



Report to the Secretary of State for Communities and Local Government

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**an Inspector appointed by the Secretary of State for
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TOWN AND COUNTRY PLANNING ACT 1990

REPORT ON APPEALS BY CREST NICHOLSON (SOUTH) LIMITED RELATING TO BOLNORE VILLAGE PHASES 4 AND 5, HAYWARDS HEATH, WEST SUSSEX

Inquiry opened on 6 June 2006.

Land to the south-west of Haywards Heath known as Bolnore Village Phases 4 & 5
File refs: APP/D3830/A/05/1195897, APP/D3830/A/05/1195898, APP/D3830/A/06/1198282 &
APP/D3830/A/06/1198283

APPEAL A - File Ref: APP/D3830/A/05/1195898

Land to the south-west of Haywards Heath, known as 'Bolnore Village Phase 4'

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Crest Nicholson (South) Ltd against Mid Sussex District Council.
- The application Ref. HH/04/02676/OUT is dated 30 September 2004.
- The development proposed is described as an outline application for residential development, based on a maximum ceiling limit of 573 units.

Summary of Recommendation: That the appeal be allowed and planning permission granted subject to the conditions listed in Annex A and Conditions 1, 2, 3 and 8 of Annex B.

APPEAL B - File Ref: APP/D3830/A/05/1195897

Land to the south-west of Haywards Heath, known as 'Bolnore Village Phase 4'

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Crest Nicholson (South) Ltd against Mid Sussex District Council.
- The application Ref. HH/04/02964/FUL is dated 23 November 2004.
- The development proposed is described as a full application for all highway and infrastructure works associated with the residential development of Phase 4 of Bolnore Village.

Summary of Recommendation: That the appeal be allowed and planning permission granted subject to the conditions listed in Annex A.

APPEAL C - File Ref: APP/D3830/A/06/1198282

Land to the south-west of Haywards Heath, known as 'Bolnore Village Phases 4 & 5'

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Crest Nicholson (South) Ltd against Mid Sussex District Council.
- The application Ref. HH/04/02681/OUT is dated 30 September 2004.
- The development proposed is described as an outline application for residential development, based on a maximum ceiling limit of 785 units.

Summary of Recommendation: That the appeal be allowed and planning permission granted subject to the conditions listed in Annex A and Conditions 1, 6, 7, 9 and 11 of Annex B.

APPEAL D - File Ref: APP/D3830/A/06/1198283

Land to the south-west of Haywards Heath, known as 'Bolnore Village Phases 4 & 5'

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Crest Nicholson (South) Ltd against Mid Sussex District Council.
- The application Ref. HH/04/02965/FUL is dated 23 November 2004.
- The development proposed is described as a full application for all highway and infrastructure works associated with the residential development of Phases 4 and 5 of Bolnore Village.

Summary of Recommendation: That the appeal be allowed and planning permission granted subject to the conditions listed in Annex A.

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1. Preliminary and Procedural Matters

Introduction

- 1.1 The appeals were recovered for decision by the Secretary of State by letters dated 9 January 2006 in exercise of powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990. The reasons for recovery of jurisdiction in the case of Appeals A and C were that the appeals raise issues relating to residential development of five or more hectares or 150 or more dwellings. In respect of Appeals B and D the reason for the direction was that the appeals would be most efficiently and effectively decided with planning appeals (Appeals A and C) over which Inspectors have no jurisdiction.
- 1.2 The Secretary of State (SoS) indicated by letter before the start of the Inquiry the matters on which (at that time) he particularly wished to be informed for the purposes of his consideration. These included:
- The extent to which the proposed development would be in accordance with the development plan for the area;
 - The extent to which the proposed development would be consistent with Government policies in Planning Policy Statement 1 (PPS 1); Delivering Sustainable Development, and accompanying guidance The Planning System: General Principles, with particular regard to whether design principles adopted in relation to the site and its wider context, including the layout, scale, open space, visual appearance and landscaping, would preserve or enhance the character and appearance of the area, having regard to the advice in paragraphs 33 to 39 of PPS 1;
 - Whether the proposed development accords with Government policy in Planning Policy Guidance (PPG) 3: Housing, particularly in respect of the advice on the provision of affordable housing. He also wished to be informed about the sequential approach to residential development; whether the site is in a sustainable location; proposed housing density; whether the dwellings would help to meet an identified local need and the amount of car parking proposed;
 - The extent to which the proposed development is consistent with the advice in PPG 13: Transport, in particular on the need to locate development in a way which helps to promote more sustainable transport choices; promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling; reduce the need to travel, especially by car and whether the proposals comply with local car parking standards and advice in paragraphs 52 to 56 of PPG 13;
 - Whether any permission should be subject to any conditions and, if so, the form these should take; and
 - Any other matters the Inspector considers relevant.

The Inquiry

- 1.3 I held an Inquiry mainly at the offices of Mid Sussex District Council and, when suitable accommodation was not available there, at those of Haywards Heath Town Council. The Inquiry sat for 50 days between 6 June 2006 and 17 May 2007. I made unaccompanied site visits to the appeal sites and their surroundings before, during and after the Inquiry, together with an accompanied visit on 14 March 2007.
- 1.4 At the Inquiry it was indicated that applications for costs were to be made. As such applications would have involved further Inquiry time, with the probability of further sitting after an additional substantive adjournment, it was suggested on behalf of the appellant, Crest Nicholson (South) Limited (CN), that any costs applications should be made in writing after the close of the Inquiry. The other main parties (Mid Sussex District Council (MSDC) and represented Local Community Organisations (see paragraph 1.5 below)) concurred with this suggestion. To expedite matters, I agreed to this procedure, subject to adherence to a strict timetable by which any applications, responses and replies should be made. Following the close of the Inquiry on May 17 2007 applications were made by both MSDC and the LCOs against CN. Applications for costs were made by CN against both MSDC and West Sussex County Council (WSSCC) (whose representatives were called to provide evidence on certain matters), and against the LCOs. These applications are the subject of separate Reports.
- 1.5 Throughout the Inquiry four local groups/organisations were represented as principal participants, with their own Counsel, under the umbrella title of the Local Community Organisations (LCOs). The four groups/organisations were: The Association of Residents of Roads of Wealden Way (ARROWW), Bolnore Village Residents Association (BVRA), Friends of Ashenground and Bolnore Woods (FoAB) and The Ashenground Residents Association (TARA).
- 1.6 At the opening of the Inquiry an application was made by MSDC, endorsed by the LCOs, for a substantive adjournment. This was principally on the basis that the late conjoining of appeals C and D to be considered at the Inquiry had led to a shortening of the timetable for the exchange of proofs of evidence. It was indicated that this, together with the dates of actual receipt of proofs, the introduction of new material and changed circumstances shortly before the opening of the Inquiry, would have meant that had the Inquiry proceeded as originally timetabled, the positions of both MSDC and the LCOs would have been substantially prejudiced. This request was opposed by CN which considered that an adjournment within the programmed timetable would be sufficient to allow adequate preparation. I ruled in favour of MSDC and the LCOs on the basis that I considered that substantial prejudice would be likely to arise to their cases if the Inquiry had progressed as originally timetabled.
- 1.7 I adjourned the Inquiry, without hearing any evidence, until 19 September 2006. However, it was apparent that the length of the Inquiry would be likely to be considerably greater than the time initially allocated, with additional witnesses to be called. It was also considered that negotiations between the three principal parties outside the Inquiry might narrow down the issues in dispute and ultimately lead to a reduction in Inquiry time. Against this background, I suggested that before the Inquiry resumed on 19 September a procedural meeting would be advantageous to establish a

detailed timetable and for the parties to report back on continuing negotiations. There was ready agreement to this and a meeting was arranged for 26 July 2006. CD63 is a note of this meeting.

- 1.8 When the Inquiry opened on 6 June 2006 there was an extant fifth appeal in addition to the four appeals listed above. This related to an application for full planning permission for the upgrading of the existing Ashenground Bridleway to provide improved access and facilities for pedestrians, cyclists and equestrians (application ref. HH/04/02249/FUL, appeal ref. APP/D3830/A/05/1195899). An amended planning application for the bridleway upgrading was submitted by CN in January 2006, taking into account issues raised by the LCOs. This application was approved by MSDC on 11 May 2006. It represents a scheme which CN is content to implement and which MSDC, WSCC and the LCOs find acceptable (CD66, Section 8). The bridleway appeal was therefore formally withdrawn by CN on 5 September 2006.
- 1.9 Prior to giving evidence on highways matters on behalf of CN, Mr David Charlton was taken ill and was not able to appear. Instead, Mr Aled Roderick from the same consultancy as Mr Charlton appeared and produced his own proof of evidence, whilst indicating that there was no significant difference between his own and Mr Charlton's written evidence.
- 1.10 An Environmental Statement (ES) was submitted in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. This includes a Non-Technical Summary and five Technical Appendices (CD44). I have taken this into account in considering the proposals and making my recommendations together with comments from statutory consultees and other representations on the likely environmental effects of the proposed development.

The Report

- 1.11 This report includes a description of the appeal sites and surroundings, the gist of the representations made, my reasoning, conclusions and recommendations. Lists of appearances and documents are attached as an appendix, together with schedules of conditions in Annex A and B that might be attached should the Secretary of State be minded to grant planning permission(s).
- 1.12 Reference to documents, plans and photographs in this report are given in round brackets, with the prefix 'CD' if it is a core document. I have used 'p' for paragraph and 'pg' for page. Other abbreviations used are listed in Appendix C.
- 1.13 Proofs of evidence and summaries are listed as documents for ease of reporting. The main parties provided their closing submissions in a form that constitutes the basis for the case that they each wish to present to the SoS. These are also submitted as documents attached to this report. However, whilst the summary of the cases that follows is primarily taken from these typed closing submissions, they have been supplemented by verbal comments in closing, evidence drawn from the parties' witnesses' proofs of evidence and appendices, supporting core documents and other documentation and oral evidence given at the Inquiry.

2. The Sites and their Surroundings

- 2.1 The appeal sites would form part of what has become familiarly known as Bolnore Village, a current major housing expansion of the south-western part of Haywards Heath. The relationship of Bolnore Village to Haywards Heath is illustrated in Doc 5 appx 1, Doc 40, appx 1 and Doc 123, Figure 1.1. The wider context of the appeal sites is shown in CD44, Environmental Statement page 2 and Technical Appendix 1, Appx E. Three phases of the Bolnore Village development have been completed or are currently under construction, with about 630 dwellings completed out of a current total of 859 that have detailed approval (Doc 4, p1.8 & Doc 171). The appeal sites have become known as Phases 4 and 5 of the Bolnore Village development and lie between Phase 1 to 3 to the west and older development of Haywards Heath to the east. The relationship of the appeal sites to existing development and phases is well illustrated on plans at Doc 5, appx 2A and CD47, appx 5 (Connectivity Plan). Their relationship to existing physical named features on and surrounding the sites are shown on the fold-out plan to the front of the LCOs' portfolio file of proofs of evidence. Different vistas of the appeal sites and their surroundings are also illustrated in the collection of photographs at CD44, Technical Appendix 1 appx F, CD47 appx 7, and Docs 167 & 168. A fuller description of the sites and their context is provided in Section 2 of the main SoCG (CD66) but the principal characteristics are set out below.
- 2.2 Broadly, the combined site is the shape of a reversed 'L', with the north-west boundary wrapping around Reading Wood, which does not form part of the site. The Phase 4 appeal site amounts to some 10.7ha and occupies blocks of predominantly open fields to the immediate south and east of Reading Wood, with a northern boundary partially abutting Bolnore Road and the residential development of Joan Nightingale House. The northernmost part of the western boundary adjoins the grounds of Grosvenor Hall, a residential and office conversion. Facing the site to the northern side of Bolnore Road are Beech Hurst Gardens, a public park.
- 2.3 The combined site for the applications for Phases 4/5 includes contiguous land to the east of Phase 4, the total area amounting to some 19.7 ha. The Phase 5 component includes further grassland, with a wooded strip adjacent to the London-Brighton mainline railway along the majority of the eastern boundary. It is bounded to the north by existing residential development (Oakwood Court, Climping and Duncton Closes and Wealden Way). The southern portion of Phase 5 includes an area known as The Meadow and a partially treed area commonly known as Four Acre Wood (FAW). To the south-western side of this is an area known as Quarry Hollow occupied by an area of standing water and trees. The land within the combined sites falls generally to the south and east, the difference between the northern boundary along Bolnore Road and the southern boundary being about 30m, with gradients in places ranging from about 1:10 to 1:6 (see Constraints and Opportunities Plan, CD47, appx 3).
- 2.4 The southern and south-western boundaries of the combined appeal sites are bounded by the bridleway (which is the subject of the approved enhancement scheme - see p4.7 below). This links Ashenground Road and residential areas of Haywards Heath to the east with Bolnore Village and the north-west of Haywards Heath. To the south of the bridleway lies

Ashenground Wood, and to the immediate west a landscaped wooded strip (King Street Copse) with play areas, which is part of Phase 1 of Bolnore Village.

3. Planning History

- 3.1 The context for the current appeals cannot be divorced from the background history of the development of Bolnore Village.
- 3.2 Policy H1 of the 1993 West Sussex County Council Structure Plan required Mid Sussex to provide 8,400 dwellings between 1989 and 2006, of which 1,100 were to be provided at Haywards Heath (Policy H2) (CD13). In addition, Policy T3 listed the A272 Haywards Heath Relief Road (HHRR) within the programme of improvements for county roads in the period to 2006.
- 3.3 Against this background, the Haywards Heath Local Plan of 1995 was adopted, covering the period to 1996. Policy HH3/1 of this plan allocated up to 780 dwellings on land to the south-west of Haywards Heath (Doc 5, appx 5). The allocation was clarified in paragraphs 3.8-3.12, which emphasised the importance of maintaining amenity for existing residents, of protecting woodland and landscape protection areas and of the high amenity value provided by the footpath and bridleway network. This original allocation divided the scheme into three phases, including the land that is now designated as Phases 4 and 5. The onus of providing the HHRR was placed on the developers of the housing sites (ibid, p3.21). The phasing of the housing development was emphasised as an important factor to ensure that the various sections of the Relief Road would be completed and in operation at the appropriate times. It was stated that this was vital as no other means of vehicular access to the development areas would be acceptable (ibid, p3.23). Policy HH8/1 set out the requirement for the Relief Road, indicating that it would link the A272 west of the town at Tyler's Green, pass to the south-west, across the London-Brighton railway line, and south of the town to link with the A272 to the town's eastern side. The road would be built as an integral part of the development of land to the south-west and south sides of Haywards Heath (ibid, p8.18).
- 3.4 Pursuant to the Local Plan policies the South-west Haywards Heath Development Strategy: General Guidance was adopted by MSDC as Supplementary Planning Guidance in December 1997 (CD16). This covered the whole of the south-west sector of Haywards Heath. It amplified the policies of the Local Plan, established the preferred line for the HHRR and requirements for, inter alia, access, open space, leisure, community facilities, affordable housing and phasing.
- 3.5 In September 1999 the South-west Haywards Heath Design Brief General Guidance provided detailed information to guide the development of the area (CD17). Individual Design Briefs were prepared for Phases 1 and 2, which included revised Masterplans reflecting flexibility in the phasing approach (CDs 18 & 19).
- 3.6 The Mid Sussex Local Plan (MSLP), adopted in 2004, took on board the policies and proposals embodied within the Haywards Heath Local Plan and brought the situation in

- respect of Bolnore Village and the construction of the HHRR more up-to-date. The acceptability of the principle of residential development for all of the identified housing 'cells' in Phases 4 and 5 has been established by the allocation of this part of Bolnore Village for housing purposes within Local Plans for over 10 years (CD47, Section 3).
- 3.7 In 1996 CN submitted two outline applications for the development of the allocated land in the south-west sector of Haywards Heath. One of these included Phases 4 and 5 (not at that time controlled by CN) and the other did not. Although MSDC resolved to grant planning permission for both applications, subject to Section 106 (S106) obligations, only the S106 in respect of the latter application was signed and permission granted. That permission, (Ref. CD29/96) related only to Phases 1-3 and Stages 1-5 of the HHRR. The other application was subsequently withdrawn.
- 3.8 Several reserved matters were subsequently approved establishing the details of the development on the whole of Phase 1 to 3, with the exception of a school site and a community facility within Phase 2 (see the Connectivity Plan, CD47, appx 5 for the position of the reserved school site). A schedule of the various applications is provided in Doc 5, appx 7. Development has taken place pursuant to these permissions: Phase 1 is complete; a considerable portion of Phase 2 was complete at the close of the Inquiry, including the village centre shops (though not all were yet operating) and square; and Phase 3 was well in progress. A recreation area within Phase 2 has been created and graded but had not been completed.
- 3.9 The HHRR has been constructed and is open as far as Phase 2 of the Bolnore Village development (Stage 3 of the HHRR). Stage 4 has been completed as far as Phase 3 but is not open for public use. All planning permissions are in place to construct Stages 4 and 5 to Fox Hill (900m east of the mainline railway). Highway Act agreements are in place for the construction of Stage 5 (including those for the bridging of the railway, and technical approvals with Network Rail) and these include provisions for bonding and an indemnity agreement, the latter requiring CN to underwrite the entire cost of Stage 5 (Doc 166, pg1-2).
- 3.10 Outline planning permission has been granted for residential development on land at St Francis Hospital. A related S106 obligation links this development with the provision of Stage 6 of the HHRR. Planning permission is therefore in place for Stage 6 (see Doc 4, p7.6 & Doc 5, appx 16 for plan relating to the differing elements). The obligation also requires the developer of the St Francis Hospital site to deliver a bond to cover the entire estimated cost of Stage 6. The St Francis Hospital land has been transferred to English Partnerships, with project approval for it to deal exclusively with CN, as preferred developer of the land, subject to ratification by the SoS. In addition to a reserved matters application for development on the hospital site, detailed designs for Stage 6 were submitted in June 2006 to WSCC for technical approval. At the close of the Inquiry MSDC had resolved to grant planning permission for residential development at Colwell Hospital, subject to a S106 obligation, which was near completion. This development will fund the move of Colwood Hospital and allow the construction of the HHRR at its north-eastern end (Doc 4, p7.10, 7.11). Because of the need to secure necessary land rights and easements and the provision of a new Child and Adolescent Mental Health Services Unit (CAMHS) (for which planning permission has been granted and work is underway) the best estimate for completion of Stage 6 would be in 2010 (Doc 166, pg6-10).

3.11 Just prior to the opening of the Inquiry it became clear that FAW was to be included within an inventory of ancient woodland. This was confirmed when A Revision of the Ancient Woodland Inventory for Mid Sussex District, West Sussex was published in October 2006 (CD58). Also shown as ancient woodland with this inventory are Quarry Hollow, Reading Wood and Ashenground Wood, the latter two areas having been shown on the original Ancient Woodland Inventory for West Sussex in 1989 (ibid, p2.1 & Map 2).

4. The Proposals

4.1 The proposals essentially comprise two principal components:

- Appeals A and B relate to both an outline application for residential development and a full application for highways and infrastructure associated with this for Phase 4 of the Bolnore Village development. This has been designed to be a 'stand-alone' scheme that, were permission to be granted, would be capable of being implemented without any reliance on land within Phase 5 (CD66, p5.1.3 & 5.1.4). The applications are based on a maximum ceiling figure of 573 dwelling units. To facilitate a speedy delivery of housing completions the full application for infrastructure provision was submitted to be considered in parallel with the outline application. (MSDC accepts that with the lack of an initial infrastructure template with the earlier phases some confusion and uncertainty was occasioned and delays experienced whilst details were considered and approved (Doc 30, p23)). The outline scheme seeks planning permission on the basis of the Masterplan Ref. 145/020/J(BS) (Plan B). This shows the route of the key roads within the site and the access points onto the highway network.
- Appeals C and D relate to both an outline application for residential development and a full application for highways and infrastructure associated with this for the combined Phases 4/5. These are based on a ceiling figure of 785 dwelling units. This figure was used for the purpose of testing the impact of the development and its associated mitigation measures within the Environmental Statement.

4.2 Both the Phase 4 and Phase 4/5 proposals are based on the provision of 'cells' of residential development, (4A1-9, 4B1-3, 4C, 5A1-3 and 5B1) as shown on the Masterplan 1451/050/C(BS) (Plan O)¹. As the applications were being considered, it became apparent that the development of Cell 5B1 was contentious because of its potential ecological interest and possible ancient woodland status. CN took a 'without prejudice' decision to delete this cell from the applications in order to expedite a positive planning decision. This was despite its residential allocation within the MSLP, and in the expectation at that time that this would assist in reaching a wider agreement in respect of the depth and functions attributable to proposed buffer zones (CD14, Inset plan 34 & CD66, p5.2.3-5.2.4).

¹ The term 'Phase' refers to the principal land elements that comprise the overall Bolnore Village Masterplan, i.e. Phases 1-5, whilst 'cell' refers to a part of a main Phase (e.g. Cell 5B1 is part of Phase 5)

- 4.3 Negotiations failed to achieve an agreement even for a phased or partial release of land for development and proposed amendments did not gain MSDC's support. MSDC was also unable to confirm a date for determining the applications. CN took the decision to appeal against the non-determination of the applications and asked that these be conjoined with the appeals already lodged in December 2005 in respect of the Phase 4 proposals. CN considered it appropriate to test, through the appeal process, the validity of the allocation of Phases 4 and 5 including Cell 5B1. Consequently, an amended Masterplan, reinstating Cell 5B1 for housing, was submitted to MSDC, prior to the lodging of the Phase 4/5 appeals (ibid, 5.2.5-5.2.8).²
- 4.4 Following the lodging of appeals, reports were prepared for the relevant MSDC planning committee on 9 February 2006 when members resolved that the applications would have been refused for the following reasons:

Appeal A - outline for residential development on Phase 4 (HH/04/2676/OUT)

- *The construction and occupation of this development prior to the completion of the Haywards Heath Relief Road would result in excessive traffic congestion on the existing highway system, contrary to Policies NE13 and DEV4 of the adopted West Sussex Structure Plan 2001-2016 and Policies T4, HH4 and HH6 of the Mid Sussex Local Plan.*
- *The proposal fails to make adequate provision for the protection of wildlife and its habitat, in particular adequate landscape/ecological buffer zones around residential development, contrary to Policy ERA2 of the adopted West Sussex Structure Plan 2001-2016 and Policy C5 of the Mid Sussex Local Plan.*
- *The development does not make the necessary affordable housing or infrastructure provision, contrary to Policy DEV3 of the adopted West Sussex Structure Plan 2001-2016 and Policies G3, H4, HH2 and HH6 of the Mid Sussex Local Plan.*

Appeal B - full application for infrastructure provision on Phase 4 (HH/04/2964/FUL)

- *The northern crossing of the bridleway would result in a degree of clearance and levelling, which would detract from the character and appearance of the area, from the historic value of this feature and from the public's enjoyment of the bridleway, contrary to Policy C6 of the Mid Sussex Local Plan and Policy NE14 of the adopted West Sussex Structure Plan 2001-2016.*
- *The approval of details of infrastructure would be premature, prior to the granting of planning permission for the development of the site and may prejudice the achievement of a satisfactory form of development. The development would, therefore, be contrary to Policies B2, HH2 and HH5 of the Mid Sussex Local Plan.*

² The SoCG indicates that the amended Masterplan reinstating Cell 5B1 was plan ref. 1451/050/A(BS). This has now been superseded by Masterplan ref. 1451/050/C(BS) showing minor amendments but which the main parties agreed at the Inquiry is the most relevant plan that should be considered and which is referred to within the suggested conditions and S106 obligation (see Doc 170 for clarification).

- 4.5 Additionally, at this committee, members resolved that they would have refused the application relating to improvements to the bridleway application, which at that time had also been appealed.
- 4.6 Appeals were later lodged in respect of Appeals C and D (the combined Phases 4/5 schemes HH/04/02681/OUT and HH/04/02965/FUL). Because of the conjoining of these appeals with the Phase 4 and the (then) bridleway appeal, MSDC's Statement of Case was prepared before members had the opportunity to confirm what their decision would have been (Doc 1). Both applications were reported to committee on 11 May 2006 with a recommendation that members note the arguments being put forward on their behalf. Suggested reasons for refusal were based on similar reasons to those for Appeals A and B with the addition of the following in respect of Appeal C:
- *The proposal would result in the loss of an area important to Nature Conservation (Area 5B1) and fails to make adequate provision for the protection of wildlife and its habitat, in particular adequate landscape/ecological buffer zones around residential development, contrary to Policy ERA2 of the adopted West Sussex Structure Plan 2001-2016 and Policy C5 of the Mid Sussex Local Plan.*
- 4.7 At the same meeting it was resolved to grant planning permission for a modified proposal for the upgrading of the bridleway (Doc 4, p3.39-3.44). In the light of this permission CN subsequently withdrew its appeal against the non-determination of the earlier bridleway application. Furthermore, at the Inquiry MSDC did not pursue what would have been its first reason for refusal of Appeal A relating to the impact of the northern crossing of the bridleway.

5. Planning Policy Background

General

- 5.1 The development plan for the area comprises the Regional Spatial Strategy (RSS) and Local Development Framework (LDF). The RSS will be known as the South East Plan and is in the course of preparation by the South East Regional Assembly. However, at the time of the close of the Inquiry, Regional Planning Guidance for the South East (RPG9) (CD11) and the West Sussex Structure Plan (WSSP) 2001-2016, (CD13), adopted in October 2004, formed the RSS.
- 5.2 The LDF will consist of 'saved' policies from the Mid Sussex Local Plan (MSLP), adopted in May 2004 but covering the period only up to 2006, and Development Plan Documents, which are in preparation. At the time of the close of the Inquiry the whole of the MSLP was 'saved' and formed the local element of the development plan.
- 5.3 The previous West Sussex Structure Plan 1993 (Doc 5, appx 9) and the Haywards Heath Local Plan of 1995 (ibid, appx 5) formed the planning policy background at the time that Bolnore Village development was originally being planned and against which earlier

phases of development would have been considered. Some of the relevant policies have already been referred to in paragraphs 3.2 and 3.3 above.

West Sussex Structure Plan (WSSP)

- 5.4 Reference has been made to various policies of the WSSP (CD13). Policy extracts are at Doc 5, appx 35 and are summarised in p5.4-5.5 of Doc 4 and CD47, Appx14. The following are particularly relevant policies: Policy NE13 relates to transport needs and seeks to widen travel choice, integrate types of transport, and achieve efficiency and sustainable growth. The reduction in traffic growth, pollution and congestion to protect public safety, the economy and built and natural environment is also sought. This is echoed in Policy DEV4 which states that development should not be permitted unless: the travel needs it generates are met; where possible, it reduces the need to travel; it achieves safe and convenient access by a choice of means of travel; it encourages and enables an increase in walking, cycling and the use of passenger transport; and the number and impact of motorised journeys is minimised.
- 5.5 Policy DEV3 indicates that new development should not be permitted unless its on- and off-site infrastructure needs are met by the developer. The protection and conservation of habitats and species is sought under Policy ERA2, which indicates that a particularly high level of protection should be afforded to sites and features of national or international importance.

Mid Sussex Local Plan (MSLP)

- 5.6 Many policies of the MSLP have been referred to, relevant extracts of which are at Doc 5, appx 34 and which are summarised in p5.2 and 5.3 of Doc 4 and CD47, Appx14.
- 5.7 Policy HH2 indicates that land is allocated to the south-west of Haywards Heath for approximately 800 dwellings, although the preamble to the policy anticipates that more than 800 will be built, with about 700 dwellings completed by 2006. Developers are required to have regard to supplementary planning guidance including design and infrastructure requirements. Particular attention is drawn to several general requirements. These include all vehicular access being from the HHRR, with no such access to any new housing areas from the existing residential road network. Good use of existing tree belts and hedgerows and other natural features should be made in the development of individual housing areas and by careful attention to the design and layout of the road network and individual dwellings. Financial contributions will be required towards school provision, civic amenity and library facilities and bus services in the locality. Affordable housing units to the level of 30% of the total are also required and this is reiterated in Policy H4. Cell 5B1 is allocated in the Local Plan for development under Policy HH2 (CD14, Inset plan 34).
- 5.8 Policies G1 and G2 explain the underlying importance of achieving sustainable development in all planning decisions, whilst G3 addresses the need for developments to provide or contribute towards necessary supporting infrastructure. Sites important to nature conservation will be subject to rigorous examination under Policy C5, with the requirement that development minimises the impact on features of nature conservation importance. Policy C6 seeks to resist the loss of hedgerows, woodland and trees which are important in the landscape or as natural habitats or historically. Policy B1 is a

principal design policy reiterating the Policy HH2 requirement for effective use to be made of landscape features, whilst Policy B2 provides more detailed guidance for estate development. Policy B1 also indicates that, where appropriate, existing wildlife habitats, including green corridors, should be protected and enhanced.

- 5.9 Policy HH5 states that the release of land allocated for residential development will be phased in order to ensure that the necessary highway and other essential infrastructure is available and to ensure a steady supply of new dwellings throughout the plan period. Paragraphs 13.65-13.71 of the MSLP provide detailed explanation to this policy, indicating that both the planning and highway authorities attach great importance to the need to co-ordinate the housing developments with the construction of the HHRR. MSDC's support for the Relief Road is expressed in Policy HH4.
- 5.10 Policy HH6 makes it a requirement for developers to provide all necessary infrastructure for allocated sites. Sustainability and the implications for traffic generation are dealt with in Policy T4 which requires, amongst other matters, that development should not cause an unacceptable impact on the local environment in terms of road safety and increased traffic. Under Policy HH7 developers will be required to dedicate to the Council the relevant sections of open space and recreation land before the development of each phase commences. Planning permission for each phase will not be granted unless all the necessary land is made available.

National Planning Guidance

- 5.11 Reference has also been made to national planning policy guidance, particularly that contained in Planning Policy Statement 1 (PPS), Planning Policy Guidance 3 (PPG) (now replaced by PPS 3 which was published during the course of the Inquiry and which has been fully addressed), PPS 9, PPG 13 and PPG 17. Also published during the course of the Inquiry was Manual for Streets, providing guidance principally on residential road design and layout (CD36A). This replaced Design Bulletin 32 and its companion guide Places, Streets and Movement. It has also been addressed by the parties (Docs, 29A, 171B & 245A).

6. Statements of Common Ground (SoCG)

General SoCG

- 6.1 Three SoCG have been produced. That of 16 October 2006 is agreed between CN, MSDC, WSCC and the LCOs (CD 66). The scope of this sets out the factual information about the applications and appeals, planning history and policy background that have been agreed with MSDC and WSCC, and clarifies matters where there is no contention. It also identifies issues that were resolved as a result of continued negotiations outside the Inquiry between the parties and areas where agreement was not likely to be reached. The SoCG was extended to include the LCOs, although it was recognised that there are issues where they disagree with both CN and the Councils. The following are principal relevant points:

- 6.2 The Phase 4 proposal seeks permission on the basis of a Masterplan, which is not an illustrative document and clearly shows the route of the key spine and distributor roads within the site, and the access points to the highway network. The ES tests the impact of the development cells and their associated infrastructure on the local environment. Any grant of planning permission would need to be conditioned to the Masterplan layout to ensure consistency and certainty.
- 6.3 The LCOs consider that if the appeals are allowed, the access point for emergency vehicles/Hopper Bus onto Bolnore Road should be immediately west of Joan Nightingale House and its buffer zone. They also consider that the use of Parkfield Way and of Bolnore Road for construction access is not acceptable³.
- 6.4 The Phase 4/5 applications followed the same timeframe as those for Phase 4 for submission and consideration by MSDC. The same principles in relation to the treatment of the Masterplan for this combined site apply, as with Phase 4.
- 6.5 WSCC has consistently taken the view that the level of highway congestion in the area is such that, ideally, no further dwellings should be occupied until the HHRR is completed and open to traffic. At the same time it is recognised that the road will only be built in association with the housing development. Discussion has concentrated on achieving certainty on a mechanism that delivers a completed HHRR open to traffic at the earliest opportunity, as well as on negotiations regarding interim numbers of dwelling units that WSCC would consider permissible to be built and occupied prior to the road's completion.
- 6.6 The proposed Travel Plan package is acknowledged by WSCC as representing an appropriate contribution towards the sustainability of the residential development, but the County Council does not consider that it is a sufficiently powerful tool in its own right to justify the occupation of any dwelling prior to certainty over the completion of the HHRR. The content of the TP and the proposed measures have been fully agreed, but its effectiveness in terms of the percentage reduction in car traffic, both before and after completion of the HHRR, remains in dispute.
- 6.7 There is agreement on the percentage of affordable housing, the principles controlling its distribution, clustering and the affordable dwelling mix. MSDC insists on fully serviced land being transferred to a social landlord at nil value, to which CN objects.
- 6.8 The need to provide an appropriate level of open space and an adequate number of play areas, including the possible enhancement of the strategic recreation facility of Beech Hurst Gardens is not disputed. The final number of play areas would be provided in accordance with the Council's adopted standards. The LCOs do not consider adequate provision for formal and community open space has been made.
- 6.9 It is not disputed that Cell 5B1 was allocated for development prior to the publication of PPS 9, which states that planning permission should not be granted for development that would result in the loss or deterioration of ancient woodland unless the need for, and

³ This position was modified during the course of the Inquiry to one of conditional acceptance that these roads would need to be used for construction access (see LCOs' case at paragraphs 9.222-9.239 and also the SoCG on the Construction Management Plan (CD67), summarised at paragraph 6.13.

benefits of, the development in that location outweigh the loss of the woodland habitat. The Councils consider Cell 5B1 to be ancient woodland and the principle of development there is a major issue between the parties.

- 6.10 The principle of a draft Management Plan and the majority of detailed proposals for the protection from, and mitigation of, ecological impacts arising from the development, with local ecological enhancement and management, is strongly supported by WSCC and the LCOs. The final content of such a plan would depend upon the outcome of the appeals.
- 6.11 Agreement has not been reached on the standards to be applied to buffer zones. Paragraph 8.58 below of the summary of the Council's case provides further details of areas of agreement reached between CN and MSDC during the course of the Inquiry and areas of remaining differences.

SoCG on ecologically important public open spaces

- 6.12 A SOCG regarding MSLP Policy HH7 and ecologically important public open spaces has been agreed between MSDC and the LCOs (CD65). This indicates that MSDC considers that the future management of the ecological areas would best be secured by a transfer of this land to the Council, with a commuted sum, and that MSDC should then be free to negotiate with the LCOs regarding the future management and maintenance of these areas. It is noted that it was the intention of the parties to the 1998 S106 agreement, which describes Phases 4 and 5 as the 'blue land', that ecological and other areas of public open space within the blue land should be treated in a like manner. The view is shared that implementation of Policy HH7 would be best achieved by the transfer of land through a S106 obligation.

SoCG on a Construction Management Plan

- 6.13 A third SoCG relating to a Construction Management Plan (CMP) has been agreed between CN and the LCOs (CD 67). This sets out terms to be incorporated into a CMP in the event that planning permission is granted and that construction traffic should be routed via ingress from Bolnore Road and egress via Parkfield Way. It includes matters such as speed limits, access times, gate locations, early completion of a loop road in Phase 4a to facilitate emergency access, consultation arrangements and painting of existing properties in Parkfield Way in the event of discolouration from construction traffic. It also indicates agreement that any planning permission granted should include a condition requiring that construction management be executed in accordance with a CMP incorporating the terms of this SoCG.

7. The Case for the appellant (Crest Nicholson (South) Limited) (CN)

Introduction

- 7.1 CN has an overwhelming case – this is an allocated site where the principle of development is not only established and agreed but where a substantial part of the development has already been implemented; and there are no other material

considerations which outweigh its allocation. Members of MSDC have acted contrary to the recommendation of their officers and ignored the advice of their own independent expert on highway matters. It is an award-winning scheme where the phases presently under consideration were envisaged as following on, in a co-ordinated and seamless fashion, the earlier phases. These phases (4 & 5) should not be further delayed by a refusal to grant planning permission in circumstances where no good reasons have been put forward to justify it. MSDC and WSCC have acted wholly unreasonably in the way CN's applications were treated. All the applications should have been granted planning permission subject to appropriate conditions and a S106 obligation. In closing submissions MSDC claimed that CN was wholly to blame for the failure to secure planning permission. However, the overwhelming evidence is of MSDC blatantly and deliberately preventing much-needed housing; the facts speak for themselves.

The Strategic Background

Allocated Status

- 7.2 The fundamental starting point is that the whole of the Bolnore Village site has been successively allocated in both the Haywards Heath and Mid Sussex Local Plans, spanning a period of more than ten years. This includes Cell 5B1, which has been repeatedly allocated in successive Local Plans and in the Development Brief. Even if it is ancient woodland (which it is not) that does not outweigh its allocation.
- 7.3 MSDC's unreasonableness at the earlier stage of the consideration of the applications has been further compounded by the way it has resisted these appeals. The LCOs have likewise acted wholly unreasonably in relation to certain aspects of their case. This is not to criticise either Counsel, who did a good job with weak material and fought long and hard in the presentation of their cases. Rather, comment is directed at the intrinsic weaknesses of their respective cases.

The Haywards Heath Local Plan 1995 (Doc 5, appx 5) and the Mid Sussex Local Plan (2004) (CD14)

- 7.4 The proposals are in accordance with these plans firstly because the site (including Cell 5B1) is allocated for residential development. Secondly, they comply with those policies relating to the provision of the Haywards Heath Relief Road (HHRR). Thirdly, they are consistent with all other policies relevant to specific elements of the development including Policy C5 of the MSLP which applies to Cell 5B1. They are therefore in accordance with the development plan. Indeed, the peculiarity of MSDC's case is that it is its treatment of the appeal site, not limited to Cell 5B1, which is contrary to the Plan. It is the Council which has had to rely upon other material considerations to outweigh the presumption that allocated land should be developed in accordance with the Development Plan. Indeed, it is CN's case that the Councils have in reality ignored the fact that the appeal site is allocated and elevated matters of detail which could have been resolved by way of condition and/or S106 obligation to opposition in principle. The same can be said of the LCOs' case which, whilst paying lip service to support in principle, has the appearance of fundamental opposition.

The Haywards Heath Local Plan (HHLP)

- 7.5 Policy HH3/1 of the Haywards Heath Local Plan 1995 allocates land south-west of Haywards Heath for house building 'subject to compliance with Policy HH3/8 and other relevant policies in this Plan' (Doc 5, appx 5, p30).
- 7.6 Policy HH3/2 applies certain general requirements to the appeal sites and the St Francis Hospital Site (ibid, p32) (see Doc 5, appx 16 for location of this). All of these requirements are complied with by these proposals: (i) vehicular access to the sites is not an issue between the Councils and CN; (ii) extensive landscaping is provided throughout the sites and open space is not an issue. The buffer zones provided are more than adequate and comply with British Standards, both so far as the protection of trees and broader ecological interests are concerned. Requirements (iii) outdoor play space and (iv) primary school and community use are both fulfilled.
- 7.7 HHLP did not give a high priority to the HHRR (ibid p3.20). It is put on the basis that "since there is a requirement to provide additional housing land in Haywards Heath, and as the Relief Road is essential to provide access to the allocated housing sites, this Local Plan proposes that the provision of these two elements is linked". And the obligation on the part of the developers is not to provide the Relief Road but to "make the necessary contributions to ensure its provision" (ibid p3.21). That obligation has been misinterpreted by the Councils to mean to provide wholly for it by way of contribution and to guarantee its delivery.
- 7.8 Linkage between housing provision and HHRR construction is what the Local Plan sought to establish and this was to be achieved through "detailed legal agreements" (ibid p3.24). This is reinforced by paragraph 3.27 and Policies HH3/3 and 3/4 of the Plan. This was dealt with in the 1998 Agreement. The Councils now seek to renege on what was agreed therein. It is not a question of arguing whether this was or is legally binding. This is irrelevant. The point is that at this stage the Agreement contains highly material evidence when considering highways matters.
- 7.9 HH3/5 stresses the willingness of the Councils to use their statutory powers to achieve "proper co-ordination and orderly development of land allocated in the Plan" (ibid p3.29). This, the Councils have patently failed to do. As part of the plan, and as repeated in legal agreements, MSDC has expressed a wish to properly consider co-ordination of development. This is a highly germane factor in considering where fault lies.
- 7.10 Policy HH8/1 deals specifically with the provision of the HHRR. Again the rationale is linkage. This is set out in full together with Policy HH8/2 (ibid p8.18):

HH8/1 "The Local Planning Authority will support the provision of an outer relief road for Haywards Heath, including the improvement of existing roads and junctions, and the provision of new road links and junctions. A diagrammatic alignment for the relief road is shown on the Proposals Map. The road will commence at Tyler's Green, pass to the south west of Bolnore House, involve a new railway crossing at High Bridge, involve an on line improvement of Rocky Lane, pass to the south of the Hospital Complex and run parallel to the west of Hurstwood Lane ending opposite

the Birch Hotel on Lewes Road. The final alignment of the route will be determined in the light of environmental assessment. The new road will be built as an integral part of the development of land on the south west and south sides of Haywards Heath. The construction of the relief road will be the responsibility of the developers of the various sites and will be phased in accordance with the proposals contained in Chapter 3 for the relief of land for residential development. Developers will be required to enter detailed legal agreements with the Local Planning and Highways Authorities setting out these matters before consent for development is granted.”

HH8/2 “The Local Planning Authority, together with the Local Highway Authority, will if necessary and where justified use their statutory powers to acquire land in order to assist the implementation of these road proposals.”

7.11 The points that emerge from these policies are:

1. The Policy is to “support the provision of the outer relief road”.
2. The improvement of existing roads and junctions.
3. The provision of new link roads and junctions.
4. The road will be an integral part of the development of land on the south-west and south-east side of Haywards Heath.
5. The responsibility for the road will be that of “the developers of the various sites” (underlining added).
6. That responsibility will be contained in legal agreements.
7. The Local Planning and Highways Authorities will use their compulsory purchase powers where necessary to “assist in the implementation of these proposals”.

7.12 If the need for housing was so strong and the present highway system can take no more traffic, and if the problem was land assembly, then why didn't MSDC help CN in the purchase of the land? There has been no assistance from the relevant authorities, CN has done all it reasonably can to ensure delivery and it is agreed that the road will go ahead even though a precise time for completion cannot at this moment be guaranteed.

7.13 There is nothing in Policy HH8/1 which justifies the Councils' insistence that no more development should take place until there is “absolute certainty” that the Relief Road will be completed by a specific date. That is not the requirement of policy, it ignores the 1998 Agreement, and is wholly inconsistent with the policy imperative of providing more housing on allocated sites as soon as possible. It is agreed (by A Howick for MSDC) that the mechanism is in place for the provision of the HHRR and it is simply a question of timing as to when the road will be completed.

Mid Sussex Local Plan May 2004 (MSLP)

7.14 Reference is made to the most relevant policies in the Mid Sussex Local Plan which essentially mirror those contained in the 1995 HHLF.

- 7.15 Policy HH2 allocates the land subject to the general requirements referred to in Policy HH3/2 of the HHLP (CD14, p13.54). Policy C5 requires development to minimise the impact on features of nature conservation importance (ibid p3.51), whilst Policy H4 deals with affordable housing and requires 30% of the dwellings to be affordable (ibid p5.47).
- 7.16 Policy T4 deals with sustainability and traffic generation (ibid p8.30). Of specific note are: “(b) not cause an unacceptable impact on the local environment in terms of road safety and increased traffic” (underlining added). This is dealt with below at paragraphs 7.129-7.181 in relation to traffic impact issues.
- 7.17 Policy HH5 deals with phasing “in order to ensure that the necessary highway and other essential infrastructure is available to ensure a steady supply of new dwellings throughout the plan period” (ibid p13.71). Paragraph 13.73 refers to the use of compulsory purchase powers to secure “highway, housing, and associated infrastructure”. There should have been a steady supply of housing provision. Why there hasn't is because of the Councils' intransigence in not assisting. Further references to the relevant policies in the MSLP and the WSSP are made when looking at specific issues raised by these appeals.

Allocation History of FAW and North Meadow

Haywards Heath Local Plan

- 7.18 In the HHLP, adopted in October 1995, FAW and North Meadow were allocated as a school site as part of the overall development of Bolnore Village - Policy HH7/1 (Doc 5, appx 5, p7.11).

1997 Development Strategy (CD16)

- 7.19 In 1997 MSDC produced a Development Strategy for the site as a Supplementary Planning Guidance after public consultation. This document moved the school site to the south-west, but the Principles of Development diagram shows both North Meadow and FAW as housing sites (CD16, Plan 3 behind pg10).

1999 Design Brief (CD17)

- 7.20 Following the grant of outline planning permission for part of the site (and a committee resolution to grant consent for the entire site), a detailed design brief was published in 1999 after extensive public consultation. The brief refers to the ecological importance of part of the site stating:

“15.1 Part of the site is designated by West Sussex County Council as a site of Nature Conservation Importance. Known as Catt's Wood complex and meadows, it consists of a block of semi-natural woodland, coniferous plantation, broadleaved plantation, stream, ponds and acid grassland. It has a rich and varied ground flora with the ungrazed meadows north of the woodland being of botanical importance.

15.2 The impact of development on the site, was fully taken into account by both the Local Plan Inspector in considering the allocation of the site in 1993 and by MSDC

when considering the subsequent planning application and master plan for the development. The protection of flora and fauna of the site is covered by planning condition. The Local Planning Authority expect the development to be laid out in such a way so as to safeguard and improve existing ecology and natural habitat.”

- 7.21 No specific reference was made to FAW or North Meadow and they are shown as part of the housing development in the ‘Principles of Development’ plan (CD17, pg13).

2001 Design Brief (CD19)

- 7.22 The detailed design brief for Phase 2 (which subsequently became Phases 4 and 5) was published in November 2001. There was wide consultation and Sussex Wildlife Trust and English Nature were among the listed consultees. The brief stated:

“4.2The area covered by the brief is classified as a Site of Nature Conservation Interest. The most valuable habitats are Ashenground Wood, Row Coppice, the Marlpits along the northern boundary and Foundry Brook to the south. Most of these areas will not be developed and will therefore remain largely intact. In order to mitigate the effects of fragmentation which development will inevitably bring about, existing corridors should be retained and enhanced (minimum desirable width 20m) and new corridors created. Buffer or transitional zones should be provided on the margins of Ashenground Wood and Row Coppice, protected from development and planted with native trees and shrubs. Wherever possible, the best existing trees on the site should be retained. Retention of landscape buffers between the line of the Relief Road and development is also particularly important. Significant tree planting is also required at the margins of the area proposed for formal sport.”

- 7.23 Once again there was no specific mention of FAW or North Meadow. However, for the first time, North Meadow is shown as open space on the ‘Principles of Development’ plan. FAW is still clearly shown as part of the developable area (CD19, pg13).

Mid Sussex Local Plan (CD14)

- 7.24 In both the Deposit Draft and Adopted Plan, North Meadow is clearly identified as open space. FAW is part of the housing allocation, with notation relating to Policies HH2 and C5 marked on the Proposals Map (CD14, Inset plan 34). HH2 is the overarching development policy. Policy HH7 does not apply to FAW (Cell 5B1).

- 7.25 C5 states (p3.51):

“Proposals for development or changes of use of management within Sites of Special Scientific Interest, Sites of Nature Conservation Importance, Local Nature Reserves, Ancient Woodlands or to other sites or areas identified as being of nature conservation or geological importance, including wildlife corridors will be subject to rigorous examination, and only permitted where the proposal, by virtue of design and layout, minimises the impact on features of nature conservation importance. Proposals should take advantage of opportunities for habitat creation wherever possible.

The weight to be attached to nature conservation interests will reflect the relative significance of designations. Special scrutiny will be applied to those sites which are statutorily designated.”

- 7.26 It is clear from the Inspector's Report that there were no objections to the allocation of FAW during the formal consultation on the Local Plan (CD15, pp378-381). Sussex Wildlife Trust made representations on other policies, so it is quite apparent that it scrutinised the plan, as did English Nature and the Environment Agency.
- 7.27 C5 makes it clear that the level of protection and scrutiny will depend on the status of the designation. However, development is not ruled out even where statutory protection applies.
- 7.28 HH2 states (p13.54):

“HH2 Land is allocated to the south-west of Haywards Heath (including land at Weald Cottage, Bolnore Farm Lane) for approximately 800 dwellings. Developers shall have regard to supplementary planning guidance including design and infrastructure requirements.”

Particular attention is drawn to the following general requirements:

- “(a) All vehicular access to the site will be from the Haywards Heath Relief Road in the general locations shown on the Proposals Map. There will be no vehicular access to any of the new housing areas from the existing residential road network.*
- (b) Individual housing areas will be developed by making good use of existing tree belts and hedgerows and other natural features, and by careful attention to the design and layout of the road network and individual dwellings.*
- (c) The development will include provision for landscaping and areas of informal public open space between the housing areas in the general locations shown on the Proposals Map. Where appropriate these areas will be restored and enhanced through additional tree and hedgerow planting and will be adopted by MSDC.*
- (d) Within the development site land is allocated for a primary school and for community uses including shops, a health care facility and a community building.*
- (e) MSDC will seek financial contributions towards secondary school provision, primary school provision, civic amenity facilities, library facilities and bus services in the locality of the development.*
- (f) In addition to the above requirements, the development will include:*

- (i) 30% affordable housing units;
- (ii) footpaths and cycleways linking the development to the existing network;
and
- (iii) outdoor playing space in accordance with the NPFA standards of 2.4ha per 1000 population, in addition to the areas referred to in (c) above.”

7.29 Section c) notes that open space will be in the ‘general location’ shown on the Proposals Map. While this allows some room for manoeuvre, the map is at a large enough scale to identify specific features. In this respect there can be no doubt that the open space areas are Ashenground Wood and the meadow north of Foundry Brook (see Inset plan 34).

The HHRR

- 7.30 This must be seen in context. Although a key transport link in the Local Plan, TPP and subsequent LTP, if the traffic levels through Haywards Heath were seen as a County problem, the power to use Compulsory Purchase Orders (CPOs) was never invoked to accelerate delivery. This is in contrast to the County Council’s current position that the traffic conditions are “dire”.
- 7.31 The County Council’s stance that CN needed to secure “early” delivery of the HHRR Stages 5 and 6 points to the fact that the highway authority wants to see the infrastructure in place ahead of when it is really needed, as opposed to the more appropriate demand-management approach which looks to sustainable transport solutions first, if necessary, then conventional road infrastructure. But in any event, the delivery of the relief road is now certain even though a precise time for its completion cannot be guaranteed. However, the test is not certainty.

The Previous Section 106 Legacy

- 7.32 The legacy that was established by the Section 106 legal agreement tied to the original outline permission clearly set the parameters for the “reasonableness” of the need for major infrastructure delivery, and clearly anticipated the development of Phases 4 and 5 (Doc 73, appx 8). Furthermore, this approach was adopted prior to PPG 3, PPG 13 and PPS 1/PPS 3 in terms of density, and sustainable development policy.
- 7.33 In his evidence, Mr Rees explained why the “starting position” for these applications should not be the requirement to deliver the HHRR and if the approach set out in the previous Section 106 relating to the ‘Blue Land’ is to be followed, it would be unfair and unreasonable, in planning terms, for the District or County Councils to insist on total infrastructure provision prior to the commencement of Phases 4 and 5⁴. In any event, the build out rates have their own constraints on how much can be delivered before the Relief Road is in place. A detailed consideration of the 1998 Agreement, the pre-existing need for the Relief Road, the failure to use compulsory purchase powers, the

⁴ Inspector’s note: The ‘Blue Land’ referred to within the 1998 S106 is that which now comprises the Phases 4 and 5 appeal sites.

history of the Blue Land and the Minutes of the meeting on 4th September 2003, is provided below.

- 7.34 Even if it is accepted that, on its own merits, the delivery of further housing (573 or 785) requires the completion of the HHRR, it is necessary to consider whether this is reasonable given the Government's current views on sustainability and the role of travel demand measures to reduce pressure on the existing road infrastructure.
- 7.35 If it is reasonable to withhold permission on the basis of dependence on Stage 6, then a phased approach is achievable and CN should be awarded much higher "ratchet" numbers than WSCC has ever agreed to, including the open offer of 29 August 2006 (Doc 23, appx 15).

The 1998 Agreement

- 7.36 The relevant clauses of the 1998 Agreement are at Doc 73 Appx 8. Attention is drawn to the following:

Clause 1.10

"... the owner has agreed in the manner set out in this Agreement to assist the County and District Councils in the accelerated provision of a major part of that relief road scheme which when completed will provide a sustainable solution to the relief of the congestion in the town.

Clause 1.15

"MSDC has also resolved under planning application reference CD/28/96 to grant planning permission for the development of an area comprising the site and the Blue Land together subject only to the conditions in Schedule Three and to the completion of an agreement in similar terms to this Agreement to secure the items secured by this Agreement and the additional items referred to in Part 4 of Schedule 4.

Clause 1.16

"In the event of planning permission being issued before the planning permission referred to in sub clause 1.15, the District and County Councils are satisfied in principle that once an application in that regard has been submitted, the planning permission may be granted in respect of the residential development of the Blue Land subject to conditions and to the completion of an agreement under Section 106 of the Town and Country Planning Act 1990 to secure the said additional matters (Part 4 of Schedule 4).

Clause 1.18

"The County and District Councils are satisfied that the provisions of this Agreement in relation to highway works and transportation matters are sufficient to satisfactorily mitigate the impact of the development and the development of the Blue Land on the existing highway network pending the completion of the Haywards Heath Relief Road" (underlining added).

Clause 1.19

“The County and District Councils are also satisfied that the completion of the residential development of the allocated land south of Saint Francis Hospital the subject of Local Plan Policy HH3/1 is not dependent upon the completion of the Haywards Heath Relief Road”.

- 7.37 The emphasis was that Phases 4 and 5 could progress and that MSDC and WSCC were satisfied that this could take place in advance of the completion of the HHRR. Matters have moved hugely since the 1998 Agreement and since the applications for Phases 4 and 5 were submitted. More and more boxes have been ticked in terms of progression to certainty of delivery of the HHRR. In his evidence, Mr Rees referred to what he called the “historic acceptance of County and District Councils that the development of the Blue Land (the appeal site) did not require the construction of Stage 6 of the Relief Road (Doc 71, p5.4). His assessment, having reviewed the documentation, was that the District and County Councils have now adopted a ‘new’ position different from that evidenced by the 1998 Agreement. Despite the Councils’ protestations to the contrary, there is no doubt that this is the case.
- 7.38 Furthermore, this change of position has to be looked at in the context of the pre-existing need for the HHRR and the failure on the part of the Councils to exercise their compulsory purchase powers.

The Pre-Existing Need for the Relief Road

- 7.39 The 1998 WSSP recognises the desirability of providing by-passes or relief roads for Haywards Heath. In the 1993/94 TPP the HHRR is shown in the “Beyond Forward Programme” category with a possible commencement of construction beyond years 2003/4. At paragraph 3.7.27 of the TPP it is stated:

“The problems in Haywards Heath are largely caused by traffic having business in the town. A recent traffic study has confirmed that an outer by-pass to the town would still leave traffic problems in the town centre and as a by-pass would be costly and difficult to route, it is unlikely to gain priority. The possibility of an outer relief/distributor road emerging from this study is recognised ... although such a scheme would have to be provided in conjunction with various development proposals.”

- 7.40 These matters are further addressed in paragraph 7.121 below.

MSDC's Failure to use Compulsory Purchase Powers

- 7.41 Reference has already been made to Clause 10.1.5 of the 1998 Agreement where the Councils agreed “*wherever ... necessary*” they would use their statutory powers to secure the construction of the HHRR. WSCC had reaffirmed that position in its evidence to the St Francis Hospital Inquiry (Doc 71, p6.2 & Doc 73, appx7).

The History of the Blue Land (Phases 4 and 5)

- 7.42 In 1996 CN submitted two applications which provided for the development of the entirety of the south-west sector. As a result of two years of detailed negotiations, it was agreed that these would deliver and/or fund the first 5 stages of the HHRR, but not Stage 6 (Doc 71, p6.9).
- 7.43 In April 1998, MSDC resolved to grant planning permission. Doc 73 appx 6 contains the two reports to the April Committee and the draft planning permission for the larger application which included the Blue Land. It is clear from both of these Reports that the responsibility of the developer in each case is to fund or secure the construction of the south-west sector sections from the A272 to Foxhill (i.e. Stages 1-5) but not Stage 6 (section 10.10 of the Report relating to the larger application (CD/28/98) and Section 5.10 of the Report relating to the smaller scheme (CD/029/96)). It is significant that WSCC raised no objection either as highway authority or strategic planning authority.

Minutes of the meeting 4 September 2003 (Doc 73, appx 7)

- 7.44 This is a most important document. Initially doubts were raised by the Councils about its authenticity but these were not pursued with Mr Rees. No query was raised as to the content of the Minutes, they having been circulated to all parties. The importance of the document is that it provides yet further evidence as to the unreasonableness of the approach adopted by the Councils at these appeals. At page 6 of the document, the Minutes read:

“As regards the highway infrastructure required for the Blue Land SP (WSCC) and DL (MSDC) indicated that CAR’s (Chris Rees) assumption that all 6 phases of the Relief Road would need to be in before occupation could occur in the Blue Land was incorrect.

The County and District Councils had previously been concerned that as a result of the intervention of the Secretary of State, Stage 6 of the relief road might never have been built. Had this been the case then MSDCs’ attitude might have been different.

However, now that the planning consent had been granted for Stage 6 the County and District Councils were more relaxed about the point and would (irrespective of the northern access issue) in all likelihood be prepared to allow Blue Land development to proceed notwithstanding the fact that the entirety of the relief road had not been completed (underlining added).

Given the undertaking by CN, the availability of the County Council’s CPO powers and the recent planning permission for St Francis Hospital and Stage 6 of the Relief Road MSDC officers were now more relaxed about the Blue Land and would probably be prepared to allow some or all of the development of this land to go ahead in advance of the remaining Relief Road infrastructure. This had been MSDC’s position in 1998 and now that there was greater certainty about Stage 6 of the Relief

Road the probability was that they would allow development on the Blue Land to proceed and occupations to occur (underlining added)".

7.45 There are no good reasons why the Councils should be allowed to change their position and now require completion of the HHRR as the sine qua non for the development of Phases 4 and 5.

The Sustainability Argument

7.46 If the appeals are to be determined on their own merits, then a key factor must be the level to which the principles of sustainability explicitly underpin the applications i.e.

- Location
- Housing numbers and mix
- Density
- Transport and Access

7.47 From early on in the planning process, CN looked carefully at how the later phases of Bolnore, building on the success of Phases 1-3, could deliver a robust and sustainable development. It took the opportunity to be innovative in the way it wished to deal with transport, providing a detailed residential retrofit Travel Plan which would provide major benefits to the existing highway network.

7.48 The principles of WSCC's new Accessibility Strategy (March 2006) are being facilitated and enabled by the developer. The key issue is that this scheme is not providing an urban extension, but is providing "urban integration", offering modal choice to all residents of Bolnore Village.

7.49 In adopting a highly sustainable approach, undue weight should not be placed on decisions raised prior to PPG 13, PPG 3, PPS 3 and specifically PPS 1. CN is offering a sustainable development package which has been assessed in detail against these policies within the planning and transport evidence.

7.50 The WSCC's own Accessibility Strategy (CD53) emphasises promoting modal choice and, through CN's proactive approach on transport, it has been possible to demonstrate how the Bolnore Village scheme, if implemented in this way, would be able to deliver an integrated and sustainable travel package that would provide for the access needs of all residents.

Delivery of Strategic Housing Numbers

7.51 Having established the strength of the development allocation and CN's response to sustainability within the ES it is necessary to stress the urgent need for housing numbers to be delivered within the south-east of England.

7.52 If a layered approach to housing supply is adopted then it is clear that, from the GoSE/regional level down to Mid Sussex's own housing supply situation, there is an urgent need to deliver both private and affordable housing in communities in the Bolnore-style format (Doc 35, Section 3, Doc 37, pp5-9).

- 7.53 If other sites in Mid Sussex are looked at sequentially, it is clear these others are affected by planning and political difficulties e.g. MSDC has allocated a significant number of houses at East Grinstead in order to deliver its quota of housing growth (Doc 37, pg 7).
- 7.54 The case is not just that Bolnore Village is “oven-ready and deliverable now” (Doc 35, p5.3.9 and oral evidence of J Harris), and is sequentially far stronger than any contender such as East Grinstead, but that if the location is tested against sustainability objectives, then Bolnore Village would be an appropriate location on its own merits, because of its locational, density, permeability and transport characteristics.

The Role of the Environmental Statement

- 7.55 The whole planning process was subject to Environmental Assessment for the explicit purpose of testing the maximum of 785 units. This figure has been misconceived as being the absolute number that will be built, and there has been a failure to recognise the role of the ES in testing the “worst-case” scenario and by putting in place measures to deal with mitigation.
- 7.56 The final numbers on each individual phase will always be a function of the housing market, the market demand for the appropriate housing mix in terms of affordable housing and private units, and the relationship of the detailed layout and house types to the localised environment, including the buffer zones.
- 7.57 It is the role of the reserved matters applications to deal with the precise mix, numbers and locations of buffers etc, and whilst the ES Masterplan is not illustrative there are certain issues within the Masterplan that can properly be dealt with by condition (e.g. specific buffer zone widths). It is understood that this is now agreed by the main parties.
- 7.58 It is also clear that density per se is a false measure, and it will be the design integrity of the scheme and how it interrelates with the surrounding site constraints and neighbouring phases that will dictate its acceptability, as opposed to a mathematical number. In any case, density can be controlled through the reserved matters applications process.

How Far We Have Come in Reaching Consensus

- 7.59 The Statement of Common Ground (CD66) shows consensus over the following key strategic issues:
- The fact that the site is allocated is not disputed.
 - The fact that there is strategic housing demand in urgent need of being met is also not disputed.
 - The fact that national policy on sustainability, transport and housing is accepted as being relevant.
 - The fact that the sustainable transport approach is valuable and welcomed is not disputed.

The Key Issues Between CN and MSDC

- 7.60 The key issue to articulate is “why was this Inquiry necessary”. Notwithstanding that the final decision rests with the Secretary of State, CN has needed to appeal on non-

determination because of WSCC's primary concern over "certainty" of delivery of the HHRR.

- 7.61 In reality, but for precise timing the certainty is there. The (updated) Gantt chart shows that the route map for delivery is clear, and that there is no reason why release of the housing land cannot be allowed, even on the basis of the revised 150/units/year build rate (Doc 65). This will in effect allow housing provision to play 'catch up' for the situation in which MSDC should have been in relation to housing delivery if it had adopted a reasonable approach. It also has the added benefit of minimising the construction management timeframe for Phases 4 and 5.
- 7.62 In terms of sustainability, the only key issue that now remains in dispute is the strategic need for Cell 5B1 to be released for housing. The national and local policy framework clearly supports the need for this cell (even if it is ancient woodland) to be developed in an appropriate manner reflecting the nature of the site. The issue of buffer zones and their depth is a factor which can be dealt with at reserved matters stage (see suggested condition 40 on the outline application for Phase 4/5 (Doc 171A)).
- 7.63 The only issue relating to the Travel Plan appears to be the level of confidence that WSCC has in the TP achieving a 25% trip saving on car usage on the A272 and further afield, with the figure of 10% being advocated as a conservative estimate it is content with (e.g. Doc 21, p7.16 & Doc 46, appx1). There is no scientific proof from its viewpoint that the 10% level is appropriate, and appears to stem from a simple "gut reaction" to the TP. WSCC has not sought to justify its fixing on 10% and rejecting 25%. It is said that there is no evidence that a 25% reduction could be achieved. However, analysis of trip savings at Poole Quarter reflect the anticipated reduction at Bolnore (Doc 67).
- 7.64 The Councils are concerned that there appear to be no targets or penalties built into the TP. This is incorrect. Targets will find their way into the detail of the TP and this is covered by the S106 obligation (Doc 167, p7.1.42-7.1.51).
- 7.65 The County Council has also failed to recognise the issue of 'pain/gain' and the wider transport benefits that can be realised through providing CN with certainty over planning permission for its housing provision. WSCC has been extremely parsimonious over the level of credit that it will award to the sustainable transport package, even as a 'bridging measure' to allow phased development occupations ahead of the HHRR opening (ibid). Whilst it has accepted that a ratchet effect on advance occupations is workable, the absolute numbers that it has advocated are far too restrictive. How can a commercial organisation plan ahead when WSCC indicates that it would be prepared to see only 50 dwellings built before the completion of the HHRR, especially when 390 dwellings were previously offered when Arup did its report?
- 7.66 The short-term impact of Phase 4 and Phase 4/5, even based on WSCC's 10% modal switch, is still within the Institution of Highways and Transportation (IHT) 5% test threshold and would require all houses to be occupied ahead of the HHRR opening for the full impact to be felt (A Roderick, oral evidence). Consideration of the latest guidance is at paragraph 7.136 below. With the certainty now provided through the Colwood Hospital decision and other events, it is unreasonable for WSCC to attest that a

<5% impact over a 'bridging period' is enough to withhold planning permission. This is considered further in relation to highways evidence in paragraphs 7.121-7.181 below.

- 7.67 WSCC and MSDC have both been erroneous in their assertion that the A272 situation is 'dire' and that congestion and queue lengths have reached unreasonable levels. The traffic counts and journey time surveys/queue analysis already carried out have repeatedly shown that journey time delay is not an issue, and that the question of queue lengths and journey delay is subject to daily variation; even when it does occur the additional time it takes to travel from Cuckfield to Haywards Heath is not significant and is marginal in relation to overall journey time (particularly for longer distance trips via Haywards Heath) (Doc 114, Section 2 and appxs 2, 3 & 7 & Doc 46, appx 11).

Delivery of Key Infrastructure

- 7.68 The fundamental submission is that delivery of the HHRR is now achievable and there is no reason to withhold planning permission for Phases 4 and 4/5. The Revised Gantt chart shows the impact of the CAMHS Unit and Colwood Hospital planning decisions and the rate of build within Phases 4/5 of 150 units per annum taking account of private and affordable housing construction programmes (Doc 65).

Housing Density

- 7.69 Housing density levels are entirely appropriate given the sustainable location of the site; density as a mathematical limit in isolation of other design and sustainable indicators is erroneous (J Harris, oral evidence).
- 7.70 Housing density is a town planning measurement tool based on units/area and is controlled through the overall ceiling limit imposed through the ES and through successive reserved matters applications; this materially differs from coverage which is based on floor area of the housing units. Coverage is not a function of density but of the market and based on the scale and mix of development whereby neither the 'maximum density' nor the 'maximum coverage' will actually occur (Doc 49, pp1-4).
- 7.71 Buffer zones; these are not sterile and they can carry out a functional role in terms of the development, providing footpath linkages and linear amenity space contrary to the position adopted by the LCOs.

Sustainable Transport

- 7.72 The need for the HHRR as a key piece of infrastructure would be questioned now in the light of the latest Government approach to transport (Doc 40, Section 2). However, the sustainable transport package, which clearly promotes travel choice, is totally in keeping with the objectives of WSCC's Accessibility Strategy (CD53) and CN would be providing a catalyst to delivering accessibility within south-west Haywards Heath.
- 7.73 The TP approach based on the 25% modal switch has been well thought through. To understand how it works one needs to appreciate that the strength of the package is in its choice and range of measures and that individual users of the network would not choose the same mix every day. There is good evidence that at least 25% of people that would have used the car (in the absence of the TP) would switch mode – although that does not

have to be the same 25% of people and the same mix of non-car modes on any one day (Docs 40 & 42). Reference is also made to the Highways Agency Guidance Note which states belief in retrofit travel plans and their value (Doc 46, appx 2) and Department for Transport Good Practice Guidelines for New Development (Doc 45, Annex 1). The retrofit TP approach is robust, tested and can be relied upon to deliver a much higher degree of credit than that accepted by WSCC. In this regard, attention is drawn to the existing Priddys Hard and Pitwines Travel Plans, Good Practice Guidelines for New Development and Mr Harris's supplementary evidence on sustainable transport (Doc 45, Annexes 1, 4 & 5, Docs 40, appx 12, and Docs 42, 53 & 54). There is, therefore, evidence of substantial trip savings of the magnitude relied upon by CN.

- 7.74 The 25% trip saving target is global, and it provides benefits in not only dealing with the priority A272 link into Haywards Heath, but also to the wider strategic trip savings it is looking to achieve on the network.
- 7.75 A compromise figure between the 10% and 25% could be derived – 18% is the mid point and also correlates with figures presented by WSCC in its own promotional documentation on travel plans (Doc 55).
- 7.76 The Maxi-Taxi and public bus scheme would benefit from a clear time advantage through the provision of the bus-only gate onto Bolnore Road and onto the A272. Whilst it could be argued that congestion in itself would aid patronage because of time delays, the Bolnore Road access route acts as an advance bus lane giving direct and more convenient access for minibuses and buses into the town centre (Doc 40, appx 12).
- 7.77 It is important to emphasise the true financial value of the TP, and how delivery through a mix of Section 106 contributions and performance-based obligations is much more robust in sustainable transport terms than MSDC accepts. The contributions are more than could be reasonably required given the scale of development and the linkage made to the HHRR provision. This is considered in more detail in paragraphs 7.115-7.120 below.

Housing Need

- 7.78 The GoSE Action Plan (which specifically focuses on Mid-Sussex as well as other local authorities) points to the urgent need for housing to be delivered within the South-East (Doc 37, appx 2). Not only has the annual housing supply been poor in relation to demand, but the strategy for MSDC has been to “put all eggs in one basket” e.g. East Grinstead (ibid, p6.2). There is a clear requirement for MSDC to not only meet forward forecasts but also to play ‘catch-up’ against previous years’ performance (Doc 35, Section 5.5, Doc 37, Section 8). This supports the argument that the housing levels tested in the ES are appropriate (see also appeal decisions regarding land at Hassocks, Doc 169, p21-26).
- 7.79 The Barker Report (Final Report December 2006, CD54) on local government delivery, including the Planning Process/LDF and Development Control, is clear in its recommendations that infrastructure requirements and bureaucracy should not hold up the growth agenda, and that local authorities should be enabling and facilitating growth in sustainable locations.

7.80 There is no doubt that MSDC's planning witness is supportive of CN's case in so far as it relates to the immediate provision of much-needed housing in advance of the HHRR. He may differ with it on certain discrete issues, but fundamentally he recognises the strength of its case. His members have put him in a very difficult position throughout the Inquiry; his frustration at having to oppose what he clearly favours has on many occasions been transparent.

7.81 From the MSDC balanced and informative reports to Committee of 9 February 2006 (Doc 5, appx 6) and 11 May 2006 (Doc 5, appx 33) attention is drawn to the following matters:

- (1) On 14 July 2005 officers recommended that permission should be granted, but the members' decision was deferred.
- (2) At that time the County Council's position was that:
"If a firm programme for the early delivery of the full relief road could be provided in association with the current application, then as Highway Authority we could be supportive." It was not saying that there should be absolute certainty of provision.
- (3) Bolnore Village is the largest supplier of new housing in the district (including affordable housing) and continued delivery of housing from the site is necessary if MSDC is to meet its housing requirements under the Structure Plan, the Local Plan and the LDF. Delivery of Affordable Housing is a Council priority.
- (4) Although there was a risk that Stage 6 of the Relief Road might be delayed, it is a *"risk which, on balance, should be taken in order to ensure continued supply of housing"*. This is in contrast to the espoused position in relation to the Inquiry set out at paragraph 9 of Doc 5, appx 29 *"It is not appropriate for issues of housing land availability to outweigh other material considerations"* (see also again the Hassocks appeal decisions, Doc 169, p21-26).
- (5) Refusing planning permission would not guarantee Stage 6 of the Relief Road. CN is not in a position and does not have the power to deliver Stage 6 itself, as it does not own the land and refusing planning permission would not alter that position (underlining added) (Doc 166, p11 & 11.4).
- (6) Phases 4A and 4C should be granted planning permission, notwithstanding that Stages 5 and 6 of the Relief Road had not been completed.
- (7) If Cell 5B1 was omitted from the development proposals, the buffer zones proposed would be adequate.

7.82 A number of further points emerge from MSDC's planning evidence (Mr Matthews). He considers the appeal site to be very much part of the urban area of Haywards Heath "with no direct connection to the countryside" (underlining added) (Doc 4, p2.1). It is made clear by reference to MSDC's letter of 5 April 2005 (Doc 5, appx DM14 and Doc 4, p3.24) that:

WSCC's current view, as highway authority, was that there should be no further development until Stages 5 and 6 of the Relief Road are in place.

It would be unusual for MSDC to take a different view particularly where there are strategic issues involved.

MSDC appointed Ove Arup to give an additional opinion on the highway evidence but MSDC is not bound to accept that recommendation, although it is material.

7.83 These references show the difficulty that MSDC's planning witness found himself in notwithstanding his own professional opinion as expressed to members. MSDC was adopting a "no further development stance" even though its own independent expert (Ove Arup) took a different view. It was therefore not acting in accordance with its own judgment, expert advice and its own officers' recommendations.

- (a) Mr Matthews does not doubt CN's willingness to construct Stages 1-5 of the Relief Road (Doc 4, p7.15). And his concern over Stage 6 (which he agreed was not the responsibility of CN) was at the time of writing his evidence "*the lack of a planning permission to relocate Colwood Hospital*" which "*highlights the County Council concerns about the uncertainty over the delivery of the relief road*" (ibid). But matters have considerably moved on since then; for example, with planning permission having been granted for a new CAMHS unit.
- (b) MSDC's concerns are that the proposals provide "*no direct mechanism for the completion of the ... road*" (ibid, p8.8). But that was not the case then and it certainly doesn't represent the position now (see paragraph 7.125 below).
- (c) MSDC's view of the traffic assessments was that "*existing queues are not taken into account*" (ibid, p8.8) (see paragraphs 7.129-7.181 below).
- (d) There was no dispute as to the shortfall in housing (ibid, p8.16) (again paragraphs 7.78-7.80 above and the Hassocks appeal decision (Doc 169)).

Affordable Housing

7.84 This was a much-debated matter at the Inquiry which it had been hoped could have been resolved by agreement between the parties. That this did not happen was because of the intransigence of MSDC and unwillingness on its part to adopt a more flexible approach to the delivery of affordable housing. MSDC has completely missed the point regarding viability of the proposals; CN has never said that the proposals are not viable. The point of difference is deliverability; affordable housing would be delivered through the mechanism of the S106 Unilateral Undertaking (Doc 167, p7.1.18-7.1.31). It is therefore important to consider this in detail.

7.85 It is first necessary to consider the evolution of the current MSDC policies on affordable housing (Doc 130). The current policy contained within the 2004 adopted Supplementary Planning Guidance (SPG) 'The Provision of Service Infrastructure Related to New Development in West Sussex, Part 2' (Doc 10, appx 2, p4.12) states:

"The S106 will ensure the provision of the necessary subsidised housing units as part of the overall scheme in either of the following two ways:

1. *The land is made available to the Local Authority or an approved Registered Social Landlord (RSL) at nil cost with a guarantee that it will subsequently only be used to construct the necessary subsidised housing in conjunction with the nominated RSL; or*
2. *In exceptional circumstances the developer builds the subsidised housing in accordance with the design standards and requirements of the approved RSL and then transfers the ownership and management of the housing to the RSL at a price that reflects nil land value."*

7.86 This policy began with the publication of Supplementary Guidance 'Provision of Service Infrastructure Related to New Development in West Sussex Part 2' in November 2000 (Doc 10, appx 2A). Paragraph 4.12 of the 2000 SPG stated:

"The S106 will ensure the provision of the necessary subsidised housing units as part of the overall scheme in either of the following two ways:

- i. *The land is made available to the Local Authority or approved Registered Social Landlord at nil cost (or with the value of the land reduced to such an extent that subsidised housing can be provided at a norm grant rate and for rented housing that rent levels can be set and maintained at affordable levels relevant to the likely occupiers), with a guarantee that it will subsequently only be used to construct the necessary subsidised housing in conjunction with the nominated RSL; or*
- ii. *in exceptional circumstances the developer builds the subsidised housing in accordance with the design standards and requirements of the approved RSL and then transfers the ownership and management of the housing to the RSL."*

2000 SPG

7.87 A series of amendments to the adopted SPG were agreed by MSDC's Cabinet in December 2002. In particular, paragraph 4.12 was amended to read as it now appears (paragraph 7.85 above). There appears to be no documented reference to the alteration; paragraph 3.11 of the officers' report to Cabinet stated (Doc 130, p3.3):

"A number of minor amendments have been made to other sections of the guidance in order to bring it as up to date as possible."

7.88 Following a Freedom of Information request, MSDC confirmed that no public consultation was carried out in respect of the amendments (ibid, p3.4).

7.89 The 2004 SPG, which was the operative document at the time the applications were submitted, has not therefore been the subject of public consultation and CN had no opportunity to challenge the policy amendment.

2006 Supplementary Planning Document (SPD)

7.90 The 2004 document was further updated commencing in 2005 with the publication of a consultation draft; no further change to paragraph 4.12 concerning affordable housing

was proposed (ibid, p4.1). A full public consultation exercise was undertaken and a report on the exercise was submitted to Cabinet in February 2006. An objection to the nil cost clause was submitted by the East Grinstead Development Consortium, but it was dismissed. MSDC's response was

“In view of scarce resources for affordable housing, unless negotiations are on the basis of land at nil cost, the funding and subsequent delivery of affordable housing may be compromised. Recommendation: No change” (ibid, p4.3).

- 7.91 The SPD was adopted in February 2006. As it is understood from its evidence, MSDC considers that its stance gives clarity to developers in its negotiations with providers of affordable housing (principally RSLs) and indeed there is an argument that when dealing with small developments it may prove helpful as the development will be commenced in the full knowledge of the prevailing level of grant availability. But, in the case of a strategic site, the imposition of the nil land value clause denies developers the opportunity to negotiate freely with RSLs and to take account of extraordinary or unforeseen site costs and changing specifications or market conditions. This raises considerable difficulties, especially when dealing with a site that will be developed on a cell-by-cell basis over a period of several years. There should be every confidence that affordable housing will be developed but delivery should not be restricted to one particular method.
- 7.92 In the case of Phases 4 and 5 the problem is compounded as the application is for outline permission; consequently the exact number and type of dwellings is unknown. MSDC need have no concern about the ultimate delivery of affordable housing as the Unilateral Undertaking will include safeguards in the form of guaranteed percentages and tried and tested cascade mechanisms that will deliver certainty to developer and local authority alike. CN has the track record and ability to deliver. Policy guidance provides for a flexible approach and there can be confidence that much-needed affordable housing would be provided.
- 7.93 PPS 3, Annex A didn't cancel Circular 11/95 so paragraph 97 of this Circular is still extant and clearly states that conditions shouldn't be used to control price, tenure or ownership. CN's package is both deliverable and affordable and meets the objectives of PPS 3 (CD3, p9 & 10).

Submissions on Affordable Housing Policy

- 7.94 In adopting its SPD, MSDC has sought to ensure that it retains a considerable degree of influence over the tenure and mix of affordable housing, and through its demand for nil value, it also seeks to limit the flexibility of CN to negotiate freely with RSLs to deliver the housing in an effective and economic manner. MSDC's policy has evolved in a way that would not satisfy current requirements for meaningful public consultation, leaving the appellant at a considerable disadvantage when seeking to meet its affordable housing obligations. There is no reference in the adopted Local Plan to a free serviced land policy (CD14).

- 7.95 Bearing in mind that the applications are for outline permission, MSDC seeks to impose rigid cost constraints at an early stage in the development process, severely limiting development options. CN has at no time sought to provide anything less than the required amount of affordable housing. It simply wishes to provide it in a flexible manner.
- 7.96 The emergence of PPS 3 and its companion document, Delivering Affordable Housing (DAH) (CDs 3 & 61) make it clear that the Government places a high priority on the provision of affordable housing, but in a manner that allows the market to provide innovative and cost-effective solutions. The overall thrust of the documents militates against MSDC's current rigid approach. CN has committed itself to delivering much-needed affordable housing in a manner that is fair and equitable without unduly hampering sensible commercial negotiation. MSDC is taking an unreasonably narrow stance.
- 7.97 This approach was conspicuously apparent from MSDC's evidence where this was arbitrary and inflexible; "*MSDC policy calls for serviced land to be provided at nil value*" (Doc 9, p1.5) and that was the end of it unless it could be shown that otherwise the proposed scheme was unviable. MSDC saw no reason for departing from that position even though in the St Francis Hospital case the Secretary of State accepted that the costs of the development were a significant and a material factor and justified the reduction of the affordable housing requirement to 18% (circa 40 units out of 220) (Doc 9, p3.8, Doc 128, p2.34 & Doc 141, p2.6).
- 7.98 MSDC relied upon letters from the Housing Corporation as if they represented national policy and converted a "desire" into a "requirement" (Doc 10, appx 3). It appeared to be seeking a financial indemnity against a potential lack of public subsidy.
- 7.99 Other authorities who had a free land policy were cited and where no distinction between free and free serviced land was seen (ibid, LS4, Table 1). This was all very unsatisfactory. Even before PPS 3 and DAH, it was incorrect to deal with the affordable housing contribution on the basis that there was some kind of national policy that free serviced land must be given by developers to an RSL. This is more conclusively the case now that these new policies are in place. There are many ways to secure funding. Furthermore, it is no part of the planning process to dictate how much profit a developer will make. Flexibility is the key. There is no justifiable requirement for MSDC to fix tenure, price or ownership and if funding is not available then shared ownership arrangements can be made to work. The new PPS 3 and DAH specifically contemplate that (Doc 172, appx E). MSDC's approach in the circumstances of this case is wholly untenable.

7.100 MSDC would not initially accept that the Easement and Connection Charge⁵ was a relevant abnormal cost and had instructed the District Valuer (DV) not to take it into account (L Standing, oral evidence). It is noteworthy that the DV subsequently did. There was no regard to the S106 Agreement of 1998 which set the blueprint for the development of the entirety of the south-west sector of Haywards Heath. This was seen as 'water under the bridge'. In 1998 the affordable housing requirement and cascade arrangements for the 'blue land' (Phases 4 and 5) were expressly agreed and documented – 85 units on equivalent terms to those agreed for Phases 1, 2 and 3) (Doc 141, p2.4). CN has voluntarily gone further than this and in good faith offered 30%, but all to no avail. It is not understood why Phases 4 and 5 should be treated not only differently from the earlier phases but differently from St Francis Hospital.

7.101 If a deal was a deal for the St Francis Hospital site, then why not for the 'blue land' (Doc 9, p3.8-3.10)? Whilst CN has voluntarily advanced the contribution beyond what was accepted at St Francis and beyond what was agreed in 1998, MSDC should otherwise be required to honour the 1998 arrangements. This is quite apart from the earlier points made in relation to the thrust of the new PPS 3 and DAH (Doc 172, appx E).

7.102 The St Francis Hospital Agreement required:

- 18% affordable housing
- was not tenure specific (i.e. all of it could be shared ownership)
- required the land sale to an RSL not to exceed 50% of Open Market Value (OMV) or such higher prices as may be agreed between the owners and the RSL.

7.103 As to the earlier phases of Bolnore:

- No free land requirement
- Cascade on previous phases allowed for no provision at all and yet not only delivered the numbers but also tenure aspirations with the overwhelming majority for rent.

7.104 CN specialises in affordable provision and has a division within the company specifically dealing with it. It can and will deliver as it did on the previous phases. The use of the cascade is recommended policy, it doesn't relax provision it ensures it, and even with free land an RSL would need a cascade mechanism to cover the position of insufficient public subsidy. So 30% is the appropriate provision, a mix of tenures is

⁵ Inspector's note: An explanation of the Easement and Connection Charge is provided in the proof of John Turner and associated note (Doc 141, Sections 4-6, Doc 143 & Doc 148). In brief, the S106 Agreement associated with the 1998 planning permission for the development of Phases 1-3 required the developer of these phases to provide infrastructure and access rights up to the boundary of Phases 4 and 5. This effectively 'deransomed' the Phases 4 and 5 land and took away the Phase 1-3 landowner's commercial position. The price for these rights was called the Easement and Connection Charge. It comprised two separate measures of 'compensation': a) a payment in consideration of the Phase 1-3 land carrying the burden of providing all land necessary for the HHRR and other major items of infrastructure and most, if not all, of the strategic areas of open space required for development of all of Phases 1-5 (an 'equalisation' payment); and b) a payment relating to the costs of the infrastructure, constructed both within Phases 1-3 and off-site which, when completed, would benefit both Phases 1-3 and 4-5.

desirable and CN will deliver (the structure of the proposed S106 is set out at Doc 172, appx F and the signed S106 obligation is at Doc 167)⁶.

The Relevance of John Turner's Evidence

7.105 It became necessary to call Mr Turner only once MSDC's evidence, which had appended to it a letter dated 29 August 2006 (later Annex D to Doc 29), which showed in a Market Land Value Assessment Table a land value of £42.84m. This was known to be wrong and obviously needed to be corrected. It gave a totally distorted view of the actual value of the land. Subsequently, when the DV's proof of evidence was provided, his valuation was reduced but only marginally to £42.7m (Doc 10, LS9). This was a curious situation given:

- Reducing the Affordable Dwelling values to £1500 per m² (from £2066 per m² or £191.98 per sq. ft) the figures he originally used in the Table appended to Mrs Standing's proof loses £5.9m to the residual assuming the DV's coverage assumptions.
- The concession that the Easement and Connection Charge should be taken into account adds £15.37m to the Development Costs.
- The aggregate net effect on the residual land value could be expected to be circa £21.27m, so if £42.84m was initially correct one might assume the effect of these charges would be to reduce the land value to circa £21m.

7.106 The answer to this conundrum was found to be in the build costs. In Doc 29, Annex B the DV took the build costs as £1300 per m² for the social housing and £950 per m² for the private. Doc 10, appx 9 worked on the basis of affordable £933 per m², private flats £790 per m² and houses £653 per m².

7.107 It was not until Mr Turner produced Doc 144 (JT2), which applied the methodology used in the DV appraisal (using coverage and sales figures more consistent with those of Mr Turner), that a situation was arrived at where, on the three variations of the number of units (705, 645 and 585), it appeared to be almost common ground that the land value was between £20-22m [705 units = £22,128,627, 645 units = £21,426,200, 585 units = £20,360,000]. It was 'almost' common ground because the DV persisted in sticking to wholly unrealistic build costs, bearing in mind the quality and finish of the proposed scheme.

7.108 As to the likely sales values figures, the DV accepted that the sales values were about right at today's price, but didn't take into account inflation. That, of course, will affect build costs too. The upshot of all this is that the true value of the land was shown to be circa £20m less than that originally ascribed to it by the DV and relied upon by MSDC. The true position then, as Mr Turner described it, is that the scheme "it just about flops over the line" of viability.

⁶ Inspector's note: The provision of affordable housing is dealt with in detail in the Obligation. However, its various provisos would not apply if the SoS was to decide that the affordable housing could be secured through a planning condition. Within the definition section of the Obligation a suggested condition is set out.

7.109 It has never been CN's case that the scheme is not viable as it would likely generate more value than cost but the question was as to deliverability. In Mr Turner's analysis it was certainly undeliverable under the terms of the existing contract, this echoing what he had originally said in his written evidence:

"In order to secure the land I am advised by CN that the average purchase price per net developable area of the two parcels which together make up Phases 4 and 5 when multiplied by the total net acreage, would result in a figure of close to £20m. Clearly the combined effect of:-

i) The Easement and Connection Charge

ii) The S106 obligations, as proposed by the two councils, in regard to the Phase 4 and 5 development and

iii) The proposed Affordable Housing Nil Land Value obligation is such that it would not be viable for CN to purchase the Phase 4 and 5 land on the existing contractual terms. Even if it were possible that CN MIGHT be able to re-negotiate such terms the evidence at Appendix 3 of comparable land sales transactions is that the owners of the Blue Land would be well advised NOT to agree such revised terms and for them to investigate ways in which their land might be developed WITHOUT incurring either or both the Easement and Connection Charge OR agreeing to Affordable Housing terms sought by MSDC ..." (Doc 141, p9.5).

7.110 It was put to Mr Turner in cross-examination, well if that were the case, then the developer would just have to accept a lower profit. On the basis of the figures he had presented, Mr Turner was in no doubt that the reduced profit level would be unacceptable to the board of a publicly-quoted company with responsibilities to its shareholders.

7.111 Planning has to live in the real world. If housing is to be delivered it must be capable of being achieved in a way that is attractive to developers otherwise it will not happen. Requiring them significantly to scale back on their profits is not the way forward nor is it an appropriate function of the planning system. This is a further example of MSDC adopting a wholly unreasonable approach in its consideration of CN's applications.

7.112 Another example of this is the failure to appreciate CN's position on an 'open book' assessment of the scheme. Surely everyone knows that developers are very rarely in a position to agree to this because of confidentiality agreements and the effect such disclosure would have on third party interests. In any event in this case this wouldn't have led to the resolution of the dispute where the differences related essentially to the acceptable level of profit to be derived from the development. Mr Turner was also cross-examined on density and coverage matters. However, the important point is that this had no real relevance to Mr Turner's assessment. JT2 (Doc 144) is based on different numbers of units, clearly at different densities and coverage, and in all three cases the land value comes out at about the same, between £20-22m and not the £42m initially relied upon by the DV.

7.113 The point of all this is that the affordable housing contribution required by MSDC should have been informed by the fact that this proposal is at the margins of viability. To push it below that is to run the very real risk that this site will not deliver what is badly

needed housing and affordable housing. In those circumstances, MSDC's approach would have been totally counter-productive to the achievement of its housing policies and the urgent need for more housing in this sector. Once again it has acted wholly unreasonably.

- 7.114 The affordable housing that would be provided through the Unilateral Undertaking goes well beyond what was approved and contained in the 1998 S106. It is considerably more generous than the Government's 'Homebuy' scheme. The cascade arrangement is also better in terms of annual outgoings compared with a conventional housing association shared ownership lease and a rental of 2.75% of the balance of the equity.

The Travel Plan and Penalties

- 7.115 The Travel Plan has a self-monitoring mechanism, and as the requirement for the provision of the TP is linked to the Section 106, the TP is accountable and measurable (as per Pitwines Poole, which is quoted as a best practice example by Department for Transport) (Doc 45, Annex 1, pp92-95, Annex 12, Section 7). Apart from it being asserted that it would not deliver substantial trip savings, the only criticism of it was that it lacks penalties.

- 7.116 The issue of penalties is dealt with in 5 ways:

1. There is an obligation to keep the TP measures going and to ensure that the most effective ones are promoted; the annual monitoring programme plus the Travel Plan Management Company would ensure that the success of each measure is regulated and assessed, with the flexibility to enhance certain interventions within the budget if that is needed (e.g. the Maxi-Taxi needed to operate in a wider morning peak time band) (Doc 45, Annex 12 Sections 6 & 7 and Doc 167, p7.1.42 -7.1.53).
2. Obligations on TPs should be seen in the positive, not the negative – therefore the performance-based obligations and any remedy should be seen in the form of “cranking up” incentives rather than holding back resources and support in the event of “punishments” being triggered (Doc 45, Annex 1, Section 4).
3. Travel Plans must not operate in the same way as punitive conditions and have to work on the positive aspects rather than the fallback position. The Poole Quarter Travel Plan is a perfect example of this where the fallback package contains £10k for a residents' parking scheme and £30k for a roundabout; this compares with the sustainable transport package of over £800k which is a mix of traffic management/walking/cycling infrastructure, bus subsidy and travel plan measures (Doc 45, Annex 4).

The concept of handing money to MSDC if it does not perform is not best practice as:

- a) it disenfranchises the developer and weakens/stops their engagement in the process.

- b) it fails to recognise that it is the developer that needs to sell the concept and behaviour change; once it becomes a 'Council' scheme the audience is one step removed.

Resources should therefore be loaded towards making the TP work, rather than steered towards reacting to failure. Another key example is Priddys Hard, where the 'congested' A32 could have been the focus of the package of measures; instead Gosport BC and Hampshire CC put all their faith in the travel demand strategy and TP rather than getting embroiled in the minutiae of modelling the A32 and all its junctions; this application and approach received 100% backing at Committee (Doc 45, Annex 5).

4. There is already a commitment to provide the bus service (£606k subsidy less fares) and to run the Maxi-Taxi service (worth £360k less fares) over a 5 year timeframe; in both cases there is flexibility to adjust timings/frequency to meet the needs of Bolnore residents (Doc 167, p7.10 & 7.11).
5. The penalty is in fact the completion of the HHRR, a major piece of infrastructure. If the need for the HHRR was being assessed now, assuming that Bolnore Village was a 'new' development, then the Priddys Hard approach would be followed first, and one would look to see what was needed in wider transport terms. The provision of a major piece of infrastructure is in itself an abnormal cost (which is accepted by MSDC's witnesses) and is therefore the penalty within the current rationale of sustainable transport.
- 7.117 There are therefore 5 safety nets in terms of 'penalty' but there is a need to move away from thinking that TPs are about what happens if they don't work; it is about weighing the resources so that they do work in the first place. This has now been accepted by the Councils.
- 7.118 The notion that the HHRR is the 'cure' regardless of the TP is a very narrow view from WSCC, and it is certainly contrary to its own policies and objectives of social inclusion and accessibility. For WSCC to state that "there is no need for the TP once the road is open" is far too simplistic (A Howick, XX). WSCC has an obligation in terms of PPS 1, PPG 13 and its own accessibility strategy to ensure that there is modal choice for all residents so there is a need for both infrastructure and a TP.
- 7.119 The argument that the TP has not been retrofitted already is flawed (particularly the reference that WSCC has asked for it since early 2005) (Doc 20, p7.11). What incentive would CN have for putting this mechanism into place if WSCC was consistently not giving it any credit? The first time that this was alluded to was on the 1 July 2005, only 14 days before the July 2005 Committee meeting (Doc 40, p3.5.4). The County's witness missed the point that, in order for TPs to be retrofitted, there needs to be some form of incentive, at least a firm belief from MSDC in the fact that the TP route is supported and worthwhile and will give a measurable 'credit'.
- 7.120 WSCC repeatedly made reference to 'significant highway congestion'. CN's witnesses demonstrated that the current levels of delay on the A272 simply do not justify this

conclusion (see paragraphs 7.147-7.150 below), but even if it was congested the TP is an entirely legitimate approach to mitigate against this (see the Priddys Hard/A32 example, Doc 42, Table 1, pg30). WSCC's assertion that the burden of responsibility for demonstrating the 25% modal change should rest entirely with the developer is also mistaken. It is also the responsibility of the highway authority to facilitate and enable TPs as a solution. This message has come from central government in the form of policy advice and best practice, from WSCC's own guidance on sustainability and accessibility, and can be demonstrated through Hampshire County Council's proactive stance on Priddys Hard (e.g. CD8, p87-91, CD13, pg50-51 & 99-101, CD53, Doc 42, pg30).

The Need for Haywards Heath Relief Road

- 7.121 The HHRR is a long-standing highways scheme, first identified in the 1970s, as being required to relieve traffic congestion along the A272 corridor through Haywards Heath. This was originally conceived long before land was allocated for residential development at Bolnore and therefore the scheme is aimed at resolving a pre-existing traffic congestion problem, irrespective of residential development south-west of the town coming forward. WSCC, as highway authority, has in its evidence placed emphasis on the current congested traffic conditions along the A272 corridor and the need for the HHRR to mitigate this (Doc 21). The evidence relating to the history of the HHRR suggests if traffic conditions were as severe as WSCC maintains, the road would have already been implemented by WSCC and would not rely on developers to fund and construct it (Doc 40, p3.3.3, 3.3.4). Further evidence on this point is shown within Mr Harris' proof which illustrates the historic levels of traffic growth that has occurred along the A272 corridor since the early 1990s when the HHRR was a firm proposal, but further residential development sites had yet to be allocated (ibid, Section 3). This illustrates that significant traffic growth levels have occurred for a highway network that WSCC considered to be congested. In the early 1990s WSCC would have been aware of traffic growth predictions for the A272 when considering the need for the HHRR, but still did not consider the deterioration in traffic conditions that would inevitably occur to be significant enough to justify its funding of the HHRR construction.
- 7.122 It may be argued that the development of Bolnore Village represents a 'tipping point' in terms of acceptable traffic levels using the A272 without the HHRR and that therefore WSCC is being reasonable in expecting completion of the road to serve the full development of Bolnore Phases 4 & 5. The fact that in the long-term, the HHRR will be required is not challenged, but since the expected completion date is 2010 and development of housing units at Bolnore Phases 4 & 5 would not be likely to commence until the start of 2008, the proposal for additional units without completion of the road will only impact on the A272 for a short period; and in any event, only a proportion of the dwellings within Phases 4 & 5 could be occupied within this two-year period.
- 7.123 The issue of WSCC not considering traffic conditions on the A272 being serious enough to stimulate its own funding of the HHRR gives further evidence to support the case that peak hour traffic congestion cannot be a reasonable basis for objecting to CN's proposals since any additional traffic generated by Phases 4 & 5 would only impact for a short period. This is further supported by CN's evidence on vehicle queues, journey times and journey speed. This shows that peak hour traffic conditions along the A272 corridor are

typical of those which exist on highways in many urban areas and that in general traffic congestion levels are not as onerous as WSCC suggests (Doc 114, p2.16-2.27).

- 7.124 In considering the need for the HHRR, the significant trip credits, expected to be 25%, brought about by the TP must also be taken into account (ibid, p5.2). This factor, together with the highway works proposed at the Tyler's Green Roundabout mitigates the potential impact of Bolnore traffic on the A272 for the relatively short period until completion of the HHRR in 2010 (ibid, p5.5-5.7, Doc 123, drawing 24080/02 and Doc 124, p3.30)⁷. It is not suggested that the TP avoids the need for the HHRR but that it would be sufficient to limit traffic generation to acceptable levels in the period up to relief road completion. In stressing this point reference should be made to the Eddington Report and the new guidelines on Making Residential Travel Plans Work, which both stress that 'soft' measures such as the TP should be considered as important a tool as new highway infrastructure in mitigating the impact of traffic growth and congestion (Doc 172, Appx C & Doc 45).

HHRR, Certainly Over Delivery, Stages 5 & 6

- 7.125 A review of the legal and planning mechanisms indicates certainty over delivery of the remaining stages of the HHRR (Doc 121, p7.36-7.43 & Doc 166). Construction is likely to be complete by 2010. Reference can also be made to the recent progress with Network Rail on agreements that would allow construction to commence on Stage 5 of the HHRR and the contractual position relating to Stage 6 (A Roderick, examination-in-chief & Doc 166). The highway authority's witness conceded that a firm mechanism was in place to deliver the remaining stages of the road and that there is now more certainty over its delivery (A Howick, XX and see also Doc 79). Absolute certainty – except for death and taxes – is an unknown concept to mankind and to planners.

Traffic Modelling Methods

- 7.126 One of the main reasons given by WSCC for objecting to the Phase 4 & 5 proposals without completion of the HHRR has been that, in using the ARCADY program to assess roundabout junction capacity, an incorrect traffic modelling method has been used (Doc 20, p3.35 & Doc 22, Section 4). ARCADY assesses junction operation for individual junctions in isolation and WSCC argues that a network traffic model, PARAMICS, should have been used to test junctions along the A272 corridor on the basis that this model could better reflect traffic conditions in terms of vehicle queues between junctions along the A272 (Doc 22, Section 4). As the Inquiry progressed, WSCC placed significant emphasis on this point, with its witness refusing to discuss in detail the extensive traffic modelling work undertaken on behalf of CN. This was on the basis that WSCC did not have a suitable traffic model before it to consider the traffic issues associated with Bolnore Phases 4 & 5. It was also suggested that the only reason

⁷ Inspector's note: The improvements proposed are the widening of the Isaacs Lane approach to the Tyler's Green Roundabout to allow simultaneous queuing for both left and right turning vehicles at the roundabout, and the widening of the carriageway at the roundabout itself by reducing the width of the central island. These are shown on Drawing 24080/02 (Doc 123). Minor carriageway widening is also proposed at the roundabout junction of the A272 and the B2184 at Cuckfield as shown on Drawing 24080/01 Rev A (Doc 123).

that CN did not commission a PARAMICS model was due to cost rather than any concerns over the validity of the work. The reason that a PARAMICS model was not employed was that there was sufficient evidence on the functioning of the network and that it was therefore not necessary.

- 7.127 CN's evidence describes at length the work undertaken with MSDC's consultants, Ove Arup, to arrive at a suitable modelling method using ARCADY for testing the capacity of roundabout junctions along the A272, namely the Tyler's Green Roundabout (Doc 121, Section 5). This demonstrates that a method was agreed with Arup for arriving at an ARCADY model that accurately reflected existing network traffic conditions and that Arup were satisfied that ARCADY was a suitable tool for assessing the impact of Bolnore Village traffic on the operation of the A272 corridor. CN considered WSCC's request for a PARAMICS modelling exercise to be undertaken but came to the conclusion that the work already undertaken was sufficient (Doc 124, p1.6). However, it was admitted that PARAMICS could better model the interaction of vehicle queues between junctions along the A272 (ibid, p3.25).
- 7.128 Further reasons why CN maintains that it was not necessary to undertake the PARAMICS modelling exercise requested by WSCC are:

- WSCC's request for a PARAMICS model to be developed is a relatively recent request (2005) and until that point WSCC did not consider it necessary for a traffic model to be prepared to consider the feasibility of the HHRR or additional development being served from it (A Roderick, examination-in-chief). When highway authorities are considering the need for significant new highway infrastructure such as a relief road, it is common for a network traffic model to be developed when schemes are being considered at the outline stage, if the authority is not satisfied that other model techniques such as ARCADY will be sufficient. This did not occur for the HHRR at any stage of its inception or feasibility design, which suggests that WSCC did not consider a network traffic study to be necessary.
- The original traffic assessment work undertaken for Bolnore Village Phases 1-3 by Singleton Clamp used 'stand alone' junction assessment using ARCADY. This approach was also taken for traffic assessments associated with development at St Francis Hospital (ibid & Doc 124, p3.25). This work was accepted by WSCC which did not ask for a network traffic model to be prepared. Therefore, in the past WSCC has been fully satisfied that 'stand alone' junction assessments have been suitable for the A272 corridor. As traffic congestion has, according to WSCC, been a long-standing problem along the A272, conditions will not have changed and therefore highway officers have no satisfactory reason to justify why a network traffic model (PARAMICS) is now required.
- CN's evidence considered the relative merits of using ARCADY and PARAMICS to assess the performance of highway junctions. It draws the conclusion that if, using ARCADY, the modelling of roundabout junctions is validated using the results of observed vehicle queue lengths, it is possible for a model to reflect how junctions are affected by traffic queues beyond them (Doc

114, p3.6). It is not therefore necessary for a PARAMICS modelling exercise to be undertaken. This had been accepted by MSDC's consultants Arup.

- This issue of costs associated with producing the PARAMICS model has been raised by WSCC since it argues that this is the main reason why CN did not commission this work. However, it is entirely reasonable for a developer to refuse to undertake an expensive and time-consuming traffic modelling exercise, which would have led to scheme delays, when it was clear that adequate traffic assessments using ARCADY had already been submitted, especially when WSCC had not requested this work for the HHRR or previous developments. In requesting PARAMICS a considerable time after the original Transport Assessment (TA) was submitted, WSCC was responsible for unreasonable delay in granting a highways approval to CN's proposals. In addition, WSCC requested a model for the whole A272 corridor through Haywards Heath. Since submission of the original TA report in 2004, it had been agreed that WSCC's main concern over traffic capacity relates to a small section of the A272 corridor at the Tyler's Green Roundabout and junctions on either side of it (Doc 114, p1.13 & 4.6). Such a small network is well suited to assessments using the ARCADY program and makes the WSCC request for a wider model wholly unreasonable given that other junctions are not of concern.
- PARAMICS, as with all traffic models, cannot be guaranteed to accurately reflect traffic conditions in all circumstances. Ultimately it is a matter of judgement having regard to all the information available.

Traffic Impact Issues

7.129 CN's evidence relating to the impact of traffic generated by the Bolnore Phase 4 & 5 proposals addresses the issue of impact relating to the A272 corridor, primarily to the west of the town centre, i.e. the Tyler's Green Roundabout and surrounding junctions and a critical highway link on the A272, Butler's Green Road (Docs 114, 121, & 124). As noted above (penultimate bullet, paragraph 7.128) WSCC confirmed that this is the area of most concern, during a weekday morning peak hour.

7.130 CN's evidence explored the impact of Bolnore Village traffic on the A272 in two ways: by calculating the percentage increase in traffic using the A272, and in particular, Butler's Green Road; and by undertaking detailed junction capacity assessments using the ARCADY program. A significant number of parameters were agreed with WSCC within CN's assessment. These are as follows:

- An assessment year of 2010
- Background traffic levels, inclusive of committed development during this assessment year and its distribution over the local highway network
- The traffic generation expected from housing development at Bolnore Phases 4 & 5.

- 7.131 Despite the disagreement over traffic modelling methods, WSCC accepted that CN's consultants, BTP, had used ARCADY in the correct way to assess the Tyler's Green Roundabout and that that MSDC's consultants, Arup, had confirmed that BTP had, as far as was possible using ARCADY, tested the operation of this junction correctly (A Howick, XX).
- 7.132 The fact the BTP and WSCC agreed a network traffic distribution for the Bolnore proposals is an important issue, since WSCC has made reference to a 'flawed distribution' which it is argued BTP has used to test the operation of the Tyler's Green Roundabout (e.g. Doc 20, p3.10-3.13). CN has in fact agreed with WSCC a revised traffic distribution based on a survey undertaken in June 2006, which suggests that almost 40% of Bolnore Village traffic would turn right to Butler's Green Road during the morning peak hour (Doc 124, Section 2, in particular Table 2.1 and p2.7). CN's most recent highways evidence uses the latest distribution to assess the impact of Bolnore traffic on junction capacity and the increase in traffic on the A272 (Doc 124, Section 2 & Doc 114, p4.9). The issue of using a 'flawed distribution' has therefore been fully addressed.

Increases in Link Traffic Flows

- 7.133 CN's evidence has addressed the issue of the percentage increase in link traffic flows using the A272 and, in particular, Butler's Green Road. This identified that this link would be operating at its theoretical capacity without additional Bolnore traffic and therefore would be sensitive to any increase in traffic (Doc 124, p3.3).
- 7.134 The parameters used to identify if a percentage increase in traffic would lead to a material impact are those published by the IHT with a 5% threshold being used i.e. if increases in traffic using the A272 were predicted to be below this threshold, the impact would not be material (CD30, p3.1.5). With the Interim Phase 4 development (390 units) at Bolnore Village, using the traffic distribution agreed with WSCC from the June 2006 survey, there would only be about a 3% increase in traffic using Butler's Green Road (Doc 124, p3.3 & 3.4). This excludes any TP trip credits and therefore takes a worst case. The situation with the full development of Phases 4 & 5 at Bolnore Village without the HHRR but with full trip credits (25%) associated with the TP has also been considered. The predicted increases in A272 link flows illustrate that for the critical highway link, Butler's Green Road, these would be less than 5% (ibid, Table 3.6, pg22). This accords with other CN evidence on the likely impact of development with the operation of the TP (Doc 42, Section 8.3).
- 7.135 In summary, the evidence relating to A272 link flow traffic increases shows that for 390 units without any TP credits the increase would be below the IHT thresholds, but that for the full development of Bolnore Phases 4 & 5, 785 units, TP trip credits will be required to keep the A272 traffic increase below 5%. It is accepted that for the full development of Phases 4 & 5 to proceed without the HHRR, the TP is required as a mitigating tool.
- 7.136 The IHT guidelines on Traffic Impact Assessment that were used have been superseded to a degree by draft government advice on Transport Assessments (Doc 172, appx B and CD60). This specifically advises that the traffic impact thresholds set out in the IHT advice should no longer be used and, in effect, that each site should be taken on its own

merits (CD60, p4.89). The new advice is a draft consultation document and therefore there can be no guarantee that all the new advice relating to highway impact will be adopted in its current form. On this basis it is reasonable for CN's evidence to rely on the accepted TA guidelines produced by the IHT. In addition, the predicted increases in traffic using the A272 must be looked at in practical terms. With the interim Phase 4 development without any TP credits there would be an increase of 92 vehicles using Butler's Green Road in the morning peak hour, which equates to less than 2 vehicles per minute (Doc 124, p3.3). With the development in full of Phases 4 & 5 with the TP the increase would be 79 vehicles, again less than 2 vehicles per minute⁸. Such a limited increase for the morning peak hour for a short duration until the HHRR is complete should be acceptable.

- 7.137 Consideration has been given to how the varying degrees of trip credits that would result from the operation of the TP would impact on Bolnore Village traffic generation and increases in morning peak hour traffic using the A272. The situation has been examined with 10% trips credits as accepted by WSCC, the 25% trip credit figure that is considered achievable for the TP and an interim figure of 18% (Doc 114, Section 5).
- 7.138 The main thrust of the evidence is that even with the lower figure of trip credits - 10% accepted in full by WSCC - the increase in traffic using Butler's Green Road during the morning peak hour would be within the 5% IHT significance threshold, even assuming the full development of Phases 4 & 5 without the HHRR. The increase would be well within it assuming only interim Phase 4 development⁹. Therefore, the TP as a tool to restrict traffic generation makes the full development proposals without the HHRR acceptable.

Junction Capacity Assessments

- 7.139 The evidence of Mr Charlton considered the operation of the Tyler's Green Roundabout and adjacent junctions with the interim Phase 4 development only without the HHRR and without the trip credits associated with the TP (Doc 124, p3.6-3.34). These assessments have taken a worst case since WSCC agrees that at the very least the TP would reduce traffic by 10% from the figures input to CN's capacity assessment.
- 7.140 Mr Roderick's evidence specifically makes reference to a queue of 213 vehicles at the Bolnore Road/Paddockhall Road junction during the morning peak with the interim Phase 4 development (390 units) (Doc 114, p6.5 (referring to Doc 21, p3.21)¹⁰. This is shown within Appendix J of the ES Technical Appendix 4 (CD44). However the material issue is not the total queue length, but how this will change with the addition of

⁸ Inspector's note: The increase of 79 vehicles is that quoted in CN's closing submissions. However, Doc 124, Table 3.6, showing additional flows for the full development of Phases 4 and 5 with the operation of the TP, indicates an increase on Butler's Green Road of 90, with that on Tyler's Green Road being 79. These respectively equate to 3.1% and 4.8% increases.

⁹ Inspector's note: The table between paragraphs 5.5 and 5.6 of Doc 114 appears to show a 5.04% net impact on this stretch of road into Haywards Heath on the basis of the full development of Phases 4 and 5 (excluding the elderly persons element) and a 10% modal shift. With a development of 390 units the net trip increase of traffic into Haywards Heath would be 1.9%

¹⁰ Inspector's note: Within Mr Charlton's evidence it is indicated that 390 units is the figure CN proposed could be served off the existing highway network including Stages 1 to 4 of the HHRR. This was supported by Arup, the independent consultants advising MSDC officers, but opposed by WSCC (Doc 121, p1.20).

Bolnore traffic. Appendix J also shows that without the interim Phase 4 development, queues at the same approach would be 183 vehicles in any event, therefore indicating the impact of the proposals to be not significant. Also, this capacity assessment is very pessimistic as it takes no account of TP credits. The level of impact would be less than that illustrated.

- 7.141 The above response applies to all of the highway junctions tested i.e. although there are some expansive queue lengths shown, these would occur with or without the addition of Bolnore traffic and that is not taking TP credits into account. All of Mr Charlton's capacity assessments take a worst case that is unlikely to occur in practice (Doc 121). This evidence and earlier TA reports were produced to show the proportional impact that would occur along the A272 with the Bolnore proposals, rather than for the purpose of exactly predicting traffic queue lengths in the assessment year, 2010. All traffic models have difficulty in predicting traffic queues in future years given that factors such as peak hour spreading cannot be taken into account.
- 7.142 Taking this issue of a worst case approach further, Mr Charlton's evidence also uses traffic generation rates for Bolnore Village that are likely to be an over-estimate. The estimates for traffic generation rates used throughout the evidence are based on traffic surveys undertaken at the then completed sections of Bolnore Village in April 2004. The most recent surveys carried out in June 2006, when more dwellings had been occupied, and which should therefore give a more accurate guide to traffic generation, illustrate lower traffic generation rates per dwelling than recorded by the original survey (Doc 124, p2.8). This further illustrates that the junction capacity assessments take a worst case in terms of predicted traffic generation.

Updated Junction Capacity Assessments

- 7.143 Mr Roderick's evidence re-visited the predicted operation of the Tyler's Green Roundabout and adjacent highway junctions using new validated ARCADY models drawing on the results of traffic and vehicle queue length surveys undertaken in November 2006 (Doc 114, p4.12-4.22). The work does not invalidate the earlier assessments undertaken by Mr Charlton but takes a slightly different approach. The main parameters used within this more recent evidence to test junction operation are:
- Year 2010 morning peak hour background traffic flows and distributions agreed with WSCC.
 - Development traffic generation and distribution agreed with WSCC.
 - Base ARCADY models validated using vehicle queue lengths observed over the network in November 2006.
 - A scenario with the interim Bolnore Phase 4 development with 10% TP trip credits.
 - A scenario with the full Bolnore Phase 4 development with 10% TP trip credits.
 - The 'with development' scenarios assume the highway improvement works that would be implemented at the Tyler's Green Roundabout junction.
- 7.144 The decision to assume the figure of 10% trip credits is fully justified since WSCC accepts this figure and, in not assuming any TP benefit, CN's earlier junction capacity

assessment work presented an overly pessimistic assessment of the impact of Bolnore traffic especially with respect to the Tyler's Green Roundabout. The relevant ARCADY results tables, which compare the situation with and without additional housing at Bolnore Village, are shown at Doc 114, Tables 4.4 to 4.12. These all illustrate that with either Bolnore development scenario the increase in traffic queues and delay when compared to the 'without development' situation in 2010 is acceptable. The results tables should be read in conjunction with the full ARCADY results printouts presented in evidence (Doc 115).

7.145 The traffic queue lengths produced by CN's most recent ARCADY assessment work do differ from those shown within the earlier evidence of Mr Charlton. This can be explained for the following reasons:

- The ARCADY assessments assume 10% TP trip credits when the earlier work did not.
- For the Bolnore Road/Muster Green junction and the Tyler's Green/Broad Street junction the ARCADY models have been validated using traffic queue survey results, when the earlier work did not use this validation process.
- For the Tyler's Green Roundabout the earlier assessments were validated using queue surveys but these were undertaken in 2004 and the most recent work uses the most up-to-date survey information.

7.146 For the Tyler's Green junction the ARCADY assessments undertaken use a different approach to that agreed previously between CN and MSDC's consultants, Arup (Doc 114, p4.10 & 4.11). Mr Roderick did not suggest that the earlier work was invalid, but that the capacity assessments within Mr Charlton's evidence had difficulty in showing clearly the benefits of the carriageway widening works proposed at the Isaacs Lane approach to the Tyler's Green Roundabout. Mr Roderick's evidence rectified this situation. In summary, the latest junction capacity assessments illustrate the same conclusions as drawn earlier in that, although there would be a degree of unavoidable traffic queuing at junctions along the A272 within the 2010 assessment year, the main issue is how large the impact of Bolnore traffic would be.

Traffic Queues, Delays and Journey Times

7.147 One of the main issues to be addressed relates to the current morning peak hour traffic conditions along the A272 corridor west of Haywards Heath town centre. The conditions have been quantified in terms of the level of traffic queues at junctions and vehicle journey times recorded in November 2006 (Doc 114, Section 2). From these survey results, driver journey speeds over this network have been calculated. The purpose of these surveys and evidence is to rebut WSCC's assertion that the A272 is heavily congested throughout the morning peak hours and cannot therefore accommodate additional traffic.

7.148 The traffic queue length and journey time survey results are shown in full at Doc 114, Appendices 2 and 3, with a summary of the traffic queues recorded shown at Tables 2.2-2.4 (pg12-13). There is an important distinction between slow moving traffic that would normally be expected in urban areas during the peak hour and stationary traffic queues at junctions. These results show that at the Tyler's Green Roundabout and surrounding

junctions traffic queues are not as extensive as WSCC suggests, are variable, do not occur through the full extent of the morning peak hour and, towards the end of the peak, queues dissipate rapidly. Maximum queue lengths on the A272 at the Tyler's Green Roundabout were 20 and 44 on Isaacs Lane (ibid, pg12). The traffic conditions operating along the A272 west of the town centre are typical for urban highways and do not represent a gridlocked network, as suggested by WSCC (ibid, p2.27).

- 7.149 This conclusion is further supported by the calculations for journey speeds over the highway network surveyed. These illustrate that even over the most congested sections of the network, such as at the Tyler's Green Roundabout and on Butler's Green Road, journey speeds are in the range 11-20 mph at worst during the morning peak hour, typical for urban highway networks under normal traffic conditions (ibid, p2.16-2.26 and appx 7).
- 7.150 Significant emphasis is placed by MSDC on two queue length figures taken from Mr Charlton's evidence. Reference is made to a 213 vehicle queue at the Paddockhall junction in the 2010 morning peak with the interim Phase 4 development, which it is estimated would have a queue length of 1.3km (CD44, Technical Appendix 4, appx J and illustrated at Doc 20, appx 17). Reference is also made to a 400 vehicle queue at the same junction under the same scenario illustrated in Mr Charlton's original evidence (Doc 123, Appendix O). MSDC used this to support the view that the impact of interim Phase 4 traffic on the A272 is unacceptable in 2010.

Junction Modelling – Arup Report

- 7.151 MSDC confirmed that its consultants, Arup, had stated that CN had modelled the Tyler's Green Roundabout as well as was possible using the ARCADY program (A Howick, XX). It was also accepted that the Arup report of 24 May 2005 concluded that the interim Phase 4 development traffic could be accommodated on the A272 (CD48, CD/T/4). However, it was stated that WSCC did not agree with the conclusions of the Arup work and that the conclusions were based on a 'flawed' distribution for development traffic to the A272 (Mr Howick, XX and Doc 20, p3.21).

Junction Modelling – ARCADY/PARAMICS – the evidence of Mr Howick

- 7.152 WSCC did not accept that the ARCADY programme is suitable for assessing junctions along the A272 because ARCADY is a 'stand alone' programme and therefore could not assess how queues between junctions would affect their performance (Doc 22, p4.2). Its position was therefore maintained that the capacity assessments undertaken by BTP could not be relied on for the purpose of assessing the impact of Bolnore traffic (Mr Howick, XX).
- 7.153 The WSCC view was that an alternative model, PARAMICS, should have been used instead of ARCADY as this model could assess the situation where adjacent highway junctions are affected by traffic queues (Doc 22, p4.3). WSCC was questioned as to why it asked for this model to be used at such a late date, i.e. during a meeting held on 20 July 2006, nearly two years after the original TA report was prepared. It was stated that WSCC suggested use of PARAMICS in 2005 (A Howick, XX & Doc 25). However,

this was still more than one year after submission of the original TA report in September 2004. WSCC was also questioned as to why it had not asked for the PARAMICS model to be used during the scoping exercise undertaken at the time of the original TA but no details could be provided as to what had been agreed at that time.

- 7.154 WSCC's highways witness confirmed that he was not an expert on the use of PARAMICS and could not therefore comment on how the programme would specifically deal with the issue of junction capacity and traffic queues. He also stated that throughout the process of WSCC assessing BTP's work, he had relied on WSCC's traffic modelling section to advise him and that in general he was not an expert in traffic modelling techniques (A Howick, XX).
- 7.155 It was suggested to WSCC's highways witness that in terms of considering the impact of traffic on highway junctions, the delay incurred by drivers was a more important factor than the length of vehicle queues in isolation. This was agreed to a point but it was stated that driver delays must be linked to vehicle queue lengths and therefore queues still were an important factor. Owing to lack of knowledge regarding the PARAMICS programme, Mr Howick confirmed that he was unaware whether it could predict driver delays over a network (ibid). His knowledge on this issue was limited.

Submissions on Mr Howick's Supplementary Proof (Doc 22)

- 7.156 The distinction made between queuing and slow moving traffic and how this was recorded during the November 2006 survey has been made clear (A Roderick, examination-in-chief). This indicates that traffic travelling below 10 mph was considered to be held in a queue and the queue length survey results are presented on this basis. In terms of slow moving traffic being typical in urban areas in a peak hour, research contained within the Eddington Report to Government outlines that almost 30% of travel time in urban areas during peak periods in 2004 was at speeds below 5 mph and over 50% at speeds less than 20 mph (Doc 172, appx C, pg160). Evidence from the journey time surveys undertaken in November 2006, shows speeds varying between approximately 5 mph and 25 mph along the A272 corridor during the morning peak hour, which is in line with the Eddington research (Doc 114, p2.16-2.27 and appx 3). Bearing in mind that the traffic congestion situation in Haywards Heath is therefore no worse than in many urban areas, WSCC cannot reasonably suggest that the A272 is unable to accommodate any additional traffic.
- 7.157 In his evidence Mr Roderick did not state that there was guidance specifically relating to rolling queues and they could be discounted from traffic congestion; what he said was that for the purpose of recording queue lengths within his surveys a cut-off point was used - less than 10 mph - and he stated that this may have originated from Government guidance. It was subsequently confirmed that the decision to use the 10 mph vehicle speed as a cut-off point for recording traffic queues was taken from methods agreed with the Highways Agency (HA) for undertaking traffic surveys. The HA is of course the organ of Government responsible for the Trunk Road network.
- 7.158 It is not argued that rolling queues of traffic can be removed from the congestion equation, but that traffic queues approaching Haywards Heath from the west are variable

and intermittent and that the default position does not involve extensive queues of stationary traffic on every weekday morning. In addition, as the surveys undertaken prove, even when traffic is queuing it is moving, which does not suggest a 'gridlocked' situation. On this basis it is clear that the A272 can accommodate additional traffic for an interim period, especially when this increase is below accepted IHT significance thresholds (A Roderick, examination-in-chief, Doc 114, p2.27).

- 7.159 It is agreed that there is no evidence that A272 network traffic conditions have changed since the start of the Inquiry but conditions are not as severe as WSCC suggests. CN has not made assumptions on the operation of the network based on a single survey day. The queue length and drive time surveys in November 2006 were undertaken on a single day but a number of earlier surveys were carried out, which recorded vehicle queues along the A272 from the west and Isaacs Lane (Doc 46, appx 11). There is therefore a range of survey results illustrating how traffic conditions can vary along the A272 in keeping with the advice from the IHT Guidelines for Traffic Impact Assessments (CD30, p3.2.4). WSCC did not request that a programme of surveys to be undertaken over consecutive days or weeks for establishing baseline traffic conditions within the TA reports (A Roderick, re-examination). It also did not request this for the original traffic assessment work undertaken for Bolnore Village or for the work undertaken and submitted to the St Francis Hospital Inquiry.
- 7.160 CN did not say in evidence that the slow moving traffic approaching the Bolnore Road Roundabout should be discounted from the traffic congestion picture overall but that it is typical for traffic in urban areas during a peak hour (A Roderick, examination-in-chief, Doc 114, p2.27). The traffic survey staff when recording vehicles queues were instructed to use their judgment 'on the ground' when establishing when traffic speeds were below 10 mph, i.e. when vehicles should be recorded as being in a queue. Automatic counters were not used, but based on the drive time surveys undertaken on the same day as the queue length surveys, a detailed breakdown of vehicles speeds could be produced and this can be related to the queue lengths recorded. For example, on the approach to the Bolnore Road junction on the A272 from the west, the queue length survey recorded slow moving traffic but no queues. This is backed up by drive time survey evidence which shows vehicle speeds on the approach to Bolnore Road along Butler's Green Road ranging from 11 mph to 24 mph (Doc 114, appx 7, Route 2)¹¹.
- 7.161 In the absence of any survey information put forward by WSCC the surveys commissioned by CN in November 2006 provide a detailed assessment of highway link conditions. It was not necessary to establish if the exit from Isaacs Lane to Butler's Green Road is clear at all times. It is accepted that there is slow moving and intermittently queuing traffic along Butler's Green Road. The question is whether this situation in this location is so onerous as to warrant a dismissal of the planning appeals on impact grounds. If it is suggested that Butler's Green Road should be clear at all times then this is in effect stating that WSCC objects to additional traffic from Bolnore

¹¹ Inspector's note: Doc 114, p2.24 indicates that a detailed assessment for traffic travelling towards the town centre from the west traffic shows speeds reduce after passing through the Tyler's Green Roundabout when a constant speed of between 11 and 13mph is maintained from there along the A272 up to the junction with Bolnore Road and Paddockhall Road.

Village loading onto the A272 because it is not in free flow at all times. This is not a reasonable or practical position to adopt.

- 7.162 CN's evidence does state that slow moving traffic on Butler's Green Road may affect the ability of traffic to exit turning right from Isaacs Lane (Doc 114, p2.21, 4.22 & Doc 127, p3.1, 3.4). However this is a matter of degree. WSCC cannot reasonably argue that no additional traffic is permissible using Isaacs Lane because there is a degree of queuing. In addition, drive time surveys also show that even with queuing, the journey time from Bolnore Village to Haywards Heath town centre during the morning peak is not excessive (ibid, p2.16-2.19).
- 7.163 WSCC has failed to take account of the fact that the carriageway widening proposed at Isaacs Lane is designed to afford improved capacity primarily for left-turning traffic (Doc 127, p3.4, 3.5). These vehicles would not be affected by the link capacity of Butler's Green Road. In addition, since left-turning traffic at present is held in the same queue as vehicles turning right, the highway works proposed would remove them from this queue, also providing additional capacity for right-turning vehicles. Further, it must be recognised that the queues that form on Isaacs Lane are moving throughout the peak hour and therefore it is possible to provide additional traffic capacity on this approach.
- 7.164 The journey time surveys were undertaken for the purpose of establishing traffic conditions during the morning peak hour to gain a better understanding of traffic patterns during the worst-case time period. WSCC cannot reasonably criticise this since all of the traffic parameters agreed with it over time have looked at a peak hour and WSCC has not in the past asked for off-peak surveys.
- 7.165 No evidence has been presented by WSCC to suggest that the surveys CN commissioned in November 2006 are not representative of network conditions, i.e. WSCC has not undertaken surveys. In addition, CN's further evidence also outlines the results of separate journey time surveys undertaken which also show that driver journey times along the A272 are not excessive even during the worst-case morning peak hour (Doc 46, appx 11).
- 7.166 It is accepted that including the full length of the Cuckfield by-pass within the journey time surveys does have an effect on the average vehicle speeds (A Roderick, XX). This section of the A272 was included because WSCC had suggested that queues from the town centre extended back to this location, although CN's evidence shows that this is clearly not the case on the November 2006 survey day (Doc 114, Tables 2.2, 2.3, 2.4 & appx 2).
- 7.167 It was made clear that the first 'run' of route 5 of the drive time surveys provided an erroneous result in terms of vehicle speeds and therefore this one result should be disregarded (Doc 114, appx 7). The County's witness suggested that all of the survey results should be disregarded for this reason. This is clearly not tenable since all other results illustrate a fairly consistent pattern of journey times and vehicle speeds over the network surveyed, all of which give a realistic picture of traffic patterns during the peak hour on the survey day (ibid).
- 7.168 The claim that delays are long and frequent along the A272 at all times is disputed; CN's drive time surveys do not suggest excessive journey times (Doc 114, p2.16-2.20 & Doc

46, appx 11). With reference to the IHT Guidelines it is accepted that as traffic increases there can be an increase in delay (CD30, p3.8.9, 3.8.10). This, however, is a matter of degree and the traffic associated with Bolnore Village would not lead to a significant enough increase in delay to warrant a highways objection. Also, the IHT advice quoted makes no reference as to when an increase in queue delay on a specific highway prevents it from being able to accommodate additional traffic.

- 7.169 CN may have been aware for 18 months of MSDC's request for a PARAMICS model, but during that time the modelling undertaken using ARCADY was accepted by Arup, acting on behalf of MSDC, and by MSDC officers. In addition, other consultants assessing development and traffic issues associated with the A272 for Bolnore Village and St Francis Hospital had previously never been asked for a network traffic model to be produced. On this basis WSCC's request was unreasonable, given that the developer would have had to set aside a considerable body of costly traffic assessment work undertaken using ARCADY.
- 7.170 CN's evidence does not argue that PARAMICS is unsuitable for assessing the traffic operation of linked highway junctions, but that it would be no better than ARCADY for this purpose for a small network. Consequently, there would be no reason to produce a new traffic model when a satisfactory method for assessing junction capacity had already been used.
- 7.171 WSCC continued to suggest that ARCADY cannot accurately model interactions between nearby congested links and junctions (A Howick examination-in-chief and XX). This ignores the fact that the ARCADY assessment results presented within CN's evidence use ARCADY models that have been calibrated using the results of queue length surveys on the A272 and Isaacs Lane. This takes into account the fact that at the Tyler's Green Roundabout traffic travelling into Haywards Heath and turning right from Isaacs Lane can be affected by slow moving/queuing traffic on the A272. Arup and MSDC officers accepted this and WSCC accepted this point previously when not requesting a network traffic model during the scoping exercise undertaken for the original TA report.
- 7.172 WSCC reiterated the advice given by the IHT that where there is likely to be flow interaction between junctions, network traffic models may be used (CD30, p3.8.15). This does not state that these models must be used. It is agreed that PARAMICS only became available in 1996¹². However, this being the case, this model was available at the time of the St Francis Hospital Inquiry and WSCC did not require its use then, or initially at the time of TA reports for Phases 4 and 5.
- 7.173 WSCC refers to the fact that for the full development of Phases 4 & 5 at Bolnore Village (705 units) 358 additional vehicles would pass through the Tyler's Green Roundabout during the morning peak hour (Doc 22, p4.13). It accepted this figure is a worst case but it takes no account of the impact of the TP, which is not mentioned at all in WSCC's supplementary proof (Doc 22).

¹² Inspector's note: Doc 22, p4.12 and cross-examination of Mr Roderick indicate PARAMICS became available in 1998.

7.174 WSCC expresses the view that a micro-simulation model, such as PARAMICS, was not produced because its results would not have proved the developer's case (ibid, p4.14). How can there be speculation on work not carried out? This statement supports CN's reasons for not undertaking this work. Since WSCC adopts the position that in the absence of the HHRR the A272 cannot accommodate any additional traffic, there would have been little purpose in the developer submitting the results of a PARAMICS assessment since the highway authority would have maintained its objection in any event. The issue therefore is not which traffic assessment model is most suitable but whether it is reasonable for WSCC to object to any increase in traffic using the A272 for an interim period before completion of the HHRR.

Summary Submissions on Highways and Traffic

- 7.175 CN's evidence does not rely on data from a single survey day, with results of earlier queue surveys back to 2004 being discussed and there also being separate results of journey time surveys to those commissioned in November 2006 (see paragraphs 7.165 & 7.168 above). This body of work as a whole is representative of how traffic conditions along the A272 can vary. It is not argued that the A272 and its junctions are in free flow during peak periods, but that traffic conditions are, in terms of vehicles queues and delays, typically not as onerous as WSCC suggests.
- 7.176 It is possible to validate the ARCADY model to take into account variable restricted capacity at exit. This is the effect of traffic on a roundabout approach, such as Isaacs Lane, being prevented from exiting in free flow due to traffic congestion downstream, such as on Butler's Green Road. The ARCADY assessments presented in CN's evidence have 'throttled back' capacity on the Isaacs Lane approach to the Tyler's Green Roundabout using the results of queue surveys; in this way the models fully take into account how junctions are affected by queues beyond them.
- 7.177 The key transport issue is the operation of the A272 corridor during the morning peak hour and the question as to whether it has sufficient capacity to accommodate the Phases 4 & 5 traffic for an interim period, taking into account the highway works proposed by CN to the critical junction in capacity terms, the Tyler's Green Roundabout.
- 7.178 The level of additional traffic that would use the route depends on the development scenario and the level of TP credits to be considered, ranging from a nil detriment scenario to a 5% increase in link flows. However, this does not alter the position that WSCC continues to argue that the A272 west of the town centre, and in particular the Butler's Green Road link and Tyler's Green Roundabout, are significantly congested during the morning peak hour and therefore cannot accommodate any additional traffic.
- 7.179 The evidence submitted by Mr Charlton, which included capacity assessments for junctions along the A272, did seem arguably to suggest that there would be significant traffic congestion in the assessment year 2010, although the majority of this was caused by background traffic levels rather than additional traffic associated with Phases 4 & 5 at Bolnore Village (Doc 121, section 8).

7.180 Mr Roderick's later evidence looked into this issue in more detail and presented the results of the journey time surveys along the A272 carried out in November 2006 and from these average journey speeds were calculated. This evidence also presented further capacity assessments from which it was possible to assess how journey times and driver delay is affected by vehicle queues (Doc 114, p2.16 et seq). From this evidence the following points need particular emphasis:

- The surveys demonstrate that vehicle journey times and journey speeds for traffic heading into Haywards Heath from the west along the A272 are typical for highways in urban areas, with reference to the Eddington Report, and therefore WSCC can have no reasonable grounds for imposing a moratorium on further development and additional traffic using this route in advance of the HHRR being completed.
- WSCC has placed significant weight on the extent of traffic queues that would occur along the A272 and on the Isaac's Lane approach to the Tyler's Green Roundabout with the addition of Bolnore traffic. The survey results in CN's evidence show that traffic queues can vary considerably during the morning peak hour and that an important distinction must be made between slow moving and stationary traffic. The drive time survey results suggest that even when traffic queues occur, they are not static within the peak hour and that journey times into the town centre from the A272 and from Bolnore Village are not excessive even during the period when vehicle queues were identified.
- The surveys presented within Mr Roderick's evidence, although a snapshot of traffic conditions surveyed on a single day, are not presented in isolation, since a number of earlier traffic and queue length surveys have been undertaken. In addition, other vehicle journey time surveys were undertaken and presented within CN's evidence (Doc 46, appx 11). This issue is critical since there is a range of survey results which illustrate that traffic queues can vary considerably along the A272, but that two independent journey time surveys clearly show that during the morning peak hour, journey times along the A272 corridor are not excessive.

7.181 The highway works proposed at the Tyler's Green Roundabout involve widening the Isaac's Lane approach to the roundabout to provide a sufficient carriageway width for 2 vehicles to queue abreast over a distance of 130m. In addition, the junction's central island would be reduced in size to provide an improved circulatory width for traffic. These proposals would bring the following benefits in improving the capacity and operation of the junction:

- Queues presently form at the Isaac's Lane approach due to the capacity of this approach and the effect of slow moving traffic heading into Haywards Heath affecting the ability of right-turning traffic to exit to Butler's Green Road. Providing an additional queuing lane would enable traffic turning left to the A272, that is currently held by traffic turning right, to leave the queue and exit the junction unimpeded. This would be the case since, as well as the additional lane,

the highway works would widen the immediate approach to the roundabout allowing traffic to exit to the left and right simultaneously, assisted by the increased circulation width that would be provided at the roundabout.

- The widening works would also benefit traffic turning right to Butler's Green Road since a proportion of this is held behind vehicles currently queuing to turn left. With this traffic leaving the queue additional capacity would be available for the right-turners.
- Overall, the works proposed would increase the operational capacity of the Tyler's Green Roundabout and mitigate an increase in traffic associated with the Bolnore Village proposals.

Cell 5B1/FAW

7.182 Much reliance has been placed by the Councils and the LCOs on 'A revision of the Ancient Woodland Inventory for Mid Sussex District, West Sussex, Report and Inventory Maps October 2006' ('the Mid Sussex Inventory') (CD58). It is important to put this document into context. The first thing to appreciate is that it is a Report and not a designation document, statutory or otherwise. It is accepted that, as with the Weald Ancient Woodland Survey (Doc 236), the data collated will be integrated into the national database of woodlands but the Report has no independent national standing as a definitive statement as to what ancient woodland (AW) is or where it is to be found. It is true that the project was funded through partnerships between MSDC, High Weald AONB, Natural England and Inter Reg 111B. But it is certainly not a Natural England document nor does it purport to be. The Report at page 2 says:

"This survey has resulted from a strong partnership between Mid Sussex District Council, Natural England, the High Weald AONB Unit, and Forestry Commission. The Forestry Commission believes that such partnerships, working with local authorities, provide an important means for increasing the understanding, protection and sustainable management of our historic ancient woodlands".(CD58)

7.183 But it remains a report carried out by Sally Westaway and Matthew Grose, of the High Weald AONB Unit, and Patrick McKenan, of the Forestry Commission.

7.184 The value of the report as a valuable piece of survey information is not denied, but its standing should not be elevated to an authoritative and binding statement on AW. It has to be read alongside the work of others, such as Peterken et al (e.g. CD42, CD43 & Docs 197, 202) and in a way which is consistent with earlier pronouncements on AW from English Nature (as was).

7.185 Looked at in this way it is a helpful document. It is accepted that local authorities have a key role to play through the planning process in the protection of AW and that PPS 9 requires local authorities to identify any areas of AW that do not have statutory protection (CD4, p10). But it is not accepted that the inclusion of Cell 5B1 in the Mid Sussex Inventory precludes consideration through the planning process of the actual

status of the land in question. In other words, the fact it is in the list is not decisive. MSDC accepts that the Secretary of State is not bound by the Inventory and that the conclusion could be reached that Cell 5B1 is not AW. This acceptance is now common ground (though MSDC believes that, on the evidence, a conclusion that it is not AW would be unreasonable). The report indicates that:

“It is recognised that a data based exercise will always be flawed and ideally ground survey work would be undertaken in every woodland. Due to time and financial constraints this is clearly impractical. Therefore decisions are based on available data. Thus, whilst every effort has been made to make this revision as accurate as possible, the Inventory is still regarded as provisional.” (CD 58, p3.2.5).

7.186 The significance of this document in terms of the definition of AW must be considered.

7.187 At paragraph 2.2.2 of the Report it is said:

“Ancient woodlands are defined by Natural England as those where there is believed to have been continuous woodland cover since at least 1600 AD.

For this survey, this definition includes:

- *Areas with continuous woodland cover*
- *Areas managed or periodically cleared for timber or underwood production.*
- *Areas regenerating following woodland management.*
- *Open grazed areas within the woodland site (at least 20% canopy woodland over 80% of the site).*
- *Temporary clearings that may have been created within the woodland complex but which have regenerated, or are regenerating, back to woodland”.*
(Underlining added)

7.188 As can be seen from the reference to Natural England, the Report proceeds on the premise that the definition requires “*continuous woodland cover since at least 1600 AD*”. Secondly, that this definition “*For this survey*” includes the bullet point categories set out below. That clearly means that the survey works to a specific non-exhaustive (hence “includes”) set of categories.

7.189 It is not accepted that this definition in any way purports to change the previous English Nature definition of AW. As put in cross-examination to both Mr Baker (WSSC) and Dr Whitbread (for the LCOs), there is not an English Nature or Natural England (NE) document(s) which defines AW other than the definition contained at page 6 of English Nature’s ‘Ancient woodland guidance material for local authorities’, dated 2002/2003 (Doc 17, appx 6).

7.190 It is this guidance which should be worked to in the consideration of whether Cell 5B1 is AW. Mrs Fisher (for CN) may or may have not said that she could live with the definition in the Mid-Sussex Inventory. That is not the point. The question, as a matter of law, is ‘what is the appropriate definition to be applied nationally?’ The only advice

of that kind is the guidance of English Nature in the document identified above (Doc 17, appx 6). It is up-to-date and has not been changed by NE. It may be that it matters not because whichever definition is applied, on the evidence, Cell 5B1 is not AW. Indeed, if the two documents are read together the conclusion on the issues relating to Cell 5B1 would remain the same – not AW.

7.191 As can be seen from Section 2 of the English Nature document under the heading “*What is ancient woodland?*” the definition is “*an area that has been wooded continuously, since at least 1600 AD*”. That is the definition repeated in the Mid-Sussex Inventory. This does not preclude woodland that has been felled or cut for coppice (which Cell 5B1 is not) “*as long as the area has remained as woodland i.e. the coppice stools have re-grown or the stand has been replanted soon after felling*” (ibid, Section 2).

7.192 There can be no doubt whatsoever that Cell 5B1 is not in this category. The next paragraph in the text at Section 2 reinforces the point;

“If woodland has clearly been through a phase in the last 400 years when the land was open, for example as grassland, heath, moor or arable, then the site is classed as recent woodland. It may still have value for nature conservation, but it is not ancient wood.”

7.193 There could not be a clearer statement as to why Cell 5B1 is not AW. There is no doubt that it has nature conservation interest (CD14, Policy C5 of MSLP), and this can be respected, but it is not as a matter of classification AW.

7.194 It can also be seen from Section 2 that the Guidance attributes the current woodland concept to Peterken (1977) and Rackham (1971, 1976). This is important because the authoritative status of Peterken should be borne in mind when looking at his observations elsewhere on AW.

7.195 At section 5 of the Guidance the significance of “*Ancient woodland inventories*” is clarified. It emphasises that:

“Ancient woodland inventories are lists, by county, of sites greater than 2ha that are thought to have been continuously wooded since 1600 AD ... They are not however definitive registers of ancient woodland.” (underlining added)

7.196 That statement is in fact a contradiction of the arguments of both MSDC and the LCOs that there should be no entitlement to consider on the evidence whether Cell 5B1 is AW. The LCOs went ever further and served a letter threatening an application for costs against CN if it did not concede during the course of the Inquiry that now Cell 5B1 was in the Inventory that it was wholly unreasonable for the issue to be further contested within the Inquiry (Doc 242).

7.197 Furthermore, at Section 5 the Guidance not only says the inventories are lists and not definitive registers but makes the further evidential point that:

“The inventories are described as provisional because at any stage new information may become available that shows that woods not on the inventory are likely to be ancient or vice versa.”

7.198 So the inventories are lists and provisional lists at that. They are not designation documents. Ultimately the issue comes down to whether, as a matter of judgment, the evidence that a wood is ancient is strong enough.

7.199 The only real evidence on this is that which relates to “Ancient Woodland Indicators”. At page 9 of the Guidance under the sub-heading “*The limitations of different types of evidence must be recognised*” it is stressed (last bullet point):

“Ancient woodland indicators do sometimes occur in abundance in what are demonstrably recent woods.”

7.200 And at Section 8 under the heading of “Ancient woodland indicators” it is stated, after referring to various surveys throughout the country:

“The definitions of what should be included as ancient woodland indicators also varied – how much more frequent in ancient woodland does a species have to be to count as an indicator? All authors stressed that it is the occurrence of a number of indicator species in a wood that should be used in interpreting site history, not the presence of individual species. Species may also be useful as an indicator in some regions and not others.”

7.201 One of the issues relevant to AW has been the extent of soil disturbance in Cell 5B1 (discussed below at paragraphs 7.214-7.246). MSDC and the LCOs have disputed its relevance. However, note should be made of the West Sussex Inventory of Ancient Woodland where there is reference on page 1 to “undisturbed soil” and on page 2 “Ancient woodland” “(iv) their soils have remained largely undisturbed” (Doc 17, appx 1.1). CN does not therefore know how it can be argued that soil disturbance is not relevant.

7.202 The Weald Ancient Woodland Survey (Doc 17, appx 1.2, section 2.1) refers to “lack of disturbance”. In section 2.2.3 it is stated that :

“However, throughout history, sections within many of these woodlands will also have been extensively used, disturbed or grazed, so that they may not retain some of the unique characteristics of ancient woodland habitats, such as the relatively undisturbed woodland soils” (underling added), whilst section 4.2 states:

“However, the largest proportion of woods left out of the revised Inventory following survey work, were removed because they were severely degraded. Twenty of these were small woods which had been irrecoverably disturbed or damaged, for example, where most of the tree cover had been removed and where there had been extensive disturbance of the soil profile by earthworks or heavy livestock usage.” (underlining added).

7.203 The Mid-Sussex Inventory (CD58, p4.2) states:

“The main reason for excluding woods from the revised Inventory following survey work was because they were severely degraded. For example, by garden encroachment, or where most of the tree cover had been removed and there was extensive disturbance of the soil profile by earthworks or heavy livestock usage” (underlining added).

- 7.204 As to the significance of indicator species, Peterken has made it clear that they should be regarded no more than a tool and not an infallible guide (Doc 17, appx 13 pg153) He says in “Identifying Ancient Woodland using Vascular Plant Indicators” :

“Ever since interest in this topic revived about 1970, there has been a tendency (for unwary enthusiasts, who tend)¹³ to concentrate their attention on species-rich ancient woods and to ignore the nettle- and bramble-ridden secondary woods, to read too much into lists of plants” (underlining added).

And at page 158 he says:

“Thus, plants can provide some useful guidance on the history of individual woods and the location of any enclaves of woodland habitat continuity in a district with a complex habitat history. A surveyor should weigh up, not just the list of species, but also the site conditions, the history of the local land use, the character and distribution of particular species, and the likely performance of particular species in the particular district and on the particular soils in the wood under consideration” (underlining added).

The Status of Cell 5B1

- 7.205 Dr Whitbread's opinion in December 2004 was that Cell 5B1 was a “clearing” (Doc 17, appx 15). He says:

“Until the 1940s it was part of the ancient woodland block to the south. Since then it seems to have been cleared and left as open habitat. It would therefore be more relevant to consider this as a woodland glade within an ancient woodland block. Consequently it should be considered part of a woodland-grassland mosaic, and should be considered of significantly enhanced value as a result”.

He also says:

“It contains a valuable complex of grassland, woodland and woodland edge species.”

- 7.206 Mr Allen (for the LCOs) helpfully volunteered the obvious fact that Cell 5B1 is not regenerating back to woodland (Mr Allen, cross-examination). In fact he wanted it kept open. And Dr Whitbread (also for the LCOs) said that the “Site” was Cell 5B1 (answer

¹³ Inspector's note: The words in brackets provide the exact quotation from this document but these were omitted from the quotation within CN's closing submissions Doc 172, pgs 100-101).

to Inspector's question). The attempt to get him to resile from that unequivocal statement in re-examination was a complete failure. Dr Whitbread's ultimate analysis was that Cell 5B1 could be within at least 3 of the categories of the definition of AW in p2.2.2 of the Mid Sussex Inventory (on an overlapping basis) (CD58). This was all very speculative and unscientific. The truth is, as Dr Kirby (of NE) recognised, Cell 5B1 does not fit easily, or at all, within any of the definitions of AW. It could only be treated as an exceptional case in order to justify its inclusion (CD62, e.g. p2.3 & 7). In other words, include it because it is, in our view, desirable to protect it from development even though it is allocated land for housing. This, in a nutshell, is the only case that can be put forward by the Councils and the LCOs to justify their stance. This is a hopeless (totally unreasonable) argument and transparently misconceived.

- 7.207 Furthermore, Cell 5B1 does not conform to glade descriptions by Peterken (1981): a woodland glade is: 1) bracken areas; 2) bogs and mires; 3) rock outcrops (Doc 84, p2.8). Cell 5B1 was mapped as grassland and scrub in the EIA and this has not been challenged (CD44, Technical Appendix 2, Figure 2 between pgs 14 & 15, and Figure 1 at the rear). Now the EIA mapping has been ignored and it is called a "woodland glade".
- 7.208 However, Cell 5B1 has always been recognised as sensitive and it will be treated as such (CD44 Technical Appendix 2, p4.15-4.21 & Annex 3 where grassland is treated at length).
- 7.209 Cell 5B1 is not AW. There is insufficient evidence of probative value to justify the conclusion that it is. The evidence of the presence of AW indicator species is more likely to have been caused by re-colonisation from the outer edges of woodland and is consistent with the aerial photographs and soil evidence (the latter discussed in paragraphs 7.214-7.246 below).
- 7.210 The suppression of succession for such a long period of time (almost 50 years since the area was cleared) must be highly significant. It is not a temporary clearing which is showing the extensive signs of re-growth which one would expect to find if, since the date of clearance, it was regenerating back to woodland. The presence of wood anemones and bluebells (whether as a carpet or not) cannot possibly be regarded as sufficient evidence of woodland regeneration, to justify the finding that it is AW (e.g. CD64, p3.2, Doc 195, p3.3 & Doc 81, p3.4.16-3.4.17). It is a nonsense to argue otherwise. That would mean that vast swathes of this country would be AW on the basis of regeneration.
- 7.211 Whatever the precise rates for re-colonisation may be in Sweden or Belgium (CD62, p4.1, Doc 86, pg10, Doc 206) (and there are very few studies of this complex concept), the reality is that Cell 5B1 is still essentially "*scrub and open ground which does not show a high degree of biological activity*" (Mrs Fisher, XX). This should be compared with p2.2.1 of the Mid Sussex Inventory (CD58):

"Recent woodland sites can show similarities to ancient woodland depending on their age, proximity to ancient sites and the diversity of microhabitats within the site. However, their biological diversity is generally not as great as that of ancient woodland. These woods are therefore excluded from the Inventory."

- 7.212 The indicator species are for the most part to be found at the periphery of the site close to existing woodland and reflect its contiguous relationship not its intrinsic character. There is no evidence of it functioning biologically as part of the broader woodland complex (J Fisher, XX and Doc 86, pg 11).
- 7.213 Its lack of continuity with adjoining woodland has led to a reduction in biological activity with fewer birds, invertebrates and other woodland species. This, together with the loss of woodland soils, sets it apart from neighbouring woodland (e.g. CD44, Technical Appendix 2, Figures A2 & A3). The reason for this is obvious: It has been subject historically to a significantly different management regime so that despite the fact that there are no physical barriers to the movement of flora and fauna from the woodland around it, it has remained distinct and separate from the AW that surrounds it. Finally, Mr Baker for MSDC volunteered in examination the conclusion "*It [Cell 5B1] is ancient woodland despite what it happens to look like*".

Cell 5B1 and Soil Issues

- 7.214 Dr Macphail's evidence for CN was based upon the soil auger and soil pit surveys of Cell 5B1 itself, and pedological investigations of nearby Ashenground Wood, where soil auger and spade-dug pits were augmented by the examination of soils exposed in natural tree-throw (blow down) features (Doc 156, appx 4, Section 1). Some relevant findings from soil science and protocols relating to soil survey were also examined.
- 7.215 The response from Keith Kirby of EN ('Kirby 2007') to the questioning of the inclusion of FAW within the Mid Sussex Inventory comments on the 'Soil data' and concludes that:
- "The soil survey evidence is inconclusive as to the nature and scale of any past soil disturbance and when it might have occurred."* (Doc 62, Section 6 & p12 of Summary).
- 7.216 Dr Macphail agreed that the date and origin of this soil disturbance is unknown, but disagreed with the view that the evidence for "the nature and scale of any soil disturbance" is "inconclusive".

Soil data within 'Kirby 2007'(CD62)

Soil data

- 7.217 In section '6. Soil data' there is *no* reference to any form of soil data whatsoever; neither the soil data presented by Dr Macphail specific to Cell 5B1, nor soil data from any other source, is mentioned. Clearly, this makes it difficult to judge why the 'Kirby 2007' document can have concluded that the soil survey evidence is inconclusive. Either the authors of 'Kirby 2007' felt themselves to be unqualified to comment on the soil data in Macphail 2006, or had the totally mistaken belief that the use of aerial photographs and maps was an equal substitute for, or superior to, a soil survey carried out on the ground.

Limitations of maps and aerial photographs in soil survey studies

- 7.218 Section 6 'Soil data' states that 'Kirby 2007' used maps and aerial photographs to assess the soil data. No geological or Soil Survey of England and Wales maps, or other soil maps are cited. Whilst it is understandable that NE cannot spend time and resources examining the ground at every site of interest, and has attempted to have made the best use of maps (presumably from the Ordnance Survey series) and aerial photographs, this approach is clearly inadequate when assessing the details of soil cover. Even whilst it is recognised that archaeological features can be mapped from the air, aerial photographs and maps on their own cannot be used to investigate such a phenomenon as depth of soil truncation when vegetated top soils had begun to reform. Desk-top studies and remote sensing employing aerial photographs (along with geological and drift geology maps) can provide only so much information about a soil cover, hence desk-top investigations are *always* backed up by soil surveys on the ground, a technique commonly termed 'ground-truthing' (Doc 156, appx 4, p2.2 & Section 3). As Dr Macphail told the Inquiry, when soils are assessed employing multi-spectral satellite imagery, any hypothesis concerning the soil cover still requires testing on the ground (ibid, p2.2).
- 7.219 The Soil Survey of England and Wales employed a frequency of auger borings and pits of 250 per 100km² to produce their 1983 soil map series. It is recommended that a geoarchaeological soil survey employs 10-20 borings per km². The soil survey of the small area of Cell 5B1 employed a coverage of 9 points (auger borings, soil pits and a section within the quarry) in 2005, and this was augmented by a further 5 points in 2006 (one auger and four 0.5 m-size soil pits), 14 points in all (ibid, p2.2).
- 7.220 It is therefore unclear why 'Kirby 2007' makes no apparent use of the soil survey data presented in Dr Macphail's 2006 survey work (Doc 89, Section 6), and simply employs aerial photographs and maps to produce hypotheses concerning the soil cover at Cell 5B1.

Soil Survey

- 7.221 Not only were relatively undisturbed soils (see Doc 62, p2.2) at Ashenground Wood identified, but moderately well preserved soils were mapped on the western margin of Cell 5B1 (auger point A2 and soil pit P7). Clearly then, the soil surveys carried out in 2005 and 2006 were able to distinguish between little disturbed soils and strongly disturbed soils (Doc 89, Section 6). This is not noted in 'Kirby 2007' (Doc 156, appx 4, p2.3).

Origin of soil disturbance

- 7.222 The fact that the precise origins of the soil truncation (and exactly when it occurred) are unknown, does not detract from the soil survey and soil pit identification of very marked soil truncation at Cell 5B1. In archaeology, many features of human origin are discovered that we have not got unequivocal explanations for. This does not mean that these features do not exist (ibid, p2.4).

Evidence of soil truncation

- 7.223 There is clear auger and soil pit evidence of deep soil profile truncation at Cell 5B1. This finding is based upon auger point data and descriptions of soil profiles. It employed standard methodologies and information from the Soil Survey of England and Wales, and soil science investigations across northern Europe. Depth of soil profile formation, soil horizon development and the weathering and transformation of the underlying geology (soil parent material) are well understood in soil science. This knowledge was employed to recognise little disturbed, shallow truncated and deeply truncated soil profiles (ibid, p2.5).
- 7.224 'Kirby 2007' finds the 'Soil data' in Dr Macphail's 2006 survey (Doc 89, Section 6) concerning soil disturbance, however, to be inconclusive. It is difficult to reconcile this conclusion with the data and associated explanations that are presented in Dr Macphail's 2006 survey work, none of which are challenged in 'Kirby 2007'. The 14 sampling points at Cell 5B1, alongside the identification of associated slope units and vegetation, has resulted in the accurate identification of areas of soil truncation.
- 7.225 One of the findings at Cell 5B1 (Pit 11) was that deep soil truncation had brought poorly weathered parent material close to the modern vegetated surface, and this had engendered areas of poor drainage and the anomalous presence of rush (*Juncus*) (Doc 156, appx 4, p2.5). This is indicative of wet ground, and is known as an edaphic (soil-vegetation) relationship. The large size of the rush-vegetated areas at Cell 5B1 is important, given the theory in 'Kirby 2007' that soil disturbance resulted from "localised stump clearance". Furthermore, if soil disturbance *was* caused by "localised stump clearance", this process still successfully removed up to 0.80cm of soil from large areas of the site (ibid).
- 7.226 It is therefore suggested that the soil data in the 'Kirby 2007' documents are inadequately dealt with. In fact, *no* soil data from any source are discussed. There is an unjustified over-reliance on maps and aerial photographs to assess the soil cover at FAW (given the soil data actually available in Dr Macphail's 2006 work) (ibid, p3).
- 7.227 Point 12 of the summary in 'Kirby 2007' (CD62) states:

"The soil survey evidence is inconclusive as to the nature and scale of any past soil disturbance."

- 7.228 This is a conclusion lacking adequate scientific foundation. No evidence whatsoever has been produced to rebut Dr Macphail's 2006 work. Hypotheses and speculations presented in 'Kirby 2007', based simply on maps and aerial photographs alone, are unacceptable given the actual soil studies carried out on the ground.

Dr Macphail's Expertise

- 7.229 Prior to his giving evidence there was a considerable challenge to Dr Macphail's competence and expertise in soil survey work. Not surprisingly, when called, that challenge fell away. There can be no doubting his experience and expertise in this discipline. His academic and research record are outstanding and he has a distinguished

pedigree in investigating site information processes associated with archaeological soils and modern analogues (Doc 156, pg9-12, CV at rear of Doc 89 & examination-in-chief). The correct identification of land use types such as woodland and arable, and unravelling the histories of soils, are routine practice to him.

Size of Dr Macphail's Soil Pits

7.230 Soil pits were dug to a size that allowed the chief question to be addressed – are the soils extant woodland soils? Deeper soil pits, as already shown by studies at Pierce's Wood and Ashenground Wood using a machine-cut section, tree throw holes, quarry sections and auguring, would only expose deep subsoils that are known to record the woodland ancestry of soils in southern England. The pits employed by Dr Macphail allowed the examination of the humus, A horizon (topsoil), Eb horizon (upper subsoil) and Btg (lower subsoil horizon), as well as the discovery of anomalously shallow Bg and Cg horizons at FAW.

7.231 The deeper and wider pits of Ron Allen simply displayed more clearly the soil disturbance and absence of woody roots of the upper profile, and demonstrated how shallow the lower subsoil and parent material horizons are (Doc 196, Supplemental Report).

Representative nature of Dr Macphail's soil pits

7.232 In terms of land use of the area, the 2002, 2005 and 2006 investigations carried out by Dr Macphail included all relevant vegetation/land use types, apart from new scrub at Cell 5B1 (the latter type it can be argued was 'included' in Pit 8 [bracken within open scrub] and at a location next to the wooded hedge at Pit 5) (Doc 89, appx 6 & Doc 156, appx 3).

These are:

- (a) Woodland soils in extant woodland at Ashenground Wood
- (b) Woodland soils in extant woodland along the southern boundary of Cell 5B1
- (c) Still extant woodland soils, now under modern conifers at Pierce's Wood
- (d) Arable soils under modern conifers, with arable/fallow pasture history, at Pierce's Wood
- (e) Disturbed soils under grassland at Cell 5B1
- (f) Disturbed soils under rushes at Cell 5B1, and
- (g) Disturbed soils under bracken and open scrub at Cell 5B1

7.233 Geographically, a representative cover was achieved by pits at the margins and in the centre of Cell 5B1 (ibid, Fig 7). In addition, the main soil slope unit was examined from its upper and lower parts and its western and eastern ends.

7.234 The pits of Mr Allen are not as geographically widespread and only apparently examined one land use/vegetation type compared to Dr Macphail (seven types) (Doc 196, Supplemental Report of Mr Allen, p4.1).

Soil Series

- 7.235 Dr Macphail said that the classification of stagnoargillic brown earth soils as the Curtisden soil series was not strictly speaking relevant to the identification of extant woodland soils, because Curtisden soil series soils include both woodland and arable land use; the examples in Jarvis *et al* 1984 (Doc 234), are arable soils (Dr Macphail XX).
- 7.236 Different soil series are classified in major part by their horizon – and parent material – differences, not their current land use/vegetation. Mr Allen identified three soil series and one variant within 50m on the same slope unit at Cell 5B1 (Doc 196, Supplemental Report, p4.3). Again in Dr Macphail's view this was irrelevant in terms of their extant woodland soil character, and points more to anomalous heterogeneity brought about by soil truncation and associated relative 'exposure' of subsoil and parent material differences. A similar profile type would be expected on a single slope unit because of thousands of years of the homogenising effect of soil processes, hence soils are mapped by soil surveys worldwide according to the modal (most commonly occurring) profile. The variation in soil series that Mr Allen found is therefore highly anomalous and 'suspicious' for a 'natural' soil cover.
- 7.237 In terms of soil series types, the stagnoargillic brown earths in Ashenground Wood are neither Stanway nor Cranbrook, because they do not have Eg horizons and thus are best described as Curtisden.

Aerial photographs

- 7.238 It is common ground that the 1959 aerial photograph shows soil disturbance (including Dr Kirby and the LCOs) (Doc 240, copy in Doc 84). It is the extent and degree of this disturbance that is controversial. It was pointed out by Dr Macphail that the uniform dark colour of the adjacent field is clearly in contrast to the patterns of white and pale colours of Cell 5B1. A droughty summer would have affected both fields. Disturbed and poorly vegetated soil and colluvium can be recognised, and Dr Kirby suggests the cause is "localised stump clearance" (and removal by machines), which may account for some of the soil scarring (Docs 151). The supposed 60 tree holes are not visible, however. Therefore, it can be assumed that some presumed follow-up forestry activity, ahead of changing the land use to grassland, has obscured them.
- 7.239 Again, although it is agreed that there is soil disturbance recorded in the 1959 aerial photograph, the testimonies of the locals does not record this fact (Doc 192). There are no local observations concerning the clear-felling itself and the LCOs have suggested 'winch-felling' as the felling technique employed, based upon the investigation of the character of dumped tree stumps (Doc 198). Furthermore, there is no local testimony to suggest what happened to the ground after clear felling and the absence of woody roots. There are only testimonies dating to the period after forestry activity that no ploughing took place.

Topsoil Formation

- 7.240 It was argued by Mr Allen that the top soils are of "unquestionable" age, but if this was the case why, asked Dr Macphail, do they occur over disturbed upper subsoils? The latter

is now more openly admitted by Mr Allen (Doc 207, Section 4). Although a turf can form rapidly, hence why we can so easily buy turf to produce ready-made lawns, shallow rooting grasses and plants such as rush cannot rapidly produce mature top soils that have pedological continuity with underlying mixed and truncated soils; hence at FAW these surface horizons are reckoned to be only decades of age, with the aerial photographs suggesting that some areas were not fully vegetated until the 1970s (Doc 240).

Soil Disturbance and Truncation

7.241 Dr Macphail's evidence of this phenomenon was founded on the basis of soils studied at Cell 5B1 and comparisons with control profiles, and essentially comprises (Docs 92, 156 and oral evidence):

- (a) Soils heterogeneity in the upper profile, as evidence of the coarse physical mixing of several different soil horizons (note colour differences in Dr Macphail's and Mr Allen's pits (Docs 196, Supplementary Report, 235 & 89, Section 6).
- (b) The shallow nature of subsoils and weathered parent materials (and even absence of the Btg horizon in places); i.e. the anomalous proximity of these lower subsoil horizons to the modern day soil surface in comparison to local woodland soils and woodland soil profiles described in the literature. ('Modern' arable soils with Ap, Ebg and Btg horizons are not often good analogues because such soils have been prone to erosion over the centuries). This close proximity to the surface occurs despite the presence of colluvium over-thickening the soil profiles in places.
- (c) This truncation of the profile is the cause of the anomalous presence of three soil series and one variant on the same slope unit, and within 50m, as reported by Mr Allen; this is highly unusual in mature soils.
- (d) Truncation of the profile has brought poorly draining lower subsoil and weathered parent materials close to the soil surface, and induced gleying (water logging). This is shown by areas of rush and Mr Allen's identification of gleys (Doc 196, supplementary report, section 4). The soils in Ashenground Wood, including examples of the Upper Grinstead Clay, are much better drained stagnoargillic brown earths in comparison.
- (e) Disturbance and truncation is also evidenced by the absence of woody roots in the upper profile of soils in Cell 5B1 compared with soils in Ashenground Wood, Pierce's Wood and in the literature (including extant woodland soils described in Jarvis *et al* 1984, Doc 234). Both Dr Macphail and Mr Allen gave evidence as to the (relict) presence of woody roots in the (truncated) lower subsoils, but these did not extend into the upper profile and thus had no influence on the current drainage problems affecting these soils, i.e. there is no root channel drainage (or pedological) continuity from the top soils to the lower subsoils, as found for example in the Ashenground woodland soils.

Woody Roots

- 7.242 Dr Macphail emphasised that a major difference between extant woodland soils and the soils at Cell 5B1, is the lack of woody roots in the upper profile (examination-in-chief, XX and Doc 146, p4.2d). The LCOs attempted to address this by suggesting that since the 1950s all these roots have rotted away, while in the 'wet' subsoil water-logging has preserved them. Dr Macphail rejected this theory on the basis that woody roots are very long-lasting because of the preservative effect of lignin (XX of Dr Macphail); woody roots were preserved at Pierce's Wood, for example. Moreover, in the case of Neolithic Hazleton (Doc 156, p3.1 & XX), coarse channels relict of woody roots were observed – but here 5,000 years had passed since soil burial. If woody roots had rotted away in an undisturbed soil at FAW, both Mr Allen and Dr Macphail would have noted coarse channels as ghosts of these.
- 7.243 The LCOs produced the evidence of the winch-felling experiment, with the comment that only 2% of Cell 5B1 would have been disturbed by this felling method (Doc 198). As Dr Macphail pointed out, the illustration of the tree hole, however, showed a multitude of woody roots still present in the soil surrounding the disturbed tree hole. He said rotting of roots was not a satisfactory explanation to account for their current absence. Given the available soil, aerial photographic and this experimental evidence, it can be presumed that after clear felling, roots were grubbed up ahead of any seeding to produce grassland. This would account for the disturbed nature of the soils studied from both Dr Macphail's and Mr Allen's pits, and explain the absence of woody roots from the upper profiles from all these soil pits. As there are no testimonies from this period, this suggestion must remain conjectural, but on the other hand cannot be challenged either in terms of such testimonies.

Extant Woodland Soils or not at Cell 5B1

- 7.244 It is clear that the original soil at Cell 5B1 developed as a woodland soil over the previous 10,000 years, and was still extant in this capacity until the 1950s. As argued by Dr Macphail, it is difficult to be certain about how much disturbance took place prior to the 1950s; there is a likely history of woodland exploitation and soil disturbance since the medieval period (oral evidence and Doc 156). On the other hand, both Dr Macphail and Mr Allen (during his evidence) agreed that the gleying now affecting the soil would have to be ameliorated by deep ploughing to produce a woodland crop. If soil conditions were sufficient to produce a woodland crop in the 1950s, what has changed in terms of these soil conditions that now requires deep ploughing to revitalise this 'woodland' soil? The obvious answer is that the impact of clear felling and the inferred ensuing forestry activity that removed all woody roots from the upper soil (and, as also argued, disturbed and truncated the soil), transformed an extant woodland soil into a soil where only the lower subsoil and weathered parent material is now of a relict woodland soil character.
- 7.245 The evidence of soil disturbance and lack of an extant woodland soil at Cell 5B1 is as follows:
- (a) Lack of mature topsoil and pedological relationship with the underlying soil profile.

- (b) Coarsely mixed (mainly fragments of Ah and Eb horizon) upper soil profile.
- (c) Absence of woody roots in the upper profile.
- (d) Relict woody roots in truncated lower subsoil/weathered parent material, which are unconnected to the modern day upper profile.
- (e) Anomalous proximity to the modern soil surface (despite colluvium over-thickening the soil in places) of poorly draining lower subsoils/weathered parent material.
- (f) Clear evidence of soil disturbance in the 1959 aerial photograph and continuing evidence of un-vegetated soils up to the 1970s; and
- (g) Anomalous poor soil drainage (due to 'e'), which would have a damaging effect on any current woodland growth (as agreed by Mr Allen) and logically, by implication, would have had a harmful effect on any previous woodland crop (taken in the 1950s), if such soil conditions were present then (i.e. does this imply that 'woodland' soil conditions have dramatically changed since clear felling in the 1950s?).

7.246 In Dr Macphail's opinion, the extant history of the soils at Cell 5B1 is unknown, but probably includes disturbances dating back to woodland exploitation from the medieval period onwards (examination-in-chief). However, the soil studies link the present-day character of the soils at Cell 5B1 with the most recent major impact of clear-felling and follow-up forestry work in the 1950s. These activities, which caused the disturbance of the upper profile, tree root removal and soil erosion, appear to have led directly to the creation of an artificial soil, which no longer functions as an extant woodland soil.

Summary and Conclusions on Cell 5B1

7.247 Cell 5B1 has not had continuous woodland cover since 1600AD. Indeed, it does not currently have woodland cover. It is not an open grazed area which is regenerating back to woodland. It certainly does not have at least 20% canopy woodland over 80% of the site. It is not a temporary clearing which has regenerated or is regenerating back to woodland. It is largely absent of woodland soils as a result of serious soil disturbance and truncation. It is therefore not AW. It is 'scrub with secondary woodland encroachment' (Mrs Fisher, examination-in-chief).

7.248 However, that is not the end of the matter, because even if it were to be found that Cell 5B1 was capable of coming within the definition of AW it would still not necessarily justify treating allocated land not in accordance with its allocation. That is a matter that requires deciding on the evidence. It is not the same point that was put in cross-examination to Mr Harris as to whether the need for housing outweighed the protection of AW. The precise question put was; "*Does the need for 60 dwellings outweigh the protection of AW*".

- 7.249 This is not the correct question – the point is whether the AW, as a material consideration, outweighs the fact that the site is allocated. The answer to that question depends on the evaluation of AW and balancing that against the allocated status of the site. That is the correct approach as a matter of law. Both MSDC and the LCOs placed considerable reliance on paragraph 10 of PPS 9. What should be considered is the relationship between PPS 9 and S38(6) of the Town and Country Planning Act 1990. The Act refers to the status of the development plan in the plan-led system. What MSDC and the LCOs seek to rely on is material considerations outweighing the allocation of the site for development within the development plan. The analysis should be: is the site allocated? Yes it is. Do material considerations, including whether the site is AW or whether it has ecological value, outweigh its allocated status? One may well evaluate the material considerations having regard to paragraph 10 of PPG 9. Once a view is formed on the weight to be attached to the material considerations then this has to be balanced against the site's allocated status. Whether the site is AW is a material consideration and this is relied upon to rebut its allocated status. But it still requires to be demonstrated that, even if it is AW, this is a justified consideration that outweighs its allocation.
- 7.250 As Dr Macphail said in oral evidence, if he was asked to study woodland soils, he would not choose Cell 5B1. If it is AW, then it is a very poor example. It has no existing tree cover, little woodland soil and no or scant evidence of regeneration back to woodland. On the present evidence of rates of re-colonisation, it would take centuries before it regained extensive woodland cover.
- 7.251 These are not the kind of circumstances which would justify the rebuttal of the presumption that allocated land should be developed. The ecological interest it has, principally at its borders, will be conserved and enhanced pursuant to Policy C5 of the MSLP.
- 7.252 There is an urgent need to provide more housing in this area and the policy requirement to make the most efficient use of available housing land. In the circumstances of this case to remove Cell 5B1 from MSDC's housing stock would be wholly inconsistent with this principle. This is strengthened if the finding is that the land is not AW.

Buffer Zones (BZ)

- 7.253 It is asserted that the proposals and, specifically, the buffer zones do not “protect and enhance” the conservation value of the areas of nature conservation interest bordering the appeal site (D Baker, oral evidence). But what is implicit in this requirement is a comparison, and none is made. If something is enhanced, that implies that it is improved, and therefore needs a comparison against the baseline. All of the BZs around the main two groups of development cells would encompass areas of low nature conservation value: the formerly improved fields (CD44, Technical Appendix 2, p4.12).
- 7.254 The treatment of these, as outlined in the ES and elsewhere, would improve the species diversity, management and overall ecological value of the areas defined as BZs (Doc 83, appx10, pg31-34 Treatment Areas E & F). At present there is no active management of these fields; the most recent management efforts (2003-2005) have not had as their objective the enhancement of nature conservation interests.

- 7.255 BZs should be regarded as part of the design process. They need to integrate well within the development but not be so wide as to cause management problems. If they are too wide they become “problematic dead zones”. It is not a quantitative exercise as there is no linear relationship between width and effectiveness. Indeed this was clear from the earlier phases where narrower buffers worked effectively both due to design and the nature of their treatment (J Fisher, examination-in-chief). “There was no sign of stress and the trees are surviving”. (J Fisher, XX). The buffer zones proposed for Phases 4 and 5 are entirely adequate for their purpose, ranging from a maximum width of about 13.6m to a minimum of some 2.5m (proposed buffer zone widths Doc 172, appx G). Apart from anecdotal evidence there is nothing that can be relied upon to indicate that the BZs provided in earlier Phases are unacceptable. More does not mean better. It is the law of diminishing returns. Their widths would be sufficient to integrate well within the development. They are not a cordon sanitaire. They would allow for limited informal public access and satisfy the relevant British Standard for root protection (see paragraphs 7.266-7.274 below). Ecologically they will function well.
- 7.256 In Mrs Fisher’s opinion, the Greater Yorkshire Tree Officers’ Group method for calculating minimum distances of new properties from trees (GYTOG), as propounded on behalf of MSDC, is a flawed process (Doc 17, appx 26 & updated method at Doc 18, appx I). It is an arbitrary application of weighting criteria – “a black box approach which ignores site specifics and the design of the development” (J Fisher, examination-in-chief).
- 7.257 CN’s approach has been to ensure that the woodland edges and areas of ecological interest are retained. Although some grassland would be affected by the development it would be translocated (Doc 81, p3.5). There would be no net loss of quality features and all undeveloped areas would be conserved and managed.
- 7.258 Buffer zones are not corridors but they could have a role as they would in this case for such species as dormice. But that is not their principal function. CN is entirely satisfied with the width of the buffer zones and sees no reason why the development should be compromised by arbitrary buffer zones of the kind proposed by MSDC, which could cause problems elsewhere in the Masterplan.

Addendum Evidence of D. Baker

- 7.259 This evidence is another illuminating example of the Councils’ unreasonable behaviour. When Mr Baker for MSDC was cross-examined on the original evidence given on the width of buffer zones there was vigorous defence of the application of the GYTOG methodology. It was not accepted that this was an arbitrary and inflexible approach which was not justified by policy guidance at any level and was no substitution for good judgment. It was said that this was the methodology, and it had to apply in accordance with the rules.
- 7.260 However, that all altered when it was later pointed out that the methodology had now changed and had, indeed, been adopted by Selby District Council and North Lincolnshire Unitary Authority, and Doncaster MBC was developing the original version within its LDF (Doc 18, p1.5). MSDC’s new position was that, as the GYTOG methodology now reduced the average buffer zone width from 17.4m with the original methodology to

15.2m along the ancient woodland component of the development, there was no longer a wish to rely upon it (ibid, p1.8 & 1.9). Therefore, as it did not suit the purpose it had become irrelevant.

- 7.261 MSDC's evidence regarding buffer zones was predicated on the use of the 'Doncaster Rules' (Docs 15, p3.4.2, 102, p2.6 & 106, p1.5). It was claimed that there is support for the use of this methodology to determine the extent of buffer zones because the methodology was tested at the Selby District Local Plan Inquiry under the heading of Policy ENV18. The Local Plan Inquiry was held between July 1999 and March 2001. The Inspector's report was received in May 2002 (Doc 17, appx 28.1 & 28.2 & Doc 106, p2.8).
- 7.262 The Inspector's appraisal of Policy ENV18 raises a number of issues. They can be summarised as:
- (i) the Local Plan Inquiry and the Inspector's report were completed prior to the review of BS 5837, Trees in Relation to Construction, which was undertaken in 2003-2005, with the BS published in September 2005 (Doc 17, appx DRB40);
 - (ii) Policy ENV18 relates to Tree Preservation Orders and not (necessarily) to trees which are not covered by TPOs;
 - (iii) the Inspector had before him two options to consider. One was the Yorkshire Wildlife Trust option which required that residential development should not be permitted within a distance of twice the expected mature height of the nearest tree carrying a preservation order. The second was the GYTOG option. This is the same as the 'Doncaster Rules'. Provided the choice between these two options it is not surprising that the Inspector decided in favour of the GYTOG option given that it does have a more considered basis of assessment rather than the simplistic approach by the Yorkshire Wildlife Trust. The most significant point is that the Inspector does not refer at all to the British Standard and therefore the conclusion must be that the option of assessing tree protection on the basis of the BS was not an option which he was asked to consider (Doc 106, p2.9).
- 7.263 Little or no weight can be given to the Selby decision which MSDC seeks to pray in aid of the use of the 'Doncaster Rules' because:
- (i) the Inspector did not appear to consider the use of the British Standard;
 - (ii) the policy refers to trees to be covered by Tree Preservation Orders; and
 - (iii) the revised BS has been published subsequent to the Inspector's considerations (ibid, p2.10).
- 7.264 Furthermore, the justification to Policy B7 in the MSLP clearly states that "*where development is permitted in the vicinity of trees the minimum distances between excavations and tree boles will follow the advice of the current British Standard*" (CD14, p4.31). This undermines the whole of Mr Baker's assessment and conclusions.
- 7.265 The requirements of WSSP Policy DEV1(a) have 10 main criteria (CD13, pg93). There is a need to balance the various requirements. The requirement to protect and enhance

the biodiversity of the site as set out in (7) is not more important than the other 9 requirements.

7.266 The Root Protection Area (RPA) is one part of the BZ around trees that would be protected. MSDC has ignored the reference to above-ground constraints which are set out in paragraph 5.3 of the BS (Doc 17, appx DRB40).

7.267 The BZs shown on the submitted drawings (Doc 113, Plans ref. 1859-TP-10 (NGP 01) Revision F) are based on:

- (i) the extent of the RPA or 1m outside the canopy of the tree – whichever is the greater;
- (ii) ecological requirements as advised by JFA Environmental Planning.

7.268 Therefore it is NOT just the protection of the roots but the protection of the whole tree which is shown on the plans. Furthermore, the RPA takes account of the need to maintain water and air supply to the tree roots, to avoid damage to the branches and to avoid changes in ground level etc. (N Pyke, examination-in-chief).

7.269 Mr Baker's evidence sets out criteria for what a BZ between woodland and new development should take into account. These are addressed within BS5837:2005 (Docs 15, p3.5.3 & 17, appx 40):

	Where addressed in the BS
(i) Water demand	5.2.4
(ii) Ultimate size of the tree	5.3.2
(iii) Density and foliage	5.3.1 and 5.3.2
(iv) Use of property	Part of the design of the scheme
(v) Shade	6.2.3, 6.3.2
(vi) Aspect of a tree to a building	5.3.1
(vii) Special factors	4.4.1, 4.4.3, 6.3.4

7.270 It is of note that the Wildlife and Countryside Directorate of the ODPM's office was represented on the Technical Committee which reviewed the BS (Doc 17, appx 40 inside front cover). Therefore, it is not true to say that ecological processes were not considered.

7.271 Mr Baker's comment is NOT correct where he states that "there is no national guidance giving specific depths for buffer zones to protect and enhance woodlands against neighbouring development beyond that which protects the roots of individual trees". The BS, as demonstrated above, looks holistically at the tree and not just the RPA.

7.272 The BZs proposed meet the objectives of the document called 'Keepers of Time' as they are based on the BS which takes these factors into account and the appropriate ecological considerations as advanced by CN (Doc 17, appx 19).

Further Submissions Relating To Additional Points Raised By Mr Baker

7.273 Mr Baker sought to define what a BZ is and sought to support the premise that it would provide a greater degree of protection for tree roots on woodland edges (Doc 15, p3.2).

There is no scientific justification for this at all. He also asserted that buffer zones typically extend beyond the RPA (ibid, section 3).

- 7.274 In Section 1 of the BS it states "*This British Standard gives recommendations and guidance on the principles to be applied to achieve a satisfactory juxtaposition of trees ... with structures*". It provides a "*balanced approach*" as set out in paragraph 3.2.1. Section 5 of the BS sets out the requirements for tree constraints plans and thus tree protection plans. The requirements include RPA and above ground constraints and are thus not limited to the RPA (Doc 17, appx 40). It is important to note that the tree protection areas shown on the submitted plans are based on an assessment of above- and below-ground constraints and not just on RPA (Doc 113, Plans ref. 1859-TP-10 (NGP 01) Revision F and Mr Pyke, examination-in-chief).
- 7.275 As to tree root morphology, it was argued that CN's proposals do not take into account asymmetrical root systems (Doc 15, p3.3.2-3.3.5). CN's evidence in response to that from the LCOs (Mr Quaife), supporting information from the arboricultural consultant who had conducted the tree survey on the appeal sites (Mr Laddiman), and the extract from Dr Biddle's book on Tree Root Damage to Buildings, dealt with this point (Docs 106, 108 & Mr Pyke examination-in-chief). In particular, there are no differences in the root spread of rows and groups of trees compared with single specimen trees and there is no support for asymmetric root systems (Doc 108, pg149, 2nd, 3rd and 4th paragraphs in right hand column). There is no evidence that the root protection area for rows and groups of trees should be larger than that required for single specimen trees and therefore the RPA methodology can apply generally in these situations.
- 7.276 A further unsubstantiated assertion was that most of the roots from the large trees on the woodland edge are likely to have a disproportionate area of their roots stretching out into the adjacent fields (Doc 232, Section 4). Again, there is no evidence to support this. Indeed, discussions with other arboriculturists and the Arboricultural Association, have identified that the woodland environment is more favourable for root growth because of the presence of mycorrhizae, leaf litter and lower bulk density (Doc 106, Section 3 and Mr Pyke, examination-in-chief). It is entirely appropriate to use the methodology recommended in the BS for the determination of the RPA.

People/Trees and Shading

Loss of Light Due to Trees

- 7.277 The shading line shown on the Masterplan indicates the area where buildings will have a reduced amount of sunlight and where the orientation and layout of the buildings would be carefully considered at the detail design stage (CD 46, application plan O, see also plan1859-LA-13 (NGP/03) Rev B within Doc 105 for clearer illustration of buffer zones and shadow lines).
- 7.278 Mr Quaife (for the LCOs) indicated that the advice in paragraph 5.3.1 of BS5837:2005 regarding annotation on tree constraints maps of trees that could cause unreasonable obstruction of sunlight and daylight is to be withdrawn as it is misleading (Doc 232, p2.8). The information on potential shade shown on the Masterplan represents the potential shade at midday in early April and mid September. In summer the shadow cast

will be significantly less, up to 50% less. In winter there would not be any leaves on the trees and therefore there would not be the same degree of shading. There would be sunlight within the area marked as being in shadow in the morning and afternoon and to an increased extent in the period between early April and mid September. This fact would be taken into account in the detailed design and orientation of dwellings to ensure that these receive maximum sunlight in living rooms (Doc 112, p7.11). The BS at paragraph 6.3.2 states that "excessive shading by trees should be avoided" not that the building should be in constant sunlight (Doc 17, appx DRB 40).

Damage to Property by Whipping Branches

7.279 The properties will be located beyond the tree canopy and therefore there will not be this effect (Doc 15, p3.3.6).

Threat to Property by Falling Trees

7.280 The quality of the trees has been assessed and recommendations have been made for the felling or pruning of trees which are in a poor condition (Doc 104, appxs A & B). There is an obligation on the landowner to ensure that the trees on his/her property are in a safe condition.

Apprehension of Occupiers

7.281 The future owners of properties will see the relationship of trees to buildings and will be able to take a view on this.

Buffers for Veteran Trees

7.282 Particular care for large old trees which would become enclosed within the development would be taken, with particular regard to the 'Pinch-point' oak No.1671 (see Doc 113, Plans ref. 1859-TP-10 (NGP 01) Revision F).¹⁴ The oak would not become enclosed within development. There would be an access road on the north side and development would be located on the south-west side. There is open space proposed to the west and north-west and to the east as part of the retained meadow (CD46, application plan O). MSDC indicates that an irreducible buffer of at least 1.5 times the canopy radius is required (Doc 15, p3.3.12). There is no justification for this requirement in the BS. There is a cap in the BS at paragraph 5.2.3 which recommends that the RPA should be capped at 707m² (Doc 17, appx DRB40). In the case of tree 1671, the tree protection area is in excess of 1000m². There is in addition a 6m distance from the tree protection area which is offset 21m from the tree bole and which would create a tree protection area of some 1385m², or nearly double that of the cap in the BS.

Construction Details of the Road Link

7.283 This would be submitted as part of a detailed planning application.

¹⁴ Inspector's note: In his oral evidence Mr Pyke indicated that no veteran trees within the meaning of BS 5837:2005, or in the common understanding of 'veteran', existed within or adjacent to the appeal sites. The oak tree, No. 1671, which is probably about 200 years old, is not a veteran tree.

Submissions on The Evidence of Mr Quaife

- 7.284 Mr Quaife was critical of the current British Standard but that does not assist. Essentially his evidence duplicated that of Mr Baker – a not uncommon characteristic of the evidence called by the LCOs. The evidence is general without any specific research to justify the statements made (Doc 232). This applies particularly to the assertion that tree roots on the edge of woodlands are asymmetric in character (ibid, Section 4, Mr Quaife XX). He did not provide any information, empirical or otherwise, regarding his assessment of an increase in the extent of the RPA apart from a general statement in his conclusions at paragraph 7.8.
- 7.285 His evidence lacked science. He failed to appreciate that the proposed extent of the tree protection fencing and the buffer zone to the trees is located outside the RPA (see Doc 113, Plans ref. 1859-TP-10 (NGP 01) Revision F).
- 7.286 Perhaps Mr Quaife's evidence is significant by way of omission in that no evidence is given to support the use of the GYTOG/'Doncaster rules' or the assessment of Sussex Wildlife Trust or Dr Whitbread. It is also of note that he is silent on the additional requirements for veteran trees proposed by Mr Baker.
- 7.287 A number of wholly unsupported assertions were made that require addressing. He argued that there are many factors that would cause the minimum radius of the RPA to be inappropriate (Mr Quaife, XX). The answer to that is the RPA takes account of the factors listed in paragraph 5.2.4 of the BS and if that has been done, which is the case as indicated by Mr Pyke, then the RPA is not inappropriate (Mr Pyke, oral evidence).
- 7.288 He contested that the woodland edge asymmetry of crown growth is in fact mirrored by root growth. He did not produce any evidence to support this contention. On the contrary, the diagrams in his appendices F and G do not support his case that the tree roots are asymmetric on the woodland edge (Doc 232 & Doc 108 with note from T Laddiman). It is maintained that ecology is a pivotal factor. CN does not disagree. However, the proposals would not affect the trees or the ecology of the woodland. Regeneration would take place within the woodland area and the woodland would not be adversely affected by the scheme proposals.
- 7.289 The same issue about root morphology relied upon by Mr Baker is raised and it is indicated that this has not been considered. This is now dealt with in Section 3 of Mr Pyke's supplementary evidence (Doc 106) which should be read with the additional information provided by Mr Laddiman (Doc 108). Mr Quaife stipulates (without justification) that the required RPA modification to allow for woodland edge asymmetry would extend a radius by a metre in most cases, and considerably more for larger trees. He gave no basis as to how he has arrived at this figure (Mr Quaife, XX). However, he ignores the fact that the tree protection and the buffer areas proposed by CN extend beyond RPA for a majority of the trees on the site. This is the first time Mr Quaife quantified at all what the increase in the RPA might be.

Dedication of land pursuant to Policy HH7 of the MSLP

7.290 The LCOs suggest that the BZs, FAW, The Meadow and woodland along the eastern side of Phase 5 fall within the description of 'areas of public open space, recreation or landscape protection and, as such, Policy HH7 of the MSLP requires that they be dedicated to MSDC before the start of development (Doc 15, p13.74 & Mr Baker XX). This provides a good illustration of the LCOs elevating a matter of detail to that of principle. It should not be suggested that development can't go ahead because of lack of dedication of this land: MSDC has not referred to it as a deemed reason for refusal; there is no evidence as to why this would be necessary and there is no reason to believe that these areas would not be maintained by the private sector. The land would be available for the provision of BZs and is dealt with in the Unilateral Undertaking (Doc 167, p7.1.9, 7.1.10).

Additional Submissions on the LCOs' Case

Density

7.291 The LCOs argue that density of development is a matter that requires consideration at this stage. This is not a matter relied upon by MSDC and is something of a red herring. These are outline applications on which decisions of principle need to be made. Density shouldn't be stipulated at this stage. If there is a need to modify BZs this can be done by condition. There is no requirement to calculate an appropriate density now. It would be up to MSDC at the detailed reserved matters stage to decide what should be allowed up to the ceiling on numbers. It would be wholly wrong to specify a ceiling on the basis of the details put forward by the LCOs and there would be no justification for reducing the ceiling from 785 to 532 (see paragraphs 9.144-9.192 below). What will be built is a factor of many things and is within the control of MSDC.

Buffer Zones (Mr Meier)

7.292 Evidence was based on the premise that the BZs are "significant landscape buffers" as defined by PPG 3/PPS 3 (Doc 211, Section 5.4). This is incorrect. BZs are functional elements within the housing development; their visual landscape role is subordinate to the functional roles of tree root protection, ecological buffering and informal recreation (Mr Harris, XX).

Construction Traffic (Mr Gilks)

7.293 It is intended to use the residential Bolnore Road for construction vehicle access, which it is claimed would be contrary to Policy HH2(a) of the MSLP and the Design Brief (CDs14 & 17). Phase 2 of Bolnore Village was constructed from residential roads off the Relief Road as well as Phase 3 without any reported problems (Doc 180, p12).

7.294 The appeal sites are claimed to be landlocked in terms of access by construction traffic having to pass through residential areas (ibid, p15-16). WSCC has accepted that Parkfield Way could be used for two-way construction access but its preference is for the use of Bolnore Road and Parkfield Way to allow a one-way system to be adopted (Doc

20, Section 8). As to concerns about possible conflict between elderly residents and construction traffic, those living on Amberley Close would not be directly affected unless they were to use the track to the east of Joan Nightingale House (No.25 Bolnore Road), which does not seem a particularly attractive option. Even if they were to use this route to walk westwards along Bolnore Road they would benefit from the footway to be provided between the proposed access off Bolnore Road and No.25, to the east of which there is an existing footway. The alternative route via Wealdon Way has good quality footways and the easternmost section of Bolnore Road would be unaffected by construction traffic.

- 7.295 Part of Bolnore Road is defined as a byway open to all traffic (BOAT) and a definition is provided, namely a highway, "... *but which is used by the public mainly for the purposes for which footpaths and bridleways are used*". It is stated that that the proposed use for construction traffic would be contrary to this use as a footpath and bridleway (Doc 180, p18). However, the proposed development includes measures to make it suitable for construction traffic including a passing bay, footway and resurfacing and which have the support of WSCC. The concerns raised about pedestrian activity are addressed by the provision of a footway between No.25 Bolnore Road and the proposed site access (Doc 124, p4.15).
- 7.296 The proposed improvements to Bolnore Road take account of the 'rural' nature of Bolnore Road through minimising the widening by the provision of only a passing bay and the construction of an 'informal' footway with a granular type surface (Doc 180, p20).
- 7.297 Concern is expressed about conflicts between cyclists and HGV traffic (ibid, p22). Bolnore Road has been used relatively recently by construction vehicles for the extension to Ashton House (to the western side of the appeal sites) without any reported problems. WSCC has not raised any fundamental concerns; the proposed restrictions on delivery times would avoid the likely peak period of cycle activity by school children; visibility is good and speeds would be low, and the removal of parking on one side of Bolnore Road would be an improvement on the existing situation by providing greater carriageway width and improving visibility (Doc 124, p4.18, 4.20).
- 7.298 Reference has been made to a planning application for sheltered housing and a day care facility having been refused for development at Ashton House because of increased activity on Bolnore Road (Doc 180, p23). A large extension to the nursing home was constructed in 2006 requiring the use of Bolnore Road by construction vehicles. The road also was used by construction traffic during the conversion of the former convent building once occupied by the Nuns of the Holy Cross (Doc 124, p4.15).
- 7.299 It is suggested by the LCOs that the construction/bus/emergency access should be located to the west of Joan Nightingale House (ibid, p24-26). If, as proposed, this was to be immediately adjacent to that of Joan Nightingale House this could lead to potential conflicts in turning movements and confusion with drivers indicating to turn left when approaching from the north-east. Furthermore, it would mean that construction vehicles would be less visible to residents or pedestrians crossing Bolnore Road to Beech Hurst Gardens than for the position currently proposed. The position of the access as currently proposed is preferable and relocation of the access is not justified (Doc 124, p4.2, 4.3).

7.300 The internal layout has been designed to accommodate 12m buses and refuse vehicles with overrun areas on a similar basis as in Phase 2, which has accommodated construction and residential traffic. Furthermore, the layout has been assessed for articulated and rigid vehicles and it has been found that the internal road layout could accommodate tipper trucks albeit with some crossing of the centre line. Articulated lorries could at least reach Phase 5 but on the tests undertaken at the time would struggle to negotiate the road layout, although this has since been changed. There may not be a need in any event for these vehicles to progress as far.

Construction traffic (Mr Carter)

- 7.301 The assertion that the site is landlocked is again rejected (Doc 186, p4.2). Furthermore, at the time of construction of Phases 1 and 2 CN did not have an option to acquire the land required for Phases 4 and 5.
- 7.302 Reference is made to the precedent of case history of planning permission being refused where a long length of time is needed for construction access (ibid p5.1 & appx B) The precedent quoted is unusual as the proposal was for drilling of a gas well and six months testing period and, therefore, not directly comparable to the Bolnore proposals. The assertion is disagreed with that the Inspector stressed that access was allowed because of its short duration. There is nothing in the Inspector's decision to say that the impact of HGV traffic would have been unacceptable if it were to occur over a longer time than 30 days other than at paragraph 4.4 when he says 'bearing in mind its very short term nature' as he concluded that it would not materially affect living conditions. Furthermore, the Inspector found in favour of CN despite the access route also serving primary and secondary schools (ibid, appx B).
- 7.303 Photographic evidence is provided of an articulated lorry negotiating Parkfield Way (ibid, pg 4. See also DVD Doc 253). The lorry is a little further across the road than it needs to be by reference to Track Plot 24322/T38 (Doc 123, Drawings). There is nothing exceptional about 185 vehicles per hour (vph), which equates to one vehicle every 20 seconds. The junction has been tested with flows of 667 vph with full development of Phases 4 and 5 and has been found to operate satisfactorily.
- 7.304 Whilst it is accepted that vehicles would need to cross the centre line of Parkfield Way, the fact that articulated lorries would be escorted by a banksman, and therefore by definition would be travelling at walking pace, has been ignored (Doc 186, p6.2). In addition, although the figures are not accepted, there would be, on average, only two such vehicles per week. It is not agreed that the corner of the staggered crossroads is blind. The junction complies with appropriate visibility standards for residential roads subject to a 20 mph design speed (Doc 124, p4.7). Furthermore, the design of the existing junction has been subject to a safety audit and when this was undertaken it was known that the junction would be one of two accesses to Phases 4 & 5. It is also worth noting that the Manual for Streets is recommending less onerous visibility requirements than those satisfied at the junction (CD36A, pg90-94).
- 7.305 It is asserted that an articulated vehicle leaving the site along Parkfield Way would entirely occupy the junction preventing entry or exit from the north of Phase 1 (Doc 186, p6.3). Mr Charlton dealt with this, with corroboration from Mr Roderick (Doc 124, p4.8

& Mr Roderick, oral evidence). However, traffic turning right out of Parkfield Way (north) is obliged to give way anyway. Furthermore, the only traffic that might have to wait is that turning left out of Parkfield Way (north) and which is obliged to slow down. Such vehicles would therefore be able to stop and wait for a short time while the escorted vehicle clears the junction. In the very unlikely event that a lorry breaks down, emergency vehicle access could be achieved close to the properties on Parkfield Way via Heyworth Ride (Doc 124, p4.8, A Roderick, examination-in-chief). Moreover, as soon as the loop road element of Phase 4a is in place, vehicles will be able to follow this road from Renfields to approach from the east. CN proposes to construct the loop road as an early element of the infrastructure of Phase 4a.

- 7.306 It is claimed that the trailers of the articulated vehicles will overhang the footway (Doc 186, p6.4). However, Track plot 24322/T/38 shows that the body of the trailer does not have to overhang the footway (Doc 123, Drawings). Furthermore, any overhanging that might occur will be over a short length of footway - 13m at worst, and when the vehicle is escorted at walking speed by a banksman as a requirement of the Construction Management Plan (CD48). As to the assertion that the 1.8m wide footways are narrow, footways have been provided to the satisfaction of WSCC and 1.8m is a standard footway width which allows a wheelchair and buggy to pass side by side (Doc 124, p4.10 and as was set out in the now superseded Design Bulletin 32 (DB32)). The mobility guidelines referred to by Mr Carter stipulate 2.0m as the normal minimum, 1.5m as being acceptable in most circumstances and 1.0m clearance as the absolute minimum (Doc 186, p6.4).
- 7.307 By total separation of pedestrians and vehicles, Mr Carter is suggesting separate footpaths for pedestrians of which there are ones to both the north and south of Parkfield Way linked by the bridleway (ibid, p6.5). Total separation is impossible but pedestrians and vehicles are effectively separated by the provision of the road on the access route but this is unavoidable and with good visibility and slow speeds there is no reason to suppose that it is unsafe. The proposed guard railing is intended to reinforce the separation (see Doc 123, track plot 24322/T/38). There is small chance of trailers of articulated lorries overhanging part of the footway but speeds would be dictated by the walking pace of the banksman. The risk of overhanging does not apply to rigid HGVs.
- 7.308 The word 'tortuous' is used in comparing Routes 1 and 2 in the Construction Access Report (Doc 186, section 7 & Doc 48, CD/T/5). Route 2 through Phases 1 and 2 follows a winding alignment with a series of bends designed to control speeds, hence the use of the word tortuous. The use of the word itself has nothing to do with the number of properties affected. As to the width of Parkfield Way, Manual for Streets indicates that a 5.5m wide carriageway allows the accommodation of two-way movement of HGVs (CD36A, pg79). DB32 identifies that a road of this width can carry two-way flows of 500-1000 vph with up to 10% HGV/buses. This suggests that a road of this width is suitable to carry two-way HGV flows of 50 to 100 vph. The worst case predicted in the Construction Access Report is 14 vph. Even allowing for buses and the occasional delivery lorry this is well below the lower figure. Indeed the document suggests that a 5.0m carriageway is sufficient where the HGV content is 5% or less¹⁵.

¹⁵ Inspector's note: As noted earlier, DB32 has now been superseded by Manual for Streets, which does not have guidance about flow capacity.

- 7.309 It would be readily apparent to prospective purchasers of the houses on the construction access route of the road's use by construction vehicles. Due to low speeds there would be no significant risk for future residents. There is no need of mitigation at the crossing of the bridleway (Doc 186, p7.2).
- 7.310 There is no particular reason why the suggested modifications to the staggered junction should increase the risk of vehicles cutting the corner into and out of Heyworth Ride (ibid, p8.5 & Doc 123, Drawings, ref. 24322/P/12, Rev C). This is supported by the fact that the works to the junction required for the favoured construction access route of entry via Bolnore Road and exit via Parkfield Way have been subject to a Stage 1 Safety Audit that has not identified this as a problem.
- 7.311 The design of the bridleway crossing has been the subject of much discussion and debate (Doc 186, p9.1.3). The layout is acceptable to WSCC and has passed a Stage 1 Safety Audit. As visibility is good and speeds would be low there is no reason why there should be a manned control point.

Evidence of Stuart Meier – Spatial Planning

- 7.312 The assertion that the loop within Phase 1 acts as a major distributor road is incorrect (Doc 211, section 5.5). There is no such definition within DB32, which at page 2 defines three types of distributor road – primary, district and local. The function of the loop road is nearer that of an access road in terms of the guidance given in DB32 despite the fact that it serves more than 300 dwellings. It does not fall into this category, but even if it was to be considered as a local distributor road, this does not place it in the category of a major distributor road¹⁶.
- 7.313 The LCOs express concern about the loading of additional residential traffic on the existing loop road serving Phases 1 and 2 (ibid, p7.1.2). The issue of a single point of access has been addressed; there are effectively two points of access (with only an incident that caused the total closure of Bolnore Roundabout resulting in vehicular access to Phases 1 to 3 being blocked) and in any event the proposed development would allow the early construction of the emergency access route to Bolnore Road, to the benefit of existing residents of Bolnore Village (Doc 121, p7.44, 7.45, Mr Roderick, examination-in-chief).
- 7.314 There is concern that the local residential road network is already overloaded, with reference being made to DB32 (Doc 211, p7.1.3) The layouts described at paragraph 2.12 of DB32 with 8 access points is recognised in this document as not being realistic. It is intended only to demonstrate how, for a specified scale of development, the number of accesses affects the volume of traffic using these accesses¹⁷.

¹⁶ Inspector's note: Manual for Streets does not define road hierarchies in the same way. It indicates that street character types in new residential developments should be determined by the relative importance of both their place and movement functions (CD36A, p4.71).

¹⁷ Inspector's note: Manual for Streets does not contain similar references.

Allotments

- 7.315 There is no shortage of allotments. The MSLP says the supply is sufficient (CD14, p10.26). Furthermore, the provision of allotments is not identified within Policy HH2 (ibid, pg231). CN is not proposing to dedicate any land for allotment use and there is no maintainable argument that they should be required to do so by policy or otherwise.

Badgers

- 7.316 Considerable effort has been put in by CN to accommodate the Badger Trust-Sussex. There has been no lack of communication and contact with the Trust. Conditions and the Ecological Management Plan would adequately deal with the presence of partially used setts adjacent to the development (Doc 83, appx 10). The design of the development allows green ways through the site so linking them to the main setts off Wealden Way. Only about 15.5% of badger territory would be lost post-development (Doc 91).

Overall Conclusions and Summary

- 7.317 Planning permission for a substantial number of houses should have been granted by MSDC subject to conditions and an appropriate S106 obligation. This should have happened at the very outset on the receipt of the current applications. Furthermore, on the basis of the detailed evidence provided, the position now is that planning permission up to the full amount sought should be granted by the Secretary of State and it should not be conditional upon the completion of the HHRR.
- 7.318 The critical evidence is the written evidence of Mr Charlton and the written and oral evidence of Mr Roderick, which shows conclusively that the existing highway network, with the benefit of a retrofitted TP, can accommodate such development without unacceptable harm to the highway network, especially in circumstances where there is a clear mechanism in place for the delivery of the HHRR within a realistic period of 2-3 years (2010). There is an urgent need for more housing and further delay in provision, bearing in mind the delays that have already occurred at Bolnore, should be avoided.
- 7.319 Cell 5B1 is not AW but even if it is, its poor quality does not justify precluding the sensitive development of an allocated site. All other matters could, and should, have been resolved by condition and a S106 obligation. The affordable housing contribution on offer to MSDC has at all times been one which should have been accepted. MSDC's arbitrary and inflexible demand for a transfer of free land is not justified. The same can be said of the buffer zones put forward by CN. They comply with British Standards and provide more than adequate ecological protection.

8. The Case for Mid Sussex District Council

Introduction

General Background

- 8.1 The south-west corner of Haywards Heath, which has become more familiarly known as Bolnore Village, has for some years been the major housing development area of the town and of the district. Of vital concern is the fact that the delivery of residential housing development at the Village was and remains dependent on the delivery of part of the HHRR. Both housing and infrastructure are seen as integrally linked and both are of vital strategic importance to the future of Haywards Heath.
- 8.2 In 1996 the current appellant attempted to pursue the development of the whole of the south-west sector, now recognised as Phases 1 to 5. This was not achievable, due in part to separate land ownerships. Consequently, the original outline planning permission only relates to Phases 1-3 but includes stages 1-5 of the Relief Road (CD66, p3.2.1 & Doc 4, 1.2). The permission included a range of conditions and the associated S106 obligation included: the retention of significant areas of woodland for public use; the provision of a frequent bus service into the site; the laying out of an area for formal sport; a contribution towards either the construction of a new school on the site or of additional primary school places at one or more existing schools within the primary school local area; a contribution towards improved library facilities in Haywards Heath; and the reservation of land for a local centre comprising shops, a health centre and a building for community use. In addition, MSDC secured a significant element of subsidised housing and the extensive provision of play areas, open space, footpaths and cycleways throughout the site as part of the comprehensive legal agreement.
- 8.3 There followed a series of reserved matters applications establishing the details of the development for the whole of Phases 1 to 3, with the exception of the school site and community facility (CD66, p3.2.3). The Masterplan on CD/29/96 showed 2 access points diagrammatically, broadly in the current position. The approval of reserved matters for Phase 1, HH/00/103/REM, showed 2 points of access in the present position (Doc 4, p1.3).
- 8.4 On site, Phase 1 of Bolnore Village, is now complete and occupied. To the south of this, on the other side of the line of marl ponds, Phases 2a-2g, including the Village Centre, are largely complete and the majority are occupied. The Village Centre shops and square have been completed and some shops are occupied (ibid, p1.4). No start has been made on the community facility, but negotiations have now commenced. No final decision has been taken on the provision of the School, although it is fair to say that there is more optimism that this will be provided on site in the relatively near future. The main recreation area has been graded, but has not been completed or grassed. A medical facility is not now required by the Primary Care Trust. The construction of Phase 3, the high ground marking the southern extremity of the site, is nearing completion.

- 8.5 The Relief Road has been constructed and is open as far as Phase 3 (Stage 4 of Relief Road). However, this means that a single loop road serves all of Phases 1 and 2 with the two ends emerging next to each other on the new roundabout in Isaacs Lane (Bolnore Roundabout). All planning permissions are in place to construct Stages 4 & 5 of the Relief Road to Fox Hill (900m east of the railway), which would meet CN's obligations in this regard.
- 8.6 In total, the reserved matters approvals for Bolnore Village included a total of 859 dwellings (ibid, p1.8).

The Appeal Sites

- 8.7 The bulk of the appeal sites are in use as fields and woodlands, so it is inevitable that there remain areas of ecological value. However, it has to be recognised that the land now forms part of the urban area of Haywards Heath with only relatively limited direct connections to the countryside.
- 8.8 The western and southern boundaries of the application sites are formed by the public bridleway, which commences at the end of Ashenground Road, passes over an ageing railway bridge and, after passing for 400 metres to the west, turns sharply north for a further 400 metres. Beyond the bridleway to the west is a landscaped tree belt and, beyond that, the completed Phase 1 development. In the south-west corner, where the bridleway turns north, the application site abuts the site reserved for a new school and, further east, the remainder of the southern boundary is formed by Ashenground Wood. Throughout its length the bridleway is characterised by mature trees on both sides. Apart from a northern stretch to Phase 1, the surface of the bridleway has become uneven and difficult to pass. It is unlit and shaded. At the same time, with the construction of the earlier phases, it has experienced increased use as a sustainable route to the town.
- 8.9 It is in the north-east corner that the south-west sector abuts most closely the existing development in this corner of the town. The furthest north-east corner is at the end of Wealden Way and the application site then borders the southern and western boundaries of Climping Close, Duncton Close, Oakwood Court and Joan Nightingale House. With the exception of Climping Close, the adjacent properties are close to the common boundaries and the existing screening is sparse (ibid, 2.3).
- 8.10 The northern-most frontage of the appeal site is onto Bolnore Road, which is a BOAT at this point. The site frontage was originally marked by a hedgerow and a line of mature trees, but the removal of trees and drastic work to the hedge were undertaken by the previous owner before they could be protected (ibid, p2.4). Despite these works, the planting is recovering with time. Although Bolnore Road has a nursing home and flats and offices further west, Beech Hurst Gardens lie opposite and in this stretch the road has a particular quiet semi-rural character. Further east the road is marked by heavy on-street parking caused by a mixture of visitors to the courts and police station, commuters and visitors to the town centre (ibid, p2.4).
- 8.11 The bulk of the north-western boundary is created by Reading Wood, an ancient woodland, which also forms the substantial part of the return boundary towards the west (ibid 2.5).

- 8.12 Looking at the main internal characteristics of the site, one is first struck by changes in levels and this will, inevitably, have a strong influence on layout in the future. The land falls quite steeply to the south and east. This is primarily because of a small stream, which emerges almost at what has become known as 'the Pinch-point', the link between the two largest fields. From Bolnore Road, one of the main characteristics is the view towards the South Downs that is obtained from the top of the site. Slopes here are at approximately 1:10, but CN indicate that in some areas the slope increases to 1:6. This field is separated from the adjoining field in Phase 5, to the east, by a north-south hedgerow, which is important in landscape and ecological terms. This land is divided into large and small enclosures but, broadly, the slope in the land remains constant with the field to the west. The exception is a smaller field to the south of Oakwood Court and west of Duncton Close, which has become known as Duncton Meadow. This has a distinctive character as a small, sheltered enclosure. Along its southern boundary, there is a drainage gully which creates an important east/west ecological and landscape corridor (ibid, p2.7).
- 8.13 The gap between Reading Wood and The Meadow ('the Pinch-point') is both a strength and a weakness in that it leaves a very narrow gap, so there is almost a complete ecological link, but at the same time it severely restricts the potential for vehicular access between the two areas of predominately open land which have been identified for development (ibid, 2.10).
- 8.14 One of the main determining issues revolves around the ecological value of the south-east corner - the areas of land to the north-east and south-west of the small stream, identified as FAW and The Meadow. Furthermore, standing in any of the open fields, one of the overriding impressions is of being enclosed by mature trees, many of which overhang the open areas. It is the landscape and ecological value and treatment of these fringes which have set the parties apart.

The Appeal Applications

- 8.15 Details of the appeal applications and the deemed reasons for refusal are set out in paragraphs 4.1-4.7 above of this report. However, some particular aspects of the applications are noted below.

Appeal A: HH/04/02676/OUT

- 8.16 This is an outline application for residential development with a maximum of 573 residential units on Phase 4 only. CN used the same Masterplan principle that forms part of the original outline application for Phases 1-3. The context of the Masterplan is explained as follows (CD47, p5.4):

*“The master plan demonstrates the way the development will be taken forward and sets out the detailed location for the proposed access, estate roads and associated infrastructure. As required for outline applications that necessitate the submission of an Environmental Statement, this master plan is **not** illustrative. It is therefore anticipated that conditions would be attached to the planning permission requiring adherence to the details submitted in this master plan layout. A detailed application*

for the infrastructure for the site is to be submitted in the near future, which will also follow the limit set by the master plan. This will provide certainty to MSDC about the locations of all infrastructure and will enable the prompt implementation of this element of work to allow the continued phasing of the development.”

- 8.17 CN explains that the site is divided into a number of sub phases and the number of dwellings in those phases (and consequently density) is given within the statement. The thinking behind those densities is also set out in the statement (ibid, p5.34 et seq).

Appeal B: HH/04/02964/FUL

- 8.18 The drawings show the detailed alignment and designs of the two crossing points to the bridleway and the bus and emergency links to Bolnore Road. They also include a detail of the Pinch-point between Reading Wood and The Meadow area. The alignment and some constructional details of the roads are provided. Roads are designed to 20mph speeds. The primary service routes for cables, pipes, etc., would be located within these adopted road and footpath areas. Drainage details are provided.
- 8.19 Whilst MSDC does not object to considering detailed proposals at the same time as establishing the overall principle, and acknowledges the advantages to CN, it is inevitable that there is an overlap on issues between the different applications being determined. Consequently, matters of principle relating to, for example, highway access, buffer areas and the Pinch-point must be consistent between applications. A similar situation applies to the approval of alternative bridleway crossings under reference HH/06/246/FUL. The approval of one application should not prejudice MSDC's control of the development, or leave doubts over which permission is being implemented and which controls apply. Whilst there are some concerns, MSDC is content that a careful application of conditions can safeguard its position.

Appeal C: HH/04/02681/OUT

- 8.20 The specific differences with this application are that it includes all of the allocated development sites, the additional areas to Phase 4 being land abutting Duncton Close, Wealden Way and the railway land, with The Meadow and Cell 5B1. Overall, a maximum 785 dwellings is proposed. The area of land known as The Meadow is shown as being retained, but with balancing ponds running west to east covering a significant part of the site, and with area 5B1 allocated to residential development.
- 8.21 It is material to note that CN does not own the land comprising Phases 4 and 5. It is stated that the Phase 4 application has been designed so that it is capable of independent implementation.

Appeal D: HH/04/02965/FUL

8.22 As with Appeal B, above, this application is closely associated with the earlier Appeal C. The most important difference is that it includes the additional areas of land, Phase 5. Apart from the inclusion of Cell 5B1, the most significant aspect in terms of infrastructure, is the provision of balancing ponds in the area known as The Meadow.

MSDC's views on the applications

8.23 The applications were recommended for approval by officers. They took the view that, whilst there were some misgivings over various aspects of the proposals, there was scope to control and amend the applications by condition (Doc 4, p3.24-3.44 & Mr Matthews, examination-in-chief). Members did not accept that contention and, from the evidence which has been submitted in respect of the appeals, MSDC considers that the Members' views have been vindicated.

8.24 It is also relevant that many of the issues flagged up to CN in MSDC's letter of 5 April 2005 have not been resolved and form the core of the issues between the parties, demonstrating the consistency of MSDC's position (Doc 5, appx 14). Local authorities are often blamed for not delivering important residential development in an organised and timely manner. However, this particular case is a classic example of the reverse situation when all sides agree in theory that development should take place. The fact that it isn't proceeding is through no fault of the Council; it is solely and completely through the fault of CN and this is the absolute crux of the case. MSDC wants the right development to proceed on this extremely important site and it is no fault of the Council that it can't come forward in the way it is now presented.

8.25 Notwithstanding the submission of some further information and the temporary withdrawal of Cell 5B1, it also demonstrates the lack of concessions which have been forthcoming from CN on the core issues. The following are some of the points raised in the April 2005 letter (ibid & Doc 4, section 7):

- WSCC's current view is that there should be no further development until Stages 5 and 6 of the HHRR are in place; it would be unusual for MSDC to take a different view, particularly where there are strategic issues involved.
- MSDC appointed consultant engineers to give an additional opinion on the highways evidence: MSDC is not bound to accept their recommendations although they would clearly be material.
- Clarification was requested on the status of negotiations with Network Rail to facilitate the construction of the new road bridge over the railway and, consequently, the remainder of stages 1 to 5 of the HHRR.
- It was requested that the application should be amended to include re-surfacing of Ashenground Bridge; confirmation was sought on the nature of the surfacing material and that the lighting bollards be reserved for subsequent approval. It was seen as advantageous that the controls over, particularly motorcycles, gaining

access through the bridleway could be set out. The two vehicular crossings over the bridleway, between Phases 1 and 4, should be narrowed to single width; this would reduce the impact on wildlife and the loss of trees/shrubbery.

- There were too many physical links from the bridleway into the ecologically sensitive areas of The Meadow and Cell 5B1. The applicant was asked to look again at the changes of levels around the northern-most crossing in order to minimise the destruction of landscape features (particularly banks).
- Officers support residential development of the site.
- No issue with proposed densities.
- The applicant was asked to clarify what was seen as being included within the outline application.
- Comments were requested on Section 106 Heads of Agreement.
- Based on information submitted, the response of consultees and representations, and the substantial increase in housing numbers above the Local Plan allocation, Cell 5B1 and The Meadow should be excluded from development; officers would not support the application as it stands.
- Buffer zones would need to be significantly enlarged; but "*some of the areas are less ecologically sensitive and if areas 5B1 and The Meadow are kept open it may be possible to argue that the blanket increase in buffer areas is not required and to agree those specific boundaries where an increase in width is necessary*". The play area in the woodland could be acceptable if sensitively handled and designed to ensure a low impact.
- The road at the 'Pinch-point' could be reduced to a single carriageway to reduce the break in the wildlife corridor.
- The Badger Trust has concerns about the impact of development.
- The applicant was asked to confirm the future management regime for the ecologically sensitive areas.
- Large structured balancing ponds and changes in levels are inappropriate for The Meadow.
- There are shortcomings with the application, particularly in relation to transport, and such matters as sourcing materials, area heating systems, solar panels and sustainable drainage.
- Community facilities provided on Phases 1 to 3 are not sufficient to serve the proposed development.

- MSDC feels it is appropriate to intervene because of the scale of development, the number of vehicles involved, duration of construction work and the configuration of roads. This is likely to be one of the most contentious items for consideration.

8.26 The consistency of the case advanced by MSDC is also revealed by the decision of the Committee on 14 July 2005, when consideration was deferred so that further consideration could be given to (Doc 5, appx DM15, pg4):

- The completion of the HHRR prior to residential occupation, in accordance with WSCC's advice.
- The details of the construction access, particularly because of previous commitments to have no access to Bolnore Road.
- The adequacy of the buffer zones.
- The density of the proposed development.
- The installation of an adequate drainage scheme.

8.27 It should of course be borne in mind that at this stage Phase 5B1 had been withdrawn from the application.

Other relevant applications

8.28 Brief details of other pertinent decisions are:

HH/06/522/FUL : Bolnore Sales Barn

8.29 An appeal hearing has now been held against MSDC's refusal of an application to retain the Sales Barn within Phase 1 and against the issuing of an enforcement notice requiring its removal. A decision is awaited.

HH/05/2279/COND : Land south of St Francis Hospital

8.30 Trees have been cleared on part of the site and some of the details of the highway works have been submitted to discharge conditions and are under consideration. It is understood that a Reserved Matters application is to be submitted shortly for the outline elements. The applicant (CN) advised that it is intended to start the preparatory highway works in July 2007, although it has still not, to MSDC's knowledge, purchased the site from English Partnerships.

HH/05/2335/OUT : Residential development, Colwell Road

- 8.31 There is a resolution to approve the application, subject to a S106, which is close to completion. Negotiations have commenced on the detailed scheme.

HH/06/1348/FUL : CAMHS Unit, Princess Royal

- 8.32 Full planning permission has been granted and work is underway.

HH/05/897/FUL : Ashton House, Bolnore Road

- 8.33 The planning appeal has been dismissed (Doc 164).

General Policy Context

- 8.34 The policy context for the decision on these appeals is provided by the development plan which, under the provisions of the *Planning and Compulsory Purchase Act 2004*, consists of the Regional Spatial Strategy and Local Development Framework. Relevant policies have been summarised in section 5 above. Of particular note are the following:
- 8.35 Paragraph 3.23 of the Haywards Heath Local Plan 1995 set out the importance of phasing of housing development within Bolnore (Doc 5, appx 5):

"It is essential that the housing development takes place at a rate and sequence, which will ensure that the various sections of the Relief Road are completed and in operation at the appropriate times. This is vital since no other means of access to the development areas will be acceptable".

- 8.36 Some of paragraphs 3.24-3.27 need to be quoted to emphasise the strength of the wording :

"The eastern section of the Relief Road south of the hospital complex, however, must be complete and open to traffic prior to the final opening of the Tyler's Green/Rocky Lane section in order to prevent through traffic from using Colwell Road at any stage". (3.24)

"At the western end development would commence with the northern housing areas, with up to 120 dwellings (the highway authority's cul-de-sac limit for housing development) being constructed in conjunction with the provision of the length of Relief Road from Tyler's Green to the Bolnore Wood Roundabout, the latter providing access to the new housing. Similarly development would proceed from the south, with up to 120 dwellings being served by the new roundabout at High Bridge and the associated length of the Relief Road". (3.25)

"Beyond these limits, no further housing development would be constructed until the remaining sections of the Relief Road at both the western and eastern ends had been

completed. Without the road being completed, further development would exceed the cul-de-sac limits or would use the existing road network for access, neither of which would be acceptable". (3.26)

8.37 Therefore, the requirement to provide infrastructure, including the Relief Road, is embodied in Policy HH3/4 (ibid, p3.27).

Development Strategy

8.38 Pursuant to the Local Plan policies, a Development Strategy (CD16) was adopted by MSDC as Supplementary Planning Guidance (SPG) in December 1997. This amplified Local Plan policies and established the preferred line for the Relief Road and the requirements for, inter alia, access (including a single point of access into Phase 4), open space, leisure, community facilities, affordable housing and phasing. The bulk of the document was devoted to establishing points of principle on limits of development infrastructure, road alignments etc. There is little departure from the fundamental Local Plan policies. However, there are some passages which do need to be highlighted.

8.39 Paragraphs 6.1 and 6.2 cast doubt on the desirability of the school site in the area allocated for informal open space in the Local Plan, in part because some of the site was considered to be 'of ecological importance'. This was relocated to a site south of the bridleway, but the plan of 'Principles of Development' shows the area for housing and this addressed in paragraph 8.48 below.

8.40 Section 10 deals with the phasing of the development. This is important because it provides the basis of the decisions made on the subsequent outline application, particularly relating to highways.

8.41 The objectives of the Relief Road were summarised as follows:

- (i) Traffic generated by new development should not unduly add to the congestion on the A272 to the west of Haywards Heath.
- (ii) No more than 50 dwellings should be allowed without improvements to the capacity of A272 west of Haywards Heath.
- (iii) The maximum number of dwellings served off a cul-de-sac (normally 120) should not be exceeded.
- (iv) The maximum number of dwellings served off a looped cul-de-sac should not normally exceed the 300 dwellings accepted in central government advice (DB32).

8.42 Bearing these objectives in mind, the SPG identified an acceptable phasing as follows:

Phase 1: Up to 50 houses could be developed off the realigned Isaacs Lane and the Bolnore Roundabout.

- Phase 2: No more than 50 houses could be developed until the A272/Tyler's Green Roundabout and the section of the Relief Road across Tyler's Green has been constructed and improvements have been carried out to the A272/Paddockhall Road/Bolnore Road junction and the Muster Green gyratory. A further 70 houses (i.e. up to 120 in total) could then be developed off the Bolnore Roundabout.
- Phase 3: No more than 120 houses in total could be built until the Relief Road has been completed to the Row Coppice Roundabout and a second connection has been made through the development area back to the Bolnore Roundabout, thereby creating a 'loop'.
- Phase 4: No more than 300 houses in total could be built until the Relief Road has been completed to Wivelsfield Road, including the new railway crossing and the upgrading of Rocky Lane.

8.43 Various passages of a Design Brief, General Guidance (CD17), published in 1999, remain pertinent to the highways issues. The phasing requirements specified :

"7.1 The development is to be carried out in stages with the construction of the housing phased in relation to the completion of the Relief Road. This is a requirement of the Local Plan. The detailed phasing arrangements are set out in the S106 Agreement and the following is a summary:

- no dwelling can be constructed until Isaacs Lane has been realigned and the first section of the Relief Road, including the Bolnore Roundabout, has been completed.*
- no more than 50 dwellings can be occupied until Chownes Mead Lane has been closed to vehicular traffic at its junction with the A272, a new roundabout and section of Relief Road across Tyler's Green has been constructed and improvements to the Butlers Green Road/Paddockhall Road junction have been completed.*
- no more than 120 dwellings can be occupied until the Relief Road has been completed as far as the Row Coppice Roundabout and the Collector Road 'loop' has been connected.*
- no dwellings in the Knoll site (Phase 3) can be occupied until either the Relief Road has been completed to Wivelsfield Road, including the new railway crossing and the upgrading of Rocky Lane, or until five years have elapsed from the commencement of the development.*

"7.2 It is anticipated that the development will be carried out in accordance with the order established in the Development Strategy, shown on the plan attached as Appendix 3. However, MSDC will be prepared to consider changes in the

phasing arrangements provided the development is carried out in a coordinated manner and complies with the requirements of the S106 Legal Agreement as outlined above".

8.44 One other material paragraph relates to construction access:

"18.1 With the exception of initial construction traffic, which should use Isaacs Lane, all construction traffic must enter the development site via the new Relief Road only. No access will be allowed through existing residential roads. The Local Planning and Highway Authorities will discuss with the developer a formal routing agreement for construction traffic. This will seek to ensure that all suppliers and subcontractors avoid environmentally sensitive areas (such as Cuckfield Village) when accessing the site".

8.45 Design briefs were prepared later for Phase 1 (September 1999, CD18) and Phase 2 (November 2001, CD19).

8.46 This was the policy situation when outline permission CD/29/96 was granted on 17 November 1998 and even at this time it is possible to recognise the policies with which CN has not complied and which form the basis of the current appeal.

Current development plan

Mid Sussex Local Plan 2004 (CD 14)

8.47 In the absence of an up-to-date Structure Plan, MSDC prepared and adopted the MSLP in May 2004, but this only covers the period up to 2006.

8.48 Policy HH2 is the most relevant within the plan and for completeness and ease of reference, and bearing in mind the importance of the policy the relevant parts are set out below (CD14, pg 231). Paragraphs a), b) and c) have a particular bearing on MSDC's deemed reasons for refusal, whilst e) and f) are relevant to the proposed S106 obligation:

- a) All vehicular access to the site will be from the Haywards Heath Relief Road in the general locations shown on the Proposals Map. There will be no vehicular access to any of the new housing areas from the existing residential road network.*
- b) Individual housing areas will be developed by making good use of existing tree belts and hedgerows and other natural features, and by careful attention to the design and layout of the road network and individual dwellings.*
- c) The development will include provision for landscaping and areas of informal public open space between housing areas in the general locations shown on the Proposals Map. Where appropriate these areas will be restored and enhanced through additional tree and hedgerow planting and will be adopted by MSDC.*
- d) Not relevant*

- e) *MSDC will seek financial contributions towards secondary school provision, primary school provision, civic amenity facilities, library facilities and bus services in the locality of the development.*
- f) *In addition to the above requirements, the development will include:*
 - i) *30% affordable housing units;*
 - ii) *footpaths and cycle ways linking the development to the existing network; and*
 - iii) *Outdoor playing space in accordance with the NPFA standards of 2.4ha per 1000 population, in addition to the areas referred to in c) above.*

8.49 The Transport and Parking Chapter supports the provision of the HHRR during the Plan period. Attention is drawn particularly to Policy T4, which deals with sustainability and the implications of traffic generation and which requires, inter alia, that new development should (ibid, pg 120):

- (b) not cause an unacceptable impact on the local environment in terms of road safety and increased traffic.*
- (e) provide convenient and safe pedestrian access to and within the development, which should link to the wider footway network ensuring that the needs of those with mobility and sensory disabilities are met.*
- (f) provide continuous and segregated cycle routes to and within the development, which should link to the wider cycleway network.*

8.50 Policy HH5 is crucial to the highways issues at these appeals. The explanatory paragraphs and policy are set out in full (ibid, pg 234 & 235):

13.65 It is essential that the construction of this number of dwellings is carefully phased, in order to achieve a steady rate of building over time. Furthermore, the Planning and Highway Authorities attach great importance to the need to co-ordinate the housing developments with the construction of the outer relief road. The relief road is the only means of access to these development areas and, consequently, it is essential that the various sections are completed and in operation at the appropriate times.

13.66 The question of the phasing of the housing and road construction is the subject of detailed legal agreements between the developers/landowners of both sectors and the Planning and Highways Authorities. These agreements secure the entire length of the relief road.

13.67 The Local Planning Authority envisages an orderly progression of development founded on the principle that the eastern section of the relief road, south of the hospital complex, must be complete and open to traffic prior

to the final opening of the Tyler's Green/Rocky Lane section. This is essential in order to prevent through traffic from using Colwell Road at any stage.

13.68 At the eastern end, development to the south-west of the former St. Francis Hospital will not commence until the construction of the roundabout at the Foxhill - Rocky Lane junction, the closure of the western end of Colwell Road and the improvement of the Colwell Road – Wivelsfield Road link has been completed.

13.69 The legal agreement restricts the number of dwellings that may be occupied in the south-eastern sector until the section of relief road, between Wivelsfield Road and A272/Lewes Road has been completed.

13.70 Phasing in relation to the south-western sector, including provision of the section of relief road from Tyler's Green to Wivelsfield Road, is set out in the comprehensive legal agreement referred to in paragraph 13.49 above. In summary, this provides for the phased release of individual areas for housing development, with each linked to the construction of successive sections of the relief road. Construction of this section of the relief road will, in broad terms, progress in a north-south direction. As stated above, the final link through to Wivelsfield Road cannot be made until the Wivelsfield Road to Lewes Road section has been completed and opened for traffic.

13.71 The legal agreement in respect of that part of the south western sector for which planning permission has been granted contains a provision whereby, when certain conditions have been fulfilled in respect of the remaining part of the allocation, rights of access to the relief road will be granted. Those conditions include the completion of a legal agreement and the payment of a fair and reasonable proportion of the total infrastructure costs.

HH5 The release of the land allocated for residential development will be phased over the period up to 2006 in accordance with paragraphs 13.65 - 13.71 of this Local Plan in order to ensure that the necessary highway and other essential infrastructure is available and to ensure a steady supply of new dwellings throughout the Plan period.

West Sussex Structure Plan (CD13)

8.51 Of particular importance is Policy DEV4, "Travel Needs and Choices" and this reads as follows (CD13, pg 99):

“(a) Development should not be permitted unless: the travel needs it generates are met; where possible, it reduces the need to travel; it achieves safe and convenient access by a choice of means of travel; it encourages and enables an increase in walking, cycling and the use of passenger transport; and the number and impact of motorised journeys is minimised.”

ISSUES

General Background

- 8.52 The outcome of these appeals will be determined by whether the issues between CN, MSDC and the LCOs can be resolved by condition or whether the effect of such conditions would be such that they fundamentally change the nature of the proposals. The consequence of the latter conclusion would be that planning permission should be refused. In this respect, the Secretary of State will have exactly the same dilemma as faced by District Councillors at MSDC's planning committee.
- 8.53 The core issues in MSDC's case have not altered. They are implicit in the deemed reasons for refusal and originate from as long ago as 5 April 2005 (Mr Matthews' letter, paragraphs 8.24 & 8.25 above) and the deferral at Committee on 14 July 2005 (Doc 5, appxs 14 & 15). There is strong support for the principle of development of Phases 4 and 5 in the development plan and MSDC is committed to seeing this achieved.
- 8.54 Nevertheless, there are equally strong national and local policies which require an appropriate form of development and which militate against the detail of what is proposed. This is the nub of what is between the parties and MSDC believes that various issues between the parties are of such a fundamental nature that the shortcomings cannot be retrieved by the conditions or the terms of the S106, which CN has indicated it is prepared to accept.
- 8.55 MSDC also believes that its case on the core issues has materially strengthened as a result of the evidence which has been presented throughout the Inquiry.

Original Common Ground

- 8.56 However, there is still a broad measure of agreement on important issues between MSDC and CN, as illustrated at an early stage by the Statement of Common Ground (16 October 2006, CD66).
- 8.57 Matters not in dispute included:
- The allocated status of the site
 - The status of the Local Plan and policy documents
 - The strategic requirements for housing
 - The density of housing provision
 - Public open space provision
 - Background highway data
 - Tree preservation data and tree survey reports
 - The extent of offsite highway improvements
 - Safety audit data
 - Construction access
 - The provision of a residential Travel Plan (TP)

Common Ground agreed during evidence

8.58 Discussions continued throughout the Inquiry process and a number of other areas where agreement has been reached can be added to the original list:

Housing

- Provision of 30% affordable housing (AH)
- A broad mix of units, although some refinement is necessary
- A tenure split of 75% rented to 25% shared ownership/intermediate tenure (except in the fallback position)
- The principle of integration of AH in clusters of not more than 20 units, with a target of 16 units.

Highways

- Levels of bus subsidy
- The provision of a Maxi-Taxi
- Creation of a fund to finance the TP
- Minor works to be dealt with by condition
- The TP can be annexed to the UU
- The TP should include targets to reduce peak hour private car movements into the town

Ecology

- FAW has been identified as AW by Natural England
- Base data of 19-23 indicator species within FAW
- Subject to the outcome of the Inquiry, the Management Plan has been agreed

Density

- The total number of houses to be built on Phases 4 and 5 and the consequent density will be determined by reserved matters submissions

County Council contributions

- Fire, Libraries and Civic amenity contributions are agreed
- A contribution towards primary education has been agreed
- A contribution towards secondary education is not required

District Council contributions

- Contributions towards leisure facilities, recycling and community building are agreed

Bridleway

- Planning permission has been granted for an alternative treatment for the bridleway and the crossing points

Conditions

- There is an agreement on all but a limited number of conditions (see Section 12 below).

Remaining Differences

8.59 When these areas of agreement are compared to the evidence which has been submitted, it becomes apparent that there remain fundamental issues which separate CN and MSDC. They are summarised below together with an indication of whether conditions would be adequate to meet MSDC's concerns:

Highways

- No agreement has been reached on the phasing of development to accord with progress on the HHRR. In the absence of such an agreement, a Grampian condition would be required, limiting the number of dwellings to be occupied before the HHRR is completed and open (Doc 5, appx 22, condition 6):
- The TP must have clear targets for peak hour trip savings and sanctions to ensure against failure to achieve the targets;
- CN has refused to accept any sanctions and has failed to identify targets for peak hour trip rate savings, despite a key element of its case being the ability of the TP to achieve a peak hour trip rate saving of 25% for trips between Bolnore Village and the town centre;
- If, as the WSCC believes, the TP would not deliver the 25% target, then the impact on the highway network would be unacceptable and would be contrary to the Development Strategy for land south-west of Haywards Heath;
- In this case, where there are well documented capacity problems, which would be worsened by this development proposal, the appropriate sanction is the phasing of further occupation. Failure to achieve TP targets would therefore need to result in development ceasing until such time as it is demonstrated that the target is achieved and sustained;
- Alternatively, the "heads of terms" offer (Doc 23, appx 15) provides a clear mechanism for the phased development of further residential development limited to the construction of Stages 5 and 6 of the HHRR;

- Without these safeguards, there would be an unacceptable increase in congestion, particularly in the morning peak, and too many dwellings would be served from one roundabout.

Ecology

- Development of FAW (Cell 5B1), is inappropriate. There is a strong argument that this is a fundamental part of CN's case and not severable by condition. However, the Wood is distinct in terms of its location, size, character and the issues affecting it. Also, the original Phase 4/5 application was amended twice by the removal and subsequent reinstatement of this area. MSDC would not oppose the area being removed from the development by condition;
- The allocation of this area for development was not fully examined at the Local Plan Inquiry. Also, S38(6) of the Town and Country Planning Act 1990 recognises that there may be circumstances where other material issues outweigh the allocation. The ecological case is one such issue, particularly where the circumstances have changed so significantly, with the identification of the land as AW, and where policies in the Plan conflict. An appeal decision for a development in Brighton supports this view (Doc 17, appx DRB 33);
- The area allowed for buffer zones is inadequate and would (i) reduce unacceptably the degree of woodland protection; (ii) reduce foraging functions for key species; and (iii) reduce the viability of the ecological network of the local area contrary to PPS 9 paragraph 12 (CD4). It would be difficult to frame a condition which varies the size of the buffers, but inappropriate to require precise boundaries to be agreed as reserved matters, when there is little agreement between the parties.

Housing

- The development does not provide for serviced land at nil value, which is established Council policy;
- Without such land, MSDC believe that affordable housing would not be provided, contrary to local and national policy. This is not adequately provided in the Unilateral Undertaking and a condition could not overcome the fundamental financial constraints;
- An equalisation payment does not resolve the fundamental problem;
- MSDC wants the RSL to be from a preferred list with proven track record of delivery and standards in development and management. These RSLs are development partners to the Housing Corporation who can attract grant. This is not provided for in the Unilateral Undertaking and is inappropriate for a condition;

- If insufficient grant is available to deliver an affordable housing scheme, a cascade arrangement will be needed. CN wishes to be able to sell affordable dwellings on a shared equity basis, if it fails to reach agreement with an RSL, and this provides no incentive to reach such an agreement;
- In principle MSDC has agreed the maximum size of affordable housing clusters that would achieve integration. In practice, the Masterplan showing the proposed locations indicates clusters in different sub-phases separated by only a road. This is not acceptable and is contrary to policy and good practice. The issue of the Masterplan is addressed below, but it would be open to the Secretary of State to remove the identification of affordable housing areas from the Plan, perhaps with an adaptation of MSDC's suggested condition 39 in appeals A and D (Doc 5, appxs 22, 25);
- If the Secretary of State has any concerns that affordable housing may not be secured by this proposal, the policy directions are so strong that the appeal should be dismissed.

Status of the Masterplan

- CN's case has always been that the Masterplan is not illustrative. It (and MSDC) will expect to be able to rely on its distribution of land uses and points of access in the preparation of reserved matters and in implementation, as it has done in earlier phases.
- It is a strong argument that if the Secretary of State finds part of the Masterplan unacceptable, then the appeal should be dismissed. It may be the case that some aspects are so distinct that nobody is prejudiced by removal by condition, and the example of cell 5B1 is quoted above. Amendment by condition may be more problematic, as in the example of the buffer zones, quoted above.

Housing Land Supply

- The numerical position regarding housing land supply in Mid Sussex is common ground. MSDC is taking steps to rectify the position. However, this is not of over-riding importance because the principle of developing the site is not at issue. It is a material consideration, but not one which outweighs national and development plan policy. It is the detail and timing which are at issue, which would be the same whether 100, 300 or 785 dwellings are being considered.

HIGHWAYS

General Background

The Relief Road Issue

- 8.60 MSDC is of the view that CN's case on highways matters remains fundamentally flawed. What CN proposes is the provision of a series of suggested benefits which are designed to attract the Secretary of State to the idea that the timely, as well as sure and certain, delivery of the completed and open HHRR up to and including Stage 6, is not required to be guaranteed as part of these development proposals.
- 8.61 CN refuses to commit itself to a timetable of the sort suggested by the WSCC, which links in the construction of a number of residential dwellings with the delivery of the Relief Road (Doc 23, appx 15).
- 8.62 That reluctance would seem particularly strange since WSCC has stressed its readiness to introduce significant flexibility into the proposed 'Heads Of Terms Agreement' so that any benefit in terms of peak hour trip rate reduction from the development is capable of being (a) regularly monitored by both sides within the ongoing agreement; and (b) acknowledged, and provided for, by an increased allowance of new units (ibid & Doc 20, p2.51).
- 8.63 CN's reluctance is closely related to the absolute refusal to install within the proposed TP any penalty for a failure to deliver the promised 25% reduction in peak hour trips from the proposed development. It is WSCC's view that the refusal to accept any penalty based on the actual, as opposed to theoretical, results of the TP in reducing peak hour trip rates completely exposes CN's case for what it really is.
- 8.64 CN desires, in reality :
- a) to be entirely free from the commercial constraint of tying housing completions in with the delivery of the HHRR;
 - b) to use the promises contained in the TP as a leverage tool to persuade that such a stance is feasible whilst at the same time;
 - c) refusing to accept any sanction if the desired result is not in fact achieved. Such a stance has been unmasked during the course of the Inquiry as completely illogical and untenable.
- 8.65 CN's highways case and the evidence it has presented on this crucial issue have been deeply misleading and designed really to deflect attention from the paramount strategic importance of, and need for, the full HHRR to be provided at the earliest possible opportunity.

The Access Point Issue

- 8.66 It is worth dealing briefly with the problems WSCC has identified with respect to the numbers of dwellings CN is proposing should be served from a single point of access. Consent has already been granted for 859 dwellings on Phases 1-3 of Bolnore Village and a looped cul-de-sac serves all of this development with a single point of access to the wider highway network at the Bolnore Roundabout. Should an incident occur at the

Bolnore Roundabout there would be potential for the vehicular access to and from Bolnore Village to be blocked (Doc 20, p4.1, 4.4).

- 8.67 'Manual For Streets' was published in March 2007 and supersedes DB32 and its Companion Guide 'Places, Streets and Movements'. Manual For Streets stresses the need for residential development to be well planned to ensure that access for all modes is provided in a safe and convenient manner. Its clear aim is to create networks of streets that provide permeability and connectivity to main destinations and a choice of route (CD36A, p1.6.1).
- 8.68 This approach complies with WSCC's position that, in accordance with the Development Strategy, two permanent points of vehicular access are required. This can only be achieved when the Relief Road is completed and open to traffic (CD16, p10.2).

Policy Background

- 8.69 For CN, Mr Roderick's updated view in cross-examination (updated in the sense that it differed so markedly with Mr. Charlton's written evidence) was that, in reality, the HHRR is not actually needed AT ALL bearing in mind the current and predicted future levels of traffic flow at peak hours on the A272.
- 8.70 It was also interesting to hear Mr Harris's answers in cross-examination on what the TP would cost CN: £606,000 for the bus service (which MSDC would demand in any event); £360,000 for the Maxi-Taxi and £150,000 for the general TP. Those sums need to be compared with the cost of delivering Stages 5 and 6 of the completed Relief Road. The final cost of Stage 5 would reach £6.2 m (Mr Rees, XX). In the summer of 2005 the estimated the cost of Stage 6 was £3.5 - 4 million.
- 8.71 However, what was perhaps most remarkable in the case presented by CN was the refusal to categorically deal with the policy background to the Relief Road issue. Mr Harris made no mention of any policy background or the current development plan in approximately 14 hours of oral evidence. In cross-examination Mr Roderick seemed to be entirely unfamiliar with the policy background relating to the HHRR.
- 8.72 The inconvenient truth for CN is that, quite apart from the actual driving/queuing conditions which currently exist on the A272 and which are experienced on a daily basis by residents of Haywards Heath, the policy justification for the stance taken by WSCC is overwhelming.
- 8.73 That policy justification was recognised by Mr Harris in cross-examination when he was taken through the policies, all of which he acknowledged were material to the decisions in this case, either as background information or as part of the current development plan as follows:
- (i) the Haywards Heath Local Plan adopted in October 1995 (Doc 23, appx 3) at paragraph 3.21 stresses the role of developers in providing a Relief Road for the town of Haywards Heath; paragraph 3.22 refers to the need for the phasing of completed dwellings; and paragraph 3.23 states that:

“In any case the Planning and Highway authorities attach very great importance to the need to co-ordinate the development of the housing with the construction of the outer relief road. It is essential that the housing development takes place at a rate and sequence which will ensure that the various sections of the relief road are completed and in operation at the appropriate times. This is vital since no other means of access to the development areas will be acceptable.”;

(ii) the Land to the South West of Haywards Heath Development Strategy from December 1997 (ibid, appx 4) carries on the theme stating at paragraph 1.1 that: *“The development is dependent on the improvement of the local infrastructure. In particular, a new Haywards Heath Relief Road will be provided by the developers of the allocated sites to the south and south-west of Haywards Heath. The purpose of the Relief Road is to provide access to the new development and to remove traffic from existing roads, particularly the A272 in the town centre”*; at paragraph 1.2 it stresses the importance of *“linking the provision of the relief road to the development”* of the south and south-west of Haywards Heath; and at 10.1 underlines the importance of phasing:

“The phasing of development in relation to the completion of the relief road is crucial to the satisfactory implementation of the Local Plan proposals.”;

(iii) the Urban Transport Plan for West Sussex from July 2000 (ibid, appx 6) identifies (at p.34) the continuing problems with “peak period traffic congestion” and explains that :

“A new relief road to the south of the town is to be constructed, funded by major housing developments which will provide for an alternative for through traffic.”;

(iv) the Haywards Heath Area Transport Plan from October 2002 (ibid, appx 7) again sets out the particular problems of peak hour traffic congestion and refers at paragraph 4.1.1 to *“The phased construction of the Haywards Heath Relief Road”* being *“part of the residential development to the south-east and south-west of the town”*. It refers to the first three stages and states categorically that : *“The remaining three stages will be linked to the completion of the development in the south-west sector”* and that *“Once complete, the relief road will remove a significant proportion of traffic from the A272 in the town centre...and provide the opportunity to enhance the town centre environment.”;*

(v) the Central Mid Sussex Area Transport Plan from 2005 (ibid, appx 8) is, once again, categorical in linking the phased completion of the Relief Road to residential development in the south and south-west of Haywards Heath and stating (at p.5) that: *“The completion of the relief road is essential to ensure that these developments do not result in increased congestion on existing roads”* and that *“Once the relief road is completed, the traffic movements around Haywards Heath will change”* providing the chance to make the town centre *“more attractive to shoppers and visitors”*.

(vi) these background documents found voice within the policies and supporting text

of the Mid Sussex Local Plan from May 2004 (Doc 23, appx 5 & CD14). Paragraph 13.58 emphasised that *“The road will be constructed as an integral part of the proposed large scale housing developments to the south west and south east of the town”*; Policy HH4 sets out the requirement for the Relief Road and paragraph 13.64 emphasises that *“The construction of the relief road will be the responsibility of developers of the various sites”*. Policy HH5 deals with the need for phasing of completed dwellings to be linked to highway and other infrastructure provision and paragraph 13.65 states that: *“It is essential that the construction of this number of dwellings is carefully phased in order to achieve a steady rate of building over time. Further, the planning and highway authorities attach great importance to the need to co-ordinate the housing developments with the construction of the relief road. The relief road is the only means of access to these developments and consequently it is essential that the various sections are completed and in operation at the appropriate times.”*, a point which is reinforced through Policy HH6 and paragraph 13.73: *“As indicated above, the planning and highway authorities attach great importance to the co-ordinated development of the allocated sites and the construction of the Haywards Heath Relief Road.”*; and finally

(vii) the West Sussex Structure Plan 2001 – 2016 (CD13) which states at paragraph 258 that: *“The construction of the Haywards Heath relief road is linked to residential development to the south-east and south-west of the town (Policy LOC1)”* and which, through Policy NE17 (c) emphasises the importance of providing the Relief Road as part of improvements to the strategic road network.

8.74 These policies from the current development plan and supporting background documents from recent years need to be considered alongside the comments of the Inspector at the St. Francis Hospital decision who entirely supported the stance that residential development must be linked to, and phased with, the construction and opening of the completed Relief Road (Doc 23, appx 10):

1) the Inspector's Report in respect of the St. Francis Hospital site stated at paragraph 14.46 that *“In my conclusion it is even more important now than it was in 1995 that the relief road be completed in some form as soon as possible”*; he also stated at paragraph 14.47 that *“unless the final stage of the relief road be provided in a satisfactory manner eastwards beyond Rocky Lane, the highway problems from the increase in traffic flows this would create would be totally unacceptable – both in terms of congestion and safety”* and he concludes at paragraph 14.48: *“My conclusion is that the provision of the completed relief road is an essential component to achieve the best possible mechanism for achieving two of the main planning objectives for Haywards Heath – the removal of traffic from the town centre and the supply of housing land...”*;

2) that conclusion was supported by the Secretary of State (ibid, appx 11) who stated (at paragraph 6) that he *“accepts there is an urgent need for the southern relief road to be completed (underlining emphasised) as soon as possible and agrees with the Inspector that despite the environmental damage, the provision of the completed relief road is an essential component to achieve the best possible mechanism for achieving the removal of traffic from the town centre and securing the supply of housing...”*.

8.75 From the examination of these current and background policy matters (in XX of Mr Harris) the following conclusions can be drawn:

- 1) the reason for the allocation of land for development to the south of Haywards Heath was in order to deliver two objectives :
 - (a) the housing which was and is needed in the district; and
 - (b) to solve the congestion problems in Haywards Heath by the delivery of a Relief Road. These were agreed by Mr Harris;
- 2) in 1995 it was in fact already identified
 - (a) that there were capacity concerns on the A272; and
 - (b) that the way to resolve these was to allocate land for residential development linked to the delivery of the Relief Road;
- 3) the early delivery of the Relief Road has always been viewed since the Haywards Heath Local Plan of 1995, within the 1997, 2000, 2002, 2004 and 2005 documents and policies listed above, as the paramount mechanism to relieve congestion on the A272 and thus allow for residential housing development;
- 4) all the development plan documents make clear that phasing of residential development in conjunction with the completion of the Relief Road is crucial to deliver a satisfactory form of development;
- 5) that policies consistently make it clear that the onus of providing the required Relief Road falls on developers of the housing schemes;
- 6) that the A272 forms part of the strategic road network in West Sussex and therefore is best able to cater for longer distance journeys starting or ending outside of the County, that it provides the only east-west route between the A27, M27 and M25 and that Structure Plan Policy NE17 (CD13, pg 55) seeks to protect the strategic road network and not to allow development that would prejudice the operation of the strategic road network.

8.76 The above policy background and the conclusions (agreed by Mr Harris) to be drawn from this is set out in such detail because, in MSDC's submission, it is only with an understanding of these points that CN's case can be comprehensively assessed. It is against those policies and conclusions that a decision should be made on how to consider:

- i) the weight to be placed on the evidence of CN's conclusions with regards to

- capacity problems which have been identified on the A272 now and in 2010;
- ii) the conclusions to be drawn from the modelling exercises that have been carried out; and
 - iii) the potential effects of the TP and highway works in dealing with the problems.
- 8.77 Finally, Mr Harris's acceptance should be noted that the Barker Review (CD54) constitutes neither policy nor even draft policy and that, in any event, the Review (a) lists (at paragraph 1.6 on p.18) the advantages of the plan-led system; and (b) in no way advocates the removal of that system (see recommendation 1, p. 20).
- 8.78 Furthermore, paragraphs. 68 and 70 of PPS 3 (CD3) re-emphasise the role of the development plan in the planning decision-making process and PPS 1 (CD1) makes clear (at paragraph 23) that the need for high quality new housing is on a par with, and not pre-eminent to, other goals of delivering sustainable development.
- 8.79 None of those points is in any way altered by the terms and recommendations of the Eddington Report (CD55), which underlines the importance of linking transport improvements to sustainable development and economic growth (see paragraphs 1.47, 1.84, 1.21, and 1.171). MSDC remains, quite frankly, puzzled in the extreme as to why CN felt it necessary to go into the terms of both the Eddington Report and the Barker Review in excruciating detail whilst, as mentioned above, failing to make a single reference to the terms of the relevant development plan in this case.

Capacity Problems on the A272

Existing Capacity Problems

- 8.80 It was explained that, as set out in the 1994 version of the IHT Guidance (CD 30), that: "*where the capacity of a road is or is near to being exceeded, a smaller (than 5%) percent increase may well be material*" and that although the percentage increase in traffic on the A272 from further development would be less than 5%, the A272 is currently "*at or near capacity*" and that therefore any increase was regarded by WSCC as materially harmful (Doc 2o, p3.30). Furthermore the revised Guidance on TIAs (CD 60) at paragraph 4.89 removed the previous 5% and 10% impact thresholds.
- 8.81 The difficulties with existing as well as predicted traffic levels on the A272 have been consistently identified over more than a decade by the relevant authorities as well as previous Inspectors and the Secretary of State. They were also recognised by Mr Charlton when he commented on existing capacity problems he had noted from his surveys in 2004. For example, he stated that, with regards to his "junction 8" (i.e. Bolnore Road/A272/Paddockhall Road/Muster Green Road): "*It is operating at or close to capacity in both morning and evening peak hours*" (Doc 121, p3.48).

2010 Predicted Capacity Problems

- 8.82 Mr Charlton is again largely at one with WSCC when it comes to his analysis of the scenario of interim Phase 4 development in 2010 with his original 'flawed' distribution figures of 16.5% turning right from Tyler's Green Roundabout onto Butler's Green Road. For example, with regards to the Butler's Green link capacity: "*The road would*

therefore still be predicted to carry traffic flows considerably above its traffic capacity of between 2200 and 2500 vph..." (Doc 121, p5.13) and he stated that these figures would produce a 213 vehicle queue (1.3 km in length) (ibid p5.38 & Doc 23, appx 17).

- 8.83 There was also agreement with MSDC's view as to the situation with regards to Phase 4 development but with the now revised/agreed distribution figures of 39.6% turning right from Tyler's Green Roundabout onto Butler's Green Road. For example, there would now be 3070 vph in the morning peak when the road would retain its theoretical design capacity of 2200 – 2500 vph (Doc 124, p3.3). There would be a 406 vehicle queue (Doc 126, appx G) which, according to WSCC, would translate to a queue of 2.6 km. These figures are entirely unacceptable.

The Modelling Debate

- 8.84 Of course, all of CN's figures were provided using ARCADY modelling techniques which WSCC considers totally unsatisfactory for the purposes of this case. It should be noted :

- 1) that MSDC repeatedly made CN aware of its requirement for micro-simulation modelling to be carried out since at least June 2005;
- 2) the 1994 Guidance on TIAs sets out a series of micro-simulation packages but PARAMICS itself came out only in 1998 (CD30, p3.8.15, Mr Howick and Mr Roderick, oral evidence); and
- 3) the August 2006 revised TIA guidance refers specifically to the need for "*identification of the critical links and junctions on the highway network, with calibrated capacity tests to reflect existing conditions*" (CD60, 8th bullet, pg47); and
- 4) Ove Arup in their May 2005 Final Report (at p. 2) expressed their reservations about the ability of ARCADY modelling techniques used on behalf of CN to "*replicate existing queuing conditions*" at the junctions under consideration (CD48, (CD/T/4), pg2, 3rd bullet).

- 8.85 Furthermore, WSCC's understanding of CN's case at the commencement of the Inquiry was as follows:

- 1) Mr Charlton said that he recognised "*there may be technical difficulties in modelling and comparing the various development scenarios because of the current imbalance in flows and the queues through the junction in the am peak hour.*" (Doc 121, p5.26). This precisely mirrors WSCC's concerns with regards to the inappropriate use of the ARCADY system in this case;
- 2) Mr Charlton has said: "*What was confirmed by my firm is that the standard computer model (ARCADY) does not fully reflect the effects of the queues*" (ibid, pg7.13). WSCC fully agrees as consistently explained;

3) Mr Charlton accepted that micro-simulation modelling would be appropriate in the circumstances of the case: "I would accept that a PARAMICS or similar model would be better able to model the effects of the queues on the network." (Doc 124, p3.27);

4) It is explained why no micro-simulation modelling was undertaken:

"Time constraints would not have made it possible to complete and prepare and exchange evidence in time for the re-opening of the Inquiry. This is mainly due to additional traffic surveys being needed to calibrate and validate the model but these could not be undertaken during the school holidays when traffic flows are non-typical." (ibid, p3.25, point (iii));

5) Mr Charlton again confirms that he "would accept that a PARAMICS or similar model would be better able to model the effects of queues on the network." (ibid, p3.27)

8.86 It seems clear that Mr Charlton fully accepted the need for the appropriate modelling exercise to be carried out. However, it became apparent that CN was not prepared to let such an exercise be undertaken. Why not? It was not, as originally claimed, because there was not enough time. It was accepted (Mr Roderick, XX) that a suitable exercise could be carried out within a few weeks and CN had endless opportunities to formulate an appropriate model in consultation with WSCC, carry out surveys and compile results. This was obvious in terms of the time frame involved, particularly with the adjournment of the Inquiry between June and September 2006.

8.87 Nor was it a question of scarce financial resources since it was accepted that a model could be devised and an exercise undertaken for a relatively small sum of money (Mr Roderick, XX); there might be a predicted cost of approximately £15,000 (Doc 22, p4.4). Is it seriously suggested that CN did not have the resources to carry out such a survey?

8.88 Nor was it that such an exercise would be fundamentally inappropriate, as claimed at one point by Mr Roderick, since he accepted that he himself was involved with a scheme where micro-simulation modelling was being used to model 5 junctions and when the supporting literature for micro-simulation modelling specifically states that it can be effectively used to model conditions at any number of junctions (Mr Roderick, XX & PARAMICS website, referred to in Doc 22, p4.5). It seems extraordinary that a report should have to be written without the necessary data.

8.89 The reality of the situation is as follows:

1) the A272 was at or near capacity in 2004 and remains so now;

2) the A272 would, on the original distribution figures at 2010, be over capacity and this would result in a queue of 213 vehicles;

3) the A272 would be further over capacity in 2010 on the revised distribution figures producing a queue of 406 vehicles;

4) micro-simulation modelling would show an even worse situation having developed in 2010, and thus CN refused its consultants permission to carry out the required work despite the strenuous and often repeated demands of WSCC since mid 2005.

8.90 As a result, CN's position is rendered completely unviable. How, on a major development scheme, can there be any excuse for the developer deliberately refusing to provide the needed information? There is indeed no excuse available to CN, and it is MSDC's submission that CN has deliberately set out not to provide adequate information in an attempt to limit, as far as possible, the inevitable damage that full and correct data from the correct modelling exercise would do to its case.

Mr. Roderick's Evidence

8.91 It was made clear at the start of the Inquiry that Mr Charlton would not be available to attend. Mr Roderick was first instructed in September 2006 (Mr Roderick, XX). It was not made clear that Mr Roderick would provide new evidence and no attempt was made by him in the months before his evidence was produced to agree the scope of new survey work with WSCC. This is indicative of CN's attitude throughout the Inquiry. As set out above, the opportunity to devise and apply the appropriate micro-simulation model to assist the Inquiry was not taken. More weight should be attached to Mr Charlton's evidence.

8.92 Mr Charlton had known of, and had been involved with, Bolnore for years. He had been responsible for pre-application negotiations with WSCC. The conclusions he expressed in his proof concerning capacity problems on the A272 now and in 2010, as set out above, carry significant weight accordingly.

8.93 But what of Mr Roderick? He was drafted in late in the day to assist CN. He had no longstanding knowledge of the existing traffic problems on the A272 and decided to conduct his own survey. This took place over a single day on 15 November 2006 (Doc 114, p1.16). His conclusions can be summarised as follows :

1) there is no capacity problem now on the A272;

2) there will be no problems in 2010; and

3) there is no need for a PARAMICS or similar micro-simulation modelling exercise to be carried out.

8.94 Mr Roderick accepted in cross-examination that queues on the A272 were subject to "considerable variability" both within the day and from day to day. Bearing that single point in mind, what weight can possibly be attached to his conclusions that there is no significant problem on the A272 now and that there will not be one in the future? How does the weight to be attached to his evidence compare with Mr Charlton's conclusions, which were based on his long experience of the area?

- 8.95 How can Mr Roderick's conclusions possibly accord with his comment in examination-in-chief that "There is no significant difference between me and Mr Charlton's evidence"?
- 8.96 How can his results compare with over a decade's-worth of policy, technical advice and data showing: (a) that there is a problem with capacity on the A272; (b) that this problem will get worse; (c) that the solution to the problems on the A272 is the provision of a Relief Road; and (d) that the Relief Road needs to be provided by developers and tied into the construction of residential dwellings to the south of Haywards Heath?
- 8.97 Finally, Mr Roderick's surveys discounted what he referred to as "rolling queues" where traffic was not at a standstill, but was moving at a very slow speed. WSCC can see no justification for this approach. Clearly, the experience of drivers on the A272 moving into Haywards Heath, and indeed drivers everywhere who get caught up in queues, is that these are often stop/start. That does not stop the road from being at or near capacity and it does not mean that a rolling queue is somehow not a queue.
- 8.98 WSCC and the Inquiry have no way of knowing how much traffic was simply discounted from the survey or how the individual surveyors were instructed in how to assess whether and how often to discount moving vehicles. Quite apart from the numerous uncertainties and contradictions inherent in the results from Mr Roderick's survey, the discounting of rolling queues further fatally undermines the reliability of the conclusions reached.

Conclusion on Capacity Problems

- 8.99 Mr Roderick has ignored the above. There is no possible justification either:
- 1) for his conclusions from a single day's survey being relied upon; or
 - 2) for his failing to carry out the appropriate modelling exercise; or
 - 3) for his contradiction of Mr Charlton's conclusions on capacity; or
 - 4) for his ignoring policy, technical advice and the previous Inspector conclusions as set out above.
- 8.100 Consequently, Mr Roderick's evidence should be accorded little, if any, weight and the views of both MSDC and WSCC as to capacity problems on the A272, both current and predicted, should be preferred.

CN's Proposed Solutions

- 8.101 If WSCC's contentions as to current and future capacity problems on the A272 are accepted, can it be concluded that CN has put forward proposals which can sensibly be relied upon to deal effectively with those problems, bearing in mind WSCC's clear view that the solution has been identified over very many years: i.e. the timely delivery of the completed Relief Road?

Proposed Highways Improvements

- 8.102 Mr Roderick explained that CN proposes works to widen Tyler's Green Roundabout at the Isaacs Lane entry approach; and widening the approach to the Cuckfield Bypass junction (Doc 114, p4.3 and examination-in-chief).
- 8.103 WSCC has a simple view as to why these proposed works will not in any way resolve current or future problems with capacity on the A272: if traffic is already queuing through a junction as a result of capacity problems at a subsequent junction, and this causes the exit to be blocked, then whatever widening works are carried out at the entry will not solve the capacity problem (Doc 20, p3.27).
- 8.104 The proposed improvements to entry capacity will only assist when the Relief Road is complete; hence WSCC's requirement for the junction improvements to be secured in association with a mechanism to complete the Relief Road (Doc 23, appx 15).

Proposed Residential Travel Plan

- 8.105 Mr Harris stated in cross-examination that: "There is no single site where a 25% peak hour trip rate reduction has been achieved" in conjunction with a TP. Mr Roderick agreed with this and confirmed that he knew of no such site (Mr Roderick, XX). Mr Harris confirmed that there is no recorded data anywhere in the UK of a 25% peak hour trip rate reduction target ever having been agreed with a highway authority.
- 8.106 Mr Harris accepted that neither the Priddys Hard, Gosport nor Poole Quarter, Dorset set targets for peak hour trip rate reductions from those developments. He also accepted that the TP he had drawn up contains no plans to pressurise future residents into not using their cars (Mr Harris, XX). This would seem strange bearing in mind the comment at p.31 of 'Making Residential Travel Plans Work' (Doc 45, Annex 1, pg31) that:

"Parking standards are likely to be a critical factor in the success of the Travel Plan in achieving low car use."

- 8.107 Finally, the proposed TP contains no penalties for any future failure of the TP to deliver a 25% peak hour trip rate reduction. That omission should be seen against the Highways Agency comments in 'NS Guidance Note 02/05 – Securing Travel Plans Through The Planning Process' (Doc 46, appx 2, pg3) which state that:

"There is a real concern that some travel plans will make ambitious, but theoretically achievable, claims in terms of reduced trip generation and modal split in an attempt to reduce the scope of, or perhaps avoid the need completely for mitigation measures. Naturally it is in the interests of the developer to achieve these objectives, but equally it is in the HA's interest to insure against failure to redeem them."

- 8.108 How, without any penalties attaching to the proposed TP, can WSCC as highway authority in this case "insure against the failure to redeem" the 25% peak hour trip rate reduction that CN is claiming the TP can and will achieve? The answer is that there was and is no "insurance" being proposed.

8.109 That approach, apart from making no sense in the light of current and future capacity problems on the A272, is not consistent with the advice contained in 'Making Residential Travel Plans Work : Best Practice Guidelines For New Development' which states under 'Enforcement and Sanctions' (Doc 45, pg 65) that :

“The elements of the travel plan implementation need to be clear such that there is an enforceable commitment for a period of time following completion, or substantial completion, of the development. Targets set out in the plan should be achieved by the end of the period identified. From the outset there should be clarity about what will happen in the event that either: the developer fails to meet essential obligations agreed within the travel plan...The travel plan fails to meet its targets.”

8.110 It was accepted that no such “clarity” exists in the proposed TP and that, were the TP to “fail to meet its targets” there would be nothing that WSCC could do about it (Mr Harris, XX). The lack of clarity and any enforceable commitment goes to the heart of the case. CN can only get away with what is being proposed if the TP can work.

8.111 CN's position as detailed above remains intact according to the wording of its proposed Unilateral Undertaking (Doc 167). CN refuses to permit the imposition of any sanctions in the event that the TP fails to achieve its targets. Furthermore, as for those targets, CN has failed even to specify these within the offered Undertaking, in particular peak hour trip reduction targets. This goes to the heart of the case.

Conclusion on the proposed TP

8.112 In these circumstances, no weight should be accorded to reliance on the ability of the TP to achieve a 25% peak hour trip rate reduction at Bolnore Village. Nor, finally, should any additional weight be attached to the proposed TP either:

- 1) on the basis that it will be “retrofitted” since CN has failed to take the opportunity to retrofit the measures within the TP on existing occupiers of Bolnore Village so as to demonstrate;
 - i. the effectiveness of the steps it is now placing so much reliance upon; and
 - ii. that a 25% peak hour trip rate reduction is actually feasible; or
- 2) on the support for which was provided by Mr Roderick in his evidence, since he:
 - (a) accepted in cross-examination that he knew of no example where a 25% peak hour trip rate reduction had been either achieved by a developer or accepted as realistic by any authority; and
 - (b) had stated that he had, in any event, experience of TPs connected only with “retail and commercial developments along with healthcare and education establishments” (Doc 114, p5.3).

Heads of Terms Agreement (Doc 23, appx 15)

8.113 This was advanced by WSCC as a sensible way forward in the light:

1) of the current and future capacity problems it had identified on the A272; and

2) bearing in mind its profound concerns with the likely effectiveness of CN's TP in reducing peak hour trip rates to the extent that would be required.

CN's reluctance

8.114 Mr Harris stated in examination-in-chief that three elements contributed to his view that the "pendulum of certainty", as he called it, had now swung in CN's favour such that it would be inappropriate for it to sign up to WSCC's proposed agreement namely:

a) the St. Francis Hospital agreement with English Partnerships (which CN had said it was about to sign for some 18 months but evidence of which WSCC had still not been provided with);

b) the Colwood Hospital application/permission; and

c) the fact that a S38 agreement either was, or would soon be, in place with Network Rail for the Stage 5 railway line crossing.

8.115 WSCC fails to understand how any of these points would, in reality, make CN more rather than less reluctant or able to sign up to the agreement which the WSCC has proposed.

8.116 Mr Rees (for CN) confirmed that (Doc 166):

a) there is still no contract in place for the St. Francis Hospital site; and

b) third party land still needs to be acquired to enable Stage 6 of the HHRR to be constructed.

8.117 Bearing in mind this latest information, where is the claimed "certainty" now?

The Need For An Agreement

8.118 The history of WSCC's involvement with CN demonstrates why it is so important to tie the company down to properly defined agreements. That is an important point bearing in mind Mr Harris's reference to the "believability" of his clients (Mr Harris, oral evidence).

8.119 WSCC's agreement with CN of 30 September 2004 (Doc 23, appx 12) came about because CN went to WSCC and asked for more housing to be allowed in advance of works to the HHRR (Doc 20, p2.31-2.33). WSCC agreed to vary the terms of the original agreement with CN in order to aid the chances of the early provision of the HHRR. CN duly failed to deliver what had been agreed.

8.120 This was a point of evidence with which Mr Rees was particularly involved. Essentially, his contention was that WSCC had previously expressed a willingness for more housing development to come forward without the completion of the HHRR and that WSCC's

views with regards to the current application and its Inquiry evidence showed an inconsistency in approach (Mr Rees, oral evidence).

8.121 When Mr Rees made that point within his proof of evidence he failed to refer to the details of the background or correspondence between CN and WSCC or, indeed, to set out the context within which WSCC's attitude in 2003/2004 needs to be assessed.

8.122 It was considered by WSCC that, after the recommendation for the grant of planning permission in respect of the St. Francis Hospital site on 16 January 2003, a mechanism was in place for the construction and delivery of Stage 6 of the HHRR. The Secretary of State's letter in support of the Inspector's conclusions (Doc 23, appx 11, p8) stated that further housing development:

"...within the south-western sector of Haywards Heath cannot be developed until the Haywards Heath Relief Road is completed."

8.123 Further to the recommendation to grant being received, WSCC and CN met on 16 September 2003. It was agreed that WSCC was prepared to allow further development to proceed "without the entirety of the relief road" having been completed. WSCC's approach at this time was clearly tied into its view as to how the St. Francis Hospital site was now to come forward and this is set out in the minutes of the meeting:

"WSCC and the District Council had previously been concerned that as a result of the intervention of the Secretary of State Stage 6 of the relief road might never have been built....However, now that the planning consent had been granted for Stage 6 the County and District Councils were more relaxed about the point and would...in all likelihood be prepared to allow Blue Land development to proceed notwithstanding the fact that the entirety of the relief road had not been completed."

8.124 Further to that meeting, WSCC wrote to CN on 18 September 2003 (Doc 77) asking a number of questions including (at 8): "When you would expect to let a contract for Stage 5 and how long Stage 5 will take to construct?" The response to the question was (Doc 78):

"CN's best estimate would be some time in late 2005/early 2006."

8.125 That letter was followed up by a letter from Davies Arnold Cooper dated 25 July 2003 (Doc 23, appx 13) which set out "a formal request on behalf of CN...for WSCC's approval to allow occupation of dwellings in Phase 3A as from 1 September 2004."¹⁸ The letter sets out the reasons for the request for a:

"Modest advancement of the ability to occupy homes within Phase 3A as...it will assist our negotiations with Railtrack in relation to the funding and early delivery of the bridge over the railway."

¹⁸ Inspector's note: This is as set out in the Council's closing submissions, although the date does not follow from that in paragraph 8.124.

- 8.126 The Supplemental Deed and Form of Release dated 29 April 2004 (ibid, appx 12) was granted in the light of the replies to WSCC's questions as set out above. It removed the restriction on numbers of occupiers of Phase 3 on the understanding that this would assist CN in the way that it was explained it would.
- 8.127 Furthermore, WSCC required CN in the Deed of Variation (ibid, p4.6) to:
- “submit detailed engineering drawings of the Stage 5 relief road works [which shall include the bridge to be constructed over the London to Brighton railway line] to the County Council for approval and enter into a related agreement under s. 38 of the Highways Act 1980 prior to 30th September 2004.”*
- 8.128 As stated in paragraph 8.119 above, that deadline was never met by CN and construction of Stage 5 has not yet commenced. If nothing else, the events from 2003/2004 serve as a salutary reminder that a binding agreement is absolutely necessary in order for the construction and delivery of the completed relief road to be tied into housing completions.
- 8.129 What is also clear is that WSCC was prepared to allow further development without the completion of the HHRR only in the particular circumstances prevailing in 2003/2004 when it was considered that a relaxation would assist in delivering the Relief Road up to Stage 5 and when the grant of permission at St. Francis Hospital allowed for the construction of Stage 6.
- 8.130 The Heads of Term offer (ibid, appx 15) allows for the phased occupation of up to 230 dwellings on the Blue Land in advance of the completion of the Relief Road linked to a clear mechanism for the early construction and opening to traffic of the outstanding stages of the completed Relief Road.
- 8.131 It is therefore quite incorrect for CN to claim that WSCC has been remotely inconsistent in its approach. The facts surrounding WSCC's agreement to enter into the Deed of Variation speak for themselves.

CN's Gantt Chart

- 8.132 On the “best case scenario” within CN's Gantt Chart, CN would only have constructed 96 dwellings by the end of September 2009, which is the most optimistic date by which CN say Stage 6 of the HHRR would be constructed and open to public traffic (Doc 65). Within the proposed agreement, however, CN would be allowed to construct 150 dwellings by this time (Doc 23, appx 15, section D, 2-5). In other words, WSCC is offering more dwellings than CN says it can actually build in its best case scenario.
- 8.133 Again, the evidence of the Gantt Chart cannot possibly justify CN's reluctance to enter into a binding agreement with WSCC. Nor should the “alternative scenario” in the Gantt Chart be accepted i.e. that there would be no development until the HHRR is completed in full. That suggestion disregards the offer contained in WSCC's proposed agreement for the phased occupation of up to 230 units to be occupied prior to the Relief Road opening up to public traffic.

Triggers In The Agreement

- 8.134 According to the terms of the proposed agreement, at various stages further housing development would be triggered. There would be an allowance of 50 market units as well as the 80 sheltered units "up front" and a further 50 units when Stage 5 of the Relief Road is completed and the section 38 Agreement for Stage 6 is completed. A further 50 units would be allowed when a contract is let for the Stage 6 works (ibid).
- 8.135 Given that this number of dwellings would not, according to CN's best case scenario, be completed and occupied by this time (earliest, the end of August 2009) it remains unclear as to why CN is still unprepared to bind itself in the way suggested. This is particularly so since WSCC has expressed its willingness, both within the agreement itself and throughout the course of the Inquiry, to build in a flexible approach such that further completion and occupation of units could be permitted as evidence is forthcoming of further progress being made. That point would, of course, apply particularly with regards to the efficacy of the TP which CN relies upon to reduce peak hour trip rates.
- 8.136 In any event, an agreement along the lines of that being put forward by WSCC is vital in all the circumstances of this case and that this should be recommended to and by the Secretary of State. The agreement would allow for a phased occupation of further dwellings to take place, but those occupations would be robustly linked to a mechanism for the certain and early completion of the HHRR. It is an approach which fits directly into development plan policies setting out in the clearest possible terms the need to deliver the HHRR, which is linked to, and phased with, new housing development.

Conclusion

- 8.137 WSCC's approach on highways issues is based:

- 1) on a solid policy background, the genesis of which stretches back over a decade;
- 2) on years of experience, both practical and anecdotal, of traffic conditions at peak hours on the A272 near Haywards Heath;
- 3) on a clear understanding of why the HHRR is needed and how it should be linked to further development; and
- 4) on an equally clear understanding of the consequences of failing to deliver the HHRR in a timely manner, whilst large-scale further residential construction and occupation takes place.

- 8.138 CN's case on the other hand :

- 1) fails to acknowledge, let alone accept, the policy background to the HHRR issue;
- 2) is confused as to the identification of the capacity problems on the A272 now and in 2010;

3) fails even to provide satisfactory and complete data through the correct modelling techniques;

4) provides bogus solutions primarily through the suggestion that an ambitious but entirely unenforceable TP would deal with any potential peak hour traffic increases; and

5) entirely fails to accept any mechanism which would tie further housing completions into the early and certain completion of the HHRR despite WSCC's acceptance of the need for a flexible approach to be taken so that any steps forward in the provision of the HHRR or any reduction in peak hour trip rates can be monitored and reflected in further housing build-out allowances.

8.139 For all of the reasons set out above, CN's case is fundamentally flawed.

THE 1998 AGREEMENT

General Background

Introduction

8.140 CN's view as to the applicability of the 1998 Agreement was set out in Mr Rees' evidence. In particular, he considered that the 1998 Agreement already obliges CN to complete Stages 1-5 of the Haywards Heath Relief Road, but does not require the delivery of Stage 6 (Doc 71, p15.1 & Doc 73 appx 8).

8.141 In essence, MSDC considers that the 1998 Agreement never applied to Phases 4 and 5 of Bolnore Village (i.e. that area which the 1998 Agreement described as the "Blue Land") and that there must now be a combined approach to the delivery of these Phases together with Stages 5 and 6 of the HHRR.

The 1998 Agreement In Context

8.142 The 1998 Agreement needs to be considered alongside the Haywards Heath Local Plan which was the adopted Plan from 1995 (Doc 23, appx 3). The text of the Plan states at paragraph 3.24:

"However, the local planning authority envisages an orderly progression of development commencing at both the east and west ends. The eastern section of the relief road south of the hospital complex however must be complete and open to traffic prior to the final opening of the Tyler's Green / Rocky Lane section in order to prevent through traffic from using Colwell Road at any stage."

8.143 Paragraph 3.25 sets out the limits of viable development prior to the completion of the relief road and paragraph 3.26 states :

“Beyond these limits no further housing development would be constructed until the remaining sections of the relief road at both the western and eastern ends has been completed. Without the road being completed, further development would exceed the cul-de-sac limits or would use the existing road network for access, neither of which would be acceptable.”

8.144 It is clear from the 1995 Local Plan that :

- (i) both ends of the HHRR road were envisaged as being commenced at the same time;
- (ii) the eastern section (Stage 6) had to be completed before Stage 5 could work; and
- (iii) until the HHRR was fully complete and open only limited development could be accepted.

8.145 These points were accepted by Mr Rees in cross-examination.

8.146 The Haywards Heath Development Strategy 1997 underlines the importance of *“linking the provision of the relief road”* to all of the residential development to the south and south-west of Haywards Heath (ibid, appx 4, p1.1-1.2). The phasing of this linkage is said at paragraph 10.1 to be *“crucial to the satisfactory implementation of the Local Plan proposals”* and at paragraph 10.4 one of the planning objectives listed is that:

“Traffic generated by new development should not unduly add to the congestion on the A272 to the west of Haywards Heath.”

Scope of the 1998 Agreement

8.147 Paragraph 1.14 of the 1998 Agreement deals with the resolution by MSDC to grant planning permission in respect of Phases 1-3 (Doc 73, appx 8). Paragraph 1.15, however, refers to another, separate planning application as follows:

“MSDC also resolved under planning reference CD/28/96 to grant planning permission for the development of an area comprising the site and the Blue Land together subject to the conditions contained in Schedule Three and to the completion of an agreement in similar terms to this agreement to secure the items secured by this agreement and the additional items referred to in Part 4 of Schedule Four.”

8.148 It is equally clear that paragraphs 1.17 – 1.18 of the 1998 Agreement refer back to the application which is described at paragraph 1.15 and not the application referred to in paragraph 1.14.

8.149 Mr Rees was questioned in cross-examination on why CN never challenged the Inspector's recommendation, which was later taken up by the Secretary of State, on the St. Francis Hospital site (Doc 23, appx 11, p8) The Secretary of State stated that:

“Other housing developments within the south west of Haywards Heath cannot be developed until the Haywards Heath Relief Road is completed.”

8.150 If CN believed that the 1998 Agreement prevented MSDC from withholding permission to develop Phases 4 and 5 of Bolnore Village on the basis that Stage 6 of the HHRR had not been "completed" then it would have:

- (iv) Judicially Reviewed the Secretary of State soon after his decision in 2003; or
- (v) Judicially Reviewed MSDC for preventing full occupation of Phases 4 and 5 until Stage 6 of the relief road is completed and open to traffic.

8.151 MSDC's view is that CN's conduct clearly demonstrates its lack of faith in its own arguments regarding the 1998 Agreement. That lack of faith is, in MSDC's view, extremely well founded.

Conclusion

8.152 None of the items listed at Schedule Four of Part 4 of the 1998 Agreement was either agreed to, or indeed provided by, CN and that application CD/28/96 was in fact, as Mr Rees accepted in cross-examination, withdrawn (Doc 73, pg 54). If the separate agreement that was mentioned in paragraph 1.15 of the 1998 Agreement had been completed, and the items listed in Part 4 of Schedule Four had been provided, then CN could have constructed Phases 1-3 and the 'Blue Land' development.

8.153 However, the consequence of the withdrawal of CD/28/96 must be that the 1998 Agreement itself was not binding since the requirements set out at 1.15 were never complied with. In other words :

- 1) the 1998 Agreement has no bearing whatever on the Blue Land since the application covering that area was withdrawn by CN;
- 2) at the present time MSDC and the Inquiry have been considering wholly fresh applications;
- 3) it is simply remarkable for CN now to be claiming that, with an entirely different set of facts, new and different applications and an altered policy framework, the 1998 Agreement nevertheless holds sway; and
- 4) that last point is emphasised by the failure by CN to mount any sort of challenge to either:
 - (a) MSDC's often repeated contention that the 1998 Agreement cannot feasibly be said to cover the Blue Land; and
 - (b) the Secretary of State's view as set out in his letter of 16 January 2003 (Doc 23, appx 11) at paragraph 8 that:

"...other housing developments within the south western sector of Haywards Heath cannot be developed until the Haywards Heath relief road is completed."

8.154 In all the circumstances, and bearing in mind, in particular, the failure by CN to challenge the Secretary of State's decision with regard to the St. Francis Hospital site in 2003, the Secretary of State is asked to support the MSDC's contentions as set out above and to clearly decide that the 1998 Agreement cannot affect the Blue Land which was the subject of the applications being considered through the current appeals.

ECOLOGY

A. *Cell 5B1/Four Acre Wood (FAW)*

General background

Introduction

8.155 The ecological status of Cell 5B1/FAW was one of the most controversial topics throughout the Inquiry. There can be no doubt as to the strength of local feeling as well as expert opinion that this is an area which should be kept free from development so that it can continue to provide a local amenity and an important ecological resource:

- (i) as an AW site which is currently regenerating a canopy of tree cover; and
- (ii) as part of an ecological network serving a vital role in the wider woodland complex connecting other important areas of woodland to the south-west of Haywards Heath.

8.156 The only people who appear to disagree with the broad analysis set out above are Mrs Fisher and Dr Macphail for CN. Ranged against them are MSDC, the Sussex Wildlife Trust (SWT) and, of course, Natural England (NE), amongst others. All of these organisations believe that FAW is an AW site. All consider that it should be kept free from development.

8.157 The many arguments in support of their position are rehearsed below. But, for the moment, and simply in terms of weight, what should be borne in mind is the exceptionally isolated position that CN has found itself to be in with regards to the central ecological questions of whether FAW is or is not AW and whether it should be preserved from development.

Consultation Responses On FAW

8.158 Even before the inclusion of FAW in the revised Ancient Woodland Inventory for Mid Sussex District (CD58), the consultees to CN's application to develop Phases 4 and 5 had made clear their opposition to development. The following should be noted:

- 1) the Environment Agency's (EA) opposition to development and the EA's comments in their letter of 28 January 2005 (DRB 17) that they considered FAW to "...be of high ecological value and an important wildlife corridor link between The Meadow and Ashenground Wood" (Doc 17, appx 17); and

2) NE's letter of 7 January 2005 (ibid, appx 16) in which FAW is "*clearly identified*" as "*an area of conservation value*" and in which NE "*strongly advises that this area is omitted from any development*" so that "*conservation and enhancement of this area*" should become "*a key part of any planning application on this site*".

8.159 It should also be borne in mind that CN seemed at one stage of the application process to agree to the removal of FAW from the development area in apparent recognition either (a) of the intrinsic ecological value of the site; or (b) of the strength of resistance to development as expressed by the relevant statutory consultees (ibid, appx 24, Annex 5, see p5.4-5.6):

"Following meetings and negotiations with a number of statutory and non-statutory consultees and further careful consideration, it has been decided to delete any form of residential development from Cell 5B1".

8.160 At that stage, the statutory consultees and the SWT could not have been aware of the ancient woodland status that the site would acquire through its inclusion in the revised Inventory. All three organisations based their opposition to CN's proposals not on the ancient woodland status of the site, but on its exceptional interest and importance as a site comprising :

- 1) unimproved acid grassland (discussed in full below);
- 2) a highly rich and diverse ecological biodiversity; and
- 3) as a woodland clearing or "glade" forming part of a vital ecological link for flora and fauna connecting Ashenground and Reading Woods.

The Revised Inventory And Review Process

8.161 The terms of CN's arguments and its evidence presented need to be set in context. It was clear to MSDC that FAW would be included within the revised Inventory shortly after the visit to the site in May 2006 of the surveyor undertaking the revision (Sally Westaway). A draft report was released by her on 5 June 2006 (an amended copy of this is at Doc 17, appx 1.5).

8.162 Mrs Fisher accepted in XX that she too was aware of the likely inclusion of FAW in the Inventory soon after this visit in May 2006. A note of an ecology meeting (Doc 97) which took place on 15 June 2006 records the fact that:

"JF (Mrs Fisher) challenged the AW (ancient woodland) work on the basis that because 5B1 had been cleared it is unlikely to be ancient woodland. DB (Donald Baker) and Tony Whitbread rebutted this strongly pointing out that there is consensus amongst all authorities that a significant part of ancient woodland comprises open areas of woodland glades which have been cleared from time to time. JF was unable to agree. She will challenge the findings of Sally Westaway's recent work."

8.163 The revised Inventory was published in October 2006 (CD58). Mrs Fisher has maintained throughout, and it is accepted by both NE and MSDC, that the Inventory is

provisional and can be reviewed and updated at any time. She was in correspondence with NE at various points in October 2006. Bearing that fact in mind, as well as the point that she had known of the inclusion of FAW in the revised Inventory since June 2006, it seems strange to MSDC that CN asked for a review only on 27 November 2006 (Doc 89), some five months after becoming aware of Sally Westaway's conclusions on the status of FAW. It also seems strange to MSDC that neither the Council nor the LCOs (nor indeed the Inspector) were even informed that a review had been requested from NE.

- 8.164 In any event, a review of Ms Westaway's work on FAW was carried out by Dr. Keith Kirby at NE (CD62). That review was clear, thorough and conscientious and deals with all of the issues raised both within the original revised Inventory and the large amount of old and new information which Mrs Fisher supplied NE when she asked for the review¹⁹.
- 8.165 Dr Kirby was categorical in his conclusion that FAW was correctly identified as AW and that Ms Westaway's conclusions remained correct despite the new aerial photographs and soil evidence which CN had presented (Doc 89). Dr Kirby stated (CD62, p15 of the summary) that:

"I conclude therefore that it was reasonable for Sally Westaway to have re-instated the FAW on the ancient woodland inventory once it became clear that the trees and shrubs were re-growing and that a rich woodland flora, including specialist species, had survived. I endorse the inclusion of FAW on the basis of current information."

- 8.166 Mrs Fisher responded to Dr Kirby's conclusions (Doc 94). In essence, it was contended that there had been a failure to carry out the NE review of the Inventory according to its own protocol. Mrs Fisher's points were, bizarrely, not sent to Dr Kirby by herself, but they were copied to him at NE's headquarters in Peterborough.
- 8.167 In Dr Kirby's reply it was made clear that he had been "*somewhat surprised by the comments*" that Mrs Fisher had made with regards to NE's review (Doc 94). In cross-examination Mrs Fisher was taken through each point in the protocol and she accepted that this had been followed to the letter in each and every respect.
- 8.168 Bearing all of the above in mind, MSDC contends:

- 1) that the Inventory process was correctly carried out by Sally Westaway and the High Weald AONB unit;
- 2) that no legal challenge to the revised Inventory was mounted by CN or anyone else;

¹⁹ Inspector's note: The review of the Mid Sussex Inventory indicates that FAW was not included within the original West Sussex Inventory 1984/1989; there was good evidence from old maps that it was an ancient woodland site but aerial photographs suggested its clearance in the 1950s and no field evidence was available at that time. The revised Mid Sussex Inventory took account of new historical and field survey work. The latter recorded a well-developed woodland flora (using ancient woodland indicator species within FAW that did not seem compatible with the evidence that the woodland had been completely destroyed by the 1950s' clearance. This led to its inclusion within the revised inventory. The presence of vascular plant indicator species can aid in the identification of AW and ancient woodland sites tend to be richer in terms of their species composition (3.2.2 of the Mid Sussex Inventory).

3) that CN waited five months to request a review of the inclusion of FAW in the revised Inventory;

4) that this review considered all of the information that was before Ms Westaway as well as all new information which was supplied to NE in November 2006;

5) that the review was conducted by a well known woodlands expert at NE, someone Dr Whitbread (SWT) described in examination-in-chief as "one of the highest authorities in the UK on ancient woodland";

6) that NE's protocol for conducting reviews of inclusions within the Inventory was comprehensively followed;

7) that no legal challenge has been mounted with respect either to the methodology or eventual conclusions of the review; and

8) that no further review has been requested by CN and no further evidence has been submitted by it to question NE's findings.

8.169 For these reasons maximum weight can be attached to the revised Inventory and to the review by NE of the inclusion of FAW in that revised Inventory.

MSDC's Approach

8.170 MSDC considers that FAW should not be developed because :

1) it is AW;

2) the balancing exercise set out at paragraph 10 of PPS 9 (CD4) falls firmly in favour of preventing the development of FAW for the sake of constructing (up to) 60 housing units; and

3) even if it is concluded that FAW ought not to have been included within the revised Inventory, it is of exceptional ecological importance.

8.171 FAW was allocated for development in the 2004 Local Plan. MSDC's evidence explained how that allocation came about and in particular the lack of ecological study which had taken place with regards to FAW since it was left out of the 1989 Ancient Woodland Inventory (Doc 4, p7.19).

8.172 However, it is also necessary to consider the implications of PPS 9 which states at paragraph 10:

"Ancient Woodland is a valuable biodiversity resource both for its diversity of species and for its longevity as woodland. Once lost it cannot be recreated. Local planning authorities should identify any areas of ancient woodland in their areas that do not have statutory protection. They should not grant planning permission for any development that would result in its loss or deterioration unless the need for, and

benefits of, the development in that location outweigh the loss of the woodland habitat.”

- 8.173 Mrs Fisher did not see fit to refer at any point in her written evidence to the wording of PPS 9 paragraph 10 or to discuss its implications. These are clear. MSDC was required to embark on a revision of the Ancient Woodland Inventory that had last been compiled in 1989. That process identified FAW unequivocally as an AW site. Natural England has, at CN's request, undertaken a review of the finding and confirmed, once again, that the area is an AW site. The background and conclusions as to why the site is ancient woodland are set out below.
- 8.174 For the moment, however, it is the second part of the extract from PPS 9 paragraph 10 which requires examination in the context of this debate. If NE's finding that FAW comprises an AW site is agreed then a further 'balancing exercise' needs to be carried out to decide whether the 'loss' of the 'woodland habitat' is outweighed by the need for, and benefits of, the development in that location.
- 8.175 Again, this crucial question appears never to have been considered by CN's witnesses (either on the strategic planning front or on the ecological front), although Mr Harris clearly accepted in cross-examination that this was the balancing exercise which needs to be carried out. He also accepted that no balancing exercise had been carried out either by himself, or so far as he was aware, by anyone else advising CN, between the need for 60 units and the ecological harm which would arise from developing FAW.
- 8.176 As for what the balancing exercise should take into account, MSDC adopts the comparative table which the LCOs submitted (Doc 218). This clearly sets out the arguments in favour of conserving FAW on the basis that this is AW. On the 'pro development' side of the equation the truth of the matter is that up to 60 dwellings would be lost from the scheme.
- 8.177 The following points should be borne in mind:
- 1) Mr Harris accepted in cross-examination that the viability of the overall development scheme is not dependent on the 60 housing units;
 - 2) the District Valuer (DV) confirmed that the scheme would remain viable, such that serviced land for affordable housing at nil value could be provided, even without the 60 units;
 - 3) Mr Harris accepted in cross-examination that there was "no strategic need" for 60 units;
 - 4) Mr Matthews for MSDC explained in his written and oral evidence that even without the 60 units, Phases 4 and 5 of Bolnore Village would deliver far more dwellings than had originally been anticipated in the 1995 Local Plan at HH3/1 (Doc 4 and oral evidence);

5) GoSE confirmed within its December 2005 Action Plan for Mid Sussex that the (at that stage) contemplated removal of FAW from Phases 4 and 5 constituted "progress" towards an acceptable solution for the further development of Bolnore Village; and

6) Mr Harris confirmed in cross-examination that, in CN's view, GoSE would 'shed no tears' if Phases 4 and 5 lost up to 60 units through the removal of FAW.

8.178 In short, it seems clear to MSDC that, were the inclusion of FAW in the revised Ancient Woodland Inventory for Mid Sussex to be agreed with, the balancing exercise set out at paragraph 10 of PPS 9 falls firmly in favour of preventing the development of this part of the appeal site. There is no viable argument provided by CN to support any contention that this particular part of the proposed development is required to be built within FAW and nor is any argument put forward that the need for development at "*that location*" must "*outweigh the loss of woodland habitat*" (CD4).

8.179 In terms of approach therefore:

1) little, if any, weight should be attached to the allocation for development of FAW within the 2004 Local Plan;

2) maximum weight should be attached:

- (a) to PPS 9 itself;
- (b) to the requirement set out at paragraph 10 of PPS 9 for MSDC to update the 1989 Ancient Woodland Inventory (Doc 17, appx DRB 1.1);
- (c) to the clear finding of the revised Ancient Woodland Inventory for Mid Sussex (CD58) that FAW is indeed an AW site; and
- (d) to the equally clear confirmation of those findings contained in NE's letter and report dated 12 February 2007 (CD62); and in any event

3) consideration should be given to the balancing exercise that needs to be carried out according to the provisions of PPS 9 paragraph 10, and a clear finding made in favour of the position of MSDC and the LCOs that this falls squarely in favour of preventing development of, and preserving, FAW.

The Ancient Woodland Debate

The Importance Of Ancient Woodland

8.180 PPS 9 (CD4), its Companion Guide (CD5) and 'Keepers of Time' (CD10) all stress the vital importance of AW as an irreplaceable natural resource, which needs to be retained and protected. Mrs Fisher accepted the intrinsic value of AW as summarised in these documents and as set out, in brief, on page 4 of Keepers of Time. On this point at least, there seems to be no dispute between the parties.

Scope of The Revised Inventory

- 8.181 The Mid Sussex revision sets out clearly the full scope of the revision exercise and the various factors which were considered as part of the revising exercise (CD58, Section 3). The survey looked at desk-based mapping using a Geographic Information System (GIS) (p3.2.1); field survey work (p3.2.2) which looked at, amongst other factors, ancient woodland indicator (AWI) species; and archive research (p3.2.3) including tithe maps and estate maps and records.
- 8.182 MSDC understood no criticism to have been levelled at the methodology during the course of Mrs Fisher's evidence, and it should be accepted that the appropriate methods and techniques were used and information gathered for the assessment concerning FAW.

The Definition of Ancient Woodland

- 8.183 The definition used in the revised Ancient Woodland Inventory is set out at paragraph 2.2.2 (ibid) :

"Ancient woodlands are defined by Natural England as those where there is believed to have been continuous woodland cover since at least 1600 AD. For this survey, this definition includes...Open areas within the woodland site (at least 20% canopy woodland over 80% of the site). Temporary clearings that may have been created in the woodland complex but which have regenerated or are regenerating, back to woodland."

- 8.184 The definition employed within the Mid Sussex revision is precisely copied from the Weald Ancient Woodland Survey (Doc 17, appx DRB 1.2) which, as with the Mid Sussex document, was compiled by Sally Westaway from the High Weald AONB Unit.
- 8.185 The Companion Guide to PPS 9 specifically holds out the Wealden Ancient Woodland Project as *"a good example of a local authority recognising that its area contains a valuable biodiversity resource and setting out to improve the information it holds on this"* (CD5, pg10). Paragraph 2.15 states :

"PPS 9 requires local planning authorities to identify areas of ancient woodland in their areas that do not have statutory protection. The Wealden Ancient Woodland project demonstrates good practice on how to address this and local authorities should consider taking a similar approach to their area."

- 8.186 Such a ringing endorsement of the Wealden project would not have been made if the Government had had concerns about the definition of ancient woodland that the survey had employed. CN relies upon English Nature's 'Ancient Woodland: guidance material for local authorities' for guidance as to whether FAW is ancient woodland (Doc 17, appx 6). This is incorrect. MSDC relies upon the definition of AW in the Weald Ancient Woodland Survey. This post-dates EN's guidance material and was done in conjunction with EN. It is this updated definition that should be used.

The Implications of Clearance

- 8.187 CN maintained throughout the course of the Inquiry that FAW cannot be ancient woodland because of its lack of canopy cover. Mrs Fisher said in examination-in-chief: *"It's not wood so it can't begin to be ancient woodland."* That view simply fails to recognise the last two bullet points of the revised Inventory definition (CD58, p2.2.2). FAW contains within it open areas and it is a temporary clearing within a larger woodland complex. It started to regenerate canopy cover as long ago as the early 1980s according to Mrs Fisher.
- 8.188 MSDC was perplexed by Mrs Fisher's attitude and evidence. FAW is patently a small block of woodland forming part of, and indeed an important link between, other areas of woodland. That much can be gathered by any view of the aerial photographs the LCOs provided to the Inquiry which demonstrated the clear links between FAW and Ashenground/Reading Woods (Doc 240). When she came to be cross-examined, it appeared that Mrs Fisher did eventually accept that FAW forms part of the wider woodland complex. The question then remains to be decided whether the removal of canopy cover of this part of the woodland complex meant that it ceased to be either woodland or AW at that point.
- 8.189 MSDC accepts the aerial photographic evidence as demonstrating that FAW was cleared at some point in the mid to late 1950s. However all, or virtually all, woodlands in the UK including 'ancient woodlands' have been through natural events as well as processes of arboricultural management and even complete felling many times over the course of millennia (Mr Baker and Dr Whitbread, oral evidence). As Dr Whitbread put it, the clearance and gradual regeneration of canopy cover at FAW constitutes *"a very minor break in woodland continuity."*
- 8.190 These felling and clearance processes are part of a cycle which has involved man's and nature's interaction with the woodland landscape being frequently repeated. The fact of felling, even complete felling, of one area within a larger woodland complex cannot, of itself, indicate that the area ceased to be AW at that point any more than if that part of the woodland had been blown over by strong winds. Furthermore, MSDC agrees with Dr Whitbread that gaps within woodlands are particularly important from a biodiversity point of view.
- 8.191 If Mrs Fisher is correct in her assertion that freedom from felling is the vital criterion of ancient woodland, then only woods which had not been felled since 1600 could be properly classed as "ancient". In reality, different areas of woodland at different points could, and probably did, suffer either from man-made interference or from wind blow or both. Yet even catastrophic interference would not have meant that the woodland ceased to be either woodland or AW.
- 8.192 This is a point which is dealt with in detail by Dr Kirby as part of his review of the inclusion of FAW within the revised Inventory (CD 62, p2.1) where he states that:

"Continuously wooded" in the above definition does not just mean those areas where there has been a continuous physical cover of trees and shrubs. Open space, both

temporary and permanent, is an important component of all temperate woodland systems."

8.193 Furthermore he states at section 5 that although FAW :

"has a separate name...that is not unusual for different parts of otherwise contiguous woodland. In practice it is not separate as far as woodland processes are concerned. Ecologically it is part of the block to the south and south west...which itself has variously named sections. FAW was considered as part of this larger block in the initial inventory assessment." (underlining added)

8.194 Clearly, NE sided with MSDC and SWT on this point such that :

- 1) FAW forms part of the wider woodland complex;
- 2) the felling in the mid to late 1950s created what can properly be described as a "temporary clearance" within the wider woodland complex;
- 3) FAW had had, and continues to regenerate back to, canopy cover over a large part of its area; and
- 4) FAW has never lost its ancient woodland characteristics.

Ancient Woodland Indicator Species

8.195 The extent of AWI species within FAW is telling, as is the gradual recognition by Mrs Fisher of quite how many AWIs the area contains. In her original proof she recorded that: *"The detailed botanical survey of Cell 5B1 found 3 ancient woodland indicator species in this Cell."* (Doc 81, p3.4.11)

8.196 However, the Botanical Society of the British Isles, WSCC, the SWT and the Friends of Ashenground Wood found up to 23 AWI species (Doc 17, appx 12). Mrs Fisher agreed in cross-examination that there were "at least 19" present on FAW when she re-visited the site in June 2006. Within her original proof Mrs Fisher notes that (Doc 81, p3.4.15):

"In my work evaluating woodlands, I use a minimum presence of 5 to 6 AWIs before I consider that a woodland may be ancient".

8.197 The reference by Mrs Fisher (Doc 81, p3.4.12) to Francis Rose's article should be noted (Doc 83, appx 9, pg251) and which stated:

"We believe that as the number of AWVP (Ancient Woodland Vascular Plant) species that occurs in a site increases, so the statistical probability of the wood being ancient also increases."

8.198 This should be borne in mind in relation to what Mrs Fisher thinks is the minimum number present. Also this comment supports the Peterken study from February 2000 (Doc 83, appx 9, pg157) which found that AW sites of less than 5 hectares in size

contained an average of only 12.4 AWI species. That finding supports Dr Whitbread's points from examination-in-chief that:

- 1) FAW is of particular value since it contains an unusual number of AWI species for a small area; and
- 2) up to 15 AWI species at a site of more than 30 hectares would provide very strong evidence of its being AW.

8.199 MSDC recognises that AWI species provide what the revised Inventory describes as "*an aid in the identification of ancient woodland*" and that "*ancient woodland sites tend to be richer in terms of their species compositions*", but also that "*care is required as other factors affect the presence and abundance of these species.*" (CD 58, pg17).

8.200 These factors were the subject of lengthy debate in the Inquiry, but the simple fact remains in MSDC's view :

- 1) that 18 separate AWI species were found in Sally Westaway's visit to FAW in May 2006 (Doc 17, appx DRB 1.5);
- 2) that this number of AWI species accords closely with the number of AWIs agreed with Mrs Fisher and other visitors to FAW as recorded in Doc 17, appx 12; and
- 3) the closeness of that correlation fatally undermines Mrs Fisher's contention that Ms Westaway was somehow confused between which species she recorded within FAW itself and which were found within the wider 'Ashenground Wood Extension' (Doc 17, appx DRB 1.5).

Re-Colonisation As The Explanation For AWI Species

8.201 CN clearly felt that an argument needed to be mounted which could provide an explanation for why so many AWI species were found within FAW. When Mrs Fisher was cross-examined the first time, she expressed the view that two of the important AWI species (wood anemone and bluebells) had re-colonised up to a distance of some 50m into FAW. She was asked by the LCOs to go away and look again at how far these species had, on her view of things, re-colonised. Mrs Fisher returned to the Inquiry with the answer that both species had re-colonised by up to a maximum of 36m.

8.202 When she was recalled to give evidence under cross-examination, Mrs Fisher was referred to a study from Belgium which she had clearly stated in examination-in-chief was "directly comparable" to FAW (Doc 206). The article showed that, at the maximum, wood anemones can migrate at 0.55m per year, about half the distance Mrs Fisher is required to show that the anemones must have travelled back into FAW.

8.203 Mrs Fisher also accepted when she was recalled in cross-examination that "no evidence" at all had been presented to the Inquiry to support her contention that bluebells are able to re-colonise at a rate of 1m per year or more.

8.204 There is, in other words, no evidence that either wood anemones or bluebells could have re-colonised FAW at the rate and to the extent claimed. Dr Kirby at NE explained his view that Mrs Fisher's "*re-colonisation hypothesis*" is...*less likely as the main source of the indicator/specialist species in the re-grown FAW than that the species persisted on the site.*" He went on to state that:

"The conditions that would be most damaging to persistence, such as ploughing or other major soil disturbance, are also those that would make rapid re-colonisation least likely." (CD62, p4.3)

8.205 Bearing in mind the fact that FAW is, and always has been, part of a larger woodland complex, MSDC accepts that a degree of movement of flora between adjacent woodland blocks is bound to have occurred since the felling of the 1950s. Indeed, Dr Kirby stated (ibid, p.11) that:

"The assumption, under the re-colonisation scenario, that species have spread rapidly back from the Catts/Pierce/Bolnore block into FAW also implies that the two areas are functionally linked."

8.206 Inevitably, a degree of movement of plant species occurs where one block of woodland lies within a complex of other areas of woodland. That point applies whether or not a particular part of the woodland complex is felled. The same process would inevitably occur had FAW been subjected to severe wind blow. FAW is not, and never has been, physically divorced from its surroundings. Plant species will always have been able to spread and migrate naturally between and within the different woodland areas. The fact that this movement of plant species is bound to have continued is no indication at all that AWI species which were already present before the 1950s clearance did not remain.

8.207 It is submitted that Dr Kirby's conclusion on Mrs Fisher's re-colonisation theory must, in all the circumstances which have been discussed at such length, be preferred bearing in mind:

- 1) the number and spread of AWIs as set out in the plan at Doc 17, appx 12;
- 2) the position of FAW as part of the "network" or "complex" of areas of woodland by which it is surrounded and of which it forms a part; and
- 3) the available academic information, none of which supports the contention that the spread of AWI species could have occurred within the timescale claimed by Mrs Fisher.

8.208 For the reasons set out above the conclusion should be reached that:

- 1) the survival of the AWI species is the only viable explanation for the number and pattern of species that have been found to exist at FAW;
- 2) accordingly, CN's re-colonisation theory should be dismissed; and

3) the AWI species that have been found to be present within FAW provide both a good indication of the AW status of the area and solid evidence that the area retains the characteristics of AW despite the 1950s felling. The area has retained its biodiversity interest, identified by Dr Whitbread as a crucial characteristic of AW, as opposed to the much more ephemeral characteristic of the canopy cover.

The Soils Evidence

8.209 Dr Kirby in his review of the inclusion of FAW in the revised Inventory stated in plain terms that : *“The soil survey evidence is inconclusive as to the nature and scale of past soil disturbance and when it might have occurred.”* (CD62, p12 and Section 6). That was a sensible conclusion from what CN presented to NE.

8.210 CN's case on the likelihood of 'truncation' having occurred at FAW since the felling of trees in the 1950s developed markedly as the Inquiry proceeded. To begin with, it was clearly not CN's intention even to call Dr Macphail to give evidence.

8.211 Late in the day, a further report was submitted by Dr Macphail and the Inquiry was informed that he would be appearing (Doc 156). It seemed as if CN's case in favour of developing FAW had imploded to such an extent that desperate measures were called for.

8.212 In the event, neither Ms Westaway nor Dr Kirby had the benefit of hearing Mr Allen give evidence on the opposite side of the soils case. His evidence was presented on behalf both of the LCOs and MSDC (Docs 196 & 207). With respect to Dr Macphail, MSDC considers Mr Allen's evidence to have been conclusive on the soils issue. It served to drive a final stake into CN's ecology case on FAW by demonstrating :

1) that even if Dr Macphail had been correct in his analysis that truncation of the soils had occurred at FAW as alleged, this was of no use or benefit at all to the Inquiry in terms of proving one way or another the issue of whether FAW is ancient woodland; and

2) that, in reality, FAW

(e) shows typical woodland soils;

(f) has a topsoil which cannot possibly have formed over only the past 40 odd years, and

(g) where any truncation which can be seen would in all likelihood have occurred between 10 and 15,000 years ago.

8.213 A brief summary of MSDC's position as regards some of the central points of the soils evidence which emerged is set out below. However, in order to avoid repetition, MSDC relies on the full analysis of the soils case presented by the LCOs (9.55-9.74 below).

8.214 MSDC agrees with Dr Kirby's view on the impact of aerial photographs from 1965, 1971 and 1973 (Doc 84, appx 4). Dr Kirby considered that these failed to prove that any, or any recognisably substantial, ploughing occurred between those years within FAW,

and certainly cannot be taken as evidence of any catastrophic latter-day truncation having occurred to the soil profile (CD 62, Section 6).

- 8.215 In any event, and this appears a crucial point of the soils case to MSDC, both Dr Macphail and Mr Allen (as well as Dr Whitbread) all agreed that soil disturbance is bound to have occurred repeatedly within woodlands such as FAW over thousands of years. The experts all agreed that such disturbance may have arisen either from human activities, including quarrying or felling, or from natural events such as wind blow in severe storms. In either case, the effect from tree disturbance on soil profiles is remarkably similar, as the LCOs' experiments on the effects of winch felling served to demonstrate (Doc 198).
- 8.216 MSDC thus agrees with Dr Whitbread and Mr Allen that soil profiles are not particularly important in the context of assessing whether a site comprises AW or not, since all woodland soils, by their very nature, have been repeatedly disturbed.
- 8.217 MSDC also agrees that this point provides the most rational explanation for why the degree of soil disturbance has been removed from the relevant definitions as a factor in deciding whether a woodland site is ancient or not. The degree of soil disturbance was listed as factor (iv) to be considered in the 1989 Inventory (Doc 17, appx DRB 1.1, pg2), but was not included within the definitions of the Wealden or Mid Sussex revisions (Doc 17, appx DRB 1.2 & CD 58).
- 8.218 The following should be particularly borne in mind, which arose from the soil debate which took place during the course of Dr Macphail's and Mr Allen's oral evidence:
- (a) Mr Allen made clear his view in examination-in-chief (with which WSCC wholeheartedly agrees), that there was no possible explanation for the presence of 19-23 AWI species in a small area of woodland at FAW, other than that the woodland soils had survived far longer than the past 50 years;
 - (b) both Mr Allen and Dr Macphail agreed that no evidence existed to support Mrs Fisher's contention that soil had been deliberately stripped off and exported from FAW;
 - (c) Mr Allen's soil pits, which appear to MSDC to have been much larger than Dr Macphail's, to have visibly 'shown' much more soil material and to have been positioned to test the possibility of changes in soils occurring down the 'slope' of FAW, served to clarify Mr Allen's explanation of what he found in each -
 - (i) that perfectly normal woodland soils exist at FAW, all of which comfortably fit within the wide range of soil varieties to be found in Curtisdon Association soils, and with any evidence of truncation being limited to what might have occurred naturally, many thousands of years ago, and within the top 53 cm of soil; and
 - (ii) that Dr Macphail was wrongly using the word 'truncation' to refer to what had occurred since 1959;

(d) Mr Allen's finding on the likely age of soil truncation carries far more logical weight than Dr Macphail's view that truncation took place since 1959, not least since the so-called truncated soil is covered by a topsoil layer;

(e) Dr Macphail's contention that the formation of topsoils at FAW had taken place "in the last 40 years" was not borne out by any cogent evidence presented to the Inquiry, and MSDC agrees with Mr Allen who described Dr Macphail's view on recent topsoil formation as "nonsense" and who stated:

- (i) that he "had never seen 10-15 cm of topsoil forming in 40 years",
- (ii) that none of the examples of rapid topsoil formation quoted by Dr Macphail (World War II rubble, Zuider Zee etc.) bore any relation or similarity to the situation at FAW; and
- (iii) that there was a noticeable lack of earthworm burrows in the soil pits Mr Allen had examined, and that large numbers of earthworms are needed for rapid topsoil formation;

(f) the absence of woody roots in the topsoils is perfectly usual since -

- (i) woody roots would only be found in pits dug within approximately 5m of former trees, and
- (ii) woody roots decompose in the top soil layers and would therefore not be found above 30-40 cm; and

(g) the 7% of the site shown with circular "white patches" in the 1959 aerial photograph is:

- (i) consistent with the tree felling that had taken place a few years earlier;
- (ii) not consistent with the presence of colluvium on the surface at FAW since colluvium deposit would form a fan-like shape as it moved downhill, and
- (iii) leaves room for the 93% of the site which Dr Macphail accepted was covered in vegetation.

8.219 In conclusion, it appears to MSDC that it should be found:

- (i) that no cogent evidence has been presented to support CN's contention that truncation of the soil at FAW has occurred since the late 1950s;
- (ii) that in any event, the carpet of AWI species has clearly survived over a large area of FAW and there is nothing in any current definition of AW to suggest that areas of woodland with truncated soils cannot be properly described as 'ancient woodland'; and
- (iii) that all the evidence in fact suggests rather that the soils at FAW are, as Mr Allen explained, typical of ancient woodland soils with which he has become familiar over decades.

The Alternative Scenario

Introduction

- 8.220 MSDC is of the firmly held view that FAW comprises AW which, according to the balancing exercise required at paragraph 10 of PPS 9, should be preserved rather than developed (CD4). However, if there is disagreement with the original inclusion of FAW in the revised Inventory for Mid Sussex and/or with Dr Kirby's findings on the review requested by CN, then, in any event, the inherent importance of FAW as an area of 'high ecological value' should be considered (Doc 15, p3.4.20).

The Ecological Importance of FAW

- 8.221 The importance in biodiversity terms of FAW is perhaps most clearly set out in the English Nature (EN)²⁰ consultation response of 7 January 2005 (Doc 17, appx 16.1, pg2) which states that the area contains "*lowland acid grassland*", a habitat which is a national Biodiversity Action Plan priority and is recognised by the Government as a:

"...nationally important and rare habitat in the lowlands and it has been estimated that less than 5,000 ha remain...This habitat is of national importance irrespective of whether it is deemed a poor example..."

- 8.222 The letter goes on to state that, apart from the lowland acid grassland component within FAW and the species such a habitat would support, the area provides a role:

"...as part of an important dynamic functioning landscape linking Ashenground Wood to the south, Reading Wood to the north, Foundry Brook gill and the hedgerows to the west. This association is well established and complex. The loss of this key landscape component will affect the functioning of the remaining habitats."

- 8.223 EN's points about FAW's role in the complex of surrounding woodlands, as well as the importance in biodiversity terms of open areas and 'glades' within woodlands has already been discussed above. With regard to the lowland acid grassland component within FAW, however, this is listed as a "*habitat of principal importance for the conservation of biological diversity in England*" under S74 of the Countryside and Rights Of Way Act 2000 (CROW) (Doc 98).

- 8.224 Bearing the nationally-recognised importance of this habitat in mind, EN made clear its opposition to Mrs Fisher's idea (Doc 81, p3.5.2) of "*possible turf translocation of the grassland to other areas.*" EN stated (Doc 17, appx 16.1, pg2) that:

"The suggested translocation of soils is not a substitute for in situ conservation."

- 8.225 It needs to be borne in mind that: (i) the fact that Mrs Fisher accepted in cross-examination that she had no knowledge or experience of any translocation of this nationally important habitat having ever occurred; and (ii) the fact that the Joint Nature Conservation Committee (JNCC) stated in its July 2003 Report (Doc 100, p7.1) that :

²⁰ Inspector's note: Although reference is made in closing submissions (Doc 30) to Natural England having made this response, at the time it was made the body responsible was English Nature.

“The translocation of habitats is considered by the statutory conservation agencies not to be an acceptable alternative to in situ conservation. The statutory conservation agencies will continue to make the strongest possible case against translocating habitats from within SSSIs and from ancient habitats (or other areas with significant biodiversity interest) elsewhere.”

Conclusion

- 8.226 Even if it is concluded that EN was wrong to include FAW within the revised Ancient Woodland Inventory for Mid Sussex, it is clearly, nevertheless, a site of national biodiversity importance for which PPS 9 at paragraph 11 provides clear protection (CD4).
- 8.227 Furthermore, Policy C5 from the 2004 Local Plan (CD14) as well as ERA2 from the Structure Plan (CD13), which Mrs Fisher accepted in cross-examination apply to be considered in respect of FAW even if it were not AW, both apply to safeguard FAW from development, with the latter giving *“a particularly high level of protection to sites of national and local importance”*.
- 8.228 Bearing in mind the JNCC's clear rejection of translocation as a viable alternative, and Mrs Fisher's lack of experience as to whether such a process could safeguard the acid grassland component of FAW, the mitigation measures being proposed by CN are not satisfactory.
- 8.229 For all of the above reasons, and in the event that a decision is made that FAW should not have been included in the revised Ancient Woodland Inventory for Mid Sussex, CN's plans for development in the area would fall foul of PPS 9 paragraph 11, as well as Local and Structure Plan policies, and should be unambiguously rejected.

B Buffer Zones

General Background

Introduction

- 8.230 Note should be taken of the BZs which CN has provided at Phases 1-3 of Bolnore Village (Doc 17, appx 23 & Doc 193, pg27-29). It is MSDC's contention that many of these BZs are manifestly unsatisfactory for the simple reason that so much of the development comes too close up to the edge of woodland.
- 8.231 All sides agreed that the close proximity of built development to trees has the potential, at least, to lead:
- 1) to harm being caused during and after the construction phase of development to the roots of trees;
 - 2) to pressure being brought to bear by future occupiers of the built development on local planning authorities for permission to be granted to either lop or fell trees; and

3) to a reduced ecological benefit.

8.232 The potential for harm was identified in Keepers Of Time (Doc 17, appx 19, pg5, bullet point 6) which states:

“Even if the woodland itself is protected, it can suffer serious disturbance where houses or roads are built right up to its margins, both directly from the impact of development, or indirectly through changes to drainage. Dumping, cutting back of trees and shrubs along the woodland edge and unmanaged recreational and access pressures are also threats in many areas.”

8.233 The simple truth of CN's position in this case is that, as Mr Pyke accepted in cross-examination, CN is suggesting as an appropriate BZ for the development of Phases 4 and 5 of Bolnore Village, where this would adjoin woodland, an average width of 7.7m (from the trunks of trees to the edge of the protected area). MSDC has consistently maintained that the types of harm listed above at paragraph 8.231, 2) and 3) would arise if such limited BZs are found to be acceptable.

Agreed points on buffer zones

8.234 Mr Pyke and Mrs Fisher both accepted in cross-examination that ecological BZs play an important role in linking areas of ecological sensitivity - what PPS 9 paragraph 12 describes as “*networks of natural habitats*” which “*provide a valuable resource.*” Both accepted that the importance of the linkage role is accentuated when areas of AW are intended to be linked.

8.235 They also both accepted MSDC's view that root protection areas (RPAs) are different to BZs in that :

1) the RPA is designed to provide protection for a significant portion of the roots of a typical tree, but takes no other consideration into account; and

2) a BZ incorporates the RPA and provides for other factors such as ecological integrity.

8.236 Mr Pyke accepted in cross-examination that BS 5837:2005 is “*concerned with the relationship between trees and structures, but has no bearing on ecological factors.*” In other words, the BS does not apply to point 2) in paragraph 8.235 above. He also accepted that there is no consistent guidance on what the size or shape of BZs close to built development should be, a point borne out in the “*Threats to Ancient Woodland*” document from December 2001 (Doc 17 appx 8, p6.11).

8.237 Both Mr Pyke and Mrs Fisher accepted that the clearly stated view of EN from its consultation response was that the BZs which had been proposed around areas of AW within Phases 4 and 5 are “*inadequate and should be significantly increased in size...*” (ibid, appx 16.1, pg3).

8.238 As to the appropriate size of BZs around ancient woodland, as recommended by various organisations, they accepted:

- (iii) that NE had said there should be 20-50m (Doc 17, appx 34);
- (iv) the Woodland Trust (WT) recommended 15-30m (ibid, appx 20); and
- (v) the SWT recommended 20-30 m (ibid, appx 15²¹).

8.239 It should be noted CN made reference to the Weald Ancient Woodland Survey which, in its original form, stated that Council officers would recommend using “10m buffer zones as a barrier round ancient woodland sites.” (Doc 17, appx DRB 1.2, pg 30, p7). This was an incorrect entry and Wealden District Council sought to remedy the inaccuracy immediately it was discovered (Doc 18, p1.6 and Annex E).

8.240 Finally, Mrs Fisher stated in cross-examination that CN would not be as capable of managing the proposed BZs as MSDC. The position of Mrs Fisher's client on this point remains uncertain, but MSDC (and the LCOs) agree with her and have put forward a Statement of Common Ground (CD 65) on the future management issue, which is discussed in more detail in paragraphs 8.258-8.259 below.

The Application of BS 5837:2005

8.241 MSDC's view is that not even the BS (CD37) has been correctly applied in CN's calculations of its RPAs. Although the BS sets out a clear system for calculating bare RPAs there are a number of 'other factors' set out within the BS for which no account appears to have been taken. These factors include :

- 1) root morphology (p5.2.4);
- 2) eventual height (p5.3.2, 10.1.1, 10.3);
- 3) shading (p5.3.1, 6.3.2);
- 4) movement in strong winds (5.3.2, 6.3.4);
- 5) water demand (10.1.2);
- 6) leaf fall (6.3.5); and
- 7) sensitivity to disturbance (5.2.4).

8.242 It is accepted that the BS provides no prescriptive methodology for building in any of the factors listed above. Nevertheless, they are clearly of interest and concern where built development is to adjoin significant wooded areas, some of which are ancient. Bearing

²¹ Inspector's note: The SWT response does not specifically mention 20-30m; in the context of Reading Wood it indicates that “a starting point for the size of a buffer strip should be roughly equivalent to the height of the trees on the edge (say 20m)”. It then states later that “a buffer strip of around 20m in size is needed in order to maintain the conservation interest of the wood...”. Its document Landscape Buffer Strips (CD 40A, pg4) states that in the past it has used a 'rule of thumb' of a 'safe' 30m for buffers around the most sensitive and valuable areas such as ancient woodland, and 20m in other cases.

this point in mind, it remains extraordinary that there is no overt reference to any of these factors by Mr. Laddiman (responsible for the tree surveys), Mr Pyke or indeed Mrs Fisher.

- 8.243 In other words, by calculating the RPA using the BS and adding 1m, the prescriptive element of the BS has been strictly adhered to, but there is no evidence that the other factors listed above have been given any detailed consideration.
- 8.244 Furthermore, Mr Pyke treats the root systems of the trees he is dealing with as wholly symmetrical, a point which is clearly illustrated in his plans for RPAs at Phases 4 and 5 (Doc 105, plan 1859-TP-10 (NGP 01) Rev F). It appeared from his cross-examination that he based his views on the symmetrical tree root approach within the Biddle publication (Doc 108).
- 8.245 However, as Mr Baker explained in evidence, the BS is based on research not by Biddle but by Matheny and Clark in 'Trees and Development' which is included in Mr Baker's evidence (Doc 15, p3.3.2 & Doc 17, appx 22). This makes the point at page 16 that there is a "myth" that "tree root systems form a circle around the canopy" of a tree, whereas the reality is that "root growth is highly opportunistic, creating very asymmetric forms."
- 8.246 MSDC's conclusion on the use of BS 5837:2005 remains that CN's application of the RPA calculation with the simple addition of 1m fails to provide any evidence of the many factors considered by Mr Baker, and listed at various points within the BS, as having been properly taken into account. That point is starkly borne out by the fact that all of Mr Pyke's calculations show a symmetrical root system for trees when, if each tree had been thoroughly considered according to its individual merits and characteristics, then an asymmetric pattern of protection would have emerged (Doc 15, p3.3.5).

The Alternative Approach

- 8.247 Even if it is considered that the BS has been properly applied by CN in this case, MSDC's view is that this does not, and indeed cannot, provide for the ecological, as opposed to simply the tree protection, elements of a BZ.
- 8.248 The distances recommended for BZs by EN, the WT and the SWT should again be borne in mind. These were all expressed as "minimums" for BZs around ancient woodland. Clearly, those BZs would be designed to achieve a far wider ecological objective of the sort described in SWT's letter of 16 December 2004 (Doc 17, appx 15, pg2):

"A starting point for the size of a buffer strip should be roughly equivalent to the height of the trees on the edge (say 20m). Furthermore, this should be a conservation feature, not a re-creation feature – i.e. the strip should not be destroyed during house construction in the hope that it might be re-created later. As well as being valuable ecologically this is important practically. Occupants in new housing developments often complain about trees in adjacent woodlands fearing that they may fall onto their houses. Consequently there may be demands to shrink the size of the wood, even though it is outside the development zone."

- 8.249 The above passage sets out in the clearest possible terms the two essential functions of BZs in: protecting ecology; and safeguarding woodland from future development

pressure. Both those functions require a space well beyond the simple RPA and small additional area which CN is offering.

- 8.250 For MSDC Mr Baker went through his plan of what the appropriate BZs should look like within Phases 4 and 5. It became apparent when he gave evidence, both with regards to the original (Doc 17, appx 38) and revised GYTOG calculations (Document 18, Annex B) that he had considered each individual tree on both occasions.
- 8.251 That approach was obviously quite different from Mr Pyke's, as was the effect in producing an asymmetrical pattern for MSDC's proposed BZs. The GYTOG methodology was used, as explained in evidence, as this allowed the incorporation of factors which were mentioned in the BS (as listed above), but for which no prescriptive methodology of calculation was set out (Mr Baker, oral evidence).
- 8.252 The GYTOG methodology had been updated prior to the formation of Mr Baker's plans and MSDC's calculations, according to the revised data, led to a relatively small difference between parts of Mr Pyke's and Mr Baker's plans (Doc 18, Annex J).
- 8.253 This methodology provides a way for ecological objectives to be taken account of, and incorporated within, an ecological BZ which is what CN claims to be providing, but which it is patently not providing in this case. It provides a working system by which the types of factor that need to be properly considered in this case can be taken into account. It provides, on average, more than what CN has said it is prepared to give, but that does not mean to say that it provides a suitable minimum ecological BZ for development along the edge of specially protected woodland.
- 8.254 The GYTOG system was specifically not designed to provide ecological protection around AW sites and Mr Baker made it clear that he agreed with the figure suggested by various organisations that 15m would be an absolute irreducible minimum requirement. As Dr Whitbread said in examination-in-chief:

"I cannot see how a thinner BZ than what we are asking for can achieve biodiversity and eco-tonal habitats between the woodland habitats."

- 8.255 MSDC's view remains clear therefore that a minimum of 15m should be applied adjacent to all AW within Phases 4 and 5, even where calculations using the revised GYTOG methodology provide less than that absolute minimum. Any reduction from that minimum would fail to achieve the appropriate ecological objectives and, as noted from her cross-examination, Mrs Fisher could not recollect a single example within her experience outside of Bolnore Village, where residential development was permitted within 7-8 m of AW.
- 8.256 Finally, the Badger Trust - Sussex made its views clear not only that FAW should not be developed, but that the BZs currently under offer from CN would provide inadequate foraging for badgers living in and around Phases 4 and 5 (Doc 248, section F). The Badger Trust asked for a minimum of 15m be provided and stated that this should include badger pathways which would "increase the foraging area and keep the public at bay" (Ms Parker and Ms Scrivens, oral evidence).
- 8.257 The Badger Trust's contribution appears to MSDC to provide a neat example :

- 1) of the varied ecological purposes of a proper BZ; and
- 2) the potential consequences to biodiversity if unsatisfactory BZs are eventually provided.

Future Management

8.258 Mrs Fisher said in cross-examination that CN would not be as capable of effectively managing the BZs as MSDC. Both MSDC and LCOs enthusiastically agreed to her thoughts on this issue. As a result, a Statement Of Common Ground regarding Policy HH7 from the 2004 Local Plan (CD14) was prepared (CD65).

8.259 It is suggested that the future management of ecological areas would be best secured by a transfer of land to MSDC with a commuted sum and that MSDC should then be free to negotiate with the LCOs regarding their future maintenance and management (CD65, p1.1.5). With regards the future management of the BZs (amongst other areas within Phases 4 and 5) this would:

- 1) entirely accord with Policy HH7;
- 2) be beneficial in terms of biodiversity;
- 3) fit in with MSDC's current (well received) management of Ashenground Wood;
- 4) as far, in particular as the BZs are proposed, allow the prevention of ecological harm arising during the construction phase of development; and
- 5) receive clear support from within the local community which is concerned to see, as Dr Whitbread made clear, ecological protection of the status quo rather than re-creation of important habitat after it has been destroyed.

Conclusion

8.260 For all of the reasons outlined above MSDC asks that:

- 1) its revised BZ plans be accepted and the plans submitted by CN rejected on the basis that the latter:
 - (a) provide for inadequate ecological protection;
 - (b) fail properly to cater for activity within and possible pressure for interference by future residents and/or members of the public using the BZs; and
 - (c) fail to meet the objectives set out at PPS 9, paragraph 12;

- 2) a minimum BZ width of 15m around AW areas must be provided; and
- 3) there is agreement to the terms set out in MSDC's and the LCOs' Statement Of Common Ground regarding the application of Policy HH7 from the 2004 Local Plan.

AFFORDABLE HOUSING

Background

Introduction

- 8.261 MSDC has been genuinely taken aback by CN's approach to the whole affordable housing issue. CN has, in MSDC's submission:
- (i) consistently failed to provide adequate and timely information to MSDC or to the Inquiry (considered further below);
 - (ii) repeatedly shifted its position as regards important factors feeding into the viability calculations that had to be made as the Inquiry progressed, for example on the proposed densities of development at Phases 4 and 5;
 - (iii) claimed inconsistencies in MSDC's approach on the provision of affordable housing;
 - (iv) questioned the validity and applicability of MSDC's requirement for serviced land for affordable housing to be provided at nil value and yet;
 - (v) entirely failed to provide any plausible justification as to why an exception should be made in this case.
- 8.262 It emerged early on in the Inquiry that CN in fact acknowledges that its scheme for Phases 4 and 5 is "viable". It transpired that the scheme remained viable even with the removal of 60 units to cater for the preservation from development of FAW and a further 60 units for the proposed ecological buffer zones (Doc 145).
- 8.263 All of this would have become apparent to CN even before the commencement of the Inquiry proper if it had taken the opportunity to open its books to the District Valuer (DV), or even if it had provided, when repeatedly asked to by MSDC, the information it undoubtedly had (and which Mr Turner accepted it would and should have) from its own internal assessments on the whole viability issue.
- 8.264 MSDC's letter of 27 September 2006 proposed a wholly confidential viability assessment to be conducted by the DV (Doc 151). CN rejected that offer and continued to drip feed information to MSDC and the Inquiry. As a consequence of CN's approach, further work was carried out on various occasions by the DV at considerable cost to MSDC.

- 8.265 This work continued to prove that the development of Phases 4 and 5 would be highly profitable for CN and that there is simply no question of the scheme becoming unviable if serviced land for affordable housing is provided at nil value. Without this work having been commissioned from the DV, the Secretary of State would not have been provided with any proper information on which to assess the issue of whether CN's scheme at Phases 4 and 5 remains viable with the provision of serviced land for affordable housing at nil value. That is surely a most remarkable state of affairs.
- 8.266 Bearing in mind the absence of a cogent case justifying its stance on the affordable housing issue, the question has to be asked: why has CN conducted itself in such an extraordinary manner?

The Supply of Information by CN

- 8.267 There has been a failure on the part of CN to supply adequate information throughout the lead up to, and indeed, the course of the Inquiry. For the record and so that there is full awareness both of the requests MSDC made for adequate information to be supplied, and the steps CN actually took to supply it, the timeline is set out below :

- 1) on 19 May 2004, a meeting took place between CN and MSDC in which CN stated that the development of Phases 4 and 5 would not be viable if it was required to provide serviced land for affordable housing at nil value. MSDC asked CN to supply a financial viability assessment in support of that contention (Doc 9, p3.3). Nothing was provided;
- 2) in June 2006, the issue was raised again. MSDC suggested that it could carry out a financial viability assessment and invited CN to participate in this and to supply the requisite information so that the exercise could be undertaken (ibid, p3.4). No reply to this suggestion was received;
- 3) on 18 July 2006, MSDC asked CN's Managing Director whether CN intended to supply information to support its views on the financial viability of Phases 4 and 5. The Council was informed that CN would not be providing this information (ibid, p3.5);
- 4) by the time the DV submitted his initial report on 29 August 2006 (Doc 28) only a theoretical exercise could be carried out to examine whether the scheme was financially viable, since so little information had been supplied by CN. As the DV explained in examination-in-chief, his original report did not constitute a full viability assessment but rather an initial study to see if CN's claims could be validated. They could not;
- 5) MSDC wrote to CN on 27 September 2006 offering a confidential open book assessment by the DV (Doc 151). This was rejected;
- 6) on 10 October 2006, CN rejected MSDC's confidential open book assessment offer and supplied some further information (Doc 152) which, the DV explained in examination-in-chief, "remained deficient";

7) the DV prepared his Proof of Evidence on the basis of this latest information. That proof set out the DV's conclusions as to the scheme being 'highly viable' according to the five scenarios H(i) – H(v) (Doc 29);

8) an e-mail from Mr Turner on behalf of CN to the DV of 2 November 2006 requested a meeting and supplied more evidence (Doc 153);

9) a meeting took place on 9 November 2006;

10) the DV expressed his view in examination-in-chief that it was only following that meeting that he considered he was privy to all information that was necessary and relevant to his own financial viability assessment, as a result of which the DV produced scenario H(vi) on 13 November 2006 (Doc 154).

8.268 The DV, who is highly experienced and impartial, made it clear that he considered that information had been drip fed to him by CN and that CN's own expert appeared to him to have been poorly supplied with information by his client. The DV also stated that, as a consequence of CN's conduct, he had been forced to estimate viability based on his knowledge and experience of viability assessments, but that his various assessments had proved to be reasonably accurate and robust.

8.269 In November 2006, the DV gave evidence to the Inquiry on his view of the viability issue. Only after his evidence was given did CN announce its intention to call Mr Turner to give evidence. Nothing further was supplied by Mr Turner than the two page set of figures he had provided with his original proof of evidence (Docs 144 & 145).

The principle of Serviced Land at Nil Value

Local Plan Policy H4

8.270 Policy H4 of the 2004 Mid Sussex Local Plan (CD14) sets out a requirement for affordable housing on all proposals for 15 or more dwellings or on sites of 0.5 ha or more. The policy states that MSDC will seek to negotiate a reasonable proportion of affordable housing on these sites, generally 30%, 25% to be subsidised and 5% to be low cost.

8.271 Paragraph 5.41 of the Local Plan states that: "*Affordable housing involves a subsidy (e.g. grants or land at a discounted price)*". Policy H4 third paragraph states that:

"The subsidised housing element of any development which is provided in accordance with this policy should be secured so that it will be available in perpetuity to meet local needs and should benefit from a subsidy so that it is available at affordable rents."

8.272 In line with Government guidance, a lower level of affordable housing may be acceptable to MSDC where a higher provision would prejudice the commercial viability of the scheme.

Supplementary Planning Guidance (SPG)

8.273 The background to MSDC's application of Policy H4 was dealt with in examination-in-chief by Mrs Standing, following a note from CN criticising MSDC's Supplementary Planning Guidance on the policy (Doc 131):

1) MSDC's SPG of November 2000 left open to interpretation the question of whether serviced land for affordable housing was required to be delivered at nil value. Paragraph 4.12 states that: "*The S106 will ensure the provision of the necessary subsidised housing units as part of the overall scheme in either of the following two ways: (i) the land is made available to an approved RSL at nil cost (or with the value of the land reduced to such an extent that subsidised housing can be provided at a norm grant rate...or (ii) in exceptional circumstances the developer builds the subsidised housing and then transfers the ownership and management of the housing to the RSL.*" Mrs Standing explained that, from 2000, MSDC sought the provision of free serviced land in almost all cases;

2) further SPG from May 2004 made clear that free serviced land was required in all situations i.e. including when completed units were transferred to an RSL (CD23, p4.12). CN criticised MSDC for introducing this change through a "minor amendment" and without consultation (Doc 130, p3.3-3.5 & Mr Parker oral evidence). MSDC regarded this as a clarification of the policy (i.e. it follows that if free land is required to deliver affordable housing at a norm grant rate then this principle must apply to completed units). Mr Parker also accepted in cross-examination:

- (a) that CN knew of the change,
- (b) that it had made no criticism of MSDC at the time as far as he was aware, and
- (c) had not sought in any way to challenge MSDC's actions;

3) a further draft SPD was issued for consultation in August 2005. This made clear (at paragraph 3.5) that serviced land should be provided "*at nil cost*" (Doc 139, p3.5). CN is listed in the February 2006 responses document as an objector to various aspects of the draft SPD (Doc 140). Yet no objection was received from CN on the nil cost requirement. The only objection to that point was received from the East Grinstead Development Corporation (EGDC) of which CN was not a member. MSDC rejected the EGDC's objection without any criticism or objection being heard of from CN; and

4) the new SPD was finally adopted in February 2006 (Doc 10, appx 2). Again, no criticism, objection or challenge was heard from CN.

Other Support For MSDC's Nil Value Requirement

8.274 The following points with regards to MSDC's policy on the provision of free serviced land at nil value for affordable housing should be noted:

- 1) all West Sussex district councils, with the exception of Chichester and Horsham, required free serviced land from 2004 (Doc 10, appx 4). Both Horsham and Chichester have since moved to a free serviced land policy;
- 2) the West Sussex Planning and Affordable Housing Group commissioned a study from Adams Integra in August 2005 to examine various issues connected with the potential impact (in terms of the soundness of LDFs) from affordable housing policies on the deliverability of development schemes (ibid). The report stated that the free serviced land requirement was "an approach which Adams Integra feels is sound" (ibid, p2.7.2, also at Doc 138);
- 3) the Housing Corporation has written two letters to MSDC (in 2003 and 2006) stating that "*The assumption is that land will be passed on to an association at no cost*" (Doc 10, appx 3);
- 4) various S106 Agreements were presented to the Inquiry to demonstrate that CN has accepted MSDC's requirement to provide serviced land at nil value in respect of developments at
 - (a) Queen's Road, Haywards Heath in December 2003, (Doc 135, p11.3),
 - (b) Hemsley's Nurseries, Pease Pottage in September 2005, (Doc 134, p4.3), and
 - (c) Folders Lane, Burgess Hill in May 2005, paragraph 4.3 (Document 136, p4.3).

8.275 All of the above provide robust support for MSDC's contentions:

- 1) that, according to Policy H4 of the 2004 Local Plan and supporting guidance, 30% affordable housing with free serviced land should be provided as a matter of principle;
- 2) if any scheme is claimed not to be viable were MSDC's policy to be applied, the onus rests firmly with the developer to demonstrate why an exception should be made;
- 3) CN has consistently failed to either object to or to legally challenge MSDC's policy on the affordable housing requirement set out above; and
- 4) CN has consistently accepted those requirements at other development sites across Mid Sussex.

Consistency of MSDC's Approach

- 8.276 CN criticised MSDC for insisting on a 30% provision of affordable housing for Phases 4 and 5, on the basis that only 18% was required at the St. Francis Hospital site (Doc 128, p2.34 & Doc 74, p1.2 & 6.1). Both references alleged an inconsistency in MSDC's approach.
- 8.277 Both Mr Parker and Mr Rees for CN were referred in cross-examination to paragraph 14.28 of the Inspector's Report on the St. Francis Hospital Site (Doc 5, appx 30). This

needs to be considered alongside the plan showing sites X, Y and Z which the Inspector referred to (Doc 5, appx 16). As paragraph 14.28 of the Inspector's Report makes clear:

"...when assessed in the context of the site Z development which is entirely made up of affordable dwellings (57 units), the proportion of affordable housing on the whole St. Francis Hospital development rises to about 35% (97 units out of 279)."

8.278 After being taken through these points in cross-examination Messrs Parker and Rees accepted that MSDC's 30% affordable housing requirement was set at the appropriate level in respect of Phases 4 and 5 and that the 30% requirement was consistent with the St. Francis Hospital development.

8.279 CN's other criticism concerning the consistency of MSDC's approach on its affordable housing requirements (Doc 128, p2.33) was that MSDC :

"have recently completed a planning agreement with the Secretary of State for Health in respect of the St. Francis Hospital site which secures only a 50% discount on land value...".

8.280 However, Mr Parker accepted in cross-examination:

1) that the original permission for the St. Francis Hospital development was dated March 2002;

2) that this permission came about further to a resolution to grant made in April 2000; and

3) that MSDC had accepted a 50% discount in that case, despite this compromising the prospects of attracting grant to the scheme, because it felt bound by its original agreements on affordable housing provision.

8.281 The case regarding the provision of free serviced land for affordable housing at the St. Francis Hospital development was patently different to that prevailing at Bolnore Village where Phases 2 and 3 (which were governed by the 1998 Agreement, drawn up before MSDC's free serviced land policy and guidance came into existence), required MSDC to meet a shortfall of £660,000 in the cost of affordable housing provision.

8.282 Mrs Standing made clear in examination-in-chief that MSDC had been prepared to step in and contribute large sums of taxpayers' money to secure the appropriate level of affordable housing at Phases 2 and 3 on the basis of an old S106 Agreement and that MSDC's largesse could not, and would not, be repeated in the case of development at Phases 4 and 5. It would also be self-defeating to do so as this would prejudice the receipt of Housing Corporation grant, because it would increase the total public subsidy to a level that would not meet the Housing Corporation's value-for-money criteria.

Preferred Registered Social Landlords

The Issue

8.283 MSDC recognises that PPS 3 (CD3) discourages local planning authorities from seeking to determine which affordable housing provider developers work with. On the basis of PPS 3 guidance, CN has criticised MSDC's approach at Bolnore Village.

8.284 This stance continues to puzzle MSDC. Mr Parker accepted in cross-examination:

1) that MSDC would be most assured of attracting grant through the appointment of a Registered Social Landlord (RSL) which meets all of the Housing Corporation's "Green Light" criteria on

- (a) governance,
- (b) viability, and
- (c) development and management quality;

2) that MSDC's three preferred RSLs (Hyde, Downland (Affinity) and Moat) all meet those criteria;

3) that all three preferred RSLs are national players which have good track records for attracting funding;

4) that all three RSLs have worked with CN on other development schemes throughout Mid Sussex; and

5) that both Hyde and Downland (Affinity) have successfully worked with CN on Phases 2 and 3 of Bolnore Village.

Conclusion

8.285 Mrs Standing clearly stated in cross-examination that, as far as MSDC was concerned, CN had always been and still remained free to put forward any suggestions it may have on an alternative RSL of its own choosing which could meet the standards and objectives set out above. CN has not, thus far, taken that opportunity.

8.286 On that basis, and bearing in mind the history of CN's relationship with all three of MSDC's preferred RSLs, in all the particular circumstances pertaining at Bolnore Village, MSDC's approach is justified and appropriate.

8.287 If that approach is not carried forward, MSDC considers there to be a significant danger of an alternative agenda coming into play on this issue. MSDC believes that CN wishes to remain free to appoint an RSL which will be prepared to pay the company a higher price for affordable housing in Phases 4 and 5, i.e. a price which is not likely to reflect land at nil value.

8.288 In MSDC's view, such an outcome could prejudice the chances for Phases 4 and 5 delivering affordable housing of the required quantity and quality as well as undermining its land at nil value policy.

Fallback or Cascade Arrangements

8.289 MSDC accepts the need for a cascade arrangement in the event that insufficient grant is available to deliver the preferred affordable housing scheme. MSDC's standard cascade clauses allow for the developer to sell units to the RSL in advance of the receipt of grant, thus ensuring developers receive their money no matter what, and there is no delay in the development.

8.290 The RSL would apply to MSDC to vary the scheme if there were insufficient grant. This gives both parties (MSDC and the RSL) an opportunity to take a more flexible approach to achieving as much as possible of the original affordable housing scheme.

8.291 CN wants the right to decide unilaterally to sell all affordable units on a shared equity basis if it itself fails to enter into an agreement with an RSL. This, in MSDC's view, provides CN with no incentive to reach such an agreement and is clearly unacceptable (Doc 9).

8.292 Further details on this particular aspect of CN's suggestions on its delivery of affordable housing at Phases 4 and 5 and MSDC's attitude to them are set out in MSDC's comments below at paragraphs 8.321-8.333 on CN's draft Unilateral Undertaking (UU).

Integration of Affordable Housing Units

8.293 MSDC has agreed, in principle, the maximum size of clusters that would achieve integration (between 12-20 units of affordable housing) (Doc 9, p5.2). However, CN's plans showing the proposed locations of affordable housing units, indicate clusters in different sub-phases separated by only a road, thus giving the impression of a coalescence of clusters which should be well separated from one another throughout the development (see Plan O, Masterplan).

The Viability Question

The DV's methodology

8.294 In essence, each of the DV's scenarios H(i) – H(v) (Doc 29, Annex H):

- 1) assessed the total development density to be expected at Phases 4 and 5;
- 2) estimated from that the capital values that could be achieved;
- 3) assessed the development costs;
- 4) considered a number of other factors; and
- 5) assessed the overall viability and profitability of the proposals.

- 8.295 H(vi) is adapted from H(i) – H(v) by splitting out the actual development costs of the social housing to view these against the estimated capital value and from that to judge whether social housing is being provided at nil value (Doc 145).
- 8.296 In other words, the methodology for H(vi) does not change, but one stage of the process is being highlighted to see whether at a price for affordable housing of £1,500 per m² CN would continue to make an appropriate profit.

Issue (i): Density

- 8.297 This was an issue dealt with in cross-examination of both Messrs Harris and Turner. The latter had worked on the basis of 1,760 m² per acre of development being achieved, the figure provided in CN's ES. The DV had worked on 1,890 m² per acre as being a realistic figure.
- 8.298 On both 1,760 m² per acre and 1,890 m² per acre the DV concluded that the development of Phases 4 and 5 was viable such that serviced land at nil value could be provided.
- 8.299 Mr Harris supplied new information on density in January 2007 in which, for the first time, he suggested that only 680 units would be constructed at Phases 4 and 5 at 1,677 m² per acre (Doc 49). He did not claim that this assumption affected the viability of the scheme, and the DV did not have an opportunity to present evidence to test this new scenario. However, it has been the DV's contention throughout that only at an extremely low density would the viability of the scheme be in doubt, as reductions in the square meterage developed result not only in a reduction in sales value but also in development costs. Even at a density of 1,677 m² the scheme would be viable on the basis of the provision of free serviced land for affordable housing.

Issue (ii): Capital Values

- 8.300 Mr Turner and the DV were in broad agreement as to the likely capital values of the market units. In terms of the affordable units, scenario H(vi) showed that, at £1500 per m² paid to CN by the RSL, the former would make a substantial profit (Doc 145). MSDC has offered a guarantee that this sum would be paid, a fact which appears to have been recognised in the 'Inspector's Route Map To The Planning Obligation, Outstanding Matters, Issue A' (Doc 165) which states:

"MSDC's position is that the affordable dwellings should be transferred to a social landlord of their choice at £1500 per square metre inclusive of fees and costs which figure is to be fixed until April 2009."

- 8.301 With development costs of £1,177 per m², and based on median build costs, CN would make not only the 8% profit (£1.78 million) that would be considered the norm for affordable housing, but also an additional super profit of £3.4 million, making a total profit on affordable housing of £5.187 million (Doc 145, pg2).

8.302 This represents 23% profit on capital value, almost twice what CN would expect as a proper return for affordable housing (12%) (DV and Mr Turner examination-in-chief).

Issue (iii): Development Costs

8.303 The DV advocates the use of the lowest bracket of build costs from the Building Costs Information Service (BCIS) figures on the basis primarily of the scale of development at Bolnore Village and the lack of any complicating factors which might lead to an increase in costs. He stated his opinion in examination-in-chief that he had been provided with nothing to convince him that any unusually high build costs would be incurred, for example because of contamination of the land at Phases 4 or 5.

8.304 The median BCIS figures show build costs for houses at £767 per m² and for flats at £920 per m². The BCIS figures the DV has used were the most up-to-date available and were taken from the Sussex area (DV examination-in-chief).

8.305 On the basis that median build costs are applied, the DV and CN were agreed on the cost of developing the affordable housing, and only 10% apart on the cost of the market housing (Doc 145, comparison table pg2).

8.306 This is not a material difference, and whether it is considered that lower or median build costs should apply in this case, the various scenarios drawn up by the DV which use the latter figures demonstrate that Phases 4 and 5 remain financially viable.

Issue (iv): Other factors

(a) Land Value

8.307 In the DV's scenarios H(i) – H(v) he had used a figure for land values of £1.5m per acre (Doc 29, Annex H). The Inquiry was informed that CN would pay a slightly lower sum which includes an equalisation payment for shared infrastructure and access costs.²²

8.308 This was the figure used by the DV in scenario H(vi), in which the DV concluded that, even after the subtraction of the expected equalisation payment, the land owners would receive about £22 million from CN (Doc 145). The land had not been purchased at the time of the applications or the Inquiry and the contractual details of any proposed purchase were not made known to the Inquiry.

8.309 The alternative use of the land at Phases 4 and 5 being for agricultural purposes, the total value would be £100,000 or less (Mr Turner, XX).

8.310 Mr Turner claimed that landowners may wish to hold back from selling the land to CN, effectively holding the development to ransom, on the understanding that access could be gained from some other point than that shown on the current plans (Doc 141, p9.5 and oral evidence). However, he also accepted in cross-examination that he had not known of the provision of Policy HH2 from the 2004 Local Plan (CD 14) which states at (a):

²² Inspector's note: The actual value was made known to the Inspector on a confidential basis.

“All vehicular access to the site will be from Haywards Heath Relief Road in the general locations shown on the Proposals Map. There will be no vehicular access to any of the new housing areas from the existing residential road network.”

(b) Easement and Connection Charge

- 8.311 Mr Turner set down the “clean serviced land” value at £39,539,22. He deducted £15,373,815 leaving £24,165,406. In the DV’s view these figures showed Mr Turner correctly reducing the amount that would be paid by CN to the land owners by the amount of the equalisation charge.
- 8.312 In other words, it would not be CN which bears the cost of the equalisation payments that would be made; it is the land owners. As a result, the DV treated the equalisation payments as a part of the cost of the land purchase throughout his scenarios H(i) – H(vi) (Doc 29).
- 8.313 Another way of looking at it is to consider (a) the price CN is actually paying the owners (about £23.6 million) as against (b) the usual price for development land in the area (about £1.4 million per acre) giving a total of about £37 million over 27 acres. The difference is the cost of the equalisation payment which CN is taking off the purchase price.

(c) Profitability

- 8.314 As set out in paragraph 8.302 above, CN claims to expect profit levels of 12% on the affordable housing element of Phases 4 and 5. In the DV’s view that is an unrealistic figure in most developments (the Housing Corporation development appraisal tool is based on 6% profit from affordable housing), but that, in any event, a figure much greater than 12% will in fact be achieved at Bolnore Village (DV, examination-in-chief).
- 8.315 In terms of market housing, the DV considered that any profit in excess of 15% showed the scheme to be viable (a figure the Housing Corporation also works to). That figure would not include finance and funding costs. Mr Turner stated that market housing should produce 20% profit but, as he accepted in cross-examination, this 20% figure includes finance and funding costs within the calculation. Once those costs are stripped out, Mr Turner’s required viability figure reduces to 16%.

Issue (v): Overall Viability

- 8.316 It should be noted that on scenario H(i), the DV calculates that CN will make 28.9% profit on capital values and on H(vi) CN would make 22.7% (Doc 29, Annex H).
- 8.317 Two assumptions have altered on scenario H(i) since it was presented by the DV:
- 1) the educational requirement has reduced from about £4 million to £1.2 million; and
 - 2) the scenario was based on a 5% profit figure for affordable housing, whereas MSDC now accepts that 8% is an appropriate figure (24% would be achieved).

8.318 The DV related his opinion that scenario H(i) remains the most robust estimate of likely viability because it is based on :

- 1) an acceptable estimate of likely density;
- 2) lower quartile build costs;
- 3) valuation figures for market units which CN broadly accepts; and
- 4) a realistic figure of £1500 per m² that CN could expect to achieve for the affordable units.

8.319 Scenario H(vi) is accurate except for the fact that the DV has employed Mr Turner's density and build cost estimates, which he does not accept.

8.320 With the loss of 60 or 120 units (if Cell 5B1 was not developed and buffer zones were enlarged), profit on capital value would be 22.13% and 21.93% respectively, excluding finance and funding costs.

The Unilateral Undertaking (UU)(Doc 167)

General comments relating to affordable housing provision

8.321 No reference is made to the basis on which affordable housing land or units are to be transferred to a Social Landlord. In accordance with MSDC policy, this must be on the basis of the provision by the owner of free serviced land in order to deliver the units at a price that will attract Housing Corporation grant. The UU therefore needs to make reference to the transfer of serviced land at nil cost or the sale of affordable housing units to a Social Landlord at a price that reflects the provision of serviced land at nil cost.

8.322 The current Masterplan, and the UU, both fail to provide for the proper integration of the affordable housing units into the overall scheme, as required by MSDC policy and by best practice. The plan shows clusters in different sub-phases separated by only a road: this is not integration (Plan O). In order to achieve appropriate integration of the affordable housing units, allocation of land to meet the affordable housing requirements of the scheme needs to occur prior to commencement of the phase and not as an afterthought and solely in the context of sub-phases. References within clauses 7.1.20 and 7.1.21 to identifying land for affordable housing within sub-phases therefore needs to be replaced by a reference to identifying the affordable housing land across the entire site, to ensure appropriate integration.

8.323 The definition section describes the "Affordable housing mix", but the specifics of the scheme are not set out as they were in previous documents. For the avoidance of doubt, these details need to be included either in the definition of the Affordable Housing Specification or in a separate Affordable Housing Schedule, to be attached to the UU, as follows:

- a) The breakdown of house types specified requires enhancement to allow for

different family sizes: MSDC's analysis of housing needs within the District suggests that the mix required is: 30% 1 bedroom, 2 person dwellings; 40% 2 bedroom 4 person dwellings, of which at least 50% should be houses; 23% 3 bedroom 5 person dwellings and 7% 4 bedroom 6+ person houses.

- b) The Affordable Dwellings should be constructed to Housing Corporation standards in force at the time of construction and in accordance with MSDC's Supplementary Planning Documents.
 - c) Approximately 10% of the Affordable Dwellings should be constructed to Housing Corporation wheelchair standards or such other standards for disabled occupants as agreed with MSDC to meet local housing need.
 - d) The tenure mix should be 75% social rented to 25% intermediate tenure housing, or such other tenure balance as agreed with MSDC in writing.
- 8.324 MSDC needs to be satisfied that the Social Landlord is capable of raising the required finance, including grant funding, and of meeting the required standards of development, letting and management. MSDC would therefore need to approve the Social Landlord. The Definition section describes a 'Social Landlord' as one *"that has been approved by MSDC in writing."* For the avoidance of doubt, the words *"and approved by MSDC in writing"* should be included in 7.1.22.1 after "of their choice".
- 8.325 The Fall Back Position described in 7.1.23, 7.1.24, 7.1.30 and 7.1.31 is unacceptable. It does not encourage the owner to reach agreement with the RSL. In the event that the owners are willing to wait for two years without reaching agreement (not impossible in the context of the timetable for the development as a whole) it would be possible for them unilaterally to change rented for shared equity leases.
- 8.326 The valuation methodology set out in the Definition section under "Shared Equity Price" would allow CN to achieve higher profit levels on such shared equity homes than would be possible with the proposed 75% rent/25% shared ownership scheme, and could therefore make this CN's preferred option, rather than a fallback position. The reference under (ii) of this definition to restricting the amount to be repaid to MSDC to the original discount will allow CN to profit from any increase in property value and provide a further incentive for this option to be CN's first choice.
- 8.327 Under the definition of "Open Market Value", whilst MSDC does not accept that this is the appropriate fall back position, if it were to be used, then the OMV should be calculated by the District Valuer, who is a neutral party. Clause (vi) should be deleted, as there will be affordable housing on the site, so this assumption would not produce a genuine OMV.
- 8.328 Basing the price of units on a percentage of Open Market Value will not guarantee their affordability, as future property price increases cannot be known at this stage. The reference in 7.1.24(b) to "a price or premium exceeding the Shared Equity Price" suggests that the cost to the purchaser will not be limited even to Open Market Value as defined in the UU, making the affordability of these units even more doubtful.

8.329 It is further suggested that CN's fallback proposal, set out in 7.1.24(b) and 7.1.31(b), to sell units on a shared equity basis to individuals without involving a Social Landlord is not practicable. Nominations for both initial sales and resales of shared equity units need to be managed, and it is not clear what structures CN would put in place to manage this process over an indefinite period.

8.330 MSDC's view is that the cascade clauses should be deleted in their entirety and replaced by the following:

"No more than 50% of the Market Dwellings in any sub-phase (or two or more sub-phases) may be occupied prior to the Owner entering into an agreement with an RSL for the transfer to the RSL of the Affordable Housing Land or for the construction and transfer to an RSL of the Affordable Dwellings for that sub-phase or those sub-phases as the case may be, and no more than 80% of the Market Dwellings should be occupied until the Affordable Housing Units have been completed and transferred to an approved RSL."

8.331 MSDC's standard cascade arrangements provide for the Social Landlord to purchase the affordable housing units whether or not grant has been made available, thus ensuring that the development can proceed without delay. It is suggested that the following be substituted for the existing Fall Back clauses:

"The Affordable Housing Land shall be reserved for development by or on behalf of a Social Landlord approved by MSDC with the intention of providing affordable homes, with 75% of those homes being available to rent and 25% for shared ownership, or as required in writing by MSDC prior to the commencement of any sub-phase, in the light of developing housing needs within the District and/or the availability of funding."

Further comments on definitions

8.332 "Dwelling" – the reference to elderly persons' accommodation is too vague and could encompass a wide range of accommodation. The reference to "elderly persons" should be deleted, retaining the reference to "very sheltered accommodation".

8.333 "Planning Condition" 1.1. The same comment applies with respect to elderly persons' units as above under "Dwelling".

Overall Conclusion on affordable housing

8.334 In MSDC's submission, it should be found:

1) that Policy H4 of the 2004 Local Plan and the 2006 SPD provide the correct policy framework and should be accorded due weight;

2) that the onus falls on CN to demonstrate why an exception should be made in the present case such that serviced land at nil value should not be provided in respect of affordable housing;

3) that CN's conduct in the provision of information to establish its financial viability case means little weight can attach either to its criticisms of MSDC or to its own viability case at the Inquiry;

4) that the DV has comprehensively demonstrated the development of Phases 4 and 5 would be financially viable;

5) that CN, in the particular circumstances of this case and bearing its known relationship with RSLs at previous phases of development at Bolnore Village in mind, should be required to work with one of MSDC's approved RSLs for the provision of affordable housing units at Phases 4 and 5;

6) that MSDC's approach on the appropriate fallback or cascade arrangements to be made should be preferred; and

7) that CN should be required to comply with MSDC's requirements on the clustering of affordable housing units within Phases 4 and 5.

THE COUNCIL'S OVERALL POSITION

8.335 There is a lack of certainty regarding the completion of the HHRR. MSDC seeks the refusal of these appeals as the development of Phases 4 and 5, without a satisfactory linkage to the completion of the Relief Road, would be too damaging in terms of congestion on the highway network. If it is considered that a conditional permission should be allowed, then a 'Grampian' condition should be imposed limiting to 50 the number of units (excluding the Cell 4C development) that can be occupied before the Relief Road is fully completed and open to the public. There should also be imposed the conditions (as discussed) relating to other off-site highway works.

8.336 If the TP as provided for in the Unilateral Undertaking (UU) is not found to be acceptable, a 'Grampian' condition should be imposed such that no development may take place until a TP covering bus subsidies, Maxi-Taxi, and other initiatives (which are designed to achieve (a) a modal shift away from the private car during the peak hours; and (b) from Haywards Heath town centre and the site) is submitted to and approved by the WSCC as highway authority. This TP should include targets for modal shift and sanctions in the event of those targets not being achieved.

Education

8.337 WSCC accepts the provisions on education contained in the UU. If however, these prove unacceptable, a Grampian Condition should be imposed such that no development may take place until a scheme to address the education impact of the development has been submitted to and approved by the County Council, as Education Authority.

Fire and rescue, civic amenity (waste) and libraries

8.338 There provisions of the UU on these issues are accepted. If however, these prove unacceptable, 'Grampian' Conditions should be imposed to secure the submission to, and

approval by, the Council of schemes to address the development's impact on those services before development commences.

Ecology

- 8.339 In the event that it is recommended that the appeals should not be dismissed on ecological grounds, there should, in the view of WSCC, be a condition imposed that no development shall take place on FAW, and that a scheme for its future preservation and management shall be submitted to and approved by MSDC prior to the commencement of development.
- 8.340 Further conditions should be imposed requiring : (i) a scheme for ecological buffer zones around the proposed development to be submitted to and approved by the Council. MSDC agrees with the LCOs that, in reality, a minimum of 15m for those buffer zones around ancient woodland at Phases 4 and 5 would be required; and (ii) a scheme for the future management of the buffer zones to be submitted to and approved by MSDC prior to the commencement of development.

Housing

- 8.341 The development does not provide serviced land at nil value. Without such free serviced land being provided, it is not believed that affordable housing would be delivered in the numbers and at a price which would be necessary to comply with local and national policies. An equalisation payment does not resolve the fundamental problem. As currently framed, neither the UU, nor the suggested planning conditions resolve these problems. The only option appears, in these circumstances, to be to dismiss these appeals.
- 8.342 Furthermore, it is believed that an RSL should be drawn from a preferred list, with a proven track record of delivery, development standards and post-development management. This is not an appropriate matter for a condition and is not included in the UU. Again, dismissal of the appeal appears to be the only option. The cascade arrangement offers no incentive for CN to reach agreement with an RSL.
- 8.343 Although the maximum size of the affordable housing clusters is agreed, the Masterplan shows an agglomeration of clusters across phase boundaries. It is submitted that this last matter is capable of being resolved by condition, removing the precise distribution of affordable housing from the Masterplan.

9. Case for the Local Community Organisations

Introduction

- 9.1 The LCOs contend that the development of Bolnore Village Phases 4 and/or 5 should only be allowed to proceed if the following matters are addressed:
- 1) There should be no development on FAW.
 - 2) Adequate buffer strips of at least 15m should be required in order to safeguard the woodland habitats adjoining Phases 4-5.

- 3) FAW, the buffer strips and related open space should be dedicated to the Council, together with a contribution for their future management.
 - 4) The ceiling limit of the development should be reduced to 532 dwellings, in order to ensure the development integrates well with, and complements, the local area in terms of density, to ensure the provision of adequate open space, to mitigate the very substantial impact of the construction process, and to avoid the creation of artificially high expectations of housing delivery and the strategic problems that would ensue.
 - 5) Duncton Meadow should be retained for the provision of allotments.
 - 6) Parkfield Way should not be used for 2-way construction traffic. If construction vehicles are allowed to use Bolnore Road, they should access the site from the LCOs' proposed entrance immediately to the west of Joan Nightingale House, and this entrance should also be used as the permanent access for 'blue light' emergency vehicles and the Hopper Bus.
- 9.2 All these matters can be dealt with by conditions or the 'minded to refuse' procedure,²³ as opposed to the outright dismissal of the appeals. This was specifically agreed by Mr Harris in cross-examination and Mr Meier in examination-in-chief.
- 9.3 The LCOs also agree that MSDC's concerns on affordable housing and the HHRR must be addressed. It would be preferable if those concerns could also be accommodated by condition and/or the 'minded to refuse' procedure (as opposed to necessitating outright refusal). This would mean that permission could be granted whilst at the same time all the flaws which the Council and LCOs have identified in the applications could be eliminated.
- 9.4 This leads to another important point. Throughout the application process and the Inquiry, CN has sought to characterise the LCOs as 'objectors' (the terminology used in Mr Harris's and Mr Charlton's proofs). As Mr Meier explained in examination-in-chief, this is a wholly inaccurate characterisation. The LCOs support the principle of large-scale residential development at Phases 4-5, and wish to see it achieved as soon as possible. They are concerned, however, that such development must not unnecessarily prejudice vital environmental and community interests – as, in their current form, the appeal proposals would. If these concerns can be met through a grant of conditional planning permission, the LCOs would welcome it (Doc 214 & Mr Meier examination-in-chief).

The need for housing delivery

- 9.5 At the start of the Inquiry CN sought to characterise these appeals as presenting a 'Gordian knot', an irreconcilable tension between the need for housing delivery on the one hand and the concerns raised by MSDC and LCOs on the other hand (Doc 34).

²³ i.e. the procedure whereby the Secretary of State writes to an appellant informing it that she is 'minded to refuse' the appeal unless (for example) the appellant agrees to the inclusion of certain S106 obligations.

- 9.6 As far as the LCOs are concerned, there is no such 'Gordian knot'. The undisputed need for housing delivery can be satisfied in this location whilst at the same time protecting the vital environmental and community interests which the appeal proposals (in their current form) ignore. This can be done either by accommodating the LCOs' and the Council's concerns in the grant of conditional planning permission, or by refusing permission and forcing CN to submit a fresh planning application that does not prejudice these important environmental and community interests.
- 9.7 In any event, the need for housing delivery is not a 'magic wand' that converts unacceptable development into acceptable development. Neither the Barker Report nor the new PPS 3 provide any support for the proposition that the need for housing delivery means that the environmental constraints of sites can be ignored, or that vital community interests can be overridden (CDs 3 & 54, Mr Harris, XX & Mr Meier examination-in-chief).²⁴ Accordingly, when CN talks of the need to "maximise the development potential of the site",²⁵ this begs the question: what is the development potential of the site? The LCOs say that, in view of the various environmental constraints and community interests, the development potential is less than that contended by CN.

Four Acre Wood

Is FAW ancient woodland?

The Mid Sussex Ancient Woodland Inventory (CD 58)

- 9.8 PPS 9 paragraph 10 places a duty on local planning authorities to "*identify areas of ancient woodland in their areas that do not have statutory protection*" (CD 4).
- 9.9 This duty has been fulfilled by the Mid Sussex Ancient Woodland Inventory 2006 ('the Inventory') (CD 58). This is a report commissioned by the Council and prepared in partnership with several expert bodies including in particular NE and the High Weald AONB Unit²⁶. Its findings are based on detailed studies including field studies by experts.
- 9.10 Crucially, the Inventory has classified FAW as ancient woodland (ibid, Map 4).
- 9.11 In November 2006, CN wrote to NE requesting a review of the classification of FAW as ancient woodland and this was accompanied by all the evidence relied upon by CN at this Inquiry (Doc 89 & Mrs Fisher, XX).
- 9.12 NE's findings of its review upheld the classification of FAW as ancient woodland and the Inventory was therefore not amended (CD62).

²⁴ See for example: Barker Report executive summary paragraphs 7, 14, 15 and main text p2.32 and 2.36; PPS 3 p38, fourth bullet. Note also that PPS 3 p1 states that PPS 3 "complements and should be read together with other relevant statements of national planning policy", which include the sustainability and environmental policies contained in PPS 1 and PPS 9.

²⁵ Put to Mr Meier in cross-examination.

²⁶ Haywards Heath lies on the fringes of the High Weald AONB. The High Weald AONB Unit is a team of strategic specialists advising on nature conservation in the area.

- 9.13 For the purposes of consideration as to whether FAW is ancient woodland, the conclusions of the Inventory (as upheld on review) are of the very greatest weight. The issue of whether FAW is ancient woodland should not be approached 'from a clean slate' whereby the evidence of the parties' experts is simply weighed in the balance. The starting point is the Inventory: the onus is firmly on CN to identify compelling reasons why the Inventory classification should be departed from. This is for the following reasons:
- 9.14 The Inventory is the product of the Council's duty under paragraph 10 of PPS 9 to identify AW sites within its area. PPS 9 paragraph 10 clearly intended this identification process to 'feed into' planning decisions. In particular:
- (a) The wording of PPS 9 paragraph 10 draws a clear link between the identification process and the planning decision-making process:
- "...Local planning authorities should identify any areas of ancient woodland in their areas that do not have statutory protection (e.g. as a SSSI). They should not grant planning permission for any development that would result in its loss or deterioration unless the need for, and benefits of, the development in that location outweigh the loss of the woodland habitat"* (emphasis added).
- The word "its" clearly links the identification process and the planning decision-making process.
- (b) The Government's intention that the identification process should feed into planning decisions was expressly stated in a Parliamentary debate on the draft PPS 9, where the Minister for Environment, Food and Rural Affairs (Ben Bradshaw MP) stated:²⁷
- "The new draft guidance in the planning policy statement for biodiversity, PPS 9, which he mentioned, makes a big step forward in recognizing the biodiversity value of ancient woodland. The draft PPS now requires local authorities to identify ancient woodland of highest biodiversity value that is not already protected by statutory designation. We believe that that identification process will assist local authorities in ensuring that the biodiversity value of such sites is fully considered in decisions on planning proposals. It will also ensure that development affecting ancient woodland is not allowed to go ahead unless any loss or deterioration is clearly outweighed by the need for and benefits of the proposed development."* (emphasis added)
- 9.15 The Inventory and subsequent review have been carried out by leading experts. NE and the High Weald AONB unit have renowned expertise both in ecology generally and in AW specifically (accepted by Mrs Fisher in cross-examination). In particular, Dr Kirby, the author of the review findings, is NE's foremost expert on AW and one of the country's leading authorities on the subject.²⁸

²⁷ Hansard HC 8th February 2005 Column 1480.

²⁸ Doc 196, p30 & Mr Baker examination-in-chief. See also Dr Kirby's CV and publications list, (Doc 94). Mrs Fisher accepted in cross-examination that Dr Kirby had greater expertise than her in the subject of ancient woodland, and that unlike him she was "not an ancient woodland authority per se".

- 9.16 The Inventory and subsequent review have been carried out with total independence, free from any possible 'agenda'. This contrasts with CN's case on ecology, which is made in the context of CN seeking planning permission to build 60 houses on FAW (along with the financial windfall that would follow).
- 9.17 The Inventory and subsequent review are very recent. There is no question of any change in circumstances since their publication.
- 9.18 The Inventory and subsequent review are both very rigorous, as is apparent upon reading them. They deal with all the issues raised by CN (such as the caveats relating to AW indicators, the removal of trees from FAW in the 1950s and the impact of disturbance). There is no question of them having missed any relevant considerations.
- 9.19 The review of the Inventory classification was undertaken at CN's request, and was based on the evidence relied upon by CN (Mrs Fisher, XX). The review therefore considered all the relevant facts which were before the Inquiry, and comprehensively rejected CN's case.
- 9.20 CN has emphasised that the Inventory is 'provisional'. It is indeed 'provisional' in the sense that it is subject to review and will be amended if fresh evidence suggests that a particular site should be added to, or excluded from, the Inventory (Doc 96, Section 1). But such a review has already been conducted in the present case – and the classification of FAW as ancient woodland has been comprehensively upheld based upon a full consideration of the relevant facts and issues. That review was very recent, and CN has not sought to challenge its findings by way of judicial review,²⁹ nor has it applied for a further review. In these circumstances, it does not assist CN to say that the Inventory is only provisional and is subject to review.
- 9.21 The assertion that NE did not follow its 'protocol' for conducting a review of the Inventory is wholly unfounded (Doc 86). It was accepted in cross-examination by Mrs Fisher that the protocol had in fact been complied with (also Doc 94).
- 9.22 Before the findings of the review were published, Mrs Fisher told the Inquiry she was hoping the review would produce "*a result... which I could put before the Inquiry*" (Mrs Fisher, XX). It is therefore clear that CN, in anticipation of a favourable result, was preparing to place considerable reliance on the review findings. All the above arguments would have been put forward by CN as reasons why the review findings should be followed. What has happened, however, is that CN did not get the result it had hoped for – and it now has to disown the findings of a review which it had pursued.
- 9.23 CN is unable to identify any compelling reasons why the Inventory classification should be departed from. Even if the issue of whether FAW is ancient woodland is approached 'from a clean slate', the overwhelming conclusion from the evidence is that FAW is ancient woodland.

²⁹ Natural England is a public authority and the classification of a site as ancient woodland is plainly a public function amenable to judicial review. The three-month deadline for bringing judicial review proceedings in respect of the review findings expired on 12 May 2007.

The agreed definition of ancient woodland

9.24 The experts at the Inquiry (including Mrs Fisher for CN) all agreed that the updated definition of AW, as set out in paragraph 2.2.2 of the revised Wealden Ancient Woodland Inventory (Doc 17, appx DRB1.2), and paragraph 2.2.2 of the revised Mid Sussex Ancient Woodland Inventory, was the definition which should apply in this case (Doc 196, p5 & Mrs Fisher, XX).

9.25 This definition states:

“Ancient woodlands are defined by Natural England as those where there is believed to have been continuous woodland cover since at least 1600 AD”.

For this survey this definition includes:

- *Areas with continuous woodland cover.*
- *Areas managed or periodically cleared for timber or underwood production.*
- *Areas regenerating following woodland management.*
- *Open grazed areas within the woodland site (at least 20% canopy woodland over 80% of the site).*
- *Temporary clearings that may have been created within the woodland complex but which have regenerated, or are regenerating back to woodland.”*

Mrs Fisher's contention as to implicit requirements of the updated definition

9.26 In cross-examination, it was put to Mrs Fisher that none of the bullet points in the updated definition contain any particular requirements as to the soils profile of the site in question. It was also put to her that the bullet points do not contain a time-limit on the length of any temporary clearing, and that the fifth bullet point does not set any requirements as to what occurred on the site during the period of temporary clearance.

9.27 Mrs Fisher's response was to contend that the bullet points were a concise 'summary' which contained implicit requirements as to undisturbed soils, the use of clearings etc., which were not expressed in the text of the definition.

9.28 However, Dr Whitbread was the co-author of the updated definition (Doc 196, p8-9). He is therefore in a far better position than Mrs Fisher to interpret what the definition is intended to cover, and in particular to confirm whether or not it contains any implicit requirements.³⁰ Dr Whitbread made it very clear that there was no intention for the definition to contain the implicit requirements suggested by Mrs Fisher (ibid, p9). He gave a detailed explanation as to why the text of the definition had evolved from that used in the 1989 West Sussex Inventory of Ancient Woodland (Doc 17 appx DRB 1.1), in particular to take account of the increased understanding that totally undisturbed habitats do not exist and that a degree of disturbance makes habitats richer (Doc 196, p10-20 and Dr Whitbread examination-in-chief).

³⁰ Note also that Mrs Fisher accepted in cross-examination that Dr Whitbread had greater expertise on the subject of ancient woodland than herself, and that unlike him she was “not an ancient woodland authority per se”. See also Doc 196, p2-4 for a comparison of their relative expertise.

- 9.29 It is therefore wrong to put a 'gloss' on the updated definition, or to read words into it. The definition should be applied as it stands, in its adopted form.

CN's last-minute attempt to disown the agreed definition

- 9.30 Less than two hours before the Inquiry closed for evidence, during cross-examination of Dr Whitbread, CN's Counsel started calling the agreed definition "the purported definition". When asked why he was using such terminology, given that CN's own expert, Mrs Fisher, had specifically agreed that this definition should be applied, it was contended that the definition of AW was a matter of law. This contention is wholly unsustainable. Ancient woodland is not defined in legislation. Nor does PPS 9 paragraph 10 contain any definition against which its presumption against development on AW is to be applied. Plainly, therefore, the definition of AW is a matter of fact. And it is a matter of fact on which the experts are agreed. There is no evidential basis for applying any other definition.
- 9.31 Further, and in any event, the Wealden Ancient Woodland Inventory, which applies this definition, is specifically endorsed by the PPS 9 Companion Guide (CD5, p2.15). Plainly, this endorsement would not have been forthcoming if the Inventory was considered to have got something as fundamental as the definition wrong. What is common ground between the experts is therefore also supported by Government policy.
- 9.32 It is very clear why this last minute attempt was made to disown this agreed definition: the evidence at the Inquiry has conclusively shown that FAW falls within the definition.

FAW meets the agreed definition of ancient woodland

- 9.33 There is no dispute that FAW was ancient woodland at the beginning of the 1950s. It is clearly marked as woodland on the 1638 map and the 1946 aerial photograph shows trees still on it (Doc 190 & Doc 84, appx 4, Fig 1). The 1956 Ordnance Survey map also clearly marks FAW as woodland. Plainly therefore, it was "continuously wooded" from 1600 until at least the mid-1950s.
- 9.34 In the late 1950s, almost all the trees were removed from FAW. This took place sometime between the 1956 Ordnance Survey map and the 1959 aerial photograph which shows the widespread absence of trees (Doc 84, appx 4, Fig 2 & Doc 240). Trees have, however, been regenerating on FAW for many years, and AW flora are widespread (detailed in paragraphs 9.43-9.54 below).
- 9.35 The removal of trees in the 1950s does not in itself mean that FAW is no longer ancient woodland. The agreed definition specifically includes:³¹
- 1) "*Areas managed or periodically cleared for timber or underwood production*" (the second bullet).

³¹ These are alternative, not cumulative bullet points. Note that the definition introduces the bullet points by saying "...this definition includes" – not "...this definition is limited to". This indicates that the bullet points are inclusive, not exclusive – in other words, there may indeed be clearings in ancient woodland which do not strictly fall within the bullet points (Dr Whitbread, examination-in-chief).

- 2) “*Areas regenerating following woodland management.*” (the third bullet).
- 3) “*Open grazed areas within the woodland site (at least 20% canopy woodland over 80% of the site).*” (the fourth bullet).
- 4) “*Temporary clearings that may have been created within the woodland complex but which have regenerated, or are regenerating back to woodland.*” (the fifth bullet).
- 9.36 It is therefore completely incorrect to state: “*if there aren't trees, it's not woodland, therefore it's not ancient woodland*” (which was, in essence, the line of cross-examination against Mr Baker).³² That is simply not what the agreed definition says.
- 9.37 Moreover, as Dr Whitbread explained in examination-in-chief, when considering whether an area is AW, one does not examine every square foot and exclude it if it is not under tree canopy. In the timescale of ancient woodland, trees are merely ephemeral; the key factor of AW is its incredible biodiversity (Dr Whitbread examination-in-chief, Mrs Fisher XX). This biodiversity is enhanced, not diminished, by the creation of clearings within the woodland, which is an entirely normal (and common) phenomenon in AW. Hence clearings are an integral part of AW; they are not something distinct (Doc 193, p5.3-5.4, Dr Whitbread examination-in-chief & Doc 202).³³
- 9.38 Accordingly, the correct approach is not to draw the AW boundary around the tree canopy line;³⁴ one must instead establish the ‘ecological unit’ and consider whether this ecological unit *taken as a whole* is AW (Dr Whitbread, examination-in-chief). The bullet points in the updated definition help to ensure that this correct approach is taken.
- 9.39 In the present case, FAW is not an isolated ecological unit. It is part of the wider AW block to the south and west. Ecologically and physically there is no separation between them. In particular, Dr Whitbread described how the ancient woodland of Ashenground Wood and Quarry Hollow “*merges seamlessly*” with FAW (Doc 195, p3.8, Dr Whitbread, examination-in-chief, Doc 178 & CD62, Section 5). The only distinctions Mrs Fisher was able to draw were in terms of land ownership and management (Mrs Fisher, response to Inspector's questions). These are both artificial factors which are not determinative of ecological continuity; most AWs have parts within them which have different ownership histories and different management histories (Dr Whitbread, examination-in-chief).
- 9.40 Accordingly, the correct approach is not to consider whether FAW *taken in isolation* is ancient woodland; rather, one must consider whether the wider woodland block within which it falls, *taken as a whole*, is AW. Everyone accepts that it is.

³² In any event, there are over 800 trees in FAW (Doc 196, p21-24).

³³ Note that the Peterken (1996) article at p.21 of Doc 86, Appx 1 also treats clearings as part of the woodland/forest as opposed to something distinct.

³⁴ Something which Dr Whitbread aptly described as the “Swiss cheese” approach to ancient woodland identification, since it would result in a plethora of holes in the ancient woodland maps (Dr Whitbread, examination-in-chief).

9.41 Applying the updated definition's bullet points to FAW, one reaches the following conclusion:

1) "*Areas managed or periodically cleared for timber or underwood production*" (The second bullet). The evidence indicates that the trees in FAW were cleared in the late 1950s for timber, which was a valuable commodity at that time (Doc 192, p4.1.2, Mr Meier examination-in-chief). Consequently the second bullet of the definition is met (Dr Whitbread, examination-in-chief).

2) "*Areas regenerating following woodland management.*" (The third bullet). FAW is unquestionably regenerating. This follows a period of woodland management where FAW was used for grazing and/or grass-cutting for hay. Accordingly, the third bullet of the definition is met (Dr Whitbread examination-in-chief).³⁵

3) "*Open grazed areas within the woodland site (at least 20% canopy woodland over 80% of the site).*" (The fourth bullet). There is far more than 20% canopy woodland over 80% of the woodland site within which FAW is located, namely the wider AW block to the south and west (Doc 195, p3.8). There is evidence that FAW, prior to its current regeneration, was grazed. Accordingly, the fourth bullet is met.

4) "*Temporary clearings that may have been created within the woodland complex but which have regenerated, or are regenerating back to woodland.*" (The fifth bullet). A large part of FAW is now covered in trees again.³⁶ The remainder, if left alone, will be covered in trees within a few decades from now (Mr Baker, XX). The fifth bullet is therefore plainly met. Some or all of the central grassed area may be deliberately kept open owing to the increased biodiversity which the clearing brings to the wider woodland block, and because this central grassed area comprises rare and protected acid grassland (discussed in paragraph 9.88 below) (Dr Whitbread, examination-in-chief). So a portion of FAW may in fact become a semi-permanent clearing. But it would be nonsensical if an action which increased the biodiversity of the wider woodland block was held to prevent this portion of FAW from being AW.

9.42 Accordingly, there is no *doubt* whatsoever that FAW is ancient woodland according to the agreed definition. FAW has *retained* the essential characteristics of AW.

FAW has retained the essential characteristics of ancient woodland

FAW has retained its biodiversity

9.43 Botanical surveys of FAW were conducted in June and August 2006 by Mr Baker, Dr Whitbread, the County Botanical Recorder (Alan Knapp), and Gill Rogers of Friends of Ashenground and Bolnore Woods. These surveys found a total of 23 AWI species, in

³⁵ The third bullet does not require any particular type of woodland management to have taken place. To 'read in' such a requirement would be an impermissible 'gloss' on the definition. In any event, grazing of clearings by animals is a longstanding woodland management practice (Doc 195, p3.7).

³⁶ There are over 800 trees in FAW: Doc 196 p21-24. Mrs Fisher's survey plans in the ES describe many of the tree-covered areas as "scrub" when in fact it is plainly young woodland. See for example Doc 204 (photo of an area which Mrs Fisher's plans show as "scrub" – however when asked to describe the photograph in cross-examination she said "that's young woodland"); see also (Doc 191, p6.1.1).

- widespread locations across FAW (Doc 17, appx 12).³⁷ Mrs Fisher has accepted the existence of 19 of these plants, but refuses to accept the existence of the remaining 4 species until she sees them herself. She has not, however, put forward any evidence to contend that these 4 species do not exist on FAW. Nor is there any suggestion that these distinguished surveyors were hallucinating when they identified these 4 species. Accordingly, the basis on which to work is that there are indeed 23 AWI plants on FAW.
- 9.44 This represents an *extremely* high degree of AWI plants. The Mid Sussex Ancient Woodland Inventory states that in its site surveys, "*the number of ancient woodland indicator species ranged between 2 and 22, with a mean figure of 10.5 species per site*" (CD58, pg24). FAW therefore has a higher number of AWI species (i.e. 23) than any of the sites surveyed for the Mid Sussex Inventory. It is also right at the top of the range recorded in site surveys for the Wealden Ancient Woodland Inventory (range: 2-31 ancient woodland indicators; mean figure of 12 species per site) (Doc 17, appx DRB1.2, pg27).
- 9.45 What is all the more *remarkable* about this is that FAW is only 1.44ha. The correlation between the normal frequency of AWIs and the size of the area surveyed was examined in a study by George Peterken (Doc 17, appx 13, pg157). This study found that, in AW sites below 5ha, the number of AWIs found ranged from 4 to 24, with a mean figure of 12.4. FAW is right at the top of this scale.
- 9.46 Mrs Fisher contends that *these* AWIs have colonised from outside FAW. Dr Whitbread, Mr Allen and Mr Baker consider that they represent the original carpet of AW flora, which survived the removal of trees in the late 1950s and has persisted ever after. Dr Whitbread and Mr Baker's view is supported by Dr Kirby in his Inventory review (Doc 62, Section 4).
- 9.47 This debate begs the question: does it matter whether or not the vast range of AWI plants are 'originals' or 'colonisers'? The agreed definition of AW does not contain any requirement that temporary clearings should retain their original carpet of AW flora, and it is indeed inevitable that a clearing within a wider AW complex will be the subject of some colonisation. Such ecological interaction is in fact to be encouraged (Dr Whitbread examination-in-chief).
- 9.48 In any event, the evidence simply does not support the colonisation theory. In this regard the carpets of bluebells and wood anemones were taken as a case study. Mr Baker's AWI location plan (Doc 17 appx 12), which is backed up by Mr Meier's photographic evidence (Doc 208), shows the spread of these carpets. Mrs Fisher stated that on this plan, the distance between the furthest point of the carpets and the southern boundary of FAW was 30-40m (Mrs Fisher, XX). She also said that, in her view, the recolonisation by these plants started in the early 1970s – i.e. at least 36 years ago and maybe less. Mrs Fisher's recolonisation theory is therefore premised upon the ability of these carpets of bluebells and wood anemones to colonise at a rate of at least 1m/yr – and possibly significantly higher, for instance if one accepts that the topsoils in FAW formed in the last twenty years (prior to which recolonisation cannot have started). All the evidence suggests that this rate of colonisation is impossible. In particular:

³⁷ A 24th species (Barren Strawberry) was discovered on the Inspector's accompanied site visit.

9.49 Dr Peterken's article *Reversing the Habitat Fragmentation of British Woodlands* (2002) contains the following observations (Doc 197):

1) Box 2.3 on pp25 refers to a study by Brunet and Oheimb (1998) which "*found rates of zero to 1.0m/yr, median 0.3m/yr*" for the "*invasion front*" of a species. The "*field layer comparable with the adjacent ancient woodland*" (which is what is being looked at in relation to the bluebell and wood anemone carpets in FAW) "*proceeded at a rate of 0.3-0.5m/yr*".

2) Box 2.3 on pg25 goes on to state that, in relation to the "*rare instances of long distance dispersal*", "*the most likely focus... is along streams and rivers, where propagules may be washed or carried downstream*". This plainly cannot be the case for FAW, since the bluebell and wood anemone carpets are not focused around Foundry Brook. Moreover, Foundry Brook is at the bottom of a considerable slope, which means it cannot possibly have carried propagules to FAW (Doc 204).

3) Mrs Fisher's colonisation theory is dependent upon the original AW carpet having been destroyed by catastrophic disturbance, such as ploughing or cultivation. Yet Peterken makes clear that such acts make the soil hostile to colonising AW plants: see e.g. pg23 ("*colonising performance may be influenced by competition with other species. For example the residual fertility left when woodland develops on former cultivated ground allows a rank growth of shade-bearing weeds...to dominate the ground and exclude low-growing woodland herbs, such as violets and wood anemone*"), pg24 ("*secondary woods confined to sites homogenised by ploughing offer fewest opportunities to potential colonisers*"); pg35 ("*in Britain, the soils of new woodland formed on farmland show the residual effects of drainage, ploughing and fertilizers many decades or centuries later: the altered soils encourage rank weed growth, which in turn offers stiff competition to any woodland species that attempts to colonise*").

9.50 Dr Kirby's review of the Mid Sussex Ancient Woodland Inventory contains the following observations (Doc 62):

1) At pg9, the findings of the Brunet & Oheimb (1998) study, referred to in Dr Peterken's article, are set out in relation to 12 AWI plants which are found on FAW. In relation to woodland anemones,³⁸ the highest colonisation rate for carpets was 0.2m/yr and the highest colonisation rate for individual plants was 0.85m/yr.

2) Also on pg9, Dr Kirby refers to a study by Rackham (1980) which indicates that, in Hayley Wood in England, a bluebell carpet travelled 50m in 80 years: i.e. 0.625m/yr.³⁹

9.51 Mrs Fisher refers to a further study published by Bossuyt et al. (1998) (Doc 86, pg10). She did not include this article in her appendices, but contended that it supported a

³⁸ *Anemone nemorosa* – the first line of the table.

³⁹ Note that the colonisation rate for wood anemone carpets (as opposed to bluebell carpets) is much slower than this, as the Brunet & Oheimb (1998) and Bossuyt et al. (1999) studies show.

colonisation rate of 1.15m/yr. In fact, the reality is very different, when the LCOs produced the full article (Doc 206):

1) On p.628 it is seen that this study covered four species, of which one species was wood anemone (*anemone nemorosa*).

2) On p.632 (fourth paragraph), the article explains how “*in the individual species approach, we calculated the mean cover and the frequency of each species occurring in at least 10 quadrats throughout the ancient and woodland forest*”. In other words, the study examined not only the distance which colonisation had travelled, but also the density of colonising plants.

3) The results are then plotted in graphs/charts on p.634. In relation to every species, the colonisation rate for dense carpets of plants is much lower than the colonisation rate for the furthest advanced individuals.

4) These results are summarised on p.635, in Table 5. Crucially for wood anemone, the colonisation rate for the furthest individual plant is 0.55m/yr, and the colonisation rate for ‘half-peak cover’ (i.e. 50% of the full carpets) is less than 0.05m/yr.

5) Table 5 also shows that the 1.15m/yr figure which Mrs Fisher relied upon related to an entirely different species: *lamium galeobdolon* (and also relates to the furthest individual plant rather than the colonisation rate for carpets). It therefore has no bearing whatsoever on the ‘case study’ into whether Mrs Fisher’s theory of colonisation rates of at least 1m/yr for bluebells and wood anemones at FAW is possible.

9.52 In summary therefore, as Dr Whitbread stressed in examination-in-chief, there is simply no evidential basis that the carpets of bluebells and wood anemones at FAW could possibly have colonised at a rate of anything like 1m/yr. All the studies demonstrate that the maximum colonisation rate for bluebell and wood anemone carpets is much, much lower than this, and that even the furthest advanced individual plants would not be able to colonise at this rate.

9.53 Such a rate of colonisation would be miraculous enough for one AWI species. But, as Dr Whitbread explained, for all 23 AWIs on FAW to have colonised so quickly on this one small site would, in his words, be “*like winning the lottery 23 times*”.

9.54 For these reasons, it defies all logic to conclude that the AWIs spread across FAW are the product of colonisation. They plainly are not. The original carpet of AW flora has survived.

Soils and disturbance

9.55 The purpose of CN’s soils evidence (as confirmed by Mrs Fisher in cross-examination) is to demonstrate that the carpet of AW flora cannot have persisted, owing to what it says is the widespread and substantial truncation of soils. Accordingly, CN says, the AW flora now present must be the product of colonisation.⁴⁰

⁴⁰ The relevance of recolonisation is doubtful in any event: see p9.47 above.

- 9.56 The short answer to this is: the proof of the pudding is in the eating. It is absolutely clear from the extent and location of the AW flora now present on FAW that the original carpet has persisted. As already explained at paragraphs 9.51-9.52 above, there is simply no evidential basis for concluding that plants can colonise at the rate necessary to establish the 'colonisation theory'. Accordingly, they must have been there all along. There is therefore no need to hypothesise about what may or may not have happened to the soils.
- 9.57 In any event, the soils evidence does not support CN's case. This is because:
- (a) Even if Dr Macphail's evidence is accepted, it does not support the conclusion that FAW has lost its AW status.
 - (b) In any event, Dr Macphail's evidence should not be accepted.
- (a) Even if Dr Macphail's evidence is accepted, it does not support the conclusion that FAW has lost its ancient woodland status*
- 9.58 As Mrs Fisher agreed in cross-examination, the removal of trees from FAW cannot of itself have caused widespread soil disturbance. In particular:
- 1.1. The most likely way the trees were removed was by winch-felling (Messrs Baker and Meier examination-in-chief and Mr Baker XX⁴¹ & Doc 192, 4.1.4, unchallenged by CN). This process creates only localised disturbance which is analogous to the natural phenomenon of trees being blown over in storms (Doc 198 & Doc 193, pg12-13).
 - 1.2. There were only around 60 trees in FAW. The area disturbed from moving this number of trees would be about 2% of the total area of FAW (Mrs Fisher, XX and Mr Meier, examination-in-chief).
- 9.59 So, as Mrs Fisher agreed, the removal of trees *per se* did not explain CN's contention that there had been widespread and serious soil truncation. Some other explanation was needed.
- 9.60 After speculation by Mrs Fisher, CN finally produced Dr Macphail to provide an explanation.
- 9.61 At the beginning of cross-examination, Dr Macphail summarised his position as follows (word-for-word):
- 1) The truncation and disturbance of soils in FAW has been the product of the cumulative process starting in medieval times, which reached its climax following the removal of trees in the late 1950s.
 - 2) At the point in time just before the removal of trees in the late 1950s, the soils would already have been truncated and disturbed, and the 'Btg horizon' would have been close to the soil surface.

⁴¹ In examination-in-chief, Mr Meier explained how the presence of 52 severed tree stumps in Quarry Hollow supported the winch felling theory.

3) The truncated soils were not deliberately stripped and carted off by humans (a theory for which he said there was “no evidence”). They were truncated by a cumulative process of natural erosion and woodland management over the centuries.⁴²

4) The key factors which he saw in the soils on FAW now, and which one would not have seen in the soils before the temporary clearing in the 1950s, were: the lack of humus (i.e. leaf litter), the absence of tree roots in the upper levels of the soils, and the shallower ‘Btg horizon’ (which he said suggested immature topsoils in places).

5) Other than this, one could only conjecture how much of the truncation had already happened before the temporary clearing in the 1950s and how much had happened since then.

6) Overall, his conclusion was that the soils in FAW are not “good woodland soils”, which he defined as “having a reasonable drainage, woody roots in the upper levels, a good A horizon and a good pedological relationship” (referring in particular to the ‘control profiles’ in Ashenground Wood). The importance of “good woodland soils” in his view was that trees can grow well in them and draw nutrition from them.

9.62 Other key aspects of Dr Macphail’s oral evidence are as follows:

1) When being taken through the photographs of Mr Allen’s soil pits in cross-examination, Dr Macphail was asked to explain the level of truncation demonstrated in each one of the photos, and did so. He did not, however, state that this truncation occurred after the temporary clearing of FAW the 1950s; and when asked to explain what he meant by “truncation” he described it as a “continuing process” and a “long term process” (Dr Macphail examination-in-chief). He subsequently made very clear that he considered the truncation on FAW to be a process which started hundreds of years before the temporary clearing of trees in the 1950s when he agreed with the propositions above word-for-word.

2) Dr Macphail agreed in cross-examination that there was no sign that the soils had been seriously disturbed by ploughing and that, in light of Mr Meier’s residents’ recollections rebuttal proof (Doc 192), which he accepted was the “best evidence” as to what happened since the 1950s, it was clear that FAW had “definitely not been ploughed”.⁴³

3) Dr Macphail emphasised what he saw as a significant amount of colluvium (i.e. soils/material that have accumulated at the surface, often as a result of being washed downhill during rainy weather) in the soils at FAW (Dr Macphail examination-in-chief).

⁴² As to woodland management in previous centuries, note that Dr Macphail’s second report (Doc 86, appx 3) suggests that one of the causes for truncation might have been “works associated with the adjacent quarry” – a quarry which had ceased operations by the time of the 1638 map (Doc 191, p4.2.1-4.2.4 & Mr Meier, examination-in-chief). Note also that there are some indications that FAW might have been used as a deer park in medieval times before 1600 (ibid, p4.3.1-4.3.6 & Mr Meier, examination-in-chief).

⁴³ Contrary to his initial comments in paragraphs 3.3a – 3.3b of his proof (as amended by his Erratum, Doc 157), which refer to the possibility of ploughing. It became apparent in cross-examination that, when he wrote these comments, Dr Macphail had not read Mr Meier’s residents’ recollections rebuttal proof (Doc 192); hence, having been taken to this document in cross-examination, he ruled out the possibility of ploughing.

9.63 None of Dr Macphail's points, even if they are accepted, support the conclusion that FAW has lost its AW characteristics following the temporary clearing in the late 1950s. In particular:

- 1) If the truncation and disturbance is the result of a cumulative process over the centuries, and if the soils in FAW were already truncated and disturbed before the temporary clearing in the 1950s (when all parties agree it was ancient woodland), then such truncation and disturbance is not incompatible with AW status. Dr Macphail himself agreed in cross-examination that "*truncation of soils is not in itself fatal to ancient woodland in the long term*" (reiterated by Mr Allen in examination-in-chief).
- 2) The agreed definition of ancient woodland does not mention soils at all.⁴⁴ In particular, there is nothing in the agreed definition of AW requiring "*good woodland soils*"; nor does the agreed definition require AW to have a *reasonable drainage, woody roots in the upper levels, a good A horizon and a good pedological relationship*". Indeed soils are not mentioned at all. These may be points of intellectual interest to an academic such as Dr Macphail, and they may be of relevance to a commercial forester looking for suitable conditions to plant a good crop of trees (Mr Allen, examination-in-chief), but they are not determinative of whether FAW is ancient woodland. There is therefore a giant leap of logic between Dr Macphail's conclusions and the conclusion that FAW is not ancient woodland.
- 3) In fact, as Dr Whitbread and Mr Allen both confirmed, significant disturbance is common in AW and can often be beneficial, in that it encourages ecological diversity (Doc 191, p14-20 & Dr Whitbread and Mr Allen examination-in-chief).
- 4) The presence of colluvium in the soils of FAW is unsurprising and entirely inconsequential. Most AW is located on a slope – accordingly the accumulation of surface material at the bottom of the slope, having been washed downhill during rainy weather, is an entirely natural phenomenon (Mr Allen, examination-in-chief). It has no bearing whatsoever on AW status.

9.64 Dr Macphail disowned Mrs Fisher's theory that there had been 0.8m truncation across 60% of FAW *after* the temporary clearing in the late 1950s, due to soils being physically stripped and carted off by humans and/or by ploughing. He said there was "*no evidence*" for the soil stripping theory, and that ploughing "*definitely did not happen*" (Dr Macphail, XX). Mrs Fisher's evidence on soils should therefore be rejected.

9.65 In any event, Mrs Fisher is not an expert on soils. Her 'soil stripping' theory is physically inconceivable given the huge volume of soil involved: some 9,000 cubic metres (Doc 191, p3.1.1-3.6.1 and Mr Meier, examination-in-chief).

9.66 Mrs Fisher's ploughing theory is contradicted by several independent recollections from local residents (Doc 192 and Mr Meier examination-in-chief). Her suggestion that the

⁴⁴ See paragraphs 9.26-9.29 above as to why it is wrong to put a 'gloss' on the agreed definition and/or imply words into the definition.

aerial photographs show plough marks is utterly implausible given the scale of those photographs. Ploughing would, in any event, have been impossible owing to the 'humpy bumpy' nature of FAW (ibid).

9.67 Mrs Fisher's suggestion that FAW has been subject to 'levelling' works is unsupported by any evidence and is contradicted by local residents' recollections. It cannot, in any event, be correct because FAW is not level! It is and always has been bumpy (ibid).

9.68 As Mr Meier explained, by far the more likely explanation of what happened is as follows:

1) The trees were removed in the late 1950s for timber, which was a valuable commodity at that time (ibid, p4.1.2, Mr Meier, examination-in-chief).

2) The carpet of AW flora was left in place across the overwhelming part of FAW, because the removal of trees did not cause widespread disturbance (accepted by all parties), and no other human or natural acts of widespread disturbance occurred (Mr Meier, examination-in-chief).

3) In the 1960s and 1970s FAW was used for grazing and/or grass-cutting for hay (Doc 191, p2.3.1-2.7.2 & Mr Meier, examination-in-chief). Neither of these uses would have destroyed the pre-existing carpet of AW flora, which would have remained in place throughout, albeit to some extent temporarily dormant (Doc 191, p2.6.2, Mr Allen, examination-in-chief and answers to the Inspector's questions and Dr Whitbread, examination-in-chief).

4) Subsequently, the grazing and/or grass-cutting stopped, as a result of which the carpet of AW flora flourished once again. Trees started to return owing to the spread of acorns etc. by birds (Messrs Meier and Allen, examination-in-chief).

9.69 Nothing that Dr Macphail said contradicts Mr Meier's explanation. This explanation is supported by the aerial photographs and local residents' recollections. It is also supported by the absence of any other plausible explanation for the widespread presence of AW flora across FAW.

(b) *Dr Macphail's evidence should not, in any event be accepted.*

9.70 In any event, Dr Macphail's conclusions as to the extent of truncation at FAW are based on flawed reasoning (although for the reasons set out above, this debate is a mere sideshow and has no relevance to FAW's ancient woodland status).

1) Dr Macphail reaches his conclusions by comparing the soil profiles now present at FAW with the typical profile for the Curtisden soil series as set out in Figure 6 to his July 2006 report (Doc 156) (accepted by Dr Macphail in cross-examination where he described Fig 6 as the "benchmark"). See:

2) the first sentence on p.2 of the July 2006 report, which states that "under natural conditions" and as found in the Ashenground 'control pits', the profile looks like Fig. 6 (Doc 84, appx 3);

3) the conclusion on p.2 of the July 2006 report as to Pit 8: “when typical soil depths are compared (Fig 6), a likely 0.8m deep soil profile truncation appears to have taken place”;

4) ‘Appendix 1’ to the July 2006 report, which analyses the soil profile at FAW using ‘Fig 1a’ as a starting point. ‘Fig 1a’ in this document is the same as Fig. 6 to the July 2006 report.

9.71 There is no justification, however, for using the Curtisden series profile in Fig. 6 as a benchmark and concluding that the FAW soils have been truncated/disturbed on the basis that they differ from this benchmark. In particular:

- 1) This area is classified as being within the Curtisden soil *association*. The Curtisden *series* is just one of many soil series within the Curtisden *association*, and which therefore occur naturally in this area. These different soil series have a range of different profiles (Mr Allen examination-in-chief; Dr Macphail, XX).
- 2) There can be a wide variety of soil series (and therefore a wide variety of soil profiles) occurring naturally in a small area (Mr Allen examination-in-chief). This is particularly so in the Weald, where the soils are known to be highly variable (Doc 191, p5.2.1-5.2.8). Moreover, there are geological fault lines running across FAW, which means that FAW has two different geologies within itself, both of which are geologically distinct from the northern part of Ashenground Wood where Dr Macphail’s ‘control profiles’ were taken. This difference in geology may lead to differences in the overlying soils, but this was not taken into account by Dr Macphail (Doc 191, p5.3.1-5.3.4, & Mr Meier, examination-in-chief). In light of these factors, the chances of the Curtisden series profile occurring naturally across all of FAW and Ashenground Wood are highly remote. It is therefore inappropriate to benchmark the present day soils on FAW against the typical Curtisden series profile in Dr Macphail’s Fig. 6, and to conclude from any differences that there must have been truncation/disturbance.
- 3) Dr Macphail’s response was that the particular series does not make much difference to the upper layers of the soil profile. He is wrong. Take for example, the upper level of the ‘Btg horizon’. Dr Macphail’s Fig. 6 puts this at 50cm. Using this benchmark, Dr Macphail stated in examination-in-chief that the upper level of the Btg horizon in Mr Allen’s pits, which was 30-40cm on average, was “shallow”; hence his conclusion that there must have been significant truncation. As Mr Allen explained, however, by reference to the book ‘Soils and their Use in South-East England’ which he co-authored, there are a number of soil series within the Curtisden association where it is entirely typical to find an upper level of the Btg horizon at 30-40cm (Doc 205 and Mr Allen examination-in-chief). Dr Macphail’s conclusion therefore does not follow.

9.72 Although accepting that the process of truncation would have taken centuries, Dr Macphail did say that some topsoils in his and Mr Allen’s pits “could have” formed in the last 20 to 40 years. This contention should be rejected for the following reasons:

- 1) Dr Macphail pointed to the absence of 'woody roots' in the topsoils as a sign of immaturity. There is a far more plausible explanation for this: there have not been trees in the areas where he dug his pits since the temporary clearing of FAW in the 1950s, and any 'woody roots' from the trees that were cleared would have long rotted away. The fact that there are remnants of 'woody roots' in the deeper subsoils is perfectly consistent with this explanation: the deeper soil has less oxygen, and so the rotting process is slower; the feeding roots at the surface are also thinner (and thus quicker to rot) than the stabilising roots in the deeper soil (Dr Macphail, XX & Mr Allen, examination-in-chief).
- 2) Dr Macphail also said that poor drainage, such as that found on FAW, was a sign of immature soil. This is incorrect, as demonstrated by the photographs of waterlogged areas in Ashenground Wood (which everyone accepts is AW) (Doc 222).
- 3) If topsoils have formed in the last 20 to 40 years, then there would have been bare subsoil on FAW sometime at the beginning of this period. None of the local residents remember bare subsoil, and their photographs contradict this theory (Doc 192). Moreover, the aerial photographs – particularly the high quality photographs obtained from the National Monuments Record (Doc 240) – all show vegetation across the overwhelming part of FAW, as opposed to bare subsoil. This includes the 1959 aerial photograph, which was taken shortly after the temporary clearing was made, and which shows several tones of vegetation indicating natural re-growth (Doc 240, Doc 191, Section 2.4 & Mr Meier, examination-in-chief).
- 4) Dr Macphail considered that the topsoils at FAW are 10-30cm thick. This is pretty typical (Mr Allen, examination-in-chief) – as Dr Macphail himself said, "*woodland topsoils don't tend to be very thick*" (Mr Allen examination-in-chief & sample profiles in Doc 205).
- 5) The process of topsoil formation normally takes hundreds of years at the very least (Mr Allen, examination-in-chief). Dr Macphail himself accepted that the formation of 10-30cm in 20-40 years would be unusual. The only examples of even remotely similar speeds put before the Inquiry related to soil formation at the Zuider Zee (a reclaimed saltmarsh) and soil formation on World War II rubble in Berlin – both of which were completely incomparable to FAW (Mr Allen examination-in-chief). Dr Macphail was unable to give any examples of 10-30cm of topsoil forming in under 50 years in British woodlands (Dr Macphail, XX). Mr Allen had never seen any such instance in his career, which is particularly telling bearing in mind the extent of fieldwork he has done on woodland soils (Mr Allen, examination-in-chief).
- 6) Dr Macphail's Appendices 1a & 1b state that topsoil formation is quicker when there are many earthworms present in the soils, and contend that "*earthworms are present at Cell 5B1, and in fact are encouraged where dogs defecate*" (Doc 87). However, p.2 of Dr Macphail's July 2006 report states that there are "*very few earthworms*" – an obvious conflict for which no coherent explanation was given (Doc 156). Moreover, Mr Meier explained from his own familiarity with the area that dogs do not frequently defecate on FAW, because they are let off their lead long before reaching FAW (Doc 213, p1.1.9). Mr Allen confirmed in examination-in-chief that he found some earthworms, but not a particularly high number.

- 7) The 'recent topsoil formation' theory begs a key question: what would the soil have formed from? In the central grassy area of FAW, there are no overhanging trees or bushes, so there is no leaf litter (the normal ingredient for soil formation). Dr Macphail suggested grass roots and dog faeces as possible ingredients. Leaving aside the total implausibility of dog faeces forming 10-30cm of topsoil across a wide area), dog faeces are *alkaline*, and yet the central grassy area is *acid* grassland (Mr Allen examination-in-chief); so dog faeces simply cannot be a central ingredient. Grass roots alone are plainly insufficient to be responsible for such a rapid formation of soil.
- 9.73 Dr Macphail also argued that the soils on FAW had a poor pedological relationship (oral evidence). This is incorrect. As Mr Allen explained in examination-in-chief, soils with a poor pedological relationship do not have defined horizons and look like Fig 8 in Doc 191 (Aldershaw pit). This is not the case with the soil profiles from FAW (Mr Allen examination-in-chief).
- 9.74 The following factors are also relevant in balancing the reliability of Mr Allen's evidence against that of Dr Macphail:
- 1) In terms of expertise, Dr Macphail drew particular attention to his undoubted experience in micromorphology. However, the soils in FAW have not been subjected to a micromorphological examination, so this experience does not help. Mr Allen, for his part, is not just a soils scientist and a micromorphologist but also a qualified ecologist with substantial experience of AW. This gives him a unique understanding of studying soils from an ecological perspective, which is a useful asset given that the soils evidence is being considered in the context of the question of whether FAW is ancient woodland. (Mr Allen examination-in-chief, Dr Macphail, XX).
 - 2) Mr Allen's soil pits were much deeper, much longer and much wider than Dr Macphail's pits. This gave Mr Allen a far broader sample from which to draw his conclusions (ibid & photographs in Docs 235 and 84, appx 3).
 - 3) Dr Macphail did not accurately record the locations of his soil pits (Doc 203 & Mr Meier, examination-in-chief). Analysis of the true locations of his soil pits demonstrates that he did not take a representative sample of the soils in FAW (Mr Meier, examination-in-chief).

General comments on the credibility and reliability of Mrs Fisher

- 9.75 In general, the evidence of Mrs Fisher should be rejected wherever there is a clash between her and Dr Whitbread, Mr Allen and/or Mr Baker. This is for the following reasons:
- 1) Mrs Fisher, by her own admission, had less experience of AW issues than Dr Whitbread and, unlike him, "*is not an ancient woodland authority per se*". She has a general practice in a broad range of environmental issues. Dr Whitbread, by contrast, is an ancient woodland expert of national standing; he is a co-author of the agreed definition of AW, and the author of numerous AW inventories and of several other publications on the subject (Doc 196, p2-4 & 8-9).

2) On a number of occasions during her evidence, Mrs Fisher demonstrated that her knowledge of ancient woodland was limited. Three examples suffice. First, she did not know the reason why the AW definition had been updated (Mrs Fisher, XX). Secondly, she questioned the experience of Dr Kirby and suggested he had written only a handful of publications on AW, when in fact (as any expert on ancient woodland would have known) he is one of the country's leading authorities on the subject and author of a vast range of publications (Doc 86, appx 1, pg37, Doc 196, p30, Mr Baker examination-in-chief & Doc 94, CV and publication list). Thirdly, she was unfamiliar with *Keepers of Time* – the Government's statement of policy on ancient woodland – at one stage asking “*who wrote this?*” (Mrs Fisher, XX).

3) Mrs Fisher was prone to making assertions which contradicted the general consensus of ecologists and which were not backed up by any evidence. For example:

1. Mrs Fisher was convinced that the ancient woodland flora in FAW were the product of recolonisation and did not see it as a problem that this necessitated an extraordinarily high recolonisation rate. When the bluebell and wood anemone carpets was taken as a case study (for which her theory necessitated a colonisation rate of at least 1m/yr), all the published studies suggested that this rate was impossible. Yet not once did Mrs Fisher qualify her conclusions.
 2. Similarly, in relation to buffer zones, Mrs Fisher denied that “*the simple physical relationship between the edge of the development and the woodlands results in a direct impact*” – flatly contradicting the conclusions of *Keepers of Time*, the Woodland Trust, NE, and the Sussex Wildlife Trust (amongst others). Yet she provided no evidence for this view from outside of Bolnore Village, and was unable to cite any authorities in her support.
- 4) There were occasions where Mrs Fisher's work did not demonstrate the rigour that a public Inquiry could reasonably expect of an expert witness. For example, in the context of the ‘case study’ as to the colonisation rates needed for the bluebells and wood anemones, she contended that the Bossuyt (1998) article supported a colonisation rate of 1.15m/yr (Doc 86, pg 10). In fact, even the most cursory reader of this article would see that the 1.15m/yr colonisation rate did not relate to bluebells or wood anemones, but to an entirely different species, and that the colonisation rate for wood anemone carpets was less than 0.05m/yr.
- 5) Mrs Fisher was also prone to making extreme assertions which were more akin to advocacy than expert evidence. See, for example, her suggestion that the striations on the aerial photographs of FAW represented plough marks, the connotations of which were helpful to CN's case on AW and caused the Inspector to ask specific questions of Mr Baker about ploughing (Doc 84, p2.6). She made her suggestion of plough marks notwithstanding that the scale of the photographs means that a plough-mark would be a twelfth of a millimetre wide and thus not visible to the human eye. Her suggestion of plough marks was not qualified by any alternative explanations for the striations (Doc 191 and Mr Meier, examination-in-chief for various alternative explanations). Another example of Mrs Fisher's extreme

assertions is her contention that since the 1950s there was truncation of 0.8m of soils across 60% of FAW, due to the physical removal of soils by humans. Dr Macphail later said there was “no evidence” of this and completely disowned the theory. Mrs Fisher’s suggestion in cross-examination that the soils were carted off over Ashenground Bridge for use as building material was pure speculation, which was unsupported by either evidence or logic.

- 9.76 Weighty evidence on AW was produced by Messrs Baker, Allen, Dr Whitbread and Dr Kirby (the latter two being leading national authorities on AW). In contrast, the general quality of Mrs Fisher’s written and oral evidence fell short of the standard to be expected from an expert witness at a public Inquiry. Hers is the only evidence that FAW is not ancient woodland, contrary to the Inventory classification.⁴⁵ The degree of her expertise on AW, and the general quality of her evidence, do not provide a reliable foundation for concluding that Messrs Baker and Allen, Drs Whitbread and Kirby and the Mid Sussex Ancient Woodland Inventory have all got it wrong.

Conclusion

- 9.77 For all the above reasons:

- 1) CN was unable to identify any compelling reasons why the Inventory classification should be departed from; and
- 2) even if the issue of whether FAW is ancient woodland is approached ‘from a clean slate’, the overwhelming conclusion from the evidence is that FAW is ancient woodland.

- 9.78 The case is so compelling that a conclusion that FAW is not ancient woodland would be beyond the range of reasonable responses open to the Secretary of State, and would therefore be unlawful.

Implications if FAW is ancient woodland

(i) CN needs to satisfy the test in PPS 9 paragraph 10, notwithstanding the Local Plan allocation (as agreed by Mr Harris)

- 9.79 FAW is allocated for development in the Local Plan. However, S38(6) of the Planning and Compulsory Purchase Act 2004 (‘the 2004 Act’) provides that planning applications must be determined in accordance with the development plan “*unless material considerations indicate otherwise*”. In the present case, if it is accepted that FAW is ancient woodland, this is a prime example of a material consideration indicating otherwise than the development plan. In particular:

⁴⁵ Note that Dr Macphail only went as far as saying that FAW’s soils were “*not good woodland soils*” and CN’s counsel prevented an answer to a question about whether FAW met the definition of ancient woodland.

1) It is only after allocation that the Council has become aware of just how ecologically important FAW is.⁴⁶ In light of the information which has arisen since allocation, MSDC has concluded that "*the Local Plan allocation was inappropriate*" (Doc 4, p7.15 & Mr Matthews, examination-in-chief). This is particularly important given that PPS 1 paragraph 19 states that "*planning decisions should be based on up-to-date information on the environmental characteristics of the area*" (emphasis added).

2) PPS 9 was published after the Local Plan. Paragraph 10 of PPS 9 contains, for the first time, a presumption against development which would result in the loss or deterioration of AW. It states:

"Ancient woodland is a valuable biodiversity resource both for its diversity of species and for its longevity as woodland. Once lost it cannot be recreated. Local planning authorities should identify any areas of ancient woodland in their areas that do not have statutory protection (e.g. as an SSSI). They should not grant planning permission for development that would result in its loss or deterioration unless the need for, and benefits of, the development in that location outweigh the loss of the woodland habitat."

3) As Mr Harris rightly accepted on behalf of CN, PPS 9 paragraph 10 applies just as much to AW sites which had been allocated for development prior to the publication of PPS 9, as it does to as-yet-unallocated AW sites. Accordingly, as Mr Harris specifically agreed in cross-examination, if it is accepted that FAW is ancient woodland, the test under PPS 9 paragraph 10 must be applied in considering whether development should proceed on FAW. If this test is not satisfied, then FAW should be excluded from development notwithstanding its allocation in the Local Plan.

9.80 Accordingly, as Mr Harris agreed in cross-examination, if FAW is accepted to be AW, it should be excluded from development "*unless the need for, and benefits of, the development in that location outweigh the loss of the woodland habitat*".

9.81 As Mr Harris agreed, the "*need for development... in that location*" means, in the present case, the need for 60 dwellings on FAW. It does not mean the need for 785 dwellings at Phases 4-5, because the remainder of Phases 4-5 is viable without, and is therefore not dependent upon, Cell 5B1 being delivered at FAW (Mr Harris, XX).

9.82 Surprisingly, PPS 9 paragraph 10 is not mentioned once in any of CN's proofs. Neither Mr Harris nor Mrs Fisher were asked in examination-in-chief to apply the PPS 9 paragraph 10 test and explain why the need for, and benefits of, 60 houses on FAW outweigh the loss of the woodland habitat. Put simply, therefore, CN has offered no evidence as to why the presumption against development on ancient woodland is rebutted. Its entire case on FAW instead focuses on arguing that it is not ancient woodland (which implicitly acknowledges the significance of AW status).

⁴⁶ Mr Matthews examination-in-chief, and note also CN's Supplementary Statement (Pursuant to the ES and Planning Statements (CD45), p5.4: "There was a lack of representations on ecological grounds during the Local Plan Review process to the allocation of this part of the site and the Inspector's Report following the Inquiry into the Local Plan did not... refer to any ecological concerns."

- 9.83 Mr Harris said in cross-examination that CN addressed the PPS 9 paragraph 10 test “*by inference*”. That cannot be accepted. The presumption against development on AW in PPS 9 paragraph 10 cannot be silently rebutted any more than, for example, the presumption against development on the Green Belt in PPG 2. The onus is firmly on the developer to put forward a positive case why the proposed development is needed in that location and would outweigh the environmental harm it would cause.
- 9.84 In any event, the evidence cannot sustain a conclusion that the need for 60 houses on FAW outweighs the environmental harm that would be caused by development (Mr Meier, examination-in-chief & Doc 218).

(ii) No evidence as to why the 60 houses need to be located on FAW

- 9.85 Insofar as there is any need for these 60 dwellings, there is no evidence at all as to why these need to be located on FAW as opposed to somewhere else in Mid Sussex. This is crucial: the test in PPS 9 paragraph 10 specifically refers to the “*need for development... in that location*”. Accordingly, it is not simply a case of balancing the benefits of the development against the loss of AW. The developer is obliged to show why the development needs to be located on the AW site in question and cannot be located anywhere else. Without that obligation, the protection of AW would be seriously undermined. Only 2.6% of the land area of England is AW, whereas 86.5% of England remains undeveloped (Doc 86, appx 1, pg 24, Dr Whitbread, examination-in-chief). There is therefore plenty of scope in principle for locating new development on non-ancient woodland sites (Mr Meier, examination-in-chief).
- 9.86 In the absence of evidence showing that any need for these 60 houses in Mid Sussex can only be met on FAW, there is no evidential basis for concluding that there is any “*need for development...in that location*”. Accordingly, the test in PPS 9 paragraph 10 cannot be satisfied.

(iii) The need for, and benefits of, the 60 houses proposed for Cell 5B1

- 9.87 The need for, and benefits of, the 60 dwellings proposed on Cell 5B1 is limited by the following factors:
- 1) Even without these 60 dwellings, CN’s proposals for Phases 4-5 would result in the delivery of far more homes at Bolnore Village than has previously been anticipated. In particular:
 - (a) The West Sussex Structure Plan 2001-2016 (Feb 2005) anticipated that 1,400 homes would be delivered in south-east and south-west Haywards Heath (CD13, p23 & 82). Of these, 859 homes are being delivered on Bolnore Village Phases 1-3, and 220 homes are being delivered on land to the south-west and south-east of the former St Francis Hospital Site (CD14, Policy HH3 and approval HH/05/02335 for 89 units). That leaves 321 of the 1,400 anticipated homes remaining. The proposals for Phases 4-5 would deliver over twice this number even if the 60 houses proposed for Cell 5B1 are omitted.

(b) The 1999 Design Brief SPG anticipated that 780 dwellings would be built on the entire Bolnore Village site (CD17, p6.2). Similarly, Policy HH2 of the 2004 Mid Sussex Local Plan allocates Bolnore Village for “*approximately 800 dwellings*” (CD14). In fact, these anticipated figures have already been exceeded by Phases 1-3, where 859 homes are being delivered. The total number of dwellings now proposed for the entire Bolnore Village site is over 1,600 – in other words, double the number originally anticipated and allocated.

2) The GoSE Action Plan for Mid Sussex (December 2005) described the removal of Cell 5B1 at the Planning Committee stage in 2005 as “progress” and stated “most ecological issues now addressed and reduced scheme proposed by Crest” (Doc 37, appx 2, table page 2-3). There is no criticism whatsoever of the “reduced scheme” resulting from the removal of Cell 5B1. The reduction is referred to in an entirely positive light.

3) When these points were put to Mr Harris in cross-examination, he accepted that there was “*no strategic need*” for the 60 houses on FAW, and said that “*GoSE would shed no tears*” if they were excluded.

4) Moreover, it is far from certain that, if permission is granted, 60 houses would be constructed on FAW. CN has at various times suggested the figure could be in the region of 30 houses (Doc 49 & Doc 162, appx 8). The need for, and benefits of, 30 houses would be even lower than it is for 60 houses.

Balancing the need for 60 houses against the loss of and damage to ancient woodland

9.88 In light of the above factors, the need for 60 houses is not sufficient to outweigh the loss of, and damage to, AW which would be caused by building upon FAW (Doc 218). In particular:

1) As a matter of principle, only a strategic need can be sufficient to justify the loss of a substantial area of ancient woodland such as FAW. As PPS 9 paragraph 10 states, ancient woodland is a rare and finite resource which, once lost, cannot be recreated. Only 2.6% of the land area of England is AW (see paragraph 9.85 above). The importance of AW is the subject of growing awareness: PPS 9 paragraph 10, the Companion Guide to PPS 9 (CD5) and *Keepers of Time* (CD10) are three recent statements of Government policy which increase the emphasis on retaining and protecting AW.

2) Moreover, FAW is an especially important area of AW. In particular:

(a) It is exceptionally high in biodiversity, with more than 20 ancient woodland species in a very concentrated area (see paragraphs 9.43-9.45 above).

(b) It is a critical link in the connectivity between the habitats of Ashenground Wood and Reading Wood (Mr Baker and Dr Whitbread, oral evidence). It therefore receives additional protection from PPS 9 paragraph 12, which provides:

“Networks of natural habitats provide a valuable resource. They can link sites of biodiversity importance and provide routes or stepping stones for the migration, dispersal and genetic exchange of species in the wider environment. Local authorities should aim to maintain networks by avoiding or repairing the fragmentation and isolation of natural habitats through policies in plans. Such networks should be protected from development, and, where possible, strengthened by or integrated within it...”

Development of FAW would lead to the fragmentation and isolation of Reading Wood and Ashenground Wood from each other. It would therefore be contrary to PPS 9 paragraph 12.⁴⁷

- (c) FAW contains the only significant clearing in the wider ancient block. As Dr Whitbread explained in examination-in-chief, this role is so important in ecological terms that, if development goes ahead on FAW, good conservation management would require another clearing to be created elsewhere in the woodland block (see above paragraph 9.41, 4)).
- (d) FAW contains unimproved acid grassland. This is itself a key habitat protected under PPS 9 paragraph 11, which provides:

“Through policies in plans, local authorities should also conserve other important natural habitat types that have been identified in the Countryside and Rights of Way Act 2000 section 74 list (CROW), as being of principal importance for the conservation of biodiversity in England and identify opportunities to enhance and add to them.”

Unimproved acid grassland is included in the CROW Act S74 list, and is therefore required to be conserved by PPS 9 paragraph 11. Moreover, acid grassland is very rare in this region, which means it is all the more important to preserve the example at FAW.

- (e) FAW is intended to be a key part of the new Local Nature Reserve covering the entire AW block in south-west Haywards Heath. Development upon FAW would be a massive setback for the Local Nature Reserve (Dr Whitbread, examination-in-chief & Mr Meier, answers to the Inspector's questions).

9.89 For all these reasons, it is clear that the need for 60 houses is not sufficient to outweigh the loss of, and damage to, AW which would be caused by building upon FAW.

⁴⁷ Note also that a number of the articles by Dr Peterken are specifically focused on the need to avoid and reverse the habitat fragmentation of British woodlands; e.g. *Reversing the habitat fragmentation of British woodlands* (2002) (Doc 197). This serves to emphasise the importance of this issue.

Irrelevance of proposed mitigation measures

9.90 CN has suggested that one means of mitigating the impact of building upon FAW would be to translocate some of the acid grassland turf to another site (Doc 81, p3.5.2). This proposal does not make the development any less unacceptable. In particular:

1) The statutory nature conservation bodies are unanimous that translocation of protected habitats is a completely unacceptable alternative to *in situ* conservation. See in particular Joint Nature Conservancy Committee's *Habitats Translocation Policy for Britain* (2003) (Doc 17, appx 1).⁴⁸ Paragraph 7.1 of this document states:

"The translocation of habitats is considered by the statutory conservation agencies not to be an acceptable alternative to in situ conservation. The statutory conservation agencies will continue to make the strongest possible case against translocating habitats from within SSSIs and from ancient habitats (or other areas with significant biodiversity interest) elsewhere. Translocation of habitats cannot reproduce the essential environmental conditions and the ecological processes, for example, migration, grazing and predation, which determine the composition of the original plant and animal communities. The available evidence shows that species in translocated habitats change their relative abundance over time, as well as being separated from their ecological, historical and cultural context. Thus, the intrinsic conservation value of translocated habitats is not sustained after the disruptions caused by their removal, transport and placement on a new site. Bullock et al. (1997) review much of the available evidence and cite references that demonstrate the problems with habitats translocations. These include the effects of weather conditions after translocation, or damage resulting from vandalism, which cannot be predicted or dealt with effectively." (emphasis not added)

2) Even if translocation of the acid grassland were to take place, building upon FAW would clearly result in a loss and deterioration of ancient woodland. The test in PPS 9 paragraph 10 would still need to be satisfied in relation to this loss and deterioration. It plainly is not satisfied, for the reasons given above.

9.91 CN has also suggested that, even if Cell 5B1 is constructed, some bits of FAW would be left in place around the edges of the development cell. This too does not make the development any less unacceptable. In particular:

1) The construction of dwellings on Cell 5B1 would still result in the loss of the much greater part of FAW. The test in PPS 9 paragraph 10 needs to be satisfied in respect of that very substantial loss of AW. It plainly is not satisfied, for the reasons already given.

2) Whatever parts of FAW remained around the perimeter of Cell 5B1 would suffer serious deterioration as a result of the development. They would be left isolated, their connectivity would be significantly decreased, and they would have a much lower ecological interaction with their surrounding environment. The test in PPS 9 paragraph 10 would therefore also need to be satisfied in respect of the deterioration in any parts of AW which are left remaining after the construction of Cell 5B1. Again, for the reasons already given, this test plainly is not satisfied.

⁴⁸ See also: Doc 15, p2.4.19 and English Nature's statement of opposition to translocation at this site at Doc 17, appx 31).

The St Francis' Hospital decision

9.92 The grant of permission on the St Francis' Hospital site in south-east Haywards Heath, which entailed the loss of AW in Anscombe Wood (Doc 81, p3.4.14) is of no bearing on the present case, for the following reasons:

1) The St Francis' Hospital decision was made in 2003 and accordingly pre-dated PPS 9, which was published in August 2005. It therefore has no bearing on the application of the test in PPS 9 paragraph 10, which did not exist in the former PPG 9.

2) There was a strategic need for the development in the St Francis Hospital case, since it was a critical pre-requisite for the delivery of the HHRR (as explained by Mr Rees in examination-in-chief). By contrast, Mr Harris agreed that there is no strategic need for the 60 houses proposed at Cell 5B1 in the present case, and CN has offered no evidence to show that those 60 houses can only be accommodated at FAW.

3) The AW at Anscombe Wood was of a significantly lower ecological value than that found at FAW. For example, Anscombe Wood contained only 12 AWI species, half the number at FAW, in an area about 4 times the size of FAW (Mrs Fisher, XX).

Conclusion on the test under PPS 9 paragraph 10

9.93 For all these reasons, if FAW is ancient woodland, CN has plainly not established that *"the need for, and benefits of, the development in that location outweigh the loss of the woodland habitat"*. Accordingly, the test in PPS 9 paragraph 10 has not been satisfied (as Mr Harris agreed it needed to be, notwithstanding the Local Plan allocation). FAW should therefore be excluded from development.

Implications if FAW is not ancient woodland

9.94 Even if FAW is not ancient woodland, it should still be excluded from development.

9.95 Policy ERA2(a) of the Structure Plan states (CD 13):

"Development should not be permitted unless the wide range of habitats, species and geological features of the County will be protected, conserved and, where possible, enhanced particularly through long-term management mechanisms and habitat creation schemes. A particularly high level of protection should be afforded to sites and features of national and international importance. Proposals for the extension or creation of new habitats should be permitted provided that they are consistent with wider environmental objectives"

9.96 The Local Plan Proposals Map identifies FAW as a site of nature conservation importance to which Policy C5 of the Local Plan applies (CD 14). Policy C5 states, in relevant part:

"Proposals for development...within...Sites of Nature Conservation Importance...will be subject to rigorous examination, and only permitted where the proposal, by virtue of design and layout, minimised the impact on features of nature conservation importance. Proposals should take advantage of opportunities for habitat creation where possible."

9.97 Policy C6 states:

“Development resulting in the loss of woodlands, hedgerows and trees which are important in the landscape, or as natural habitats, or historically, will be resisted.”

9.98 Mrs Fisher rightly accepted in cross-examination that these policies need to be complied with even if FAW is not ancient woodland.

9.99 The construction of 60 houses on FAW would be an unjustified breach of these development plan policies. Further or alternatively, the severe environmental impacts of development on FAW represent material considerations which outweigh the Local Plan allocation of FAW. In particular (Doc 218):

1) The need for, and benefits of, the proposed 60 houses is limited by the factors set out at paragraph 9.87 above.

2) CN has produced no evidence to show why any need for those 60 houses cannot be accommodated in a less environmentally sensitive location within the District (see paragraphs 9.87 above).

3) Even if FAW is not ancient woodland, it is a crucial ecological asset. In particular:

(a) It is exceptionally high in biodiversity (see paragraph 9.88 2(a) above).

(b) Development of FAW would lead to the fragmentation and isolation of Reading Wood and Ashenground Wood from each other, contrary to PPS 9 paragraph 12 (see paragraph 9.88 2(b) above).

(c) Development of FAW would remove the only significant clearing in the wider woodland block (see paragraph 9.88 2 (c) above). This would result in the deterioration of the adjoining AW and therefore trigger the presumption against development in PPS 9 paragraph 10. For the reasons already given, the test under PPS 9 paragraph 10 plainly is not satisfied.

(d) FAW contains unimproved acid grassland, which PPS 9 paragraph 11 requires to be “conserved”. The translocation of this protected grassland is a completely unacceptable alternative to *in situ* conservation (see paragraph 9.88 2 (d) above).

(e) FAW is intended to be a key part of the new Local Nature Reserve covering the entire AW block in South-West Haywards Heath (see paragraph 9.88 2 (e) above). Development upon FAW would be a massive setback for the Local Nature Reserve (Dr Whitbread, examination-in-chief, Mr Meier’s answers to the Inspector’s questions).

9.100 Accordingly, even if FAW is not ancient woodland, it should still be excluded from development.

Buffer Zones (BZs)

9.101 As Mr Pyke and Mrs Fisher agreed in cross-examination, two distinct questions need to be addressed in considering the adequacy of the proposed BZs:

- First, what degree of separation is required to protect trees?
- Secondly, what degree of separation is required for the ecological protection of woodland?

9.102 Though the precise widths of buffers might be left to the reserved matters stage, the parameters are being tested at the outline stage. At any given point, the buffers proposed by CN equate to whichever is the greater of its calculation of the BS5837:2005 root protection area (RPA), 1 metre outside the canopy line, or a 5m width of ecological buffer (Mr Pyke, examination-in-chief & Doc 102, p5.1.5).

9.103 These proposed buffers fail to provide sufficient separation to protect trees and fail to provide sufficient separation for the ecological protection of woodland.

Sufficient protection for trees

9.104 It is common ground that the requirements of BS5837:2005 need to be complied with in order to provide sufficient protection for trees.

9.105 However, CN has incorrectly assessed the root protection area under s.5.2 of BS5837:2005, which means that the buffers do not provide the separation required by the Standard (CD37). The RPA has been assessed as illustrated on drawing 1859-TP-10, Rev F (Doc 113), as the girth of each tree at 1.5m height multiplied by a factor of 12 (Mr Pyke, XX and Mr Quaife, examination-in-chief). This is the calculation set out in Table 2 of BS5837:2005.

9.106 However, the proper assessment of the RPA does not end with the calculation in Table 2. The shape may change, and/or the size of the area may increase, depending on a number of considerations. This is clear from the following paragraphs of BS5837:2005:

1) Paragraph 5.2.1 refers to the calculated RPA in Table 2 as “*a minimum area in m² which should be left undisturbed around each retained tree*” (emphasis added).

2) Paragraph 5.2.2 refers to the calculated RPA in Table 2 as “*an area equivalent to a circle...*” – not simply “*a circle*”.

3) Most significantly, paragraph 5.2.4 states, in relevant part:

“The RPA, for each tree as determined in Table 2, should be plotted on the TCP⁴⁹ taking full account of the following factors, as assessed by an arboriculturalist, which may change its shape but not reduce its area whilst still providing adequate protection for the root system.

a) The likely tolerance of the tree to root disturbance or damage, based on factors such as species, age and condition and presence of other trees...

⁴⁹ Tree Constraints Plan, as defined in BS5837:2005

- b) *The morphology and disposition of the roots, when known to be influenced by past or existing site conditions...*
- c) *The soil type and structure.*
- d) *Topography and drainage...*

9.107 Accordingly, as Mr Quaife explained (Doc 232):

“3.13. Whatever the debate about the method of deriving it, it is intended to be a minimum dimension. There are many factors that would cause that minimum radius to be inappropriate, and these include soil type, topography, drainage, summer water table level, exposure, structures, surfacing, health and condition of the tree, growth potential, and proximity to other trees and vegetative competition.

...5.17 ...one must determine whether the minimum RPA is sufficient. Whether it is or is not, one's justification in either case must be described so that the basis of the RPA is understood.”

9.108 CN has failed to make any adjustment of the RPA's size or shape for any of the several hundred trees bordering Phases 4-5. Nor did Mr Laddiman's⁵⁰ tree assessments provide any justification for applying the minimum RPA, without any adjustment to its shape, throughout the site (ibid, section 6, Mr Quaife examination-in-chief and Mr Pyke, XX).

9.109 In particular, as Mr Quaife explained, CN failed to consider whether the shape of the RPA required adjustment in order to take account of asymmetric root growth at woodland edges (root morphology being an express consideration under paragraph 5.2.4 of BS4837:2005).

9.110 In response, Mr Pyke accepted that tree root growth patterns are often irregular and asymmetric, but contended that asymmetry at the woodland edge was always insignificant. It was for this reason, he said, that the minimum RPAs had not been adjusted (Mr Pyke, XX).

9.111 The issue between the parties, therefore, is whether or not asymmetric root growth at the woodland edge is always insignificant. If it is not always insignificant, as the LCOs contend, then CN should have given specific consideration to adjusting the minimum RPA for woodland edge trees.

9.112 Mr Quaife explained in detail why significant asymmetric root growth occurs at woodland edges, and therefore needed to be given specific consideration (Doc 232, p4.1-4.15, 5.9-5.11, 5.14-5.16 & Mr Quaife, examination-in-chief).

9.113 For CN, Mr Pyke advanced the following arguments in support of his contention that asymmetric root growth at the woodland edge would always be insignificant (Mr Pyke, oral evidence):

- 1) the land on the non-woodland side at this site is inhospitable to tree roots owing to the presence of grass (which competes with tree roots for water);

⁵⁰ An arboriculturalist (not called as a witness) who undertook tree surveys for Mr Pyke.

2) the *mycorrhizae* fungi, which are crucial to the growth of trees, are common in woodlands but not in grassland;

3) his view was supported by observations in a book by P G Biddle entitled *Tree Root Damage to Buildings* (Doc 108).

9.114 Mr Pyke's evidence should be rejected for the following reasons:

1) As Mr Quaife explained in examination-in-chief, the presence of grass does not make the land on the non-woodland side inhospitable to tree roots. Most grass roots grow up to 30cm deep, whereas tree roots regularly grow in the top 60cm. Accordingly, if the top 30cm does not have sufficient water and/or nutrients owing to the presence of grass, the tree roots will simply grow deeper than the top 30cm.

2) Mr Pyke contradicted himself in relation to *mycorrhizae*. In cross-examination, when asked why *mycorrhizae* were present in woodland soils, he said "they're there because of the tree roots". He then agreed that this meant *mycorrhizae* would follow roots into grassland. But if that is so, it cannot possibly be the case that tree roots are less willing to grow into grassland owing to the lack of *mycorrhizae*. Mr Quaife subsequently explained, with greater nuance, the symbiotic relationship between *mycorrhizae* and tree roots and why it is the case that "where roots grow, *mycorrhizae* are with them" (Mr Quaife, examination-in-chief).

3) The extracts from P G Biddle's book *Tree Root Damage to Buildings* do not, in fact, support Mr Pyke's argument that asymmetry is always insignificant at woodland edges. As Mr Quaife explained in examination-in-chief, Dr Biddle was not referring to woodland edges at all in this extract.

4) The above points are complex matters of arboriculture. Mr Quaife is a renowned arboriculturalist of national standing (Doc 232, p2.1-2.10). Mr Pyke, however, is not an arboriculturalist at all: he is a landscape architect with no qualifications in arboriculture (Mr Pyke, XX). Mr Quaife's evidence on these points should therefore be preferred. For the same reason, his evidence more generally on the interpretation and application of BS5837:2005 should be preferred: the foreword to BS5837:2005 distinguishes between "landscape architects" and "arboriculturalists" and paragraph 5.2.4 specifically provides that the RPA "must be assessed by an arboriculturalist".⁵¹ If Mr Pyke (as a landscape architect) is not in a position to *assess* the RPA, how can he be in a position to give *expert evidence* on it?

9.115 Accordingly, CN's proposed RPAs, and therefore the buffer zones, do not comply with BS5837:2005.

⁵¹ See also the definitions section at paragraph 2.1 of BS5837:2005.

Sufficient width for ecological protection

Overview

- 9.116 It is common ground that BS5837:2005 is not designed to provide ecological protection for woodland. It is designed solely to protect trees. The question of ecological protection must therefore be considered separately (Mr Pyke, XX).
- 9.117 In other words, CN's position is that a buffer width of 5 metres provides sufficient ecological protection. Where the BS5837:2005 RPA is less than 5m, CN's proposed buffers are extended beyond the root protection area to 5m. Where the BS5847:2005 RPA is greater than 5m, no further separation is provided for ecological purposes.
- 9.118 The LCOs and MSDC, for their part, contend that an absolute minimum buffer width of 15m is required at all points in order to achieve sufficient ecological protection. At the more sensitive points, a buffer width of more than 15m will be required.

Mrs Fisher's view that buffer width is not a particularly important factor in protecting woodland

- 9.119 CN's position that no more than a 5m buffer width is required for ecological protection is based upon Mrs Fisher's view that the width of buffers is not a particularly important factor in protecting woodland. Her approach is that:

"...the most important factors in protecting woodland is [sic] not so much buffer depth as the layout of the site, the provision of sufficient open and incidental space, post-development monitoring and management, and the management of potentially the most damaging phases – construction" (Doc 81, p1.4.6)

and that:

"...there appears to be an assumption that the simple physical relationship between the edge of the development and the woodlands results in a direct impact. However, there is no evidence to support this." (ibid, p2.8.1).

- 9.120 It is notable that Mrs Fisher did not cite any reports, articles, policies or other publications in support of this approach. Elsewhere in her proof she referred in passing (p1.4.3) to BS5837:2005, the Highways Agency's *Guide on Nature Conservation*, the NHBC's guidance *Building Near Trees*, and the Environment Agency's Land Drainage and Sea Defence Byelaws (Doc 83, appx 6). However, none of these documents are on point, and none of them provide any support for her view that buffer width is not a particularly important factor in the ecological protection of woodland (Mrs Fisher, XX).
- 9.121 Mrs Fisher professed to rely upon her experience; yet she did not cite any case studies from outside Bolnore Village to support her approach. Moreover, given that the intended beneficiary of the buffer zones is ancient woodland, it is significant that she is not an AW expert, unlike Dr Whitbread whose evidence she contradicts (see paragraph 9.75 above).
- 9.122 Moreover, Mrs Fisher's view that buffer width is not a particularly important factor in protecting woodland, and her refusal to recognise that the relationship between the

development edge and woodland results in a direct impact, is directly contradicted by *Keepers of Time*, the Government's statement of policy on AW (CD 10). This document states:

"Even if the woodland itself is protected, it can suffer serious disturbance where houses or roads are built right up to its margins, both directly from the impact of development or indirectly through changes to drainage." (p.13)

"Strategic objectives: ...reduce or buffer the impacts of intensive land uses and development which adjoin ancient or native woodland." (p.11)

"There is a need to re-establish graded, more natural transitions and buffers between woodland perimeters and surrounding land uses" (p.17)

Widespread support for the LCOs' view that a buffer width of 15m is necessary

9.123 In contrast to the lack of any support for Mrs Fisher's approach, there is widespread support for the LCOs' view that a minimum buffer width of 15m at any given point is necessary for the ecological protection of woodland (and AW in particular).

- NE considers that a buffer width of 20-50m is necessary (Doc 17, appx 34).
- The Woodland Trust considers that a buffer width of 15-30m is required to protect ancient woodland from adjoining development (Doc 17, appx 20).
- Sussex Wildlife Trust originally maintained that a buffer width 20-30m was required. However, recognising the pressures of development, it is now prepared to accept an absolute minimum of 15m (CD40A, Dr Whitbread, examination-in-chief).⁵²
- The Badger Trust – Sussex considers that a buffer width 15-30m is necessary (Doc 248, p64).

9.124 These bodies have considerable expertise and experience in relation to ecology generally and woodland specifically. Their recommendations on buffer widths are not simply plucked out of the air; they are the product of judgments which have been formed based upon that expertise and experience (agreed by Mrs Fisher in cross-examination). They endorse the reasons given by Dr Whitbread and Mr Baker for an absolute minimum buffer width of 15m at any given point (Doc 193, section 7 & Mr Baker, examination-in-chief).

9.125 CN criticised in cross-examination Mr Baker and Dr Whitbread for their failure to consider a 'compromise' figure below 15m. However, as the figures quoted above show, 15m is already a compromise. It is right at the bottom of the range advanced by the Woodland Trust and Badger Trust – Sussex, and is 5m less than the minimum buffer width required by NE. As explained above, Dr Whitbread and Sussex Wildlife Trust initially required 20-30m, but came down to 15m in specific recognition of the pressures of development. So there has already been a significant degree of compromise on the part of MSDC and the LCOs. There is simply no scope for further compromise below 15m without causing the loss and/or deterioration of the AW surrounding Phases 4-5.

⁵² Note 15m is an absolute minimum as opposed to an average: the separation would be greater than 15m in the more sensitive areas.

Any such loss or deterioration of AW would need to satisfy the test under PPS 9 paragraph 10, which plainly is not satisfied in the present case.

- 9.126 It is also common ground that an important function of buffers is to provide a layered 'ecotone' – a graduated transition from woodland through to development.⁵³ However, as explained by Dr Whitbread in examination-in-chief, it is simply not possible to achieve this graduated transition in anything less than 15m – and certainly not in the minimum 5m ecological buffering proposed by CN.

GYTOG /The Doncaster Rules (Doc 17, appx 26 & Doc 18)

- 9.127 The LCOs adopt and rely on MSDC's submissions in relation to GYTOG. The following general observations are made:

- 1) The 'bottom line' has always been that 15m is the absolute minimum separation needed in order to provide effective ecological protection of AW (in accordance with the widespread consensus outlined at paragraphs 9.123-9.125 above).
- 2) The original GYTOG (a.k.a. the 'Doncaster Rules') is useful because it provides an easy-to-use mechanism which can be used for calculating a buffer width which is sufficient for individual tree protection and which complies with the 15m 'bottom line' for ecological protection.
- 3) The updated GYTOG is not useful, because (owing to changes in the tree-specific factors) its calculations are not always consistent with the 15m 'bottom line' for ecological protection.⁵⁴
- 4) The LCOs' reliance on the original GYTOG has always been as a means to an end: the 'end' being compliance with the 15m 'bottom line'. Accordingly, even if CN's attacks on GYTOG are upheld, it does not follow that its buffers are acceptable. CN's attacks on GYTOG are attacks on the 'means', not attacks on the 'end': they do not undermine the principle of the 15m 'bottom line' (the widespread support for which is set out above at paragraphs 9.123-9.126). CN's buffers do not comply with the 15m 'bottom line' and therefore should be rejected in any event.

The experience of buffers at Phases 1-3 of Bolnore Village

- 9.128 Mrs Fisher places particular reliance on the buffer zones for Phases 1-3 of Bolnore Village (Doc 81, p1.4.3-1.4.4). Such reliance is misplaced, for the following reasons:

- 1) Contrary to what Mrs Fisher says (Doc 81, p1.2.9), there is clear evidence of human intrusion into habitat areas away from footpaths (Doc 193, pg29, Fig 12).

⁵³ The principle of 'ecotones' was accepted by Mrs Fisher and Mr Pyke in cross-examination. It is also a specific policy recommendation in Keepers of Time (CD10, pg17). Doc 193, p7.1.3 provides an explanation of what ecotones involve.

⁵⁴ Note that the Doncaster Rules have not been updated in line with the new version of GYTOG. The current version of the Doncaster Rules is the original version, which is based on the original version of GYTOG and which is therefore useful for calculating buffer widths which comply with the 'bottom line' for ecological protection of woodland.

2) The buffers on Phases 1-3 were subject to very substantial damage during the construction process, the effects of which could be long-lasting (ibid, pg27-29, Dr Whitbread examination-in-chief & Doc 191, pg 30).

3) The pictures at Doc 17, appx 23 show a plainly inadequate separation between development and housing (indeed, in some cases, virtually no separation at all). In cross-examination Mrs Fisher's response to this point was that the edge trees on images 2 and 6 would soon be removed, thereby creating a greater separation between the woodland and development. But this is precisely the point: the inadequate separation means that the buffer would be built from the woodland edge *into* the woodland, not from the woodland edge *away from* the woodland. The woodland edge would therefore be eroded, which is one of the key things buffers seek to prevent.

4) Recent experience over the 2006/07 winter has demonstrated that, unless there is sufficient separation between woodland and development, the perceived risk of trees blowing down on the edge of woodlands will lead to adjoining homeowners seeking the removal of those trees (Doc 191, Section 7 & Appx 6 and Mr Meier examination-in-chief).

5) It is, in any event, too early to conclude that there has been no long-term damage resulting from the buffers at Phases 1-3. As Mrs Fisher accepted in cross-examination, some long-term damage may not yet have manifested itself. It is therefore too early to rely on the Phases 1-3 buffers as a design guide for subsequent phases.

Conclusion

9.129 For all these reasons, CN's proposed buffers at Phases 4-5 are inadequate. A condition should be imposed, requiring that no development commences until a new buffer scheme is approved in writing by the Council, which must in any event comply with BS5837:2005 and provide a minimum of 15m separation between development and woodland at any given point.⁵⁵ These are the parameters that must be adopted for the development to be acceptable.

Dedication of Land Pursuant to Policy HH7

The need to comply with Policy HH7 of the Local Plan

9.130 Paragraph 13.74 and Policy HH7 of the Local Plan (CD14) provide as follows:

⁵⁵ Note that at the more sensitive points, more than 15m separation would be required in order to achieve effective ecological protection. The Council would be able to take this into account in considering whether to grant approval of the new buffer scheme pursuant to the LCOs' proposed condition. In other words, 15m separation would be the minimum required in any one place; not the average across the whole of Phases 4-5.

“13.74: The Proposals Map indicates that extensive areas of land within or adjacent to the allocated development areas are identified for purposes of public open space, recreation or landscape protection. The provision of these areas of amenity land and landscaping is regarded as an essential element within the strategy of the Local Plan. It is vital that these areas are made available, laid out and maintained for these purposes. It is considered that the only practical way of achieving this is for the land to be passed to the District Council. The Local Planning Authority will therefore require the dedication of the relevant sections of land to the District Council before the development of each phase is commenced.

HH7 Developers will be required to dedicate to the Council the relevant sections of open space and recreation land before the development of each phase commences. Planning permission for each phase of the development will not be granted unless all the necessary land is made available.”

- 9.131 The Local Plan Proposals Map indicates that Policy HH7 applies to the appeal site.
- 9.132 The buffer strips, FAW, The Meadow, and the Railway Woodland (assuming the latter is excluded from development) plainly fall into the description of “*areas of public open space, recreation or landscape protection*”. Policy HH7 therefore requires that they are dedicated to the Council before the development commences.
- 9.133 Not only is the dedication of these areas a policy requirement; it also makes very good sense. In particular:
- 1) Developers are naturally less expert in, and less committed to, the long-term management of ecologically sensitive areas than local planning authorities whose function it is to serve the public interest. Ancient woodland is a particularly sensitive and valuable resource, as is clear from the raft of documentation on the subject. Its long-term management and protection must therefore be entrusted to those for whom it is a priority. That means MSDC, and not CN or its subcontractors.
 - 2) The parties' evidence is unanimous on this issue. In particular:
 - (a) CN's ecology expert, Mrs Fisher, agreed that Policy HH7 applies and stated that “*regardless of width, an LPA is in a better position to manage the buffer zones than the developer*” (Mrs Fisher, XX).
 - (b) Dr Whitbread expressed his agreement with this view. He also explained the ecological benefits which would result if these areas, including FAW and the buffer zones, were managed in an integrated management programme with other sensitive ecological areas in the locality. Their management can only be integrated in this way if they are transferred to the Council (Dr Whitbread, examination-in-chief).
 - (c) MSDC has signed a Statement of Common Ground with the LCOs which states that “*the future management of the ecological areas will best be secured by a transfer of the land to the District Council with a commuted sum*” (CD 65, p1.1.5).
- 9.134 The experience of Bolnore Village Phases 1-3, where the land comprising the buffer zones was not dedicated to the Council, is illustrative of the problems that arise if

sensitive ecological areas are managed by developers and/or their subcontractors. During the construction process, building materials were left within the buffer zones, causing significant environmental harm (Doc 193, pg27-29 & Doc 191, p30). Moreover, the damaging invasion of Himalayan Balsam into the buffer zones and adjoining woodland was not dealt with by CN or their ecological consultants; Friends of Ashenground and Bolnore Woods stepped in to do the job in the woodland, but the problem has not been tackled within the wildlife corridors which remain in CN's control (Mr Meier, examination-in-chief).

9.135 The 1998 S106 agreement acknowledged these points, and included a provision for the dedication of the 'ecological area' and 'residual woodland area'⁵⁶ together with commuted sums of £20,000 and £21,000 respectively: see Schedule 4 Part 4 of the Agreement (Doc 73, appx 8, pg54).

9.136 The 1999 Design Brief SPG specifically endorsed the provision for dedication in the 1998 S106 agreement (CD17). Paragraph 14.4 stated:

"In addition to formal recreational provision the development area contains natural features such as woodlands and ponds. Under the terms of the outline planning permission (CD/29/96), these woodland areas will be transferred for future management as public open space"

9.137 As Mr Meier explained in response to a question from the Inspector, and as Dr Whitbread elaborated in examination-in-chief, plans are afoot for a local nature reserve covering the entire AW block in south-west Haywards Heath (Doc 211, appx A & Mr Meier, examination-in-chief). The dedication of FAW and the buffer zones to the Council would help to deliver this objective.

9.138 In failing to comply with Policy HH7, the appeal proposals are contrary to the development plan. It is therefore incumbent upon CN to point to material considerations which justify non-compliance - see S38(6) of the 2004 Act. Yet it has not produced one shred of evidence to demonstrate that dedication is not desirable, or otherwise explain why the requirement to dedicate under Policy HH7 should be departed from. The only evidence from CN on this subject - Mrs Fisher's comment quoted above - supports the case for dedication. Moreover, neither the evidence of Mr Meier nor that of Dr Whitbread as to the need for dedication was challenged in cross-examination.

9.139 In response to the absence of Policy HH7 from the Council's suggested reasons for refusal and Statement of Case, it has to be pointed out that:

1) Things have moved on since the reasons for refusal and the Council's Statement of Case. The LCOs subsequently put dedication in issue, firstly in paragraph 5.9 of its Statement of Case (Doc 174), and secondly through the unchallenged and uncontradicted evidence of two witnesses (including an expert ecologist).

2) Having considered that evidence, MSDC has now signed a Statement of Common Ground expressing the view that dedication is in the best interests of the BZs and FAW.

⁵⁶ These areas were not defined in the 1998 agreement, but would not include FAW whose Ancient Woodland status and ecological value were not then recognised.

9.140 In reality, the reason why the S106 obligation does not provide for the dedication of FAW and the BZs has nothing to do with the best interests of these areas. It is all about money. MSDC requires the transfer of these areas to be accompanied by a financial contribution for long-term management. CN has refused to provide such a sum. A stalemate has thus been reached, and ecology is losing out. It is entirely right that the dedication involves a financial contribution, because:

1) If the areas are not transferred, CN would have to bear the financial burden of managing them. Accordingly, if the areas are transferred without a financial contribution for their management, CN would avoid an expense which it would otherwise have incurred (and MSDC would incur an expense which it would otherwise not have incurred).

2) The purpose of Policy HH7 is not to relieve the developer from the financial responsibility which it would otherwise have had for managing areas of open space. Its purpose is to ensure the best long-term management of those areas by transferring them to the Council. That purpose would be fulfilled less effectively if MSDC is given no financial assistance towards that long-term management.

3) Accordingly, it is inherent in the concept of 'dedication' under Policy HH7 that the transfer of the relevant areas of open space should be accompanied by a financial contribution for their management.

4) The 1998 S106 agreement, referred to above, acknowledged these points – contributions of £20,000 and £21,000 were provided for the dedicated areas.

9.141 Consequently, there are no material considerations justifying a departure from the dedication requirement under Policy HH7 – and there is a substantial amount of (unchallenged and uncontradicted) evidence demonstrating the importance of dedication. Permission cannot be granted, therefore, unless effect is given to Policy HH7.

The mechanism for achieving compliance with Policy HH7

9.142 The dedication of land, with or without a financial contribution for its future management, cannot be effected by condition. Accordingly, if permission would otherwise be granted but for the dedication point, the LCOs suggest that the Secretary of State writes to CN stating that she is 'minded to refuse' granting planning permission unless it agrees to a S106 obligation providing for the dedication of the BZs and FAW, together with an appropriate sum for their management. In order to facilitate this process, a draft version of such an obligation is included with the LCOs' suggested conditions.

9.143 Finally, the LCOs stress that the requirement in Policy HH7 is for dedication to occur "*before the development of each phase commences*". This requirement is important: as Dr Whitbread explained, the sensitive ecological areas are particularly vulnerable to mismanagement by developers and their subcontractors during the construction process (Dr Whitbread, examination-in-chief, Doc 193, pg27-29 & Doc 191, p30). It is therefore vital that dedication takes place before construction begins.

The Ceiling Limit

9.144 CN is seeking planning permission for up to 785 dwellings. It accepts that if FAW is excluded from development this ceiling limit would reduce to 725 dwellings.

9.145 The LCOs contend that the ceiling limit should be further reduced to 532 dwellings, in order to:

- 1) ensure the development integrates well with and complements the local area in terms of density, and to ensure the provision of adequate open space;
- 2) avoid the creation of artificially high expectations of housing delivery and the strategic problems that would ensue; and
- 3) mitigate the very substantial impact of the construction process.

9.146 This is not an issue that can be swept under the carpet until the reserved matters stage. In particular:

- 1) As a matter of law, when outline permission is granted for a development, matters which are accepted in principle at the outline stage, and are therefore implicit in the grant of permission, cannot be reopened at the reserved matters stage: see e.g. *Proberun Ltd v. Secretary of State for the Environment* [1990] 3 P.L.R. 79.
- 2) Outline planning permission is being sought for “up to 785 dwellings”.
- 3) As a matter of law, consideration of density does not fall within the scope of reserved matters: see *R v. Newbury DC ex parte Chieveley Parish Council* [1999] P.L.C.R. 51 and *R (Murray) v. Hampshire County Council* [2003] J.P.L. 224.⁵⁷
- 4) It follows that, if outline planning permission is granted for the appeal proposals as they currently stand, the principle of constructing up to 785 dwellings on the site will have been accepted (including in relation to density).⁵⁸
- 5) Accordingly, if permission is granted for the appeal proposals as they currently stand, the Council would be unable to refuse reserved matters approval on grounds which undermine the principle of up to 785 dwellings at Phases 4-5 (including in relation to density).
- 6) CN's assertion that the actual number of dwellings on the site will depend upon market forces (Mr Harris, examination-in-chief & Doc 49) therefore misses the point. What is important is that the Council would have no legal power to prevent 785 dwellings being constructed at the site.

⁵⁷ Inspector's note: Although not provided at the Inquiry, for completeness they are provided as Inquiry documents. See also p3B-3010, *Encyclopaedia of Town and Country Planning*, (Docs 259-262).

⁵⁸ Agreed by Mr Harris in cross-examination. Hence the *Supplementary Evidence Note on Density and Coverage Issues* (Doc 49) states on pg3 that the purpose of the Inquiry is “to ensure that the ‘worst case’ has been tested” (see also pg1: “it is the function of the ES to test the ‘worst case’ in planning terms (measured in ceiling housing units”).

7) Moreover, if planning permission is granted now for up to 785 dwellings and CN subsequently makes good its assurances that a significantly lower number of dwellings would come forward, the LCOs' concerns as to artificially high expectations of housing delivery will be proved correct as there would be an unplanned shortfall in the number of houses anticipated for Mid-Sussex (see paragraphs 9.184-9.189 below). It is far better that a realistic ceiling limit is set now.

Density

Relevance of density

9.147 PPS 3 (CD3) paragraph 16 requires planning authorities to consider whether a proposed development:

“...is well integrated with, and complements, the neighbouring buildings and the local area more generally in terms of scale, density, layout and access” (emphasis added)

9.148 In examination-in-chief, Mr Harris commented on how Annex C of draft PPS 3 contained suggested density levels for different types of location, whereas the final version of PPS 3 does not contain suggested density levels. It was argued that this represented a policy shift whereby density has become less relevant to planning decisions (notwithstanding the text of PPS 3 paragraph 16).

9.149 In fact, as Mr Harris ultimately conceded in cross-examination, the reality is very different.

9.150 The consultation responses to the draft PPS 3 included the following (Doc 69, p12):

“Other points raised include:

The need for a less prescriptive approach to density, especially the indicative density ranges proposed. LPA should be able to decide density policies on the basis of local circumstances.” (emphasis added)

9.151 When PPS 3 was published, the Minister for Housing and Planning issued an accompanying written statement which stated (inter alia) that PPS 3 would provide (Doc 217, pg2, 6th bullet):

“More flexibility for local authorities.... Local authorities will be able to set their own local standards for density.”(emphasis added)

9.152 Consequently, it is not the case that density levels are any less relevant to planning decisions; rather, a decision has been taken that it is for local authorities and not central government to decide what the appropriate levels shall be. Density is still an important consideration, as PPS 3 paragraph 16 makes clear.⁵⁹

9.153 Moreover, the Barker Report, on which so much reliance was placed, itself treats density as an important planning consideration. Paragraph 14 of the Executive Summary states (CD 54, pg9):

⁵⁹ See also PPS1 p38 (CD 1): *“design policies... should concentrate on guiding the overall density... of new development.”*

“Densification can also make the best use of available land, but there are limits as to how far this can go. Although in some urban areas it is possible to build at very high densities, this may be less acceptable elsewhere. The savings of land which come from building at 50, rather than 40, dwellings per hectare are smaller from those from building at 30, rather than 20, dwellings per hectare. Densification also comes at a cost...”

9.154 As the final words of this passage hint at, the reason why density matters is that it gives a very good indication of the social, landscaping and environmental impacts of a development (Mr Harris, XX).

Appropriate density levels for this area

9.155 PPS 3 paragraph 16 requires the development to “*integrate well with and complement*” the local area in terms of density. The local area can properly be described as ‘semi-rural’ and ‘suburban’ (Docs 35, p3.2.7, Doc 211, p4.3.7-4.3.8 & Mr Harris, XX).

9.156 In this context, Mr Harris accepted that:

- 1) A development of Phases 4-5 at a density of 65dph would not “*integrate well with and complement*” the local area.
- 2) A density of 60dph is at the very upper end for suburban, semi-rural locations, and a development at Phases 4-5 at this density would therefore need a clear justification to show how it “*integrates well with and complements*” the local area.⁶⁰

Which areas should be included in calculating the density of Phases 4-5?

9.157 PPS 3 Annex B defines “*net dwelling density*” (the appropriate measure for these purposes) as follows:

“Net dwelling density is calculated by including only those site areas which will be developed for housing and directly associated uses, including access roads within the site, private garden space, car parking areas, incidental open space and landscaping and children’s play areas, where these are provided.”

9.158 This is a word-for-word transposition from the definition of “*net site density*” in the DETR guidance *The Use of Density in Urban Planning* (Doc 211, appx C) (which has not been cancelled by PPS 3), paragraphs 8.19-8.20 of which provide:

“8.19 A “net site density” is a more refined estimate than a gross site density and includes only those areas which will be developed for housing and directly associated uses. This will include:

⁶⁰ Inspector’s note: For comparison, Phase 3 of Bolnore Village has been built at an average density of 47 dph (Doc 49, pg7).

- *access roads within the site;*
- *private garden space*
- *car parking areas;*
- *incidental open space and landscaping; and*
- *children's' play areas where these are to be provided.*

8.20 It therefore excludes:

- *major distributor roads;*
- *primary schools;*
- *open spaces serving a wider area; and*
- *significant landscape buffer strips."*

9.159 Paragraph 8.19 explains what the concept of "*net site density*" includes. It is this paragraph which PPS 3 Annex B is based upon. Paragraph 8.20 then goes on to explain what the concept excludes. PPS 3 Annex B does not specifically refer to these exclusions. However, as Mr Harris agreed, given that the definition of "net dwelling density" in PPS 3 Annex B is a transposition of paragraph 8.19, the exclusions in paragraph 8.20 must logically apply to it.

9.160 The key issues between the LCOs and CN in this are:

- 1) Are the ecological buffers "*significant landscape buffer strips*" and therefore to be excluded from the calculation of net site density?
- 2) Is the spine road a "*major distributor road*" and therefore to be excluded from the calculation of net site density?

9.161 The LCOs say the answer to both of these questions is yes.

9.162 The ecological buffers are "*significant landscape buffer strips*" for the following reasons (Doc 211, p5.4.1-5.4.9, Mr Meier, examination-in-chief & Mr Harris, XX):

- 1) Their primary purpose is to provide the necessary separation between the development and woodland (accepted by Mr Harris in cross-examination).
- 2) Without sufficient ecological buffers (whatever 'sufficient' may be), the development as a whole would not be acceptable owing to its environmental impact (accepted by Mr Harris in cross-examination). Accordingly, they are clearly significant.

3) The area of the ecological buffers as currently proposed represents 23% of the overall area of Phases 4-5; if they are widened in accordance with the Council's and LCOs' submissions, they would represent at least 26.5% of the overall area.⁶¹ On either view, this is a very significant proportion.

4) By their very nature, the ecological buffers are located around the periphery of the site and are not integrated within the development. They therefore have little or no impact upon whether or not there is a "feeling of openness" within the heart of the development. Including them within the "net site density" would therefore give a false impression of how "open" the development would actually feel in reality.

5) If, notwithstanding the above factors, the ecological buffers are not "*significant landscape buffer strips*", this begs the question: what on earth is? When this question was put to him in cross-examination, Mr Harris said that the concept of "*significant landscape buffer strips*" was restricted to strategic buffers between urban extensions and the countryside. As to which:

(a) This is precisely what the ecological buffers are in the present case. Phases 4-5 is an extension to Haywards Heath; and the buffers are required to ensure an ecologically acceptable transition between this extension and the AW in the adjacent countryside (Mr Meier, examination-in-chief).

(b) In any event, if Mr Harris is right, why was the term "*significant landscape buffer strips*" used in the first place, rather than the term "*strategic buffers between urban extensions and the countryside*"? The former is plainly more expansive than the latter.

9.163 The spine road (which runs from the western access point from Phase 1, through the Pinch-point, to Phases 4B and 5), is a "*major distributor road*" because it will carry traffic from outside Bolnore Village to a range of locations across Phases 4-5 and, in the case of buses and cyclists, to the whole of Bolnore Village (Doc 211, p5.5.1-5.5.2, Mr Harris XX & Mr Meier, examination-in-chief). In particular:

1) It is the only way in which traffic from outside Bolnore Village can access Phases 4A, 4B and 5.

2) It is also the route of the proposed 'Hopper Bus' between Haywards Heath town centre and the whole of Bolnore Village (not just Phases 4-5).

3) It will also be a significant route for cyclists travelling between Haywards Heath town centre and the whole of Bolnore Village (not just Phases 4-5).

9.164 Finally, it should be noted that in examination-in-chief Mr Matthews for MSDC stated that he agreed with the LCOs' assessment as to which areas should be excluded from the calculation of "*net dwelling density*".

Calculating the net dwelling density of Phases 4-5

⁶¹ The overall area of Phases 4-5, as calculated by CN, is 15.49ha. The area of the ecological buffers proposed by Crest is 3.6ha (Doc 224, p8.3). The area of the wider buffers called for by the LCOs and the Council would be at least 4.10ha (Mr Harris, XX & Mr Meier, examination-in-chief).

9.165 Applying the above principles, there are a number of different permutations of the precise calculations, depending upon: whether one excludes both the ecological buffers and the spine road, or just one of them; whether FAW is excluded from development; whether one uses the area measurements in CN's ES or the slightly different area measurements in Mr Broomhead's evidence. The main permutations are as follows.⁶²

9.166 Based on CN's proposed ecological buffers, using the area measurements in the ES, the appropriate calculations are as follows:

- 1) Overall area within the Phases 4-5 'red line' = 15.49ha (CD44, ES, Table 4.1, pg 14).
- 2) Exclude Cell 4C at 0.84ha (ibid) (80 units sheltered housing with a higher density which the LCOs agree is justified) = 14.65ha for the remaining 705 units.
- 3) Exclude Cell 5B1 (FAW) at 1.44ha (ibid) (the ceiling limit will accordingly drop by 60 units) = 13.21ha for the remaining 645 units.
- 4) Exclude the ecological buffers at 3.6ha⁶³ = 9.61ha for the remaining 645 units.
- 5) The density excluding the ecological buffers is therefore 67.1dph (average across Phases 4-5 excluding Cell 4C).
- 6) Also exclude the spine road at 0.46ha⁶⁴ = 9.15ha for the remaining 645 units.
- 7) The density excluding the ecological buffers and the spine road is therefore 70.5 dph (average across Phases 4-5 excluding Cell 4C).

9.167 Based on the Council's and LCOs' submissions as to how wide the ecological buffers should be, the appropriate calculations are as follows:

- 6) Overall area within the Phases 4-5 'red line' = 15.49ha.
- 7) *Exclude* Cell 4C at 0.84ha (80 units sheltered housing with a higher density which the LCOs agree is justified) = 14.65ha for the remaining 705 units.
- 8) *Exclude* Cell 5B1 (FAW) at 1.44ha (CD44, ES, Table 4.1, pg14) (the ceiling limit will accordingly drop by 60units) = 13.21ha for the remaining 645 units.
- 9) *Exclude* the ecological buffers at 4.1ha⁶⁵ = 9.11ha for the remaining 645 units.
- 10) The density excluding the ecological buffers is therefore 70.8dph (average across Phases 4-5 excluding Cell 4C).
- 11) *Also exclude* the spine road at 0.46ha = 8.65ha for the remaining 645 units.

⁶² Various other permutations were also explored with Mr Harris in cross-examination and Mr Meier, examination-in-chief. In the end, on any of the permutations, once the ecological buffers are excluded, the density is around or above 65dph (agreed by Mr Harris in cross-examination).

⁶³ Taken from CN's March 2006 Masterplan: see Doc 224, p2.5 & 8.3. This figure was agreed by Mr Harris in cross-examination.

⁶⁴ (Doc 225, p1.3 (sum total of figures in the third column)). This figure was not disputed by CN.

⁶⁵ (Doc 211 - see the table at p5.6.2, as corrected during cross-examination of Mr Harris (The table gives a figure of 4.56ha, but this figure also includes the spine road which measures 0.46ha, as explained above – so the figure for the LCOs' proposed buffers is 4.10ha. CN has not disputed the 4.10ha figure at any stage).

12) The density excluding the ecological buffers and the spine road is therefore 74.5dph (average across Phases 4-5 excluding Cell 4C).

9.168 These figures are significant because Mr Harris himself accepted that (see 9.156 above):

1) A development at Phases 4-5 at a density of 65dph would not “*integrate well with and complement*” the local area (as required by PPS 3, paragraph 16).

2) A density of 60dph is at the very upper end for suburban, semi-rural locations, and a development at Phases 4-5 at this density would therefore need a clear justification to show how it “*integrates well with and complements*” the local area.

9.169 Moreover, applying the suggested density levels in Annex C of Draft PPS 3, the above densities would be in the middle of the range suggested for urban locations,⁶⁶ and around 20% above the maximum suggested level for suburban locations such as Bolnore Village.⁶⁷ It is accepted that Annex C is not part of the final PPS 3 but, as already discussed, this is because central government has decided to delegate the setting of density standards to local authorities. Given that MSDC has not yet set density standards for Mid Sussex, the suggested levels in Annex C of Draft PPS 3 provide a useful indication as to the range of densities that might be expected in suburban areas such as Bolnore Village. This range is greatly exceeded by the density which would result if the proposed ceiling limit of 785 dwellings is delivered at Phases 4-5.

9.170 By contrast, if the LCOs' proposed ceiling of 532 units is imposed, the average density of Phases 4-5 will be no more than 50dph.⁶⁸ This would achieve a greater integration with the local area in terms of density.⁶⁹

Open Space and play areas

Open space

9.171 PPS 1 paragraph 35 states that “*high quality and inclusive design should...have well-planned public spaces that bring people together and provide opportunities for physical activity and recreation*” (CD1).

9.172 PPG 17 reiterates the need to ensure adequate open space provision (CD9). Paragraph 11 in particular highlights the benefit of “*areas of open space that provide a community resource and can be used for informal or formal events*”.

9.173 Public open space is all the more important where there is a lesser degree of private open space (e.g. gardens) associated with dwellings, as would be the case with Phases 4-5 (Mr Meier, examination-in-chief).

⁶⁶ The range suggested for urban locations is 40-75dph.

⁶⁷ The range suggested for suburban locations is 35-55dph. 66dph exceeds the top end of this range by 20%.

⁶⁸ The precise methodology for calculating this figure is explained in Doc 211, p5.6.4-5.6.5 (and is based on Mr Broomhead's (unchallenged) assessment of the net site area/net dwelling area). For phase 4 alone and calculated pro-rata excluding 80 units on Cell 4C the suggested ceiling limit would be 410 units (Doc 243, pg2).

⁶⁹ Inspector's note: Table 4.1 of the ES (CD44, pg14) indicates an average dph across the whole of Phase 4/5 of 50.7, based on a net developable area of 15.49ha. Taking out Cells 4C and 5B1 reduces the average to about 48.4 dph.

- 9.174 However, it will be physically impossible to achieve these objectives at Phases 4-5 if 785 dwellings are constructed at a density around or even above 65dph. There will simply not be enough room left for any significant areas of open space within the development.
- 9.175 The problem can be seen in detail when looking at the proposed layout for Phase 4A (Doc 239 in the LCOs' main folder, Tab 20)⁷⁰. Mr Harris asserted that this layout leaves adequate open space for informal use (Mr Harris, XX). However, whilst there are spaces on the perimeter suitable for dog walking, there is no open space integrated within the development which can (as PPS 3 paragraph 35 requires) "*bring people together*" and be used for community events (Mr Meier, examination-in-chief). Why not? Because Cell 4A is tightly packed with houses.
- 9.176 This is not a matter which can be left to the reserved matters stage. By that time, MSDC will be legally unable to undermine the principle of 785 dwellings, and so the fact that sufficient open space cannot be provided alongside this number of dwellings will be beyond the Council's control. The only solution is to reduce the ceiling level now to a more appropriate level: namely, the 532 units proposed by the LCOs.

Play areas

- 9.177 The 1999 Design Brief SPG, at paragraph 14.3, identified the need for 7 Locally Equipped Areas of Play ('LEAPs') and 3 Neighbourhood Equipped Areas of Play ('NEAPs') in Bolnore Village (CD17).
- 9.178 The Design Brief was written at a time when it was contemplated that Bolnore Village as a whole would provide 780 dwellings (ibid, p6.2). If the present appeals are allowed in their current form, Bolnore Village would in fact provide over 1,600 dwellings. In other words, the identified need of 7 LEAPS and 3 NEAPS for Phases 1-5 was based on the assumption that the population of Bolnore Village would be less than half the size of what is now proposed. The increase in planned population size has led to a consequent increase in the need for play areas and open space (Mr Meier, examination-in-chief).
- 9.179 There are expected to be 5 LEAPs and 3 NEAPs on Phases 1-3 (Mr Harris, XX, Mr Meier, examination-in-chief). The S106 obligation for Phases 4-5 proposes either:
- 1) 1 additional LEAP on Phases 4-5 plus 1 additional NEAP to the south at Quarry Hollow (subject to planning approval); or
 - 2) 2 additional LEAPs on Phases 4-5 (if approval for the Quarry Hollow NEAP is not granted).
- 9.180 This would result in Bolnore Village having a total of either: (a) 6 LEAPs and 4 NEAPs; or (b) 7 LEAPs and 3 NEAPs – to be shared by up to 1,600 dwellings. Comparing this with the original identified need of 7 LEAPs and 3 NEAPs to be shared by just 780 dwellings, it is clear that the provision of LEAPs and NEAPs does not cater for the increase in Bolnore Village's planned population size.

⁷⁰ Inspector's note: The detailed proposal for Phase 4A does not form part of the appeal proposals.

9.181 This problem can be mitigated by reducing the ceiling limit to the LCOs' proposed figure of 532 dwellings. In particular:

1) Imposing a ceiling limit of 532 dwellings rather than one of 785 dwellings would ease the pressure on the LEAPs and NEAPs at Bolnore Village, which would in any event be shared by hundreds more households than originally anticipated in the Design Brief.

2) Imposing a ceiling limit of 532 dwellings would ensure that sufficient open space can be provided on Phases 4-5. This open space would be a useful alternative recreation area to the LEAPs and NEAPS, and as such would help to ease the pressure on them.

Off site open space/play areas at Beech Hurst Gardens

9.182 CN has sought to meet some of the above criticisms by proposing to enhance Beech Hurst Gardens to provide additional off-site open space.

9.183 This is no substitute for on-site open space. In particular (Doc 211, p6.3.4-6.3.5):

1) PPS 1 paragraph 35, quoted above, specifically requires "*well planned public spaces that bring people together*". Placing vital community space off-site is not good planning, and does not bring people together. Rather than encourage a sense of community within the site, CN would be sending people away from the site to use open space.

2) Similarly, the DCLG's consultation paper on Planning Obligations talks of the "*important objective*" in ensuring that "*facilities are integrated within developments and not located inappropriately, for example, far away from housing developments.*"⁷¹ Beech Hurst Gardens would not be integrated within Phases 4-5 or Bolnore Village as a whole; and it would be a long walking distance away from some of the proposed development cells. Mr Harris' suggestion in cross-examination that residents of Phases 4-5 could get the bus to Beech Hurst Gardens just goes to prove the point!

3) Beech Hurst Gardens existed in 1999, when the Design Brief was adopted. If it was considered to be a suitable substitute for on-site open space, the Design Brief would have said so.

4) In any event, CN is unlikely to achieve anything of substance by its proposed enhancement of Beech Hurst Gardens. The Gardens already have award-winning facilities of the highest quality (ibid Doc 211, p6.3.1-6.3.3). CN insinuated that Beech Hurst did not comply with the Disability Discrimination Act, but this insinuation was unsubstantiated and unfounded (Mr Harris, XX, Mr Meier, examination-in-chief).

⁷¹ *Changes to Planning Obligations: A Planning Gain Supplement Consultation* (DCLG, 2006) p34 [CD57]. This comment is made in the context of how planning obligations are currently intended to work, not in the context of proposed policy changes – so it is no answer for CN to say that this is 'just a consultation paper'.

Avoiding false expectations of housing delivery

- 9.184 Aside from the issue of density and open space, a further compelling reason for reducing the ceiling limit is the need to avoid false expectations of housing delivery at Phases 4-5.
- 9.185 Throughout the Inquiry, CN repeatedly stressed that it does not intend to construct 785 dwellings on Phases 4-5. In particular (Doc 216):
- 1) The Supplementary Statement on Construction Management and Vehicle Access states: *“the final dwelling numbers are expected to be lower than the identified ceiling of 785”* (Doc 44, p3.2).
 - 2) CN's Supplementary Evidence Note on Density and Coverage Issues repeatedly describes 785 dwellings as *“the worst case scenario”* and states *“any potential reduction should not be ignored when determining the appeals”* (Doc 49). The penultimate paragraph on page 5 states that *“the final dwelling count could be significantly lower than the dwelling ceiling of 785”*.
 - 3) The second paragraph on page 7 of the above document contemplates *“the final housing delivery figure amount[ing] to between 10-15% less than the ES test figure”*. A 10% reduction represents 707 dwellings; a 15% reduction represents 667 dwellings. On page 8 it states *“we would expect to see around 89% of the 705 housing units being built, i.e. circa 625 units plus 57 sheltered housing units (previously tested at a ceiling of 80 in the ES). That would bring about a site capacity in the order of 680 units...”*
 - 4) Section 9.2 of Mr Clyne's Update Report (amplified on pages 1 & 8 of the Appendices to this Report) contemplates 560 units at Phases 4-5, excluding the sheltered housing Cell 4C (Docs 162 & 163). Adding the 57 units now proposed for Cell 4C, this gives a total of 617 dwellings for Phases 4-5.
- 9.186 Regrettably, there has been a distinct impression of “smoke and mirrors” about the number of dwellings CN intends to deliver on the site. In particular:
- 1) The various assertions and figures put forward by CN at different stages of the Inquiry, quoted above, fluctuated substantially.
 - 2) Page 5 of Doc 49 states: *“For sound commercial and planning reasons, Crest Nicholson will have set themselves a target dwelling total for Phases 4 and 5”*. Mr Harris was asked in cross-examination what this target was – a perfectly valid question, given that this was after all a public Inquiry into CN's proposals for the site, and CN is specifically asking the Secretary of State to take into account the potential reduction from the ceiling limit. Counsel for CN objected to this question and Mr Harris subsequently refused to answer.
 - 3) The LCOs repeatedly asked CN to confirm the rationale behind the ‘560 units’ figure given in Mr Clyne's Update Report (Doc 162). CN did not respond to this request. Mr Clyne was not made available for cross-examination, and so he could not be asked directly. It may be that Mr Clyne has inadvertently let slip the *“target dwelling total”* that Mr Harris was so keen to conceal – but there was no opportunity of finding out whether this is the case.

- 9.187 Notwithstanding CN's refusal to reveal its "*target dwelling total*", it is reasonable to conclude from its various assurances quoted above that it is planning a substantial reduction from the ceiling limit: up to 168 dwellings or 20% if Mr Clyne is correct.⁷²
- 9.188 This is important, because if the appeals are allowed as they currently stand, the Council's and GoSE's strategic assessments of housing delivery in Mid-Sussex will proceed on the basis that an outline permission exists for 785 dwellings. As CN has emphasised so strongly, housing delivery is a crucial issue in this area. If MSDC and GoSE are suddenly presented with a 20% reduction from the anticipated figure in a site as large as Phases 4-5, the resulting shortfall (i.e. up to 168 dwellings) could be of strategic proportions and create real difficulties for housing provision. It is no answer to say that the Council and GoSE can take into account the 'potential for flexibility' at Phases 4-5. They need to plan ahead with a sufficient degree of certainty: a 20% margin of error would not enable them to do so.
- 9.189 The problem becomes all the more apparent when it is considered what would happen if there was a 20% reduction from the ceiling limits of other strategic outline permissions in Mid-Sussex (or indeed the South-East more generally). The cumulative effect would be disastrous. Yet if CN is allowed this degree of 'flexibility' here, a precedent would be established and there would be nothing to stop other developers seeking permission for artificially inflated ceiling limits in future.

Mitigating the impact of construction traffic

- 9.190 If the ceiling limit is reduced from 785 dwellings to 532 dwellings (or to an intermediate figure), the impact of construction traffic would decrease commensurately. Either the construction period would shorten, or the frequency of construction traffic would reduce, or both. This would help to mitigate the very substantial impact of construction traffic, discussed below at paragraphs 9.204-9.230.

Conclusion on the ceiling limit

- 9.191 For all these reasons, the ceiling limit should be reduced from 785 to 532 (or, alternatively, to an intermediate number which the Secretary of State considers appropriate).
- 9.192 Mr Harris emphasised that it was important for a developer to have flexibility in carrying the outline permission through the reserved matters process. Provided that there is not so much flexibility as to risk artificially inflated expectations of housing delivery (discussed above), the LCOs have no qualms about this. However, a reduced ceiling limit would still give CN an adequate degree of flexibility.

⁷² NB this is not relevant in assessing density and open space issues (as explained above, the 785 figure is being tested for those purposes).

Allotments

9.193 Duncton Meadow should be retained for the provision of allotments for the following reasons:

- 1) It is common ground that there is an unmet need for allotments in the Haywards Heath area. The development at Phases 4-5 would increase this need (Doc 226).
- 2) The provision of allotments within Phases 4-5 would reduce the feeling of 'denseness' within the development (discussed above).
- 3) The retention of Duncton Meadow would safeguard the local badger population (Docs 247 & 248).

Unmet need for allotments

9.194 As Mr Marshall explained, and as Mr Harris agreed in cross-examination, there is already a substantial and increasing demand for allotments in the Haywards Heath area (Doc 226, pg2-4). This demand outstrips the supply of allotments, and lengthy waiting lists are in place (ibid, pg3). To quote the words of a Haywards Heath Town Council member in a conversation with Mr Marshall, "*allotments are like gold dust*" (Mr Marshall, examination-in-chief).

9.195 This unmet need for allotments is important. The significance of allotments is recognised in PPG 17 (Doc 211, p6.4.3), and their benefits have recently been elaborated in detail by the London Assembly's Environment Committee in its October 2006 report *A Lot to Lose: London's disappearing allotments*.⁷³ The benefits identified by this report (which apply to allotments generally, not just to London) include the following:

- social benefits (pg8-9 of the report);
- health benefits (pg9-10);
- environmental benefits (pg11-12);
- financial benefits (pg12);
- stronger community links (pg13-14); and
- social diversity (pg14-15).

9.196 No doubt because of the unmet demand, and the important benefits of allotments, MSDC has set a threshold of 200 houses above which new developments may be required to provide allotments (Doc 226, pg3 and Mr Meier's response to the Inspector's questions). This is not unusual. For example, the London Assembly's report states at p2:

"To ensure provision is maintained, boroughs that have identified unmet demand for allotments should consider using S106 agreements to compel the developers of high density housing to allocate a portion of land for use as allotments."

⁷³ Doc 227. In considering the weight to be attached to this report, the Secretary of State is asked to have regard to the wide range of bodies who submitted evidence for the report: see p.26. These bodies include the Department for Communities and Local Government, Council officers, several allotment associations, the RSPCA, and the RSPB.

9.197 Such a requirement is particularly apt for the development at Phases 4-5. In particular:

- 1) Up to 785 dwellings are being proposed – almost four times the Council's threshold figure.
- 2) Not least because of the higher density of Phases 4-5, the garden sizes of the proposed dwellings will be significantly smaller than those of previous phases, particularly Phase 1 (agreed by Mr Harris in cross-examination).
- 3) These two factors mean that the demand for allotments is likely to increase. Mr Harris accepted this was possible, although he went on to say that the extent of any increase would depend upon the lifestyle and demographics of residents. However, no research has been undertaken by CN as to the effects of these factors, whereas Mr Meier and Mr Marshall both explained that allotment users come from a wide range of backgrounds (Mr Meier, examination-in-chief and Mr Marshall, oral evidence).
- 4) The Local Plan has not specifically identified a requirement that allotments be provided with Phases 4-5; however the Local Plan envisaged that Bolnore Village would comprise “*approximately 800 dwellings*” as opposed to the 1,500+ dwellings now proposed (Doc 211, p6.4.1-6.4.3).

Retention of Duncton Meadow will reduce the feeling of 'denseness'

9.198 The inclusion of allotments within Phases 4-5 would provide much-needed open space, and as such would help to make the development feel less 'dense' and more 'open' (Mr Meier, examination-in-chief). This is particularly important given the high density which would follow if 785 dwellings are constructed on the site (see above).

Retention of Duncton Meadow will safeguard the local badger population

9.199 The retention of Duncton Meadow is necessary to safeguard the local badger population. The LCOs rely on the evidence of the Badger Trust – Sussex in this regard.

9.200 Importantly, Ms Parker and Ms Scrivens (from the badgers' perspective) and Mr Marshall (from the allotment-holder's perspective) were in agreement that badgers and allotments could happily co-exist on Duncton Meadow (oral evidence).

Conclusion

9.201 Accordingly, if Duncton Meadow is retained for allotments, three separate planning objectives would be achieved: meeting the demand for allotments, increasing the 'openness' of the development, and safeguarding the local badger population. The case for allotments is therefore compelling.

9.202 Two alternative mechanisms are available to achieve the provision of allotments:

- 1) Imposing a condition requiring Duncton Meadow to be retained for use as allotments.

2) Alternatively, if it should be decided that the allotments should be transferred to the Council's ownership (with or without a financial contribution for their management), it would be necessary to achieve this via a S106 obligation rather than by condition. In this situation, the 'minded to refuse' procedure could be used to persuade CN to include allotment provision in a S106 obligation.

9.203 The LCOs would be happy for either of these mechanisms to be used.

Construction Access

9.204 There are two questions to be considered:

- 1) Which figures should be used for measuring the impact of construction traffic?
- 2) What measures are necessary in order to mitigate that impact?

9.205 Each of these questions is considered in turn. In summary, the LCOs contend:

- 1) The ES figures should be used for measuring the impact of construction traffic;
- 2) The proposed option for two-way construction traffic on Parkfield Way is unacceptable; and
- 3) If, despite being in breach of the Local Plan,⁷⁴ the proposed option for construction traffic to enter via Bolnore Road and exit via Parkfield Way is to be allowed, three provisos must be satisfied, including in particular the imposition of the LCOs' proposed access at the beginning of the 'BOAT' section of Bolnore Road.

(a) Which figures should be used for measuring the impact of construction traffic?

9.206 The Environmental Statement for Phases 4-5, when assessing the potential impact of construction traffic, states that it is "*anticipated*" that there would "*typically*" be 64 HGVs per day during the construction period (Doc 44, ES Technical Appendix 4, appx F, Section 2). Given the permitted HGV access hours are to be 09:15 to 15:30 (i.e. a 6¼ hour working day) (CD 67, pg3) this equates to an average of:

- 1) 10.24 HGVs per hour; and
- 2) HGV every 5.9 minutes.

9.207 The ES also anticipates that 80 non-HGV construction vehicles would access the site. Given the permitted access hours for such vehicles will be 08.00-18.00 (i.e. a 10 hour working day), (Doc 39, Annex 14, p4.6.3) this equates to:

- 1) 8 non-HGVs per hour; and

⁷⁴ See Policy HH2(a) of the Local Plan (CD 14 & CD17, p18.1 and Doc 180, p8-13).

2) 1 non-HGV every 7.5 minutes.

- 9.208 When the HGV and non-HGV figures are combined, the ES prediction is that there would be on average a total of 17.8 construction vehicles accessing the site per hour: roughly speaking, one vehicle every 3 minutes. Over a construction period spanning more than half a decade,⁷⁵ this would have a substantial impact.
- 9.209 CN's Supplementary Statement on Construction Management and Vehicle Access ('SSCMVA') contains significantly lower estimates of construction traffic. In particular, this predicts 15 HGVs per day (the 'best case scenario') and 31.5 HGVs per day (the 'worst case scenario') (Doc 44, p2.4-2.5).
- 9.210 CN contends that the impact of construction traffic should be assessed on the basis of these revised figures. The LCOs, for their part, contend that the impact of construction traffic should be assessed on the basis of the figures in the ES. There are two reasons for this:
- 1) As a matter of law, the likely significant environmental effects of the development (including the effects of the construction process) must be assessed by reference to the ES.
 - 2) In any event, the revised figures are unsupported by evidence and are not credible.

Legal requirement to use the ES figures

- 9.211 Regulation 3(2) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ('the EIA Regulations') provides, in relation to applications which require an EIA:
- "The relevant planning authority or the Secretary of State or an inspector shall not grant planning permission pursuant to an application to which this regulation applies unless they have first taken the environmental information into consideration, and they shall state in their decision that they have done so."*
- 9.212 The "environmental information", which Reg 3(2) requires to be taken into account, includes the ES: see Reg 2(1).
- 9.213 The construction traffic estimate of 64 HGVs per day in CN's ES is therefore part of the environmental information which is required to be taken into account under the EIA Regulations.
- 9.214 Moreover, the estimated level of construction traffic is a fundamental part of the ES – it is not simply irrelevant 'padding'. This is because, under Part I of Schedule 4 to the EIA Regulations, an ES is required to provide:
- 1) *"A description of the physical characteristics of the whole development and the land use requirements during the construction and operational phases"* (Schedule 4 Part 1 p1(a)).

⁷⁵ As to which see paragraph 9.220 below.

2) "A description of the main characteristics of the production processes" (Schedule 4 Part 1 paragraph 1(b)).

3) "A description of the aspects of the environment likely to be significantly affected by the development" (Schedule 4 Part I paragraph 3).

9.215 An ES is therefore required to provide information on the construction process, and its likely environmental effects – and this necessitates estimating the level of construction traffic involved. This estimate, once included in the ES, becomes part of the "environmental information" by reference to which the decision-maker must assess the environmental effects of the development and construction process. It would therefore be unlawful to assess the environmental effects of construction traffic by reference to the revised figures which contradict the ES.

The revised figures are not credible

9.216 Even if it were permissible in principle to have regard to the revised figures, they should in any event be given no weight (Doc 188, p3.1-3.7).

9.217 When comparing the revised figures to the ES figures, the reduction in the anticipated level of construction traffic is very high: the revised "worst case scenario" (31.5 HGVs/day) is just 49% of the ES figure (64 HGVs/day) – a 51% reduction. The revised "best case scenario" is a mere 23% of the ES figure – a 77% reduction. Both scenarios represent a massive reduction in the anticipated level of construction traffic, and in order to have any credibility at all they need to be backed up with cogent reasoning. The reduction is too great to be accepted at face value (Mr Carter, examination-in-chief).

9.218 However, no empirical calculations have been given to show how the reduction in the level of construction traffic can be achieved (SSCMVA (Doc 44) & Mr Harris, XX).

9.219 Inconsistent and unconvincing reasons have been given as to why there has been such a high reduction in the anticipated level of construction traffic:

1) Initially, in the SSCMVA paragraph 3.2 stated that:

"The ES is required to address a 'worst case' scenario, and was therefore written to take into account the maximum possible number of dwellings that the site could accommodate. The final dwelling numbers are expected to be lower than the identified ceiling of 785, with a consequent reduction in overall vehicle numbers."

2) When questioned about this in cross-examination, Mr Harris was unable to explain (even in the broadest of terms) what mathematical relationship there was between the number of dwellings and the volume of construction traffic. In light of this, and given the absence of any empirical calculations, the only conclusion to be drawn is that the revised figures were plucked out of the air.

3) Moreover, CN is seeking planning permission for up to 785 dwellings and it refuses to reduce the ceiling number to a lower level. It cannot have its cake and eat it: if approval is wanted for up to 785 dwellings, the Secretary of State has to be satisfied that the construction traffic levels for building up to 785 dwellings are acceptable. The ES figures are therefore the relevant figures to be assessed.

4) In any event, Mr Harris moved away from the 'reduction in dwellings' explanation during cross-examination and instead advanced a new explanation: CN had given further consideration to the efficient use of construction vehicles, which would result in a reduction in the overall number of vehicle movements. Again, however, no empirical evidence has been advanced to show just how this very high level of reduction would be achieved.

9.220 In addition, Mr Harris accepted in cross-examination that the revised figures did not take into account the fact that the proposed construction period has reduced from 7 years 10 months to 5 years 9 months: a 27% reduction.⁷⁶ This, he agreed, means that the construction process would be more intense, with a consequent increase in the intensity of construction traffic.

Conclusion

9.221 For all these reasons, the impact of construction traffic should be assessed by reference to the ES figures (64 HGVs per day and 80 non-HGVs per day).

What measures are necessary in order to mitigate the impact of construction traffic?

Selecting the route for construction traffic

9.222 A number of potential construction access routes have been considered (CD 48, CD/T/5). Of these, two routes have been advanced by CN:

- 1) In and out via Parkfield Way (a.k.a. 'Route 1'); or
- 2) In via Bolnore Road and out via Parkfield Way (a.k.a. 'Route 10').

In and out via Parkfield Way

9.223 This option is unacceptable, regardless of whether the impact is assessed by reference to the ES figures or CN's revised figures. In particular:

⁷⁶ Compare Doc 35, appx 12 lines 24 and 30 (01/02/07-28/11/14) with Doc 65 (Gantt Chart) lines 12 and 31 (01/08/07-30/04/13).

- 1) The video demonstration shows (Doc 253) what one-way articulated HGV access would look like in practice: it is clear from this video that two-way access by such vehicles would be impracticable, dangerous and oppressive to local amenity (Docs 186, Section 7 and 188, p4.10 & Mr Carter, examination-in-chief).
 - 2) Computer modelling as to how two-way construction traffic could work in theory on Parkfield Way does not demonstrate that it is workable in practice (Doc 123, track plots within Drawings Section). HGVs are driven by humans, not by computers. Mr Roderick himself accepted in cross-examination that "there is no guarantee" that all the HGV drivers using Parkfield Way would follow the manoeuvre which the computer track plots show. The manoeuvre shown in the track plots is not a simple one. Deviations from it would therefore be common, and pose an ongoing danger to other people using Parkfield Way.
 - 3) For CN, it is accepted that on parts of Parkfield Way two HGVs travelling in opposite directions would be unable to pass each other (Doc 124, p4.12). If, as the ES predicts, there are over 10 HGVs per hour in each direction (one every 5.9 minutes), this is going to pose a serious problem.
 - 4) CN's analogy with the construction access programme for Phases 1-3 (in particular Phase 3) is flawed. There is no comparison between Phases 1-3 and Phases 4-5 in terms of the routes, the intensity of construction traffic or the duration of the construction process (Mr Harris, XX).
 - 5) The site visit will have confirmed views as to whether two-way HGV access along this narrow, bendy, residential road would be appropriate.
- 9.224 It appears, however, this option is dead in the water. CN and WSCC both prefer the "in via Bolnore Road, out via Parkfield Way" route (Mr Roderick, XX). All three parties are suggesting that a condition should be imposed restricting construction traffic to entering via Bolnore Road and exiting via Parkfield Way (except in relation to the spine road's construction – see paragraph 12.10 below).

In Bolnore Road, out Parkfield Way : 'The Three Provisos'

- 9.225 Under this option, the entrance for construction traffic would be located off Bolnore Road and would also be used by the Hopper Bus and 'blue light' emergency vehicles.
- 9.226 The LCOs' position on this option is as follows (Doc 184):
- 9.227 If, and only if:
- 1) the ceiling limit of the development is reduced to 532 dwellings (see paragraph 9.191 above), which would in turn reduce the impact of the construction phase; and
 - 2) a robust set of construction management proposals are conditioned into any grant of permission; and
 - 3) a condition requiring the LCOs' proposed construction entrance to the east of Cell 4C, instead of CN's proposed entrance further down the BOAT section of Bolnore Road;

then the LCOs accept that any residual safety or amenity impact arising from construction access, Hopper Bus, and 'blue light' emergency vehicles would not alone justify the refusal of permission in the event that it should be considered that permission should otherwise be granted.

- 9.228 For ease of reference, these are referred to as the 'three provisos'.
- 9.229 In relation to the first proviso, the LCOs' submissions on why the ceiling limit should be reduced are set out in paragraphs 9.144-9.189 above.
- 9.230 The second proviso is now satisfied by the construction management proposals agreed by the LCOs and CN during the course of the Inquiry (Mr Carter, examination-in-chief).
- 9.231 That leaves the third proviso outstanding: namely, the issue as to where the site entrance off Bolnore Road should be located.⁷⁷

Location of the site entrance off Bolnore Road

- 9.232 During cross-examination, Mr Roderick accepted the following points (see Doc 184):
- 1) The routing of construction traffic via Bolnore Road would be in breach of Policy HH2(a) of the Mid Sussex Local Plan and paragraph 18.1 of the September 1999 Design Brief (Doc 180, p8-13).
 - 2) The western parts of Bolnore Road, in particular the 'BOAT' section, have the particular character of a quiet, semi-rural road (ibid, p18-21)⁷⁸.
 - 3) If Bolnore Road is used for construction access, the breach of policy and the semi-rural character of the road would mean that a particularly robust effort must be made to mitigate the impacts of construction traffic (ibid, p22-26).
 - 4) The frequency of construction traffic (whether using the ES figures or CN's revised figures) would have an adverse impact on the quiet, semi-rural character of Bolnore Road and particularly of the 'BOAT' section (ibid).
 - 5) The very point of a BOAT is that it is "used by the public mainly for the purpose for which footpaths and bridleways are used" and as such does not segregate pedestrians from traffic (ibid, p18 and Doc 182, p2).
 - 6) If CN's proposed access to the west of Cell 4C (further down along the BOAT from the LCOs' proposed access to the east of Cell 4C) is used, it would be necessary to construct a path to segregate pedestrians from traffic and thus ensure their safety. This path would be a permanent alteration to the BOAT (Doc 182, p2).
 - 7) Given that the very point of a BOAT is not to segregate pedestrians from traffic, the creation of a path would permanently change the nature of this section of the BOAT (ibid, p3).

⁷⁷ The LCOs and CN agree that if it is considered the LCOs' proposed entrance be used for construction traffic, this entrance should also be used for the Hopper Bus and 'blue light' emergency vehicles (in other words, there would not be two entrances: one for construction access and one for the Hopper Bus/emergency vehicles).

⁷⁸ See also p2.2.9 of the Statement of Common Ground and note that Mr Else, a local resident, said in his oral evidence that on a number of occasions he had seen deer roaming on or around the BOAT.

8) In light of these factors, if a site entrance to the east of Cell 4C (such as the LCOs' proposed access) was acceptable in safety terms, that entrance would be preferable to CN's proposed entrance to the west of Cell 4C.⁷⁹

9) CN had advanced two safety objections to the LCOs' proposed access (Doc 124, p4.3). Of these, the second concern – namely “that construction vehicles would be less visible to residents or pedestrians crossing Bolnore Road to Beech Hurst Gardens than for the position currently proposed” – is not valid. This is because construction traffic would pass the pedestrian entrance into Beech Hurst Gardens regardless of whether CN's proposed entrance or the LCOs' proposed entrance is being used. If anything, under the LCOs' proposed entrance the vehicles would be going more slowly by the time they pass the pedestrian entrance to Beech Hurst Gardens because the LCOs' proposed entrance is nearer (Doc 182, p12).

9.233 It follows from the above agreed points that the sole argument relied upon by CN in opposition to the LCOs' proposed entrance is that a site access which was adjacent to Joan Nightingale House “*would lead to potential conflicts in turning movements and confusion with drivers indicating to turn left when approaching from the north-east*” (Doc 124, p4.3).

9.234 Put another way, the issue is whether there would be sufficient separation between the Joan Nightingale House driveway and the LCOs' proposed construction entrance for Phases 4-5 ((Doc 184 & Mr Gilks, examination-in-chief).

9.235 With the LCOs' proposal the separation distance between the two junctions would be about 25m (agreed by Messrs Roderick and Gilks). However, the LCOs' proposed access could be shifted a few metres further west if necessary, to create a separation of (say) 30m and this could be achieved by condition (Mr Gilks, examination-in-chief).

9.236 Mr Roderick asserted that a 30m separation would be insufficient, because it was “standard practice” for highway junctions to be separated by 80m, assuming a road speed of 30mph (Mr Roderick, XX). This should be given limited weight, however, because he was unable to point to any specific guidance containing such a requirement (despite being asked and promising to search). In any event, “standard practice” for highway junctions assuming a speed of 30mph is not relevant to the specific situation of the BOAT. In particular:

1) Construction traffic using Bolnore Road will be restricted to 10mph (not 30mph) (Doc 44, pg4).

2) The BOAT is not a ‘normal’ highway. By definition, it is a highway “used by the public mainly for the purpose for which footpaths and bridleways are so used”. As Mr Roderick accepted, it experiences a low vehicular traffic flow.⁸⁰

⁷⁹ See also the Council's view, expressed in its letter concerning *Manual For Streets*, that the semi-rural character of the BOAT “*should be maintained*” (Doc 29A).

⁸⁰ When questioned on behalf of CN, Ms Brownrigg said that Bolnore Road was used regularly by vehicles. However, in the same breath she referred to vehicles associated with the Police Station and Magistrates' Court – both of which are located east of and before the BOAT section. Her comments therefore have no bearing on the BOAT and it would be disingenuous for CN to suggest otherwise. CN's own witness, Mr Roderick, agreed that the BOAT was quiet and had a low vehicular use.

3) The driveway into Joan Nightingale House is not a highway at all. It is a small private drive, used by about 20 vehicles per day (Ms Brownrigg, oral evidence and Mr Gilks examination-in-chief).

4) The proposed site access off Bolnore Road is very different from a 'normal' highway junction situation where vehicles regularly enter and exit in both directions. Construction vehicles would be entering, not exiting. They would be coming from one direction only (the east). Although the Hopper Bus and 'blue light' emergency vehicles would exit as well as enter (albeit very infrequently), they too would be going to/from one direction only (the east) (Mr Gilks, examination-in-chief).

9.237 Moreover, insofar as the (very limited) empirical guidance to junction separation is relevant, it undermines CN's argument that there would be insufficient separation between the LCOs' proposed access and the Joan Nightingale House driveway (Mr Gilks examination-in-chief). In particular:

1) In DB32 numerical guidance is given on junction separation on residential roads (Doc 185, p3.46). This states that no separation distance is required where the 'priority road' serves no more than around 100 dwellings. As Mr Gilks explained, the BOAT, which is analogous to 'priority road' in this situation (being the road off which the junctions turn), has less than 100 dwellings. By analogy with paragraph 3.46, this suggests no separation distance is necessary – all the more so given that paragraph 3.46 is based on the normal residential speed limit of 30mph, and not the 10mph limit which would be imposed on construction traffic along Bolnore Road.

2) DB32 paragraph 3.45 also refers to junction separation guidance in the DETR publication Roads and Traffic in Urban Areas. Page 268 of this document contains a table of recommended junction spaces for various categories of junction. The most analogous category to the present case was 'access roads', for which separation distances of 20-40m was recommended. The LCOs' proposed access is in line with this recommendation.

3) The new DfT publication Manual for Streets, which has replaced DB32, does not contain any empirical guidance as to the separation of junctions (CD36A). The LCOs' proposed access is compatible with the general observations on junction spacing at paragraphs 7.3.17 to 7.3.19; moreover, paragraph 7.4.4 states that keeping the separation between junctions short is a "particularly effective" traffic-calming measure (Doc 245A, p4.2.1-4.2.3).

9.238 Other relevant factors are:

1) The residents of Joan Nightingale House actively support the LCOs' proposed access (Doc 183 and Ms Brownrigg's oral evidence).

2) There are existing junctions on Bolnore Road with less than 30m separation between them. There is no evidence that these junctions have posed safety problems to date (Mr Roderick, XX).

3) WSCC, when giving its approval to the 'in Bolnore Road, out Parkfield Way' route, did not consider this issue, because the possibility of mitigating the impact on Bolnore Road by using the LCOs' proposed access had not yet come to light. Accordingly, CN derives no assistance from the highway authority's approval.

4) Having heard the evidence at the Inquiry, MSDC has now expressed the view that the semi-rural character of the BOAT "should be maintained" (Doc 29A).

5) CN is wrong to rely on the use of the BOAT for construction traffic in connection with an extension to a nursing home, and in connection with the conversion of a former convent building (Doc 124, p4.15). These were works on two specific buildings which lasted less than one year (Mr Roderick, XX). This bears no comparison whatsoever to the construction of 785 homes over 5 years 9 months, and the extent of construction traffic that would be associated with it.

9.239 For all these reasons, there is no basis for CN's suggestion that there would be insufficient separation between the Joan Nightingale House driveway and the LCOs' proposed site access for Phases 4-5. Accordingly, the LCOs' proposed access should be imposed by condition.⁸¹

Overall Conclusions

9.240 In conclusion, the LCOs contend:

1) There should be no development on FAW. This can, and should, be achieved by imposing the LCOs' proposed conditions B5 and F2 (a.k.a. the Council's proposed condition 40) (see paragraphs 12.1-12.22 below for discussion on conditions).

2) Adequate buffer strips of at least 15m should be required in order to safeguard the woodland habitats adjoining Phases 4-5. This can be achieved by imposing the LCOs' proposed condition B4, which would require CN to obtain prior written approval of a 'buffer plan' providing for buffer zones with at least 15m separation at all locations. This condition should therefore be imposed.

3) FAW, the buffer strips and related open space should be dedicated to the Council, together with a contribution for their future management. As a matter of law this cannot be achieved by condition. It can, however, be achieved through the 'minded to refuse' procedure which would avoid the need for outright refusal (see paragraphs 9.142-9.143 above). This solution should be adopted.

4) The ceiling limit of the development should be reduced to 532 dwellings, in order to ensure the development integrates well with, and complements, the local area in terms of density, to ensure the provision of adequate open space, to mitigate the very substantial impact of the construction process, and to avoid the creation of artificially high expectations of housing delivery and the strategic problems that would ensue. This can, and should, be achieved by the LCOs' proposed condition A6 (Doc 244).

⁸¹ Something which Mr Harris agreed in cross-examination was achievable by condition in line with Circular 11/95.

5) Duncton Meadow should be retained for the provision of allotments. This can, and should, be achieved by the LCOs' proposed condition B3 (ibid).

6) Parkfield Way should not be used for 2-way construction traffic. If construction vehicles are allowed to use Bolnore Road (despite this being in breach of the Local Plan), they should access the site from the LCOs' proposed entrance immediately to the west of Joan Nightingale House, and this entrance should also be used as the permanent access for 'blue light' emergency vehicles and the Hopper Bus. This can, and should, be achieved by the LCOs' proposed condition C2 (ibid).

9.241 Accordingly, all the LCOs' concerns with the appeal proposals (as they currently stand) can be addressed by way of conditions or the 'minded to refuse' procedure. The LCOs would prefer this solution, because it would enable the long-planned development of Phases 4-5 to proceed in a timely manner without prejudicing the vital environmental and community interests at stake. It would also save the time and expense of all parties having to sit through another lengthy planning Inquiry several months down the line.

9.242 Nonetheless, if it is decided that for whatever reason it is not possible to address the LCOs' concerns by way of conditions and/or the 'minded to refuse' procedure, then permission should be refused and the appeals should be dismissed. The onus would then be on CN to submit a planning application which deals with these concerns, and which would therefore enable permission to be granted and development to commence in a timely and acceptable manner. Had CN submitted an application before now in 1995 it would have avoided the need for an Inquiry and development could have commenced. As to the HHRR and affordable housing, it is hoped that these can be accommodated by condition or the 'minded to refuse' procedure. But if they cannot then new planning applications would be needed.

10. Other Appearances

The Case for the Badger Trust – Sussex (BTS) (Docs 233-236)

10.1 Evidence has been provided by Sonya Parker and Angela Scrivens, Field Officers with the BTS, who have been involved with the Bolnore Village development since about 1997.

10.2 There is an active badger clan with two active setts, the main sett being within the railway embankment to the east of Wealden Way, with a second sett in Wealden Way on the edge of Great Haywards Farm. A third possible breeding sett, which is seasonally used, is within Duncton Meadow (see Doc 83, appx 7, Figure 3). Brodford Gill running along the southern side of Duncton Meadow and Climping Close provides a link between the three setts (see fold-out plan at the front of the LCOs' portfolio of evidence for locations of these features). The presence of water and vegetation cover help provide everything the badgers need to live and thrive at present.

10.3 The proposed development would result in a loss of foraging areas for the badgers. A planning application has also been submitted for development at Great Haywards Farm

where the badgers also forage⁸². Calculations by Dr Julian Brown and Warren J Cresswell have become the recognised standard in establishing a badger clan's viability in respect of foraging area. This has been used in CN's ecological assessment, which explains that survival is likely if the loss of foraging territory does not rise above 25%. Badgers are presumed to forage over 40ha. CN's calculations suggest a loss of potential foraging habitat of about 19%. BTS does not agree with this figure. It is based on the assessment that whilst some grassland will be replaced by hard development, other areas will be replaced by gardens and public open spaces, which the badgers would be able to forage over. Experience in Phases 1 & 2 of the Bolnore Village development points to the serious lack of greenspace and the likelihood that high density development on Phases 4 and 5 could be even worse.

- 10.4 To use gardens as supplementary foraging post-development shows a serious lack of judgement. The National Federation of Badger Groups' policy on development indicates that private gardens should not be part of any scheme to compensate for the loss of foraging land (Doc 248, appx 4). This advice is based on experience at Saltdean where there was a public outcry about the decision of the Department for Environment, Food and Rural Affairs to kill badgers which were living close to housing and causing damage to gardens. The existing situation in Wealden Way, where damage is resulting from badger foraging, provides a pointer to the inadvisability of reliance on private gardens as substitute foraging areas (see Doc 249 for photographs of damage). If gardens and fragmented open spaces as a food source are removed from the equation the percentage of lost foraging would push the badgers into a fight for survival. If the same measures to keep badgers out of gardens are adopted as those attempted in Wealden Way the situation would become intolerable, with an almost 100% loss of foraging.
- 10.5 Unless proper mitigation is included in the proposed development it is believed very strongly that this protected species would be lost forever in this area. Moreover, unless such a strategy ensures enough foraging ground, gardens in Wealden Way would suffer further. Additional space is required, which could be provided by enlarged buffer zones that should be of a depth of at least 15m. By increasing their depth this would incorporate many badger pathways that would otherwise be lost. In the short-term an increase in the depth of the zones would give the badgers more of a chance to find the extra food they need to compensate for lost foraging areas. In the long-term the planting of these areas with fruit and nut-bearing shrubs would alleviate some of the lost foraging and provide cover as the animals move around the perimeter of the site.
- 10.6 Duncton Meadow should be left free of buildings, the total developable area being very small. The family group of badgers use the site for foraging and connecting links between them. It has been suggested by the LCOs that Duncton Meadow could be used for allotments (Doc 226). There is another site in Haywards Heath which quite happily combines a badger sett and allotments so such a suggestion would be unlikely to pose a problem.
- 10.7 No provision is made within the Masterplan for the existing badger pathways running east-west from Duncton Meadow, across cells 4B2 and 4B3 into Reading Wood. This and other pathways are very important foraging links, with evidence of foraging spread

⁸² Planning permission for two dwellings has now been granted (verbal information from MSDC, Inquiry day 48).

generally over the whole development area. Badgers would be funnelled around the perimeter of the site with the possibility of road traffic accidents involving badgers on Bolnore Road. The proposals fail to provide adequate tunnels and other anti-vehicle protection or traffic calming measures.

- 10.8 The above matters should be addressed by the imposition of suitable conditions, which should include: the approval of a badger mitigation plan; retention of Duncton Meadow in a natural state but with possible partial use as allotments or community open space; provision of badger tunnels and fencing where established badger tracks cross planned roadways; provision of a green corridor from Brodford Gill Copse to Reading Wood; and buffers within 400m of the southern end of Wealden Way being no less than 15m in width.

Mid Sussex Area Bridleways Group – Hilary Pierce (Doc 255)

- 10.9 The proposals have implications for the bridleway CU26⁸³, which have not been sufficiently well considered in the context of equestrian use on two safety grounds: the development would result in a housing mass that would straddle the bridleway and there would be two road crossing points; equestrians have not been considered in relation to the increase in traffic in the area, which has already resulted from the Bolnore Village development and which would become more significant with further phases of house-building.
- 10.10 Discussions have taken place with CN's agent since the submission of the applications and suggestions made as to ways of mitigating problems for riders. None of the features to enable this route to remain equestrian-friendly have been incorporated into subsequent plans. Whilst the number of equestrians in the area is no longer very large, their safety and the long-term health of the bridleway network should be integrated at the planning stage.
- 10.11 The accommodation for riders that has been requested is simple and, in the context of the overall development, inexpensive. There should be a 'Pegasus' crossing installed to allow riders and other bridleway users to safely cross the distributor road to access Chownes Mead Lane. If the bridleway must be dissected by the proposed internal roads an alternative around the perimeter of the development should be provided for equestrian use. A limited number of the leisure paths for pedestrian and cycle use, which are included in the plans, could also allow horses. The addition of a link from Ashenground Bridge to Bolnore Road, partially a BOAT, around the eastern edge of the development would complete a circular route and be an added bonus. Any gates specified for bridleway routes should be equestrian-friendly, guided by the British Standard for Gaps, Gates and Stiles.

Mr Robert Else (Statement within Doc 189)

- 10.12 Mr Else moved to Beech Hurst Close, off Bolnore Road in June 1999 and was aware that the Bolnore Village development was within the Haywards Heath Local Plan. However,

⁸³ The line of the bridleway is shown in Doc 255, appx D. This is the bridleway referred to elsewhere in this report as the Ashenground Bridleway, which skirts the appeal sites to their south and west and the upgrading of which was subject to planning permission approved by MSDC on 11 May 2006 (see paragraph 1.8 above).

paragraph 3.17 of Policy HH3/2 of the plan indicates that all vehicular access to these sites will be from the HHRR and that there will be no vehicular access from the existing residential road network (Doc 5, appx 5). This is because, as stated in paragraph 3.18, owing to the configuration and limited capacity of the surrounding road network, development would cause unacceptable overloading and significant traffic hazards. The Mid Sussex Design Brief General Guidance states that all construction traffic must enter the development site via the HHRR, with no access being allowed through existing residential roads (CD17, p18.1). This was reinforced in a letter from the Head of Planning Implementation at MSDC of 13 December 2004. This stated that it had always been the intention that Phases 4 and 5 should be accessed from the west via the HHRR, rather than from Bolnore Road or Wealden Way, and that the Local Plans have made this clear.

- 10.13 The main reason for CN wanting to use Bolnore Road for construction access is that the existing development has been built without due regard to access for subsequent developments. CN has therefore created the situation for itself, so why should residents here sacrifice their quality of life to solve the developer's self-imposed situation?
- 10.14 Allowing construction traffic to use Bolnore Road would result in a considerable detrimental effect on local residents and amenities, with significant increases in the amount of noise, vibration, dust and dirt that would blight lives for the duration of the construction work. Property values would be affected and Beech Hurst Gardens would be spoilt. Deer and badgers are seen in Bolnore Road, a pleasant rural area. MSDC designated Bolnore Road as a cycle way and a safe route away from the busy A272. Its use for construction access would counteract this and would expose schoolchildren and families to an excessive amount of heavy road traffic, significantly increasing the risk of accidents. CN must fulfil its commitment to the community by completing the HHRR first before any further development is started. This should be designed together with all internal estate roads so that all construction and residential traffic avoids existing residential roads.

Ms K Brownrigg (Docs 183 & 189)

- 10.15 Ms Brownrigg spoke as a resident representative of Joan Nightingale House (JNH) on Bolnore Road. The residents of the house, of which there are 27, oppose the use of Bolnore Road for construction access to Phases 4 and 5. Such use expressly contravenes the Local Plan.
- 10.16 Having regard to development on Cell 4C, there is concern that detailed proposals would result in an excessively high and massive development. In addition to the proposals' unacceptable impact on the semi-rural character of Bolnore Road and upon Beech Hurst Gardens, there would be an unacceptable and direct impact on the lives of residents of JNH, particularly through loss of light on the western boundary. The development would be too close to this boundary and would provide inadequate buffering for the residents, wildlife and for trees.
- 10.17 JNH residents would prefer the access for emergency vehicles and the Hopper Bus to be between this property and Cell 4C (the beginning of the BOAT). Not only would this allow Cell 4C to be moved to the west, reducing its impact in terms of light and physical

bulk, but a closer ingress to Phases 4 and 5 would ensure that vehicles would be travelling as slowly as possible as they pass the end of JNH, where residents walk across to Beech Hurst Gardens. Also, by not taking as many vehicles along the semi-rural western part of the BOAT section of Bolnore Road its character could be better maintained – an important consideration for the landscape value of the area, which helps to set the landscape context of the Gardens themselves.

- 10.18 By limiting the vehicular use of the BOAT its frequent use by pedestrians and cyclists would be much safer. Should it be decided that Bolnore Road should be used for construction traffic access, then the argument in favour of placing the access closer to JNH is even more compelling since the vehicular usage of the access point would then be substantially greater.

11. Written Representations (Doc 258)

- 11.1 About 180 written representations were made (not including duplicate letters relating to the different appeals). Many indicated agreement for their authors to be represented at the Inquiry by one of the groups comprising the LCOs. Many were also identical letters making the same points. The representations express concerns or objections, the main gist of which is set out below.
- 11.2 The objections of the LCOs are fully supported. The late inclusion of revised applications that had yet to be decided by MSDC prejudiced local interest groups in having less time to prepare and less certainty as to the scope of the appeals. Phase 4 should not include the eastern field, which should be developed as part of Phase 5.
- 11.3 Four Acre Meadow (sic) (Cell 5B1) is an ecological asset of national importance which should not be developed but which should be incorporated into the planned Local Nature Reserve, together with Duncton Meadow and the woodland.
- 11.4 There should be no departure from the phasing within the Local Plan. To do so would deny access to almost all the fields from the outset and because of the construction access difficulties it would create later, with the use of quiet residential roads over an extended period creating issues of health and safety and loss of residential amenity. The claimed volume of construction traffic is not believed.
- 11.5 Development should not take place until CN has fulfilled overdue existing planning obligations and not before the completion of the HHRR, community centre and recreation fields.
- 11.6 There would be inadequate landscape buffers to protect ancient woodland. Some existing development is very close to ancient woodland. The buffers would be too narrow to be used for informal recreation and would encourage unnecessary incursion into a sensitive wildlife habitat. CN is deceptively increasing housing density by claiming that the buffers are informal open landscaping rather than their correct categorization as significant landscape buffers. The housing density proposed is almost half again the maximum that should be considered for a site of this nature and location.

- 11.7 Existing development has been built without due regard to the subsequent effect on residential amenity and impact on the value of properties. The development would put increased pressure on local services. Development would have a negative impact on the amenity value and wildlife of the area.
- 11.8 The developers are clearly ignoring the provision of amenities/facilities and are seemingly in default of fulfilling many principles of the present approvals. Shops in Bolnore Village have deliberately remained empty and boarded up, forcing residents to complete time-consuming travel by bus to collect pensions and shopping.
- 11.9 The proposed internal access road (at the Pinch-point) would immediately adjoin the burial ground of past Sisters of the Holy Cross Convent. There is a real risk that with the burial ground being a wet locality its stability could be adversely affected, with possible disastrous results of heavy construction traffic passing so close. The road should be placed further south.

12. Conditions and Obligations

Conditions

- 12.1 Suggested conditions to be attached to planning permissions in the event that these are granted were discussed between the main parties outside the Inquiry. An Inquiry session was held to discuss the suggested conditions and reasons. There was a large measure of agreement between the parties in respect of many of the conditions they consider it would be necessary to impose. Nevertheless, there also remain some fundamental differences which stem from the respective positions adopted in regard to issues which divide the parties. As a consequence, a single list of agreed conditions has not been produced; MSDC, CN and the LCOs have each produced lists of conditions and reasons, (that of the LCOs also incorporating a condition suggested by the Badger Trust-Sussex), (Doc 5, appxs 22, 23, 25 & 26 'final versions', Doc 171A & Docs 243, 245). A useful cross-comparison table of the three sets of suggested conditions for the Phase 4/5 outline application is provided in the LCOs' Doc 244.
- 12.2 A list of suggested conditions and reasons for each of the four appeal proposals, which has been derived from the above documents, the discussion that took place at the Inquiry and which follows from my consideration of the issues raised, is attached at Annex A. This list contains those conditions where there is agreement (or a large measure of agreement) between the parties. I have amended the wording of conditions where necessary in the interests of clarity and consistency and having regard to advice in Circular 11/95, The Use of Conditions in Planning Permissions.
- 12.3 The conditions listed in Annex B are those that have been advanced by one or more parties and which did not find common agreement or are ones which I consider it would be necessary to impose arising out of my conclusions on the various issues.

- 12.4 The following sets out the gist of the conditions that I consider it has been necessary to alter or modify in substance. An assessment of the conditions recommended for each of the proposals is contained in the 'Conclusions' section below.

Appeal A (HH/04/02676/OUT) Phase 4 outline

- 12.5 The suggested wording of condition 1 has been amended to remove reference to scale. Scale is a reserved matter as defined in the Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2006 but is not applicable to applications made prior to 10 August 2006 when the relevant Article of this Order came into force. Reference to sub-phases has been included, given the size of the site, the way in which it is likely to be developed, and for clarity. In condition 3 I have removed MSDC's reference to the Environmental Statement (the date of which is September 2004) in order to avoid confusion, particularly as the Masterplan contained within this differs in detail from Masterplan 1451/020/J(BS).
- 12.6 CN has proposed a 'Grampian' style condition in the event that it is considered necessary to limit the number of occupied dwellings prior to the opening of the HHRR. This is in order to limit the impact of additional vehicular traffic on the A272. The condition excludes development on Cell 4C, which would be for aged persons. This would have access direct to Bolnore Road and it is accepted that it would be likely to be a very low traffic generator. No number of units to be occupied prior to the opening of the HHRR has been specified. (Doc 171A Conditions 42 & 45 relating to Appeals A and C). I include within Annex B a condition (No. 1) along the lines of that suggested by the Council but with a dwelling figure arising out of my conclusions (Doc 5, Appx 22, Condition 9). Also listed in Annex B is the LCOs' residential ceiling limit condition (No. 9), calculated pro rata and excluding 80 units for the elderly in Cell 4C (Doc 243 Condition (b)).
- 12.7 The question of the on-going management of areas of nature and ecological importance is one that divides the parties; the Council and the LCOs wishing to see these areas transferred to the Council. It is acknowledged that this is not a matter that could be resolved by the imposition of a condition. In the event that permissions are granted, with such areas being retained and managed by the developer, both the Council and the appellant have suggested conditions relating to management taking place in accordance with an Ecological Management Plan and what this should contain (Doc 5, Appx 22, Conditions 41 and 43, Doc 171A, Conditions 39, 40). That suggested by CN is more succinct than that of the Council but is sufficiently comprehensive and encompasses the Council's condition regarding an ecological clerk of works. This is included as Condition 38.
- 12.8 I have modified condition No. 7 (Doc 5, Appx 22, Condition 9, Doc 171A, Condition 8) to remove reference to conditions 19 and 20 (of Doc 5, Appx 22) since these appear to be unnecessary duplication of the need for reserved matters approval for landscaping. I have also included the need for these areas to be maintained in accordance with an approved Ecological Management Plan in order that they continue to be protected and serve the functions for which they are intended. By including this reference within this condition I do not consider there to be a requirement for the Council's separate suggested conditions relating to this matter (ibid, Conditions 25 & 40). It also takes into account the

appellant's suggested condition 39 (Doc 171A). A condition relating to buffer zones has been included in Annex B as Condition 2. This acknowledges the LCOs' suggested condition referring to the need for the buffers to be at least 15m in depth but, in accordance with my conclusions on the BZs, refers to buffers around the ancient woodland elements abutting Phase 4.

- 12.9 MSDC has suggested the imposition of a condition relating to the submission and approval of a Travel Plan (Doc 5, appx 22, Condition 18A). However, I consider this is adequately covered by the terms of the Unilateral Undertaking accompanying the applications. MSDC suggests the imposition of a condition relating to the control of construction work, whereas CN suggests that such details would be covered by a Construction Management Plan (CMP) (ibid, Condition 31, Doc 171A, Condition 30). However, in the absence of a specific suggested wording for a condition relating to a CMP, the LCOs have suggested such a condition (Doc 244, Condition C9) and it is along these lines that Condition 29 is put forward in Annex A.
- 12.10 Two-way construction access will be necessary in order to construct the spine road. There has been agreement between the parties that this should be allowed from Parkfield Way in order to construct the road within Phase 4A and from Bolnore Road to construct that in Phase 4B. This is suggested condition 31 (Doc 5, Appx 22, Condition 32A, Doc 171A, Condition 32 and Doc 244, Condition C8).
- 12.11 There is broad agreement about allowing access by an archaeologist during development, but the appellant wishes this to be by prior appointment to ensure that the relevant health and safety codes are observed (Doc 171A, Condition 35). The Council's suggested condition (Doc 5, appx 22, Condition 36) requires the agreement of the site manager, which I consider would provide an adequate level of control and this is included as Condition 34 in Annex A.
- 12.12 Both MSDC and the LCOs would want to see the approved improvements to the Ashenground Bridleway undertaken at an early stage in the development of Phase 4, since development works on the appeal site would prevent current public access there and would be likely to therefore increase use of the bridleway as an alternative (Doc 5, Appx 22, Condition 38, Doc 171A, Condition 37, Doc 244, Condition A8). The appellant suggests that its upgrading need not take place until the last occupation of Phase 4A and that an early requirement to implement the bridleway works could remove flexibility and cause delay in the delivery of housing on Phase 4. I consider the bridleway could provide an important pedestrian/cycle route for residents in Phase 4, as it seemingly does already for residents in earlier Bolnore phases. As I saw on my visits, its present condition, particularly after wet weather, is likely to reduce its attractiveness to such users (see also paragraph 8.8 above). Given the potentially large number of dwellings that could be occupied on Phase 4, and the increased use to which the bridleway might be put (particularly before the completion of Phases 4B and 4C), I consider it is important that early improvements to the route are effected. I concur with the views of MSDC and the LCOs that its improvement prior to the occupation of any dwellings on Phase 4 is reasonable and a condition to secure this is included as Condition 36. I also combine within this condition the suggested condition regarding the need for completion of the bridleway cross-over works (Doc 171A, Condition 41).

- 12.13 MSDC has expressed concern about the grouping of affordable housing; that in places clusters are separated only by roads and that this would lead to an unsatisfactory distribution of this form of housing throughout the site. A condition has been suggested, and agreed between the parties, requiring the location of affordable housing to be agreed before development in each sub-phase (Doc 5, Appx 22, Condition 39, Doc 171A, Condition 38). This would allow consideration to be given to its distribution and ensure proper integration. As affordable housing areas are indicated on the Masterplan, I consider that reference needs to be made to this within the condition, which is included as Condition 37.
- 12.14 MSDC, supported by the LCOs, has put forward a condition to ensure the proper protection of trees and the ecological linkage of areas to either side of the 'Pinch-point' between Phases 4A and 4B (Doc 5, Appx 22, Condition 44). I consider such a condition to be necessary to achieve these aims and would also take into account concerns expressed about the adjacent burial ground (p11.9 above) (Condition 39).
- 12.15 Included at Annex B is Condition 6 along the lines of that suggested by the Badger Trust-Sussex regarding wildlife corridors (Doc 244, Condition F7 and Doc 254).

Appeal B (HH/04/02964/FUL) Phase 4 full application for infrastructure

- 12.16 Most of the suggested conditions duplicate those relating to the outline proposals. As the application (and that in respect of Appeal D also) was submitted before 24 August 2005 the time limit for commencement of development is five years and not three (Planning and Compulsory Purchase Order Act 2004, Commencement Order No. 5).
- 12.17 To be consistent with the conditions relating to the outline proposals for Phase 4 I have included a condition (No. 12) referring to the need for the submission and approval of a Construction Management Plan. This replaces the Council's suggested condition 15 and CN's condition 12 (Doc 5, Appx 23 & Doc 171A). I have also included a condition (Condition 15) regarding construction vehicle access times for consistency and as suggested by the LCOs.
- 12.18 For consistency, I have included a condition (No. 22) relating to the Pinch-point crossing (ibid, Condition 44).

Appeal C (HH/04/02681/OUT) Phases 4 & 5 outline

- 12.19 The list of conditions for the combined Phase 4/5 outline proposal is largely similar to that for the Phase 4 scheme and the comments above relating to the various conditions where there are differences between the parties are applicable. To be consistent with the conditions relating to the outline proposals for Phase 4 I have included a condition (No. 29) referring to the need for the submission and approval of a Construction Management Plan.
- 12.20 The appellant wishes to develop Cell 5B1, and has suggested two conditions to address this (Doc 171A, Conditions 42 and 43). I have combined these into a single condition. MSDC (supported by the LCOs) has suggested a condition to make it clear that if no development is to be allowed on Cell 5B1, Duncton Meadow or within the ecological buffer zones these are not included within the permission. I have included a further

condition along the same lines but referring only to Cell 5B1, should it be decided that no development should take place there but is acceptable on Duncton Meadow. These are listed in Annex B as Conditions 4, 5 and 6.

- 12.21 If development proceeds, parts of Quarry Hollow, an area of ancient woodland, might be developed as a 'play zone'. The Council has suggested the imposition of a condition requiring details of proposals to be submitted and approved in order to ensure the protection and enhancement of this area's ecological interest (Doc 5, Appx 25, Condition 42). This is supported by the LCOs although the appellant has not suggested a similar condition. I consider it reasonable to impose such a condition (Condition 41 in Annex A) to provide a safeguard for this important environment.

Appeal D (HH/04/02965/FUL) Phase 4/5 Full application for infrastructure

- 12.22 The conditions are broadly the same as those for the Phase 4 infrastructure proposals.

Unilateral Undertaking

- 12.23 A completed S106 Unilateral Undertaking (UU) has been provided by CN to support the proposals (Doc 167). This covers matters including affordable housing, play space provision, management of buffer zones, and various financial contributions, including those for library, education, civic amenity, recycling and play area/leisure facilities. It also includes passenger transport contributions and the establishment of a Maxi-Taxi service together with the provision for the implementation of the TP for ten years substantially along the lines of that appended to the Undertaking. The TP would be required to establish trip rate targets for projected peak hour movements of private cars from the site and the County Council would have step in powers in the event of obligations of the TP or trip rate targets not being complied with or met. Further comment on the Undertaking is set out in my 'Conclusions' section below.
- 12.24 The UU, whilst covering in detail the issue of affordable housing provision, also sets out as an alternative a suggested condition relating to the provision of affordable housing should it be decided that this would provide a more appropriate mechanism of securing this. If such a condition were to be imposed then the clauses of the UU dealing with affordable housing would not apply. An affordable housing condition is included in the Annex B schedule for both the Phase 4 (Appeal A) and the Phase 4/5 applications (Appeal C), respectively Conditions 3 and 11.

13. Conclusions

General introduction

- 13.1 In this section references in square brackets [] indicate the paragraph(s) in which the relevant source material relied upon in reaching my conclusions can be found in the preceding part of the report.
- 13.2 I will start these Conclusions with a very short summary of the proposals, brief description of the sites and planning history. Following this, I have structured my Conclusions on a topic basis, dealing with the matters on which there are differences of opinion between the main parties. The Secretary of State (SoS) indicated before the start of the Inquiry matters on which he (at that time) wished to be informed. These matters relate essentially to how the proposals comply with the development plan and with national planning guidance, particularly that as set out in PPS 1, PPG 3 (which was extant at that time) and PPG 13. PPS 3 has now replaced PPG 3 and this was considered during the course of the Inquiry. Rather than dealing with these matters separately, I have considered them where appropriate within the context of the individual topics covered. Before my final conclusions I have considered the question of conditions that might be attached should the SoS be minded to grant planning permission(s). I also discuss the relevance of the Unilateral Undertaking which has been proffered as a S106 planning obligation. [1.2]
- 13.3 An Environmental Statement (ES) was submitted in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. I have taken this, together with comments from statutory consultees and other representations on the likely environmental effects of the proposed development, into account in my conclusions and in making my recommendations. [1.10]
- 13.4 Throughout the Inquiry four groups/organisations were represented as principal participants under the collective title of the Local Community Organisations (LCOs). Many of the individuals who have made written representations on the appeals indicated their agreement for their views to be represented at the Inquiry through the LCOs. The LCOs effectively took on board the points raised in these representations in making their case. Nevertheless, all the written representations have been read and taken into consideration. [1.5, 11.1]

The appeal proposals

- 13.5 The proposals would form part of Bolnore Village, a current major housing expansion of the south-western part of Haywards Heath, three phases of which have been completed or are under construction and in respect of which there are detailed planning approvals for 859 dwellings. Between them the four appeal applications would comprise Phases 4 and 5, resulting in the completion of Bolnore Village. The appeals are against the Council's non-determination of the applications. They comprise two principal components:
- Appeals A and B relate to both an outline application for residential development and a full application for highways and infrastructure associated with this for Phase 4. This part of the proposals has been designed to be a 'stand alone'

scheme that, were permission to be granted, would be capable of being implemented without reliance on land within Phase 5. These proposals are based on a maximum ceiling of 573 dwellings.

- Appeals C and D relate to both an outline application for residential development and a full application for highways and infrastructure associated with this for the combined Phases 4 and 5. These proposals are based on a maximum ceiling figure of 785 dwellings. [2.1, 4.1]

13.6 The outline schemes seek permission on the basis of Masterplans. These show the route of the key roads within the sites and indicate that the proposals are based on the provision of 'cells' of residential development, which would be sub-phases of the main Phases 4 and 5. The Masterplans are not illustrative and if planning permissions were to be granted it is accepted that conditions would need to be attached requiring adherence to details submitted in the Masterplan layouts. [4.1, 4.2, 8.16 - 8.17]

13.7 When the Inquiry opened there was an extant fifth appeal relating to a full application for the upgrading of the existing Ashenground Bridleway. However, an amended application was submitted and approved by the Council (MSDC) in May 2006, representing a scheme which the appellant, Crest Nicholson (South) (CN), is content to implement. Consequently the bridleway appeal was formally withdrawn [1.8, 4.1, 4.2]

The appeal sites

13.8 The appeal sites, totalling some 19.7ha, broadly lie between Bolnore Village Phase 1 to the west and older established areas of Haywards Heath to the north-east and east. Phase 5 of the proposals partially abuts the London to Brighton mainline railway to the east, whilst the southern and south-western boundaries of the combined appeal sites are bounded by the Ashenground Bridleway with woodland and existing Bolnore Village development beyond. A short northern boundary of Phase 4 has a frontage to Bolnore Road. The Phase 4 appeal site occupies blocks of predominantly open fields to the immediate south and east of Reading Wood. The Phase 5 component includes further grassland and a wooded strip adjacent to the mainline railway. The southern portion of Phase 5 also includes a partially treed area, commonly known as Four Acre Wood, and the adjacent Quarry Hollow, an area occupied by standing water and further trees. [2.1-2.4, 8.7-8.11]

Planning policy background and history

13.9 The 1993 West Sussex County Council Structure Plan required Mid Sussex to provide some 1,100 dwellings at Haywards Heath between 1989 and 2006. A Haywards Heath Relief Road (HHRR) was also included in a programme of improvements for county roads in the period to 2006. This was to relieve pressure on the A272 passing through the town centre and to serve development in the south-western sector of the town. A relief road is a long-standing highways scheme. It was first identified in the 1970s as being required to relieve traffic congestion along the A272 corridor through Haywards Heath and was conceived long before land was allocated for housing at Bolnore. Against this background the Haywards Heath Local Plan of 1995 was adopted, covering the period to 1996, with Policy HH3/1 allocating up to 780 dwellings on land to the south-west of Haywards Heath. This allocation included the land now designated as Phases 4

and 5 and which is subject to these appeals. The onus of providing the HHRR was placed on the developers of the housing sites. The phasing of housing development was emphasised as an important factor to ensure that various sections of the relief road would be completed and in operation at the appropriate times. [3.2-3.5, 3.7, 7.121]

- 13.10 Both housing and infrastructure are seen as integrally linked and both are of vital strategic importance to the future of Haywards Heath. Subsequent Supplementary Planning Guidance amplified Local Plan policies, established the preferred line for the HHRR and provided detailed information to guide the development of the area. Following submission in 1996, outline planning permission was granted, subject to a S106 obligation, relating to Phases 1-3 and Stages 1-5 of the HHRR. A second outline application related to the whole of the Bolnore village site, i.e. Phases 1-5. Whilst the Council resolved to grant planning permission for this second application, subject to a S106 obligation, such an obligation was not concluded, development not being possible due, in part, to questions of separate land ownership. [8.1, 8.73]
- 13.11 There have been several subsequent reserved matters approvals establishing the details on the whole of Phases 1 to 3, with the exception of a school site and community facility in Phase 2. As a consequence, Phase 1 is complete, a considerable portion of Phase 2 was complete at the close of the Inquiry and Phase 3 was well in progress. [3.4, 3.5, 3.8]
- 13.12 The Mid Sussex Local Plan, adopted in 2004, took on board the policies and proposals embodied within the Haywards Heath Local Plan and brought the situation in respect of Bolnore Village and the construction of the HHRR more up-to-date. In short, the acceptability of the principle of residential development for all of the identified housing 'cells' within Phases 4 and 5 has been established by the allocation of this part of Bolnore Village for housing purposes within Local Plans for over 10 years. Save for objections to residential development on Cell 5B1 (Four Acre Wood) and, on the part of the LCOs and the Badger Trust-Sussex, to development on Cell 5A1 (Duncton Meadow), there is no meaningful opposition to the principle of residential development on the appeal sites. [3.6, 7.2, 8.229, 9.4, 9.193, 9.240, 10.6]
- 13.13 Indeed, the position may be characterised that there is strong development plan support for the principle of development of Phases 4 and 5 and that MSDC is committed to seeing this achieved. It is also the case that the LCOs' position is one of support for the principle of large-scale residential development here. Furthermore, there is a large measure of common ground on many aspects of the proposed development, agreed prior to the start of the Inquiry and which emerged through continuing discussions whilst the Inquiry progressed. Nevertheless, both the Council's position and that of the community organisations is contingent upon the provision of an appropriate form and nature of development which would not prejudice planning, environmental and community interests. The majority of these Conclusions therefore focus upon the continuing areas of dispute and difference which exist. [7.59, 8.53, 8.54, 8.56-8.58, 9.4]

Traffic generation/Relief Road provision

Introduction

- 13.14 The appeals are made against MSDC's non-determination of the four subject applications. However, following the lodging of the Phase 4 appeals the Council

resolved that the applications would have been refused because, amongst other matters, the construction and occupation of the development prior to the completion of the HHRR would result in excessive traffic congestion on the existing highway system, contrary to specified development plan policies. A similar resolution applied to the later conjoined appeals relating to the combined Phase 4/5 proposals. It is apparent that the Council has a primary concern regarding the certainty of delivery of the HHRR and therefore how, in the absence of its completion and opening, the present proposals would impact on the present perceived traffic problems at peak hours on the A272, part of the strategic road network in West Sussex. [4.4, 4.5, 8.75]

- 13.15 WSCC has consistently taken the view that the level of highway congestion is such that, ideally, no further dwellings should be provided until the HHRR is completed and open to traffic. At the same time it is recognised that the road will only be built in association with housing development. The planning policy background makes it clear that phasing of residential development in conjunction with the completion of the HHRR is crucial to deliver a satisfactory form of development. Discussion has concentrated on achieving certainty on a mechanism that would deliver a completed HHRR at the earliest opportunity as well as on negotiations regarding interim numbers of dwellings that the County Council would consider it acceptable to be built and occupied prior to the road's completion [6.5, 8.75]
- 13.16 There can be no absolute certainty that the HHRR would be completed and open for use within a specified time. However, during the protracted duration of the Inquiry it became clear that matters were moving forward that would seem to indicate a firm mechanism for, and an increasing degree of probability of, delivery. Stages 1-3 of the relief road have been constructed and the road is open as far as Phase 2 of Bolnore Village. Stage 4 has been completed as far as Phase 3 but is not open for public use. All planning permissions are in place to construct Stages 4 and 5 to a point 900m to the east of the railway and planning permission is in place for the final Stage 6. Substantial progress has been made on the realisation of enabling development. CN's estimate was that the road could be complete and open sometime in 2010, a timescale not contradicted by MSDC. Prior to its opening, all traffic that would be generated by development on Phases 4/5 would need to find its way onto the highway network via the Bolnore Roundabout and much would thence progress to the A272, with a substantial proportion travelling eastwards into Haywards Heath. [3.9, 3.10, 7.31, 7.83, 7.125]
- 13.17 WSCC has sought to characterise the position with regards congestion on the A272 as 'dire', with the road being at or near capacity at peak hours; it is the eastwards flow of traffic into Haywards Heath that is of primary concern. The scenario of predicted flows in the design year of 2010, with an interim Phase 4 development and assuming the agreed distribution figure of 39.6% traffic turning right from the Tyler's Green Roundabout towards Haywards Heath, indicates a considerable exceedence of the theoretical design capacity of the road in the morning peak hour. This would translate to a potential queue length of some 2.6 km. [7.30, 7.67, 8.80, 8.81, 8.83, 8.89]

Traffic modelling

- 13.18 How has traffic generation from Phases 4/5 been predicted? WSCC, as highway authority, has been critical of the traffic modelling employed, suggesting that a

PARAMICS or similar micro-simulation model would be better able to model the effects of queues on the highway network, rather than the ARCADY model that was used as a 'stand alone' junction assessment and which could not assess how queues between junctions would affect their performance; if such a micro-simulation model had been used then this would have been likely to show an even worse situation in terms of congestion having developed in 2010. It has been suggested that reluctance to use PARAMICS or a similar model was because of the results this might have yielded and the costs involved. [7.127, 7.128, 8.87, 8.90]

- 13.19 On the other hand, the appellant contests, amongst other matters, that modelling with ARCADY was agreed with MSDC's consultants as a satisfactory tool for assessing the impact of Bolnore Village traffic on the A272 corridor when survey work was originally carried out in 2004. At that point WSCC had not considered it necessary for a PARAMICS model to be used. Also, when a PARAMICS modelling exercise was requested, the conclusion was reached that the work that had already been undertaken was sufficient, particularly as there had been agreement that the ARCADY model had been used in the correct way. Further, the relative merits of using ARCADY and PARAMICS to assess the performance of highway junctions had been considered. However, the conclusion drawn was that it is appropriate to use ARCADY to reflect how junctions would perform under future traffic conditions if the model is validated using the results of observed queue lengths. Such validation was carried out from queue length surveys undertaken in November 2006. [7.127, 7.128, 7.131, 7.143, 7.152, 7.170, 8.85, 8.89]
- 13.20 It may well be that a PARAMICS or similar model would be more fitted to model the effects of queues on the network. Nevertheless, whatever the relative merits of differing modelling that might have been employed, the only data available are those using the appellant's surveys and the modelling undertaken with ARCADY. It is agreed that WSCC's main concern over traffic capacity relates to a relatively short section of the A272 at the Tyler's Green Roundabout and junctions on either side of it, as opposed to fundamental concerns over a more wide-ranging road system with a complex of junctions. This, together with validation through observation of queue lengths, and the earlier acceptance of ARCADY as the model to be used for assessment of traffic impact, leads me to conclude that a reasonable degree of reliance should be placed on the results obtained. [7.128, 7.171, 7.176, 8.85]
- 13.21 The later junction capacity assessments undertaken following survey work in November 2006 draw the same conclusions as earlier work, namely that there would be a degree of unavoidable traffic queuing at junctions along the A272 within the 2010 assessment year. The principal issue is the magnitude of the impact that would result from the present proposals.

Present situation

- 13.22 The current traffic situation in the morning peak hour along the A272 has been quantified by the appellant in terms of level of traffic queues at junctions and vehicle journey times recorded in November 2006. This was to assess the degree of congestion and whether, prior to the opening of the HHRR, the road system could accommodate additional traffic that would be generated by the proposals. Traffic queue length and journey times were surveyed. These followed the emphasis placed by MSDC on two

queue length figures taken from the appellant's earlier evidence showing a possible 213 vehicle queue (with a length of 1.3 km) and a possible 406 vehicle queue (translating to a queue of 2.6km) in the morning peak in 2010. This was based on the assumption of an interim development of 390 dwellings on Phase 4. There would be a predicted 3,070 vehicles per hour (vph) in this peak when the road would retain its theoretical design capacity of 2,200-2,500 vph. However, what the November 2006 surveys recorded were peak queues of no more than 20 vehicles on the A272 (traffic travelling below 10 mph was considered to be held in a queue). Calculations of journey speed times, even over the most congested sections of the network, such as at the Tyler's Green Roundabout and on Butler's Green Road, indicated that journey speeds are in the range of 11 – 20 mph at worst during the morning peak hour. This is at a time when the appellant's earlier survey work noted capacity constraints, with the Bolnore Road/A272/Paddockhall Road/Muster Green Road junction operating at or close to capacity in peak hours. The Butler's Green Road would itself be operating at its theoretical capacity in 2010 without additional Bolnore traffic. [7.133, 7.147-7.150, 7.156, 7.157, 8.81, 8.83]

- 13.23 There is general acknowledgement that queuing is variable from day to day. In this regard I consider caution needs to be exercised in placing principal reliance on a single day's survey results to arrive at firm conclusions, particularly as there is some degree of lack of transparency as to the conducting of the survey. Nevertheless, during the course of the Inquiry I specifically made several eastward journeys along the A272 towards Haywards Heath at different times during the morning peak. This was to experience at first hand the nature of traffic conditions. These supported the notion of temporal and diurnal variation in traffic flows. Although queuing and slow moving traffic of varying degrees was encountered back from the Bolnore Road/Paddockhall junction, it was intermittent and rarely static. From the survey evidence produced, including the appellant's additional surveys of June and August 2006, and from my own experience, I do not consider that delays are long and frequent at all times during the morning peak. They are likely to be less so outside this period [see paragraph 13.24 for references].
- 13.24 I concur with the appellant's characterisation of traffic conditions along this road as being typical of urban highways, as evidenced in the Eddington Transport Study; whilst queuing does undoubtedly exist, leading to lengthened journey times, and theoretical design capacity might be being reached or exceeded at peak hours, I do not consider the present situation warrants the epithet of 'dire'. Nevertheless, concerns about peak hour congestion along this road have long been acknowledged, although there has been no use by the highway authority of CPO powers to hasten the realisation of the HHRR. Some of the appellant's evidence does seem to suggest that there would be significant congestion in the assessment year 2010, although the majority of this would be caused by background traffic levels rather than additional traffic associated with the proposals. The principal issue is whether the likely additional traffic from the proposals would result in significant worsening in the interim period before the HHRR is fully completed and opened of what congestion exists. This is bearing in mind highway works proposed as part of the development proposals, particularly at Tyler's Green Roundabout, the critical junction in capacity terms. [7.30, 7.41, 7.67, 7.156, 7.159, 7.161, 7.162, 7.165, 7.168, 7.175, 7.177, 7.179, 7.180, 8.81, 8.94, 8.98]
- 13.25 Reference has been made to the Institution of Highways & Transportation Guidelines (IHT) for Traffic Impact Assessments. On the one hand, the appellant draws attention to

a 5% threshold being the parameter used to identify if a percentage increase in traffic would lead to a material impact; if the increase was to be below 5% then the impact would not be material. On the other hand, MSDC refers to the advice in the guidance that, where the capacity of a road is or is near to being exceeded, a smaller percentage increase may well be material. Revised guidance on traffic impact assessments has been produced in which reference to threshold impacts has been removed. However, as this is only in a draft consultation form I consider it appropriate to rely on the current guidelines for advice on this matter. That said, in talking of percentage increases in traffic flow arising from a proposed development, the guidance merely uses these to suggest what might constitute a significant traffic impact which would require a full traffic impact assessment to be undertaken. In my view, it is the context of the individual circumstances of a particular situation that would determine the significance of an impact rather than reference to a specific percentage increase in traffic flow. [7.134, 7.136, 8.80]

- 13.26 With an interim Phase 4 development of 390 dwellings, using the latest agreed traffic distributions there would be about a 3% increase in traffic using Butler's Green Road (eastwards towards Haywards Heath) during the morning peak hour. This would equate to an increase of 92 vehicles using Butler's Green Road in the morning peak hour or, as the appellant puts it, less than two extra vehicles per minute. This excludes any likely reduction in traffic generation from Bolnore (or trip credits) as a result of the operation of the appellant's proposed Travel Plan (TP). [7.134, 7.136]

The Travel Plan (TP)

- 13.27 The appellant's proposals put forward a Travel Plan. This includes a package of measures to enhance modal choice of travel and to encourage residents of Bolnore Village to use travel means other than the car. It is accepted by both MSDC and WSCC as a legitimate and useful sustainable development tool that should be linked to the proposals. The proposed TP is to be 'retro-fitted' to apply to existing Bolnore development. The principal dispute in its application (other than the question of penalties to be applied should it not achieve its stated goals and which is addressed in paragraph 13.28 below) is the level of confidence that the stated 25% trip saving on car usage can be achieved. The use of residential travel plans is relatively recent and their proven efficacy in achieving car use reduction is not fully established. It was accepted on behalf of the appellant that there is no single site where a 25% peak hour trip reduction has been achieved, or such a target ever having been agreed with a highway authority. On this basis, WSCC remains sceptical about claims of this level of car trip saving, but is prepared to accept that a 10% saving could be delivered. On the other hand, the appellant claims there is good evidence that at least 25% of people who would have used a car would switch mode, and reference has been made to existing residential travel plans elsewhere, and guidance on their operation. [6.6, 7.63, 7.73, 8.105, 8.112]
- 13.28 Scepticism as to the level of savings that the TP could achieve is also fuelled by the claim that there is a refusal to include any penalty for, and insurance against, a failure to achieve a 25% reduction in peak hour trips. However, the TP is tied to the proffered S106 obligation, with a requirement that it is in place for ten years and that it is accountable and measurable in its effectiveness. It makes provision for the establishment of trip rate targets and for the management of the plan. There would be scope for adjustment to meet residents' needs. Although there may be no specified financial

penalties in the event of targets not being met or failure to meet obligations set out within the TP, the S106 would allow WSCC to step in to undertake measures and recover costs and fees. Nevertheless, I am inclined to share the appellant's view that resources should be loaded towards making a TP work rather than being steered towards reacting to failure. I consider it would be unreasonable for the County Council to be able to step in and prevent further development pending delivery of the entire HHRR if targets are not being met, particularly given that the developer of Phases 4 and 5 would be required to provide major infrastructure as part of the development. Overall, I consider the TP package that would be brought about through the S106 obligation has the potential to be an effective tool notwithstanding the absence of specific penalties. [6.6, 7.115, 7.116, 8.63, 8.107-8.112, 12.4]

- 13.29 I consider the TP to be comprehensive and well thought through, offering a range of measures that would provide residents with a choice of travel modes as alternatives to the car. The close geographical relationship of the appeal sites to central Haywards Heath; proposed linkages for cyclists and pedestrians; the direct access from the site to Bolnore Road for the proposed Maxi-Taxi and public bus service; and the other detailed measures envisaged, suggest that there would be a strong likelihood of achieving considerable car trip savings. Also, it is suggested that conditions be imposed to limit the amount of car parking provision per dwelling. These factors would contribute to the development's overall sustainability credentials. Whether as much as a 25% saving is realistic and actually achievable, however, must remain a matter for some speculation despite references to trip savings at Poole Quarter, where the appellant has also been involved. I do not consider there is enough evidence to be sufficiently confident that 25% represents a robust assessment of likely car trip savings in the particular circumstances of Bolnore. [2.1, 7.63, 7.73, 7.76, 7.138, 8.105]
- 13.30 Irrespective of whether this higher rate of trip saving would be achieved, a 10% level of trip credits would result in an increase in traffic flows along Butler's Green Road during the morning peak of about 5% even assuming the full development of Phases 4 and 5 without the completion and opening of the entire HHRR. Any increase in trip credits above this as a result of the operation of the TP would bring the percentage increase below the IHT significance threshold. With the interim Phase 4 development and a 10% modal shift, the percentage increase would be likely to be about 1.9%. As far as junction capacity is concerned, additional traffic from the proposal would result in a contribution, to a degree, of unavoidable traffic queuing at junctions along the A272 within the 2010 assessment year. It is, however, acknowledged by the appellant that with the development of both Phases 4 and 5 the TP is required as a mitigating tool. [7.136, 7.138]

Highway improvements

- 13.31 The proposals include suggested improvements to the Isaacs Lane approach to the Tyler's Green Roundabout, together with an increase in the carriageway width at the roundabout itself. The present Isaacs Lane is single carriageway and vehicles wishing to travel westwards from there onto the A272 are held in the same queue as those wishing to turn right into Haywards Heath. Although the improvement measures themselves would not increase capacity on the A272, the provision of a second lane would enable left-turning (westwards) traffic to queue simultaneously with that turning right. This

should have the effect of reducing queue lengths on Isaacs Lane and increasing the operational capacity of the Tyler's Green Roundabout. [7.124, 7.181, 8.102-8.104]

Interim controls

- 13.32 Within the Inquiry WSCC put forward a Heads of Terms Agreement. This would allow for the phased occupation of dwellings within the proposed development, but with occupations linked to a mechanism for the certain and early completion of the HHRR. This was seen as a sensible way forward in light of the perceived capacity problems on the A272 and the County's concerns regarding the likely effectiveness of the TP in reducing peak hour trips. The proffered S106 obligation does not incorporate any such linkage. [8.62, 8.113, 8.136, 12.3]
- 13.33 The proposed Heads of Terms Agreement suggested an allowance of 130 units 'up front' (including 80 sheltered units for the elderly having access to Bolnore Road), with a further 50 units on completion of Stage 5 of the HHRR and completion of the S38 Agreement for Stage 6. An additional 50 units would be allowed when a contract for Stage 6 is let. In its overall conclusions MSDC has suggested that a 'Grampian' condition could be imposed limiting development to 50 units (excluding development of sheltered aged housing on Cell 4C) prior to completion and opening of the HHRR. [8.134, 8.335]
- 13.34 Assessments of traffic impact have earlier been based on an interim Phase 4 development of 390 units, a figure supported by MSDC's independent highways advisor, but opposed by WSCC. Based on a build rate of 150 dwellings per annum and commencement mid 2008, if permission is granted, it would be likely that no more than about 300 units at best would be likely to have been built by mid 2010, when the HHRR might be open. Allowing some slippage of completion of the HHRR until, say, the end of 2010, the interim Phase 4 figure of 390 dwellings is approached. [7.68, 7.140 and footnote]
- 13.35 The appellant has indicated, in support of the early development of the sites, the urgent strategic need for the delivery of housing numbers in the south-east of England generally, and in relation to Mid Sussex's own housing supply situation in terms of Structure and Local Plan requirements. MSDC has not countered the fact that in order to deliver its quota of housing a significant amount has been allocated at East Grinstead but where there are planning and political difficulties in delivery. Nor has it contradicted the appellant's view that the present Bolnore scheme is: one which is capable of ready implementation; is sequentially far stronger than any contender such as East Grinstead; and that when tested against sustainability objectives is an appropriate location on its own merits. Bolnore Village represents the largest supplier of new housing in the district (including affordable housing). Whilst not an overriding consideration in its own right, these factors lend weight to the need to see at least some early development on the appeal sites providing this would not result in a materially unacceptable increase in highway congestion. [7.51-7.54, 7.81]
- 13.36 On the basis of the above, I consider the imposition of conditions relating to both the Phase 4 and the Phases 4/5 outline applications limiting development to an interim figure of 310 (excluding up to 80 sheltered aged units) before the opening of the HHRR would be reasonable, relevant and necessary in order to mitigate the impact of the development on traffic conditions on the A272. Together with the agreed conditions relating to off-site

road improvements relating to Isaacs Lane, Tyler's Green Roundabout and the junction of the A272 and B2184 at Cuckfield, these would strike an appropriate balance between ensuring the timely continuing supply of housing in furtherance of recognized strategic need whilst acknowledging the need to safeguard highway conditions. [7.124 and footnote]

Previous permissions and agreements

- 13.37 The appellant claims that two years of detailed negotiations from 1996, relating to the two applications which could have realised the development of the entirety of Bolnore Village, resulted in agreement that these would deliver the first five stages of the HHRR, but not Stage 6. No objection to this was raised then by WSCC as either highway authority or strategic planning authority. Permission for the 'blue land' (what is now Phases 4 and 5) was never forthcoming because there was no conclusion of an accompanying S106 obligation and the application was withdrawn. However, it is suggested that the obligation attached to the 1998 outline permission relating to Phases 1-3 set the parameters for the reasonableness of the need for major infrastructure delivery and clearly anticipated the development of Phases 4 and 5. The appellant claims that minutes of a meeting in 2003 indicate that MSDC officers at that time would probably be prepared to allow some or all of the development on the (now) appeal sites in light of advancements towards greater certainty of completion of the HHRR and the availability of the County Council's Compulsory Purchase Order powers. It is claimed that it would be unfair and unreasonable, in planning terms, for the Councils to now insist on the total provision of the HHRR prior to commencement of Phase 4 and 5 development. [7.32, 7.33, 7.42-7.44, 8.152]
- 13.38 MSDC's view is that the 1998 S106 obligation, which related to the planning permission for Phase 1-3 of Bolnore Village, never applied to Phases 4 and 5 and that this obligation has no bearing on the 'blue land' since the application covering that area was withdrawn. Further, it is claimed that, if CN had believed that the 1998 obligation prevented the Council from withholding permission to develop Phases 4 and 5 on the basis that Stage 6 of the HHRR had not been completed, then it would have sought judicial review in respect of the Secretary of State's 2003 decision on the St Francis Hospital site. In that, the SoS stated that other housing developments in the south-west of Haywards Heath could not be developed until the HHRR is completed. There was no such review. [8.141, 8.149, 8.150, 8.153]
- 13.39 Against this background and conclusions reached I consider that the debate about the historical position of the development of the 'blue land' (what is now the subject sites) in relation to the linkage and provision of the HHRR is somewhat peripheral. However the 1998 obligation attached to the outline permission for Phases 1-3 might be interpreted, matters have progressed almost ten years on, with entirely new applications against an altered local and national planning framework.

Conclusion on traffic generation/relief road provision

- 13.40 I am in no doubt that completion of the HHRR is an essential component of the achievement of two main planning objectives for Haywards Heath, namely the removal of traffic from the town centre and the supply of housing land. Furthermore, I consider there would be some inevitable worsening of the congestion on the A272 within the morning peak hour as a result of development on the appeal sites prior to the relief road's

full completion and opening. I am satisfied that there is a mechanism in place and there is now a large measure of certainty (although this cannot be absolute) of delivery of the completed HHRR. The suggested conditions would mitigate the short-term impact of additional vehicular traffic from the proposals on existing traffic congestion in advance of the full opening of the HHRR. They would prevent further occupation of dwellings beyond the number specified prior to the completion and opening of the entire HHRR. [See paragraph 13.41 for references]

- 13.41 In my view, the likely level of impact would not be such that, on balance, it would have an unacceptable impact on the local environment in terms of road safety and increased traffic and thus would not be contrary to Mid Sussex Local Plan Policy T4. Furthermore, subject to the suggested conditions and operation of the TP, the proposals would not be contrary to WSSP Policies DEV4 and NE13. They would not unacceptably prejudice the operation of the strategic road network and would comply with the thrust of advice in PPG 13 regarding the promotion of sustainable forms of development. Similarly, I do not consider the proposals would run contrary to the thrust of MSLP Policies HH4, HH5 and HH6 relating to the provision of the relief road and release of land in a steady supply. [4.4, 4.6, 5.4, 5.9, 5.10, 7.16, 7.125]

Single point of access

- 13.42 MSDC is concerned that should development take place prior to the completion and opening of the HHRR to traffic a considerable number of dwellings would be served from a single point of access, (from a looped cul de sac via the Bolnore Roundabout). Should an incident occur at the roundabout this could block access and egress to Bolnore Village. Permission already exists for 859 dwellings on Phases 1-3 to be potentially served off this one point of access to the village. I acknowledge that the potential service of up to 1169 dwellings (859 plus potentially up to 310 dwellings on Phase 4 should permissions be granted subject to a condition as suggested in paragraph 13.158 below) from one point of access to the wider highway network may not be ideal or desirable in the longer term. However, construction access from Bolnore Road would be likely to take place at an early stage in the development of Phase 4 (this is discussed in more detail in paragraphs 13.130-13.141 below). In my view, the complete closure of Bolnore Roundabout would be a remote possibility. Nevertheless, in such an event it is likely that contingency plans could be readily put in place to allow the construction access via Bolnore Road to be used as a temporary alternative. In these circumstances, I do not consider the access and safety issues on this basis are sufficient to warrant delaying further Bolnore development. [7.313]

Development of Four Acre Wood/Cell 5B1

Introduction

- 13.43 During the Inquiry, and for the purposes of its consideration here, Cell 5B1 and Four Acre Wood (FAW) are taken to be one and the same and the terms are used interchangeably. The site forms part of the wider housing allocation within Bolnore Village under Mid Sussex Local Plan Policy HH2 and is shown as such on the relevant

inset plan within this document. There is no dispute regarding its allocated status. [5.7, 7.24, 8.171, 9.79]

- 13.44 However, the site has now been included within 'A Revision of the Ancient Woodland Inventory for Mid Sussex District, West Sussex' (hereafter referred to as the Mid Sussex Inventory) as being Ancient Woodland (AW). A draft report indicating the site's inclusion was made available very shortly before the opening of the Inquiry, with publication of the final report in October 2006. [8.161]
- 13.45 S38(6) of the Planning and Compulsory Purchase Act 2004 provides that if regard is to be had to the development plan planning applications must be determined in accordance with it, unless material considerations indicate otherwise. Both MSDC and the LCOs suggest that the site's status as AW, and its ecological value within the wider context, constitute material considerations warranting a finding otherwise than in accordance with its development plan allocation. The question that therefore needs to be addressed is whether, if the site is AW or has some other ecological value which ought to be protected, this outweighs its development plan allocation for residential development. Before such a balancing exercise can be undertaken, a further question to be answered is whether, despite its inclusion in the Mid Sussex Inventory, the site is actually ancient woodland. This is a matter that divides the principal parties and was a key focus of the Inquiry. [7.249, 8.155, 8.174-8.176, 9.79]

Is FAW Ancient Woodland?

- 13.46 Paragraph 10 of PPS 9 requires local authorities to identify areas of AW that do not have statutory protection. The Mid Sussex Inventory has resulted from a partnership of bodies including MSDC, Natural England, the High Weald AONB Unit and the Forestry Commission and will assist in this PPS 9 requirement. However, I accept the appellant's view that the Inventory, within which FAW is identified as AW, is a report and list and not a designation document, statutory or otherwise; whilst a valuable piece of survey information it is not a binding statement on AW. It is common ground that inclusion within the Inventory, which itself is provisional and open to change in the light of new evidence, does not preclude consideration through the planning process of the actual status of the land in question. It is a matter of judgement on the evidence as to whether sites included within the Inventory are ancient woodland or not. [7.182, 7.185, 7.198, 8.163, 9.9]
- 13.47 What, therefore, is the significance of the Inventory document? Ancient Woodland is not defined in legislation, nor is any definition contained within PPS 9 or its companion 'Guide to Good Practice'. However, the Inventory provides an AW definition. This is the same definition as that used in the Weald Ancient Woodland Survey, which resulted from the Wealden Ancient Woodland Project. This project is specifically mentioned and endorsed in the companion guide to PPS 9 as good practice on the identification of areas of AW. On the other hand, in submissions the appellant considered that the definition of AW that is appropriate and should be used and applied nationally is that which is contained in English Nature's 'Ancient woodland guidance material for local authorities'. However, within the Inquiry the appellant's ecology witness accepted that the Mid Sussex Inventory definition was the one which should be applied in the assessment of FAW. Natural England, the successor to English Nature, was a partner

involved with the Inventory and this post-dates EN's guidance material on ancient woodland, as does the publication of PPS 9. I consider it is unlikely that there would have been endorsement of the Wealden Ancient Woodland Project within PPS 9, or acceptance by Natural England of the definition in the Inventory, if it was considered that something as fundamental as a definition was incorrect. On this basis, it is the definition as contained within the Mid Sussex Inventory that should be used in judging whether FAW is AW and not that in earlier guidance material. [7.187, 7.189 7.190, 8.184-8.186, 9.24, 9.30, 9.31, 9.76]

Does FAW fulfil the definition of AW?

13.48 It is worth repeating the definition of AW as set out in the Mid Sussex Inventory:

"Ancient woodlands are defined by Natural England as those where there is believed to have been continuous woodland cover since at least 1600 AD".

For this survey this definition includes:

- *Areas with continuous woodland cover.*
- *Areas managed or periodically cleared for timber or underwood production.*
- *Areas regenerating following woodland management.*
- *Open grazed areas within the woodland site (at least 20% canopy woodland over 80% of the site).*
- *Temporary clearings that may have been created within the woodland complex but which have regenerated, or are regenerating, back to woodland."*

13.49 Has there been continuous woodland cover since 1600? FAW is contiguous with Ashenground Wood and Quarry Hollow to its south and south-west. These areas are themselves shown within the Mid Sussex Inventory as AW and their definition and inclusion is not disputed. From my site visits I would agree with the evidence on behalf of the LCOs that FAW merges seamlessly with these areas. The only distinctions between them to be drawn by the appellant's ecology witness were in terms of land ownership and management. I do not consider that these factors impinge upon the question of physical or ecological continuity and woodland processes between parts of a greater whole. In reviewing the inclusion of FAW in the revised Inventory (and which is considered further in paragraphs 13.51 & 13.64 below) Dr Kirby, an acknowledged authority on AW from Natural England, indicated that FAW was considered as part of this larger block. Therefore FAW should be looked at within the context of the wider woodland complex, particularly that to the south and south-west. [7.205, 8.188, 8.193, 8.205, 8.207, 9.15 and footnote, 9.39, 9.40, 9.75, 9.76]

13.50 There is no dispute that FAW was ancient woodland in the early 1950s. Similarly, there is no dispute from the aerial photographic evidence that at some point in the mid to late 1950s FAW was cleared of trees, probably as a valuable timber crop. The evidence would seem to suggest that following clearance the land was used for grass cutting for hay and/or for grazing (and was not ploughed or soil stripped) before tree growth became re-established over parts of the site in the 1980s. There is no doubt therefore that on

FAW itself there has not been continuous woodland cover per se since 1600 to the present day. [7.239, 9.33, 9.62 and footnote, 9.64-9.66, 9.68, 9.75(5), 8.187, 8.189, 8.214]

- 13.51 Nevertheless, the definition of AW includes areas that have been managed or temporarily cleared for timber production and temporary clearings within the woodland complex but which have regenerated, or are regenerating, back to woodland. Freedom from felling is not therefore a criterion that is required to be met for woodland to be classed as ancient. It is likely that much ancient woodland has gone through phases of clearing of trees, either through natural events or as a result of arboricultural management over the years. NE, in its review of the revised Inventory in respect of FAW, suggests that 'continuously wooded' does not just mean those areas where there has been a continuous physical cover of trees and shrubs and that open space, both temporary and permanent, is an important part of all temperate woodland systems. [for references see p 13.52 below]
- 13.52 For the LCOs, Dr Whitbread indicated that there is increasing understanding that totally undisturbed habitats do not exist and that a degree of disturbance makes habitats richer, with biodiversity being enhanced by the creation of clearings. He was one of the authors of the revised definition of AW used in the revised Inventory. In my view, it is clear that this evolving understanding provides a clear pointer to the fact that the appellant's reliance on the previous ancient woodland guidance material definition of AW is incorrect. This is particularly the case in reference to that part of the definition indicating that if woodland has clearly been through a phase in the last 400 years when the land was open, then the site should be classed as recent (as opposed to ancient) woodland. [7.192, 8.162, 8.189-8.192, 9.28, 9.37]
- 13.53 There is no definition of what a 'temporary' clearing might be. Although there may have been an absence of tree growth for some 20 or more years on FAW following the 1950s' clearance, it is clear that the majority of the site (perhaps in the order of about 75%) is now regenerating back to woodland, having in the order of 800 trees, with a central open grassed area. It was accepted by the appellant's ecology witness that the regeneration of canopy cover started as long ago as the early 1980s. I have no doubt from the evidence, and my visits, that the site has the characteristic of woodland and not scrub (as characterised in the EA) or scrub with secondary woodland encroachment. Nor do I accept or follow the appellant's argument at one point that there are no trees within the site, or the conclusion that Cell 5B1 has no existing tree cover and no or scant evidence of regeneration back to woodland. [7.247, 7.250, 8.187, 9.26, 9.34, 9.36 and footnote, 9.41 and footnote, 9.43 and footnote]
- 13.54 Against this background, I consider that in terms of the definition of AW it is clear that FAW is an area that was cleared for timber production (second bullet of the definition); as part of the larger woodland site of Ashenground Wood, where there is clearly 20% canopy woodland over 80% of the site, it represented an open grazed area within the woodland site (fourth bullet); and it was a temporary clearing created within a woodland complex which is now regenerating back to woodland (fifth bullet). [9.41]

Ancient Woodland Indicator Species

- 13.55 The review of the Mid Sussex Inventory indicates that FAW was not included within the original West Sussex Inventory 1984/1989; there was good evidence from old maps that it was an ancient woodland site but aerial photographs suggested its clearance in the

1950s and no field evidence was available at that time. The revised Mid Sussex Inventory took account of new historical and field survey work. The latter included the use of ancient woodland indicator species (AWI) in the study. Using these, a well-developed woodland flora within FAW was recorded that did not seem compatible with the evidence that the woodland had been completely destroyed by the 1950s' clearance. This led to its inclusion within the revised Inventory. Absence from the original Inventory was presumably a contributory reason why there were no objections to the site's residential allocation at the time of preparation of the Mid Sussex Local Plan or, before this, allocation as a school site within the Haywards Heath Local Plan. [7.18, 7.26, footnote to 8.164, 8.181]

- 13.56 Eighteen AWIs were found by the surveyor undertaking the revision to the Mid Sussex Inventory in May 2006. Later surveys by others in June and August of that year found 23 AWIs. The appellant's ecology witness accepted that 19 of these species existed (but, whilst presenting no evidence to contradict their existence, she indicated that she would require sight herself of the additional four). This represents a high number of AWIs, particularly for a small area, the Mid Sussex Inventory finding generally a range within AWs of between 2 and 22, with a mean of 10.5 species per site. It is also towards the top of the range found in site surveys in the Wealden Ancient Woodland Inventory. It contrasts with the three AWIs found on the site by the appellant's ecological team during the Environmental Impact Assessment (EIA). Reference has been made to a study which indicates the belief that as the numbers of AWI species that occur in a site increases, so the statistical probability of the wood being ancient also increases. Dr Whitbread, for the LCOs, also indicated that up to 15 AWI species at a site of more than 30ha would provide very strong evidence of it being AW. In a study of AW sites below 5ha there was found to be a range of AWIs of 4 to 24, FAW therefore being towards the top of this scale. [8.197, 8.195, 8.198, 8.200, 9.43-9.45]
- 13.57 Having reached broad agreement as to the number of AWIs within FAW, the appellant has sought to suggest that these have not survived and persisted as part of the original carpet of AW flora but that their presence is as a result of re-colonisation from beyond the site. The LCOs suggest that the debate begs the question as to whether it matters whether or not the AWIs are originals or colonisers; the definition of AW does not contain any requirement that temporary clearings should retain their original carpet of AW flora. I consider that given the close relationship of FAW with adjacent AW it is likely to be inevitable that some degree of re-colonisation from outside the site will take place. Nevertheless, it is suggested that the evidence does not support the colonisation theory to explain the present extent and abundance of AWIs. [8.206, 9.46, 9.47]
- 13.58 Particular consideration has been given to the presence of AWI species of bluebells and wood anemones. It was accepted that these species were present up to 36m from the southern boundary of the site. For them to have re-colonised from beyond the site a rate of colonisation of about 1m/year would be required. However, from the various studies quoted regarding the colonisation rates of these species, there would appear to be little support for their presence as a result of re-colonisation since management of FAW ceased and woodland regeneration started. It is much more probable that many of the AWI species now found within the site are the result of their persistence and survival from the period before clearance, a view supported in EN's review of the Mid Sussex Inventory. Whilst accepting that there should be care exercised in interpreting the

presence of AWI as firm pointers to the status of a site as AW, I consider that the presence of a considerable number of AWI species is indicative of the site's biodiversity interest and reinforces the notion that FAW is AW. Retention of biodiversity is considered by Dr Whitbread, a key figure in the study of AW within the region, as a very important characteristic of AW, as opposed to the much more ephemeral one of tree canopy cover. [7.199, 7.209-7.212, 8.201-8.208, 9.48-9.54, 9.68, 9.75]

Soils

- 13.59 Considerable discussion has taken place regarding the soil characteristics of FAW and whether these display signs of disturbance or truncation such that they can not now be said to be representative of the soil profiles that are found in AW. Soil pit survey work within FAW has been carried out on behalf of both the appellant and the LCOs/MSDC. The results of the appellant's work have been compared with additional surveys of control profiles carried out in Ashenground Wood and neighbouring woods. [See paragraph 13.60 for references]
- 13.60 Emphasis has been placed by the appellant on what is seen as considerable disturbance and the fact that this should be taken into account in deciding whether FAW is AW or not; the present-day character of the soils there are linked with the impact of the clear-felling and follow-up activities in the 1950s. These have caused disturbance to the upper soil profile, there has been tree root removal and soil erosion and these appear to have led directly to the creation of an artificial soil which no longer functions as an extant woodland soil. The LCOs characterise the purpose of this evidence as seeking to demonstrate that the carpet of AW flora at FAW cannot have persisted by reason of what is claimed to be the widespread and substantial truncation of soils and that their presence is thus the product of re-colonisation. On the other hand, MSDC and the LCOs suggest that soil profiles are not particularly important in the context of assessing whether a site is AW or not since all woodland soils, by their very nature, have been repeatedly disturbed; this provides the most rational explanation for why the degree of soil disturbance has been removed from the relevant Mid Sussex Inventory definition as a factor in deciding whether a woodland site is ancient or not. [7.214, 7.241-7.243, 7.246, 8.216-8.217, 9.55, 9.63]
- 13.61 The appellant's soils witness, Dr Macphail, accepted that before the removal of trees in the 1950s the soils of FAW would have been truncated and disturbed; the date and origin of soil disturbance is unknown but there is no evidence that truncated soils have been deliberately stripped and removed by human activity and no evidence of ploughing; truncation is likely to have been a result of a cumulative process of natural erosion and woodland management over the centuries; and it can only be conjecture how much truncation happened before temporary clearance in the 1950s and how much has happened since then. Overall, he concluded that the soils at FAW are not good woodland soils (which he defined as having a reasonable drainage, woody roots in the upper levels, a good 'A' horizon and a good pedological relationship). In his view the importance of good woodland soils is that trees can grow well in them and draw nutrition from them. However, Dr Macphail never expressed the view that FAW was not AW. [7.216, 9.61, 9.64]
- 13.62 Considerable detail has been provided as to why the appellant's evidence on the extent of truncation is flawed, should not be accepted and the evidence of the LCOs/MSDC soils

witness preferred. Amongst other matters, the LCOs' evidence suggests that the appellant's soils witness carried out incorrect benchmarking of soil profiles and provided implausible explanations for the presence of the depths of topsoil found. Irrespective of which evidence provides the more probable explanation of what was found in the different studies, I agree with the conclusion of the LCOs that this has no relevance to FAW's ancient woodland status; none of the points raised support the conclusion that FAW has lost its AW characteristics following the 1950s clearance. This is on the basis that, amongst other matters, it is accepted that truncation and disturbance has been the result of a cumulative process over the centuries. The FAW soils would likely have been truncated and disturbed prior to the 1950s, when there appears to be no disagreement that the site was ancient woodland, and such truncation and disturbance is not therefore incompatible with AW status. It was also acknowledged by Dr Macphail that truncation of soils is not in itself fatal to ancient woodland in the long-term. The question of whether the soil is a good woodland soil is not important in terms of the status of the land; it may only be relevant if commercial forestry was being considered. [8.216, 9.63, 9.70-9.73]

- 13.63 The definition of AW within the Mid Sussex Inventory makes no mention of soil disturbance or its absence as a criterion of AW status. Furthermore, it is suggested by the LCOs' witnesses that significant disturbance is common in AW and can be beneficial in that it can encourage ecological diversity. Most telling of all, however, is the continued presence of a considerable number of AWI species which, it has already been concluded, are most likely the result of survival within the site's soils rather than being the result of recent re-colonisation. Had there been major disturbance or truncation of soils following tree clearance in the 1950s such an abundance of indicator species would be most unlikely. [8.217, 8.219, 9.63]
- 13.64 It is acknowledged by all parties that the Mid Sussex Inventory is provisional and that it is capable of being updated and amended in the light of further evidence and information. Having regard to FAW, the Inventory has already been reassessed through the review undertaken by NE, only a matter of a few months after its publication. This review was carried out on the basis of the information supplied by the appellant. The review endorses the inclusion of FAW in the Inventory. The appellant is critical of the review's finding that the soil survey evidence (provided by Dr Macphail) is inconclusive as to the nature and scale of any past soil disturbance and when it might have occurred. Given my conclusions above regarding soil disturbance, I do not consider that the review's inconclusive finding on this matter undermines in any way the endorsement of FAW's inclusion with the Inventory. [7.215-7.221, 7.226-7.228, 8.163]

Conclusion on the status of FAW

- 13.65 Overall, I consider that in respect of the status of FAW as AW, the case made out by MSDC and the LCOs and the evidence presented, including that from two leading experts in the study of ancient woodland, is to be preferred. I conclude that FAW/Cell 5B1 is ancient woodland as categorised within the Mid Sussex Inventory.

Other ecological interest of FAW

- 13.66 Even if FAW/Cell5B1 were not to be considered AW, does it possess any other ecological interest that needs to be considered and weighed against the site's residential allocation?
- 13.67 The area contains within its central open section lowland acid grassland, which is recognised as a nationally important and rare lowland habitat. It is a national Biodiversity Action Plan priority habitat and is listed as a habitat of principal importance for the conservation of biological diversity in England under S74 of the Countryside and Rights of Way (CROW) Act 2000. PPS 9 paragraph 11 advises that important natural habitats identified under the CROW Act should be conserved and opportunities for enhancement identified through plan policies. In the EIA possible turf translocation of the grassland to other areas is suggested. English Nature (as was) considered that such translocation is not a substitute for in situ conservation, a stance supported by the Joint Nature Conservation Committee. The appellant's ecology witness also admitted to lacking experience as to whether translocation could safeguard the acid grassland component of the site. These factors indicate that this suggestion would not be a satisfactory mitigation strategy if the site were to be developed. [8.221, 8.223-8.226, 8.228, 9.88, 9.90]
- 13.68 EN also considered that FAW/Cell 5B1 provides a role as part of a dynamic functioning landscape linking Ashenground Wood to the south, Reading Wood to the north and Foundry Brook Gill and hedgerows to the west; its loss would affect the functioning of these remaining habitats. PPS 9, paragraph 12 exhorts the maintenance of natural habitats by avoiding their fragmentation and isolation. The appellant's intention, were development to be allowed on Cell 5B1, would be to retain woodland around the periphery of the site. However, this would still result in the loss of much the greater part of FAW and I do not consider this would be sufficient to acceptably maintain the functional linkage which is seen as being important and worthy of protection. [8.160, 8.188, 8.193, 8.222, 9.88, 9.91]
- 13.69 For the appellant, it is suggested that the area has fewer birds, invertebrates and other woodland species resulting from its lack of continuity with adjoining woodland. Nevertheless, I have already concluded that FAW does possess close continuity with the adjoining ancient woodland and the fact that the appellant's earlier surveys found only three AWI species on the site, in my view, casts some doubt on its conclusion that the area has reduced biological activity compared with neighbouring areas. As already noted, the site contains over 20 AWI species within what is a relatively small area, putting it near the top end of the range of such species found in this form of habitat within the region. The function of the open central 'glade' has also been recognised as important as it provides the only significant clearing in the wider block of ancient woodland and helps to provide ecological diversity. [7.213, 8.160, 9.88]
- 13.70 I therefore consider that even if the view is taken that FAW/Cell 5B1 is not AW it still has considerable acknowledged ecological interest and importance.

Development plan allocation and other material considerations

- 13.71 Both the conclusions that FAW/Cell 5B1 is correctly identified as AW and, independently of this, that it possesses other facets of ecological importance, are material considerations that need to be weighed against its development plan allocation for residential development.
- 13.72 It is apparent that MSDC became aware of the ecological importance of FAW only after its allocation within the MSLP. EN's view of this importance, the site's inclusion as AW within the Mid Sussex Inventory and the publication of PPS 9, all post-date the Mid Sussex Local Plan. Paragraph 10 of PPS 9 indicates that planning permission should not be granted for development which would result in the loss or deterioration of AW unless the need for, and benefits of, the development in that location outweigh the loss of the woodland habitat. Paragraph 19 of PPS 1 indicates that planning decisions should be based on up-to-date information on the environmental characteristics of an area. The Council's planning witness indicated that it is now considered that the Local Plan allocation is inappropriate in light of the information and guidance which has arisen since the plan's publication. These are highly relevant and material considerations. [7.2, 9.79 and footnote]
- 13.73 All three main parties to the Inquiry (CN, MSDC and LCOs) accept that, if it is considered there should be no residential development on Cell 5B1 then, rather than this warranting outright dismissal of the appeal relating to Phase 4/5, a condition could be imposed to exclude this area from development. It is a discrete and distinct area within the overall site, would be severable from it and this would permit this approach. There is also acceptance that should residential development be allowed on Cell 5B1 then it would be capable of accommodating about 60 dwellings. What needs to be considered therefore is not the ecological importance of Cell 5B1 versus the development plan allocation of the whole of Phase 5 (Phase 5 only, since Phase 4 could proceed if the separate appeals relating to this as a stand-alone development were to be allowed), but its importance versus its allocation which could realise the development of about 60 dwellings on this particular part of the whole of Phase 5. In this light, the appellant's overall scheme would realise far more dwellings within Bolnore Village than envisaged in the West Sussex Structure Plan 2001-2016, even without development on FAW. It was accepted by the appellant's planning witness that there is no strategic need for dwellings within FAW itself (even though in submissions it is argued that the local and national planning framework supports the need for the cell to be developed). Further, it is not argued that development of FAW is necessary in terms of the viability of the wider scheme. I therefore do not consider it has been demonstrated why there is a need for development in this particular location. [7.62, 8.59, 8.177, 8.178, 9.85, 9.87, 9.92]

Overall Conclusion on FAW

- 13.74 Against the above background I conclude that FAW/Cell5B1 is ancient woodland and is an ecologically important habitat which should be conserved. Up-to-date planning policy guidance in PPS 9 supports this. There is also backing in Local Plan Policies C5 and C6 and Structure Plan Policy ERA2, the latter providing a high level of protection for sites of national and local importance. Residential development on the site would not achieve the satisfactory safeguarding of this habitat. The need for and benefits of

potential development in this location would not outweigh the loss of this habitat. I consider that these constitute relevant material considerations sufficient to outweigh the site's allocation for residential development within the Mid Sussex Local Plan. If planning permission is to be granted for development of Phases 4/5 a condition should be imposed to prevent residential development on FAW/Cell 5B1. [5.5, 8.227, 9.95-9.99]

Buffer Zones

Introduction

- 13.75 Buffer zones (BZs) are proposed to provide protection of trees from development and also to provide ecological protection of existing woodland within and adjacent to the appeal sites. Considerable debate has taken place as to the adequacy of the width of the appellant's proposed BZs and their likely effectiveness. CN suggests that there is no linear relationship between width and effectiveness and that this is clear from earlier development phases at Bolnore where narrower buffers have worked effectively due to their design and nature of treatment; the widths of the proposed buffers would be entirely adequate for their purpose, would protect individual trees and would function well ecologically. On the other hand, MSDC and the LCOs contend that many of the existing BZs within Phase 1 to 3 are unsatisfactory because development comes too close to the edge of woodland; the present proposed buffers would fail to provide the necessary separation from development to protect trees, and there would be inadequate separation for the ecological protection of woodland. [7.255, 8.230, 9.101, 9.103, 9.128]
- 13.76 Though the precise widths of buffers should be left to the reserved matters stage, if outline permissions are to be granted, I agree with the LCOs that the overall parameters of what would be acceptable are being tested at this outline stage. The appellant's suggestions for the BZs where they would adjoin woodland indicate an average width of some 7.7m and there would be a range from a maximum of about 13.6m to a minimum of some 2.5m. The proposed buffers equate to whichever is the greater of its calculation of BS5837:2005 'Trees in relation to construction' root protection area (RPA), one metre outside the tree canopy line, or a 5m width of ecological buffer. Suggestions as to appropriate BZ widths made by others have ranged up to 50m, with minima of 15m. The MSDC view is that a minimum BZ width of 15m around ancient woodland should be provided, whilst the LCOs also suggest that such zones should comply with BS5837:2005 and provide this level of minimum separation between woodland and development. What is the basis for the different approaches? [7.255, 7.267, 8.233, 8.238, 8.260, 9.102, 9.123, 9.129]

How have the proposed BZs been derived?

- 13.77 It is common ground that the BS5837:2005 is designed solely to protect trees from development and is not designed to provide ecological protection for woodland. The two elements can therefore be examined separately. [9.116]

Tree protection

- 13.78 It is clear that the appellant has placed considerable reliance upon the application of the British Standard (BS) in suggesting appropriate BZ widths. In submissions, it was stated

that the BZs shown on plans submitted by the appellant's landscape consultant do not just show protection of roots; they show the protection of the whole tree, with the RPA taking account of the need to maintain water and air supply to the tree roots, avoid damage to branches and avoid changes to ground level; the suggested tree protection areas are based on above- and below-ground constraints and not just on the RPA. It is further suggested that by applying guidance within the BS, ecological processes and requirements, as advised by the appellant's ecology consultants, have been considered and trees have been looked at holistically. [7.268, 7.271, 7.274, 9.116]

- 13.79 The Council suggests that whilst the BS sets out a clear system for calculating RPAs there are other factors that need to be taken into account in establishing appropriate BZs. These matters are listed within the BS, have been referred to both by the Council and the appellant, and include eventual height of trees, shade, water demand, leaf fall, movement in strong wind and relationship to, and use of, buildings. In the appellant's production of its BZs the Council contends that the BS has been used to calculate the RPA but that there is no evidence that these other factors have been taken into account. Both the appellant's landscape and ecology consultants accepted the Council's view that RPAs are different to BZs in that they are designed to provide protection for a significant portion of a tree's roots but take no other consideration into account. A BZ, on the other hand, incorporates an RPA and provides for other factors such as ecological integrity. It was also accepted that BS 5837:2005 is concerned with the relationship between trees and structures but has no bearing on ecological factors in relation to the protection of woodland. I consider the question of sufficiency of ecological protection below. Firstly however, I assess the criticism levelled at the use of the RPAs in drawing of the BZs and whether these would provide sufficient separation to protect trees. [7.269, 8.241, 8.243, 9.116]
- 13.80 The BS provides details of calculating the RPA, which it goes on to state should be seen as the minimum area that should be left undisturbed around each retained tree. This should be an area equivalent to a circle and the RPA should take account of factors as assessed by an arboriculturalist that may make the minimum radius of an RPA inappropriate. These factors may include species, age and condition and presence of other trees, morphology and disposition of roots, topography, drainage and soil type and structure. The appellant's BZs appear to be based on RPA calculations that assume a symmetrical root growth pattern. Both the Council and the LCOs consider that there has been a failure to make any adjustment to the RPA's shape or size for the many trees bordering the site; no account appears to have been taken of the above various factors, particularly when there is evidence that root growth is often irregular and asymmetric. Whilst asymmetric growth is acknowledged by the appellant's landscape witness, it is contended that at the woodland edge this is always insignificant and this is why the minimum RPAs have not been adjusted. [8.244, 9.106-9.110]
- 13.81 The evidence provided by CN and the LCOs of asymmetric root growth of trees at woodland edges where these abut open grassland (as in this case) is somewhat contradictory. The arguments advanced are detailed matters of arboriculture. The appellant maintains that there are no differences in root spread of rows and groups of trees compared with single specimen trees, there is no support for asymmetric root systems nor is there evidence to support the idea that roots from large trees on the woodland edge are likely to have a disproportionate area of their roots stretching out into

the adjacent fields; if there is asymmetric root growth it would not be significant enough to call for the RPA to be adjusted, the purpose of RPAs being to protect sufficient root mass of trees to ensure their survival, not their entire root system. For the LCOs it is suggested that asymmetric root growth at woodland edges mirrors crown growth and is significant because of the adaptive behaviour of trees; accordingly, specific consideration should have been given to adjusting the minimum RPA to account for this. Furthermore, contrary to the appellant's evidence, grassland would not provide a less hospitable rooting environment for trees and reference to rows and groups of trees having no difference in root spread is misleading since the work quoted was not referring to woodland edges. The LCOs' arboricultural witness suggests that at the woodland edge the RPA radius should be adjusted by at least a metre in most cases and considerably more for larger trees. [7.275, 7.276, 7.285-7.290, 9.109-9.114]

13.82 The LCOs argue that their evidence should be preferred because it was provided by an arboriculturalist of national standing whereas that on behalf of the appellant was provided by a landscape architect with no arboricultural qualifications. Nevertheless, it is clear that the appellant's witness has drawn on arboricultural advice, including that from the arboriculturalist who conducted the detailed tree survey and on which the appellant's proposed BZs are based. Furthermore, it is maintained that the RPAs do take into account the factors listed in paragraph 5.2.4 of the BS which it advises should be assessed in addition to the basic RPA calculation. These include species, age, condition and presence of other trees, soil type and structure and topography and drainage. [7.275, 7.276, 7.285-7.290, 9.109-9.114]

13.83 I find that the evidence relating to the degree of significance of asymmetric root growth to be somewhat equivocal. Nevertheless, I note from the detailed drawings showing RPAs that the crown spreads of trees are shown and from this it can be seen that certain trees on the edges of woodland show asymmetry in their crowns. In most cases the RPAs mirror these and in cases where they don't the proposed root protection fencing extends beyond them. [7.290]

13.84 In terms of other above-ground constraints that should be taken into account to ensure the adequate long-term protection of trees from development many, such as positioning and orientation of dwellings and concerns about potential damage, shading and light loss from trees, would be matters that could be adequately addressed through applications for reserved matters. Trees that would abut development, either within the site or on its edge, have been assessed and recommendations made as to which should be removed because of their condition and to that extent this could help to alleviate potential future fear of branch or tree fall. Overall, whilst having some misgivings about the appropriate application of the BS in terms of tree protection, I consider that, on balance, a considerable degree of protection would be afforded to individual trees if the suggested BZ scheme were to be implemented. [7.277-7.281, 8.241-8.242]

Ecological protection of woodland

13.85 Tree protection is only one component of BZs. It is common ground that BS5837:2005 is not designed to provide ecological protection for woodland. How therefore has this been addressed? It is apparent that the appellant believes five metres to provide sufficient ecological protection for woodland; that the most important factors are not so

much buffer depth, but matters including the layout of sites, management of the construction phase, (which could be potentially the most damaging), and post-development monitoring and management; and there is no evidence to support a simple physical relationship between the edge of development and woodlands resulting in a direct impact. However, little direct evidential support for this approach has been provided other than reliance on experience from earlier phases of Bolnore. [See paragraph 13.86 below for references]

- 13.86 Ranged against the above assessment are MSDC, the Woodland Trust, Sussex Wildlife Trust and the Badger Trust-Sussex all of whom consider 15m to be a minimum buffer. English Nature suggested a minimum of 20m and indicated that the proposed BZ around Reading Wood is inadequate and should be significantly increased. It was agreed on behalf of the appellant that these are judgements based on experience and expertise. In the absence of appropriate buffers potential problems are highlighted in 'Keepers of Time' if development is built up to the margins of woodland. These include the direct impact of development itself and indirect ones such as changes to drainage. Pressure from future occupiers to lop or fell trees because of fear and apprehension of damage or nuisance, fly tipping and domestic encroachment are other concerns. [8.231, 8.232, 8.237, 9.117, 9.119, 9.122, 9.123]
- 13.87 It is also common ground that an important function of BZs is to provide a role in the linkage of areas of ecological sensitivity. They should additionally provide an ecotone, a graduated woodland edge with shrub and grass layers, as a transition to development. For the LCOs it is maintained that it would simply not be possible to achieve a satisfactory transition to provide biodiversity and ecotonal habitats in less than 15m, and certainly not in the minimum 5m buffers proposed. [8.254, 8.234, 9.126]
- 13.88 An alternative approach to the determination of appropriate buffer zones was suggested as more appropriate by the Council. This involved the application of a methodology devised by the Greater Yorkshire Tree Officers Group (GYTOG) which provides a way for ecological objectives to be taken account of, and incorporated within, an ecological BZ. It allows the incorporation of factors mentioned in BS5837:2005, but for which no prescriptive calculation is set out, and could result in the production of a BZ based on the collective assessment of individual trees and the application of specific criteria. An initial application of the methodology in its original 'Doncaster Rules' form resulted in the production of an average BZ width of some 17.4m along the ancient woodland component of the development. The appellant's ecologist considered the methodology to be a flawed process with an arbitrary application of weighting criteria which ignores site specifics and the design of development. MSDC claims support for the use of this methodology as it was tested at the Selby Local Plan Inquiry in 1999-2001. Nevertheless, I agree with CN that little or no weight should be given to this; there appears to have been no consideration of the use of the British Standard as then was; the revised 2005 BS has been published subsequent to the Inspector's report; and the policy refers to Tree Preservation Orders only. [7.256, 7.261-7.263, 8.251, 8.253]
- 13.89 However, the GYTOG methodology has been revised and has been adopted by Selby District Council and North Lincolnshire Unitary Authority. MSDC has applied this revised methodology with the result that it produces a reduced average BZ width along the ancient woodland component of some 15.2m. The Council appears to have shifted

position to some extent, reducing the reliance it wishes to place on the GYTOG methodology as a suitable means of evaluating what would be an appropriate BZ; the system was specifically not designed to provide ecological protection around AW sites. The Council indicates that, whilst providing on average more than what the appellant has said it is prepared to give, this does not mean to say that the methodology provides a suitable minimum ecological BZ for development along the edge of specially protected woodland. Its position, shared by the LCOs, now is that 15m would be an absolute irreducible minimum requirement. Whilst the LCOs adopt MSDC's submissions regarding GYTOG, their reliance on the original GYTOG has always been a means to an end, the end being compliance with a 15m 'bottom line'. Whatever criticisms are levelled against the GYTOG methodology, therefore, are attacks on the means rather than the end. [7.260, 8.254, 9.127]

- 13.90 It is unfortunate that it appears that there is little empirical support one way or the other for what should be appropriate BZs to provide sound ecological protection of ancient woodland. I am not convinced that examples of buffers within Bolnore Phases 1 to 3 provide pointers to what should be appropriate depths.
- 13.91 In submissions, the appellant suggests that, apart from anecdotal evidence, there is nothing that can be relied upon to indicate that these earlier BZs are inappropriate. However, from the evidence and from what I saw on my site visits, it is clear that there are areas where development comes within 7-8m of areas of retained trees and woodland boundaries. Whilst it might be argued that there is little evidence of problems resulting from the relationship of development with existing buffers, the development, particularly in Phases 2 and 3, is very recent. It was accepted by the appellant's ecology witness that some long-term damage might not yet have manifested itself. It was also accepted that some of the very close trees on the edge of the development are to be removed, thereby creating greater separation. This is presumably in recognition of the uneasy relationship that presently exists. It seems to me that such a situation is one that needs to be avoided from the outset to prevent any potential degradation of the ancient woodland edge and is one that could only be addressed through ensuring an adequate depth of buffer. This is probably more so when it is proposed that some of the buffers should have a dual use and be capable of accommodating passive uses such as footpaths. [7.255, 8.255, 9.128]
- 13.92 In the absence of definitive or conclusive evidence on appropriate BZ widths, I consider that it would be appropriate to apply what is, in effect, a precautionary approach and suggest that, as far as the ancient woodland components within and abutting the sites are concerned, a minimum BZ width of 15m should be provided. This would represent a reasonable compromise between the more onerous suggestions that have been put forward and the needs of the developer, a compromise which has already been acknowledged to a large extent by the Council and the LCOs. Although effectively reducing the developable area of the sites, the actual increases in size of BZs compared with those presently suggested, would be relatively modest. [9.125]
- 13.93 This compromise is further underlined by the fact that I consider it would be reasonable to apply this only to the boundaries of the AW within and abutting the site (FAW, Quarry Hollow and Reading Wood); it is for these areas that the principal arguments are advanced on ecological grounds and where I consider it is most important that satisfactory ecotones are established to protect areas of acknowledged biodiversity value.

It is in relation to these that MSDC concludes a minimum BZ width of 15m should be provided, although the LCOs would want to see a minimum of 15m applied to all woodland areas in and around the sites. [8.256, 8.260]

- 13.94 I have already concluded that the suggested RPAs that have been calculated, and fencing, would afford a considerable measure of protection for trees. Whilst important landscape and structural elements within the overall development framework of Bolnore, areas such as King Street Copse, within which the Ashenground Bridleway is situated, and the band of woodland flanking the western side of the mainline railway, are not ancient woodland. In the case of King Street Copse it is already used in part as play areas, and roads to link the proposed development would pass through it. The wood area alongside the railway is of a depth that it would, in my opinion, continue to provide a considerable protective habitat for foraging badgers whose setts lie to the north. In this light I do not consider the imperative to provide buffering containing ecotones as large as those for the protection of AW is as great and the appellant's suggested measures should provide adequate assurance of protection. Further detailed consideration of the boundaries of these other wooded components could follow at the reserved matters stage if outline permission is granted. [2.3, 2.4]

Conclusion on buffer zones

- 13.95 It is therefore my overall view that the appellant's proposals, through the application of advice within BS5837:2005, would be likely to afford a considerable measure of protection for trees within and around the appeal sites. However, in terms of the broader need to adequately protect the ecological value of the ancient woodland components in and abutting the sites, I consider the balance lies in favour of the adoption of buffer zones of a minimum width of 15m around their edges. This would more appropriately accord with the thrust of advice within paragraphs 10 and 12 of PPG 9, Policies ERA2 of the West Sussex Structure Plan 2001-2016 and C5 of the Mid Sussex Local Plan, which seek to protect sites of recognised conservation importance. This could be achieved by the imposition of suitable conditions (see paragraph 13.161 below).

Ancient oak

- 13.96 Reference has been made to the oak tree which stands close to the 'Pinch-point' where there would be a road connection between Cells 4A and 4B. I consider this to be of considerable importance, particularly in landscape and visual terms, and also because it helps to provide linkage and continuity between FAW and Reading Wood. As such, its protection should be paramount. The proposed RPA for it is greater than the recommended cap for such cases within BS5837:2005, with an additional tree protection area on top of this. I am satisfied that its longevity could be assured through the imposition of suggested conditions should planning permission be granted, which would include construction details for the access road which would pass close by. The range of suggested conditions that could be imposed should also ensure the adequate protection of other trees within the sites that it is intended should be retained. [7.282, 7.283, 12.14]

Affordable Housing

Introduction

- 13.97 The proposals make provision for an agreed 30% of all housing to be affordable (social rented or intermediate housing as defined by PPS 3). A principal difference dividing the Council and the appellant is the means of delivery of this element of housing provision. The proffered Unilateral Undertaking sets out a mechanism for this. However, of concern to MSDC is the fact that no reference is made to the basis on which affordable housing land or units of accommodation are to be transferred to a Registered Social Landlord (RSL). The Council maintains that, in accordance with its policy, this must be on the basis of the provision of free serviced land by the owner in order to ensure the delivery of the units that would attract Housing Corporation grant; the UU should therefore make reference to the transfer of serviced land at nil cost or the sale of affordable housing units to an RSL at a price that reflects the provision of serviced land at nil cost. The Council's further concern is that the Masterplan and the UU both fail to provide for the proper integration of the affordable housing element into the overall scheme, as required by MSDC policy and best practice. [8.321, 8.322]
- 13.98 For its part, CN argues that the Council need have no concern about the ultimate delivery of affordable housing. It suggests that the provision of affordable housing could be ensured either through the imposition of a condition or, in the alternative, through its proffered UU. The latter includes safeguards in the form of guaranteed percentages and tried and tested cascade mechanisms that would deliver certainty to the developer and local authority alike. [7.92]

Planning Policy

- 13.99 Policy H4 of the Mid Sussex Local Plan sets out the requirement for the provision of a proportion of affordable housing on development sites, generally 30%. In addition to this the Council has produced Supplementary Planning Guidance relating to affordable housing provision. It acknowledges that the mechanism to bring forward subsidized housing provision is complex and the preferred approach to secure subsidised housing is thorough the use of S106 obligations. The first SPG in 2000 left open to interpretation the question of whether serviced land for affordable housing was required to be delivered at nil value. Further SPG from May 2004 made clear that free serviced land was required in all situations. This was further updated and finally adopted in February 2006, and confirmed that the Council required that serviced land should be provided at nil cost. Support for the free serviced land requirement is claimed in that, amongst other matters, all West Sussex district councils now require this, a commissioned study found it to be a sound approach, CN has accepted the requirement at three other sites within Mid Sussex, and the Housing Corporation has set out this assumption in letters to the Council. Although CN sought within the Inquiry to criticise the way in which the SPG evolved in terms of the amendments made to the free serviced land requirement in the run up to and time of adoption of the final SPG, no criticism, objection or challenge was made at that time. [5.7, 7.87-7.90, 8.270, 8.273, 8.274]

Viability

- 13.100 A circumstance where the provision of free serviced land for affordable housing might not be appropriate is where this would call into question the viability of a development. The Council states that in May 2004 CN indicated that the development of Phases 4 and 5 would not be viable if it was required to provide free serviced land for affordable housing. The Council asked that a financial viability assessment be provided to support this contention. An assessment was not provided and subsequent requests failed to elicit one. In its absence, MSDC involved the District Valuer (DV) to provide an independent view. His original report, provided in August 2006, did not constitute a full viability assessment, since little information had been provided by CN, but was effectively an initial and theoretical exercise to see whether CN's claims could be substantiated. This found that the claims could not. Once the Inquiry had started hearing evidence, MSDC offered to the appellant a confidential 'open book' assessment by the DV, but this was rejected. For CN it was indicated that developers are rarely in positions to agree to 'open book' assessments because of confidentiality agreements and the effect that such disclosure would have on third party interests. [7.97, 7.112, 8.267, 8.268]
- 13.101 However, information was supplied to the DV and meetings took place between him and the appellant's valuation consultant. MSDC has still expressed concern about the way information was provided (and also seemingly poorly supplied to the appellant's own consultant). Within the Inquiry the DV indicated that, as a consequence of CN's conduct, he had been forced to estimate viability based on his knowledge and experience of viability assessments. He believed, however, that his various assessments had proved to be reasonably accurate and robust. No separate comparable, detailed assessment has been provided by the appellant, with comment only within the Inquiry being made by its valuation consultant on the DV's assessment. [8.267, 8.268]
- 13.102 The evidence on viability is complex. Assumptions have had to be made about matters such as likely density (given the outline nature of the applications), appropriate build costs, sales values and acceptable levels of profit. The DV's assessments have been based on what he considers to be a realistic price (£1,500/m²) that the developer would be likely to receive from an RSL that reflected only the development costs of the affordable housing excluding any land value. Further assumptions have been made about the Net Development Area, taking into account the possible reduction if FAW was to be excluded and buffer zones were to be increased in size. How the Easement and Connection Charge relating to infrastructure considerations on Phases 1-3 is to be dealt with also appeared to cause uncertainty in initial efforts to tackle the viability question. This was probably due to the absence of provision of full information. The treatment of the Easement and Connection Charge was clarified within the discussions which took place, it now being accepted that this Charge would come off the purchase price of the Phase 4/5 land, the likely value of which largely became agreed common ground. Whilst there are measures of agreement over many factors between the DV and CN, other matters such as density and build cost estimates have not been mutually accepted. [7.100, 7.105, 7.107, 8.311-8.313, 8.319]
- 13.103 The DV's opinion as to the most robust estimate of likely viability indicates considerable levels of profit on capital values. Even basing figures on assumptions about density and build cost estimates used by the appellant's consultant, but which the DV did not accept,

profit levels remain high and the proposals remain viable. This would still be the case if the number of housing units was to be reduced by reason of leaving FAW free of development and increasing the size of buffer zones. In submissions, the appellant's position is said to be that it has never been its case that the scheme was not viable (although this does seem to contradict what is understood to have been its position in 2004 when the Council was prompted to request a viability assessment from CN (paragraph 13.100 above)). It also contradicts the appellant's valuation consultant's initial evidence that it would not be viable for CN to purchase the Phase 4 and 5 land under its then contractual terms. [7.109, 8.262, 8.265, 8.316-8.320]

13.104 Rather, CN's position is characterised as relating to one of deliverability. It is claimed that it was CN's consultant's view that the proposals would be undeliverable under the terms of the existing contract and that the owners of the land would be well advised to investigate ways that their land might be developed without incurring either or both the Easement and Connection Charge or agreeing to the affordable housing terms sought by MSDC. Such an assessment, however, seems to have been based, in part, on lack of knowledge of Mid Sussex Local Plan Policy HH2, which effectively precludes means of access to the site other than from the HHRR and hence through the existing phases of Bolnore. In other words, Phases 4 and 5 are effectively 'land-locked', with access only possible through the existing Bolnore Village. On this basis I consider there would be little likelihood of the site being held back by its owners because there would appear to be no realistic alternatives to the present scheme. The contractual terms of purchase of the Phase 4/5 land were not made known to the Inquiry (and at which time the land had not been purchased by the appellant); it would presumably be open to a developer to negotiate terms reflecting the various constraints that any planning permission was to impose. [8.309, 8.310]

13.105 Taking into account all the above it is my view it has not been adequately demonstrated that the development of the site would be unviable if serviced land for affordable housing was made available at nil cost, or the dwellings provided at a price reflecting this. The appellant's proffered UU does not provide for this. What therefore might the justification be for failing to accord with the Council's SPG which requires this approach?

Compliance with the SPG

13.106 The provision of an affordable housing element within Phases 4 and 5 is an acknowledged requirement. The UU would ensure this to the level of 30% of the total housing provision. It would also include the requirement for disposal of the affordable housing to a Social Landlord by way of an affordable housing contract. This would provide that the Social Landlord offer nomination rights to the Council and that the land has the necessary access and services. The UU would include a cascade delivery mechanism which would prevent full occupation of market sector housing until affordable housing had been provided within the relevant sub-phase. However, MSDC argues that the cascade as proposed in the UU would fail to provide sufficient incentive for a developer to enter into an agreement with an RSL; if there was willingness to wait for two years without reaching agreement it would be possible for the owner/developer to change affordable housing units from rented to shared equity leases. There would also be an ability to achieve higher profit levels on such shared equity homes than would be

possible with the Council's proposed 75% rental/25% shared ownership scheme, a split which has been agreed between CN and the Council. [8.58, 8.59, 8.325, 8.326, 8.291, 8.331]

13.107 CN has stated that at no time has it sought to provide anything less than this required amount of affordable housing but that it simply wishes to provide it in a flexible manner. The Council's policy of serviced land for affordable housing being provided at nil cost may well give clarity to developers in negotiations with providers of affordable housing. It may also be possible that for small developments it would be helpful as the development could be started in full knowledge of the prevailing level of grant availability. However, there is no doubt that Phases 4 and 5 represent a large site which, certainly in terms of Mid Sussex, it would be fair to categorise as of strategic importance. This is likely to be developed on a cell-by-cell basis over several years. The appellant argues that in such circumstances the imposition of the nil land value requirement would deny the developer of the sites the opportunity to negotiate freely with RSLs, to take account of extraordinary or unforeseen site costs and changing specifications or market conditions. I agree that this position would be compounded since these are outline applications with the exact numbers and types of dwelling unknown. [7.81, 7.91, 7.92, 7.95, 7.99]

13.108 The Council's principal concern appears to be that unless land is made available at nil value there may be a problem in attracting grant funding from the Housing Corporation, which could impact on delivery of affordable housing. Amongst the support cited for this approach is a Housing Corporation letter of 2006 stating its assumption that land for affordable housing will be passed onto an association at nil cost. However, during the course of the Inquiry PPS 3 and its companion, 'Delivering Affordable Housing', were published. The requirement to provide land at nil cost does not find expression within these recent indications of Government policy. The key appears to be flexibility in approach, with the market being allowed to provide innovative and cost-effective solutions. This applies also to choice of potential providers, with Delivering Affordable Housing indicating that local authorities should not prescribe affordable housing providers. Given this background, the nature and scale of the proposals, and the terms of the proffered UU, (or planning condition which is suggested as an alternative mechanism), that would assure the provision of the agreed level of affordable housing, I consider that in this particular case these factors outweigh the requirements of the SPG. [7.96, 7.99, 8.274]

13.109 The Council makes several criticisms of the proffered UU. These include: the lack of reference to the basis on which affordable housing land or units would be transferred to a Social Landlord (the term 'Social Landlord' being specifically defined in the UU); lack of specificity relating to the affordable housing mix; an unacceptable and impracticable fall-back position; and the need to substitute more appropriate 'cascade' clauses. The appellant did not counter these specific criticisms within the Inquiry. However, within the UU the appellant has suggested that the imposition of a planning condition to require the provision of 30% affordable housing could serve as an alternative to UU clauses dealing with this. I deal in more detail with the terms of the suggested condition within the section of these Conclusions in which conditions are discussed. Suffice to say at this stage that a condition would provide a simple mechanism for ensuring the provision of 30% affordable housing. [8.321-8.333]

13.110 If permission is granted and development proceeds then this is likely to take place on a sub-phase basis over several years (probably in the region of 6 years) and against a background of changing housing market conditions and needs. As Circular 11/95 indicates, conditions should not normally be used to control matters such as tenure, price or ownership. I therefore consider that details such as the likely split between different forms of affordable housing (such as social-rented or intermediate, as defined by PPS 3), and cascade arrangements, should be matters for future discussion and agreement as the suggested condition indicates. This would also apply to consideration of mechanisms for ensuring affordable housing is retained in the affordable housing market and for requiring the recycling of any public subsidy to ensure the most efficient and proper use of public resources and to help meet future housing need. This would be able to take place against the prevailing housing scene and evolving planning policy background, including emerging Local Development Documents which, as PPS 3 indicates, should deal with issues such as targets for social-rented and intermediate affordable housing, size and type that is likely to be needed. [9.220]

Integration of affordable housing

13.111 Another Council criticism of the UU in terms of delivery of affordable housing is the suggestion that the Masterplan and the UU both fail to provide for the proper integration of the affordable housing units into the overall scheme. The UU provides that affordable housing should be in clusters with a target of 16 dwellings in each cluster, and with a maximum of 20 per cluster. However, as shown on the Masterplan there are in Phase 4 three areas where clusters are separated only by proposed roads. Both local and national policy seeks to ensure proper integration of affordable housing elements and this is the purpose of the proposed clustering. The success of integration of different housing types will be largely the product of skilful design and layout, of which I noted good examples within earlier Bolnore Phases. Nonetheless, I agree that there would be potential for the smaller clusters proposed to appear much larger by reason of limited separation if development was to proceed along the lines shown on the Masterplan. The Council suggests the modification of the UU to overcome this. However, I consider that adequate control over the detailed siting could be exercised through consideration of reserved matters applications and by the imposition of a suitable condition (included in Annex A - Appeal A, Condition 37 and Appeal C, Condition 38). [8.293, 8.322]

Conclusion on affordable housing

13.112 Overall, I share some of the Council's concerns about the way in which the appellant has approached the question of affordable housing provision. This includes its seeming reluctance to provide information to confirm or otherwise whether viability of the proposals would be compromised through the Council's insistence on provision of serviced land for affordable housing at nil cost. The Council suggests dismissal of the appeals on the basis that it does not believe that affordable housing would be delivered in the numbers and at a price that would be necessary and that neither the UU nor planning conditions would resolve matters. Nevertheless, I consider that the circumstances and nature of the proposals are such that, for the reasons given, these outweigh any conflict with the SPG. There would be no conflict with the thrust of advice in PPS 3 or its companion, Delivering Affordable Housing. The imposition of the suggested condition

would ensure that 30% of housing provided would be affordable even if questions of price, tenure and ownership are not matters determined at this stage. [8.341]

Ceiling limit on dwellings

Introduction

- 13.113 The outline applications for residential development are respectively described as being based on a maximum ceiling of 573 units (Phase 4 alone) and 785 units (Phases 4 and 5 together). In respect of the combined larger site, CN accepts that if no development is allowed on FAW the ceiling limit would drop to 725 dwellings. It is the LCOs' case that the ceiling limit should be further reduced to: ensure the proper integration and complementarity of the development in terms of density, and to ensure the provision of adequate open space; avoid the creation of artificially high expectations of housing delivery; and to mitigate the impact of the construction process. Its suggested ceiling (for Phase 4/5) is 532 dwellings and that if permission is to be granted a condition should be imposed to this effect, since factors such as density cannot be controlled at the reserved matters stage. [9.144, 9.145]
- 13.114 Conversely, the appellant indicates that these are outline applications on which decisions in principle should be made, with density not being a matter that should be stipulated at this stage; it would be wholly wrong to specify a ceiling on the basis suggested by the LCOs, there being no justification for reducing the ceiling to 532 dwellings. What would be built would be within the control of MSDC. For its part, the Council is on common ground with CN in that it maintains the total number of dwellings to be built and the consequent density would be determined by reserved matters submissions. Which approach is correct? [7.291, 8.58]

The LCOs' argument

- 13.115 If outline permission is granted matters which are accepted in principle at the outline stage and are therefore implicit in the grant of permission cannot be reopened at the reserved matters stage. Density is not a matter that falls within the scope of reserved matters. If permission were to be granted for the proposals as they stand then the principle of constructing up to 785 dwellings will have been accepted (including in relation to density) and a reserved matters application couldn't be refused on grounds which undermine this. [9.146]
- 13.116 It is clear that in terms of PPS 3 advice density remains an important factor to be considered in terms of whether a development integrates with and complements neighbouring buildings and the local area (see for example PPS 3, p16). It was accepted on behalf of CN that the area could be described as 'suburban' or 'semi-rural', where a density of 65 dwellings per hectare (dph) would not integrate well with the local area, or complement it, whilst a density of 60 dph would be at the very upper end of acceptability for this type of area; there would need to be clear justification to show satisfactory integration and complementarity with the area. What the potential density might be would depend on the way in which this is calculated, particularly in respect of the consideration of which areas of land should be included in any calculation. PPS 3

indicates that local planning authorities should develop housing density policies, but as this is very recent guidance no such policies yet exist for Mid Sussex. [9.147-9.156]

- 13.117 It is appropriate to use the net dwelling density, as defined in Annex B of PPS 3, in calculating density. This is a more precise tool than gross site density and includes only those areas which would be developed for housing and directly associated uses. The definition does not refer to those elements of a development that should be excluded but it was agreed in the Inquiry on behalf of the appellant that features such as major distributor roads and significant landscape buffer strips should be excluded from any calculation. The LCOs consider that both the proposed BZs and the spine road through the site should be so excluded in net dwelling density calculations. [9.147-9.156]
- 13.118 Detailed calculations have been provided by making varying assumptions. These have all been based on the exclusion of Cell 4C, which is set aside for sheltered housing (80 units) and which is agreed should be allowed to carry a higher density than the rest of the site (though it is apparent from the evidence that 57 units are now contemplated). FAW is also excluded (60 units). The various permutations considered, assuming variously the exclusion of the ecological buffers and the spine road from the net dwelling density calculations, result in a range from about 65 dph to 75 dph. The actual calculations are not disputed, merely the assumptions on which they are made. This contrasts with an averaged figure of 50.7 dph across Phases 4/5 as set out in the ES (48.4 dph if Cell 4C and FAW are removed). If the LCOs' calculations are taken, based on their belief that the buffer zones and spine road should be excluded, their suggested ceiling of 532 dwellings for Phase 4/5 would equate to an average density of no more than 50 dph. This would provide, in their view, a development far better integrated with the local area and more fitting for a semi-rural or suburban area. Is it correct that the buffer zones and spine road should be excluded from the net dwelling density calculations? [9.170, 9.185]
- 13.119 The ecological buffers should be excluded if they represent 'significant landscape buffer strips'. No definitions have been provided as to what constitute 'significant landscape buffer strips'. I share the view of the LCOs (and one accepted on behalf of the appellant) that the primary purpose of the BZs is to provide the necessary separation between development and woodland and that without sufficient buffers the development would not be acceptable because of its environmental impact. The area of the buffers represents in the region of a quarter of the overall area of Phase 4/5. As the buffers are around the periphery of the site they would not contribute to any feeling of openness or space within it such that to include them within a net site density calculation would provide a false impression of how open the development would feel. [9.162]
- 13.120 For the appellant, it has been suggested that the term 'significant landscape buffer strips' should be restricted to strategic buffers between urban extensions and the countryside. In the absence of any guiding definition, whether this is a correct interpretation of 'significant buffer strip' must be open to question. However, I am not convinced that the BZs proposed would fall within the category of 'strategic' buffers; whilst they are necessary to ensure an acceptable ecological transition between development and ancient woodland, their location is effectively contained within the existing Bolnore Village development and their role is more localised rather than strategic. They would have a role in tree protection, ecological buffering and, in places, possible footpath use, and these roles would be of greater importance than their visual contribution. These latter

points notwithstanding, I consider that on balance the LCOs' categorisation of the proposed BZs as significant landscape buffer strips is correct because of their scale. These should therefore be excluded from the calculation of net dwelling density. [7.71, 7.255, 7.292, 8.7, 9.162]

- 13.121 The LCOs also wish to exclude the spine road linking Phase 1 to Phases 4 and 5 from the net dwelling density calculation on the basis of the belief that this represents a 'major distributor road'. Again, no definition of this term is provided and the Design Bulletin 32 replacement, 'Manual for Streets', does not provide any guidance on this matter. Whilst the road would carry traffic from outside Bolnore to locations across Phases 4 and 5, the road itself, as far as motorised traffic is concerned (except emergency vehicles and the proposed Hopper Bus), would be effectively a large cul de sac. It would have a somewhat sinuous route that I consider would fall more appropriately within the category of an access road within the site or, at best, a local distributor road. In this regard it should be included within the definition of net dwelling density. Inclusion of the spine road (which represents only some 0.46ha) within the density calculation would still result in an average density across the sites ranging from about 67 dph to 71 dph, assuming the BZs are excluded. [7.312, 9.163, 9.166, 9.167]
- 13.122 The LCOs suggest that the consequences of these levels of density (stemming from the development of the maximum number of dwellings applied for) would be a form of development that would not integrate well with, or complement, that which exists. This would be further underlined by the likelihood that at these densities the development would not be able to satisfactorily incorporate within it open spaces which could bring people together to promote social and community cohesion; such areas of open space would be useful alternative recreation areas to the Locally Equipped Areas of Play (LEAPS) and the Neighbourhood Equipped Areas of Play (NEAPS), which could be put under strain by reason of the far greater population within Bolnore than originally envisaged. By reducing the ceiling limit of dwellings, overall density would be reduced and there would also be less pressure on the LEAPS and NEAPS. [9.171-9.183]
- 13.123 The appellant has offered enhancement of Beech Hurst Gardens to provide additional off-site open space. Additional open land adjacent to Phase 4 would also exist if FAW is not developed. Nevertheless, these are peripheral to the main bodies of Phases 4/5, the proposed enhanced facilities at Beech Hurst Gardens particularly so. FAW, as an important ecological area, would be likely to be unsuitable as formal open space. In this regard I have sympathy with the LCOs' argument that meaningful utilisable open spaces within the residential phase of development would be important, to provide social foci and opportunities for interaction and to help build a sense of community. This need may be especially emphasised if private garden areas are small (or non-existent in the case of flats) as a result of a high density form of development. In particular, as indicated on the Masterplans there appears to be little proposed open space within Phase 4, although there are larger open areas shown within sub-phases 4A and 5B. [9.171-9.183]
- 13.124 From the evidence it is apparent that if permission was to be granted the final number of dwellings that would be built within Phase 4/5 would be likely to be lower than the 785 ceiling. The appellant has indicated that 785 is a 'worst case scenario' and that this figure has been used within the EIA to test the environmental and sustainability credentials of the proposals. It has been suggested that the final housing delivery could

amount to between 10-15% less than the EIA 'test' figure (providing totals of 707-667 dwellings). Having regard to likely yield of children of school age, in respect of the calculation of contribution to education provision, a figure of 560 dwellings has been used. With the now contemplated 57 sheltered units that would be provided on Cell 4C this would result in a total of 617 dwellings, or about a 20% reduction on the maximum ceiling. No actual or contemplated target figure has been made known by the appellant. [9.185-9.187]

- 13.125 A further reason for reducing the ceiling limit advanced by the LCOs is the need to avoid false expectations of housing delivery; if permission is granted on the current basis both the Council's and GoSE's strategic assessment of housing delivery in Mid Sussex will proceed on the assumption of an outline permission for 785. If there was to be the realisation of a much lower number - possibly up to 20% - as indicated above, the resulting shortfall could be of strategic proportions and significance. This could create difficulties in housing provision as well as an undesirable precedent for other developers to seek artificially inflated ceiling limits. The LCOs also point to the fact that a lower ceiling of dwellings would have the effect of decreasing the impact of construction traffic through reduction of the construction period, reduction in the frequency of traffic, or both. [8.59, 9.187-9.190]

Should the ceilings be reduced?

- 13.126 Against the above background is it necessary and reasonable, through the imposition of conditions, to reduce the ceiling below that mentioned within the applications? The applications themselves are described as being 'up to...' 785 or 573 units. They are not specifying these as the actual numbers to be constructed. The removal of FAW and the enlargement of the ancient woodland BZs would reduce the developable area. If the maximum number of dwellings were to be proposed on this lesser area then densities could be in the order of magnitude of those suggested by the LCOs on the assumption of the above method of calculation of net dwelling density. I acknowledge the LCOs' concerns about the potentially high density levels that might result. If the method of calculation of density is accepted, and if development were to take place with the maximum numbers of dwellings indicated, then there would be potential for development at densities more appropriate to urban rather than suburban or semi-rural locations (as were suggested in the draft version of PPS 3). It is rightly important that development should be integrated with and complement that of its neighbours in terms of, amongst other matters, density. PPS1, paragraph 35 indicates that high quality and inclusive design should create well-mixed and integrated developments which avoid segregation and have well-planned public spaces that bring people together. Equally, however, PPS 3 indicates at paragraph 50 that the density of existing development should not dictate that of new housing by stifling change or requiring replication of existing style or format. If done well imaginative design and layout of new development can lead to a more efficient use of land without compromising the quality of the environment. [9.169]

- 13.127 To an extent, consideration of density on the basis of dwellings per hectare is only a mathematical exercise. If it were to be considered that the BZs formed part of the net dwelling density calculation then the maximum densities that might result would reduce. It is the layout, siting, form and design of the different components of a residential

development that will determine its acceptability. These in turn will be influenced by factors including highway/footpath layout, buffer zones, play areas and topography. Whilst density itself is not a reserved matter, design and appearance, siting and landscaping are, and the Council accepts that it would have control over these at that stage. This would also include regard to the provision of adequate open space.

- 13.128 The appellant appears to anticipate that development would realise a reduced number of dwellings (variously hinted at between 10% and 20%) compared with the ES assessed maximum. As earlier indicated, I am recommending the reduction in the developable area through the omission of FAW and the increase in the ancient woodland BZs. If the changes regarding these are accepted then to reflect them I consider an indicative maximum ceiling of 685 dwellings would be all that would be required for the combined Phase 4/5 applications (a reduction of an anticipated 60 units from Cell 5B1, a reduction of 23 units given the now anticipated 57 units rather than 80 on Cell 4C, and an assumed additional notional reduction to account for the increase in ancient woodland buffer zones (but whose precise extent would be subject to subsequent approval)).
- 13.129 Nonetheless, whilst I consider the LCOs' arguments to have been well made, given the description of the applications and the control that the Council would have over details at the reserved matters stage, it is not necessary or reasonable to go beyond this. There is no doubt that there is a strong need for housing delivery in the area. However, the Council has not expressed concern that housing strategies would be undermined by the actual realisation of a much reduced number of housing units on Phase 4/5 compared with those specified in the applications; overall, Bolnore Village would provide far more housing than initially anticipated. A reduction in dwelling numbers might well condense the period and intensity of construction traffic and reduce potential disturbance for existing residents. Nevertheless, proposed conditions and the requirement for the agreement of a Construction Management Plan should provide strong control to ensure that impact from construction is mitigated to acceptable levels. Furthermore, through its advocacy of the plan, monitor and manage approach PPS 3 requires regular monitoring of housing delivery to provide a flexible and responsive supply of land. Under these circumstances these latter matters are not determinative considerations that alter my view that a condition fixing the maximum ceiling of 685 to be all that is necessary (and a ceiling of 543, pro rata, for Phase 4 alone).

Construction access and traffic

Introduction

- 13.130 Policy HH2(a) of the Mid Sussex Local Plan requires all vehicular access to Bolnore Village to be from the HHRR, with no vehicular access to housing areas from the existing residential road network. It is accepted that, save for the proposed Hopper Bus, emergency access, and access to aged persons accommodation on Cell 4C, there would be no vehicular access to or from Bolnore Road to serve the completed development. However, this does not address the question of construction traffic access to Phases 4 and 5, which could be significant in volume and duration. Concern has been expressed that Phases 4 and 5 have effectively become 'land-locked' by earlier Bolnore phases and pre-

existing residential development such that construction traffic would inevitably have to pass through established residential areas. Several options for construction access have been considered. The two most realistic ones are two-way construction vehicle access via Parkfield Way (to the west of Phase 4), and a one-way system: in via Bolnore Road and out via Parkfield Way. This latter is the option preferred by WSCC and by the appellant and it is the one which the LCOs are prepared to accept subject to three provisos. Before considering this I address the two-way Parkfield Way option as the only other practical and potential alternative. [7.293, 7.294, 7.297, 7.301, 9.205, 9.222, 9.227, 10.12-10.13, 10.15, 11.4]

Parkfield Way two-way option

13.131 The LCOs have queried the figures provided for the daily HGV construction traffic flow relating to the development of Phases 4 and 5 that were produced during the Inquiry. These show a much reduced volume of HGV construction traffic compared with those in the ES (a range from about 15 to 31 per day, compared with a prediction of typically 64 per day in the ES (about 10 per hour on the basis of restricted times of access)). Additionally, non-HGV traffic would need to be factored in. The credibility of the revised figures is questioned, particularly in light of the lack of empirical calculations showing how these have been arrived at. It is suggested that the figures shown within the ES are to be preferred and should be used as a matter of law. Irrespective of which figures should be used, and despite WSCC's acceptance that two-way construction traffic flow along Parkfield Way would be feasible, from the evidence produced and from my site visits, I consider this would be likely to be somewhat impracticable and detrimental to the amenity of residents flanking the road; it is accepted that on parts of Parkfield Way, a residential street with a right angled junction, two HGVs travelling in opposite directions would not be able to pass each other. If implemented, residents would be likely to be subject to serious potential disturbance and disruption caused by two-way flow for several years. I therefore consider this to be an unacceptable option. [9.206-9.220, 9.223]

13.132 Notwithstanding the above, it has been acknowledged by the main parties that there would have to be a short period when two-way construction traffic would be inevitable to allow the access spine road to Cell 4A to be provided. (This would also apply to short term two-way flows along Bolnore Road whilst the spine road through Cell 4B and 4C is constructed). Subject to detailed control through conditions attached to permissions, to allow for mitigation, I consider this short-term impact would be acceptable.

In via Bolnore Road and out via Parkfield Way

13.133 As already noted, both the appellant and WSCC favour this option. I address the three provisos that the LCOs require to be met for this option to gain their support.

Reduction in ceiling limit of development

13.134 I have considered this matter in paragraphs 13.113-13.129 above. Whilst I have agreed that it is necessary to condition the outline permissions to limit the maximum number of residential units within Phases 4 and 5, I have not considered it necessary to fix a ceiling as low as the 532 dwellings the LCOs would wish to see. [9.277]

Need for construction management proposals to be conditioned

13.135 Discussions regarding construction management proposals during the course of the Inquiry have resulted in agreement between CN and the LCOs. A Statement of Common Ground regarding a Construction Management Plan (CMP) has been produced covering various matters relating to construction traffic management. There is agreement that the terms of the SoCG should be incorporated into a CMP and that a condition attached to a planning permission should specify that construction management be carried out in accordance with it. Implicit within this is the acceptance by the LCOs that use of Parkfield Way for egress only of construction traffic would be acceptable subject to the conditioning of a robust set of construction management proposals. From the evidence presented, and subject to agreement of and compliance with such proposals, I do not consider this would result in materially harmful road safety or residential amenity impacts. [6.13, 7.302-7.311, 9.227, 9.230]

Location of site entrance off Bolnore Road

13.136 The access from the site onto Bolnore Road which would be used for emergency access/egress and for the Hopper Bus is proposed to be at the western end of Cell 4C. This is the proposed position for access to the site by construction traffic. It would be further along the Byway Open to All Traffic (BOAT) section of Bolnore Road than the LCOs' suggested access point that they would wish to see positioned to the eastern end of Cell 4C, close to its boundary with Joan Nightingale House. The LCOs consider that this latter position, if acceptable in safety terms, would result in a less harmful impact on the quiet, semi-rural character of the BOAT, a highway which is used by the public mainly for the purposes for which footpaths and bridleways are used: construction traffic would not need to travel as far along it; there would no requirement to construct a character-altering footpath along the site frontage for the segregation of pedestrians from traffic; and there would be less potential for conflict between pedestrians, cyclists and vehicular traffic. [7.295, 7.297, 7.299, 9.232]

13.137 CN has countered the suggested repositioning of the access by suggesting that there would be less visibility of construction vehicles by residents and pedestrians crossing to Beech Hurst Gardens (the pedestrian access to which is almost opposite the entrance to Joan Nightingale House). There would also be potential for conflict and confusion between left-turning vehicles approaching from the north-east wanting to access the appeal sites and those going to Joan Nightingale House. However, I do not consider that either of these points have substance. Construction vehicles would pass the entrance to Beech Hurst Gardens whichever site access was used and it is probable that if using the LCOs' suggested access point they would be travelling more slowly as they passed Joan Nightingale House. The access to Joan Nightingale House is a small private drive, used by only about 20 vehicles a day, adequate separation between the accesses could be provided, and construction vehicle speeds along Bolnore Road would be low (with control through the operation of a Construction Management Plan). I consider that in terms of highway and pedestrian safety the LCOs' suggested access point would be acceptable. However, does this mean that it should be preferred over the appellant's proposals? [9.232, 9.233-9.238]

- 13.138 The current proposals include measures to make the affected section of the BOAT suitable for use by construction traffic through the inclusion of a passing bay, footway and resurfacing, these matters having the support of WSCC, as highway authority. Bolnore Road has been used in the recent past by construction traffic connected with the extension of Ashton House. However, I do not consider this in its own right can be taken as a guide to the suitability of the current proposals in terms of highway safety, particularly given the likely far greater scale and duration of activity that would be involved. Nevertheless, the proposed physical measures, good visibility along Bolnore Road and restrictions on delivery times (avoiding peak periods for movements of children on foot and on bicycles to and from schools) and vehicle speeds, would ensure safety for users of Bolnore Road would not be compromised. [7.295-7.298, 9.238, 10.14, 10.18]
- 13.139 Bolnore Road does change in character from a primarily residential road to the north-east of Joan Nightingale House, to one of a narrower, much more informal and semi-rural feel where it becomes a BOAT. The proposed works along it to provide satisfactory access would undoubtedly change its character to a degree, by requiring the provision of a footpath and some widening of the carriageway. However, compared with the LCOs' suggested access point this would involve alterations to a stretch of road of only about an additional 70-80m. The road is metalled, has been recently repaired/improved and is already used by vehicular traffic to the residential and commercial properties to the west. The LCOs would want the permanent emergency/Hopper Bus egress from the site to be in the same position as its suggested construction access point. This is supported by residents at Joan Nightingale House as they consider it would also allow greater separation between this property and the proposed aged persons' dwellings on Cell 4C, which would help to maintain privacy and light. [2.2, 7.296, 9.232, 10.16]
- 13.140 I consider that a principal element of the character of the section of the BOAT adjacent to the appeal sites is provided by the current feeling of openness and views across the appeal sites themselves. If development proceeds, this is likely to be fundamentally altered by the provision of aged persons' accommodation on Cell 4C, notwithstanding retention of hedging and additional landscaping that would be likely along the southern side of the road. This would be the case whichever of the two access points off Bolnore Road were to be provided. Beech Hurst Gardens is separated from Bolnore Road by a boundary of mature trees and hedging and would not be materially affected by works within Bolnore Road. The cogent arguments advanced by the LCOs and others are fully appreciated and I note that the appellant has not advanced any countervailing arguments that the presently proposed access point to Bolnore Road should be where it is on the basis of wider design or layout considerations. Nonetheless, within this context the works that would be associated with the present proposals, either in the shorter construction phase or in longer term, would not be so harmful to the character or appearance of this part of Bolnore Road that permission should be withheld on the basis of this impact. Consideration of the design and siting of the aged persons' accommodation on Cell 4C at the reserved matters stage should ensure that the amenity of residents of Joan Nightingale House could be suitably safeguarded, especially as this building itself is set back from the common boundary with the appeal sites. [9.238, 10.16]

Conclusion on access

13.141 Overall, the 'Bolnore Road in/Parkfield Way out' route for construction traffic would be the most appropriate means of providing for the development of Phases 4 and 5. Inevitably this would give rise over the construction period to some degree of disturbance and loss of amenity to existing residents particularly within these roads. However, through the operation of a Construction Management Plan (secured by planning conditions), and the imposition of other conditions, the impacts would be likely to be substantially mitigated. The accepted need for the completion of Bolnore Village and provision of additional housing outweigh any short-term conflict with Policy HH2(a) of the Mid Sussex Local Plan that would arise from the routing of construction traffic along Bolnore Road. My conclusions on this matter are not undermined by the fact that I have not agreed with the LCOs' three provisos for the support of the 'Bolnore Road in/out Parkfield Way' construction access option.

Allotments

13.142 The LCOs argue that there is an unmet need for allotments in Haywards Heath, with demand outstripping supply. PPG 17 recognises the significance of allotments and their general social, health, environmental and financial benefits is flagged up in a report on London's allotments, referred to by the LCOs. Attention is further drawn to MSDC's supplementary planning guidance indicating that there may be a requirement for a developer to provide land for allotment use in schemes of over 200 dwellings. The present proposals would provide well above this number of dwellings and it is probable that the density of development would result in smaller garden sizes than those within some of the earlier Bolnore phases. This would point to the likelihood of greater demand for allotments. Accordingly, it is suggested that Duncton Meadow should be set aside for this use, especially as this would bring the additional benefits of helping to safeguard the local badger population by protecting foraging areas (there being examples elsewhere in Haywards Heath of successful co-existence of badgers and allotments). Allotment use would also contribute further open space, thereby promoting a less dense feeling of the development. Countering this, CN argues that the Mid Sussex Local Plan indicates a sufficiency of supply of allotments and the need for them within Bolnore is not identified within Policy HH2. [7.315, 9.194-9.200, 10.3, 10.6]

13.143 I have some sympathy with the well-made points of the LCOs. It may well be that the proposed development would increase demand for allotment provision. Whilst Policy HH2 does not include reference to allotment provision, it envisages a development at Bolnore of about 800 dwellings. More than this are being provided within Phases 1-3 and development on Phases 4/5 would lead to the Local Plan specified number being considerably exceeded. Nevertheless, the Council has not expressly identified a shortfall in allotments or suggested that conditions should be imposed to secure their provision. It may well be that garden sizes of some of the dwelling provision within Phases 4/5 might be small or non-existent but these are matters for consideration at the reserved matters stage should outline permissions be granted.

13.144 Use of Duncton Meadow for allotment use would undoubtedly contribute to providing some quality of 'openness' within the development and there would be likely to be a benefit for the local badger population. However, detailed site layout, design and landscaping are also reserved matters over which the Council would have control and this would determine the relationship of hard to soft elements within any scheme. I deal with the question of badger habitat protection below. Overall, I am not convinced that it has been sufficiently demonstrated that the provision of allotments is a necessity that outweighs the appellant's proposals, which envisage this part of the site accommodating residential development.

Dedication of land in accordance with Policy HH7 of the MSLP

13.145 Policy HH7 of the Mid Sussex Local Plan requires developers to dedicate to the Council relevant sections of open space and recreation land before the development of each phase commences, with permission not being granted unless all the necessary land is made available. The LCOs suggest that areas such as the BZs, FAW, The Meadow and the woodland adjacent to the mainline railway fall within the description of open space and recreation land; CN should be required to comply with the terms of this policy, which applies to the appeal sites. For its part, CN states that there should be no suggestion that development cannot go ahead because of lack of dedication of the land and there is no reason to believe that these areas would not be adequately maintained by the private sector. [5.10, 7.290, 9.130-9.132]

13.146 Backing for the need for dedication of the land to the Council is provided by the expressed view of the appellant's ecological witness who indicated that a local planning authority would be in a better position to manage the BZs than a developer. The LCOs' ecological witness agreed with this. He also considered that there would be ecological benefits if these areas were managed in an integrated way with other ecologically sensitive areas in the locality, something which could only be done if the land was transferred to the Council. This would also assist in plans for the establishment of a local nature reserve covering the entire AW block in south-west Haywards Heath. [8.258, 9.133, 9.137]

13.147 MSDC has not referred to lack of such dedication in its suggested reasons for refusal. However, following the LCOs' promotion of this matter as an issue to be considered, within the context of the Inquiry it has signed a SoCG with the LCOs stating that the future management of the ecological areas would best be secured by a transfer of the land to the Council with a commuted sum. MSDC also indicates that it should then be free to negotiate with the LCOs regarding the future management and maintenance of these areas. [6.12, 8.259]

13.148 Further support for this approach is suggested by the examples of damage done to sensitive ecological areas in Phases 1-3 when these are managed by developers and/or their subcontractors; such problems could be avoided if the land was within the Council's management. There is also acknowledgement within the 1998 S106 agreement, relating to earlier Bolnore development, of the intention that there should be dedication of ecological and woodland areas together with commuted sums in respect of

the 'blue land' (the present appeal sites). Endorsement of this latter point is provided in the 1999 Design Brief SPG. [9.128, 9.134-9.136]

- 13.149 The proffered S106 obligation with the appeal proposals makes reference to the management and maintenance of woodland buffer zones in accordance with an Ecological Management Plan. It does not refer to areas such as FAW or The Meadow. The S106 does not define an Ecological Management Plan but the appellant's suggested conditions refer to the need for such a plan to be submitted to and agreed by the local planning authority prior to the start of development within each sub-phase. In its final submissions MSDC confirms its agreement to the terms of the agreed SoCG with the LCOs regarding the application of Policy HH7. But then it too has provided a suggested condition requiring the submission and agreement of an Ecological Management Plan to secure detailed specifications and management regimes for the BZs, FAW and The Meadow. This appears to be somewhat at odds with its professed agreement of the need for dedication of the land with a commuted sum at this stage. [7.290, 8.259, 8.260, 8.340]
- 13.150 There is no mention within these conditions of the dedication of the relevant land to the Council. Such dedication, with or without a financial contribution, would not be capable of being secured through this mechanism. Dedication with a financial contribution would, however, be likely to secure the long-term management of these areas. The Council is willing and seemingly able to take on the land on this basis and this is backed by a clear local plan policy. An Ecological Management Plan submitted to and approved by the Council may allow satisfactory management but no such plan has been finalised. There is therefore no means of knowing how effective this might be in the long-term and the adequacy or otherwise of any financial commitment to achieve proper management.
- 13.151 I have seen no substantive evidence to suggest that the matter of the dedication of these important areas of open land has been given particular detailed consideration by the appellant. It has sought to categorise the LCOs' concerns on this front as elevating a matter of detail to that of principle. However, the long-term protection of those areas of the appeal sites that are to be left open and/or are ecologically sensitive is to my mind a crucial element in securing a satisfactory standard of development. The Mid Sussex Local Plan provides a clear policy in HH7 as to what is expected to achieve the protection and ongoing management of these areas. The satisfactory management of these areas and compliance with development plan policy is a matter of principle. In this regard, I consider it is of some regret that a secure mechanism is not in place at this stage whereby the open land within the sites is dedicated to the Council for ongoing management. This is in conflict with Policy HH7 of the Local Plan. The LCOs have suggested that dedication of the land, with or without a financial contribution for future management, cannot be effected by condition. Accordingly, if permission should otherwise be granted but for this dedication aspect, it is further suggested that the SoS could write to the appellant stating that she is 'minded to refuse' granting planning permission unless there is agreement to a S106 obligation providing for dedication. This may well be an option open but it is not one that I consider I am in a position to recommend. [7.290, 9.140, 9.142]
- 13.152 Notwithstanding the above, conditions have been suggested that require an Ecological Management Plan to be agreed prior to development. The Phase 1-3 development within Bolnore Village has undoubtedly already provided a body of knowledge and experience

of local ecological circumstances and of the type of ongoing management that would be likely to be required. It would presumably be open to the relevant parties to negotiate through the mechanism of the requirement to agree an Ecological Management Plan suitable dedication arrangements/financial requirements that would be necessary or desirable. On this basis I do not consider that strict conflict with Policy HH7 should be a bar to suitably conditioned planning permissions being granted.

Other Matters

Badgers

13.153 Concern has been expressed by the Badger Trust-Sussex (BT-S) about the potential loss of foraging areas for existing badger clans living in two active setts off Wealden Way, to the north-east of Phase 5. I am not recommending that Duncton Meadow remain as open land or be set aside for allotment use. Nonetheless, I am satisfied that provided adequate means of linkage to open areas surrounding the proposed development are maintained, sufficient areas for foraging would continue to exist to serve the local badger population. In particular, there would be a considerable depth of wooded area to the eastern side of Phase 5, to the south of Wealden Way that would provide continuing linkage to The Meadow, Cell 5B1 and Ashenground Wood beyond. This would be important to ensure that badgers were not reliant on access to private garden areas for food, with resultant conflict and damage that might arise. [7.316, 10.2-10.8]

13.154 It is apparent that there has been an ongoing dialogue between the BT-S and the appellant's ecological consultant to ensure that the interests of the local badger population are safeguarded through suitable mitigation. The BT-S is anxious to ensure that there continues to be a satisfactory link from Duncton Meadow across Cell 4B2 to ensure badger access to foraging grounds in Reading Wood. It has suggested a condition to secure this, involving the provision of a corridor 20m in width (see Annex B below, Conditions 6, 3, 12 and 3 of the four respective appeals). No such corridor is presently indicated on the Masterplan. I consider that a balance needs to be struck between the needs of badgers, a protected species, and appropriate development. No justification has been advanced as to why, if such a link was to be provided, it would need to be of this specific width, particularly when elsewhere BT-S has suggested 15 metres should be a minimum width of BZ. This, together with other protective measures, is a matter which should be subject to detailed consideration through the medium of the proposed Ecological Management Plan and I do not consider it is necessary for the imposition of this specific condition. I am satisfied that, subject to the imposition of other appropriate conditions, the interests of the local badger population can be adequately addressed and I discuss the question of conditions in more detail below. [7.316, 8.256, 10.7]

Bridleway use

13.155 Concern has been expressed as to the impact of the proposals on the use by horse riders of the Ashenground Bridleway. Two access roads into Phase 4 would cut across the bridleway. The question of the detail of the crossing point to Parkfield Way and Renfields is subject to a suggested condition, which would allow the issue of horse rider safety to be fully addressed. The possible use of pedestrian/cycleways around the

periphery of the appeal sites, and linkage with the wider road and bridleway network, is also a matter that could be more fully addressed at the reserved matters stage. [10.9-10.11]

Conditions and the S106 Obligation

Conditions

13.156 In the event that planning permissions are granted the parties have suggested lists of conditions that they consider it would be reasonable and necessary to impose to make the proposals acceptable. Whilst a large measure of agreement was reached regarding the majority of conditions, as a result of dialogue between the parties outside the Inquiry, there remain inevitable differences arising out of the respective positions adopted by the parties. This has meant that a single agreed list of conditions for the four appeal applications has not been produced, with the appellant, MSDC and the LCOs each producing differing proposals. [12.1-12.21]

Annex A conditions

13.157 Annex A contains lists of conditions where there was a large measure of agreement between the main parties. Many are in the form suggested in the Inquiry but I have amended others, or excluded them where necessary, in the interests of clarity and consistency and having regard to advice in Circular 11/95, The Use of Conditions in Planning Permissions. These have been discussed in Section 12 of this report. The conditions in Annex A are ones which are necessary and relevant to the development proposed and if planning permissions are to be granted, should be imposed. The conditions listed in Annex B are those that have been advanced by one or more parties, and which did not find common agreement, or are ones which I consider it would be necessary to impose arising out of my conclusions on the various issues. These are discussed in more detail below. [12.1- 12.22]

Annex B conditions

13.158 To mitigate the short-term impact of additional vehicular traffic that would arise from the development prior to the full completion and opening of the HHRR, I have concluded it would be necessary to limit the occupation of dwellings in Phase 4 to 310 (excluding the aged persons' development on Cell 4C). This is Condition 1 of both outline applications (Appeals A and C).

13.159 I have concluded that no development should take place on FAW and a condition is therefore necessary to exclude this. This is condition 6 of the Phase 4/5 outline (Appeal C). In the alternative, should it be decided that development on FAW is acceptable in principle, Condition 4 of the Phase 4/5 outline would provide additional control to ensure subsequent details minimised impact on features of nature conservation importance.

13.160 I have not agreed with the LCOs that Duncton Meadow should be excluded from development, but if to the contrary it was to be decided that this should be so excluded then Condition 5 relating to the Phase 4/5 outline (Appeal C) would be appropriate.

- 13.161 In view of my conclusion that buffer zones around the ancient woodland components within and abutting the sites should be of a minimum depth of 15m, Conditions 2 and 7 for the Phase 4 and Phases 4/5 applications respectively (Appeals A and C) would be appropriate.
- 13.162 I have concluded in paragraphs 13.109 and 13.112 above that a condition is necessary in order to ensure the provision of 30% affordable housing. The condition suggested within the proffered UU would prevent no more than 90% of open market dwellings in any sub-phase being occupied until the practical completion of the affordable dwellings in that sub-phase. The Council, in commenting on the UU in reference to the appellant's suggested 'cascade' clauses, suggests that no more than 80% of market dwellings should be occupied until the completion and transfer of the affordable housing. Reference to 80% within the condition would be more appropriate since this would provide greater incentive for the timely provision and better integration of the affordable housing elements within sub-phases. I do not consider there to be a need to add the suggested paragraph regarding right to buy or 'staircasing' as this is a detailed matter of tenure and ownership which Circular 11/95 indicates conditions should not be used to control. In any event, this would be a matter covered in detailed arrangements of the affordable housing provision. However, it would be necessary to require that the type of affordable housing be subject to the approval of the Council in order to assist in the provision of the appropriate mix in accordance with assessed housing need. This is covered in Conditions 3 and 11 of the Phase 4 and Phases 4/5 applications (Appeals A and C) respectively. [8.330]
- 13.163 Included within Annex B are conditions for all four applications relating to the positioning of the spine road access onto Bolnore Road. These have been suggested by the LCOs in line with their concern about the impact of vehicular traffic on highway safety and the character of the BOAT section of Bolnore Road. These conditions would be necessary only if a contrary view was to be taken on my conclusion as to the adequacy of the appellant's present proposals (Appeal A Conditions 4 and 5, Appeal B Conditions 1 and 2, Appeal C Conditions 2 and 3, and Appeal D Conditions 1 and 2).
- 13.164 Conditions are set out relating to ceiling levels of dwellings in respect of the two outline appeals. These differ depending upon the assumptions made regarding ceiling levels. They include the ceilings referred to in the applications (Appeals A and C, Conditions 7 and 8 respectively), those taking account of reductions because of the alterations to buffer zones and the removal of FAW from the development proposals (Appeals A and C, Conditions 8 and 9 respectively) and those relating to the ceilings proposed by the LCOs (Appeals A and C, Conditions 9 and 10 respectively).
- 13.165 The condition suggested by the Badger Trust-Sussex includes the requirement for a 20m-wide wildlife corridor linking Duncton Meadow with Reading Wood (Conditions 6, 3, 12 and 3 respectively of the four appeals). I consider that the requirements for the agreement of an Ecological Management Plan, which is covered by Conditions 38, 21, 39 and 20 in Annex A relating to the four appeals respectively, should be sufficient to ensure that the interests of the local badger population are safeguarded. Furthermore, conditions in Annex A require agreement of details of the crossing of the Pinch-point to facilitate the crossing of wildlife (Conditions 39, 22, 40 and 21 respectively of the four appeals).

Unilateral Undertaking

13.166 The appellant has provided a completed S106 Unilateral Undertaking to support the proposals. This includes making provision for financial contributions for matters such as library, education, civic amenity, recycling and play area/leisure facilities and passenger transport contributions. There is no dissent that these levels of contribution are appropriate. It also provides for the establishment of a Maxi-Taxi service and the implementation of a Travel Plan. Whilst it covers the matter of affordable housing provision, I have concluded that this could be addressed through the imposition of conditions and the UU makes accommodation for this eventuality (see paragraphs 13.109 and 13.112 above). Save for the issue of affordable housing, there is no substantive objection to the terms and scope of the UU. I consider that its provisions are necessary from a planning point of view since the development proposals would place additional demands on existing physical and social infrastructure. Its provisions relate directly to the proposed development and are reasonable in scale and kind. They would be reasonable and necessary to ensure an acceptable form of development and I consider that the obligation fulfils the tests of Circular 05/2005, Planning Obligations. The development should not be permitted in the absence of the Undertaking. [8.337, 8.338, 12.23, 12.24]

Overall Conclusions

- 13.167 The proposals would complete the development of Bolnore Village, a major expansion of Haywards Heath, whose planning and development has been ongoing for some years. There is a considerable measure of support for the general principle of residential development on the appeal sites, which are allocated for such purposes within the Mid Sussex Local Plan. The imposition of planning conditions can enhance the quality of development and enable proposals to proceed where it would otherwise have been necessary to refuse planning permission. Such is the case here.
- 13.168 Subject to the imposition of conditions limiting the number of dwellings that could be occupied before the completion and full opening of the Haywards Heath Relief Road, and the operation of a Travel Plan retro-fitted to apply to the whole of Bolnore Village and secured by means of the proffered S106 obligation, the proposals would not result in undue highway congestion.
- 13.169 One matter of principle regarding the residential proposals that remains in contention is development on Four Acre Wood. This has recently and correctly been identified as an area of ancient woodland, and an important ecological habitat. PPS 9, in particular, advises against allowing development in such areas unless the need for, and benefits of, the development in that location outweigh the loss of the woodland. The needs and benefits of residential development on this site have not been sufficiently made out. The identification of the site as ancient woodland and its ecological importance are matters which outweigh this area's residential allocation within the Local Plan. Prevention of development here can be achieved by the imposition of suitable conditions. On the other hand, the case for the removal of Duncton Meadow from the development area is not sufficiently strong to outweigh its residential allocation.

- 13.170 The proposals would provide a considerable measure of protection for trees within and around the sites. But there is a need to protect adequately the ecological value of the ancient woodland components within and abutting them. To this end, buffer zones would need to be of a minimum depth of 15m around the ancient woodland, a matter which can be ensured through the imposition of conditions.
- 13.171 The proposals would provide for 30% of dwelling units to be affordable. Despite concerns expressed by the Council about the delivery mechanisms, the imposition of conditions would be sufficient to make provision for this.
- 13.172 Through appropriate conditions and the operation of the linked S106 obligation, the protection of existing amenity and living conditions could be ensured in relation to proposed access arrangements, including those for construction traffic, as could protection of wildlife and ecological interests. Having regard to the outline applications, the Council would have adequate subsequent control over detailed matters to ensure the realisation of a form of development that would be well integrated with and complementary to that which exists. There is no requirement to reduce by condition the ceiling level of dwellings referred to in the applications other than to reflect the removal of Four Acre Wood from the development area, necessary adjustments to the buffer zones and the small reduction in the number of units on Cell 4C.
- 13.173 The development would not comply with Policy HH7 of the Mid Sussex Local Plan in that it is not proposed that the open land be dedicated to the Council at this stage for future management. Nevertheless, through the imposition of conditions there would be sufficient safeguards to ensure the ongoing management of important areas of open land within the sites. On balance, this represents a material consideration which outweighs this conflict with development plan policy.
- 13.174 Overall, subject to the imposition of conditions and the application of the Unilateral Undertaking, the proposals would in my view represent a sustainable form of development broadly in accordance with local and national planning policy. There are no other material considerations, taken jointly or severally, sufficient to outweigh the factors above which have led to my recommendations.

Recommendations

- 13.175 I make the following recommendations:
- 13.176 **Appeal A (APP/D3830/A/05/1195898)** Outline for Phase 4: the appeal be allowed and planning permission be granted subject to the Conditions listed in Annex A and Conditions 1, 2, 3 and 8 of Annex B.
- 13.177 **Appeal B (APP/D3830/A/05/1195897)** Infrastructure for Phase 4: the appeal be allowed and planning permission be granted subject to the Conditions listed in Annex A.
- 13.178 **Appeal C (APP/D3830/A/06/1198282)** Outline for Phases 4 & 5: the appeal be allowed and planning permission be granted subject to the Conditions listed in Annex A and Conditions 1, 6, 7, 9 and 11 of Annex B.

13.179 **Appeal D (APP/D3830/A/06/1198283)** Infrastructure for Phase 4 & 5: the appeal be allowed and planning permission be granted subject to the Conditions listed in Annex A.

P J Asquith

INSPECTOR

APPENDIX A

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Edmund Robb of Counsel,
instructed by the Chief Solicitor,
Mid Sussex District Council,
Oaklands Road, Haywards Heath,
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He called:

Mr D G Matthews MRTPI	Principal Planning Officer, Mid Sussex District Council..
Ms L Standing	Head of Housing Services, Mid Sussex District Council.
Mr R E Iliffe	Senior Solicitor, Mid Sussex District Council.
Mr P Whiffing BSc(Hons) MEd	School Organisation Planning Manager, West Sussex County Council, Children and Young People's Service.
Mr D Baker BSc MIEEM	Ecologist, West Sussex County Council, County Hall, West Street, Chichester, PO19 1RQ.
Mr A P Howick	Planning Liaison Engineer Development Control, West Sussex County Council, The Grange, Tower Street, Chichester, PO19 1RH.
Mr C Solomon MRICS	District Valuer Services, Valuation Office Agency, New Court, 48 Carey Street, London, WC2A 2JE.

FOR THE APPELLANT:

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by Foxley Tagg Planning Limited, 6
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3PR.

He called:

Mr J F Harris BA(Hons) DipTP MRTPI CMILT	formerly Associate Director of Foxley Tagg Planning Limited.
Mr C A Rees LLB	Partner and Head of the Planning and Environmental Group, Davies Arnold Cooper, 6-8 Bouverie Street,

London, EC4Y 8DD.

Mrs J C Fisher BSc MSc MLI FAE FRSA	Managing Director of Jaquelin Fisher Associates Environmental Planning Ltd, 4 Yukon Road, London, SW12 9PU.
Mr N Pyke DipLA MLI	Consultant Allen Pyke Associates Limited, The Factory, 2 Acre Road, Kingston-upon-Thames, KT2 6EF.
Mr A Roderick BSc CMILT MIHT	Technical Director of Bettridge Turner & Partners, Consulting Civil Engineers and Transportation Planners, Cobham Gate, 34 Anyards Road, Cobham, KT11 2LA.
Mr D Parker MSc BA(Hons) DMS FCIH,	Director of Pioneer Property Services Ltd, Hartham Park, Hartham Lane, Corsham, SN13 0RP.
Mr J D Turner BSc(Hons) MRICS	Turner Morum Chartered Surveyors, 32-33 Cowcross Street, London, EC1M 6DB.
Dr R I Macphail BSc MSc PhD	Institute of Archaeology, University College London, 31-34 Gordon Square, London, WC1H 0PY.

INTERESTED PARTIES:

Local Community Organisations (Association of Residents of Roads of Wealden Way (ARROWW), Bolnore Village Residents Association (BVRA), The Ashenground Residents Association (TARA), Friends of Ashenground and Bolnore Woods (FABW, previously FoAW)).

Mr Charles Banner of Counsel,
instructed by Mr A McGowan,
Waugh and Co Solicitors, Boltro
Road, Haywards Heath.

He called:

Mr S Meier	Wyndham House, Coppice Way, Haywards Heath, RH16 4NN.
Mrs J Bunting Thring	2 Cherry Place, Bolnore Village, Haywards Heath, RH16 9QE.
Mr C Marshall	5 Belvedere Walk, Bolnore Village, Haywards Heath, RH16 4TD.

Mr R Carter	Chair of BVRA, of 3 Farm Cottages, Parkfield Way, Bolnore Village.
Mr M A Gilks CEng MIEE DMS	66 Lincoln Wood, Haywards Heath, RH16 1LJ.
Mr T Broomhead	Managing Director, DMS Digital Mapping Services, of 116 Greys Road, Henley-on-Thames, RG9 1QW.
Mr J Quaife DipArb (RFS) FArborA	Quaife Woodlands, Squerryes Farm Cottages, Westerham, Kent, TN16 1SL.
Mr R Allen BSc(Hons) ARSM CEnv CBiol EurProBiol MIBiol MIEEM MIEnvSc MEWI	Director EPCG Ltd, 44A Winchester Road, Petersfield, GU32 3PG.
Dr A Whitbread	Chief Executive, Sussex Wildlife Trust, Woods Mill, Henfield, BN5 9SD.
OTHER INTERESTED PARTIES/PERSONS	
Ms H Pierce	Chairman, Mid Sussex Area Bridleways Group, 42 Ferndale Road, Burgess Hill, RH15 0HG.
Miss K M Brownrigg	15 Joan Nightingale House, Bolnore Road, Haywards Heath, RH16 4AB.
Ms S Parker and Ms A Scrivens	Field Officers, Badger Trust – Sussex, c/o 14 Freeks Lane, Burgess Hill, RH15 8DG.
Mr R Else	1 Beech Hurst Close, Haywards Heath, RH16 4PN.

APPENDIX B

Inspector's Note: For completeness and understanding, all proofs of evidence are included as Inquiry documents.

CORE DOCUMENTS

Document number

Policy Documents

CD1	Planning Policy Statement 1: Delivering Sustainable Development.
CD2	Planning Policy Guidance Note 3: Housing.
CD3	Planning Policy Statement 3: Housing and earlier consultation draft and Delivering Affordable Housing.
CD4	Planning Policy Statement 9: Biodiversity and Geological Conservation.
CD5	Planning Policy Statement 9: Biodiversity and Geological Conservation – A Guide to Good Practice.
CD6	Planning Policy Statement 11: Regional Spatial Strategies.
CD7	Planning Policy Statement 12: Local Development Frameworks.
CD8	Planning Policy Guidance Note 13: Transport.
CD9	Planning Policy Guidance Note 17: Planning for Open Space, Sport and Recreation.
CD10	DEFRA & Forestry Commission: 'Keepers of Time': A statement of policy for England's Ancient & Native Woodland 2005.
CD11	Regional Planning Guidance 9: Regional Planning Guidance for the South East.
CD12	Draft South East Plan 2006-2026, Executive Summary.
CD13	West Sussex County Council Structure Plan 2001-2016.
CD14	Mid Sussex Local Plan, May 2004, full version and extract.
CD15	Mid Sussex Local Plan Inspector's Report, August 2003, extract.
CD16	South-west Haywards Heath Development Strategy: General Guidance, December 1997.
CD17	South-west Haywards Heath Design Brief: General Guidance, September 1999.
CD18	South-west Haywards Heath Design Brief Phase 1, September 1999.
CD19	South-west Haywards Heath Design Brief Phase 2, November 2001.
CD20	West Sussex Local Transport Plan – superseded and not provided.
CD21	Transport Plan for West Sussex 2006-2016, Executive Summary.
CD22	Haywards Heath Transport Plan.
CD23	Adopted Mid Sussex District Council's Supplementary Planning Guidance including Provision of Service Infrastructure Related to New Development in West Sussex Part 2, May 2004.

Emerging Mid Sussex District Council Supplementary Planning Documents:

CD24	Development and Infrastructure, August 2005.
CD25	Sustainable Construction, December 2005.
CD26	Small-scale Housing Allocations, May 2005.
CD27	Disability Discrimination Act 1995, extract.

Transport guidance

CD28	Design Bulletin 32: Residential Roads and Footpaths.
CD29	Places, Streets and Movement: A Companion Guide to DB32.
CD30	The Institution of Highways & Transportation Guidelines for Traffic Impact Assessments (see AR7).
CD31	Design Manual for Roads and Bridges – TA79/99 Traffic Capacity of Urban Roads.
CD32	Design Manual for Roads and Bridges – TD16/93 Geometric Design of Roundabouts.
CD33	IHT Guidelines – Creating Accessible Environments.
CD34	Department for Transport Best Practice Guide on Residential Travel Plans.
CD35	Department for Transport: Securing Travel Plans Through the Planning Process.
CD36	Department for Transport Guide for Major Employers on Travel Plans.
CD36A	Manual for Streets, DfT and DCLG.

British Standards

CD37	BS5837:2005 Trees in relation to construction (see DRB40).
CD38	BS5837:1991 Trees in relation to construction (see JFA, App 6).

Ecology Guidance and Documents

Buffer zone source documents

CD39	NHBC (1986), NHBC Standards, Building near trees, chapter 4.2 (see JFA, App 6).
CD40	Highways Agency (2001), HA84/01, Nature Conservation and Biodiversity (see JFA, App 6).
CD40A	Sussex Wildlife Trust: Landscape Buffer Strips for the protection of trees, woods & other wildlife habitats, October 2005.
CD41	Historical Ordnance Survey Maps (see JFA App 8).

Woodland flora references

CD42	Francis Rose (April 1999), Indicators of ancient woodland – The use of vascular plants in evaluating ancient woods for nature conservation.
CD43	George Peterken (February 2000), Identifying ancient woodland using vascular plant indicators.

Application material and documents

CD44	Environmental Statement, non-technical summary and supporting technical appendices 1-5.
CD45	Addendum material produced subsequent to the Environmental Statement.

- CD46 Bundle of maps, plans, drawings and illustrations in support of Phases 4 & 5 outline and Phases 4 & 5 infrastructure schemes and bridleway improvements.
- CD47 Planning statements of support in relation to Phases 4 & 5 outline and infrastructure applications.
- CD48 Supplementary traffic reports, safety audits, construction access reports and Construction Management plans (CD/T1 – 5).
- CD49 Travel Plan Framework, door-to-door survey results (see appellant's sustainable transport evidence Annexes 10 and 11) and detailed/retrofit Travel Plan submissions.
- CD50 South-west Sector Development Area Haywards Heath: Traffic Impact Assessment of possible development phasing arrangements (Singleton Clamp and Partners).
- CD51 South-west Sector Development Area Haywards Heath: Supplementary Traffic Impact Assessment of possible development phasing arrangements (Singleton Clamp and Partners).

Other Documents

- CD52 Traffic Forecasting Report on the 'Nun's' and 'St Modwen' land, Bolnore Village, Haywards Heath – draft (2003) (WSP Development Ltd).
- CD53 West Sussex County Council Highways and Transport Accessibility Strategy, March 2006.
- CD54 The Barker Review of Land Use Planning, Final Report – Recommendations, December 2006.
- CD55 Extract from the Eddington Transport Study, pages 1-61, December 2006.
- CD56 Key extracts from Volume 3 of the Eddington Transport Study.
- CD57 Changes to Planning Obligations, a Planning-gain Supplement consultation, Department for Communities and Local Government, December 2006.
- CD58 A revision of the Ancient Woodland Inventory for Mid Sussex District, West Sussex, October 2006.
- CD59 Selected extracts from the Eddington Transport Study.
- CD60 Guidance on Transport Assessment, DCLG/DfT Draft, August 2006.
- CD61 Delivering Affordable Housing, Department for Communities and Local Government.
- CD62 FAW – question on its origins (final version), Keith Kirby, Forestry and Woodland Officer, NE, with attached letter and e-mail.
- CD63 Inspector's note of the Procedural Meeting of 26 July 2006
- CD64 Attendance sheets.

Statements of Common Ground (SOCG)

- CD65 SOCG regarding Local Plan Policy HH7 and ecologically important public open spaces, Mid Sussex District Council and the Local Community Organisations, February 2007.
- CD66 SOCG regarding the development in general, Mid Sussex District Council, CN Nicholson (South) Ltd, Local Community Organisations and West Sussex County Council, October 2006.

CD67 SOCG regarding the Construction Management Plan, CN Nicholson (South) Ltd and the Local Community Organisations.

PROOFS AND OTHER DOCUMENTS

Mid Sussex District Council

1. Statement of case.
2. Position statement of 1 June 2006 regarding request for possible substantial adjournment.
3. Opening statement on behalf of MSDC.
4. Proof of evidence, (August 2006) – Dennis Matthews.
5. Appendices (DM) to proof of evidence – Dennis Matthews.
6. Development and Infrastructure: Supplementary Planning Document, February 2006, Mid Sussex District Council.
7. 2nd Annual Monitoring Report, 1 April 2005 - 31 March 2006, December 2006, Mid Sussex District Council.
8. Letter (undated) from Dennis Matthews, Mid Sussex District Council to Mrs Tagg, Foxley Tagg regarding emergency access to Bolnore Road.
9. Proof of evidence – Lynne Standing.
10. Appendices (LS) to proof of evidence – Lynne Standing, including SPG 'The provision of Service Infrastructure Related to New Development in West Sussex', Part 2, Consultation Draft, July 2000.
11. Proof of evidence – Richard Iliffe.
12. Appendices (RI) to proof of evidence – Richard Iliffe.
13. Proof of evidence – Phillip Whiffing.
14. Appendices (PW) to proof of evidence – Phillip Whiffing.
15. Proof of evidence – Donald Baker.
16. Summary proof of evidence – Donald Baker.
17. Appendices (DRB) to proof of evidence – Donald Baker.
18. Addendum proof of evidence, with attached appendices (A-J) – Donald Baker.
19. West Sussex Inventory of Ancient and Semi-natural woodlands (draft).
20. Proof of evidence – Andrew Howick (AH1).
21. Summary proof of evidence – Andrew Howick.
22. Supplementary proof of evidence – Andrew Howick (AH2)
23. Appendices to proof of evidence – Andrew Howick.
24. Letter form BT&P to Mr Howick, 21 February 2007 (AH3).
25. BT&P comments on note attached to Duncan Barratt's letter of 20 June 2005.
26. Extract from draft Guidance on Transport Assessment, August 2006.
27. Letter of 7 August 2006 from Barry Smith, West Sussex County Council to David Ashworth, Area Director, South East, English Partnerships and response of 16 August 2006 regarding timing of delivery of the Relief Road.
28. Letter from Charles Solomon (District Valuer) to Mrs Standing, 29 August 2006 with attached Annexes.
29. Proof of evidence with attached Annexes – Charles Solomon.
- 29A Comments on 'Manual for Streets', 2 May 2007.
30. Closing submissions.

CN Nicholson (South) Ltd – the appellant

31. Statement of case.
32. Response to Mid Sussex District Council's statement of case.
33. Response to MSDC's position statement of 1 June 2006.
34. Appellant's opening statement.
35. Proof of evidence, May 2006 (strategic planning) – Jon Harris.
36. Summary proof of evidence (strategic planning) – Jon Harris.
37. Supplementary proof of evidence, September 2006 (strategic planning) – Jon Harris.
38. Summary of supplementary proof of evidence (strategic planning) – Jon Harris.
39. Annexes to strategic planning evidence – Jon Harris.
40. Proof of evidence, May 2006 (sustainable transport) – Jon Harris.
41. Summary proof of evidence (sustainable transport) – Jon Harris.
42. Supplementary proof of evidence, September 2006 (sustainable transport) – Jon Harris.
43. Summary of supplementary proof of evidence (sustainable transport) – Jon Harris.
44. Supplementary statement on construction management and vehicle access – Jon Harris.
45. Annexes to sustainable transport evidence – Jon Harris.
46. Supplementary sustainable transport appendices – Jon Harris.
47. Modal split evaluation matrix and justification (JH1).
48. Evidence from Phase 3 construction management approach and housing completion sequence (JH2).
49. Supplementary note on density and coverage issues (JH3).
50. Letter of 22 September 2006 from the Highways Agency to Foxley Tagg Planning Limited regarding sustainable transport solutions (JH4).
51. Details regarding proposed taxi bus service between Bolnore Village and Haywards Heath rail station (JH5).
52. East Grinstead Strategic Development Area Action Plan - Pre-submission document, May 2006 (JH6).
53. Transportation assessment calculations regarding Priddy's Hard (JH7).
54. Actual traffic generation from observations on 11 December 2006, Poole Quarter (JH8).
55. West Sussex Sustainable Business Partnership Newsletter (JH9).
56. Phase 4 notes and attached planning application details (JH10).
57. Schedule of accommodation regarding Phase 4A revised mix, 14 October 2005 (JH11).
58. Site layout plan for Bolnore Village Phase 3 (plan ref. 1063/1006/K) (JH12).
59. Schedule of accommodation for Bolnore Village Phases 4 & 5 from plan ref. 1079/030/C (JH13).
60. Considerate Constructor's Scheme and accompanying photographs (JH14).
61. Aerial photographs of Parkfield Way showing properties close to the construction route, Phase 3 (JH15).
62. Construction access route for Phase 3, accompanying photographs and route of articulated lorry in Parkfield Way/Pondside (JH16).
63. Photographs of development in Phase 3 (JH17).
64. E-mail from Chris Marshall of 9 December 2004 and accompanying photographs regarding construction vehicles in Bolnore Village (JH18).

65. Revised Gantt time chart (24 November 2006), superseding Foxley Tagg Transport Statement Appendix 18 and Planning Statement Appendix 6.
66. Priddy's Hard Travel Survey Results.
67. Poole Quarter Travel Survey Report.
68. Extract from the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.
69. Consultation on Planning Policy Statement 3 – Housing (PPS 3), A summary of responses and key issues.
70. Schedule of Form Consultation Responses.
71. Proof of evidence – Christopher Rees.
72. Summary of proof of evidence – Christopher Rees.
73. Appendices to Proof of evidence – Christopher Rees.
74. Supplementary proof of evidence – Christopher Rees.
75. Appendices to the supplementary proof of evidence – Christopher Rees.
76. Letter of 16 September 2003 from Christopher Rees to Sue Pope, West Sussex County Council (CR1).
77. Letter of 18 September 2003 from Vanessa Field, West Sussex County Council to Christopher Rees, with copy to Mid Sussex District Council (CR2).
78. Letter of 23 October 2003 from Christopher Rees to Vanessa Field (CR3).
79. Note on the progress towards certainty of the Haywards Heath Relief Road (CR4).
80. Inspector's 'route map' to the planning obligation (CR5).
81. Proof of evidence (JF2) – Jaquelin Fisher.
82. Summary of proof of evidence (JF1) – Jaquelin Fisher.
83. Appendices to proof of evidence (JF3) – Jaquelin Fisher.
84. Supplementary proof of evidence (JF4) – Jaquelin Fisher.
85. Summary of supplementary proof of evidence (JF5) – Jaquelin Fisher.
86. Supplementary proof of evidence II (JF6) – Jaquelin Fisher.
87. Copy of Appendices 1a and 1B from Dr Macphail's report and soil profiles of Ashenground Wood and Cell 5B1 (JF6).
88. Copy of Figure 8 showing suggested depths of soil truncation in Cell 5B1 (JF7).
89. Letter of 27 November 2006 from Jaquelin Fisher to Emma Goldberg, Natural England with accompanying material regarding Cell 5B1 to be reviewed (JF8).
90. Plan showing the location of soil pits 1-3 in Ashenground Wood (JF9).
91. Note on area of badger territory loss post-development at Phases 4 & 5 (JF10).
92. Soil report on Phase 5B1 from Dr Macphail, July 2006 (revised October 2006) (JF11).
93. Letter of 12 February 2007 from Jaquelin Fisher to Emma Goldberg, Natural England (JF12).
94. Letter of 2 March 2007 from Keith Kirby, Natural England with enclosures to Jaquelin Fisher (JF13).
95. Letter of 13 October 2006 from Emma Goldberg, Natural England to Jaquelin Fisher regarding the Ancient Woodland Inventory.
96. Letter of 24 October 2006 from Emma Goldberg, Natural England to Jaquelin Fisher regarding the Ancient Woodland Inventory (fuller version of the letter of 13 October 2006).
97. Note of ecology meeting of 15 June 2006.
98. Extract from the Countryside and Rights of Way Act 2000.

99. Letter of 8 December 2006 from Jaquelin Fisher to Emma Goldberg, Natural England regarding the queried location of the Ashenground Wood extension.
100. A Habitats Translocation Policy for Britain, Joint Nature Conservation Committee on behalf of the Countryside Council for Wales, English Nature and Scottish Natural Heritage, July 2003.
101. Letter of 4 October 2006 from Jaquelin Fisher to Keith Kirby, English Nature (sic) regarding the Weald Ancient Woodland Survey.
102. Proof of evidence – Nicholas Pyke.
103. Summary proof of evidence – Nicholas Pyke.
104. Appendices to proof of evidence – Nicholas Pyke.
105. Plans and illustrative material referred to in the proof of evidence – Nicholas Pyke.
106. Supplementary proof of evidence – Nicholas Pyke.
107. Summary of supplementary proof of evidence – Nicholas Pyke.
108. Extracts from 'Tree Root Damage to Buildings', P G Biddle (NGP13).
109. E-mail exchange of 15 January 2007 between Nicholas Pyke and Jonathan Tesh, Doncaster MBC (NGP14).
110. Extracts from 'Veteran Trees: A guide to good management' (NGP15).
111. Arboricultural Impact Report, Land east of South Street, East Hoathly, Simon Jones Associates Ltd (NGP16).
112. Arboricultural Method Statement regarding Shetland Rise, Whiteley, CBA Trees (NGP17).
113. Revised plan ref.1859-TP-10 (Rev F) showing amended tree root protection areas for trees 1812 and 1521 (NGP18).
114. Proof of evidence with attached appendices – Aled Roderick (AR1).
115. Capacity assessment results – Aled Roderick (AR2)
116. Plan GD04504/1001 showing surrounding highway network and journey time nodes (AR3).
117. Plan showing Bolnore Village Phase 3 construction (AR4).
118. Letter of 20 June 2005 with attached notes from Duncan Barratt, West Sussex County Council to Mid Sussex District Council regarding the impact of further development prior to the completion of the relief road (AR5).
119. BT&P comments on the note from D Barratt attached to his letter of 20 June 2005 (AR6).
120. The Institution of Highways and Transportation Guidelines for Traffic Impact Assessment (AR7 and also CD30).
121. Proof of evidence – David Charlton.
122. Summary of proof of evidence – David Charlton.
123. Figures and appendices to proof of evidence – David Charlton.
124. Supplementary proof of evidence – David Charlton.
125. Revised summary proof of evidence – David Charlton.
126. Figures and appendices to supplementary proof of evidence – David Charlton.
127. BT&P response to West Sussex County Council Highways and Transport Services consultation of 27 June 2005 (AR8).
128. Proof of evidence – David Parker.
129. Summary of proof of evidence – David Parker.
130. Supplementary statement on affordable housing policy (DP1).

131. Report to Cabinet of 16 December 2002 regarding SPG: The provision of service infrastructure related to new development (DP2).
132. Copy of E-mail of 4 October 2006 from Belinda Hunt to Foxley Tagg Planning Limited regarding a request for information (DP3).
133. Changes to Planning Obligations, a Planning-gain Supplement consultation, December 2006 (DP4).
134. Extract from a Section 106 Agreement relating to Old Brighton Road, Pease Pottage (DP5).
135. Extract from a Section 106 Agreement relating to land on the north side of Queens Road, Haywards Heath (DP6).
136. Extract from a Section 106 Agreement relating to land at Folders Lane, Burgess Hill (DP7).
137. Extract from an Inspector's Report regarding a policy relating to nil land cost in a Local Plan in Hart District Council (DP8).
138. Extract (page 15) from Adams Integra report on financial viability impacts of affordable housing policy options in West Sussex (DP9).
139. Draft SPD regarding development and infrastructure (DP10).
140. Consultation statement on Development and Infrastructure SPD (DP11).
141. Proof of evidence with appendices – John Turner.
142. Summary of proof of evidence – John Turner.
143. Explanation of easement and connection charges prepared jointly by John Turner and Charles Solomon (JT1).
144. Calculations from Mr Turner based on the District Valuer's figures (JT2).
145. District Valuer's assessment of viability of Phases 4 & 5, median costs comparing with John Turner's approach, 14 November 2006 (JT3).
146. Copy of e-mail with attached calculations of 2 November 2006 from John Turner to Charles Solomon (JT4).
147. Schedule of accommodation for Phase 4A (JT5).
148. Schedule 6 from the 1998 Section 106 Agreement relating to the easement and connection charge (JT6).
149. Copies of award certificates relating to Bolnore Village development (JT7).
150. Copy of undated E-mail from Lynne Standing to Charles Solomon regarding a request for a financial viability study to be undertaken (JT8).
151. Letter of 27 September 2006 from Mid Sussex District Council to Foxley Tagg Planning Limited regarding the calling of the District Valuer as witness (JT9).
152. Letter of 10 October 2006 from John Turner to Charles Solomon requesting information on the District Valuer's viability assessment (JT10).
153. Copy of E-mail of 2 November 2006 from John Turner to Charles Solomon with appended calculations (JT11).
154. Table of the District Valuer's build costs (H (vi) version) (JT12).
155. Extract from the Housing Corporation Economic Appraisal Tool user manual (JT13).
156. Proof of evidence – Richard Macphail (RIM1).
157. Erratum regarding aerial photographic evidence – Richard Macphail (RIM2).
158. Proof of evidence – Stephen Clyne.
159. Appendices to Proof of evidence – Stephen Clyne.
160. Summary Proof of evidence – Stephen Clyne.
161. Supplementary Proof of evidence – Stephen Clyne.

162. Update report on education issues (December 2006) – Stephen Clyne.
163. Appendices to update report – Stephen Clyne.
164. Appeal decision APP/D3830/A/06/2020169 regarding development at Ashton House, Bolnore Road.
165. Appeal decision T/APP/W1850/A/97/286456/P2 regarding land at Lower Bullingham, Hereford. (CR6).
166. Summary of evidence of Christopher Rees (CR7).
167. Signed S106 Unilateral Undertaking.
168. Letter of 30 April 2007 from CN Nicholson (South) Ltd to Mr Carter regarding construction traffic.
169. Appeal decisions APP/D3830/A/06/2017523 & 2017556 regarding land at Hassocks.
170. Notes of clarification on the Construction Management Plan and Masterplans.
171. Note of clarification on housing completions in Phases 1-3.
- 171A Suggested conditions.
- 171B Comments on 'Manual for Streets', 1 May 2007.
172. Closing submissions.

The LCOs

173. Position statement of 1 June 2006 regarding possible request for a substantial adjournment.
174. Statement of case.
175. Note on the LCO's position in response to the appellant's submission of evidence, 1 June 2006
176. Opening statement on behalf of the LCOs.
177. Photographic site guide.
178. Aerial photographs of Phases 4 & 5.
179. Map and photographs of the site and surroundings (within the folder of LCOs' proof of evidence).
180. Amended proof of evidence – Mike Gilks.
181. Summary of amended proof of evidence – Mike Gilks.
182. Rebuttal Proof of evidence – Mike Gilks.
183. Copy of letter of 10 January 2007 from Ms K Brownrigg (MG1).
184. Supplementary note from Mike Gilks regarding construction access via Bolnore Road (MG2).
185. Extracts from Design Bulletin 32 and Roads and Traffic in Urban Areas (MG3).
186. Proof of evidence – Richard Carter.
187. Summary of proof of evidence – Richard Carter.
188. Rebuttal proof of evidence – Richard Carter.
189. Statements regarding construction access made by ARROWW residents.
190. Proof of evidence (19 May 2006) – Stuart Meier (history of the woods and meadows of the appeal sites).
191. Rebuttal proof of evidence with appendices (7 February 2007) – Stuart Meier (history of FAW).
192. Supplementary proof of evidence (15 November 2006) – Stuart Meier (residents' recollections regarding the history of FAW).

193. Amended proof of evidence – Anthony Whitbread.
194. Summary of amended proof of evidence – Anthony Whitbread.
195. Rebuttal Proof of evidence (13 September 2006) – Anthony Whitbread.
196. Rebuttal Proof of evidence (21 February 2007) – Anthony Whitbread, including report by Ron Allen of 19 February 2007.
197. 'Reversing the habitat fragmentation of British woodlands' (George Peterken) (TW1).
198. Assessment of soils disturbance resulting from winch felling of mature oak tree in ancient woodland (TW2).
199. Extract from Jaquelin Fisher Associates web site (TW3).
200. Note on aerial photography sourced by LCOs from the National Monuments Record Centre (TW4).
201. Extract from Jaquelin Fisher Associates web site (TW5).
202. Extract from 'Woodland conservation and management' (George Peterken) (TW6).
203. Corrections to locations of Macphail soil pits 9, 10 and 11 (TW10⁸⁴).
204. Two photographs of FAW (TW11).
205. Legend for the 1:250,000 Soil Map of England and Wales, map extract and extracts from 'Soils and their Use in South-east England' (TW12).
206. Extract from 'Migration of herbaceous plant species across ancient-recent forest ecotones in central Belgium' (TW13).
207. Rebuttal Proof of evidence of Ron Allen on matters relating to the soils of FAW (TW14).
208. Three photographs of FAW (TW15).
209. Letter of 9 March 2007 from Sussex Wildlife trust regarding suggested condition/106 obligation (TW16).
210. Letter of 15 March 2007 from Sussex Wildlife Trust regarding suggested condition (TW17).
211. Amended proof of evidence – Stuart Meier (spatial planning).
212. Summary of amended proof of evidence – Stuart Meier (spatial planning).
213. Rebuttal proof of evidence (14 September 2006) – Stuart Meier regarding spatial planning.
214. Rebuttal proof of evidence (7 February 2007) – Stuart Meier (overview of the LCOs' role).
215. Letter of 12 February 2007 from the LCOs to Foxley Tagg Planning Limited regarding documentation from Dr Macphail (SM1).
216. Table from the LCOs regarding different housing numbers on Phases 4 & 5 (SM3⁸⁵).
217. Yvette Cooper statement of 29 November 2006 regarding PPS 3 (SM4).
218. Tables balancing the merits of development v ancient woodland conservation and development v conservation (SM5).
219. Copy of Mid Sussex Matters, Spring 2007 (SM6).
220. Rebuttal proof of evidence – Stuart Meier (aerial photography relied upon by Dr Macphail (SM7).
221. Note on the calculation of 'bare' areas on 1959 image of Dr Macphail (SM8).
222. Photographs of waterlogged areas in Ashenground Wood (SM9).
223. LCOs' initial list of suggested conditions (SM10).
224. Proof of evidence – Tom Broomhead (spatial statistics)

⁸⁴ Inspector's note: there are no documents TW7-TW9.

⁸⁵ There is no SM2.

225. Supplementary proof of evidence – Tom Broomhead (spatial statistics).
226. Proof of evidence – Chris Marshall (social infrastructure).
227. 'A Lot to Lose: London's disappearing allotments' (CM1).
228. Proof of evidence – Margaret Smith⁸⁶
229. Note regarding Mr Clyne's December supplementary proof of evidence and preliminary report on the demography of Bolnore Village (JBT).
230. Final Report on the demography of Bolnore Village – Julia Thring (JBT1).
231. 'Child Yield', Data Management and Analysis Group, Greater London Authority (JBT2).
232. Proof of evidence with attached appendices – Jim Quaife.
233. Summary of proof of evidence – Jim Quaife.
234. Extract from 'Soils and their Use in South-east England' (RA2).
235. Photographs of soil pits in FAW (RA3).
236. Weald Ancient Woodland Survey, final report 2006.
237. Landscape Buffer Strips for the protection of trees, woods and other wildlife habitats, Sussex Wildlife Trust.
238. West Sussex Inventory of Ancient Woodland (provisional), Nature Conservancy Council.
239. Plan (Ref.1079/1000/B) showing Bolnore Village Phases 4 & 5 revised mix, 310 units site layout (Tab 20 of LCOs' main folder of proofs).
240. Four aerial photographs from the National Monuments Record (dated 1959, 1965, 1971 and 1973) of FAW.
241. Letter of 5 February 2007 from the LCOs to Foxley Tagg Planning Limited regarding authorship of Appendices 1a and 1b.
242. Letter of 14 February 2007 from the LCOs to Foxley Tagg Planning Limited asking that it be accepted as common ground that FAW is ancient woodland.
243. Summary regarding LCOs' proposed conditions (SM11).
244. Cross-comparison of condition texts (SM12).
245. Conditions proposed by the LCOs for Phase 4 and 5 outline applications (SM13).
- 245A. Comments on 'Manual for Streets', 30 April 2007.
246. Closing submissions.

Badger Trust - Sussex

247. Initial proof of evidence of 21 May 2006.
248. Proof of evidence – Sonya Parker & Angela Scrivens.
249. File of photographs relating to badger habitats and damage.
250. Rebuttal of Jaquelin Fisher's supplementary proof of evidence II.
251. Letter of 21 February 2007 from Mid Sussex District Council to Ms Parker and Ms Scrivens regarding consultations relating to badgers.
252. DVD regarding badger habitats/activity.
253. DVD regarding site construction access (LCOs evidence).
254. Suggested planning conditions.

Documents from other persons

⁸⁶ Mrs Smith did not appear and her evidence was effectively updated by that provided by Mrs Thring.

- 255. Proof of evidence with appendices – Hilary Pierce, Mid Sussex Bridleway Group.
- 256. Letter of 2 October 2006 from Mrs D M Hatfield regarding the arrangements at the Inquiry.
- 257. Statement of fact/proof of evidence – Tony Hudnott, Wickens Court Residents Group (he did not appear at the Inquiry).
- 258. Files of written representations.

Legal references referred to in submissions

- 259. Proberun Ltd v Secretary of State for the Environment (also known and reported as Medina Borough Council v Proberun Ltd (1991) 61 P. & C.R. 77), [1990] 3 P.L.R.79.
- 260. R. v Newbury District Council ex parte Chieveley Parish Council (1998) Court of Appeal.
- 261. R (Murray) v Hampshire County Council (2003) JPL 224.
- 262. Encyclopaedia of Town and Country Planning, p3B-3010.

APPLICATION PLANS⁸⁷

Phase 4 outline application (1195898)

- A. Site location plan (Ref. 1079/015/B)
- B. Masterplan for Phase 4 (Ref.1451/020/J(BS)).
- C. Constraints and opportunities plan (Ref. 451/010/C)
- D. Connectivity plan (Ref.1079/032/E).

Phase 4 full infrastructure and highways application (1199597)

- E. Masterplan (Ref. 1451/020/J(BS)).
- F. Site location plan (Ref. 1079/015/B).
- G. Overall infrastructure plan (Ref. 24256/P/107, Rev B).
- H. Bridleway/access road junction details (Ref. 24256/P111, Rev D).
- I. Engineering details at crossing points (Ref. 24256/1002, Rev B).
- J. Engineering details at crossing points (Ref. 24256/1003, Rev B).
- K. 12M bus track plots (Ref. 24256 SK10).
- L. 10M pantechnican track plots (Ref. 24256 SK11).
- M. Large refuse vehicle track plots (Ref. 24256 SK12).

Phases 4 & 5 outline application (1198282)

- N. Site location plan (Ref. 1079/016/B).
- O. Masterplan (Ref. 1451/050/C(BS)).
- P. Constraints and opportunities plan (Ref. 1079/010, Rev D).
- Q. Connectivity plan (Ref. 1451/032, Rev A).

Phases 4 & 5 infrastructure and highways application (1198283)

- R. Site location plan (Ref. 1079/016/B)
- S. Overall infrastructure plan (Ref. 24256/P/106, Rev D).
- T. Bridleway/access road junction details (Ref. 24256/P111, Rev D).

⁸⁷ The plans are contained in the bundle at CD46.

- U. Engineering details at crossing points (Ref. 24256/1002, Rev B).
- V. Engineering details at crossing points (Ref. 24256/1003, Rev B).
- W. 12M bus track plots (Ref. 24256 SK10).
- X. 10M pantechnican track plots (Ref. 24256 SK11).
- Y. Large refuse vehicle track plots (Ref. 24256 SK12).

APPENDIX C

ABBREVIATIONS USED THROUGHOUT THE REPORT

AONB	Area of Outstanding Natural Beauty
appx	Appendix(es)
AW	Ancient Woodland
AWI	Ancient Woodland Indicator species
BOAT	Byway open to all traffic
BTS	Badger Trust – Sussex
CAMHS	Child and Adolescent Mental Health Services Unit
CMP	Construction Management Plan
CROW Act	Countryside and Rights of Way Act 2000
DAH	'Delivering Affordable Housing'
DfT	Department for Transport
dph	dwellings per hectare
DV	District Valuer
EIA	Environmental Impact Assessment
ES	Environmental Statement
FAW	Four Acre Wood
GoSE	Government Office for the South-East
GYTOG	Greater Yorkshire Tree Officers Group
HA	Highways Agency
ha	hectare
HHRR	Haywards Heath Relief Road
IHT	Institution of Highways and Transportation
JNH	Joan Nightingale House
LCO	Local Community Organisations
LDF	Local Development Framework
m	million or metre depending on context
MSDC	Mid Sussex District Council
MSLP	Mid Sussex Local Plan 2004
NE	Natural England
OMV	Open Market Value
p	paragraph(s)
pg	page(s)
PPG	Planning Policy Guidance Note
PPS	Planning Policy Statement
RPA	Root Protection Area
RSL	Registered Social Landlord
RSS	Regional Spatial Strategy
SoCG	Statement of Common Ground
SoS	Secretary of State for Communities and Local Government
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
SWT	Sussex Wildlife Trust

S106	Section 106 obligation under the 1990 Town and Country Planning Act (as amended).
TA	Transport Assessment
TCPA	Town and Country Planning Act 1990
TP	Travel Plan
TPP	Transport Programme and Plan
UU	Unilateral Undertaking
WSSC	West Sussex County Council
WSSP	West Sussex County Council Structure Plan 2001-2016
WT	Woodland Trust
XX	Cross-examination

ANNEX A

CONDITIONS SCHEDULE

The conditions have been grouped under broad headings as used by the parties for ease of reference and reasons for the conditions are included as a footnote.

APPEAL A - Phase 4 outline (HH/04/02676/OUT) (APP/D3830/A/05/1195898)

Time limit/exercising the permission

1. Approval of the details of the siting, design and external appearance of the buildings, landscaping, and the means of access thereto (excluding points of entry to the site and route of the spine road) of sub-phase areas (hereinafter referred to as the 'sub-phase' or 'sub-phases' as the case may be) and as each shown on the approved Masterplan (hereinafter called 'the reserved matters') shall be obtained from the local planning authority in writing prior to the commencement of development within each of the sub-phases. A 'sub-phase' is defined as part of the development hereby permitted on any part of Phase 4 comprising a number of dwellings and associated development such as roads and other infrastructure to be completed and proposed to be released for occupation as a discrete parcel. For the purposes of this condition the sub-phase areas are Nos. 4A1-4A9, 4B1-4B4 and 4C.

Application for the approval of the reserved matters shall be made to the local planning authority before the expiration of five years from the date of this permission.

The development hereby permitted shall be begun not later than the expiration of two years from the date of approval of the last of the reserved matters to be approved.⁸⁸

2. The permission hereby granted relates to the following schedule of plans/drawings:
1:2500 Site Location Plan (1079/015/B)
Masterplan 1451/020/J(BS)
Environmental Statement, dated September 2004⁸⁹
3. The development hereby permitted shall be constructed and laid out in broad accordance with the mix and disposition of uses shown on the Masterplan 1451/020/J(BS) or as may be varied by condition attached to this permission.⁹⁰
4. The development shall not be carried out otherwise than in accordance with the reserved matters approved pursuant to condition 1 of this permission.⁹¹

⁸⁸ To enable the local planning authority to control the development in detail and to comply with S92 of the Town and Country Planning Act 1990.

⁸⁹ For the avoidance of doubt.

⁹⁰ To ensure a satisfactory form of development and compliance with Mid Sussex Local Plan Policy HH2.

Play Areas

5. The layout of each sub-phase of the development shall incorporate provision for play space and play equipment in accordance with details to be approved in writing by the local planning authority and the sites provided for such facilities shall not thereafter be used for any other purpose. Within each sub-phase, no more than 50% of the dwellings therein shall be occupied until the provision for that sub-phase has been completed, provided that 50% of any dwellings within 25 metres of the play area have been constructed and are ready for occupation.⁹²
6. Before the release for sale to prospective purchasers of the first dwelling in each sub-phase, signs shall be erected on the site of all proposed play areas indicating the intention to provide play areas on those sites. The details of such signage shall be submitted to and approved in writing by the local planning authority and maintained in accordance with such approved details until the play areas are provided.⁹³
7. The areas of land identified as open space, woodland and buffer zones on the approved Masterplan and as may be varied by reserved matters approvals shall remain undeveloped and shall be laid out as amenity land in association with the remainder of the land the subject of this permission, such amenity land to be laid out and landscaped in accordance with conditions Nos. 1, and 19. The land shall not be included in any residential curtilage. These areas shall be maintained in accordance with a Landscape Management Plan and an Ecological Management Plan which shall have been submitted to and approved in writing by the local planning authority prior to commencement of development of any sub-phase.⁹⁴

Fencing/screen walling

8. No development shall take place in each sub-phase until details of proposed screen walls/fences and/or hedges have been submitted to and approved in writing by the local planning authority and no dwellings shall be occupied until such screen walls/fences or hedges associated with them have been erected or planted.⁹⁵

Highways and parking

9. No dwelling within any sub-phase shall be occupied until details of the space to be laid out for parking and stationing of vehicles clear of the public carriageway, within that sub-phase, have been approved in writing by the local planning authority. No dwelling within each sub-phase shall be occupied until the parking space relating to that dwelling has been

⁹¹ To ensure a satisfactory standard of development in accordance with Mid Sussex Local Plan policies, particularly HH2.

⁹² To secure an adequate standard of environment for the occupiers and to ensure adequate play space pursuant to Policy R3 of the Mid Sussex Local Plan and in the interest of health and safety of occupants.

⁹³ To ensure that prospective purchasers are aware of proposals for the provision of play areas and to accord with Policy R3 of the Mid Sussex Local Plan.

⁹⁴ To secure an adequate standard of environment and to accord with Mid Sussex Local Plan Policies HH2, B1, B2, B7 and C5.

⁹⁵ In order to protect the appearance of the area and to protect the amenities of adjacent residents, pursuant to Local Plan Policies B1 and B3.

- surfaced, drained and completed. The space so provided shall not thereafter be used other than for the parking of vehicles in connection with the development hereby permitted.⁹⁶
10. Detailed plans referred to in condition 1 of this permission shall provide for car parking at an average maximum of 1.5 off-street car parking spaces per dwelling.⁹⁷
 11. No dwelling construction shall commence until details of the bus-only link and emergency vehicle access control mechanisms have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until such mechanisms are in place or alternative temporary controls are in place in accordance with details to be submitted to and approved in writing by the local planning authority.⁹⁸
 12. Each individual dwelling shall not be occupied until provision has been made within the site, in accordance with details to be submitted to and approved in writing by the local planning authority, for the parking of bicycles for each such dwelling clear of the public highway and such space shall not thereafter be used other than for the purposes for which it is provided.⁹⁹
 13. No development within any sub-phase shall take place unless and until details of the layout and specifications of, and construction programmes for, the roads (including visibility splays), footpaths, cycleways and casual parking areas in that sub-phase have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until it is provided with access constructed in accordance with such approved details to the established highway network.¹⁰⁰
 14. Except as approved as part of this permission (including development traffic and access to the sub-phase identified as 4C on the approved Masterplan) means of vehicular access to the development site shall not be otherwise than from the new estate roads leading to the Haywards Heath Relief Road. No means of vehicular access shall be created to Bolnore Road, Duncton Close, Climping Close or Wealden Way (including via Phase 5) otherwise than pursuant to condition 11.¹⁰¹
 15. This permission does not include the levels, gradients, means of construction or visibility splays of the bridleway crossings to Parkfield Way and Renfields unless previously approved and implemented pursuant to application ref. HH/06/0246/FUL. No work on these access roads shall be commenced until details of these matters have been submitted to and

⁹⁶ In the interests of road safety and to accord with Policy T5 of the Mid Sussex Local Plan and Policy DEV4 of the adopted West Sussex Structure Plan 2001-2016.

⁹⁷ In the interests of road safety and to accord with Policy T5 of the Mid Sussex Local Plan and Policy DEV4 of the adopted West Sussex Structure Plan 2001-2016.

⁹⁸ To ensure that unauthorised vehicles do not have access to Bolnore Road via the bus-only link as it would be prejudicial to highway safety and residential amenity, contrary to Policies B3, T4 and HH2 of the Mid Sussex Local Plan.

⁹⁹ To enable adequate provision for a facility which is likely to reduce the amount of vehicular traffic on existing roads and to accord with Policies T4 and T6 of the Mid Sussex Local Plan and Policy DEV4 of the adopted West Sussex Structure Plan 2001-2016.

¹⁰⁰ To secure satisfactory standards of access for the proposed development and to accord with Policy T4 of the Mid Sussex Local Plan and Policy DEV4 of the adopted West Sussex Structure Plan 2001-2016.

¹⁰¹ In the interests of road safety and of residential amenity pursuant to Policies B3, T4 and HH2 of the Mid Sussex Local Plan.

approved in writing by the local planning authority and the development shall not be carried out otherwise than in accordance with such details.¹⁰²

16. No dwelling shall be occupied until details of the off-site highway works shown on the drawings pursuant to application ref. HH/04/02965/FUL have been submitted to and approved in writing by the local planning authority and thereafter fully implemented.¹⁰³

Landscaping

17. No development of any sub-phase shall take place unless and until there has been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.¹⁰⁴

18. Hard and soft landscape works shall be carried out in accordance with the approved details. The works within each sub-phase shall be carried out prior to the occupation of any part of that sub-phase or in accordance with a programme agreed in writing by the local planning authority. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation.¹⁰⁵

19. A Landscape Management Plan, including ecological supervision and long-term design objectives, management responsibilities, arboricultural supervision and maintenance schedules for all landscape and open areas, other than small, privately-owned domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of any sub-phase of the development. The Landscape Management Plan shall be carried out as approved.¹⁰⁶

Hedge/tree protection

20. The burning of materials obtained by site clearance or from any other source shall not take place within the areas identified as buffer zones or within 10 metres of the furthest extent of the canopy of any tree or group of trees to be retained on the site or on land adjoining.¹⁰⁷

¹⁰² To protect matters of ecological or archaeological interest, contrary to Policies C5 and B18 of the Mid Sussex Local Plan.

¹⁰³ To mitigate traffic impact on the highway network, ensure satisfactory standards of access for the development and to accord with Policy T4 of the Mid Sussex Local Plan and DEV4 of the West Sussex Structure Plan 2001-2016.

¹⁰⁴ In the interests of visual amenity and of the environment of the development and to accord with Policy B1 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹⁰⁵ In the interests of visual amenity and of the environment of the development and to accord with Policy B1 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹⁰⁶ To ensure the retention of areas important for the amenity, townscape and ecology of the area, pursuant to Mid Sussex Local Plan Policies B1, B7 and C5.

¹⁰⁷ To protect habitat, trees and vegetation from fire damage and to accord with Policy B7 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

21. No trenches or pipe runs for services and drains required to service the development hereby approved shall be cut or laid otherwise than in accordance with BS 5837:2005, except with the prior written approval of the local planning authority.¹⁰⁸
22. No development shall take place on the site unless and until all existing trees, shrubs, hedges and buffer zones to be retained within and abutting each phase have been protected by a fence to be approved in writing by the local planning authority; this shall be installed around each tree or group of vegetation in accordance with BS5837:2005, or in accordance with the scheme for the protection of buffers adjacent to ancient woodland, as appropriate, or such distance as may otherwise be agreed in writing by the local planning authority. Within the areas so fenced off, and except as may be required by the approved Landscape and/or Ecological Management Plan, the existing ground levels shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored thereon without the prior written approval of the local planning authority. If any trenches or services are required in the fenced-off areas they shall be excavated and backfilled by hand.¹⁰⁹

Materials

23. No development shall be carried out in each sub-phase unless and until a schedule of materials and finishes to be used for external walls and roofs of the proposed dwellings within each sub-phase has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.¹¹⁰

Regulation following development

24. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no gate, fence, wall or other means of enclosure exceeding 1 metre in height above ground level shall be erected, or constructed in front of the forwardmost part of any building which fronts an open space, highway, footpath or cycleway unless planning permission is specifically granted by the local planning authority on an application in that regard.¹¹¹

Controls during construction

25. No work for the implementation of the development hereby permitted shall be undertaken on the site on Public Holidays. Work shall not be undertaken at any other time except between

¹⁰⁸ To protect ecologically sensitive areas and tree roots from damage likely to lead to the loss of trees and to accord with Policy B7 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹⁰⁹ To ensure the retention and maintenance of trees and vegetation which are important features of the area and to accord with Policies B1 and B7 of the Mid Sussex Local Plan and Policy DEV1 of the West Sussex Structure Plan 2001-2016.

¹¹⁰ To provide control over the development in the interests of amenity by endeavouring to achieve buildings of visual quality and to accord with Policy B1 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹¹¹ In order to safeguard the character and visual amenity of the locality, pursuant to Policy B1 of the Mid Sussex Local Plan.

the hours of 08.00 and 18.00 on Mondays to Fridays and between 08.00 and 13.00 on Saturdays, unless otherwise agreed in writing by the local planning authority.¹¹²

26. Except as already provided for in condition 25 the implementation of the development hereby permitted shall be undertaken in accordance with the following:

Access to the site for HGVs over 7.5 tonnes will be limited to between 09.15 and 15.30, Mondays to Fridays;

Access to the site for heavy plant over 7.5 tonnes will be limited to between 11.00 and 15.00, Mondays to Fridays; and

Access to the site for articulated vehicles (other than heavy plant) will be limited to between 09.15 and 15.30, Mondays to Fridays.¹¹³

27. No work shall be carried out on the site unless and until an effective wheel-cleaning facility has been installed in accordance with details to be submitted to and approved in writing by the local planning authority and such facility shall be retained in working order and, unless otherwise agreed in writing by the local planning authority, operated throughout the period of work on the site.¹¹⁴

28. No work shall be carried out on the site unless there is available within the site, in accordance with details approved in writing by the local planning authority, provision for the temporary parking of vehicles and the loading and unloading of vehicles associated with the building or other operations on the site throughout the period of work required to implement the development hereby permitted.¹¹⁵

29. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Construction Management Plan shall incorporate matters set out within the Statement of Common Ground relating to a Construction Management Plan, dated 27 April 2006. Development shall be carried out in accordance with the approved plan.¹¹⁶

Construction Access

30. Except as set out in Condition 31 vehicles used in the construction of the development, including vehicles of persons employed, shall not enter the site otherwise than from Bolnore Road and shall not exit otherwise than through Parkfield Way.¹¹⁷

31. Two-way access shall be permitted along Parkfield Way to Phase 4A but not to Phase 4B and along Bolnore Road to Phase 4B but not to 4A solely for the purpose of constructing the

¹¹² To safeguard the amenity of nearby residents and to accord with Policy B3 of the Mid Sussex Local Plan.

¹¹³ To safeguard the amenity of nearby residents and in the interests of highway and pedestrian safety, in particular to minimise conflict with pedestrians during school travel hours.

¹¹⁴ To ensure that vehicles do not leave the site carrying materials on their wheels in a quantity which would cause a nuisance or hazard on the road system in the locality and to accord with Policy T4 of the Mid Sussex Local Plan and Policy DEV4 of the adopted West Sussex Structure Plan 2001-2016.

¹¹⁵ In the interests of road safety and to accord with Policy T4 of the Mid Sussex Local Plan and Policy DEV4 of the West Sussex Structure Plan 2001-2016.

¹¹⁶ In the interests of highway safety and residential amenity.

¹¹⁷ To provide a safe access to the site and minimise the impact on adjacent residents pursuant to Policies T4 and B3 of the Mid Sussex Local Plan.

spine road between Bolnore Road and Parkfield Way, up to base level, and for no other purpose. The timing of the works and two-way working shall be in accordance with a programme to be submitted to and approved in writing by the local planning authority.¹¹⁸

Additional Details

32. The development hereby permitted shall not commence until details of the proposed surface and foul drainage and means of disposal, including, where relevant, off-site drainage improvements, have been submitted to and approved in writing by the local planning authority and no building shall be occupied until all drainage works have been carried out in accordance with such details.¹¹⁹
33. No development within any sub-phase shall take place until details of existing and proposed site levels have been submitted to and approved in writing by the local planning authority. Development shall not be implemented otherwise than in accordance with such details.¹²⁰

Archaeology

34. During permitted hours of site working, with the agreement of the site manager, the developer shall afford access to a qualified field archaeologist, who has been agreed in writing by the developer and by the local planning authority, and shall allow the archaeologist to observe the excavations and record archaeological evidence that may be uncovered as a result of the development.¹²¹
35. No development shall take place within any sub-phase until there has been secured by the applicant/developer the implementation of a programme of archaeological evaluation/recording within that sub-phase in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the local planning authority.¹²²

Bridleway

36. No dwelling shall be occupied until the works to upgrade the bridleway, approved under planning permission Ref. HH/06/0246/FUL, (or alternative such planning permission as may be approved), have been completed and these shall include the cross-over works in connection with the upgrade.¹²³

¹¹⁸ To provide a safe access to the site and minimise the impact on adjacent residents pursuant to Policies T4 and B3 of the Mid Sussex Local Plan.

¹¹⁹ To ensure that the proposed development is satisfactorily drained and to accord with Policies CS12 and CS13 of the Mid Sussex Local Plan.

¹²⁰ For the avoidance of doubt and to ensure that the development does not prejudice the amenities of adjacent residents or the appearance of the locality and to accord with Policies B1 and B3 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹²¹ The site is potentially of archaeological interest and to accord with Policy CH11 of the West Sussex Structure Plan 2001-2016.

¹²² The site is potentially of archaeological interest and to accord with Policy CH11 of the adopted West Sussex Structure Plan 2001-2016.

¹²³ To ensure that residents have a safe and sustainable access to and from Bolnore Village, pursuant to Policies T4 and HH2 of the Mid Sussex Local Plan.

Housing

37. Notwithstanding the approved Masterplan, prior to the commencement of each sub-phase (other than within sub-phase 4C) the location of the affordable housing units shall be submitted to and approved in writing by the local planning authority and the location shall not be altered without the prior written approval of the local planning authority.¹²⁴

Ecology

38. Prior to the commencement of construction within each sub-phase an Ecological Management Plan shall be submitted to and approved in writing by the local planning authority and shall include detailed specifications and management regimes as appropriate for the following:
- a) Woodland buffering, including the orientation of dwellings proposed to adjoin the woodland buffer zones
 - b) Acid grassland
 - c) Nature conservation and ecological mitigation including details of habitat and soils translocation (to include details of monitoring of outcomes over time) and enhancement where necessary
 - d) Protected species and their habitats (including proposals for licensing applications where necessary)
 - e) Appointment of an ecological clerk of works to monitor construction activities that may impact on the above.

Development shall be carried out in accordance with the approved plan.¹²⁵

Pinch-point crossing

39. No development shall take place until detailed proposals for the design, construction and management of the Pinch-point crossing between Phases 4A and 4B have been submitted to and approved in writing by the local planning authority. These proposals shall incorporate the protection of adjacent trees by use of road construction design, methods and materials (including a porous surface) that will facilitate the passage of wildlife beneath the road surface; location of sub-surface services to avoid root damage; and proposals to secure continuous ecological linkage from Reading Wood to North Meadow uninterrupted by side fencing or other obstructions. Development shall be carried out in accordance with the approved details.¹²⁶

¹²⁴ To ensure an appropriate distribution of dwellings through the site, pursuant to Policy H4 of the Mid Sussex Local Plan.

¹²⁵ To protect and enhance ecologically sensitive habitats and species during and after construction and to accord with Policies B1, B7, C5 and HH2 of the Mid Sussex Local Plan and Policies DEV1 and ERA2 of the West Sussex Structure Plan 2001-2016.

¹²⁶ To ensure the retention and maintenance of trees and vegetation which are an important feature of the area, to allow the free passage of wildlife and to accord with Policies B1, B7, C5 and C6 of the Mid Sussex Local Plan and Policies DEV1 and ERA2 of the West Sussex Structure Plan 2001-2016.

APPEAL B Full application for Phase 4 (HH/04/02964) (APP/D3830/A/05/1195897)

Time Limit/Exercising the permission

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.¹²⁷
2. The permission hereby granted relates to the following schedule of plans/drawings and documents:

1079/015/B
1451/020/J(BS)
24256/P/107B
4256/P/111D
24256/1002B
24256/1003B
24256/SK10
24256/SK11
24256/SK12

Environmental Statement, dated September 2004.

The above plans, drawings and documents are hereinafter referred to as 'The Approved Drawings'. The development hereby permitted shall be constructed in accordance with The Approved Drawings or as may be varied by the prior written approval of the local planning authority.¹²⁸

Access

3. Except as approved as part of this permission (and such exception shall include development traffic and access to the phase identified as Cell 4C on the approved Masterplan pursuant to application ref. H H/04/02676/OUT) means of vehicular access to the development site shall not be otherwise than from the new estate roads leading to the Haywards Heath Relief Road. No other vehicular access shall be created to Bolnore Road, Duncton Close, Climping Close or Wealden Way (including via Phase 5) otherwise than as approved pursuant to Condition 16.¹²⁹
4. No development within any sub-phase shall take place unless and until details of the layout and specifications of, and construction programmes for, the roads (including visibility splays), footpaths, cycleways and casual parking areas in that sub-phase have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until it is provided with access constructed in accordance with such approved details to the established highway network.¹³⁰

¹²⁷ To comply with Section 91 of the Town and Country Planning Act 1990.

¹²⁸ For the avoidance of doubt.

¹²⁹ In the interests of highway safety and of residential amenity pursuant to Policies B3, T4 and HH2 of the Mid Sussex Local Plan.

¹³⁰ To secure satisfactory standards of access for the proposed development and to accord with Policy T4 of the Mid Sussex Local Plan and Policy DEV4 of the adopted West Sussex Structure Plan 2001-2016.

5. This permission does not include the levels, gradients, means of construction or visibility splays of the bridleway crossings to Parkfield Way and Renfields unless previously approved and implemented pursuant to application ref. HH/06/00246/FUL. No work on these access roads shall be commenced until details of these matters have been submitted to and approved in writing by the local planning authority and the development shall not be carried out other than in accordance with such details.¹³¹

Landscaping

6. The burning of materials obtained by site clearance or from any other source shall not take place within the areas identified as buffer zones or within 10 metres of the furthest extent of the canopy of any tree or group of trees to be retained on the site or on land adjoining.¹³²
7. No trenches or pipe runs for services and drains required to service the development hereby approved shall be cut or laid otherwise than in accordance with BS 5837:2005, except by prior written approval of the local planning authority.¹³³
8. No development shall take place on the site unless and until all the existing trees, shrubs, hedges and buffer zones to be retained within and abutting the site have been protected by a fence to be approved in writing by the local planning authority; this shall be installed around each tree or group of vegetation in accordance with BS 5837:2005 or such distance as may be agreed in writing by the local planning authority. Within the areas so fenced off, and except as may be required by a Landscape and/or Ecological Management Plan, which shall have been approved in writing by the local planning authority prior to the commencement of any development on the site, the existing ground levels shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored thereon without the prior written approval of the local planning authority. If any trenches for services are required in the fenced-off areas they shall be excavated and backfilled by hand.¹³⁴

Controls during construction

9. No work for the implementation of the development hereby permitted shall be undertaken on the site on Public Holidays or at any other time except between the hours of 08.00 and 18.00 on Mondays to Fridays and between 08.00 and 13.00 on Saturdays, unless otherwise agreed in writing by the local planning authority.¹³⁵

¹³¹ The details currently shown would have an adverse impact on items of ecological or archaeological interest, contrary to Policies C5 and B18 of the Mid Sussex Local Plan.

¹³² To protect habitat, trees and vegetation from fire damage and to accord with Policy B7 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹³³ To protect ecologically sensitive areas and tree roots from damage likely to lead to the loss of the tree and to accord with Policy B7 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹³⁴ To ensure retention and maintenance of trees and vegetation which are an important feature of the area and to accord with Policies B1 and B7 of the Mid Sussex Local Plan and Policy DEV1 of the West Sussex Structure Plan 2001-2016.

¹³⁵ To safeguard the amenity of nearby residents and to accord with Policy B3 of the Mid Sussex Local Plan.

10. No work shall be carried out on the site unless and until an effective wheel-cleaning facility has been installed in accordance with details to be submitted to and approved in writing by the local planning authority and such facility shall be retained in working order and, unless otherwise agreed in writing by the local planning authority, operated throughout the period of work on the site.¹³⁶
11. No work shall be carried out on the site unless there is available within the site, in accordance with details approved in writing by the local planning authority, provision for the temporary parking of vehicles and the loading and unloading of vehicles associated with the building or other operations on the site throughout the period of work required to implement the development hereby permitted.¹³⁷
12. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Construction Management Plan shall incorporate matters set out within the Statement of Common Ground relating to a Construction Management Plan, dated 27 April 2006. Development shall be carried out in accordance with the approved plan.¹³⁸

Construction Access

13. Except as set out in Condition 14 vehicles used in the construction of the development, including vehicles of persons employed, shall not enter the site otherwise than from Bolnore Road and shall not exit otherwise than through Parkfield Way.¹³⁹
14. Two-way access shall be permitted along Parkfield Way to Phase 4A but not to Phase 4B and along Bolnore Road to Phase 4B but not to 4A solely for the purpose of constructing the spine road between Bolnore Road and Parkfield Way, up to base level, and for no other purpose. The timing of the works and two-way working shall be in accordance with a programme to be submitted to and approved in writing by the local planning authority.¹⁴⁰
15. Except as already provided for in Condition 9 the implementation of the development hereby permitted shall be undertaken in accordance with the following:

Access to the site for HGVs over 7.5 tonnes will be limited to between 09.15 and 15.30, Mondays to Fridays;

Access to the site for heavy plant over 7.5 tonnes will be limited to between 11.00 and 15.00, Mondays to Fridays; and

¹³⁶ To ensure that vehicles do not leave the site carrying materials on their wheels in a quantity which would cause a nuisance or hazard on the road system in the locality and to accord with Policy T4 of the Mid Sussex Local Plan and Policy DEV4 of the adopted West Sussex Structure Plan 2001-2016.

¹³⁷ In the interests of road safety and to accord with Policy T4 of the Mid Sussex Local Plan and Policy DEV4 of the West Sussex Structure Plan 2001-2016.

¹³⁸ In the interests of highway safety and residential amenity.

¹³⁹ To provide a safe access to the site and minimise the impact on adjacent residents pursuant to Policies T4 and B3 of the Mid Sussex Local Plan.

¹⁴⁰ To provide a safe access to the site and minimise the impact on adjacent residents pursuant to Policies T4 and B3 of the Mid Sussex Local Plan.

Access to the site for articulated vehicles (other than heavy plant) will be limited to between 09.15 and 15.30, Mondays to Fridays.¹⁴¹

16. No dwelling construction shall commence until details of the bus-only link and emergency vehicle access control mechanisms have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until such mechanisms are in place or alternative temporary controls are in place in accordance with details to be submitted to and approved in writing by the local planning authority.¹⁴²

Additional Details

17. No development within any sub-phase shall take place until details of existing and proposed site levels have been submitted to and approved in writing by the local planning authority. Development shall not be implemented otherwise than in accordance with such details.¹⁴³
18. The development hereby permitted shall not commence until details of the proposed surface and foul drainage and means of disposal, including, where relevant, off-site drainage improvements, have been submitted to and approved in writing by the local planning authority and no dwelling shall be occupied until all drainage works have been carried out in accordance with such details.¹⁴⁴

Archaeology

19. During permitted hours of site working, with the agreement of the site manager, the developer shall afford access to a qualified field archaeologist, who has been agreed in writing by the developer and by the local planning authority, and shall allow the archaeologist to observe the excavations and record archaeological evidence that may be uncovered as a result of the development.¹⁴⁵
20. No development shall take place within any sub-phase until there has been secured by the applicant/developer the implementation of a programme of archaeological evaluation/recording within that sub-phase in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the local planning authority.¹⁴⁶

¹⁴¹ To safeguard the amenity of nearby residents and in the interests of highway and pedestrian safety, in particular to minimise conflict with pedestrians during school travel hours.

¹⁴² To ensure that unauthorised vehicles do not have access to Bolnore Road via the bus-only link as it would be prejudicial to highway safety and residential amenity, contrary to Policies B3, T4 and HH2 of the Mid Sussex Local Plan.

¹⁴³ For the avoidance of doubt and to ensure that the development does not prejudice the amenity of adjacent residents or the appearance of the locality and to accord with Policies B1 and B3 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹⁴⁴ To ensure that the proposed development is satisfactorily drained and to accord with Policies CS12 and CS13 of the Mid Sussex Local Plan.

¹⁴⁵ The site is potentially of archaeological interest and to accord with Policy CH11 of the West Sussex Structure Plan 2001-2016.

¹⁴⁶ The site is potentially of archaeological interest and to accord with Policy CH11 of the adopted West Sussex Structure Plan 2001-2016.

Ecology

21. Prior to the commencement of works the subject of this permission an Ecological Management Plan shall be submitted to and approved in writing by the local planning authority and shall include detailed specifications and management regimes as appropriate for the following:

- a) Woodland buffering, including the orientation of dwellings proposed to adjoin the woodland buffer zones
- b) Acid grassland
- c) Nature conservation, ecological mitigation including details of habitat and soils translocation (to include details of monitoring of outcomes over time) and enhancement where necessary
- d) Protected species and their habitats (including proposals for licensing applications where necessary)
- e) Appointment of an ecological clerk of works to monitor construction activities that may impact on the above.

Development shall be carried out in accordance with the approved plan.¹⁴⁷

Pinch-point crossing

22. No development shall take place until detailed proposals for the design, construction and management of the Pinch-point crossing between Phases 4A and 4B have been submitted to and approved in writing by the local planning authority. These proposals shall incorporate the protection of adjacent trees by use of road construction design, methods and materials (including a porous surface) that will facilitate the passage of wildlife beneath the road surface; location of sub-surface services to avoid root damage; and proposals to secure continuous ecological linkage from Reading Wood to North Meadow uninterrupted by side fencing or other obstructions. Development shall be carried out in accordance with the approved details.¹⁴⁸

¹⁴⁷ To protect and enhance ecologically sensitive habitats and species during and after construction and to accord with Policies B1, B7, C5 and HH2 of the Mid Sussex Local Plan and Policies DEV1 and ERA2 of the West Sussex Structure Plan 2001-2016.

¹⁴⁸ To ensure the retention and maintenance of trees and vegetation which are important features of the area, to allow the free passage of wildlife and to accord with Policies B1, B7, C5 and C6 of the Mid Sussex Local Plan and Policies DEV1 and ERA2 of the West Sussex Structure Plan 2001-2016.

**APPEAL C, Outline application for Phases 4 & 5 (HH/04/02681/OUT
(APP/D3830/A/06/1198282)**

Time Limit/Exercising the permission

1. Approval of the details of the siting, design and external appearance of the buildings, landscaping, and the means of access thereto (excluding points of entry to the site and route of the spine road) of sub-phase areas (hereinafter referred to as the 'sub-phase' or 'sub-phases' as the case may be) and as each shown on the approved Masterplan (hereinafter called 'the reserved matters') shall be obtained from the local planning authority in writing prior to the commencement of development within each of the sub-phases. A 'sub-phase' is defined as part of the development hereby permitted on any part of Phases 4 and 5 comprising a number of dwellings and associated development such as roads and other infrastructure to be completed and proposed to be released for occupation as a discrete parcel. For the purposes of this condition the sub-phase areas are Nos. 4A1-4A9, 4B1-4B4, 4C, 5A1, 5A2 and 5A3.

Application for the approval of the reserved matters shall be made to the local planning authority before the expiration of five years from the date of this permission.

The development hereby permitted shall be begun not later than the expiration of two years from the date of approval of the last of the reserved matters to be approved.¹⁴⁹

2. The permission hereby granted relates to the following schedule of plans/drawings:

1:2500 Site Location Plan (1079/016/B)
Masterplan 1451/050/C(BS)
Environmental Statement, dated September 2004¹⁵⁰

3. The development hereby permitted shall be constructed and laid out in broad accordance with the mix and disposition of uses shown on the Masterplan 1451/050/C(BS) or as may be varied by condition attached to this permission.¹⁵¹
4. The development shall not be carried out otherwise than in accordance with the reserved matters approved pursuant to condition 1.¹⁵²

Play Areas

5. The layout of each sub-phase of the development shall incorporate provision for play space and play equipment in accordance with details to be approved in writing by the local planning authority and the sites provided for such facilities shall not thereafter be used for

¹⁴⁹ To enable the local planning authority to control the development in detail and to comply with S92 of the Town and Country Planning Act 1990.

¹⁵⁰ For the avoidance of doubt.

¹⁵¹ To ensure a satisfactory form of development and compliance with Mid Sussex Local Plan Policy HH2.

¹⁵² To ensure a satisfactory standard of development in accordance with Mid Sussex Local Plan policies, particularly Policy HH2.

- any other purpose. Within each sub-phase, no more than 50% of the dwellings therein shall be occupied until the provision for that sub-phase has been completed, provided that 50% of any dwellings within 25 metres of the play area have been constructed and are ready for occupation.¹⁵³
6. Before the release for sale to prospective purchasers of the first dwelling in each sub-phase, signs shall be erected on the site of all proposed play areas indicating the intention to provide play areas on those sites. The details of such signage shall be submitted to and approved in writing by the local planning authority and maintained in accordance with such approved details until the play areas are provided.¹⁵⁴
 7. The areas of land identified as open space, woodland and buffer zones on the approved Masterplan and as may be varied by reserved matters approvals shall remain undeveloped and shall be laid out as amenity land in association with the remainder of the land the subject of this permission, such amenity land to be laid out and landscaped in accordance with conditions Nos. 1 and 19. The land shall not be included in any residential curtilage. These areas shall be maintained in accordance with a Landscape Management Plan and an Ecological Management Plan which shall have been submitted to and approved in writing by the local planning authority prior to commencement of development of any sub-phase.¹⁵⁵

Fencing/Screen walling

8. No development shall take place in each sub-phase until details of proposed screen walls/fences and/or hedges have been submitted to and approved in writing by the local planning authority and no dwellings shall be occupied until such screen walls/fences or hedges associated with them have been erected or planted.¹⁵⁶

Highways and parking

9. No dwelling within any sub-phase shall be occupied until details of the space to be laid out for parking and stationing of vehicles clear of the public carriageway, within that sub-phase, have been approved in writing by the local planning authority. No dwelling within each sub-phase shall be occupied until the parking space relating to that dwelling has been surfaced, drained and completed. The space so provided shall not thereafter be used other than for the parking of vehicles in connection with the development hereby permitted.¹⁵⁷
10. Detailed plans referred to in condition 1 of this permission shall provide for car parking at an average maximum of 1.5 off-street car parking spaces per dwelling.¹⁵⁸

¹⁵³ To secure an adequate standard of environment for the occupiers and to ensure adequate play space pursuant to Policy R3 of the Mid Sussex Local Plan and in the interest of the health and safety of occupants.

¹⁵⁴ To ensure that prospective purchasers are aware of proposals for the provision of play areas and to accord with Policy R3 of the Mid Sussex Local Plan.

¹⁵⁵ To secure an adequate standard of environment and to accord with Mid Sussex Local Plan Policies HH2, B1, B2, B7 and C5.

¹⁵⁶ In order to protect the appearance of the area and to protect the amenities of adjacent residents, pursuant to Local Plan Policies B1 and B3.

¹⁵⁷ In the interests of road safety and to accord with Policy T5 of the Mid Sussex Local Plan and Policy DEV4 of the adopted West Sussex Structure Plan 2001-2016.

¹⁵⁸ In the interests of road safety and to accord with Policy T5 of the Mid Sussex Local Plan and Policy DEV4 of the adopted West Sussex Structure Plan 2001-2016.

11. No dwelling construction shall commence until details of the bus-only link and emergency vehicle access control mechanisms have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until such mechanisms are in place or alternative temporary controls are in place in accordance with details to be submitted to and approved in writing by the local planning authority.¹⁵⁹
12. Each individual dwelling shall not be occupied until provision has been made within the site, in accordance with details to be submitted to and approved in writing by the local planning authority, for the parking of bicycles for each such dwelling clear of the public highway and such space shall not thereafter be used other than for the purposes for which it is provided.¹⁶⁰
13. No development within any sub-phase shall take place unless and until details of the layout and specifications of and construction programmes for the roads (including visibility splays), footpaths, cycleways and casual parking areas in that sub-phase, have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until it is provided with access constructed in accordance with such approved details to the established highway network.¹⁶¹
14. Except as approved as part of this permission (including development traffic and access to the sub-phase identified as 4C on the approved Masterplan) means of vehicular access to the development site shall not be otherwise than from the new estate roads leading to the Haywards Heath Relief Road. No means of vehicular access shall be created to Bolnore Road, Duncton Close, Climping Close or Wealden Way otherwise than pursuant to condition 11.¹⁶²
15. This permission does not include the levels, gradients, means of construction or visibility splays of the bridleway crossings unless previously approved and implemented pursuant to application ref. HH/06/0246/FUL to Parkfield Way and Renfields. No work on these access roads shall be commenced until details of these matters have been submitted to and approved in writing by the local planning authority and the development shall not be carried out otherwise than in accordance with such details.¹⁶³
16. No dwelling shall be occupied until details of the off-site highway works shown on the drawings pursuant to application ref. HH/04/02965/FUL have been submitted to and approved in writing by the local planning authority and thereafter fully implemented.¹⁶⁴

¹⁵⁹ To ensure that unauthorised vehicles do not have access to Bolnore Road via the bus-only link as it would be prejudicial to highway safety and residential amenity, contrary to Policies B3, T4 and HH2 of the Mid Sussex Local Plan.

¹⁶⁰ To enable adequate provision for a facility which is likely to reduce the amount of vehicular traffic on existing roads and to accord with Policies T4 and T6 of the Mid Sussex Local Plan and Policy DEV4 of the adopted West Sussex Structure Plan 2001-2016.

¹⁶¹ To secure satisfactory standards of access for the proposed development and to accord with Policy T4 of the Mid Sussex Local Plan and Policy DEV4 of the adopted West Sussex Structure Plan 2001-2016.

¹⁶² In the interests of road safety and of residential amenity pursuant to Policies B3, T4 and HH2 of the Mid Sussex Local Plan.

¹⁶³ To protect matters of ecological or archaeological interest, contrary to Policies C5 and B18 of the Mid Sussex Local Plan.

¹⁶⁴ To mitigate traffic impact on the highway network, ensure satisfactory standards of access for the development and to accord with Policy T4 of the Mid Sussex Local Plan and DEV4 of the West Sussex Structure Plan 2001-2016.

Landscaping

17. No development of any sub-phase shall take place unless and until there has been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.¹⁶⁵
18. Hard and soft landscape works shall be carried out in accordance with the approved details. The works within each sub-phase shall be carried out prior to the occupation of any part of that sub-phase or in accordance with a programme agreed in writing by the local planning authority. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation.¹⁶⁶
19. A Landscape Management Plan, including ecological supervision and long-term design objectives, management responsibilities, arboricultural supervision and maintenance schedules for all landscape and open areas, other than small, privately-owned domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development or any sub-phase of the development, whichever is the sooner. The Landscape Management Plan shall be carried out as approved.¹⁶⁷

Hedge/Tree protection

20. The burning of materials obtained by site clearance or from any other source shall not take place within the areas identified as buffer zones or within 10 metres of the furthest extent of the canopy of any tree or group of trees to be retained on the site or on land adjoining.¹⁶⁸
21. No trenches or pipe runs for services and drains required to service the development hereby approved shall be cut or laid otherwise than in accordance with BS 5837:2005, except with the prior written approval of the local planning authority.¹⁶⁹
22. No development shall take place on the site unless and until all existing trees, shrubs, hedges and buffer zones to be retained within and abutting each phase have been protected by a fence to be approved in writing by the local planning authority; this shall be installed around each tree or group of vegetation in accordance with BS5837:2005, in accordance with the scheme for the protection of buffers adjacent to ancient woodland or group fencing for buffers or such distance as may be agreed in writing by the local planning authority. Within the areas so fenced off, and except as may be required by the approved Landscape and/or

¹⁶⁵ In the interests of visual amenity and of the environment of the development and to accord with Policy B1 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹⁶⁶ In the interests of visual amenity and of the environment of the development and to accord with Policy B1 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹⁶⁷ To ensure the retention of areas important for the amenity, townscape and ecology of the area, pursuant to Mid Sussex Local Plan Policies B1, B7 and C5.

¹⁶⁸ To protect habitat, trees and vegetation from fire damage and to accord with Policy B7 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹⁶⁹ To protect ecologically sensitive areas and tree roots from damage likely to lead to the loss of the tree and to accord with Policy B7 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

Ecological Management Plan, the existing ground levels shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored thereon without the prior written approval of the local planning authority. If any trenches or services are required in the fenced-off areas they shall be excavated and backfilled by hand.¹⁷⁰

Materials

23. No development shall be carried out in each sub-phase unless and until a schedule of materials and finishes to be used for external walls and roofs of the proposed dwellings within each sub-phase has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.¹⁷¹

Regulation following development

24. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no gate, fence, wall or other means of enclosure exceeding 1 metre in height above ground level shall be erected, or constructed in front of the forward most part of any building which fronts an open space, highway, footpath or cycleway unless planning permission is specifically granted by the local planning authority on an application in that regard.¹⁷²
25. No work for the implementation of the development hereby permitted shall be undertaken on the site on Public Holidays. Work shall not be undertaken at any other time except between the hours of 08.00 and 18.00 on Mondays to Fridays and between 08.00 and 13.00 on Saturdays, unless otherwise agreed in writing by the local planning authority.¹⁷³
26. Except as already provided for in condition 25 the implementation of the development hereby permitted shall be undertaken in accordance with the following:

Access to the site for HGVs over 7.5 tonnes will be limited to between 09.15 and 15.30, Mondays to Fridays;

Access to the site for heavy plant over 7.5 tonnes will be limited to between 11.00 and 15.00, Mondays to Fridays; and

Access to the site for articulated vehicles (other than heavy plant) will be limited to between 09.15 and 15.30, Mondays to Fridays.¹⁷⁴

¹⁷⁰ To ensure the retention and maintenance of trees and vegetation which are important features of the area and to accord with Policies B1 and B7 of the Mid Sussex Local Plan and Policy DEV1 of the West Sussex Structure Plan 2001-2016.

¹⁷¹ To provide control over the development in the interests of amenity by endeavouring to achieve buildings of visual quality and to accord with Policy B1 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹⁷² In order to safeguard the character and visual amenity of the locality, pursuant to Policy B1 of the Mid Sussex Local Plan.

¹⁷³ To safeguard the amenity of nearby residents and to accord with Policy B3 of the Mid Sussex Local Plan.

¹⁷⁴ To safeguard the amenity of nearby residents and in the interests of highway and pedestrian safety.

27. No work shall be carried out on the site unless and until an effective wheel-cleaning facility has been installed in accordance with details to be submitted to and approved in writing by the local planning authority and such facility shall be retained in working order and, unless otherwise agreed in writing by the local planning authority, operated throughout the period of work on the site.¹⁷⁵
28. No work shall be carried out on the site unless there is available within the site, in accordance with details approved in writing by the local planning authority, provision for the temporary parking of vehicles and the loading and unloading of vehicles associated with the building or other operations on the site throughout the period of work required to implement the development hereby permitted.¹⁷⁶
29. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Construction Management Plan shall incorporate matters set out within the Statement of Common Ground relating to a Construction Management Plan, dated 27 April 2006. Development shall be carried out in accordance with the approved plan.¹⁷⁷

Construction Access

30. Except as set out in Condition 31 vehicles used in the construction of the development, including vehicles of persons employed, shall not enter the site otherwise than from Bolnore Road and shall not exit otherwise than through Parkfield Way.¹⁷⁸
31. Two-way access shall be permitted along Parkfield Way to Phase 4A but not to Phase 4B and along Bolnore Road to Phase 4B but not to 4A solely for the purpose of constructing the spine road between Bolnore Road and Parkfield Way, up to base level, and for no other purpose. The timing of the works and two-way working shall be in accordance with a programme to be submitted to and approved in writing by the local planning authority.¹⁷⁹

Additional Details

32. The development hereby permitted shall not commence until details of the proposed surface and foul drainage and means of disposal, including, where relevant, off-site drainage improvements, have been submitted to and approved in writing by the local planning authority and no building shall be occupied until all drainage works have been carried out in accordance with such details.¹⁸⁰

¹⁷⁵ To ensure that vehicles do not leave the site carrying materials on their wheels in a quantity which would cause a nuisance or hazard on the road system in the locality and to accord with Policy T4 of the Mid Sussex Local Plan and Policy DEV4 of the adopted West Sussex Structure Plan 2001-2016.

¹⁷⁶ In the interests of road safety and to accord with Policy T4 of the Mid Sussex Local Plan and Policy DEV4 of the West Sussex Structure Plan 2001-2016.

¹⁷⁷ In the interests of highway safety and residential amenity.

¹⁷⁸ To provide a safe access to the site and minimise the impact on adjacent residents pursuant to Policies T4 and B3 of the Mid Sussex Local Plan.

¹⁷⁹ To provide a safe access to the site and minimise the impact on adjacent residents pursuant to Policies T4 and B3 of the Mid Sussex Local Plan.

¹⁸⁰ To ensure that the proposed development is satisfactorily drained and to accord with Policies CS12 and CS13 of the Mid Sussex Local Plan.

33. No development within any sub-phase shall take place until details of existing and proposed site levels have been submitted to and approved in writing by the local planning authority. Development shall not be implemented otherwise than in accordance with such details.¹⁸¹
34. Details of the design and construction of the balancing ponds shall be submitted to and approved in writing by the local planning authority prior to work commencing in respect of this part of the development. The development shall not be carried out otherwise than in accordance with such details.¹⁸²

Archaeology

35. During permitted hours of site working, with the agreement of the site manager, the developer shall afford access to a qualified field archaeologist, who has been agreed in writing by the developer and by the local planning authority, and shall allow the archaeologist to observe the excavations and record archaeological evidence that may be uncovered as a result of the development.¹⁸³
36. No development shall take place within any sub-phase until there has been secured by the applicant/developer the implementation of a programme of archaeological evaluation/recording within that sub-phase in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the local planning authority.¹⁸⁴

Bridleway

37. No dwelling shall be occupied until the works to upgrade the bridleway, approved under planning permission Ref. HH/06/0246/FUL, (or alternative such planning permission as may be approved), have been completed and these shall include the cross-over works in connection with the upgrade.¹⁸⁵

Housing

38. Notwithstanding the approved Masterplan, prior to the commencement of each sub-phase (other than within sub-phase 4C) the location of the affordable housing units shall be submitted to and approved in writing by the local planning authority and the location shall not be altered without the prior written approval of the local planning authority.¹⁸⁶

¹⁸¹ For the avoidance of doubt and to ensure that the development does not prejudice the amenities of adjacent residents or the appearance of the locality and to accord with Policies B1 and B3 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹⁸² To ensure that this aspect of the development is compatible with the landscape and ecological value of the site and to accord with Policies C5 and B1 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹⁸³ The site is potentially of archaeological interest and to accord with Policy CH11 of the West Sussex Structure Plan 2001-2016.

¹⁸⁴ The site is potentially of archaeological interest and to accord with Policy CH11 of the adopted West Sussex Structure Plan 2001-2016.

¹⁸⁵ To ensure that residents have a safe and sustainable access to and from Bolnore Village, pursuant to Policies T4 and HH2 of the Mid Sussex Local Plan.

¹⁸⁶ To ensure an appropriate distribution of dwellings through the site, pursuant to Policy H4 of the Mid Sussex Local Plan.

Ecology

39. Prior to the commencement of construction within each sub-phase an Ecological Management Plan shall be submitted to and approved in writing by the local planning authority and shall include detailed specifications and management regimes as appropriate for the following:

- a) Woodland buffering, including the orientation of dwellings proposed to adjoin the woodland buffer zones
- b) Acid grassland
- c) Nature conservation and ecological mitigation including details of habitat and soils translocation (to include details of monitoring of outcomes over time) and enhancement where necessary
- d) Protected species and their habitats (including proposals for licensing applications where necessary)
- e) Appointment of an ecological clerk of works to monitor construction activities that may impact on the above.¹⁸⁷

Development shall be carried out in accordance with the approved plans.

Pinch-point crossing

40. No development shall take place until detailed proposals for the design, construction and management of the Pinch-point crossing between Phases 4A and 4B have been submitted to and approved in writing by the local planning authority. These proposals shall incorporate the protection of adjacent trees by use of road construction design, methods and materials (including a porous surface) that will facilitate the passage of wildlife beneath the road surface; location of sub-surface services to avoid root damage; and proposals to secure continuous ecological linkage from Reading Wood to North Meadow uninterrupted by side fencing or other obstructions. Development shall be carried out in accordance with the approved details.¹⁸⁸

Quarry Hollow

41. Development shall not commence until a plan has been submitted to and approved in writing by the local planning authority that provides details showing that by virtue of layout, design, materials and construction methods, the ecological interest of this area of ancient woodland will be protected and enhanced. Development shall be carried out in accordance with the approved details.¹⁸⁹

¹⁸⁷ To protect and enhance ecologically sensitive habitats and species during and after construction and to accord with Policies B1, B7, C5 and HH2 of the Mid Sussex Local Plan and Policies DEV1 and ERA2 of the West Sussex Structure Plan 2001-2016.

¹⁸⁸ To ensure the retention and maintenance of trees and vegetation which are important features of the area, to allow the free passage of wildlife and to accord with Policies B1, B7, C5 and C6 of the Mid Sussex Local Plan and Policies DEV1 and ERA2 of the West Sussex Structure Plan 2001-2016.

¹⁸⁹ To protect ecologically sensitive habitats and species and to accord with Policies B1, B2, B7, C5 and C6 and HH2 of the Mid Sussex Local Plan and Policies DEV1 and ERA2 of the West Sussex Structure Plan 2001-2016.

**APPEAL D – Phases 4/5 infrastructure application (HH/04/02965/FUL)
(APP/D3830/A/05/1198283)**

Time Limit/Exercising the permission

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of the permission.¹⁹⁰
2. The permission hereby granted relates to the following schedule of plans/drawings:
1079/016/B
1451/050/C(BS)
24256/P/106C
14256/P/111D
24256/1002B
24256/1003B
24256/SK10
24256/SK11
24256/SK12
Environmental Statement, dated September 2004

These plans, drawings and documents are hereinafter referred to as 'the Approved Drawings'. The development hereby permitted shall be constructed in accordance with the Approved Drawings or as may be varied by the prior written approval of the local planning authority.¹⁹¹

Access

3. Except as approved as part of this permission (and such exception shall include development traffic and access to the phase identified as Cell 4C on the approved Masterplan pursuant to application ref. HH/04/02681/OUT), means of vehicular access to the development site shall not be otherwise than from new estate roads leading to the Haywards Heath Relief Road. No other vehicular access shall be created to Bolnore Road, Duncton Close, Climping Close or Wealden Way otherwise than as approved pursuant to Condition 4.¹⁹²
4. No dwelling construction shall commence until details of the bus-only link and emergency vehicle access control mechanisms have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until such mechanisms are in place or alternative temporary controls are in place in accordance with details to be submitted to and approved in writing by the local planning authority.¹⁹³

¹⁹⁰ To comply with Section 91 of the Town and Country Planning Act 1990.

¹⁹¹ For the avoidance of doubt.

¹⁹² In the interests of road safety and of residential amenity pursuant to Policies B3, T4 and HH2 of the Mid Sussex Local Plan.

¹⁹³ To ensure that unauthorised vehicles do not have access to Bolnore Road via the bus-only link as it would be prejudicial to highway safety and residential amenity, contrary to Policies B3, T4 and HH2 of the Mid Sussex Local Plan.

5. This permission does not include the levels, gradients, means of construction or visibility splays of the bridleway crossings to Parkfield Way and Renfields unless previously approved and implemented pursuant to application ref HH/06/00246/FUL. No work on these access roads shall be commenced until details of these matters have been submitted to and approved in writing by the local planning authority and the development shall not be carried out other than in accordance with such details.¹⁹⁴

Landscaping

6. The burning of materials obtained by site clearance or from any other source shall not take place within the areas identified as buffer zones or within 10 metres of the furthest extent of the canopy of any tree or group of trees to be retained on the site or on land adjoining.¹⁹⁵
7. No trenches or pipe runs for services and drains required to service the development hereby approved shall be cut or laid otherwise than in accordance with BS 5837:2005, except by prior written approval of the local planning authority.¹⁹⁶
8. No development shall take place on the site unless and until all the existing trees, shrubs, hedges and buffer zones to be retained within and abutting the site have been protected by a fence to be approved in writing by the local planning authority; this shall be installed around each tree or group of vegetation in accordance with BS 5837:2005 or such distance as may be agreed in writing by the local planning authority. Within the areas so fenced off, and except as may be required by a Landscape and/or Ecological Management Plan, which shall have been approved in writing by the local planning authority prior to the commencement of any development on the site, the existing ground levels shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored thereon without the prior written approval of the local planning authority. If any trenches for services are required in the fenced-off areas they shall be excavated and backfilled by hand.¹⁹⁷

Controls during development

9. No work for the implementation of the development hereby permitted shall be undertaken on the site on Public Holidays. Work shall not be undertaken at any other time except between the hours of 08.00 and 18.00 on Mondays to Fridays and between 08.00 and 13.00 on Saturdays, unless otherwise agreed in writing by the local planning authority.¹⁹⁸

¹⁹⁴ To protect matters of ecological or archaeological interest, contrary to Policies C5 and B18 of the Mid Sussex Local Plan.

¹⁹⁵ To protect habitat, trees and vegetation from fire damage and to accord with Policy B7 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹⁹⁶ To protect ecologically sensitive areas and tree roots from damage likely to lead to the loss of trees and to accord with Policy B7 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

¹⁹⁷ To ensure retention and maintenance of trees and vegetation which are an important feature of the area and to accord with Policies B1 and B7 of the Mid Sussex Local Plan and Policy DEV1 of the West Sussex Structure Plan 2001-2016.

¹⁹⁸ To safeguard the amenity of nearby residents and to accord with Policy B3 of the Mid Sussex Local Plan.

10. No work shall be carried out on the site unless and until an effective wheel-cleaning facility has been installed in accordance with details to be submitted to and approved in writing by the local planning authority and such facility shall be retained in working order and, unless otherwise agreed in writing by the local planning authority, operated throughout the period of work on the site.¹⁹⁹
11. No work shall be carried out on the site unless there is available within the site, in accordance with details approved in writing by the local planning authority, provision for the temporary parking of vehicles and the loading and unloading of vehicles associated with the building or other operations on the site throughout the period of work required to implement the development hereby permitted.²⁰⁰
12. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Construction Management Plan shall incorporate matters set out within the Statement of Common Ground relating to a Construction Management Plan, dated 27 April 2006. Development shall be carried out in accordance with the approved plan.²⁰¹

Construction Access

13. Except as set out in Condition 14 vehicles used in the construction of the development, including vehicles of persons employed, shall not enter the site otherwise than from Bolnore Road and shall not exit otherwise than through Parkfield Way.²⁰²
14. Two-way access shall be permitted along Parkfield Way to Phase 4A but not to Phase 4B and along Bolnore Road to Phase 4B but not to 4A solely for the purpose of constructing the spine road between Bolnore Road and Parkfield Way, up to base level, and for no other purpose. The timing of the works and two-way working shall be in accordance with a programme to be submitted to and approved in writing by the local planning authority.²⁰³
15. Except as already provided for in Condition 9 the implementation of the development hereby permitted shall be undertaken in accordance with the following:

Access to the site for HGVs over 7.5 tonnes will be limited to between 09.15 and 15.30, Mondays to Fridays;

Access to the site for heavy plant over 7.5 tonnes will be limited to between 11.00 and 15.00, Mondays to Fridays; and

¹⁹⁹ To ensure that vehicles do not leave the site carrying materials on their wheels in a quantity which would cause a nuisance or hazard on the road system in the locality and to accord with Policy T4 of the Mid Sussex Local Plan and Policy DEV4 of the adopted West Sussex Structure Plan 2001-2016.

²⁰⁰ In the interests of road safety and to accord with Policy T4 of the Mid Sussex Local Plan and Policy DEV4 of the West Sussex Structure Plan 2001-2016.

²⁰¹ In the interests of highway safety and residential amenity.

²⁰² To provide a safe access to the site and minimise the impact on adjacent residents pursuant to Policies T4 and B3 of the Mid Sussex Local Plan.

²⁰³ To provide a safe access to the site and minimise the impact on adjacent residents pursuant to Policies T4 and B3 of the Mid Sussex Local Plan.

Access to the site for articulated vehicles (other than heavy plant) will be limited to between 09.15 and 15.30, Mondays to Fridays.²⁰⁴

Additional Details

16. No development within any sub-phase shall take place until details of existing and proposed site levels have been submitted to and approved in writing by the local planning authority. Development shall not be implemented otherwise than in accordance with such details.²⁰⁵
17. The development hereby permitted shall not commence until details of the proposed surface and foul drainage and means of disposal, including, where relevant, off-site drainage improvements, have been submitted to and approved in writing by the local planning authority and no dwelling shall be occupied until all drainage works have been carried out in accordance with such details.²⁰⁶

Archaeology

18. During permitted hours of site working, the developer shall afford access to a qualified field archaeologist (who has been agreed by the developer and approved in writing by the local planning authority) by way of prior appointment arranged with the site manager, and shall allow the archaeologist to observe the excavations and record archaeological evidence that may be uncovered as a result of the development.²⁰⁷
19. No development shall take place within any sub-phase until there has been secured by the applicant/developer the implementation of a programme of archaeological evaluation/recording within that sub-phase in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the local planning authority.²⁰⁸

Ecology

20. Prior to the commencement of works the subject of this permission an Ecological Management Plan shall be submitted to and approved in writing by the local planning authority and shall include detailed specifications and management regimes as appropriate for the following:
 - a) Woodland buffering, including details of the orientation of dwellings proposed to adjoin the woodland buffer zones

²⁰⁴ To safeguard the amenity of nearby residents and in the interests of highway and pedestrian safety, in particular to minimise conflict with pedestrians during school travel hours.

²⁰⁵ For the avoidance of doubt and to ensure that the development does not prejudice the amenity of adjacent residents or the appearance of the locality and to accord with Policies B1 and B3 of the Mid Sussex Local Plan and Policy DEV1 of the adopted West Sussex Structure Plan 2001-2016.

²⁰⁶ To ensure that the proposed development is satisfactorily drained and to accord with Policies CS12 and CS13 of the Mid Sussex Local Plan.

²⁰⁷ The site is potentially of archaeological interest and to accord with Policy CH11 of the adopted West Sussex Structure Plan 2001-2016.

²⁰⁸ The site is potentially of archaeological interest and to accord with Policy CH11 of the adopted West Sussex Structure Plan 2001-2016.

- b) Acid grassland
- c) Nature conservation, ecological mitigation including details of habitat and soils translocation (to include details of monitoring of outcomes over time) and enhancement where necessary
- d) Protected species and their habitats (including proposals for licensing applications where necessary)
- e) Appointment of an ecological clerk of works to monitor construction activities that may impact on the above.

Development shall be carried out in accordance with the approved plan.²⁰⁹

Pinch-point crossing

21. No development shall take place until detailed proposals for the design, construction and management of the Pinch-point crossing between phases 4A and 4B have been submitted to and approved in writing by the local planning authority. These proposals shall incorporate the protection of adjacent trees by use of road construction design, methods and materials (including a porous surface) that will facilitate the passage of wildlife beneath the road surface; location of sub-surface services to avoid root damage; and proposals to secure continuous ecological linkage from Reading Wood to North Meadow uninterrupted by side fencing or other obstructions.²¹⁰

²⁰⁹ To protect and enhance ecologically sensitive habitats and species during and after construction and to accord with Policies B1, B7, C5 and HH2 of the Mid Sussex Local Plan and Policies DEV1 and ERA2 of the West Sussex Structure Plan 2001-2016.

²¹⁰ To ensure the retention and maintenance of trees and vegetation which are an important feature of the area, to allow the free passage of wildlife and to accord with Policies B1, B7, C5 and C6 of the Mid Sussex Local Plan and Policies DEV1 and ERA2 of the West Sussex Structure Plan 2001-2016.

ANNEX B

APPEAL A - Phase 4 outline (HH/04/02676/OUT) (APP/D3830/A/05/1195898)

1. Excluding development on Phase 4C, no more than 310 dwellings shall be occupied within Phase 4 until Stages 5 and 6 of the Haywards Heath Relief Road have been constructed and are open to public traffic.²¹¹
2. No development shall take place on any part of Phase 4 until there has been submitted to and approved in writing by the local planning authority a scheme to protect buffer zones providing at least 15 metre separation between development and the edge of woodland within Reading Wood, Four Acre Wood and Quarry Hollow. Development shall not be implemented otherwise than in accordance with the approved scheme.²¹²
3. Thirty per cent of the dwellings comprising the development hereby permitted (excluding elderly persons or sheltered accommodation) shall be designated as affordable housing by reference to approved layout plans for which reserved matters approval shall have been granted. No more than 80% of the open market dwellings (excluding elderly persons or sheltered accommodation) in any sub-phase of the development hereby permitted shall be occupied until all affordable dwellings within that sub-phase shall have been completed. Once completed the affordable dwellings in each sub-phase shall be set aside as social-rented or intermediate housing or for other forms of affordable housing in accordance with a scheme to be submitted to and agreed in writing by the local planning authority (such as housing provided under the Government's 'Homebuy' scheme) as defined in Annex B of Planning Policy Statement 3 'Housing', dated November 2006.²¹³
4. Notwithstanding the submitted plans no development shall take place until a revised spine road layout plan showing the final positioning of the spine road (including the link to Renfields and Bolnore Road) has been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with this plan.²¹⁴
5. Notwithstanding the submitted plans, no development shall take place until a plan has been submitted to and approved in writing by the local planning authority showing the access for construction vehicles and for bus and emergency vehicles passing to the east of all buildings on Cell 4C and the development shall not take place otherwise than in accordance with this plan.²¹⁵

²¹¹ To ensure that the development does not have a detrimental impact in terms of congestion on the highway network.

²¹² To ensure adequate protection of areas of acknowledged conservation importance.

²¹³ To ensure the appropriate level of provision of affordable housing in accordance with local and national planning policy.

²¹⁴ To allow connection to the access points and to accord with advice in Manual for Streets.

²¹⁵ To protect pedestrian and cyclist users of the BOAT section of Bolnore Road and to protect its character and appearance.

6. This permission does not include the development of that part of Cell 4B2 where a wildlife corridor is required as described in this condition. No development, including operational site works of any description, shall take place on the site unless and until all wildlife corridors within the development have been created in accordance with a Wildlife Corridor Plan, which shall have been submitted to and approved in writing by the local planning authority. This Plan shall include a corridor across the Pinch-point between The Meadow and Reading Wood, and an east-west corridor for badgers 20 metres in width across Cell 4B2 linking Reading Wood to Duncton Meadow. Wildlife corridors shall be protected from the effects of development throughout the period of construction.²¹⁶
7. The number of dwellings constructed within the housing development sub-phases identified on the Masterplan 1451/020/J(BS) shall not exceed 573.²¹⁷
8. The number of dwellings constructed within the housing development sub-phases identified on the Masterplan 1451/020/J(BS) shall not exceed 533.²¹⁸
9. The number of dwellings constructed within the housing development sub-phases identified on the Masterplan 1451/020/J(BS) (but excluding Cell 4C) shall not exceed 410.²¹⁹

APPEAL B Full application for Phase 4 (HH/04/02964/FUL) (APP/D3830/A/05/1195897)

1. Notwithstanding the submitted plans no development shall take place until a revised spine road layout plan showing the final positioning of the spine road (including the link to Renfields and Bolnore Road) has been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with this plan.²²⁰
2. Notwithstanding the submitted plans, no development shall take place until a plan has been submitted to and approved in writing by the local planning authority showing the access for construction vehicles and for bus and emergency vehicles passing to the east of all buildings on Cell 4C and the development shall not take place otherwise in accordance with this plan.²²¹
3. This permission does not include the development of that part of Cell 4B2 where a wildlife corridor is required as described in this condition. No development, including operational site works of any description, shall take place on the site unless and until all wildlife corridors within the development have been created in accordance with a Wildlife Corridor Plan, which shall have been submitted to and approved in writing by the local planning

²¹⁶ To provide access for badgers and other wildlife to existing foraging areas in Reading Wood and to ensure that adequate foraging grounds are available to them.

²¹⁷ To ensure a satisfactory standard of development in accordance with Mid Sussex Local Plan Policies, particularly Policy HH2.

²¹⁸ To ensure a satisfactory standard of development in accordance with Mid Sussex Local Plan Policies, particularly Policy HH2.

²¹⁹ To ensure a satisfactory standard of development in accordance with Mid Sussex Local Plan Policies, particularly Policy HH2.

²²⁰ To allow connection to the access points and to accord with advice in Manual for Streets.

²²¹ To protect pedestrian and cyclist users of the BOAT section of Bolnore Road and to protect its character and appearance.

authority. This Plan shall include a corridor across the Pinch-point between The Meadow and Reading Wood, and an east-west corridor for badgers 20 metres in width across Cell 4B2 linking Reading Wood to Duncton Meadow. Wildlife corridors shall be protected from the effects of development throughout the period of construction.²²²

APPEAL C, Outline application for Phases 4 & 5 (HH/04/02681/OUT (APP/D3830/A/06/1198282))

1. Excluding development on Phase 4C, no more than 310 dwellings shall be occupied within Phase 4 until Stages 5 and 6 of the Haywards Heath Relief Road have been constructed and are open to public traffic.²²³
2. Notwithstanding the submitted plans no development shall take place until a revised spine road layout plan showing the final positioning of the spine road (including the link to Renfields and Bolnore Road) has been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with this plan.²²⁴
3. Notwithstanding the submitted plans, no development shall take place until a plan has been submitted to and approved in writing by the local planning authority showing the access for construction vehicles and for bus and emergency vehicles passing to the east of all buildings on Cell 4C and the development shall not take place otherwise than in accordance with this plan.²²⁵
4. No development shall commence within sub-phase 5B1 (as defined by the Masterplan 1451/050/C(BS)) until full details of the development proposals for that sub-phase have been submitted to and approved in writing by the local planning authority, whereby in accordance with Policy C5 of the Mid Sussex Local Plan (May 2004) the design and layout proposals both minimise the impact on features of nature conservation importance and take advantage of opportunities for habitat enhancement wherever possible. Development shall be carried out in accordance with the approved details.²²⁶
5. This permission does not include development within the areas identified on the Masterplan 1451/050/C(BS) as Cell 5B1, or development within Duncton Meadow or the ecological buffer zones.²²⁷
6. This permission does not include development within the area identified on the Masterplan 1451/050/C(BS) as Cell 5B1.²²⁸

²²² To provide access for badgers and other wildlife to existing foraging areas in Reading Wood and to ensure that adequate foraging grounds are available to them.

²²³ To ensure that the development does not have a detrimental impact in terms of congestion on the highway network.

²²⁴ To allow connection to the access points and to accord with advice in Manual for Streets.

²²⁵ To protect pedestrian and cyclist users of the BOAT section of Bolnore Road and to protect its character and appearance.

²²⁶ To ensure the protection of areas of nature conservation importance.

²²⁷ These areas are of ecological value and should remain free of development.

²²⁸ This area is of ecological interest and should remain free of development.

7. No development shall take place on any part of Phase 4 until there has been submitted to and approved in writing by the local planning authority a scheme to protect buffer zones providing at least 15 metre separation between development and the edge of woodland within Reading Wood, Four Acre Wood and Quarry Hollow. Development shall not be implemented otherwise than in accordance with the approved scheme.²²⁹
8. The number of dwellings constructed within the housing development sub-phases identified on the Masterplan 1451/050/C(BS) shall not exceed 785.²³⁰
9. The number of dwellings constructed within the housing development sub-phases identified on the Masterplan 1451/050/C(BS) shall not exceed 685.²³¹
10. The number of dwellings constructed within the housing development sub-phases identified on the Masterplan 1451/050/C(BS) (but excluding Cell 4C) shall not exceed 532.²³²
11. Thirty per cent of the dwellings comprising the development hereby permitted (excluding elderly persons or sheltered accommodation) shall be designated as affordable housing by reference to approved layout plans for which reserved matters approval shall have been granted. No more than 80% of the open market dwellings (excluding elderly persons or sheltered accommodation) in any sub-phase of the development hereby permitted shall be occupied until all affordable dwellings within that sub-phase shall have been completed. Once completed the affordable dwellings in each sub-phase shall be set aside as social-rented or intermediate housing or for other forms of affordable housing in accordance with a scheme to be submitted to and agreed in writing by the local planning authority (such as housing provided under the Government's 'Homebuy' scheme) as defined in Annex B of Planning Policy Statement 3 'Housing', dated November 2006.²³³
12. This permission does not include the development of that part of Cell 4B2 where a wildlife corridor is required as described in this condition. No development, including operational site works of any description, shall take place on the site unless and until all wildlife corridors within the development have been created in accordance with a Wildlife Corridor Plan, which shall have been submitted to and approved in writing by the local planning authority. This Plan shall include a corridor across the Pinch-point between The Meadow and Reading Wood, and an east-west corridor for badgers 20 metres in width across Cell 4B2 linking Reading Wood to Duncton Meadow. Wildlife corridors shall be protected from the effects of development throughout the period of construction.²³⁴

²²⁹ To ensure adequate protection of areas of acknowledged conservation importance.

²³⁰ To ensure a satisfactory standard of development in accordance with Mid Sussex Local Plan Policies, particularly Policy HH2.

²³¹ To ensure a satisfactory standard of development in accordance with Mid Sussex Local Plan Policies, particularly Policy HH2.

²³² To ensure a satisfactory standard of development in accordance with Mid Sussex Local Plan Policies, particularly Policy HH2.

²³³ To ensure the appropriate level of provision of affordable housing in accordance with local and national planning policy.

²³⁴ To provide access for badgers and other wildlife to existing foraging areas in Reading Wood and to ensure that adequate foraging grounds are available to them.

**APPEAL D – Phases 4/5 infrastructure application (HH/04/02965/FUL)
(APP/D3830/A/05/1198283)**

1. Notwithstanding the submitted plans no development shall take place until a revised spine road layout plan showing the final positioning of the spine road (including the link to Renfields and Bolnore Road) has been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with this plan.²³⁵
2. Notwithstanding the submitted plans, no development shall take place until a plan has been submitted to and approved in writing by the local planning authority showing the access for construction vehicles and for bus and emergency vehicles passing to the east of all buildings on Cell 4c and the development shall not take place otherwise than in accordance with this plan.²³⁶
3. This permission does not include the development of that part of Cell 4B2 where a wildlife corridor is required as described in this condition. No development, including operational site works of any description, shall take place on the site unless and until all wildlife corridors within the development have been created in accordance with a Wildlife Corridor Plan, which shall have been submitted to and approved in writing by the local planning authority. This Plan shall include a corridor across the Pinch-point between The Meadow and Reading Wood, and an east-west corridor for badgers 20 metres in width across Cell 4B2 linking Reading Wood to Duncton Meadow. Wildlife corridors shall be protected from the effects of development throughout the period of construction.²³⁷

²³⁵ To allow connection to the access points and to accord with advice in Manual for Streets.

²³⁶ To protect pedestrian and cyclist users of the BOAT section of Bolnore Road and to protect its character and appearance.

²³⁷ To provide access for badgers and other wildlife to existing foraging areas in Reading Wood and to ensure that adequate foraging grounds are available to them.