS, whilst currently the subject of review, is nevertheless an up-to-date part of the Development Plan which, in terms of its strategic spatial

requirements, remains relevant, as they are consistent with the policies and proposals of the emerging RSS.

6. The threads that can be drawn together from the policies of the Development Plan are as follows. Firstly, the Structure Plan, prepared consistently with the extant RSS, provides support for Uckfield as a suitable settlement for strategic levels of development. Paragraph 6.12 of the explanatory memorandum to the Structure Plan reports and endorses the view of the EIP Panel in their report on the Structure Plan that “there is no choice but to look for development in these three places”, which include Uckfield. That conclusions of the Panel is reflected in policy S22 of the Structure Plan and the key diagram associated with it, which earmarks Uckfield as a location for strategic growth. Thus, the Development Plan is supportive of a significant scale of development at Uckfield, being a sustainable settlement beyond the other environmental constraints which operate in Wealden.
7. For reasons which are well known, this strategy from the RSS and Structure Plan was never articulated into a completed Local Plan to provide local substance to the strategic requirement. The fact that there is this increased requirement focusing particularly on Uckfield reinforces the limited if any weight which can be attached to the old Local Plan measured against earlier and superseded development requirements.

8. Thus, whilst there is no Local Plan to give effect to the strategic policy, the Development Plan at a strategic level clearly identifies that Uckfield is a suitable location for residential development and, as such, the proposals for the BIES site are in accordance with the advice and policy which is to be found in the Development Plan.
9. Whilst it is obvious and in accordance with the relevant statutory duty under Section 38(6) of the 2004 Act that the Development Plan must be the paramount consideration in respect of the consideration of this appeal, nevertheless considerable time at the Inquiry has been devoted to examining the provisions of emerging policy.
10. The first element of emerging policy which needs consideration is the emerging RSS. This document at paragraph 8.4 on page 259 identifies the need for greenfield extensions to existing towns in the Weald. Whilst Uckfield is not identified by name, it is clear that it is a settlement which fits the bill so far as the RSS policy is concerned.
11. We know that these policies have been the subject of independent scrutiny by the EIP Panel. They supported further development at Uckfield as a sensible location for sustainable residential proposals. Indeed, on the basis of their conclusions, they suggested a modest increase in the figure for housing for the rest of the Weald area based on their conclusions that Uckfield was a suitable place to accommodate such growth.

12. Although the Council has cavilled at the reference within the Panel's justification for this increase in the quantum of housing at Uckfield on the basis that there is no rail access to Tunbridge Wells, nevertheless the remainder of the reasoning of the Panel is unassailable. Paragraph 26.41 on page 424 of the Panel report provides sound reasons in the form of Uckfield's sustainability profile coupled with its absence of significant environmental constraints around parts of the town to justify the conclusion that it is a suitable location for further growth. Thus, the strategic policy set out above in the Development Plan which supports Uckfield as a location for significant housing development has not in any way been undermined or superseded in the emerging RSS, and considerable weight can be attached to the thrust of that policy.
13. The other element of emerging policy which has attracted the attention of the Inquiry are the provisions of the non-statutory Local Plan. This document is incapable of attracting material weight for a number of cogent reasons. First and foremost, the document has never been the subject of scrutiny or testing in an independent public forum. That as we know is a critical stage for weight to be attached to its provisions, measured against the General Principles associated PPS1 at paragraph 18.
14. Secondly, and again of paramount importance, is the view which has previously been taken by the Secretary of State, the same decision maker as in this case, as to the weight to be attached to the abandoned non-statutory Local Plan. In the decision at Five Ash Down decision, at

paragraph 8 the Secretary of State makes plain that she affords little weight to this abandoned policy framework. There is no basis whatsoever for the Secretary of State reaching a different conclusion in the context of these appeals.

15. The Court of Appeal did not and could not express any view as to the weight in terms of planning judgement that could be ascribed to the non-statutory Local Plan. All that they were concerned to conclude was that the Council were legally entitled or empowered to abandon it. Whilst, like an enormous number of matters, the non-statutory plan may be a material consideration, that is neither here nor there. The issue is what weight attaches to it, and the Court of Appeal were obviously unqualified to express an opinion in respect of the issue of weight and did not so so.

16. In fact, the process of plan preparation does not assist the Council at all in respect of their argument. We can see that, as a matter of record, the BIES and BIEN sites were allocated in the First Deposit Draft of the plan but then that allocation was abandoned. The sites were de-allocated without any sensible reason being provided and in the teeth of officers recommending simply that the matter be deferred. I invited MR Walker to furnish the inquiry for a rational explanation for this decision and he was unable to do so. It is this flaw in the Local Plan-making process which makes it all the more critical that the document has failed to be the subject of independent scrutiny, and reinforces the caution which

should be attached to it and the good sense of the Secretary of State's prior conclusion that little weight could attach to this document.

17. It is to be noted that in his closing submissions on behalf of the council Mr Boyle makes little attempt to defend the views of Mr Walker in respect of the significance of the non-statutory Plan and rightly so.
18. The overall conclusion in respect of the development plan is therefore that the proposals are in accordance with it.

Housing need

19. A great deal of time at the inquiry was expended in the discussion of the 5 year supply calculation. However this overlooks the fundamental point made by the introduction of the requirement and the amendments to PPS3. Despite what is asserted in paragraph 2.34 of the Council's closing submissions the existence of a 5 year supply is not a reason for refusal and so much was conceded by Mr Walker in cross-examination. Thus the absence in this case of a 5 year supply of housing land, if that were the case which it is not, is not a basis for refusing it consent. This is further reinforced by the Secretary of State's guidance in relation to the calculation of a 5 year supply which makes clear that the 5 year supply is not a ceiling on provision. This observation was repeated by the Panel in advising on the emerging RSS.
20. There can be no doubt that as set out above the Structure Plan is still part of the development plan and therefore the starting point for the

calculation of the 5 year supply in accordance with the advice provided by the Secretary of State. It is agreed that measured against the Structure Plan there is not a 5 year supply which the Council can pray in aid on the basis of their abysmal performance in housing delivery in recent years. Thus on the basis of the development plan and the Secretary of State's advice there should be significant weight granted to the proposals on the basis of housing land supply.

21. These figures are however solely related to the general requirement for housing. They do not address what Mr Walker had to accept was a critical and crushing requirement for affordable housing in the District. The figures are indisputable and shocking. The most recent housing needs survey from 2005 demonstrates that there is an annual requirement for affordable housing of 874 units, including the backlog of unmet need. This is no less than 17 times the number of units that the survey anticipated that the Council might be able to deliver.
22. Measured against this requirement the amount of affordable housing which Mr Walker could demonstrate was in the pipeline amounted to less than 9 months worth of the annual requirement. The Council's Annual Monitoring Report shows that in the last recorded year they managed a pathetic 34 affordable housing completions or approximately 2 weeks supply.
23. When we turn to examine Uckfield itself the housing survey demonstrates that it is the urban area in the district with the highest need

in terms of locational preference. There was in 2005 a requirement for 390 units. Against this Mr Walker's figures showed that in Uckfield there were only commitments capable of delivering a meagre 128 units or less than a third of the need then identified without accounting for the accumulating need.

24. It was this lamentable performance in relation to the provision of affordable housing which led to the Report from the Chief Executive of 1 August 2007 which was critical of the Council's manifest failure in respect of affordable housing delivery and called for the identification of additional sites in the short term to make good the shortfall. This shortfall has arisen from the failure to deliver general housing sites because as Mr Walker accepted it is only through the delivery of market housing can these requirements for affordable housing be addressed.
25. This issue cannot await being dealt with by the LDF which is already slipping and is a long way off. The people who are in housing need require homes now. This is why the Secretary of State effectively abolished objections to housing proposals solely on the grounds of prematurity in PPS3 and requires sites to be brought through the development control process. In so far therefore as the Council objects on the basis that this site should come through the LDF that is not an objection known to the Secretary of State's policy. Moreover that suggestion is cold comfort to the people who are currently living in over-crowded or otherwise unsuitable housing and who require and deserve a decent home.

26. This shortfall and the failure to make provision for affordable housing provides the backdrop for the consideration of the 5 year supply when measured against the emerging RSS. The Council have to accept numerically that when the shortfall in housing provision measured against previous targets (and which has caused the affordable housing crisis in the District) is taken into account they cannot provide a 5 year supply. In the inquiry and in their closing the Council have sought to suggest that there is no need to account for the shortfall. However that is an entirely artificial position and completely ignores the position in relation to affordable housing. Those local people who were and obviously remain in housing need have not been vanished by some conjuring trick performed by the Secretary of State in her proposed changes. They represent an unmet housing need which the Council still have to address and their existence and the need for market housing to facilitate the provision for them has to be accounted for. Thus taking account of the unmet housing need the Council are unable to demonstrate a 5 year supply.
27. Much time and effort at the inquiry was expended in detailed exploration of the figures in relation to supply to be set against the requirements of both the Structure Plan and the emerging RSS. In fact there is no need to dwell in detail on these exercises. That is because all of these matters and the figures which lie behind them were debated and adjudicated upon by one of your colleagues recently in Polegate. In her decision having assessed the situation in relation to supply and the Council's claims as to the delivery of the various sites which were also debated in

the context of this inquiry she concluded that the Council was unable to demonstrate a 5 year supply of housing land in the District. There is no basis to depart from this recent conclusion and thus your conclusion is bound to be similar.

28. Furthermore in paragraph 77 of that decision the Inspector concluded:

“Even if I am wrong on the deliverability of some of the housing sites, it was put succinctly at the inquiry that under-provision is now the only crime. Housing requirement figures are targets not ceilings. Additional housing would not be harmful to the Council’s housing strategy. It would give the Council more leeway to meet its trajectory and take pressure off other areas. I am satisfied that housing on the site would only be beneficial.”

27. All of these conclusions, reached in the context of the same housing figures in the same District apply with equal force to the BIES proposals and lend considerable weight to the case for the grant of planning permission.

Landscape

28. Subject to the provision of the detailed landscaping proposals which are set out on the master plan proposals for the BEIS site, the Council have no objection on landscape grounds to the BEIS site. In a sense, that is highly unsurprising since they previously allocated the site and regarded it as suitable, and there was no suggestion that landscape considerations

led to the site being de-allocated. Thus, the Secretary of State can be safely advised that the site is suitable for development in respect of the assessment of impact on landscape character and visual amenity.

29. The only party that objects to the proposals on landscape grounds is DL through the evidence of Mr Russell-Vick. His conclusions in regard to the BEIS site are, for the reasons which will be explained in these submissions relating to the Downs site, conspicuously at odds with any objective assessment of his judgement in respect of the DL site. For the record, these submissions set out the reasons why both Mr Duckett and the Council are of the opinion that the BEIS site can be developed for residential purposes without in any way compromising the interests of landscape and visual amenity.
30. The landscape character of the site is properly to be regarded as urban edge, albeit within a character area identified as the Lower Weald, Upper Ouse Basin. Visually it is obviously heavily influenced by the existing urban area to which it is adjacent. Furthermore, the horsicultural land use across the site is redolent of an urban fringe location which commonly accommodates this type of activity. Thus, the landscape character of the site is not in any way sensitive to change, and the residential development can be accommodated within the appeal site without doing material or inappropriate harm to landscape character considerations. It is a landscape which is capable of absorbing this change without giving rise to material harm.

31. So far as visual considerations are concerned, as you will have observed from your site visit and as is evident from an examination of HDA5 and HDA7, the visual envelope of the site is particularly limited. Whilst there are views from within and immediately on the edge of the urban area towards the site, there are limited if any views from the wider countryside. Such views as can be obtained from within the urban area at Mallards Drive will of course disappear once the development of the land north of Mallards Drive has taken place. That development is being actively pursued by the same parties as pursue the BIES site, and planning permission will shortly be issued. Thus, there are hardly any views from the wider countryside which will be in any way affected by the proposals on the site.
32. In fact, the topography and land form of the site are well related to the town, forming a west-facing slope and enclosing development within the bowl of the valley. The site is thus suitable for development on the basis that it represents a proposal which is typical of the settlement pattern of Uckfield, which is a settlement which formed and rose out of the valley floor associated with the river Uck.
33. This analysis demonstrates the site's suitability to accommodate development in terms of both its minimal impact on sensitive landscape character and its minimal visual intrusion. The landscape proposals which accompany the site and which are fully supported by the Council provide further mitigation in terms of absorbing the site within the wider landscape. These proposals include provision of new tree planting and a

new shaw at the entrance to the site, coupled with avenue planting within the site to create a tree-lined skyline above the development proposals.

34. Around the site, and in particular associated with the ancient woodland beyond the site boundary, there are proposals to provide augmentation to the woodland planting, to facilitate both the buffer zones to the ancient woodland and wildlife corridors for the benefit of nature conservation. More formal open space to accompany the informal recreation towards the south and west of the appeal site is provided in the open space on the hillside, which preserves the views to the farm complex and in particular the listed oast house on the ridge. Thus, the detailed and well thought-out landscaping proposals for the site provide a development solution which respects and augments the existing landscape assets of the site.
35. To conclude, any sensible analysis of the landscape effects of the site demonstrate that it is suitable for residential development, and was properly selected for that purpose in the first stages of the preparation of the replacement Local Plan. The proposals will have little if any impact on visual amenity, and are provided within landscape of a character which is easily capable of absorbing the proposed change.

Urban design

36. The proposition that the BEIS site has been the subject of a suitable Design and Access Statement and is capable of delivering a high-quality urban design consistent with PPS1 is effectively uncontroversial. No evidence has been offered by any party to the Inquiry to suggest that the

material contained within the Design and Access Statement and Mr Thompson's proof is in any way at issue. Although not called, Mr Thompson's evidence does, therefore, provide a sound basis for the Secretary of State to conclude that an appropriate quality of design will be secured through the BEIS development.

37. For reference, the walk through the development provided in Mr Thompson's evidence at pages 14–17 illustrates how various elements of the design scheme provide a coherent solution for the site and fit comfortably together. The design works with the topography and across the contours to provide development which is accessible and reflects in terms of its detailed design the contemporary principles of the a clear division between public and private realm, together with appropriate natural surveillance to ensure that the development is secure by design.
38. An important principle of the development has been to respect the setting of the listed building, the oast house, within the farm complex on the ridge at the top of the site. Development has been carefully set below that building, and the view of the oast house and its cowl has been deliberately preserved through the provision of open space and a view corridor retaining and framing the picturesque building within views from the Framfield Road. The Design and Access Statement at page 27 contains a visualisation of this aspect of the development.

39. The development has been designed to ensure that there is appropriate and adequate provision of both formal and informal open space within it. There is a Leap which has been located so as to be a short walk from all of the homes which will be provided on the site. Thus, the development will provide appropriate amenity space within the public realm whilst at the same time providing a proper level of private amenity space for the enjoyment of the new residents.

40. The development design works with the framework of the existing vegetation so as to retain and enhance it through the landscape works which are proposed. The principles involve avoiding any impact on adjacent woodland but rather reinforcing and augmenting the planting around them so as to provide an attractive backdrop to the informal areas of open space around the site.

41. The Design and Access Statement makes clear that in terms of the palate of materials and elements of the individual design of dwellings, in accordance with advice from the local planning authority, the development will reflect the existing adjacent development of the New Town area of Uckfield. Within the illustrative material, there is at page 25 of the Design and Access Statement illustrations of the way in which the housing interfaces with the open space, together with examples of the design prompts which will be deployed in the final development proposals.

42. There can be no doubt but that the careful design work which has been undertaken by Mr Thompson will ensure that the proposals have both a robust structure and a distinct sense of identity whilst being well related in design terms to the neighbouring New Town area of Uckfield. There can therefore be no basis to reject the proposals grounded in the principles of urban design even at this outline stage of planning procedures.

Ecology

43. There is no objection to the Bird In Eye South site on ecological grounds from any of the responsible regulators. This means that neither the local planning authority nor Natural England nor the Environment Agency has any objection to these proposals. That is in stark contrast to the Downlands site, to which I shall return below.

44. It is fair to record that the Sussex Wildlife Trust remains an objector but, as is explained in Mr Meurer's proof, they object to all greenfield applications for development on principle. Thus, it is not a discriminating objection in terms of the detail of the nature conservation interests of the site. The other party which objects to the Bird In Eye South site on nature conservation grounds is Downlands. That is an objection made from a seriously substantial glass house.

45. The approach which has been taken to assessing the nature conservation interest of the Bird In Eye South site is one which is wholly consistent with the approach of PPS9. That approach is grounded in, firstly, accurately identifying and evaluating the nature conservation value of

the site. Having done so, and this is critical in relation to arguments which have been advanced at the Inquiry, the approach is then to seek to avoid any impacts arising. Following the avoidance of impact, there is then a consideration of appropriate mitigation. Only if impacts remain after mitigation has been applied is it ever appropriate to offer compensation. This approach is vital to a proper understanding and application both of policy and of sound nature conservation practice.

46. It is completely at odds with the approach taken at Downlands, which is to seek to select a site by creating substantial and unmitigatable impacts and then using the application of unrelated compensatory benefits to seek to outweigh the impacts unnecessarily created in the first place. It is the obvious nature conservation impacts which are created at Downlands which give rise to the need for a careful consideration of alternative sites. That consideration of alternative sites inevitably leads to the conclusion that, so far as Bird In Eye South is concerned, it comprises an entirely suitable site which is absent any material impact on nature conservation interests. The absence of nature conservation impact is assessed in the following paragraphs issue by issue.

47. Dealing firstly with ancient woodland, there are mapped outside the margins of the site areas of ancient woodland. PPS9 requires the decision maker to avoid the “loss or deterioration” of ancient woodland. That means that the decision maker must be satisfied that there would not be either direct or indirect impact upon the nature conservation interest of the ancient woodland. That is self-evidently an allusion to the

proposition that pressure from people using or accessing ancient woodland will inevitably lead to its deterioration. That is an obvious indirect effect which the guidance seeks to avoid.

48. In response to that common sense proposition, the proposals here are to avoid any impact by the provision of secure fencing to the ancient woodland areas coupled with buffer zones, typically in excess of 35 metres wide planted and provided to ensure that there is no access from people recreationally to the ancient woodland areas. At its narrowest, the buffering is 20 metres wide and easily capable of ensuring that access is avoided.
49. This sensible approach is supported by the Council, and precludes any opportunity for harm to occur to the ancient woodland areas, together with providing augmented woodland edges which will add to the interest and biodiversity of the site. Thus, all woodland in, on and around the site will be preserved, and new woodland will be planted. Light, noise, visual and recreational disturbance would be avoided through the provision of the very extensive buffers described. This not only secures the preservation of the nature conservation interest of the ancient woodland itself, but will also secure the interests of species currently using the ancient woodland or which may use it in the future.
50. The areas of the site proposed for development currently comprise grassland fields which are improved and horse-grazed. They are of little if any nature conservation value. Similarly, the areas affected by

development currently containing scrub and ruderal vegetation are equally of little or no nature conservation value. Of importance in this context is that there are no bodies of standing water or ponds on the site, and thus there is no aquatic ecology which could conceivably be affected by the proposals. The Framfield Stream runs outside the site and will be unaffected by the proposals. It is retained within the ancient woodland and will be unaffected by the development.

51. Turning to specific species, the site is wholly unremarkable and raises no issues in terms of the particular requirements of individual species, or, most importantly, any species protected by European law.
52. So far as badgers are concerned, there is a disused sett occasionally occupied as an outlier within the woodland to the west of the site. If it were to be lost and no longer occupied, this would not create any material impact on the interests of badgers around the site. Whilst there would be a loss of foraging habitat comprised in the grassland fields proposed for development, that impact is insignificant in the light of the extensive retained foraging areas around the site and in the wider countryside beyond the site. Thus, there is no impact upon badgers.
53. A comprehensive assessment has been undertaken in relation to the presence of dormice around the site, and they have been shown to be present within the woodland to the west of the site around the Framfield Stream. As such, they are unaffected by development, and the avoidance of noise, light, visual and recreational disturbance created by the

proposals to avoid any impact upon the ancient woodland will ensure that their interests are safeguarded. The augmentation of the woodland beyond the fencing to preclude access will provide further habitat for them to expand into, should they have the inclination to do so. Critically, there is no activity proposed as part of this development which would require licensing by Defra.

54. So far as bats are concerned, surveys have been undertaken which demonstrate that there are foraging and commuting routes for five species of bat¹, all of which are common. There has also been a comprehensive assessment in relation to bat roosts, and some have been identified south of the site and beyond the site boundary. None of the roosts is affected by the development proposals. The creation of wide buffer zones around the development and the exclusion of lighting from the periphery of it, coupled with the width of those areas and their continuity around the site, avoids the severance of any commuting or foraging route so that the interests of bats are wholly unaffected. Critically, again, there is no need for any licensing in respect of this species.

55. The bird assemblage on the site is unremarkable. The interests of birds would be enhanced, in effect, by the diversification of the habitats which would be provided as a result of the development proposals, and no one sustains any objection on the basis of impact upon birds.

¹ Pipistrelle, brown long-eared, Natterer's, noctule, whiskered/Brandt's

56. Comprehensive surveys in relation to the existence of reptiles have been undertaken at the site. These demonstrated that the site currently plays host to grass snake and slow worm, although the maximum count which was achieved in relation to the refugia which were placed on the site was three grass snakes and two slow worms. There has never been any suggestion, apart from Mr Colebourn, that this very limited reptile interest required a highly detailed approach to survey work that he failed to undertake in respect of his own site². Furthermore, given the very limited reptile interest within the site, the approach which has been taken to translocation coupled with habitat creation is appropriate, especially in the context that the development will provide for continuity and breadth of habitat across the site, so as not to compromise any movements within and across the site as a result of development.
57. As set out above, there is no standing water or ponds on the site. There is therefore no breeding habitat for any amphibians on the site. The Framfield Stream is not an appropriate habitat, given its condition and also the fact that fish are within it. As set out in the Comprehensive Ecological Assessment, there is no amphibian interest, and certainly no suggestion of any great crested newts either within or proximate to the site such as to give rise to any requirement for licensing. Thus, despite wild speculation on Mr Colebourn's behalf as clearly expressed in the evidence given by Mr Meurer, there is no basis for any suggestion that great crested newts are anywhere near the Bird In Eye South site.

² Namely, a 20-visit survey.

58. To conclude, the Bird In Eye South site is of very limited value to nature conservation. The approach that has been taken has been to avoid any impacts arising, and the mitigation offered has in effect the augmentation of the site to ensure that the balance in respect of nature conservation is carefully conserved.

Transportation

59. As is well known to the Inquiry, although initially there were reasons for refusal in relation to highways and transportation and in particular the impact of the proposals on the town centre, these matters have largely been resolved with the County Council. In essence, their position, as repeatedly described by Mr Boyle to the Inquiry, is that in principle they would prefer for the highways and transportation issues arising in Uckfield to be resolved through the forward planning process in the context of the Wealden LDF. Moreover, they retain that objection based upon distances and accessibility in relation to this site. However, on the basis that those matters do not trouble the Secretary of State sufficiently for her to refuse planning permission, an agreed package of measures is available, to which I shall turn shortly, which addresses any highways and accessibility issues and ensures that the site has no adverse highway impact. Indeed, it is clear that the package of improvements would provide for wider coincidental benefits for which the proposals should have credit.

60. Turning to the very narrow remaining objections in principle, the first is in essence an issue of prematurity. As has been set out above this kind of

objection is precluded by the provisions of PPS3. There is no sensible reason why, when a package of improvements has been agreed which ensures no adverse impact, this development should be held up simply so that it can be assessed through the process of the LDF. Such would be a triumph of process over substance, which is neither contemplated by paragraph 72 of PPS3 nor endorsed by any policy of the Secretary of State.

61. So far as accessibility is concerned, it is pertinent to compare this site with those which have been released through the Non-Statutory Plan process. In particular, for instance, the site on Eastbourne Road is further from all the services and facilities identified by Mr Walker with the single exception of the distance to a primary school. The comparison following the delivery of the Mallards Drive bus link past the hospital amounts to a difference of but 400 metres. Thus, taking Eastbourne Road, as is perfectly sensible, as a yardstick for acceptability, it is clear that these proposals pass that test, and the fact that the site is 400 metres further than that site from a primary school is not a sensible reason for refusing consent. Firstly, the 1.1 km distance is one which is readily walkable. Secondly, when one examines other areas of the town, it is perfectly clear that issues of accessibility will be a balance of different distances, and there are areas of the town which are clearly further from a primary school than this distance but sustainable nonetheless. The reliance by the Council on the IHT guidelines is of little avail to them. Again, there are many areas in the town that could not meet those guidelines but which nevertheless have sensible transport choices to

travel to services and facilities. Thus, neither of the remaining two narrow issues raised by the Council amounts to a sensible reason for refusing planning permission.

62. At a late stage the Council have taken a point in relation to the ownership of a small part of a corner of one of the fields within the BIES site. Quite rightly it is not raised as a ground for refusing consent per se: the Council simply ask that the Secretary of State be satisfied that the condition which requires the land to be used for the provision of the pedestrian/cycle link can be properly imposed. There is no doubt that it can for the reasons which have been set out in the correspondence from CMS Cameron McKenna on the topic.

63. In short this area of land had merely, probably by dint of some administrative oversight, been excluded from the land registered. It is not suggested by anyone to be in any ownership other than the owner of the BIES site and there is a wealth of evidence in the form for instance of statutory declarations which demonstrate the land had always been treated as part of the demise of the BIES site owner. Thus the tests for the imposition of a condition are clearly satisfied and in the event of planning permission being granted the link will be provided. It will remain in place because there is no basis for any suggestion that anyone other than the owner of the BIES site is the owner and controller of the land.

64. Proceeding, then, to the package of measures which have been agreed with the County Council as giving rise to an acceptable effect in terms of

highways and traffic, the detail of these contributions is, as set out in the Statement of Common Ground, WDC16. However, the essence of the position is as follows.

65. It is accepted on all sides that Uckfield has current and forecast problems in relation to traffic congestion within the town centre. There would inevitably be an impact upon that congestion wherever development was to be sited, as some of the traffic generated would need to move through the town centre network. Thus, in order to facilitate development, it is necessary for a proposal both to provide intermediate measures to create some capacity on the existing network to accommodate that development, and also to make a proper contribution towards the measures necessary to secure a final solution for the proposals. In the case of Bird In Eye South, those necessary measures have been agreed, and they fall into three main areas: firstly, the creation of headroom on the network; secondly, the measures specific to the site's development; thirdly, the contribution towards the town centre solution.

66. The headroom package designed to create additional capacity across the network to allow development to be commenced prior to the town centre improvements being delivered is a combination of hard and soft measures to create capacity for around 300 dwellings. These proposals, which comprise improvements to facilitate pedestrian and cycle movements together with enhanced public transport, are specifically designed to create a wider benefit for the whole of the community so as

to foster more sustainable travel modes and provide relief to the existing network. That can only be, it is accepted, a temporary solution, since permanent measures will need to be delivered. However, the headroom package has been analysed and detailed in the Statement of Common Ground, and it is accepted that it will work so as to enable the development to commence in advance of the programmed town centre improvements.

67. The development itself will also deliver a package of measures. Firstly, there are DDA and accessibility improvements to the Framfield Road.
68. These physical measures will improve the quality of the pedestrian environment within the Framfield Road, and ensure that it is readily accessible to wheelchairs and pushchairs. Although criticism has been made of these proposals, it has to be recalled that they are addressing an existing rather than a completely new route. They will provide a safe and convenient route from the sites into the town centre. The proposers of Downlands have raised concerns in relation to the absence of footway between the vehicular access to the site for a length of the road running down Bird In Eye Hill. That objection is wholly misconceived. It completely overlooks the actual proposed dedicated pedestrian and cycle access, which is more conveniently located than the vehicular access for pedestrians and cyclists seeking to access the town centre. For them to use the site access in the case of Bird In Eye South would involve a circuitous route and a trip back on themselves in order to access the

town centre. By contrast, the dedicated pedestrian and cycle route is on an alignment which follows the desire line towards the town centre.

69. In addition to these measures, the existing issues in relation to residents' parking on Framfield Road will be addressed by the implementation of a residents' parking scheme. Such an approach is one which is readily acknowledged to bring benefits to existing residents experiencing the kind of problems described by residents at the Inquiry, namely commuter parking outside their dwellings. This rationalisation of parking and prioritisation of on-street parking for residents will be beneficial in order to reduce existing problems for residents in securing on-street parking.
70. Lastly, in association with the Mallards Drive development, there will be a bus and pedestrian link provided adjacent to the hospital which will improve pedestrian accessibility to the primary school from the site as well as providing for a circulatory bus route with wider benefits in terms of transport choice for the whole of the town.
71. The final element of the agreement with the County Council which has enabled virtually all of their objections to be removed is the substantial contribution which is being made to the solution of the town centre problems. It is a mischievous fallacy for the proposers of Downlands to suggest that the town centre solution is the "gynormous gyratory" and that alone. The issue is that the ultimate solution in terms of the congestion in Uckfield town centre has yet to be arrived at. However,

what is clear from the modelling work is that there are physical improvements which are capable of providing relief to the town centre in the future so as to accommodate the totality of the development. That scheme has not yet been designed and has only been modelled so as to provide some understanding that there may be physical measures which are available. So as to avoid the frustration of these schemes, the County Council has quite properly identified a range of potential solutions comprising both hard and soft measures to which this site makes a substantial contribution. The final means of delivering the solution will be within the hands of the County Council, and they already have a substantial pot of money towards providing the scheme.

72. This is a further aspect of benefit from the Bird In Eye South proposals. The grant of planning permission for Bird In Eye South would facilitate a contribution, thereby bringing closer the achievement of town centre traffic relief for Uckfield. That is a clear and material benefit of these proposals alongside the other physical highway works and contributions towards public transport, which mean that this proposal brings with it significant material coincidental benefits for the wider community, encouraging the view that the grant of planning consent is an appropriate decision.

Downlands

Landscape

73. The Downlands site is completely and utterly unsuitable for residential development in landscape terms, whether assessed by itself or in

comparison with the Bird In Eye sites. The objection raised by the Council to the site on this basis is sufficient in and of itself to be an end of their prospects at appeal.

74. Whilst there have been methodological disputes between the landscape architects as to the appropriate basis for assessment, it is probably unnecessary, for the reasons I shall explain, to completely resolve that dispute. That is because of the serious failings on the face of Mr Russell-Vick's assessment. It is the frailty of his judgement which is the key issue in this case rather than any iconoclastic disputes as to the appropriate approach to assessment. Nevertheless, for the record, we remain firmly of the view that any assessment process has to factor in expressly and transparently the sensitivity of the viewpoint from which the view is being obtained. Only by doing so is it possible to fully appreciate both the judgement which is being exercised and also the relative weight and importance of the views which are being affected.
75. The analysis in these submissions follows the approach taken in the evidence, namely to look initially at issues related to landscape character and, subsequently, matters associated with visual impact.
76. The assessment of landscape character has to start with an understanding of the settlement form of Uckfield and the relationship of the Downlands site to it. As is clear from the maps depicting historic development of the town, Uckfield started from the river valley floor and is essentially contained within that valley. Figure PRV4 shows how the historic

development of Uckfield has been retained within the ridge lines surrounding the town and containing the river valley.

77. Particularly conspicuous within this plan is the ridge line which runs down and along Snatts Road containing the town to the east. The effect of allowing the Downlands development to proceed would be to permit Uckfield to spill out of the bowl within which it sits and to spread out and down the outward-facing slope of the site which is wholly unrelated to the town. This has clear implications, to which we shall return when considering the questions of visual impact. However, what is plain in terms of settlement form is that the development proposed breaches the natural confines of Uckfield, marching down the outward-facing slope without any physical relationship to the historic context of the town. It rolls over the landscape with a character wholly unrelated and unaffected by the urban area, and is not a proposal which is properly related at all to Uckfield and its historical evolution.
78. Mr Russell-Vick has two propositions to attempt to mitigate this. The first is his contention that the Downlands site will be somehow perceived as a new community and, making a virtue of necessity, that it is appropriate for it to appear unrelated to Uckfield as, in effect, a “new settlement”. That, however, is not a sensible response in respect of a proposal which is supposed to be designed to meet the needs of Uckfield. Its physical divorce from the rest of the town creates a key planning disadvantage for this proposal.

79. His second answer is to say, as he did not several occasions, that the development has a minimal impact “for a development of 750 houses”. This was Mr Boyle’s “Queen Mother” point. It is to set the development totally the wrong test. The issue is whether or not the landscape character and the visual quality of the site is suitable to accommodate residential development. Even if Mr Russell-Vick’s test were the test, this site would conspicuously fail on the basis of its unacceptable relationship with the historic morphology of the town, coupled with the fact that it will be conspicuous in views from the north and west.
80. These issues of settlement morphology arise before a consideration of landscape character. It is clear that the nature of the landscape to the north and west of the town is materially different from that south and east. Snatts Road, quite apart from being a topological barrier, also marks the break at the north west of the town between the settlement and the wider character of the Downs landscape of rolling wooded hills passing off to the north. Again, the effect on landscape character of the Downlands proposal is wholly unacceptable, since it trespasses into this landscape character, which is obviously sensitive to change. As such, it is unsuitable to accommodate development of the kind which is proposed.
81. As set out above, the fact that the site runs across an outward-facing slope also has serious implications in terms of its suitability visually to accommodate this development. The zone of visual influence presented by Mr Russell-Vick in PRV3 shows the vast expanse of the wider

countryside from which the site would be viewed. However, this somewhat clinical exercise masks the nature of the those views and their sensitivity.

82. Many of the views which would be obtained from the north and west of the site back towards development are views obtained from the AONB in the Ashdown Forest. Those views are obviously highly sensitive, firstly because of the national designation which the AONB enjoys. It is a designation which arises precisely because of the importance of the visual aspect of the landscape in these locations and their sensitivity and need for them to be protected. Furthermore, the viewpoints are especially sensitive, even within the AONB, because they are from popular beauty spots used by both local people and tourists to experience the beauty of the surrounding area.
83. In these views from very sensitive locations, the scale of the development and its nature will make it both clear and obvious. Mr Russell-Vick's view 1 from the Ashdown Forest is a case in point, where at present one could be forgiven for thinking that there was no development at all between the viewer and the horizon. That is part of its charm and beauty. The Downlands proposal will introduce for the first time a substantial volume of residential development which will be clearly obvious because of its incongruity within the view, and will blight the pleasure currently to be obtained from this position.

84. A similarly expansive view from a highly sensitive location is the view represented by Mr Russell-Vick's view 8 from Maresfield Recreation Ground. This location is sensitive because it is a place to which the public have recourse for pleasure and recreation as well as sporting activities, no doubt in considerable numbers. At present, in common with the view from the Ashdown Forest, there is little evidence at all of the presence of Uckfield. It is contained behind the ridge running along Snatts Road. From this viewpoint, views of substantial quantities of residential development will be introduced, spilling over the ridge and down the slope, obvious and conspicuous by virtue of its incongruity in the view, undoubtedly having a very substantial impact.
85. In assessing the visual impact upon these views, it is of course essential to have regard to the way in which the development is proposed to be formed and any mitigation which might arise. This can be dealt with simply. Firstly, so far as the development form is concerned, the Design and Access Statement illustrates that the proposal is for the tallest development to be located in the village centre on the top of the hill. It also shows that the high-density development is to occur crowning the top of the slope. Thus, the only sensible conclusion is that the development has been designed in order to create the most intense and conspicuous visual impact within these views.
86. So far as mitigation proposals are concerned, Mr Russell-Vick's proof is clear that they do not propose that tree planting would provide any material screening or mitigation of the views of the development. Thus,

there is no mitigation for this highly incongruous and conspicuous visual impact.

87. We have no visualisations of viewpoints 1 and 8, although given the nature of what is occurring it is easy to imagine the effect. To assist, however, we do have a watercolour visualisation of the view from Batts Bridge, Mr Russell-Vick's view 5, which shows the nature of the effect. The visualisation demonstrates housing crowding the ridge and planting being wholly ineffective to preclude or filter the substantial impact which the development would have. Thus, coupled with the significant impact on landscape character and settlement form, there is associated with the Downlands site a very serious visual impact.

88. As set out at the beginning of this section, the real criticism here has to be of Mr Russell-Vick's assessment, contrary to all other landscape architects at the Inquiry, that Downlands can be regarded as an appropriate site in landscape terms. The quality of his judgement can be tested by placing it in the context of the objections which he raises to the Bird In Eye South site. As I put it to him in cross-examination, he can be calibrated by the contrast between his assessment of views of the Downlands site and those of the Bird In Eye South site. That contrast leads inexorably to the conclusion that Mr Russell-Vick is in serious need of recalibration.

89. We will take for these purposes two examples. The first example is the contrast between two views, both of which Mr Russell-Vick regards as

having a negligible landscape impact. The first view is his view 1 from the AONB in the Ashdown Forest, where large-scale residential development will be introduced for the first time into a highly sensitive viewpoint. Astonishingly, he regards this as having a negligible impact. He compares it in the context of Bird In Eye South to his views 21 and 22. Taking those views to hand, what they show is that the Bird In Eye South site is essentially invisible, and even Mr Russell-Vick claims that only street lighting will allegedly be seen. That is put in issue but, even if correct, the existence at a distance of slim grey lampposts is by no means a sensible comparator to the introduction of 750 houses in a direct view from the AONB.

90. The clue to Mr Russell-Vick's desperate need for recalibration can be found in his own definitions and his completely unaccountable application of them. The definitions are set out within his main proof at paragraph 8.1, page 32. He defines negligible as: "Only a very small part of the proposals is discernable and/or they are at such a distance that they are scarcely appreciated. Consequently they have very little effect on the scene".

That definition is one which simply cannot be sensibly applied to viewpoint 1.

91. The second example is to take two viewpoints from which Mr Russell-Vick has concluded that the impact on the landscape is slight. In the Downlands context, such a view is view 8 from Maresfield Recreation

Ground. I have described above the nature of that relatively close view of the site, currently with a backdrop formed by the landscape and woodland on the site, to be seriously and significantly blighted by the introduction of large-scale development.

92. This compares in the Bird In Eye South context to viewpoint 20, which is a view across the existing urban area which fills the foreground to a minuscule view of a small part of the Bird In Eye South somewhere in the distance. It is in fact very difficult to discern where on earth the Bird In Eye South site is from these locations. Again, something has gone very badly wrong. There is a necessity to go back to the definitions to try to understand how this incomprehensible comparison could have arisen. Turning back to Mr Russell-Vick's definition of slight impact, it provides as follows:

“The proposals constitute only a minor component of the wider view which might be missed by the casual observer or receptor. Awareness of the proposals would not have a marked effect on the overall quality of the scene.”

93. Again, it is impossible for that definition to be sensibly applied to viewpoint 8. The Maresfield Recreation Ground would be dominated by the new development filling the view, far from being a “minor component”.
94. Thus it is that Mr Russell-Vick's evidence and analysis has fallen very seriously into error. Once his evidence is recalibrated, even applying his

own definitions, the substantial impact of the proposals becomes apparent, and its complete unacceptability in landscape terms is rendered obvious.

Ecology

95. In addition to the devastating effects upon nature conservation which would occur if the Downlands development were to proceed there are critical legal reasons excluding the possibility that planning permission could be granted for the scheme. These relate to the legal principles in respect of Environmental Impact Assessment and the legal framework for the granting of licences for work affecting protected species.
96. So far as the Environmental Statement is concerned there is obviously no doubt but that the Downlands proposal requires an environmental statement. As such Regulation 3 of the 1999 Regulations precludes the grant of consent unless it is accompanied by a valid environmental statement. There is therefore a duty upon you and the Secretary of State to examine whether in the light of the evidence at the inquiry there is a valid environmental statement for the development.
97. Subsequent extremely well known case law governs the correct approach to the assessment of the validity of the environmental statement. The first is the very well known case of Berkeley v Secretary of State for the Environment [2001] 2 AC 603. This case establishes that the document must be complete and self-contained. Substantial compliance, for example through the provision of material in reports or proofs of evidence at a public inquiry will not do: that is the kind of

paperchase which the legislation and the European Directive was designed to avoid. The absence of a request under Regulation 19 for further information is irrelevant in the light of this authority. The duty is on the Appellant to ensure that the appeal is accompanied by a valid environmental statement.

98. The second case is R v Cornwall County Council ex p Hardy. This establishes that in relation to important environmental effects, such as the impact on protected species, the assessment of that impact cannot be postponed by condition to subsequent stages after the grant of consent. They must be addressed in the environmental statement as part of the consenting process. Copies of both of these very well known cases accompany these submissions.
99. Turning to licensing, the requirements of the Habitats Regulations are fully set out in Circular 06/2005. This makes clear that a licence can only be granted if it is in the over-riding public interest, there is no satisfactory alternative, and the species affected will be maintained at favourable conservation status. The circular also makes clear, in paragraph 116 that whether or not a licence could be granted should be considered now and not left until after the grant of permission.
100. From their representations it is clear that Natural England are not satisfied that the proposals could be licensed and have not been provided with the information to enable them to tell the Secretary of State that the licences required for the Downlands scheme would be forthcoming. For

the reasons which will be explored below the inability of the Downlands scheme to achieve a licence for the works which are required affecting protected species is a complete show-stopper so far as their appeal is concerned. It renders it hopeless and entirely without merit.

101. Turning to the issues on the evidence the first aspect to be considered is the impact on ancient woodland. This is obviously a scarce and irreplaceable habitat. Mr Colebourne's repeated assertion that the scheme does not involve any loss of ancient woodland is completely incorrect. The access proposals will lead to the direct loss of ancient woodland in unit 7.1. There will be direct loss as a result of the construction of the pedestrian links through Longwood Gill and Shermers Reed Wood. There would be direct loss of ancient woodland as a result of the construction of the link to the northern parcel of development. This is all in clear breach of paragraph 10 of PPS9 which precludes the loss of ancient woodland as a scarce and irreplaceable resource.

102. Paragraph 10 of PPS9 also refers to the indirect losses being avoided. These can arise as a result of the introduction of pressure from people to the areas. Although Mr Colebourne sought in his oral evidence to suggest that managed access would cause no harm he had obviously at that stage forgotten what he had said in his first proof at paragraph 5.12 about the damage that access to these fragile habitats would cause. He had also forgotten the clear terms of the Environmental Statement in this respect in Vol 1 paragraphs 6.252 and 6.253. His oral contention that

ancient woodland is a robust habitat is therefore contrary to PPS9, the ES and his own proof.

103. In any event the suggestion that managed access can be achieved at the Downlands site is equally untenable. Fencing cannot be sustained as a means of containing people when it will be clearly breached by the many paths running across and through it as part of the access strategy. Moreover as has been pointed out by others the proposals will introduce recreational pressure not simply from the development but in fact from the whole of Uckfield. This completely explodes Mr Colebourne's myth about the "educated visitor" coming to the woods for a spiritual experience.

104. The inquiry heard direct evidence from those actively engaged in the management of area of this sort in the Uckfield area of the problems which are associated with the provision of access to the public. There will of course be responsible visitors. But there will also inevitably be irresponsible ones, who can and do cause damage to these ecological resources. In fact even well meaning access, for instance with dogs, can cause serious impacts on the integrity of the habitat.

105. Whilst reliance is placed on buffer strips on this site their use cannot be straightforward. That is because of the range of interests that they have to accommodate. They have to consist of thorny plants to exclude people, but at the same time have clearings for the reptiles using the site. They have to allow badgers and amphibians to move through them but at

the same time exclude cats and small children. Notwithstanding the obvious incoherence and inconsistency of these requirements nowhere have these buffer strips been illustrated and described in the evidence or the environmental information. Perhaps the obvious answer to this is that it is simply not possible to do so.

106. In fact the information in the Design and Access Statement contradicts the evidence in relation to the buffer strips. It shows no buffering around the school or the housing areas in the detailed illustrations. Where it illustrates housing overlooking woodland it does not illustrate the buffer strips. In reality, like so much of the Downlands case in relation to nature conservation it is not explained, illustrated or proved. It is an evidence free approach which at every turn relies on Mr Colebourne's repeated assertion that it will be all right on the night. Given the wealth and complexity of the nature conservation interest at the site this is woefully inadequate.

107. The case is a complete catastrophe when it comes to the pedestrian walkways directly through the ancient woodlands linking the parcels of residential development. These are regarded by Mr Russell-Vick and the Design and Access Statement as being vital to the urban design and access strategy of the scheme. As set out above these links have a direct and devastating effect on the ancient woodland at Longwood Gill and Shermers Reed Wood. They will require support from piling driven directly into the woodland floor, but there is no idea where this will occur or what the impact on existing trees and the surrounding habitat

may be. They will have to be lit, but again that obvious detrimental impact is unknown. They are, as designed, unsafe as they have no means of escape. When this was pointed out to Mr Russell-Vick he agreed this was a problem but suggested that there could be some means of access down into the Gill. This was of course directly contrary to the evidence given by Mr Colebourne who was keen to avoid any direct access to the Gill. None of this has been thought through or properly analysed and in fact this woolly headed approach gives rise to serious and substantial impacts upon habitats which preclude the use of this site for residential purposes.

108. Thus for all these reasons the Downlands scheme has major direct and indirect impacts upon ancient woodland which is clearly contrary to national and development plan policy which seeks to protect this nature conservation resource and protect it for future generations. This is without taking into account the indirect effects on ancient woodland in parcels 6.2 and 6.4 which Mr Meurer considers ancient woodland and Natural England regards as an important biodiversity resource. They impacts which should, in accordance with planning policy, be avoided before there is even any attempt at compensation. The difficulty for the proposers of the Downlands scheme is that they cannot be avoided other than by simply refusing consent.

109. I turn now to consider the multiplicity of impacts on particular groups of species. These impacts are interconnected, and underline the difficulties in relation to the site.

110. The first group of species to be considered is amphibians. Clearly, great crested newts are a headline species so far as this group is concerned because of their European protected status. They are, because of that, of critical importance in relation to licensing. However, it is important to appreciate that this site, in addition to hosting this very important species, provides habitat and breeding opportunities for frogs, toads, smooth and palmate newts in significant numbers.
111. The proposal has a series of serious impacts upon the interests of these species. First and foremost, there will be a direct loss of ponds which support great crested newts, if Mr Colebourne's amendment to avoid the loss of Ancient Woodland is contemplated. Obviously, that alteration has no status in terms of the Environmental Statement, and its environmental impact, namely the loss of great crested newt breeding habitat, has not been assessed. However, not only is there this direct loss of breeding habitat but the impact of the proposals is to give rise to severance and fragmentation of habitats currently used by and supporting amphibian populations. This point can be eloquently demonstrated by reference to Mr Colebourne's supplementary rebuttal proof, Appendix SU15. What this plan shows is that on all of the dispersal routes within and across the site the development proposes roads and other ancillary development which severs those routes.
112. The answer which has been proposed in respect of that severance and fragmentation, namely the provision of tunnels, is a wholly unproven hypothesis. As Mr Colebourne accepted in cross-examination, if the

tunnel provided under roads is to be at all useful, it will require the animals to be corralled into it through the use of tunnels. However, it is entirely unclear how that can be achieved, given the complexity of the development's design. In the absence of impermeable fencing to herd the amphibians towards the tunnels, they will have to take their chance crossing roads and travelling through development.

113. Moreover, there is no illustration to explain how the different requirements of the different species groups which are intended to use these tunnels can be accommodated. For instance, to be attractive to amphibians it would be expected that the tunnels would be damp and wet. By contrast, those conditions would be unattractive to the reptiles which, as we shall see, are expected to use these tunnels. Furthermore, the danger of using fences to corral the animals is that those fencing arrangements can also constitute a trap for the amphibians, trapping them within the development and forbidding them from using the crossings provided.

114. In addition to this critical impact created by the fragmentation of the habitats across the site, there is an obvious loss of foraging habitat which comes under the footprint of the development. This foraging habitat is, of course, proven to support a significant number of amphibians, and is therefore of significant value.

115. The Environmental Statement confirms that the works which it contemplated (which exclude the extinguishment of breeding ponds for

great crested newts) will have to be licensed. Unfortunately, for reasons which I shall explain below, they cannot be obtained because of course there are alternative sites such as the Bird In Eye South site which do not require any licensing.

116. There will in addition be indirect effects which commonly arise from the co-location of housing with great crested newt ponds. It is well known that, as explained by Mr Meurer, great crested newt breeding habitat adjacent to housing development is frequently afflicted by the introduction of fish that eat the great crested newt larvae, rendering the ponds unsuitable for them. No amount of management is going to preclude this, and the solution suggested of regularly draining the ponds means that the cure is worse than the disease. The proper approach is to avoid the impact at all by precluding the development of housing adjacent to these significant ponds.

117. Turning to the question of reptiles, as is well documented the Downlands site plays host to four out of the six British species of reptile. This is an assemblage which, coupled with the amphibians, is accepted to meet SSSI criteria for designation, and is thus of very high value. It is no answer to that to suggest that there are other areas nearby which are of similar status and that is why this site has not been designated. The fact that it fulfils the criteria is a measure of its significant value. The fact that there are other significant sites in the area shows that there are important meta-populations of reptiles which need to be safeguarded. It is also a site which is clearly highly valued by national and local experts,

and the Inquiry had the privilege of hearing from Professor Trevor Beebee, one of the country's leading herpetological experts, together with representatives of the Sussex Herpetological Society.

118. Although we can be confident of all four species being present on the site, there is no reliable evidence in relation to estimates of population. It would have been necessary for 20 visit surveys to have been undertaken for a reasonably reliable population estimate to have been made, and this has simply not been done. It follows that the evidence provided by Mr Colebourne in relation to his assertion that the adder population is in decline is simply unjustified speculation. Similarly, we have no empirical information as to the way in which reptiles move across the site. However, as Mr Colebourne accepted, on the basis of the 2003 and 2007 survey results, it is reasonable to assume that they are in effect travelling across and using the whole site.

119. It is in that context that the impacts upon this group of animals arise. The impact is in many respects very similar to that which will be experienced by amphibians. Firstly, there will be a clear severance of their movement routes across the site. As for amphibians, what SU15 demonstrates is that each and every area across the site will be severed by roads and other development, and movement will thus be imperilled and precluded.

120. The solution which is proffered in that regard, namely the provision of tunnels under the roads, is a wholly unproven hypothesis. The evidence

demonstrates that there are no examples of reptile tunnels being actually used by reptiles. Indeed, the first such tunnel was installed in December 2007 and thus there is no empirical or scientific basis to assume that they will work. This leaves the reptiles having to cross the road, obviously giving rise to hazard in terms of injury and death, together with the disturbance and distress which being forced to use roads would give rise to. The alternative is of course a deterrence, meaning that reptiles will in fact never use the sites or the tunnels, and, in addition to the loss of high-quality habitat which would be removed from the site, reptiles will effectively be excluded from it.

121. This loss of high-quality habitat is for reptiles is another significant impact which arises as a result of the Downlands development.

122. The proposals in respect of reptiles are, as can be seen from the Environmental Statement, that they should be captured, removed and excluded from the development site for the duration of construction. That is for a period of six years and, whilst Mr Colebourne appeared oblivious of the phasing proposals, an examination of them makes clear that in effect it will be necessary to exclude reptiles from the whole of the site over that period. They are to be translocated to an area which is already well populated with such animals, supporting all four of the reptile species to be found on the site. No investigation appears to have been undertaken about carrying capacity and, as set out above, there is no information as to reliable population estimates. Thus, it is clear that

all of these impacts arise without any sensible mitigation, and certainly without any compensation in nature conservation terms.

123. As Mr Colebourne agreed in cross-examination, there is in effect no benefit to reptiles as a result of these proposals. In fact, there is serious detriment through the removal of high-quality habitat, the exclusion of reptiles from the site owing to the severance and fragmentation caused by the development, and their removal to an area which is already well used by reptiles. Thus, this site, which is of SSSI standard, will be effectively extinguished as a habitat for reptiles, leading to a significant and serious impact.

124. The next species affected by these proposals is another European species, namely dormice. It is undoubted that there are dormice on the site, especially within the woodland areas to the west of the site between the development and the A22. There will again be impacts on habitats which support this species. That is indisputable because the Environmental Statement accepts that there will be a need for licensing as a result both of the loss of dormouse habitat and also as a result of its fragmentation.

125. The impact on this species will again arise through the fragmentation of its habitat. This will occur by the introduction of extensive tracks of access slicing through the woodland, introducing lighting, noise and disturbance to areas that are currently unaffected. There is again nothing beneficial in this scheme for dormice; only impacts and speculative

mitigation. The principle of avoidance simply is not and cannot be engaged.

126. This is another European protected species for which it will not be possible for the promoters of Downlands to obtain a licence. A licence cannot be in prospect because of course there are other sites which are available, namely the Bird In Eye South site, which are alternatives to meet the need which do not require or cause impacts such as the loss of habitat for these species.

127. Lastly in this respect, I turn to bats. Again, these are another European protected species the subject of significant impact as a result of the Downlands proposals. What can be recorded as beyond dispute in respect of the evidence in relation to bats is as follows. Firstly, the Downlands site plays host to a very substantial number of the bat species present in the UK. Secondly, there has not been a comprehensive survey of all the trees around and within the site to establish whether or not there is any impact on bat roosts. Thirdly, the site is well used by the wide range of species which exist in and around the Downlands site for foraging and commuting activities which have been mapped as a result of the bat surveys.

128. When the master plan of the Downlands development is examined it becomes clear that, far from providing wide buffer strips around but not severed by development, the Downlands proposals, as exemplified on plan SU15, will lead to the severance and compromise of most of the

foraging and commuting routes currently used by bats around the site. Furthermore, whilst Mr Colebourne said that it would be impractical to survey the site for bat roosts, that is no answer to his failure to properly assess the environmental capital of the site. It is simply not true to say that it cannot be done. The issue may well be one of cost, bearing in mind the extensive wooded areas within the Downlands site, but that does not make it impractical but just expensive. What it leaves is the potential for very significant impacts on bat roosts which would require licensing which are currently completely unknown. This issue, namely the failure to survey for bat roosts, as acknowledged in the survey report within volume 2 of the ES, is especially important in respect of the commuting routes through Longwood Gill and Shermer's Reed Wood which will introduce lighting and disturbance into areas used by bats and currently wholly undisturbed.

129. A classic example of the incoherence and half-baked nature of the Downlands proposals is the instance of the bus and emergency access link passing between the site and Snatts Road towards the north-eastern corner of the site. This proposal is completely absent from SU15. When this was pointed out to Mr Colebourne and he was invited to consider its effects, because of the obviously catastrophic impact that a lit road through this area would have on the identified bat commuting route, he insisted that it would be subject to low-level lighting. He had to provide that answer because the Environmental Statement is predicated on the basis that:

“New roads will sever foraging areas and commuting routes”,
and

“These areas should not be lit unless absolutely necessary; if
lighting is required it should be restricted to low level downward
facing bollard lighting”³

130. We now know from Mr Brown that in fact this bus link will be a substantial piece of infrastructure, and will require proper standard highway lighting which will be provided so that there would not be any dark areas and a constant level of illumination would be in existence along the road. This is of course complete anathema so far as the ES is concerned, as well as providing a devastating impact on this bat commuting route. What it demonstrates is, firstly, the wholly incoherent and ill thought out nature of the Downlands case; secondly, the clear conflict which repeatedly emerges between the interests of nature conservation and the requirements of the development and, thirdly, that the requirements of the development will inevitably have to prevail because of the requirements, for instance in this case, in respect of road safety. Thus, the creeping urbanisation of the area has a significant impact.

131. Therefore, although there has been debate about the frailties of the surveys and their extensiveness, these issues are simply illustrative of the unacceptability of the Downlands scheme. Taking the Downlands

³ Bat survey report ES volume 2, section 6, page 22, para 6.2.6

surveys at face value, the information that they provide about commuting routes clearly conflicts with the development, and the absence of information in relation to roosts means that the extent and nature of the impact on bats and the requirements for licensing are wholly unknown. Thus, there is a significant impact arising from this site in respect of bat conservation.

132. These paragraphs have demonstrated the substantial impacts which arise on the interests of ecology as a result of the Downlands proposals on the merits. These are more than enough individually or collectively to lead to the demise of the appeal. There are, however, in addition, insurmountable legal obstacles to the grant of consent.

133. Starting with the Environmental Statement, as set out above that document has to be complete, accurate and not reliant upon a paper chase through other proofs and documents in the Inquiry. On analysis, the Environmental Statement produced by the Downlands team is, in terms of nature conservation, horribly incomplete and wildly inaccurate both internally and when compared with the evidence. The points which arise are as follows.

134. Firstly, as explored in cross-examination of Mr Colebourne, the Environmental Statement in volume 1 is wholly inconsistent with volume 2 as to the character of vegetation parcels 6.2 and 6.4 in respect of the number of Ancient Woodland indicators. Volume 1 suggests that

there are no Ancient Woodland indicator plants in unit 6.2, whereas volume 2 accepts that there are.

135. However, the error is compounded by the fact that the information in volume 2 (which does not include any survey data notwithstanding Mr Colebourne's criticisms of others in respect of survey data) is as a summary of the nature conservation value in number of Ancient Woodland species in parcels 6.2 and 6.4 wholly and utterly wrong. Once these areas were properly surveyed in the spring of this year, it became perfectly clear that they actually contained an above-average number of Ancient Woodland indicator species when measured against the other parcels of Ancient Woodland designated on the Sussex inventory. This leads to the conclusion that either the Environmental Statement is gibberish or it arose from completely incompetent survey.

136. What this demonstrates is that it is impossible for the Secretary of State to have confidence in any of the survey work which has been undertaken when such graphic errors can have been identified in this instance. Moreover, the Environmental Statement does not in any way reflect the view of Natural England that both of these areas are of highly significant nature conservation value.

137. Remaining with the theme of Ancient Woodland, the Environmental Statement is also confusing and incoherent in relation to the approach which it takes to mapping the Ancient Woodland. It is clear that maps 6.1 and 6.2 are inconsistent with each other and confusing, and

that the text provides little if any explanation for the disparities between them. However, more crucially, neither of them in fact reflects the Appellant's own case as to the true position in respect of Ancient Woodland. In fact, his case, following more competent evaluation (albeit not accepted as being the accurate position) is as set out on plan SU13 in his supplementary rebuttal proof.

138. Thus, in order to find the starting point in relation to the environmental capital of the site so far as Ancient Woodland is concerned, we have to embark upon what is specifically excluded by the decision in Berkeley, namely a paper chase through the proofs of evidence, to try to understand what the Appellant's case actually is. This new case, not the subject of Environmental Assessment, is materially different from that which was the subject of Environmental Assessment. For instance, its approach to unit 7.1 is significantly different. This was not identified at all within the Environmental Statement as Ancient Woodland, although now, even on Mr Colebourne's case, there is an area of Ancient Woodland within that parcel. The artificiality of that approach is immediately apparent from an examination of plan SU13. However, even on his own case, he accepts that there is an impact upon the Ancient Woodland within this parcel as a result of the access junction proposed to the development. Currently, there is no illustration to explain the extent and nature of that impact, and it is one which requires careful examination in three dimensions which has not occurred.

139. Furthermore, the Environmental Statement is lacking in its failure to identify unit 9.1 as Ancient Woodland when it is on the inventory, and no sensible explanation has been provided or survey work commissioned to demonstrate why it is not Ancient Woodland. Finally, of course, the area of Ancient Woodland now identified by Mr Colebourne and directly affected by the Snatts Road Link is nowhere identified in the Environmental Statement or evaluated. Thus, the Environmental Statement is wholly deficient in respect of its assessment of Ancient Woodland.

140. This incompetence extends further to the impacts upon Longwood Gill. Longwood Gill, as a piece of Ancient Woodland, is a critical part of the environmental capital of the site. As explained and accepted by Mr Colebourne, gill woodland is especially valuable because, owing to its topography, it is likely to have been wholly untouched throughout its life. In particular, it is precious and sensitive as a result of its dependence on the hydrological or hydro-geological regime around it. That is a wholly uncontroversial statement, because it was accepted by Mr Colebourne in evidence, and it is clearly stated in the Environmental Statement.

141. The Appellant's advisers in volumes 1 and 2 of the Environmental Statement at chapters 6 and 8 make clear that the continued survival and quality of Longwood Gill depends critically both on the maintenance of overland flows of water into the stream at its heart and also on the maintenance of water flowing underground through the geology to serve

springs which fill that stream. The hydrologists who were commissioned by the Appellants to provide advice were clear that bore holes were needed in order both to prove the geology within the currently wholly unaffected catchment of Longwood Gill stream and also the permeability of the geology, so that the maintenance of SUDS drainage proposals could be proved.

142. None of this has been done, and there is no calculation, assessment or evidence to demonstrate either that a SUDS scheme can be provided or that any other kind of scheme can be provided which would maintain the current flows and chemical quality of water feeding the Gill. Thus, there is absolutely no evidence at all to demonstrate that the ecological qualities of Longwood Gill can be preserved when its currently wholly unaffected catchment is covered by urban development.

143. Furthermore, we learned for the first time in re-examination of Mr Tustain that in fact the whole of the area comprised in the catchment was to be totally regraded during phase 1 of the development. You will search high and low in the Environmental Statement for any such suggestion as part of the development proposals. Moreover and obviously, the impact of that on the critical catchment for the Gill has been completely omitted from any assessment of environmental effects. This is another critical gaping void in the Environmental Statement.

144. The felony of the Environmental Statement is further compounded by the wholly ambiguous status of the Design and Access Statement which

lies alongside it. Mr Russell-Vick was keen to promote that document as being definitive, and one which had been prepared to demonstrate an exceedingly high quality of development “without the pressure of the board room”. By contrast, when the clear conflict between the development as described in the Design and Access Statement was drawn to the attention of Mr Colebourne, that document became nothing more than merely illustrative and of little weight or value. The conflicts between the development described in the Design and Access Statement and the nature conservation interests of the site arise in the following ways.

145. Firstly, they can be illustrated by the absence of the portrayal of any buffer zones either around the school or around the development parcels illustrated in detail in the Design and Access Statement. Secondly, they arise in relation to the location of the school and the provision of high-density development within the catchment for the Gill. This is a further example of the incompetence of the Environmental Statement.

146. The absence of a competent Environmental Statement, for these and other reasons, is of course a complete bar to the lawful granting of planning consent. The other legal matter which needs to be addressed is the licensing regime. That has to be addressed at the stage of granting planning permission, and the onus is on the promoter of the development to demonstrate that a scheme is available to the developer capable of being licensed after the grant of planning consent. As set out above, this

is not possible for Downlands, and thus the absence of licensing completely frustrates their development.

147. We know that licensing would be required and, as Mr Colebourne was forced to accept, the Downlands site is the only site for the Inquiry which clearly and unambiguously requires species licences to be obtained. It is not possible for the Downlands proposal to pass the licensing tests. The only overriding public interest which they rely upon is the provision of housing, and we know that there are two other sites that do not require licensing which could meet that need. There is no suggestion here of any other basis on which the licence could be justified.

148. This is also obviously coupled with the availability of suitable alternative sites. Furthermore, in the case of dormice, it is clear even on their own Environmental Statement that they do not have sufficient survey information to demonstrate that dormice could be retained and have favourable conservation status, as set out in paragraph 6.241 of chapter 6, volume 1 of the ES. Therefore, the absence of ability to license is a complete show-stopper so far as the Downlands site is concerned.

149. The excuse provided for all of this multifarious harm to the interests of nature conservation is the provision of management for the woodland and Budletts Common. It is, however, clear that areas of the woodland are currently being managed, and there is no evidence to suggest that

Longwood Gill, a site which has remained intact over millennia, requires any management. Certainly, none is required urgently. So far as Budletts Common is concerned, it is accepted by all of the ecologists that management of that area would be beneficial. However, the critical question is whether it requires the development of 750 houses together with all of the other associated development at Downlands in order to achieve that objective. No costed plan has been provided by the developers, and it cannot therefore be contented that the minimum necessary amount of development to provide that management is 750 homes. The only reason why 750 are being pursued is because of the obligation within the option to Gleeson Homes to maximise development. Thus, the case based upon Budletts Common and other management is simply not made out, since there is no basis to conclude that it is necessary to have this volume of development to secure management.

150. In any event, it is clear from the evidence that there are plenty of other options for grant-aided management which could be relied on. Parts of the land are already the subject of the Higher Level Stewardship Scheme. As Mr Meurer explained, that is a scheme which is readily capable of extension to the Budletts Common area, if the land owners were willing to do so. In the circumstances, therefore, there are other means whereby management could be obtained. Indeed, the Woodland Trust have already made clear that they would be willing to purchase the woodland areas of the site if they are in fact a burden to the land owners.

151. Thus, firstly, the benefits are incapable of outweighing the harm which has been identified; secondly, there is no basis for concluding that this vast development is the only means of securing management of the site; and, thirdly, there are, in the absence of any development at all, other mechanisms and grants which are available to support the objective of providing Budletts Common and the woodland with some management which would not involve the harms arising from the access contingent on them being turned into a country park.

152. There is therefore an overwhelming case against the Downlands proposal in respect of nature conservation which, if the policy parameters of PPS9 are to be respected, should inexorably lead to the rejection of this site in nature conservation terms. Such a rejection would be wholly consistent with the concerns expressed by Natural England and their objections to this location for development proposals in their comments upon the emerging LDF.

153. In the course of the evidence you asked Dr Wray whether it was the adversarial process of the inquiry which had led to the position of the various witnesses at the inquiry in relation to the Downlands site. If all of the ecologists were attacking each of the other sites and the Council was opposed to each of the sites on the grounds of ecological impact then there might be some evidence for that thesis. However that is not the case here. The position is that every single person with any ecological qualification and experience who has given evidence to the inquiry with the lonely exception of Mr Colebourne has contended that

the Downlands site is totally unsuitable for development on the basis of the disastrous impact which it has on nature conservation. The explanation for the position which has been reached on the ecological evidence can be explained simply. Mr Colebourne is wrong.

Conclusions

154. The BIES site is suitable for development and deliverable to meet the housing needs of the District in accordance with the guidance in the Development Plan. It brings the benefits of important contributions to affordable housing and contributions to highway improvements in Uckfield which will benefit the town as a whole as well as this development. These benefits are increased if the BIEN site, also suitable for development, is also brought forward for development. If the Secretary of State wished to chose between the two, then we would obviously contend that the BIES site should be preferred, consistently with the Council's approach, on the basis that it involves a smaller loss of countryside.

155. The Downlands site is not and never has been a sensible candidate for development and vast tracts of time have been wasted at the inquiry examining a site which is completely inappropriate and utterly devoid of any merit. Moreover there are critical legal impediments to the grant of planning permission for it in any event which have been set out above.

156. For the reasons which have been set out above we invite you to recommend to the Secretary of State that consent be granted for the BIES site and refused for the Downlands scheme.

IAN DOVE QC

No5 Chambers

6th Floor

76 Shoe Lane

London