

Land at Former Wisley Airfield, Hatch Lane, Ockham

Planning Inspectorate No: APP/Y3615/W/23/3320175

LPA reference: 22/P/01175

**CLOSING SPEECH OF THE APPELLANT
TAYLOR WIMPEY UK LIMITED**

A table of abbreviations is set out as an appendix to this speech. All abbreviations in the text are capitalised.

1. Introduction

1. This appeal seeks planning permission for the major part of the WNS - a sustainable new settlement allocated for development in 2019 under Policy A35 of the GBLP.
2. In opening, we made the point that it is regrettable that a scheme of this quality, and of this importance to GBC's overall vision for the current plan period¹, should have faced such fierce resistance and so suffer the resultant delay. This sad fact has been exemplified by the content of the evidence of third parties and a number of the Rule 6 Parties at the inquiry. It is a hard truth that, as Mr Williams said, there is sometimes simply no way to communicate the benefits of a scheme to the people who live near by. Their opposition to the Appeal Scheme is implacable.
3. However, standing back from the noise and objections, it is our submission that the evidence at the inquiry has fully vindicated the Appeal Scheme and demonstrated that it not only complies fully with national and local policy but goes beyond what is required in many areas, from design quality, to community engagement, to sustainability, to biodiversity net gain. The decision (as counter-

¹ The WNS is the largest single allocation in the GBLP. As Mr Collins said in his oral evidence, only Slyfield has been consented, and limited progress has been made in delivering the other strategic allocations.

intuitively as this may seem given the time it has taken to get here) should be simple:

- (1) The Appeal Scheme being allocated, and being in full accordance with the uses specified in the allocation², there is a statutory presumption in favour of it being granted, unless material considerations indicate otherwise.
- (2) The starting point is whether the Appeal Scheme is compliant with the requirements in Policy A35 and with the development plan as a whole.
- (3) It is and it does.
- (4) By definition at an inquiry like this the focus has been on the alleged harms - principally air quality, ecology and transport - but also the myriad of other matters raised by third parties and a number of the Rule 6 Parties.
- (5) This means in turn that much of this closing is focussed on responding to those issues.
- (6) But we must not lose sight of the benefits. These are many. The Appeal Scheme is exemplary, making best use of the opportunities available to it, in the context of its constraints, and providing fully against all policy requirements. These benefits are dealt with below and have been canvassed in evidence. We say the benefits demonstrably outweigh the harms.
- (7) As such, there is effectively no *planning* case for refusal. Indeed Mr Hall, see below, accepted that if WAG's case on the technical issues of air quality, ecology and transport failed the planning permission should be granted.

² There has been no dispute at all, despite the length of the inquiry, that the Appeal Scheme fully complies with all 11 points that make up the allocation itself See CD6.1 p. 219: "*This is a residential led mixed use development, allocated for: (1) Approximately 2,000 homes (C3), including some specialist housing and self-build plots and (2) Approximately 100 sheltered/Extra Care homes (C2 use) and (3) 8 Gypsy and Traveller pitches and (4) Approximately 1,800 sq m of employment floorspace (B1a) and (5) Approximately 2,500 sq m of employment floorspace (B2/B8) and (6) Approximately 500 sq m of comparison retail (A1) and (7) Approximately 600 sq m of convenience retail (A1) and (8) Approximately 550 sq m services in a new Local Centre (A2 -A5) and (9) Approximately 500 sq m of community uses in a new Local Centre (D1) and (10) A primary school (D1) (two form entry) and (11) A secondary school (D1) (four form entry, of which two forms are needed for the housing on the site and two for the wider area)*"

- (8) Given that the presumption is for grant. Moreover, the test in the S/S's 8 September 2023³ letter – and entitled “*The long-term plan for housing*” – is that development should proceed on allocated sites unless there are “*strong reasons*” why it cannot.
- (9) There are no such reasons.
4. We structure these closing submissions by first dealing with overarching matters (section 2) before turning to the four main issues (section 3), other alleged harms (section 4) and then the benefits (section 5). Development plan compliance and the planning balance are dealt with in section 7 and 8. To improve readability and reduce reading time, we have set out tables addressing policy compliance and the position on benefits at the end of the inquiry in four annexes (2-5). A response to cycle route issues on a route by route basis is at annex 6.

2. Overarching matters

2.1. Policy context

2.1.1. Statutory development plan

5. The relevant provisions of the statutory development plan are contained in the GBLP, DMP and Lovelace Neighbourhood Plan. No party contends that any of these are out of date. They should be given full weight.
6. The most important part of the development plan for the purposes of this appeal is the allocation, Policy A35 of the GBLP. This is a policy tailored specifically to the site and sets out in detail (through 11 allocated uses and 26 separate requirements) GBC's aspirations for the WNS. Although Mr Hall was, inexplicably, unwilling to describe it as “*key*” or “*the most important*” policy for the purposes of the appeal⁴ it is obviously both. This was accepted by Mr Smith.⁵

³ ID5.36.

⁴ The former term having been used in the Officer Report. Mrs Yates referred to it as “*the policy of principal relevance*” at 4.1.

⁵ “*It is the policy which allocates, if there is a hierarchy it is this policy which is at the top*”; it is “*of most significance*”.

7. There are several significant implications of the WNS having been allocated.
8. First, the allocation confirms that, as agreed by Mr Hall and Mr Smith in XX, the principle of the development of a new settlement within the allocated land should not be up for debate at all. This is consistent with what you said, Madam, at the Pre-Inquiry Meeting namely: *“everyone had to remember that the site had been allocated for 2,000 homes and other facilities within the statutory development plan”* so that the inquiry should *“not be an opportunity to object to the principle outlined in policy A35, which will inevitably have some impacts, including on local roads”*.⁶ Sadly, no heed whatsoever was paid to this by the objectors at this inquiry. That means that the many objections raised that are, in reality, objections to the principle of the development of the site must be given little or no weight.⁷
9. Second, and relatedly, impacts which flow inevitably from the provision of the major portion of the WNS on the FWA should be given no weight at all in determining whether or not the Appeal Scheme accords with the development plan as a whole. Both Mr Hall and Mr Smith relied in their written evidence on the *TV Harrison*⁸ case. This decision of the High Court, which confirms that it is not sufficient to only look at an allocation policy when determining accordance with the development plan, appears to have led them to believe that all relevant policies in the development plan must be complied with⁹. This is not correct. In XX both witnesses accepted the correct position which is that:
 - (1) Policies in a development plan may pull in different directions¹⁰.

⁶ PIM note CD5.9 at para 16.

⁷ Also agreed with Hall in XX, and with Smith.

⁸ CD11.3.

⁹ Smith proof 4.1.6 *“It is relevant that the appeal proposal does not comply with the site allocation policy (A35) of the development plan, but also that the proposal does not comply with other policies of the development plan. Even if the appeal proposal did comply with the site allocation policy A35, there is still a requirement for it to be compliant with all other policies of the development plan.”*

¹⁰ CD11.17at [27] *“the decision-maker must understand the relevant provisions of the plan, recognizing that they may sometimes pull in different directions”; that “section 38(6) does not prescribe the way in which the decision-maker is to go about discharging the duty”; but that “the duty can only be properly performed if the decision-maker, in the course of making the decision, establishes whether or not the proposal accords with the development plan as a whole”.*

- (2) The fact there is conflict with one relevant policy (or part of one relevant policy) does not mean that a scheme is not in accordance with development plan as a whole¹¹.
- (3) It follows that a proposal for an allocated site does not necessarily have to be in accordance with all other relevant policies of the development plan.
- (4) Where a site is allocated the decision-maker must still consider all the other relevant policies in the Development Plan – that is what *TV Harrison* holds – but that is not a requirement to comply with all relevant policies.
- (5) In deciding whether the development plan is accorded with as a whole, a decision-maker must consider:
 - (a) The degree of any breach, in terms of how far the policy in question sets its face against what is proposed and
 - (b) The significance of the breach.¹²

10. We add that, in deciding the significance of any breach, you Madam will need to consider how the breach may interact with other parts of the development plan, including the site allocation. For example, as explored with both Mr Hall and Mr Smith:

- (1) Policy E5(3) is a relevant policy and it states in unequivocal terms that *“Agricultural land will be protected ...”*¹³
- (2) The Appeal Scheme – and indeed any development of the FWA consistent with Policy A35 – would involve the loss of BMV land.

¹¹ Ibid at [28] quoting from an earlier judgment of Sullivan J *“Given the numerous conflicting interests that development plans seek to reconcile: the needs for more housing, more employment, more leisure and recreational facilities, for improved transport facilities, the protection of listed buildings and attractive landscapes etc., it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan.”*

¹² Ibid. Relevant considerations include *“– how firmly it favours or sets its face against ... the proposed development [–] is a relevant factor, so too are the relative importance of the policy to the overall objectives of the development plan and the extent of the breach. These are essentially matters for the judgement of the local planning authority”*.

¹³ CD6.1 at p 82.

- (3) However that loss is inevitable if the allocation is delivered.
- (4) It follows that a decision-maker could not sensibly decide that the Appeal Scheme is in accordance with the allocation but then conclude that it is not in accordance with the development plan as a whole because it involves the loss of BMV and so a conflict with Policy E5(3).¹⁴
11. A similar logic applies, we submit, to any impacts of the Appeal Scheme which are inevitable. So, for example, the landscape impacts of the new settlement, and any conflict found with policies that protect landscape, would not justify a finding of non-compliance with the development plan as a whole unless they can be shown to be a result of specific design choices and not necessary to achieve delivery of the development provided for under Policy A35. In any event, Policy A35 contains its own bespoke requirements on landscape such as requirement (23) which mandates “*[s]ensitive design at site boundaries that has significant regard to the transition from urban to greenfield*”. Mr Davies, the only expert who gave landscape character evidence to the inquiry¹⁵, affirmed in ReX his view that there was full compliance with this bespoke requirement of Policy A35.
12. Third, Policy A35 is designed to set the framework for the consideration of applications on the FWA and wider allocation. So, where an application meets specific requirements for particular kinds of infrastructure, compliance with those requirements is a strong indicator that more generic policies are also met. This is reflected in the way in which some of those policies are drafted. While some policies might contain aspirations which go beyond those in Policy A35, or are different to those in Policy A35, these cannot be interpreted or applied in such a way as to prevent the delivery of the site allocations – particularly not

¹⁴ Accepted by both Mr Smith and Mr Hall in XX.

¹⁵ The fact that Mr Davies was the only visual and landscape witness called at the inquiry is itself telling. The plain fact is that there is not even remotely credible case to be made against the Appeal Scheme on such grounds.

strategic policies such as Policy A35 which are at the heart of the GBLP spatial vision. As set out in section 3 of the GBLP itself¹⁶:

“Not all of the borough’s development needs can be met within Guildford’s urban areas. The plan therefore focuses some development on large strategic greenfield sites which brings with it significant infrastructure, helps to make it sustainable and does not compromise the overall character of the Borough. ... A new settlement will be created at Wisley airfield containing approximately 2,000 homes. Further development is also located around Ash and Tongham on land beyond the Green Belt.”

13. So for example, while ID9 of the DMP seeks to set out broader ambitions for cycle provision, its ambitions for the site allocations remain closely anchored in the site-specific requirements of the allocation policies themselves, Policy ID9 thus cannot be interpreted in such a way as would frustrate delivery of the WNS itself. This is clear from the text of ID9(2) itself which clearly says that *“proposals are also required to deliver the site-specific requirements for cycle infrastructure as identified in site allocation policies...”*¹⁷ The supporting text to ID9 also recognises that the delivery of a comprehensive Guildford borough cycle network where it involves the upgrade of existing routes or connections such that proposals will have to *“appropriately respond to the opportunities and constraints of the built and rural environments, land uses and designations.”*¹⁸ Thus importantly, the policies themselves recognise that there are *“constraints”* in rural environments to the delivery of cycle infrastructure. This being reflected in the requirements identified in the site allocation policies.
14. The other relevant development plan policies were set out by GBC’s officers at 15.3-7 of the Officer Report¹⁹. It should be noted that:

¹⁶ CD6.1 at p18.

¹⁷ Something that is also made clear in the supporting text to ID9 which says in terms at para. 6.89 that *“[s]ite specific requirements can be found in the relevant site allocation policies ...”*.

¹⁸ CD6.2 para. 6.90, emphasis added.

¹⁹ CD4.1. pp 81-82.

- (1) Although this list includes the Surrey Waste Plan, that plan removed the FWA as a safeguarded site and is therefore not relevant to the Appeal Scheme.²⁰ No party argued otherwise.
 - (2) West Horsley's neighbourhood plan is not part of the statutory development plan for the Appeal Site²¹ (unlike the Lovelace neighbourhood plan). Although Mr Hall and Mr Smith both sought to rely on it in their proofs, they accepted in XX that it was not part of the development plan and also confirmed that the dark skies policy in that plan sought to be relied upon did no more than require appropriate mitigation, something which is in fact secured here by conditions.
15. All of the relevant policies were addressed in the evidence of Mr Collins and (where raised) with Mrs Yates, Mr Hall and Mr Smith. The position reached at the inquiry is summarised in Annexures 2 and 3 to this speech.

2.1.2. Supplementary planning guidance and other relevant policy

16. GBC have produced an SPD to support the delivery of its strategic allocations. It has been created specifically to guide the masterplanning for the strategic sites, including the WNS.²² It is a notable feature of the case that both GBC and WAG (via Mr Hall) accept compliance with it, only Mr Smith of the professional witnesses raised any issue as regards the SPD and the issue he raises is a very limited one. We will address the implications of this for specific issues below but, standing back, this is on its own a strong indication of the extent to which objections in this case have not been directed at the detail of what is proposed – but at the principle of development as established by site allocation.
17. Other relevant SPDs are set out at 3.4 of the SoCG²³.
18. The NPPF is clearly an important material consideration. In the context of a site allocated in an up-to-date plan, the starting point within NPPF 11 is

²⁰ Mr Collins proof at 7.11.

²¹ Accepted by Mr Hall and Mr Smith in XX.

²² CD7.1 section 1.2.

²³ CD5.10.

subparagraph c) which encourages decision-makers to grant permission “without delay”. This is consistent with NPPF para 15 (“*The planning system should be genuinely plan-led*”) which reinforces the emphasis which the Government on delivering proposals which, like this, are not only consistent with but key to delivering the spatial vision set out in the GBLP.

19. The NPPF therefore reinforces the importance of the allocation and confirms that the correct starting point in planning terms must be that this is a site that is allocated in the statutory development plan for precisely the form of development being applied for.
20. We set out in Annex 4 our summary of the position reached at the inquiry on NPPF compliance and the matter is also addressed in section 6 below.

2.1.3. Levelling Up and Regeneration Act 2023

21. The Levelling Up and Regeneration Act 2023 received Royal Assent on 26 October 2023. As things stand, no relevant provisions are in force. Various regulation making powers are due to come into force on 26 December 2023 but these will not, on their own, have any impact on the decision that is to be made. S. 245 of the LURA comes into force on 26 December 2023. It is relevant to AONBs and has the effect of amending Section 85 of the Countryside and Rights of Way Act 2000 to require a relevant authority (other than a devolved Welsh authority) seek to further the purpose of conserving and enhancing the natural beauty of the AONB. S. 245 further provides that “*the Secretary of State may by regulations make provision about how a relevant authority is to comply with the duty under (including provision about things that the authority may, must or must not do to comply with the duty).*” No such regulations have been published yet.
22. Future changes to the law, including the possible adoption of new national development management policies (and the attendant changes to s.38(6) of the Planning and Compulsory Purchase Act 2004 to require decisions to be made in accordance with the development plan, as redefined, except where material

considerations “strongly” indicate otherwise) will have to be addressed as or if they are actually made/brought into force.

2.1.4. Other matters of Government policy

23. Similarly, while it seems likely that a further version of the NPPF will be produced at some point (although the chronology is unclear) the previous consultation draft of the NPPF is considered to have little or no weight at the present time given (i) the absence of any clear indication from the Government as to what changes will finally be made and (ii) continuing uncertainty as to when any changes might be introduced. In any event, as Mr Collins explained in his written evidence²⁴ the changes consulted on are of limited relevance to this appeal. They mainly relate to plan-making and do not impinge on any of the main issues arising on this appeal.

24. In the meantime, the clear policy of Government as set out in the S/S’s written statement of 8 September 2023²⁵ is that:

“Development should proceed on sites that are adopted in a local plan with full input from the local community, unless there are strong reasons why it cannot.”

25. This is especially pertinent to this appeal given that we are dealing with an allocated site and there has been a vast amount of consultation and engagement with the local community. So, this is one of those schemes which the S/S is making clear should only be refused if there are “strong reasons” for so doing. There are, as we have already noted, no such reasons.

2.2. The WPIL appeal

26. The previous appeal (“the WPIL appeal”) was determined by the S/S in June 2018 following an inquiry in the autumn of 2017²⁶. It should be noted that when the Appellant purchased the Appeal Site it also purchased WPIL. WPIL is thus

²⁴ Mr Collins proof at 7.4.

²⁵ ID5.36

²⁶ CD9.1.

now a wholly owned subsidiary of the Appellant. Its directors are all employees of the Appellant.²⁷

27. The decision, and the report of Inspector Hughes, are material considerations. However, attempts to rely directly on it as supporting a refusal of this appeal should be treated with a very considerable degree of circumspection.
28. Mr Smith, who was perhaps most guilty of this, stated baldly that “*many of the reasons for refusal which were identified by the Secretary of State... remain valid*”.²⁸ However, he was obliged to accept in XX that this was just not so. The S/S identified four harms at DL38 of his decision. His principal harms (to which he gave substantial weight²⁹) have been entirely superseded. The FWA is no longer in the green belt and the J10 DCO works now form part of the future baseline. In that context, NH agrees that the Appeal Scheme (which is in fact smaller than the WPIL appeal in terms of dwellings and employment proposed) will not have a severe impact on the SRN³⁰ and no party has advanced a positive case to the contrary³¹. The other issues (landscape³² and heritage harm³³) do remain relevant but, as we will explain, merit far less weight given (i) the differences between what is proposed now and the WPIL appeal³⁴ and (ii) the fundamentally different planning context created by the site allocation³⁵. Moreover, on heritage the S/S on the WPIL appeal considered that in any event the public benefits

²⁷ See Mr Collins EiC and Mr Davies ReX. Suggestions made in XX by Mr Harwood that the previous owners and investors behind WIPL remain involved in this appeal are therefore wholly erroneous. Moreover, it is well established that the identity of the applicant is generally not relevant to the decision on whether planning permission should be granted: see CD9.2 para. 91.

²⁸ Mr Smith Proof at 2.7.

²⁹ See also DL42 – the key consideration was the failure to establish very special circumstances for what was then land in the Green Belt.

³⁰ Unlike the WPIL appeal where Highways England objected to the Appeal Scheme on the grounds of a severe impact on the SRN.

³¹ See discussion of Mr Russell’s evidence below.

³² To which the S/S gave “*significant*” weight at a time before the Appeal Site was allocated.

³³ To which the S/S gave “*moderate*” weight only.

³⁴ These differences were addressed in Mr Williams EiC – see e.g. ID5.21 pp 56 – 59.

³⁵ The S/S’s decision also gave limited weight to (DL 39, CD9.1): (i) loss of BMV; (ii) loss of privacy for some existing residents and (iii) loss of a safeguarded waste site. The issue of BMV is dealt with below. The other two issues do not arise on this appeal as Mr Smith agreed in XX.

would outweigh the heritage harm such that the NPPF heritage policies were favourable to the proposal³⁶. The same clearly applies here: see below.

2.3. The development of the Appeal Scheme

29. The Appeal Scheme has been developed through extensive community and stakeholder participation and, while outline in respect of all of the housing elements, is supported by a suite of plans and design documents which represent best practice.
30. The Appeal Scheme comprises a hybrid permission with some areas of the Appeal Scheme for outline and other (the SANG and accesses) for full approval. These are delineated by the Component Plan³⁷. Other parameter plans for approval comprise:³⁸
- (1) A Land Use Parameter Plan³⁹, which identifies zones for residential development, non-residential building uses and key open spaces (including the SANG).⁴⁰
 - (2) A Building Heights Parameter Plan⁴¹ which defines the areas in which taller buildings will be allowed both by creating different zones and providing that the percentage by total footprint of taller buildings in each zone shall not exceed a specific level. For example in the highest rise area (the local centre) “no more than 30% of the built footprint” may be 4 storey.
 - (3) An Access and Movement Parameter Plan⁴² which describes the network of routes on-site that connects the different neighbourhoods and land uses and shows connections and access point off-site.

³⁶ CD9.1 para. 43 (“The Secretary of State has considered Paragraph 134 of the Framework, which states that the harm to heritage assets should be weighed against the public benefits of the proposal. He considers that the public benefits of the proposal would outweigh the harm and that therefore paragraph 134 is favourable to the proposal”) and Smith answers in XX.

³⁷ CD1.7.

³⁸ See ID5.55.

³⁹ CD1.2 - Version 2 (1350-2-252, R) dated 22/03/2023.

⁴⁰ See Mr Kime’s proof p39.

⁴¹ ID5.17A - Version 2(1350-2-254, N) dated 20/10/2023.

⁴² ID5.17B - version 2 (1350-2-255 Q) dated 20/10/2023.

- (4) A Green and Blue Infrastructure Parameter Plan⁴³ which defines the key green spaces essential to a landscape-centred masterplan.
- (5) A Design Framework Parameter Plan⁴⁴ which captures the key urban design moves from the illustrative plan and vignettes in an approvable document. It identifies key features such as arrival gateways, frontages and landmark buildings and will work with the Design Principles Documents (see below) to shape what can be approved under the Site Wide Design Code. This kind of parameter plan was something which Mr Williams despite his vast experience “*had not seen before*” but which he considered to be highly positive as giving a greater degree of certainty – it was “*effectively a first regulating plan for a code*”⁴⁵. Mr Collins similarly had not worked on any other scheme which included this and, as he said, it will serve to ensure, along with a number of other mechanisms to which we turn next, the delivery of design quality.
31. The documents for approval also include the Design Principles Document⁴⁶. This sets out a clear and well-structured strategy for design coding⁴⁷. This caused Mr Williams (who has extensive experience in design coding⁴⁸) to say that mechanisms provided for securing future design were exactly what he would want to see⁴⁹ and respond appropriately to the recommendations of his audit⁵⁰. With the Design Framework Parameter Plan, the Design Principles Document provides for an appropriate and robust approach to both site wide and neighbourhood coding (secured under draft conditions 43-44⁵¹). A first coding document relating to the key facilities to be delivered prior to the residential dwellings⁵² has already been advanced such that the Placemaking Infrastructure

⁴³ CD1.4 - Version 2 (1350-2-253, N) dated 22/03/2023.

⁴⁴ CD1.6 - (1350-2-256, F) dated 18/08/2022.

⁴⁵ Mr Williams ReX.

⁴⁶ CD1.9 - Version 2 dated 22/03/2023.

⁴⁷ Mr Williams proof at 2.2.6.

⁴⁸ As someone who had worked extensively with design codes since the 2000s.

⁴⁹ Mr Williams in EiC.

⁵⁰ ID5.21 pg 111 and Mr Williams' proof at 6.2.2.

⁵¹ CD5.55.

⁵² Including Energy Centre, Pumping Station and SANG education centre/café.

Design Code, following comments from officers, is now agreed and will itself be an approved document secured by condition.⁵³ This provides further certainty of the delivery of design quality.

32. Overall the level of detail to be approved was endorsed by GBC's urban design officer who concluded⁵⁴ that:

"overall the layout of the proposed settlement as per the Parameter Plans would be legible and navigable (in terms of appreciating one's location within the settlement and the principal routes through), distinctive, (with different layout / design elements in the three neighbourhoods) and linked to the wider setting and surroundings via a series of viewpoints."

"...At this stage officers consider that the material to be approved, as supported by the further material, demonstrates that the layout, design and character of the proposal is in conformity with the masterplanning requirements of Policy D1 (13) and (14), and with those other parts of the policy relating to the physical placemaking requirements"

33. The design evolution process was described by Mr Williams at length in his oral evidence. The matter is also covered extensively in Mr Kime's proof⁵⁵. In summary, the Appeal Scheme has been the subject of an exemplary level of community engagement, including:

- (1) Four DRP processes – which Mr Williams identified as an exceptional number⁵⁶. He said this was *"really important"* as design testing through a DRP will always bring benefits to a scheme.
- (2) Over 50 pre-application meetings with GBC to refine both strategic and detailed design choices⁵⁷.
- (3) 15 community liaison group meetings with up to 20 representatives of parish and local councils, community groups and stakeholders. Each focused on topic-specific workshop style discussion meetings to provide

⁵³ See ID5.46A-C for the revised Design Code as well as officer comments and a summary of changes.

⁵⁴ CD4.1 Officer Report 23.47.

⁵⁵ Mr Kime could not be called for reasons that have been explained but his proof stands as written evidence and contains a huge amount of detail on design matters.

⁵⁶ In his EiC he said that in his experience he had only encountered one other scheme which had four DRPs as the outline stage – out of dozens of projects which he had reviewed.

⁵⁷ Mr Williams presentation at p39 – see also Mr Kime's proof at pg 31.

feedback on a wide range of design options and choices. Topics included transport (CLG meetings 5, 10, 13, 14 and 15); SANG, landscaping and BNG (CLG meeting 4) and Masterplanning, Naming strategy and Community Infrastructure (CLG meetings 2, 3, 7 8).⁵⁸

- (4) Targeted stakeholder events looking at transport impacts on Ripley and Off-Site Cycling proposals⁵⁹.
 - (5) Four chapters of open community consultation in July 2020, November 2020, May 2021 and April 2022.
 - (6) Production of newsletters, a dedicated website and the carrying out of a listening exercise.⁶⁰
34. These were not a superficial exercise but resulted in real changes to the design approach and specific choices made. By way of example only, the Local Centre was relocated further west so as to avoid conflicts with horse riding along the existing bridleway, a choice made in part in response to concerns raised by the British Horse Society.⁶¹ Mr Collins commented that this was the fullest consultation exercise he had seen on any scheme.⁶²
35. Mr Williams gave evidence on the overall success of what is proposed. In his oral and written evidence he emphasised that:
- (1) The DRP final comments were *“as positive a set of final comments for a scheme as I have ever seen”*. He also noted that the second DRP had identified that the Appeal Scheme entailed a convincing landscape concept and could credibly be called *“landscape led”*⁶³, something he said was particularly impressive given the overuse of those terms in placemaking.

⁵⁸ See Mr Collins’ proof at 8.8 and CD2.38 pt 1 at pg 207-209.

⁵⁹ CD2.38 pt 1 pp 187-193.

⁶⁰ CD2.38.

⁶¹ See Mr Kime’s proof at 8.3.2.

⁶² Mr Collins in his EiC.

⁶³ CD12.4 para 2.2.

- (2) As designed, the Appeal Scheme is “*closely aligned with current urban design best practice guidance, has been diligently put together through a highly consultative process*”⁶⁴.
- (3) The Building for Nature design award represents the conclusion of a “*long and thorough process*” and is “*a real accolade*”⁶⁵.
- (4) The Appeal Scheme is materially better than the WPIL appeal. While the previous scheme was more mechanical, regular and orthogonal, presenting a continual typology and heights (including a “*wall*” of 4 storey), the Appeal Scheme was based on a “*different mindset based on understanding the local character and sensitivity*”⁶⁶ and had responded in a number of ways including (see Mr Williams presentation at pp 57-59⁶⁷):
 - (a) The creation of three distinct neighbourhoods within the settlement with appropriate density distribution;
 - (b) Taking advantage of a broader mix of home typologies and a more contextual approach to building forms and materials;
 - (c) Lower building heights in general, but specifically when considering sensitive edges including Ockham Lane (see further discussion below in section 4.1) and the SANG.
- (5) This led him to conclude that:
 - (a) The Appeal Scheme is “*in accordance with national policy and guidance and relevant local planning design policies*” (6.3.1);
 - (b) It is “*one of the most comprehensive and coordinated planning applications I have audited (out of well over 200)*”⁶⁸;

⁶⁴ ID5.21 Mr William’s presentation at pg 111 (and proof at 6.2.1).

⁶⁵ Mr Williams in EiC.

⁶⁶ Williams in EiC.

⁶⁷ ID5.21.

⁶⁸ Mr Williams’ proof at 6.6.1.

(c) He was in a position to “fully endorse and commend the Appeal Scheme”⁶⁹.

36. Hallam and Harris each confirm in the SoCG⁷⁰ that the Design Principles Document (i) has been prepared with the input of all three parties and (ii) is to be an approved document on all three planning applications. They also commit to participate in preparing the Site Wide Design Code.

2.4. Third party objectors

37. Specific points made by third parties at the Inquiry are addressed below under the relevant main issues, as necessary. In respect of the statements made by third parties more generally, we make the following overarching points.

38. First, almost every objector who spoke at the two public sessions advanced an objection to the principle to the development of the FWA for a new settlement. None appeared to have had any regard whatsoever to the warnings in PIM note⁷¹ that the inquiry was not an opportunity to object to the principle of the allocation. Further, despite your warnings, Madam, during the evidence, much time was spent on matters (housing need, the history of the GBLP, the impact of removing the WNS from the Green Belt⁷²) which are simply irrelevant to the matters which fall to be assessed on this appeal.

39. Second and relatedly, some of the objectors said that housing should be put on brownfield sites in urban areas and not on this site. However, that is an argument which has already been had and determined through the examination of the GBLP. Inspector Bore addressed the issue squarely at paragraph 81 and 82 of his

⁶⁹ Williams proof at 6.6.2.

⁷⁰ CD5.12 “19. The Parties are committed to preparing a Site Wide Design Code, as described in the Design Principles Document (DPD) (CD 1.9). The DPD has been prepared with input from all principal landowners, the content is agreed by all Parties and is to be an approved document on all three separate planning applications. 20. The Site Wide Design Code would be supplemented by neighbourhood or phase specific design codes. These later design codes can be submitted independently of one another.”

⁷¹ See CD5.9 at para 16 as set out in full above.

⁷² See CD6.1 where the GBLP records at para 4.3.18 ep 50 “[w]hilst the general extent of the Green Belt has been retained, land has been removed from the Green Belt in order to enable development around Guildford urban area, selected villages, and at the former Wisley airfield.”

report⁷³, concluding that “*[i]t is not possible to rely on increasing the supply of housing within the urban areas to obviate alterations to the Green Belt boundary. Development opportunities within the urban areas have been thoroughly investigated... Although further sites have been identified in other documents such as the Town Centre Masterplan, and in work undertaken by the Guildford Vision Group, they cannot be relied upon to deliver homes or meet business needs within the plan period and it would therefore be unsound to assume that they can contribute towards meeting the Plan’s housing requirement... any extra yield from these sites would fall a long way short of making the scale of contribution towards meeting overall development needs that would enable the allocated sites in the Green Belt to be taken out of the Plan.*”

40. In reality, these (rather tired) arguments that housing should be directed elsewhere are the very definition of NIMBYism⁷⁴. It is of course a striking feature of the planning system that the objections in cases like these come almost exclusively from older local residents, living in their own no doubt very valuable houses in prime locations in Surrey. Some (a few; too few) paid lip service to the notion that there is an acute need for housing both locally and nationally. Many did not acknowledge this at all. A number argued the level of need has been overinflated. This is all par for the course at inquiries. Those in acute need of housing sadly don’t come to inquiries. They have rather more pressing concerns. For those who did acknowledge the need for housing they just didn’t want the development near them. So, as usual we are facing NIMBYism, pure and simple. Some frankly accepted this⁷⁵ but many sought to alight on environmental or sustainability concerns which, as usual, were raised as a fig leaf for such NIMBYism. It is striking that the same people who argue that the Appeal Scheme will not make sufficient provision for sustainable modes of transport omit entirely to recognise that one effect which it must necessarily have is to improve the sustainability of the community they now live in through improved routes

⁷³ CD7.11 pg 20.

⁷⁴ The Cambridge dictionary defines NIMBYISM as “*the behaviour of someone who does not want something to be built or done near where they live, although it does need to be built or done somewhere.*”

⁷⁵ Dr Aish; Mr Lawrence.

for cycling and the bus offer. As is so often the case where a person is so strongly opposed to a development they are blinded to any benefits it might bring.

41. Third, many objectors harked back to the refusal of the WPIL appeal and failed to acknowledge or understand the importance of the subsequent allocation of the site in the GBLP and the making of the J10 DCO. They also challenged the housing requirement in the GBLP. There were many, many references to the GBLP having been adopted in purdah. This is completely irrelevant. The GBLP was properly adopted. Moreover, it was challenged unsuccessfully in the High Court. S. 113(2) of the P&CPA 2004 makes clear that the validity of a development plan may not following an unsuccessful challenge be “*questioned in any legal proceedings*”.
42. Fourth, there was a regrettable degree of insinuation about “*highly influential individuals*” and even fraud⁷⁶. This was combined with an account of the planning history of the FWA which was as deeply flawed as it was entirely irrelevant. The planning history, so far as it is actually relevant, is set out in the SoCG⁷⁷.
43. Fifth, this tendency to seek to make attacks on the character of the Appellant as a company, often by reference to vague and unverified googled material related to other sites. The Appellant is a top three UK housebuilder with a five star satisfaction rating from the HBF, delivering over 11,000 new homes every year⁷⁸. Its five star rating is based on independent feedback from their buyers and mean at least 90% have to rate them as five star. In any event, it is well established that the identity of the applicant is generally not relevant to the decision on whether planning permission should be granted.
44. Sixth, the objectors’ representations were replete with misunderstandings of the Appeal Scheme and the evidence. Mrs Paulson (who gave evidence as a third party but was also relied upon by Mrs Porter for VAWNT) was a good example.

⁷⁶ In particular from Mr Lawrence and Mrs Erhardt.

⁷⁷ CD5.10, section 2.

⁷⁸ Mr Collins in EiC.

She spoke about traffic modelling being based on counts undertaken during COVID, alleging this undermined the modelling. However, the model was developed very largely on the basis of pre-Covid data and as such agreed to represent a robust worst case: the counts were undertaken out of lockdown periods, calibrated with reference to pre-Covid counts, the methodology approved in advance by SCC and NH and the results accepted as representative by SCC and NH. All of which was clearly set out in CD 2.22 (paragraph 11.1.4 and Appendix J). She also suggested that the Appellant would be able to increase building heights when this is a feature fixed by the parameter plans. She asserted that there had been no assessment of impact on heritage assets. There has, of course, been detailed assessment.⁷⁹ We use Mrs Paulson as an example of this. She was by no means alone⁸⁰. Such was the scale of misunderstandings and misrepresentations by third parties and indeed some of the Rule 6 Parties that it becomes impossible to correct them all. Such evidence must be treated with extreme caution.

45. Seventh, there were repeated attempts to criticise the quality and good faith of the public consultation and engagement programme undertaken by the Appellant. The reality is, as set out already, that there was very extensive engagement over a number of years. That this is the position is not actually disputed.⁸¹ In the end the complaint that emerged was not that there was not consultation on the Appeal Scheme but that in response to the points raised the Appellant did not pack up shop and go home despite the site being allocated. If your position is that you object to the principle of development on an allocated

⁷⁹ See Chapter 10 of the ES (CD2.85), HEBDA (CD2.40) and Heritage Rebuttal (Appendix 1 to Mr Collins' rebuttal proof).

⁸⁰ Another particularly egregious example was Mr Wise (ID5.14T). So replete with errors and misunderstandings was his statement that it is impossible to know where to start. There is almost no content to it that is correct. Mr Campbell for VAWNT also repeatedly made incorrect or false statements about the Appeal Scheme and the evidence.

⁸¹ There were a couple of specific allegations made of particular deficits but these are all factually wrong. For example, Mr Milton for VAWNT alleged that the British Horse Society and Surrey County Access had not been consulted by the Appellant. This is not the case. See CD2.38 (pt 8 of 12) elec pp 51, 53, 54, 57, 58, 59 and CD2.38 (pt 1 of 12) p 189.

site you are bound to be disappointed with consultation on a scheme or schemes that will seek to deliver the aspirations of the allocation.⁸²

46. Eighth, a number of third parties – some associated with Rule 6 Parties⁸³ – have continued to submit evidence long after the close of their case⁸⁴, during the Appellant’s case and even after that⁸⁵. This flow of late material has been constant. None of it is new. The Appellant has not sought to specifically respond to much of it. If Madam you have any concerns at all about its contents or need anything else from the Appellant by way of response then we would invite you to let us know. Otherwise we intend to move on.

2.5. VAWNT

47. While VAWNT⁸⁶ sought and were granted Rule 6 status, their evidence did little more (in both substance and form) than repeat the issues already set out in relation to the third party objectors.

⁸² Mr Williams made that point very clearly when XXd. He was asked by Mrs Porter “*How significant or important is buy in by the existing community?*”. He said that in his experience while it is very important to communicate thinking and have regard to feedback in terms of agreement - convincing local people of the benefits of a scheme or the design approach - is very hard. He said, “*People who live nearby don't want it.*” Given that it was difficult to talk through positive design. So you can explain your ideas. You can show the design rationale. and you can hope that existing community can be persuaded to see the benefits. But he concluded “*Being frank that is all you can do*”.

⁸³ Cllr McLaughlin being especially guilty of this. The material he has produced late has some scurrilous content. It is borderline defamatory. The points he has raised are misconceived and vexatious. This evidence should be given no weight. His conduct is such that he is very fortunate not to have been the subject of a costs application against both him and Ripley and Send.

⁸⁴ See by way of example only ID5.53-54, 64-65.

⁸⁵ VAWNT even called a new witness and gave new evidence in the s. 106 session in Week 8 of the Inquiry on 11 December 2023. This was to deal with matters that had been before the inquiry since 10 October 2023.

⁸⁶ VAWNT has had every conceivable opportunity to present its case:

- a) At the date for proofs it provided a short 7 page proof and a report from Mayer Brown on transport;
- b) At the date set for rebuttals it produced 50 statements (these were not rebuttals);
- c) Post that date – the following week a number of additional statements were provided;
- d) Then in week 3 of the inquiry many further statements were produced;
- e) Then on the days their case was heard they produced yet more statements;
- f) They were also allowed to and did XX the Appellant’s witnesses at considerable length and despite your advice, Madam, they went over and repeated questioning on points pursued by other parties. Indeed Mrs Porter and Mr Campbell often as between themselves covered issues twice;
- g) Throughout the process, including after its case was made, and the Appellant was giving its evidence further material was submitted: see e.g. ID5.44.

48. So far as relevant, their points are addressed below. However, as a matter of proportion and recognising that VAWNT called no expert witnesses, the Appellant has chosen not to seek to respond to and rebut each of the very many errors and misrepresentations which they have repeatedly and relentlessly advanced. Some of their witnesses, such as Mr Cross, freely admitted that they had not sought to glance at even the most basic information relevant to the case which they were purportedly seeking to advance.⁸⁷ The weight to be given to such evidence is thus very limited.
49. Mr Collins explained in his proof⁸⁸ and in his oral evidence that many attempts were made by the Appellant to meet with VAWNT to seek to answer their questions. VAWNT determined not to engage⁸⁹. The fact is that hours, if not days, have been wasted at this inquiry by VAWNT asking basic questions that they could and should have asked at the offered meetings.⁹⁰

2.6. Third party supporters

50. While, as is almost always the case, the majority who spoke at the third party sessions were objectors, it should be remembered that there is strong evidence for wider support within the local community. The following gave oral evidence, the palpably hostile reaction to them at the inquiry a good reminder of why people are generally reluctant to do so:

- (1) Mrs Punter of the Surrey Chamber of Commerce (herself a local resident) spoke eloquently and persuasively on the level of demand for housing in the district and on the benefits which the WNS would bring in terms of supporting the local economy: she gave the example of support for the small businesses struggling in East Horsley.

⁸⁷ Mr Cross raised a number of questions on the basis of the SCC SoCG (CD5.11) but admitted that he had not even read Mr McKay's proof which (together with the TA) contains the answers to nearly all of the questions he posed.

⁸⁸ See para. 8.13 and Appendix 2.

⁸⁹ Mrs Porter was clear about this when she XXd Mr Collins saying VAWNT decided that there was no point in meeting with the Appellant.

⁹⁰ Mrs Porter attended many of the Community Liaison Group meetings in her capacity as a resident of Elm Corner.

- (2) Mr Fox of the Guildford Hockey Club explained the need for new sports facilities and expressed his support for what is proposed (discussed further below).
- (3) Mr Waterfield of Vivid Homes confirmed his company's role as a committed delivery partner for the affordable housing. He expressed his view that the settlement would be sustainable and confirmed that affordable housing would be delivered on a tenure blind basis to a high standard.
51. Others, including Doug Clare for GBUG or Sir Gerald Acher, identified limitations or areas where they would like the Appeal Scheme to have been formulated differently but did not object to the Appeal Scheme per se.
52. In addition to the oral statements, you Madam have the written support statements from the Surrey FA, Woking and Guildford Tennis Club, Sports England.⁹¹ Mr Collins also referred to some 143 statements in support from local students – as he said, their voice is worth listening to as part of the community who will in due course hope to benefit from the provision of new homes in the borough in the future – a prospect that lies out of reach for most given the housing crisis.

2.7. ES compliance and cumulative/in combination sites

53. WAG have confirmed in writing through Mr Harwood that no issue is taken regarding the legal adequacy of the ES. Although Dr Marner and Mr Hall presented lists of additional sites which they thought might not have been taken into account, each of Mr Russell, Dr Marner, Mr Baker and Mr Hall confirmed that they were not arguing that there was any deficiency in either (1) the assessment of cumulative impacts in the ES or (2) the identification of projects to be assessed in combination with the WNS in the HRA work. These concessions were well made. It is untenable to argue that complex assessments like those undertaken for transport, air quality and ecology must be constantly updated

⁹¹ See Mr Collins at section 9 of his proof and in his oral evidence.

each time a new permission is granted or indeed applied for⁹². This is, in part, why TEMPro growth factors are used to ensure that the overall projections for future traffic (and hence pollutant) levels is robust and precautionary.

54. Cllr Osborn's limited points on this subject on behalf of Ripley and Send (dealt with further below) did not take the matter any further⁹³.
55. It was on this basis that Mrs Wood was not called – a course of action to which WAG's advocate did not object when asked by you Madam. Her evidence stands as written evidence in the same way as the heritage evidence that is appended to Mr Collins' proof and in the same way as Mr Kime's proof

2.8. The proposed Stewardship Body – the Wisley Airfield Community Trust

56. The Appellant has sought to develop a best practice approach to the future ownership, management and maintenance of the community assets to be created on the FWA and the wider WNS. While the final form of the Stewardship Body including (i) a scheme setting out its business plan, objective and strategies for achieving the "*Stewardship Body/WACT function*" (ii) a memorandum and articles of association (iii) and its management are all to be approved at a future date (prior to occupation)⁹⁴. The level of endowment to be made by the Appellant will then be approved later, prior to handover. Appellant's own proposals are set out in the IPFF and addendum and draft articles of association and are annexed to the s.106 agreement.⁹⁵ These build on the Stewardship Strategy and In-Perpetuity Funding Framework Document ("*IPFF*") submitted in August 2022 and July 2023 respectively.⁹⁶
57. Mr Williams has audited the Stewardship Strategy and original IPFF and confirmed that in his view this was excellent work, rare in his experience.⁹⁷

⁹² For cumulative assessment in the ES one is looking at committed development only, but for HRA purposes some guidance suggests that consideration is also to be given to development applied for albeit not yet consented: see Marner proof para. 4.8.

⁹³ See Section 3.1.2.5

⁹⁴ See clause 4.1 of Schedule 13.

⁹⁵ See ID5.63 annexures T and U

⁹⁶ CD2.45 and CD2.60

⁹⁷ In his EiC.

58. While noting that the final form of the Community Trust/Stewardship Body (referred to as Community Trust for convenience in what follows) is to be agreed by GBC in due course, there are a number of points to be made about what is secured now.
59. First, the functions of the Community Trust will be⁹⁸:
- (1) maintenance of public open space and community facilities (community buildings, sport pitches, play areas, etc.);
 - (2) maintenance of the SANG and provision for SAMM+ wardening on and off the SPA;
 - (3) sustainable transport (bus service and subsidy, e-bike hire scheme, car club)
 - (4) placemaking (community development, activities and events).
60. Second, the Community Trust will be established and resourced by the Appellant until handover⁹⁹. The definition of the Stewardship Body/WACT Scheme provides that it may include security measures, to guard against default of its obligations, which (prior to handover) could include bonding. Further, the s. 106 imposes direct obligations on the “Owner” of the site to provide and pay for the various community facilities (including the SANG and bus services) prior to their handover to the Community Trust.
61. Third, the future viability of the Community Trust has been demonstrated by the evidence before the inquiry. As Mr Collins and Mr McKay explained, the IPFF and addendum thereto¹⁰⁰ provides demonstrable evidence of all of the costs associated during the circa 10 year build out, and beyond, and where the income will come from to ensure the Community Trust can meet its liabilities in perpetuity¹⁰¹. This is robust and detailed and shows how sensitivities have been applied to demonstrate that proposed endowment of assets could underpin

⁹⁸ See definition of Stewardship Body/WACT Functions in Schedule 13 of the s.106 agreement.

⁹⁹ See Schedule 13 of the section 106 agreement – in particular paragraphs 4 and 5.

¹⁰⁰ Collins rebuttal App 2 and ID5.63 Annexure T.

¹⁰¹ Collins proof paras. 12.32, 14.11, 16.4 – 16.6.

financial viability for the Community Trust even if the performance of the bus services (which are probably the element of cost and revenue most susceptible to uncertainty) is significantly worse (in financial terms) than WSP's core projection. Any surplus against this could be fed back into a reduction in estate charges, which are in any event significantly below the examples currently seen at other comparator sites¹⁰². There was no serious challenge by anyone to the financial modelling underlying the Community Trust. Mr Collins' evidence was that "*the WACT is industry best practice*".¹⁰³

62. Fourth, and in any event, the handover to the Community Trust will be subject to satisfaction as to its financial robustness in perpetuity.¹⁰⁴ This will enable GBC to review the financial performance of the bus services and other community infrastructure during build-out¹⁰⁵ and to require an endowment sufficient to ensure that future robustness.
63. Fifth, Mr Williams' evidence was that the Community Trust model itself was "*a very strong part of the appeal scheme*" noting that, "*this level of attention and insight into the long-term management of the community for the benefit of its residents is very rare*".¹⁰⁶ The Community Trust will support the new community and provide public benefit to existing and new residents including ensuring the maintenance of the community assets and the promotion of community activities that brings residents and members of the wider community together and helping to ensure that a community is created out of the Appeal Scheme.¹⁰⁷ Mr Collins commented that this is very much in accordance with the drive towards localism – providing local residents a real stake in the future management of their community.

¹⁰² See the Case Studies at Appendix II to the IPFF.

¹⁰³ Collins proof para. 15.31.

¹⁰⁴ See Collins proof at paras. 15.19 – 15.33.

¹⁰⁵ Potentially a period of 10 years.

¹⁰⁶ Williams proof para. 2.2.14 and his EiC.

¹⁰⁷ Collins proof para 3.17 i. and see also Mr Collins rebuttal at App 3 and 4.

64. Sixth, the position of SCC¹⁰⁸ and NE¹⁰⁹ - both of which are directly concerned with matters to be provided via the Community Trust – that is to say bus services and SANG management and maintenance respectively – is that they are entirely satisfied with this aspect of the Appeal Scheme.
65. Seventh, as set out in Mrs Yates evidence “*[s]o far as the principle of the WACT is concerned, GBC has always said it has no issue with the principle of the WACT and its assuming responsibility for the various SANG, infrastructure etc. as proposed ...*”.¹¹⁰ When XXd Mrs Yates withdrew her suggestion that the “*in-perpetuity framework as proposed by the Appellant is a novel approach to manage SANG and has not been agreed by the Council previously.*”¹¹¹ She had little option but to so concede given that GBC had fully agreed a Community Trust to manage, inter alia, SANG on the WPIL appeal.¹¹²
66. Finally, when Mrs Yates gave her oral evidence she confirmed in XX that the only remaining issues were as set out in her email at ID5.3, that these were “*capable of being addressed*” and that GBC had no other issues whatsoever with what was proposed in relation to the Community Trust. Since then there has been full agreement reached on these matters in the s. 106 so as to deal with all

¹⁰⁸ CD2.29 “*SCC are satisfied that the WACT would provide sufficient resilience funding to ensure the required bus services are provided in-perpetuity*”. See also Mr Cooper’s oral evidence.

¹⁰⁹ CD3.105 and Mrs Yates answers in XX.

¹¹⁰ ID5.3 and Yates XX.

¹¹¹ Yates proof para. 3.17 and answers in XX.

¹¹² See CD9,1 paras 7.19, 7.39, 7.82, 19.5, 19.11, 20.44, 20.49 and 20.190. See also CD9.5 at elec p 18 and see also App 6 containing the Community Trust documentation. See further Collins rebuttal at paras. 5.7 and 5.8:

“5.7 I also note that the principle of a Community Trust managing SANG is something which GBC have previously been comfortable with, and as I have outlined, formed part of the S.106 agreement signed up to by GBC at the last appeal (CD REF 9.5). Furthermore, the Wisley Airfield Garden Village (Garden Communities Programme Bid to the MHCLG) (November 2018) (CD REF 12.60) (“GCPB”) produced by GBC details (paragraph 3.1.1): -

“The Proposals include the formation of a Community Trust [...] The Trust will support the new community and provide public benefit to existing and new residents including:

- *Long term ownership and maintenance of the on-Site Suitable Alternative Natural Greenspace (SANG)”*

5.8 Paragraph 3.1.3 of the GCPB details an in-perpetuity funding arrangement along the lines which are proposed: -

“The Trust and its activities will be funded and resourced in the early years directly by developers and will then be endowed with income generating assets able to deliver sufficient annual income to support the Trust in-perpetuity. Funding sources are also to include a ground rent charge to fund placemaking activities and to give residents a stake in, and sense of ownership of, the Trust and its activities.”

of Mrs Yates remaining issues. Madam, you can thus have full confidence in this aspect of the Appeal Scheme.

3. Main Issues

67. We now turn to consider the main issues set out by you Madam in opening. In so doing we follow the order in which the witnesses for WAG and the Appellant were called and address highways and sustainability issues first, before air quality and then ecology. We retain Madam your numbering for convenience.

3.1. Main Issue 2: Effect of Proposed Development on the Local Road Network and Strategic Road Network

3.1.1. Introduction

68. There are a number of points to be made at the outset.

69. First, the effect of the Appeal Scheme on highways must be approached recognising that a development of this scale is inevitably going to have some impacts on local roads¹¹³. This is important because:

(1) NPPF 111 makes clear that development proposals should “*only be prevented or refused on highways grounds if*” either (i) “*there would be an unacceptable impact on highway safety*” or (ii) “*the residual cumulative impacts on the road network would be severe.*”

(2) Here, the principle that the development of the allocation as a whole can be delivered without severe residual impacts on either the LRN or SRN was recognised by GBC in allocating the site under Policy A35 of the GBLP, a conclusion specifically confirmed as sound by Inspector Bore in his examination report.¹¹⁴

70. Second, beyond the higher level work underpinning the GBLP, the impact of the WNS as a whole has already been subject to detailed modelling and testing through (1) the examination of the J10 DCO, a project promoted by NH and

¹¹³ CD5.9 para 16, as set out in full above.

¹¹⁴ CD7.11 para 188. He also recognises that the site is well located with respect to the SRN.

consented by the S/S on the advice of the ExA and (2) the consideration of the WPIL appeal:

- (1) As SCC agreed in the SoCG¹¹⁵, the Appeal Scheme proposes only 86.5% of the total dwellings proposed in the WPIL appeal which was advanced on the basis of a higher agreed traffic generation rate than has been agreed for the Appeal Scheme. Notwithstanding this, Inspector Hughes concluded (and the S/S agreed) that there was no unacceptable harm to the LRN¹¹⁶.
- (2) While a severe impact on the SRN was identified on the WPIL appeal, that issue has been resolved by the delivery of the J10 DCO. Through its evidence to the examination of that project, NH successfully demonstrated to the satisfaction of the ExA and S/S that the residual cumulative impacts of the scheme, including the full modelled WNS proposed under Policy A35¹¹⁷, were acceptable in relation to both the SRN and LRN¹¹⁸.
- (3) Mr Russell agreed that in the context of the DCO the A35 allocation “*would have been given particular attention*”¹¹⁹. Mr McKay also confirmed this and added that the model used was “*broadly similar*” and confirmed that it looked not only at the impacts on the SRN but also the LRN¹²⁰.
- (4) In fact, as recorded in the ExA report, a specific purpose of the J10 scheme was to “*support the delivery of the new housing planned for in the Guildford Local Plan 2019, particularly in the later stages of the plan period for this local plan.*”¹²¹

¹¹⁵ CD5.11 para 5.2 “SCC also AGREE that the application proposal comprises 1730 dwellings (plus care and G&T), which is 86.5% of the number of dwellings in the 2017 Appeal. The agreed residential traffic generation rate is also marginally lower in this appeal and hence the overall traffic generation is accordingly lower in these current Appeal proposals than in the previous Appeal, which SCC considered would not cause a severe impact on the highway network.”

¹¹⁶ CD9.1 IR 20.70 and DL24.

¹¹⁷ Russell and Marner accepted this in XX. The DCO modelling thus included 2000 new homes on the FWA plus 753 jobs.

¹¹⁸ CD13.2 para 7.2.6.

¹¹⁹ CD13.2 paras 5.2.9, 5.2.11 and 5.2.114.

¹²⁰ Mr McKay in EiC.

¹²¹ CD13.2 para 5.2.11. Answers given by Mr McKay to Mr Eves further confirmed that the delivery of the allocations in the GBLP was one of the purposes of the DCO.

The WNS was therefore not only modelled through the DCO but was part of its justification.

- (5) It is noted that RHS Wisley (one of Mr Russell's clients on this appeal) objected to the DCO and advanced a highways case attacking the scheme. That objection was rejected in its entirety.

71. Third, in the context of the Appeal Scheme itself, highways issues have been given detailed and careful consideration in relation to the Appeal Scheme: see e.g. TA (CD2.22); the Transport Position Statement (CD2.25)¹²² and updated Position Statement (CD2.26); ES Chapter 11 (CD2.86); the proof and rebuttal of Mr McKay and the well over five days of oral evidence he gave. As he sets out at 4.1-4.11 of his proof, there were many meetings both before and after the application was submitted. These were held on a topic basis and including all the relevant parties when required such as on traffic modelling.
72. Fourth, that consideration has been developed in close consultation with the statutory authorities (especially SCC and NH as highway authorities with responsibility for, respectively, the LRN and SRN) on an ongoing basis at both pre and post application stages: see SoCG with SCC at 2.1-2.5 (CD 5.11). This has allowed detailed queries on the traffic forecast modelling, mitigation proposed and residual impacts to be raised and addressed: see for example the tracker with SCC at CD2.29, the summary at pg 3 of NH's consultation response of 19 May 2023 (CD3.85), the appendices to the TFR (CD2.22, appendix G.2-G.4), or the Transport Position Statement and Updated Transport Position Statement.
73. In his EiC, Mr McKay went to section 2.5 of Appendix G to the TPS (CD2.25 pt 3) which shows queries raised about the traffic growth forecasts applied; and the updated TPS at pg 9 which shows discussions around impacts on Plough Lane and Old Lane. WSP were directed by SCC to look at possible mitigation including a proposed partial south bound closure of Old Lane. The conclusions

¹²² The TA and ES Chapter 11 were both fully scoped with GBC, SCC and NH – see Mr Cooper's answers in XX.

of the work were that proposed partial closure was neither necessary nor desirable, as it would lead to impacts on the A3, Ockham Lane and the Ockham Park Roundabout without significantly reducing traffic flows on Plough Lane, a conclusion agreed with SCC (see response on 30 June 2023 referred to at 3.1.3 of updated TPS).

74. Fifth, GBC has its own transport officer, Mr Knowles, who was also present at the majority of those meetings and was able to raise questions or concerns. Mr Cooper, in XX, said he was an “*active observer*” discussing the issues and raising queries which were answered on modelling, trip generation etc. Mr McKay confirmed this and noted that Mr Knowles had had a particular interest in impacts on Potters Lane.¹²³
75. Sixth, and critically, none of these statutory bodies now raise any objection to the Appeal Scheme on highways grounds:
- (1) NH confirmed on 19 May 2023¹²⁴ that, on the basis of the Appellant’s work and their own appraisal, the residual cumulative impacts of the development on the SRN would not be severe and any unacceptable impacts on highway safety could be mitigated.
 - (2) SCC as CHA gave evidence through Mr Cooper who confirmed, in line with the SoCG,¹²⁵ that all matters are agreed subject to finalisation of the s. 106 agreement and that once that has occurred Madam you will be “*respectfully requested to allow the appeal*”. It should be noted that Mr Cooper is a qualified transport development management professional who holds the rank of Principal Transport Development Planner, has 15 years’ experience, and is familiar not only with the site but its context in south west Surrey¹²⁶. He coordinates a number of teams at SCC including public transport, road safety, cycling, road traffic regulation, s.278 design strategic modelling and

¹²³ Mr McKay in EiC.

¹²⁴ CD3.85.

¹²⁵ CD5.11 para 2.8.

¹²⁶ See Mr Cooper’s proof at 1.1.

local junction modelling. He has the support of his senior officers at the highest level and has asked pertinent questions about each topic area, representing the position of the CHA robustly¹²⁷. Mr Cross' wholly inaccurate attempt at character assassination (who by his own admission had not read key evidence and did not put any of his points to Mr Cooper directly either in the inquiry or outside it) are to be deprecated. Mr McKay rejected unequivocally the suggestion that Mr Cooper was in any way underqualified to make the judgments he has.

- (3) GBC also rely on the evidence¹²⁸ of Mr Cooper and do not raise any freestanding highways issues.
- (4) All of these bodies specifically accept that Burnt Common Slips¹²⁹ are not required to mitigate the impacts of the scheme.¹³⁰ This was also the view of Mr McKay.¹³¹

76. This provides the context in which Mr Russell advances his case that the appeal should be refused on highways grounds. As he rightly acknowledged, it is an "*isolated*"¹³² position.

77. It is also a rather more limited position than perhaps might have been apparent prior to his oral evidence. In relation to the effect of the Appeal Scheme on the LRN and SRN, Mr Russell confirmed that:

- (1) He does not argue that the Appeal Scheme will lead to severe residual cumulative impact on either the LRN or SRN. WAG therefore advance no case for refusal under that limb of NPPF 111.

¹²⁷ In Mr McKay's words in EiC he has "*never held back from requesting further modelling*".

¹²⁸ See Mrs Yates Proof at para 6.2(c) and 6.5.

¹²⁹ Which are referred to in requirement (4) of A35 and in the IDP accompanying the GBLP. See Annex 3.

¹³⁰ See for SCC CD5.11 at 7.1 bullet point 3; for NH CD3.85 pg 6 and 7; for GBC Mrs Yates' proof at 4.4.

¹³¹ In his written and oral evidence.

¹³² Mr Russell's own words in XX.

- (2) He does not raise any concerns about the site accesses to be constructed from the Wisley Lane Diversion or Old Lane¹³³. While Mr Russell suggested that his concerns about the off-site cycle routes would also engage NPPF 110(b), this argument is unsustainable.
- (3) While he does now say that there would¹³⁴ be unacceptable safety impacts (albeit this characterisation of Mr Russell's evidence departs from the way the vast majority of his evidence is written¹³⁵), this results from his contention that (i) the traffic forecasting cannot be relied upon to reach a view as to the totality of the cumulative residual impacts and (ii) the particular proposals for off-site cycling are unsafe/unsuitable. He is not advancing any wider case that, if the Appellant's traffic forecasting is accepted, there will be any specific junctions or links that would be unsafe except for cyclists.

78. As such, his evidence on the LRN and SRN as a whole is really dependent on his two arguments that either:

- (1) The traffic forecasting is inadequate and/or generally underestimates trip generation / travel demand such that it cannot be shown that the mitigation proposed is safe and suitable or that additional mitigation is not required¹³⁶; and
- (2) The proposed off-site cycle routes fail to meet the requirements of LTN 1/20 and will therefore be unsafe/unsuitable¹³⁷.

¹³³ The first of which has in fact already been approved on appeal. Both have been subject to stage 2 RSA: see Mr McKay's proof at 8.4.

¹³⁴ I.e. not just that he is unable to say one way or the other.

¹³⁵ Although paragraph 1.7 of his proof said that the Appeal Scheme "*would*" result in an unacceptable impact on highway safety, paragraph 6.30 only referred to a "*potential to cause*" or suggested that it had "*not been proven*" that unacceptable impacts on highway safety would arise.

¹³⁶ See Russell proof at 6.30-31.

¹³⁷ In his proof Mr Russell had also sought to suggest that the cycle routes were limited by costs considerations: see his proof at para. 3.35. But in XX he accepted that this was not so as the costs are likely to run to several millions of pounds. See also Mr McKay's rebuttal at 4.14.

79. Each of these will be addressed in more detail, but it is right to observe that in advancing his case on safety, Mr Russell:

- (1) Identifies no junction or link within the LRN or SRN where unacceptable impacts would arise, outside of his points in relation to the off-site cycle routes.
- (2) In respect of the off-site cycle routes, provides no comment on or criticism of the RSA process carried out in relation to the detailed scheme concept drawings for the proposed off-site cycle routes¹³⁸.
- (3) Acknowledges that, if he were right about the safety risks arising on the off-site cycle routes, then SCC would be failing in their statutory duties as regards the LRN¹³⁹ by not objecting to the scheme and by instead supporting it, a failing all the more striking given their detailed role in developing them.

80. It is also necessary to observe that there were limitations to Mr Russell's approach as a professional witness which go to the weight which his evidence can be given:

- (1) First and foremost, it was of concern that he had consistently failed to engage with or even acknowledge responses to his points. This was not limited to corrections and rebuttals made through the inquiry process (via proofs of evidence and rebuttal proofs) but extended back into the application history where WSP had gone out of their way to offer clarification and explanation in response to the Motion Reviews¹⁴⁰. This is of particular concern where part of the case being advanced is that it is not possible to understand what has gone on.
- (2) So, for example,

¹³⁸ At CD2.31.

¹³⁹ In XX,

¹⁴⁰ See CD12.17 and the responses in CD2.32.

- (a) He consistently (until his oral evidence) referred to there being six proposed cycle routes, notwithstanding repeated corrections from Mr McKay¹⁴¹.
- (b) He continued to criticise the identification of Old Lane as a non-sensitive receptor in the ES (see below) on the basis that it was a route which the Appellant was encouraging for cycling. However, as set out in Mr McKay's rebuttal at 4.17 "*despite several reminders from me and his reading the cycle strategy report, he continues to consider the Old Lane Traffic Management scheme as forming part of the cycle route network. It does not and SCC have accepted this. Any comments from Mr Russell regarding Old Lane as a cycle route can therefore be disregarded.*"
- (c) He failed to make any reference in his proof to CD2.32 which set out a detailed response (including factual corrections) to the points he had made in the Motion Review. Instead, passages like 5.11-5.13 of his proof (where he alleges a discrepancy between the TA and the ES) are set out in identical terms to the Motion Review notwithstanding that a detailed explanation for the different numbers had already been provided (pg 4-5 of CD2.32). We discuss the substance of this point below, but Mr Russell's failure to react to rebuttal and clarification is a matter for regret. It is telling that no XX of Mr McKay was pursued on any of these matters.
- (3) Second, and relatedly, he showed a tendency not to have read documents unhelpful to his case – even when they were directly relevant to the point he was trying to make. So, for example, he had not reviewed the Lighting Strategy Report¹⁴² despite its relevance to the environmental impacts which he speculated might arise from off-site cycle routes.

¹⁴¹ See Russell proof 3.39 and p 21, table 3.1, his answers in XX and CD2.35 Part 1, electronic p. 3 and CD2.22 part 7 of 12, electronic p. 39.

¹⁴² CD1.41.

(4) Third, the most striking example of this was WSP's technical note on trip generation selection dated 26 March 2021 ("**the Trip Generation Note**"). This set out the TRICS data relied on by the Appellant and agreed with SCC. It was provided directly to Mr Russell by the Appellant on 30 August 2023 following a meeting the previous day, held to address the Horsley's request for further information at the PIM. It is simply baffling that Mr Russell did not mention it in his proof, chose to suggest in his rebuttal that this was "*wholly new technical evidence*" and did not even take the opportunity to address the Appellant's subsequent clarification¹⁴³ in his EiC.

3.1.2. Traffic forecasting

81. The traffic forecasting undertaken by WSP on behalf of the Appellant and presented through the evidence of Mr McKay has come under sustained criticism from the Rule 6 Parties and some third parties.

3.1.2.1. Strategic model verification/audit

82. The modelling used by the Appellant has been subject of lengthy and detailed processes of audit and verification¹⁴⁴. The traffic model itself is a full assignment model developed in SATURN¹⁴⁵ and is bespoke, having been developed specifically for the purpose of assessing the WNS¹⁴⁶. It was developed by Mr McKay's¹⁴⁷ team¹⁴⁸ in line with a specification agreed with SCC and NH¹⁴⁹. It has

¹⁴³ ID1.19A and appendices.

¹⁴⁴ See CD2.22 App. K and L.

¹⁴⁵ Mr McKay explained why SATURN modelling remains the best application for determining the assignment of traffic through a road network. As he said, microsimulation (which was mentioned by Mr Eves) is possible but not a great tool for comparing the behaviour of traffic under different demand scenarios. SCC and NH have never requested it at any location.

¹⁴⁶ Mr McKay's prof at 7.1-7.4.

¹⁴⁷ Mr McKay gave details of his own extensive experience (which goes back to the Newbury bypass) in the field of modelling in his EiC.

¹⁴⁸ WSP has one of the largest and most experienced modelling teams in the UK, providing modelling for a number of CHA via consultancy frameworks. This includes evidence bases for a number of statutory local plans as well as for strategic transport schemes. Mr McKay explained that he has not carried out the modelling himself but has worked closely with them (see McKay EiC).

¹⁴⁹ LMVR para 1.2.4. The model used for this appeal has a much higher degree of validation than the SINTRAM model used on the WPIL appeal. That model was subject to extensive attack at the WPIL appeal but the Inspector and S/S rejected these attacks: see CD.9.1 paras 7.50, 7.53, 7.54, 7.62, 10.32, 16.30 (Harry Eve) and 20.67 "[a]t the Inquiry the Appellant's traffic modelling was challenged by various

subsequently been subject to detailed validation in accordance with the standards set by DfT through the TAG guidance¹⁵⁰, as set out in the LMVR. As the LMVR explains, the validation of the model was based upon a comparison of observed and modelled traffic flow and journey time data - using independent data from that used to calibrate the model.¹⁵¹ The LMVR was confirmed and approved prior to the making of the application by both NH¹⁵² and SCC¹⁵³ following further validation and auditing by specialist independent consultants, Jacobs Systra JV¹⁵⁴, on behalf of NH and also by Mr Bryans, “*a specialist and very experienced modelling and transport studies officer*”¹⁵⁵, for SCC.

83. The strategic model incorporates detailed representations of not only the links within the detailed simulation area but also all junctions. It also includes as key junctions outside of the detailed area¹⁵⁶. SCC’s team reviewed the modelling and offered specific comments, for example, raising questions in relation to East Lane junction with Ockham Road North which were addressed¹⁵⁷.
84. These mechanisms are designed to, and do, confirm that, at both the detailed and holistic levels, the strategic model is fit for the purpose of assessing the Appeal Scheme.

parties, although it is acceptable to SCC and HE, as Highway Authorities, and to GBC ... The proposals are likely to increase traffic on rural lanes. Some of these, such as Guilehill Lane, are really not suitable for additional traffic due to its restricted width in places and limited forward visibility. However, it was not demonstrated that the capacity of any of the rural roads was an insurmountable obstacle to the development. The concerns related more to the change in their character that would inevitably arise due to the increased traffic.”

¹⁵⁰ This guidance sets out a series of statistical tests for model performance. It sets out percentages of acceptability for validated links. Generally links need to be within a GEH value of 5 for 85% of links. Mr McKay in EiC.

¹⁵¹ LMVR at 8.1.

¹⁵² Represented by Nigel Walkden, a specialist transport consultant at Atkins.

¹⁵³ See Appendix L to the TA.

¹⁵⁴ And prior to that Atkins: see above.

¹⁵⁵ Confirmed Mr Cooper in XX.

¹⁵⁶ See LMVR at 4.3 CD2.22 pt 10 or 13 e p 33ff.

¹⁵⁷ Mr McKay in EiC referred to specific questions which were raised by JSJV and SCC. See CD 2.28 e p 9.

85. This was accepted by Mr Russell on behalf of WAG who confirmed that¹⁵⁸, having heard Mr Cooper's evidence, he considered that the model was fit for purpose and met the relevant WebTAG criteria.
86. This was an absolutely critical concession on the part of Mr Russell, notwithstanding the points he/WAG later raised around the LINSIG junction assessments. It is the SATURN model which generates the Appellant's prediction for the future impacts of the Appeal Scheme and which provides the basis for the AADT traffic flows that feed into the air quality and ecology assessments. While the detailed junction assessments in LINSIG or Junctions 9¹⁵⁹ (discussed further below) are relied upon by the Appellant (and SCC and NH) in demonstrating no unacceptable impacts on the affected junctions selected for that assessment, those models do not themselves change the projected flows which rely on the junction modelling within the SATURN model.
87. It follows that neither Mr Russell (or indeed any other main party) now disputes the adequacy of the strategic model itself or, it follows, the accuracy of the traffic flows it produces (subject to the various points about trip rates, addressed below).
88. Despite this Mr Russell in his proof continued to raise the issue of his not being granted access to the model.¹⁶⁰ The issue was also raised by VAWNT and a number of third parties, albeit based on at best a partial understanding of the issue. In response:
- (1) This matter was dealt with at the PIM¹⁶¹;
 - (2) There are contractual reasons requirements with suppliers of the data used in the model, which have not been disputed, why access to the model data files cannot be granted to the Rule 6 Parties.¹⁶² Moreover, contrary to

¹⁵⁸ In contrast to the position he took in his proof at 5.9-5.10.

¹⁵⁹ See 13.1.2 of the TA (CD2.22 pt 1 e p 119).

¹⁶⁰ Russell proof para 5.6.

¹⁶¹ See Mr McKay's proof at para 12.16 and his App. M.

¹⁶² Ibid.

VAWNT's suggestions there is nothing unusual or sinister about this. The position is the same in all cases using such data;

- (3) Mr Russell / WAG did not request disclosure of further modelling outputs, as opposed to access to the model itself, until the XX of Mr McKay in week 5 of the inquiry upon which he produced what was requested the very next day. Mr Harwood then helpfully and fairly confirmed the next day that the contents of these disclosed outputs were correctly recorded in the TA;
- (4) Mr Eve in XX referred to a request he made to GBC and which was passed on to the Appellant. This was responded to at the time, albeit the issue was somewhat hampered by GBC's anonymisation of the request.¹⁶³ At the inquiry, Mr Eve explained he wanted flows on all the links not actual access to the model. Mr McKay pointed him to App G.1 of the TA the TFR which contained all of these. Mr Eve fairly accepted that this was in fact the case but he indicated he was looking for more still. But, as Mr McKay explained, to check the input data files themselves as Mr Eve seemed to want to, it is necessary to have the SATURN software. Mr Eve confirmed he does not have this. So, the further information he sought was not something that can be checked by members of the public. Even Mr McKay needs to make requests of his modelling team in order to interrogate it¹⁶⁴. Mr Eve accepted all of this and moved on.
- (5) The statutory highway authorities, and in the case of NH their consultants, have had full access to the model on an open book basis – it being the case that an audit by the statutory authorities is an essential part of the development of the model, and hence permitted by the contractual arrangement with suppliers. The results of their audits are set out in the March and July Transport Position Statements.¹⁶⁵

¹⁶³ CD2.24 elec p 5 – 6.

¹⁶⁴ See McKay EiC.

¹⁶⁵ See McKay EiC and CD2.25 and 2.26.

3.1.2.2.Appellant's predicted impacts on the SRN and LRN

89. The Appellant has used its model to forecast the impact which the Appeal Scheme will have on the LRN and SRN.
90. This work has been subject to further detailed scrutiny post-application by NH and SCC's advisers as reported in some detail in the Transport Position Statement¹⁶⁶ and Updated Transport Position Statement¹⁶⁷. All queries were investigated and addressed through post-application engagement leading first to both authorities' agreement of the forecast traffic flows and junction assessments set out in the TA.¹⁶⁸ Contrary to Mr Russell's suggestion in XX, this covered all matters relevant to the SRN and LRN – JSJV specifically asked questions regarding the assignment of traffic on the LRN through the Horsleys and to Woking.¹⁶⁹ Further agreement was then reached on the implications of those flows leading to the current position of both statutory highway authorities that severe residual cumulative impacts do not arise on either the SRN or LRN and that no unacceptable impact on safety will occur subject to suitable mitigation and detailed design.¹⁷⁰
91. The approach taken is properly precautionary. The Appellant has looked at the effects of the full WNS allocation – i.e. up to 2,000 homes, as well as 100 C2 units and 8 gypsy and traveller pitches. This is likely to overpredict traffic generated by the Appeal Scheme by approximately 15%¹⁷¹. The impacts of the employment and education provision have also been looked at. On a worst case basis, the assessment has assumed additional inbound and outbound traffic to an on-site secondary school (notwithstanding that SCC's response to the application as education authority confirms that would be better made off-site¹⁷²) whilst

¹⁶⁶ CD2.25.

¹⁶⁷ CD2.26.

¹⁶⁸ CD2.25 at para 2.1.3.

¹⁶⁹ Mr McKay in EiC referred to CD2.25 Appendix G section 2.2 and 2.3.

¹⁷⁰ See CD2.26, CD3.85 and CD5.11.

¹⁷¹ Mr McKay's proof at 7.63.

¹⁷² CD3.61. This says "[t]he secondary pupil yield for the combined developments on Wisley Airfield including the Wisley Airfield development, the Land north of Ockham Lane and the Land at Bridge End Farm is 279 pupils. This is not sufficient to maintain a secondary provision on the Wisley Airfield site" (at para. 4.21). As a result

making no reduction to residential trip generation to account for internalisation in that scenario¹⁷³.

92. The details of the approach are set out in the TFR:

(1) As set out at Table 3-1, a range of scenarios have been generated¹⁷⁴. These have been agreed with SCC and NH¹⁷⁵. Following discussions between Mr McKay and the Appellant's ES team, including noise, air quality and ecology experts, further scenarios were also generated for the purpose of identifying the environmental effects of the Appeal Scheme in accordance with the EIA and HRA regimes.

(2) The forecast demand was based on:

(a) Demand from the WNS itself;

(b) Demand from committed sites identified for cumulative and in-combination assessment;

(c) Background future traffic growth from all other foreseeable development. For Guildford district this was identified from the allocations in the GBLP¹⁷⁶ but then 'constrained' (which counterintuitively means 'added to so as to reach a minimum of') to the level derived¹⁷⁷ from the NTEM data as accessed via the TEMPro software (known generally as the TEMPro growth). For the rest of the modelled area, TEMPro growth was used directly;

it is said that "if a secondary school were to be opened on the Wisley Airfield site, a further 321 pupils would be required to travel onto the Wisley Airfield development in order to make a sustainable secondary education provision. Therefore it is considered to be more sustainable for secondary aged pupils to travel to one or more existing local provisions rather than for pupils to travel onto the development to sustain a secondary school" (at para. 4.22).

¹⁷³ Mr McKay proof at 7.46.

¹⁷⁴ Also Table 11 to Mr McKay's proof.

¹⁷⁵ Mr McKay's Proof at 7.37. Also Appendices G.2-G.4 to the TA – e.g. Question 12 by NH/JSJV in G.3.

¹⁷⁶ Identified in the uncertainty log.

¹⁷⁷ As explained in sections 5.3 and 5.4 of the TFR (CD2.22 Appendix G.1) this involves deriving a percentage growth of trips in the modelled area between the base year and the forecast years; applying this to the base matrices to obtain background trip growth. There is then adjustment to take account of the Fuel and Income factors provided through the TAG.

(d) Background LGV and HGV growth derived using the RTF workbook.¹⁷⁸

(3) These inputs led to link flow projections for the entire highway network within the detailed modelling area for each scenario which are illustrated in the TFR¹⁷⁹. They are assessed against well used standards for link capacities which provide a guidance for the maximum flows which might be expected – they take account of road width and nature; this takes account of the kinds of bends and obstructions experienced on the LRN albeit often by proxy with comparison to the influence of parking spaces and bus stops on urban roads.¹⁸⁰

93. It is important to note that TEMPro has now been updated to v8 from the v7.2. As Mr McKay explains¹⁸¹, and SCC have agreed¹⁸², this makes the modelling of background growth particularly robust. Compared with the latest release of TEMPro v8, trip end growth in TEMPro v7.2 is overestimated by over 50% across the whole area of detailed modelling and specifically in Guildford administrative area – this overestimate represents approximately 7% of the total trip ends in the detailed model area and 10% in Guildford.

94. For the WNS itself, the trip generation was discussed in detail and agreed with SCC and NH¹⁸³. This was on the basis of the detailed note provided at Appendix B to Mr McKay’s proof. The sources for the residential trip rates were TRICS (a trip rate database) and a precedent site at Dunsfold Aerodrome. This was clearly set out in the application materials at paragraphs 6.1.2-6.1.4 of the TA and Section 2.2 of WSP’s response note to NH’s comments on the draft TFR (Appendix G.2 of the TA).

¹⁷⁸ See TFR at 5.5.

¹⁷⁹ CD2.22 Appendix G.1 see Figures 6-1 to 6-12.

¹⁸⁰ Mr McKay explained in response to questions from you Madam.

¹⁸¹ Mr McKay proof at 7.50-7.57 and see especially Table 13.

¹⁸² CD5.11 section 6.

¹⁸³ Appendix G.4 of the TA (CD2.22).

95. Following initial testing of the impact of adding the WNS to the future traffic forecasts, mitigation measures comprising speed reduction interventions on roads surrounding the site¹⁸⁴ were devised and added to the future projection under Scenario 3. These are secured under Part 1 of Schedule 3 of the s.106 agreement.
96. As agreed with SCC (see 7.1 of the SoCG), it is agreed that on basis of this work:
- (1) The mitigated traffic impacts of the Appeal Scheme on the highway overall are not severe;
 - (2) The proposed speed mitigation measures have the effect of reducing traffic volumes on a number of local roads including B2215 Portsmouth Road and Ripley High Street (to the north of the Newark Lane junction¹⁸⁵) when compared to flows without the Appeal Scheme;
 - (3) Impacts on roads not subject to mitigation are also not severe and, in addition, are assessed as unlikely to be unacceptable in terms of road safety, subject to the provision of funding by the Appellant of further resilience funding – now secured in the quantum agreed with SCC via the s.106.¹⁸⁶

3.1.2.3. Mr Russell's primary case

97. The traffic forecasting issues raised by Mr Russell in his proof, rebuttal and his main oral evidence were, in the end, really quite limited and came down to a critique of the some of WSP's outputs (at Section 5 to his proof) and then the promotion of his own alternative projection of Travel Demand (Section 6).
98. The criticisms of WSP's work were shown to be toothless and none were pursued at all by Mr Harwood in XX of Mr McKay:

¹⁸⁴ See TFR Table 4-6 and Figure 4-2. (Appendix G.1 to TA, CD2.22).

¹⁸⁵ South of the junction there is no significant change due to the Scheme alone.

¹⁸⁶ In XX of Mr McKay and at the s.106 roundtable, Mr Harwood challenged whether the local road resilience measures to be funded were required. Mr McKay confirmed that in his view they were but that he primarily deferred to Mr Cooper's evidence for SCC. That includes Mr Cooper's CIL Compliance Schedule at Appendix 1 to his proof.

- (1) First, at 5.1-5.9 of his proof, Mr Russell identified what he termed “*discrepancies*” between the forecast peak hour traffic generation from the Appeal Scheme and the modelled flow on links near to the site. In his written evidence he raised the possibility that this might be due to flaws in the model, but in his EiC confirmed his view that this was not the case. He accepts that the model is not flawed and indeed that it is robust. His concern is that the model shows that the Appeal Scheme (which of course proposes various speed reduction measures on local roads) will displace some traffic outside of the assessment area. He then speculates that this might give rise to unacceptable impacts on other (unidentified) links.
- (2) This point does Mr Russell no credit. SATURN modelling¹⁸⁷, a tried and tested method, works by displacing traffic from more congested routes to less congested routes when appropriate according to well tried and tested algorithm¹⁸⁸. Displacement of traffic will occur in reality and is therefore essential to any model. Here, the study area was agreed with statutory highway authorities¹⁸⁹ and both have had detailed involvement in the highway modelling. As you noted Madam in your questions, if they had any concerns that particular roads or junctions beyond the modelling area were being adversely affected they can be expected to have raised them¹⁹⁰. They have statutory duties in relation to the SRN and LRN respectively. In fact, as Mr McKay explained in his oral evidence, most of the redistribution of traffic is within the study area itself. To the extent that traffic is displacing on to the SRN outside the model area this is something that NH and SCC would be expected to investigate.¹⁹¹ Of course, it cannot be forgotten that

¹⁸⁷ Mr Russell accepted that SATURN modelling was an appropriate form of modelling to use see Russell XX.

¹⁸⁸ See Russell XX.

¹⁸⁹ See CD2.22 Appendix K, LMVR Figure 2-1.

¹⁹⁰ And in fact they did ask WSP to extend the model to include Woking Town Centre, which was done. See Figure 2-1 of the LMVR.

¹⁹¹ Mr Russell said that the very first question he would ask looking at the modelling was where has the traffic displaced outside the model area gone. He was constrained to accept that this would also have been the first question that NH’s consultants and SCC would have asked. The suggestion that the

one of the purposes of the J10 DCO was improvement of the SRN so that it could accommodate growth in the GBLP including the A35 allocation.

- (3) Second, at 5.11-5.13 of his proof and in his EiC, Mr Russell continued to advance his concerns about the inconsistency between Table 12-2 of the TA and Table 11.2 of the Transport Chapter in the ES¹⁹². As already stated, this point should have been withdrawn (or at least moderated) following the rebuttal in WSP's response note to Motion's Review (CD2.32). That points out that not only is Table 11.2 (which compares Scenarios 1 and 3) looking at a three access scenario (i.e. the worst case where 70 units – that is the Hallam scheme – are accessed via Ockham Lane) whereas Table 12-2 of the TA is concerned with a two access scenario (see the heading). Further, as Mr McKay explained in the note¹⁹³, again in his proof¹⁹⁴ and oral evidence (1) the ES table is in vehicles¹⁹⁵ and the TA table in PCUs¹⁹⁶ and (2) that the locations reported are slightly different in the TA and ES for Portsmouth Road and Old Lane North given the different purposes of the two assessments (Mr McKay proof at 12.22-25). Mr Harwood again failed to pursue these points in XX of Mr McKay. They are of no merit whatsoever.

99. As for Mr Russell's alternative approach to travel demand:

- (1) The starting point is to recognise that there a number of different ways to build a projection of the travel demand from any scheme.
- (2) The Appellant's approach is derived principally from the use of the Dunsfold Aerodrome scheme as a precedent – recognising that the trip rates used there were agreed by SCC. As set out already, this has been discussed

Appellant was in some way pulling the wool over the eyes of NH and its consultants is without merit. It will be recalled that NH have a heightened interest in the Appeal Scheme given: (i) its interaction with the DCO and (ii) the fact that HE at the WPIL appeal objected to the scheme based on impacts on the SRN. Given this one would expect that NH would scrutinise the modelling with particular care. This they did.

¹⁹² CD2.86, electronic pages 15 and 16.

¹⁹³ CD2.32 pg 7

¹⁹⁴ Para 12.21.

¹⁹⁵ CD2.86 para 11.62.

¹⁹⁶ CD2.22 TA para 12.1.5.

and agreed with both SCC and NH. It has been accepted by their experts, who have had the opportunity to subject it to detailed scrutiny, to be robust. Moreover, while Dunsfold is in a similar location to the Appeal Site, Dunsfold is more remote from sustainable transport links than is the Appeal Site. The use of Dunsfold as a precedent is thus precautionary.¹⁹⁷

- (3) Mr Russell makes no criticism of that approach in his written evidence and confirmed in XX (and response to questions from you Madam) that while he thought the approach was “*simplistic*” he made no objection to its use. Indeed he accepted that, in using pre-Covid data it represented a “*prudent*” approach.¹⁹⁸
- (4) In such circumstances, it is hard to see the value of Mr Russell’s own exercise. First, and fundamentally, it has not been subject to the same kind of lengthy and robust interrogation and analysis by the statutory highway authorities and their specialist officers and consultants. Second, and consequentially, it contains a number of questionable assumptions and results in some implausible outputs

- (a) On trip rates, Mr Russell uses two sites which he accepted were very different from the WNS in that they were smaller (Ockham Road North is for only 86 dwellings, Garlick’s Arch is for 550 dwellings) and contained no on site facilities. Ockham Road North is likely to have a trip rates which exceed that at the WNS which is designed to have substantial on-site facilities including (at a minimum¹⁹⁹) a

¹⁹⁷ McKay proof para. 7.41. And see also (emphases added):

“7.42 ... In the work carried out to gain approval to the trip rates, a comparison was made between the trip rates proposed at the FWA Appeal Site and the trip rates used in the Dunsfold Inquiry (agreed at the time with SCC). It shows that the Wisley trip rates are higher in the AM peak and lower in the PM and therefore judged to be comparable to that approved site, even though the Wisley site is more accessible by sustainable transport modes.

7.43 No reduction has been applied to the FWA Appeal Proposal trip rates to account for the effects of the proposed Travel Plan and Mobility Strategy, even though the TRICS and Dunsfold sites do not have the same level of travel plan and mobility strategy commitments in operation as the Appeal Site will.”

¹⁹⁸ In XX.

¹⁹⁹ It may also have a secondary school and medical facility, depending on the election of the NHS ICB and SCC.

primary school, local centre, smaller centres in the eastern and western neighbourhoods and employment land sufficient to support around 417 jobs on site²⁰⁰. Mr McKay has looked at the Garlick's Arch transport assessment and found that their agreed vehicular trip rate in the AM peak was 0.44 which compares very closely with the 0.426 on the Appeal Scheme.²⁰¹

(b) Mr McKay calculated²⁰² that Mr Russell's total residential trip rate in the AM peak hour would be equivalent to 0.763. As he said, that was way²⁰³ in excess of any of the trip rates reported in either Mr McKay's note²⁰⁴ or Mr Russell's rebuttal²⁰⁵.

(c) On mode share, he uses a different census area to that agreed with SCC/NH by WSP – choosing to exclude an area to the east of Ripley on the basis that it is more built-up, despite acknowledging that the Appeal Scheme when constructed will also be a built up area.²⁰⁶

(5) The weaknesses in Mr Russell's alternative (and unaudited) approach can be seen by the eye-catching projection in Table 6.5 that only 6 people would take buses to the train stations served in the AM peak despite there being 6 buses per hour – so one person, per bus. As Mr McKay explained this is simply "*unbelievable*", especially as Mr Russell himself described the services as good. His travel demand exercise cannot sensibly be relied upon.

100. Mr Russell's other point on the adequacy of the transport work related to the way in which sensitive receptors had been identified and assessed in Chapter 11 of the ES²⁰⁷. He suggested that certain features of the links had been missed

²⁰⁰ CD2.49, CD1.2 and Russell XX. See also the draft IDP at CD2.77 and the DAS at CD2.51, Part 6 of 12, electronic pages 27 and 28.

²⁰¹ Mr McKay in EiC.

²⁰² In his EiC.

²⁰³ Indeed Mr McKay in chief said that Mr Russell's trip rates were "ludicrous".

²⁰⁴ Appendix B to his proof.

²⁰⁵ At para 1.12.

²⁰⁶ In XX.

²⁰⁷ See Mr Russell's proof at 7.9.

leading to those links being defined as non-sensitive (by reference to the relevant IEMA guidance) when they should have been sensitive. This was yet another point that went nowhere.

- (1) First, the assessment of sensitivity is, as Mr Russell was constrained to accept, a question of judgement. There is no definition offered by the IEMA²⁰⁸.
- (2) Second, the function of the assessment is to set a threshold for further assessment – links identified as sensitive are subject to a lower percentage threshold for increases of traffic than non-sensitive (10% rather than 30%)²⁰⁹. However, as explored with Mr Russell in XX, all of the links which he identifies at paragraph 7.9 of his proof were considered in detail and appear in all of the receptor impact tables in the ensuing parts of the chapter: see e.g. for Scenario 3 (2038 with WNS and speed reduction measure)²¹⁰ tables 11.33-11.38. So, Mr Russell’s criticism is a non-point.
- (3) Third, a number of the receptors identified by Mr Russell are in fact modelled to experience a reduction in traffic volumes as a result of the WNS and speed reduction measures (Table 11.2 of the ES). A number of these are precisely the same links which he raises concerns about in the context of his comments on the off-site cycling routes: see in particular Ockham Road North, Long Reach, Wisley Lane, or Ripley High Street and Alms Heath for HGVs.²¹¹ Others such as Plough Lane will see an increase in traffic but a reduction in speeds through the speed reduction measure/introduction of Quiet Lane designations. On Rose Lane (where Mr Russell identified a school) there will be increases in flows as well as HGV flows but the impact of these must take account of the footway which runs between Ripley and the school. For that link, the ES reaches the following judgements:

²⁰⁸ As set out at para 11.58 of CD2.86 and accepted by Mr Russell in XX.

²⁰⁹ Explained by Mr McKay in EiC.

²¹⁰ For definition of the scenarios see CD2.86 at Table 11.1.

²¹¹ See McKay EiC.

- (a) Table 11.33 severance – negligible
 - (b) Table 11.34 driver stress and delay – minor beneficial
 - (c) Table 11.35 Pedestrian Delay and Amenity – negligible
 - (d) Table 11.36 Cyclist Delay and Amenity – negligible
 - (e) Table 11.37 Levels of Fear and Intimidation – negligible
 - (f) Table 11 .38 Accidents and Safety Analysis – minor adverse
- (4) In this context, Mr McKay was right that none of Mr Russell’s points could lead to a different view on the overall significance of effects²¹², nor did Mr Russell offer any alternative assessment of impact significance.
- (5) Mr McKay was again not XXd by Mr Harwood on any of these points.

3.1.2.4.WAG’s points in XX/Mr Russell’s Response Note

101. Notwithstanding the limited nature of Mr Russell’s evidence, in XX of Mr McKay, instead of interrogating any of the discrepancies alleged by Mr Russell in his written and oral evidence, Mr Harwood instead determined to pursue a series of entirely new and different points – of which no prior notice was given – on the accuracy/reliability of the TA work. These were, in the main, directly refuted by Mr McKay in the course of XX and rightly not pursued further. The only two of these new points that need to be considered any further at all are these:

- (1) First, it was put to Mr McKay (and he accepted) that a small number of figures in table 6-2 of the TA were incorrect – the third row of the table is not the correct total of the PCUs in and out of the two accesses. This point (which could have been taken at any point since August 2022) was not raised prior to XX, but in any event Mr McKay was able to confirm that this was only a presentational error: the underlying data taken from the SATURN model for transport flows are correct. This was, of course,

²¹² In EiC.

something that Mr Harwood confirmed was the position having been provided with the requested modelling outputs. Such errors with figures occur. Given the scale of the transport evidence that this was the only such error that Mr Harwood could find shows just how thorough the transport work is. Mr Russell's note (ID5.43) itself, for example, contained some wrong figures in his tables which he corrected in EiC when recalled. He also admitted the "*cock-up*" at Figure 3.2 of his Proof of Evidence that was picked up by Mr McKay. These put into some context the quite unjustified level of approbation directed at Mr McKay by Mr Harwood in XX on this matter.

- (2) Second, it was pointed out that the LINSIG layout²¹³ for the Ockham Park roundabout does not fully reflect the layout approved under the DCO²¹⁴. This is indeed correct and, although some of the differences relate to coding solutions, Mr McKay was able to confirm through a note provided after his evidence that the issue was in fact flagged by NH back in November 2022. After this point was raised by NH, a further model run was carried out on the basis of a corrected layout. This was provided to NH, SCC and GBC who accepted that it did not materially affect the results. Each of them have subsequently confirmed that they are satisfied that there are no unacceptable impacts on the network including the Ockham Park Interchange.

102. Following the production of Mr McKay's technical note (ID5.42) which exhibited the earlier exchange with NH, Mr Russell/Motion's response on behalf of WAG (ID5.43) and Mr McKay's reply (ID5.48) both witnesses were recalled. The evidence they gave demonstrated the extent to which this point was a storm in a teacup: reflecting WAG's continuing desperation as they sought to roll their criticisms from one point to another:

- (1) The raising of this issue only serves to underline how closely the transport works submitted in support of the appeal was interrogated by the statutory

²¹³ TA Appendix M.2.

²¹⁴ TA Appendix N.2.

highway authorities and their consultants. The point on the LINSIG layout which it took Mr Russell and Mr Harwood some 15 months to spot had been picked up and fully dealt with by NH's consultants long before they very belatedly alighted on the point.

- (2) Mr Russell accepted that he had not raised any concerns about junction capacity at any stage in his written or oral evidence before Mr McKay was XXd. Indeed at the meeting in August 2023 (following the PIM where you Madam asked for the experts to meet so that WAG and other Rule 6 Parties could be directed to or provided with the information that they required²¹⁵) he expressly confirmed that he had was "*comfortable with the information provided*" on junction turning flows.²¹⁶
- (3) While he now at the eleventh hour sought to raise a concern around the capacity of the Ockham Park Interchange, on the basis of the lower PRC figures shown in the corrected and approved modelling for that junction, but could not explain why this was an issue given that:
 - (a) Other junctions dealt with in the TA had worse PRCs, including J10 itself, and he had raised no issue there;
 - (b) The actual effect of the Appeal Scheme on the Ockham Park Interchange was: (i) a small increase in the AM peak which it was agreed by Mr Russell was "*relatively modest*"; and (ii) an improvement to the PRC in the PM peak (which is the period when a negative reserve capacity is actually projected)²¹⁷; and
 - (c) If there was a problem with the Ockham Park Interchange's capacity it would mean that NH had failed to design their roundabout, which forms part of the DCO works currently under construction, to meet

²¹⁵ CD5.9 para 30(a).

²¹⁶ See notes at Mr McKay proof appendix K, which Mr Russell accepted were accurate in this respect.

²¹⁷ See ID5.42 Table 1.

the flows which they modelled for it – given that the WNS formed part of their baseline;

(d) Mr Harwood in ReX of Mr Russell – when he was recalled – tried to resurrect something from this evidence by suggesting that if there was a capacity issue at the Ockham Park Interchange this might lead to more traffic using the Old Lane access such that: (i) more vehicles would head through the SPA; and (ii) there would be non-compliance with Policy A35(1). These points are totally without merit for reasons explored in the EiC of Mr McKay when he was recalled:

- (i) Given that the changes to the PRC were “*relatively modest*”²¹⁸ in the AM peak and improved in the PM peak people already on the network had no more reason to divert away from this junction with the Appeal Scheme than without it, because conditions did not significantly change;
- (ii) Local trips by new residents to destinations south of the site via Old Lane would be faced with speed management measures that would reduce their attractiveness as compared to going via the Ockham Park Interchange and Ockham Road North which only has a relatively shorth length of traffic management proposed at Alms Heath;
- (iii) Going North along Old Lane through the SPA would only be an option for trips headed towards Ripley, Guildford or Woking which for some of these trips would mean they would then have to come off the A3 at Ockham Park via the approach to the roundabout (the feature they were apparently seeking to

²¹⁸ To use Mr Russell’s words.

avoid) anyway, so such a long and counter-intuitive diversion would not motivate people to do that.

103. WAG then raised their last point in XX of Mr McKay when he was recalled which was that the LINSING flows for certain parts of the junction were difficult to reconcile with the flows shown in parts of the junction in SATURN. As with all of the other detailed points raised without any prior warning this was without merit:

- (1) The issue about discrepancies between the LINSIG and Saturn modelling was not raised in the Motion note;
- (2) When raised in Mr Russell's recalled EiC he:
 - (a) Referred to two links where he was able to make the comparison and the numbers were very close (1 and 35 different – NB should note the total numbers 406 v 405²¹⁹ vs and 1340 vs 1304²²⁰);
 - (b) Said he was unable to make any comparison between any other links in the models;
- (3) When XXd he confirmed he could offer no evidence on any possible discrepancies between the models;
- (4) Mr McKay was then XXd on links not raised by Mr Russell and on which Mr Harwood alleged discrepancies but:
 - (a) the structures of the SATURN and LINSIG models of the Ockham Park Roundabout are different making it difficult to make a direct comparison of some of the internal and exit links as Mr Harwood attempted to do;

²¹⁹ For the entrance from the Wisley Lane Diversion.

²²⁰ For the Offslip from A3.

- (b) Mr Harwood was comparing the LINSIG to material advanced by Jacobs as part of their audit note and not actually from WSP's transport assessment²²¹;
- (c) Mr McKay explained that he would have needed notice of these points in order to examine them further but as the point was raised only in XX he could not do so. As such, reliance had to be placed on the detailed scrutiny carried out by JSJV, both at the LINSIG and SATURN modelling levels, of this key junction in the DCO proposals.

104. The above points were the high points for those opposed to the Appeal Scheme in what was in the end well over five whole days of XX of Mr McKay. And none of them was of any consequence whatever.

3.1.2.5.Highways points raised by others

105. Other Rule 6 Parties and third parties raised concerns about the highways evidence. These were largely confined to echoing the evidence of Mr Russell for WAG. Many of the points raised were points that would apply to any proposal for the development of the WNS and so were again, in effect, objections to the principle of the development.

106. Such additional points as were made were dealt with by Mr McKay:

- (1) Mr Burns raised concerns about the Ockham Roundabout at the opening of the inquiry. As Mr Cooper said²²², and Mr McKay's clarifications re LINSIG layouts confirmed, NH have specifically reviewed the effects on this junction and is content that the roundabout can accommodate the traffic generated by the Appeal Scheme without a severe impact. Mr Burns also

²²¹ See TPS Appendix G 3 at CD2.25 pt 3. The figures quoted were appended to Jacobs' Audit Note TN02 which is in turn an appendix to WSP's response note at Appendix G of the Transport Position Statement: see WSP's index at e p 8, Jacobs' TN02 begins at e p 46. The junction operating statistics relied on by Mr Harwood are discussed at e p 49 and then included as Annexure D (e p 76 ff). It is not clear whether the figures are directly taken from the SATURN models or have been subject to changes by NH for the purpose of their audit.

²²² In EiC.

raised concerns about effect of traffic turning left from the development from Old Lane onto the A3. That is of course also a junction for which NH is responsible and which has been carefully scrutinised and in relation to which NH raise no objection²²³.

- (2) The only other criticism of trip generation came from the first Mayer Brown report submitted by VAWNT²²⁴. This evidence is wholly flawed for the reasons set out by Mr McKay.²²⁵ It is clear that Mayer Brown embarrassingly missed this most recent information on Dunsfold despite it being freely available from the Waverley Borough Council website. The material in the Mayer Brown report is thus wholly out-of-date and can be disregarded. The eleventh hour further response from Mayer Brown (ID5.25) had no response on these failings. Moreover, the other points raised were all fully answered by Mr McKay in response Madam to your questions.
- (3) A number of third parties or VAWNT witnesses referred to examples of accidents on the LHN around the FWA. This does not demonstrate that the roads are unsafe in either absolute or relative terms. Reported personal injury accident records have been interrogated in detail by Mr McKay on two occasions. The more recent data²²⁶ shows a reduction in the accident level, particularly fatalities, when comparing that five year period with the period assessed in the TA²²⁷. Mr McKay characterised the level of accidents as quite low for the area, noting that the roads are generally lightly trafficked.
- (4) Mr Eve said that:

²²³ Cooper in response to your question Madam.

²²⁴ See ID2.15.

²²⁵ See Mr McKay's rebuttal section 2.

²²⁶ Summarised at Table 3-1 in the updated TPS. Referred to by Mr McKay in EiC.

²²⁷ The most recent data includes Potters Lane so covers a slightly larger area than the previous data.

- (a) East Lane junction had not been included in the model. This is not correct. The junction is explicitly represented as a 4-arm major-minor junction.
 - (b) Not enough junction modelling had been undertaken. However, the scope of detailed junction modelling was based on the WPIL appeal and SCC and NH have not requested any further detailed assessments. Further, all local junctions have been modelled within the SATURN model²²⁸, each junction is represented based on its physical characteristics.
 - (c) Input capacities had not been provided. Again, this was not correct. They are set out in Figure 7-2 of the LMVR and Mr McKay provided them again in Table 14 and para 7.71-72 of his proof.
- (5) Councillor Osborn suggested that two sites have been missed from the assessment. This is not correct. Mr McKay explained that the first (Burnt Common Warehouses – Allocation A45) has been expressly modelled as is shown by the uncertainty log²²⁹. For the second, the Send Business Centre, he said that this was a minor site the trip end growth from which would be well within the scope of the TEMPro projections for Guildford growth which exceed that identified via the uncertainty log.
- (6) Mr Cross raised a concern about Potters Lane. This was also raised by all of the statutory authorities. SCC’s concerns on flows on the road are one of the matters to be addressed by resilience funding. NH’s concerns were directly addressed in Appendix G to the TPS²³⁰.
- (7) There was a lot of anecdotal commentary re J10 and delays caused when A3 closed at weekends for construction. This was understandable but does not provide any useful basis on which to assess the future impacts of the Appeal

²²⁸ See Figure 2-1 of the LMVR.

²²⁹ See e.g. CD2.22 Part 3 of 13 elec pages 30 and 98.

²³⁰ CD2.25 see paragraph 2.4.2, electronic page 306.

Scheme. The A3 carries approximately 9,000-10,000 vph and it is not surprising that it causes problems when all or some of this has to find a different route. In contrast the Appeal Scheme will generate approximately one twentieth or 5% of that at each access (approx. 500 vph) and it disperses along a number of routes including a significant proportion via the A3, so not all along local roads. It is preposterous to suggest this is similar to the traffic impacts the Appeal Scheme would generate.

- (8) Mr Orpwood also suggested that traffic from the Appeal Site would need to travel along Guilehill Lane to reach the A3 southbound. This is patently not true as they could either simply travel north along Old Lane and turn left on to the A3 southbound at the improved merge being built with the DCO, or go through Ripley and join at the A247. There is also the half hourly bus service or the train from Horsley via the frequent bus service.
- (9) Mrs Whiting asked whether one-way roads are proposed. Mr McKay confirmed there are not. There was a one way southbound closure of Old Lane in the WPIL appeal. However, the DCO did not include it and so it has not been included in the Appeal Scheme²³¹.
- (10) A number of queries relate to the resilience funding contribution requested by SCC in recognition of the potential effects of the development on the local road network. Mr Cooper's ID5.1A provides a useful overview of what is envisaged:
 - (a) The red lines represent traffic management and speed reduction measures. These include three roads around Ripley: Rose Lane, Newark Lane and B2215 itself;
 - (b) Blue lines represent drainage works on Plough Lane, The Drift and north end of Ockham Road North;

²³¹ CD 2.26 Updated TPS at Section 3.1 explains that SCC requested that WSP consider a southbound closure of Old Lane at the site access but on testing it produced significant diversion of traffic and was therefore recommended not to be taken forward, which SCC accepted.

(c) Purple lines represent carriageway haunching²³² which will help cyclists.

All of these are additional to the works proposed to deliver the five off-site cycle routes and the Old Lane traffic management improvements.

107. It follows that there is no real basis on which to question the traffic forecasting work done by the Appellant/WSP, or to conclude that there is any real risk that it underpredicts the impacts of the Appeal Scheme. Instead, it can and should be accepted as a thorough and robustly precautionary basis on which the impacts of the Appeal Scheme can be assessed.

3.1.3. AADT

108. An additional issue raised by both Mr Russell and Dr Marner related to the adequacy of the AADT flows produced by Mr McKay for use in the air quality modelling.

109. They have been generated from the model (which looks specifically at AM and PM peak hours) using factors derived from traffic flow data around the network.

110. As Mr McKay explained in his EiC, the AADT process is only part of the overall process of producing flows and other data for the wider ES Team. There are specific requirements²³³ not just for air quality but also noise and vibration and it is standard practice to derive the required outputs from the core AM and PM peak flows. It is telling that there has been no objection from the statutory authorities on any of these outputs or indeed from any party at all in terms of the flows generated to inform the noise and vibration assessments.

111. Mr McKay explained how AADT flows have been derived at 7.6 of his proof and in his oral evidence. The factors are obtained from traffic counts that are permanent sites and count flows hourly throughout an extended period of many months and years. They allow AADT factors to be derived from the AM and PM

²³² Strengthening of carriageway edges.

²³³ They all have different requirements in terms of time periods and days of the week to be included.

peak hours counts recorded. Typically, AADT flows are approximately 5.5-6.0 times the sum of the peak hour flows. Mr McKay set out the methodology used in more detail during his oral evidence²³⁴:

- (1) The proximity of the RHS Gardens led to complaints by Mr Russell and Dr Marner about the influence it has on AADTs. However, Mr McKay explained that because the WebTRIS counts capture flows on the SRN –this accounts for the bulk of RHS Wisley related traffic²³⁵. Therefore, the WebTRIS SRN counts represent well the seasonality of flows for 85% of traffic to the RHS site. The seasonality effects on the remaining 15% are inconsequential.
- (2) Regarding the use of peak hour model flows, Mr McKay explained that the SCC and WebTRIS sites were used to derive interpeak flows to avoid that problem, so it follows that AADT flows do indeed take interpeak flows on the local and wider network into account.

112. As such there can be no doubt that there can be full confidence in the flows used by the ES team.

113. Moreover, in response to the issues raised by Dr Marner on the calculation of AADT, Mr McKay in his rebuttal²³⁶ sets out his response namely that:

²³⁴ In summary:

- (1) Monday-Thursday average AM & PM Peak flows are extracted from the model in PCUs.
- (2) Using observed data from 47 SCC count sites on the LRN and 8 WebTRIS sites on the SRN, factors were developed for converting these flows to a Monday-Friday AM and PM peak.
- (3) The Monday-Friday AM and PM peaks were then averaged and a factor applied to create an approximate average inter-peak hour. The factor used was developed with the same set of LRN and SRN count sites.
- (4) The model outputs are converted from PCU flows to vehicle flows by factoring the HGV and bus flow outputs.
- (5) Observed data was used to generate factors for converting model vehicle flows to (various different) peak and inter-peak flows which are then summed to create an AADT. These numbers are then processed to take account of seasonality – relying on the WebTRIS long term counts – and a range of different outputs for air quality and noise are generated.

²³⁵ Most visitors arrive and leave via the SRN i.e. the A3 and RHS' own position at the DCO examination suggested in the region of 85%: see CD13.2 Para 5.2.80.

²³⁶ Section 3.

- (1) Dr Marner is, by his own admission, not a transport professional²³⁷;
- (2) Dr Tuckett-Jones and Mr McKay worked together very closely to produce the data required for the air quality assessments and indeed also worked together on the information produced for the WPIL appeal in, in which no fault was found with the traffic flows produced or indeed the air quality assessment, as reflected in the findings of the Inspector, endorsed by the S/S (CD 9.1). This was despite vehement objections by Dr Marner's colleague and predecessor Professor Laxen²³⁸ including allegations of errors in the traffic data which WSP provided. All of these criticisms were rejected by the Inspector and S/S. Mr McKay confirmed that the process for producing the ES data was the same as on this Appeal²³⁹.
- (3) Dr Marner offers no view on whether the effects or the alleged errors, even were they made, are or are not of any consequence²⁴⁰;
- (4) Despite complaining that he has not had the AADT factors provided to them, WAG has had the information available in the TA since 2022 from which they could easily have worked out whether the factors were reasonable but did not;²⁴¹
- (5) There has never been any criticism of the factoring of data to produce AADT flows in any of the many assessments of major strategic housing sites that Mr McKay has directed at WSP²⁴².

114. Accordingly, there can be no doubt that the AADT flow factoring has been carried out thoroughly using locally derived data and is therefore fit for purpose.

115. Dr Marner also suggested that AADT data was required to have been provided in the air quality assessment but in XX he accepted:

²³⁷ Marner proof para. 1.6.

²³⁸ McKay rebuttal at para 3.2 and App B.

²³⁹ In EiC.

²⁴⁰ McKay rebuttal para. 3.4 and XX Marner.

²⁴¹ McKay rebuttal paras. 3.5 – 3.7 and Marner XX.

²⁴² McKay rebuttal para. 3.10 and Marner XX.

- (1) Where, as here, there is a great deal of data it need not be provided with the assessment but can instead be left to be requested.
- (2) No request for the AADT data flows had in fact been made (although Dr Marner seems to have thought at the time of writing his proof that Mr Russell had asked for it).²⁴³ As matters stand today still no request has been made for this data by WAG or anyone else.
- (3) Further, Mr Russell was invited to make contact with Mr McKay to discuss the AADT data but he never did so.²⁴⁴

3.1.4. Highway safety

116. If the traffic forecasting set out in the TA and ES is accepted, then Mr Russell's only remaining argument for refusal under NPPF 111 relates to the safety of the proposed off-site cycling routes.

117. As already mentioned, this whole argument needs to be approached recognising:

- (1) That the choice of the routes has been agreed with SCC, who will have control over their delivery either as direct works by them (funded via the s.106 agreement) or under any s.278 agreement;
- (2) The routes themselves support aspirations set out by GBC in Policy A35 of the GBLP but also the potential mapped routes identified by them in the DMP at Appendix A – as referred to in Policy ID9²⁴⁵.
- (3) No party (apart, possibly, from Mr Russell when questioned by you Madam) has suggested that the delivery of the WNS requires the use of CPO powers to either expand current roads or provide entirely new cycle routes – GBC and SCC have been clear that the goal is to see how existing opportunities can be exploited. This is reflected in Policy ID9 of the DMP which lists mechanisms for the improvements sought at paragraph (3), but

²⁴³ Dr Marner proof at 6.8.

²⁴⁴ CD2.32 p. 6 and Mr Russell's answers in XX.

²⁴⁵ CD6.2 pp 213 – 214 and 228, Mr McKay's rebuttal para 4.9 and Mr Russell's answers in XX.

does not include the use compulsory purchase powers. Notably neither the DMP nor GBLP seek to safeguard land for such a purpose.

- (4) With that in mind, the policy aspiration for this specific site in Policy A35 has been set at providing an off-site cycle network to key destinations “*with improvements to a level that would be attractive and safe for the average cyclist*” (our emphasis). This is neither contradicted nor changed by ID9 (4). Mr McKay and GBC rely on the definition of the average cyclist set out by SCC²⁴⁶. Mr Russell criticised this but was apparently unable to assist with an alternative definition, in XX and following questions from you Madam.

118. However, while the degree to which the off-site cycle routes meet policy or guidance is important to both the overall development plan compliance consideration and – to some degree – to the question of whether the Appeal Scheme makes appropriate provision for sustainable modes of transport (Main Issue 3), it is not directly relevant to the basic question under this Main Issue, which is whether the cycle routes would themselves be unsafe.

119. Mr Russell formally contended that they would be unsafe, but it is, frankly, impossible to see how he gets there. He accepted that the proposed cycle routes do offer sufficient provision for an average cyclist as defined by Mr McKay. While the Appellant understands his (rather impractical) view that all aspects of the proposed cycle routes should comply with the full aspirations of LTN 1/20 (albeit he accepted in XX that Active Travel England²⁴⁷ is not a statutory consultee and compliance with LTN 1/20 is not mandatory, being primarily developed for the purposes of local authority schemes requiring government

²⁴⁶ See Officer Report 20.58 “[t]he definition of an “average” cyclist in policy A35 has been stated by SCC as being an individual complying with the bikeability level 2 criteria” . See Mr McKay’s proof at 10.7 “I would also note that although these proposals have been designed in the context of LTN1/20 and the guidance within it, the locally derived and specific design requirement set out in GBC policy A35 is for a network suitable for the average cyclist, taken as being Bikeability level 2, a stage reached generally at or around the ages of 14 to 16. This is someone who is confident in traffic but not so confident at some more complex highway layouts or in very busy traffic. LTN1/20 sets out standards with a target of people of all ages and abilities and is aimed at new local authority schemes for which applications to Government for funding are required.”

²⁴⁷ Who are the body which judge compliance with LTN 1/20 for the purpose of allowing government grants to be made- See Mr McKay’s rebuttal at 4.12.

funding) – the correct implication of his argument is not that the off-site routes are unsafe, but that they do not do enough to make the site sustainable. We explain below why this case is not made good.

120. Other safety concerns were raised by many objectors in the public session and for VAWNT. A consistent picture was painted²⁴⁸ of the risks presented by the current lanes which are used by HGVs and/or speeding sports cars. However, there was no recognition of the extent to which the Appeal Scheme will precisely address these issues through its speed reduction and cycle prioritisation measures. When the predicted increases in traffic are considered (as discussed above) it is clear that the most sensitive routes for cyclists (or indeed pedestrians around Ockham, Bridge End and Martyrs' Green) will actually see a reduction in traffic volumes.

121. Further, insofar as any concern about safety remains, it should be noted that:

(1) A specific package of measures has been required by SCC to address safety concerns on the LRN²⁴⁹. These include²⁵⁰:

(a) Traffic Management/Speed reduction measures (to include speed limit reduction and NMU safety improvements) on Newark Lane, Rose Lane, B2215 (between Ripley and Send), and A247 between B2215 and A246.

(b) Highway drainage resilience improvements at Plough Lane, Ockham Road North and The Drift which will address repeated and

²⁴⁸ See for example Mr for VAWNT: Diane Whiting (App 2.2.3.i).

²⁴⁹ In the s.106 roundtable session, Mr Harwood questioned whether the obligation on the Owner in Schedule Part 2 at para 2.1 of the s.106 to carry out off-site highways works is within s.106(1)(a) of the 1990 Act. It is submitted that it is: the end words "*prior to occupation of the 50th Residential Unit*" render the covenant negative and thus enforceable against a successor in title under the section. Even if were not, the point is immaterial as paragraph 2.2 achieves the same result by imposing an explicit restriction on occupation contingent on compliance with paragraph 2.1.

²⁵⁰ See Mr Cooper Proof at 4.4.

lengthy flooding events and improve safety for all highway users, particularly for NMU travel.²⁵¹

(c) Carriageway haunching works to improve safety for cycling on Potters Lane, Ripley Road, Ripley Lane, and Ockham Road North. This might involve installing a proper kerbed edge to the roads.²⁵²

- (2) As discussed further below, the off-site cycle routes have been developed in consultation with Phil Jones of PJA²⁵³ – who is the main contributor to LTN 1/20 – and who has also concluded that the resulting routes are “*safe and accessible to the average cyclist*”²⁵⁴.
- (3) The routes have been subject to Stage 1 RSA²⁵⁵, the results of which have not been substantially addressed or criticised. Madam, you will be familiar with this process but – for reference – the approach taken is set out RSA context note.²⁵⁶ The audit team is an independent team²⁵⁷ within WSP, with no reference between the design team following the submission of the drawings. There was consideration given to whether SCC’s own RSA team could be used but they had insufficient capacity at that time²⁵⁸. The WSP audit team are highly professional who often act for CHAs. As is evident from a number of the comments they make, they have taken a thorough and robust approach in the RSAs.
- (4) The detailed design of the routes is still to be fixed and will be under the control of SCC as CHA.

²⁵¹ See CD2.35 (Part 2) Appendix F: Plough Lane flood mitigation investigation and Mr McKay’s answers in XX. And see also the XX of Cllr Burley and Cllr Stephens on Day 1 of the Inquiry.

²⁵² Confirmed by Mr Cooper in response to your question Madam.

²⁵³ Acting as a critical friend.

²⁵⁴ CD2.35.

²⁵⁵ CD2.31.

²⁵⁶ CD 2.31 Part 4 of 17.

²⁵⁷ In a different office – Mr McKay had “*never met them*”.

²⁵⁸ Mr McKay following question from you Madam.

122. It is also important to note the scope of the monitor and manage strategy secured by the s.106 agreement²⁵⁹ which will allow for further physical and non-physical measures to be taken as necessary²⁶⁰. This approach was not criticised by Mr Russell²⁶¹.
123. Similarly, issues such as the potential for unsafe parking around train stations (raised by Mr Russell at paragraph 4.9 of his proof) would be addressed by statutory powers such as the use of a TRO, as Mr Cooper confirmed in his evidence. Moreover:
- (1) This issue, also raised by third parties, was considered in the WPIL appeal in respect of a larger number of proposed homes on the Appeal Site and pre-pandemic and the increase in working from home it was concluded that this was a “*minor*” issue²⁶²;
 - (2) Mr Russell has himself undertaken no assessment of car park capacity²⁶³;
 - (3) This has not been raised as an issue by GBC or SCC.
124. It follows that there is no basis on which to conclude that the Appeal Scheme will lead to unacceptable impacts in terms of either safety or residual cumulative impacts.

3.1.5. Conclusion

125. In conclusion:
- (1) On the basis of robust, heavily audited projections which have been accepted by the statutory authorities, the Appeal Scheme will have no unacceptable impacts on the SRN or LRN either in terms of cumulative residual impact or safety.

²⁵⁹ See Schedule 13 and Annexure V of the s.106 agreement and definition of WACT functions at pg 100.

²⁶⁰ CD2.30 see pg 4 and see also CD5.11 section 12.

²⁶¹ Accepted in XX.

²⁶² CD9.1 paras. 7.68, 16.10 and 20.74.

²⁶³ Russell XX.

- (2) That is the view not just of Mr McKay but also of officers at GBC and SCC and of NH and its consultants. Mr Cooper in XX confirmed that subject to securing the proposed mitigation via a s. 106 agreement his view was that there would be no residual severe impacts on the network and no unacceptable safety impacts. Mr Cooper's proof was clear that subject to entering into a s. 106 agreement you Madam will be "*respectfully requested to allow the appeal*".²⁶⁴

3.2. Main Issue 3: Whether the Proposed Development makes appropriate provision for sustainable travel choices

126. The Appellant contends that the Appeal Scheme would deliver the transport sustainability measures necessary to enable sustainable travel choices. This is a conclusion endorsed by GBC, as local planning authority, and by SCC, as CHA. There are a number of key points.

127. First, the starting point on this issue, as on others, is that the appeal site forms part of the allocation under Policy A35. The Appellant recognises that the site is not currently sustainable in that it is not served by significant public transport infrastructure²⁶⁵ and only contains limited services within walking distance. However, it is the Appellant's position, and GBC's as reflected in the GBLP evidence base, that the future WNS does give rise to an opportunity to create a sustainable settlement and that the Appeal Scheme takes advantage of the chance:

- (1) See the 2017 Sustainability Appraisal SA²⁶⁶ which recognised that development at Wisley Airfield "*gives rise to considerable opportunity ... to achieve high standards of sustainable design*" and that "*the scale of the scheme*

²⁶⁴ See Mr Cooper proof at para 6.2. See also Mrs Yates proof at paras 6.2I & 6.5 and CD5.11 para. 2.8.

²⁶⁵ That said as Mr McKay explained in his EiC that notwithstanding the Appeal Site is currently a disused airfield there are a number of buses: see Table 2-1 and Figure 2-1 of CD 2.34. So there is (i) the daily school bus which leaves from the Old Post Office on Ockham Road North; (ii) the 715 Guildford – Kingston which via the RHS Wisley and Ockham Roundabout; and (iii) the 462/463 Guildford Woking service via Ripley and Ockham Roundabout.

²⁶⁶ CD7.10 at 10.3.3.

would enable good potential to provide a high quality bus service in perpetuity and deliver some cycle route improvements to important destinations”²⁶⁷;

- (2) Moreover, Pegasus in the Green Belt and Countryside Study²⁶⁸ out that in respect of the Appeal Site “it is considered that a population level in the region of 4,000 has the potential to support notable facilities and services and, in turn, offer a sustainable form of development. Such a scale of development for a new settlement would therefore offer the potential for it to adhere to the sustainable development requirements of the NPPF, along with the Garden City principles referred to within paragraph 52 of the NPPF”²⁶⁹.

128. This is consistent with the NPPF’s provisions in relation to sustainable transport. Despite Mr Russell’s focus in section 3 of his proof and EiC, pre-development sustainability is not a requirement either for an allocation to be made or an application approved. NPPF 110(a) requires decision-makers to ensure that “appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location”, NPPF 105 provides further context to this in recognising that while “[s]ignificant development should be focused on locations which are or can be made sustainable²⁷⁰, through limiting the need to travel and offering a genuine choice of transport modes... opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.²⁷¹”

²⁶⁷ Ibid at 10.16.5.

²⁶⁸ CD7.13 22.2.

²⁶⁹ See also paras. 22.5 and 22.7. The latter says “[i]t is not considered of value to undertake a sustainability assessment based upon existing facilities at Wisley Airfield as these are generally absent and would be provided through the new settlement itself. The site will score very poorly at present as it contains no existing facilities or services as opposed to the potential major village expansions. However, a new potential settlement at Wisley Airfield could comprise sustainable development if new facilities can be brought forward through a development. A new settlement at Wisley Airfield will only proceed if it includes new services and facilities, and as a result it is considered reasonable and necessary to allow for these, before sustainability assumptions can be made.”

²⁷⁰ See also CD9.1 at paras. 20.71 and 20.81.

²⁷¹ So, the NPPF is focussed on doing everything practicable to make a site sustainable having regard to its context. In the plan-making context that might include choosing one site over another. But in the context of an allocated site – where its location is fix-d - it would mean looking at how opportunities to make a site sustainable had been taken up. WAG in the examination of the GBLP contended that the site was unsustainable and so should not be allocated (see CD7.24, pp 3-4). Inspector Bore rejected this.

129. As Mr Russell acknowledged in XX, where a site has been allocated, the choice as to where to focus development has already been made. The thrust of the national policy is therefore squarely towards “*maximising*” the opportunities available, recognising the differences which will arise according to location.
130. Second, SCC and GBC agree that the proposals secured by the s. 106 agreement will meet the requirements of policy. In particular, SCC agrees in their SoCG with each of the updated bus strategy²⁷², travel plan²⁷³ and monitor and manage strategy²⁷⁴. In relation to the cycle strategy they agree that:
- (1) The strategy is “*a positive step-change from the proposals submitted as part of the previous planning application and appeal scheme.*”
 - (2) The routes “*have been developed to a level of detail that demonstrates their suitability for this stage of planning, and that iteration will follow at detailed design stage / s.278 process*”.
 - (3) On the overall efficacy of what has been designed, “*the fundamental principles of the improvements proposed, including the interventions that induce reduced vehicle speeds, the typology of interventions being utilised, and the destinations being served, and that the package of improvements accords with the cycling infrastructure requirements of Policy A35 of GBC’s Local Plan, to provide “improvements to a level that would be attractive and safe for the average cyclist”*.”²⁷⁵
131. This view is supported not only by the various transport experts on whom the Appellant relies (see further below) but also by that of Mr Williams – who has reviewed the Appeal Scheme as a critical friend. He explained in EiC how the collective masterplanning features will directly influence sustainable life patterns²⁷⁶. He also described the very positive approach taken to cycling,

²⁷² CD5.11 para 11.1.

²⁷³ Ibid para 12.1.

²⁷⁴ Ibid para 12.2.

²⁷⁵ Ibid at paras 10.1-10.3 and see Mr McKay’s proof at para. 4.30.

²⁷⁶ Williams EiC and see also ID5.21 pages 84-85.

particularly regarding off site enhancement which he said were, in his experience rare²⁷⁷.

132. Third, the views of SCC and GBC are consistent with the finding of the Inspector and S/S on the WPIL appeal. As agreed with Mr Russell in XX and set out by Mr McKay, the current bus proposals²⁷⁸ are “*similar but better*” to those in the WPIL appeal while on cycle provision it is “*clear that more is being offered*”²⁷⁹. Given that even the provision proposed in the WPIL appeal was accepted by the Inspector and S/S to “*go a long way towards making the location more sustainable*”²⁸⁰, this can give confidence to the conclusion that the improved offer agreed with SCC does indeed maximise what is possible in the local environment.

133. We address the remaining points by reference to the different aspects of what is proposed.

3.2.1. On site provision

134. The Appeal Scheme has been underpinned by a design approach which seeks to make the proposals “Sustainable by Design”. This is discussed by Mr Kime at section 7 of his proof. The Appellant acknowledges that at present limited local facilities are within walkable distance²⁸¹ but, as Mr Kime explains in his proof at 4.5.1-2, this presents an opportunity to provide those facilities on site to deliver a sustainable, walkable neighbourhood.

135. Practical steps include designing the Appeal Scheme so that residents will have around 200m to walk to a bus stop; locating the local centre and neighbourhood centres so as to ensure that residential areas are all within easily walkable

²⁷⁷ Ibid. pages 81 – 83.

²⁷⁸ See his proof at 9.9, see CD9.1 at para 20.72 and Mr Russell’s answers in XX.

²⁷⁹ Mr Russell’s words in XX.

²⁸⁰ CD9.1 IR 20.81 and DL25.

²⁸¹ A point emphasised by Mr Russell and echoed in countless objections from third parties and VAWNT.

distances²⁸²; and providing employment land, open space²⁸³, sports pitches, SANG, primary school, nursery provision and options for a medical facility²⁸⁴.

136. The masterplan proposes a network of high quality cycle routes within the development (all of which are fully LTN1/20 compliant) and indicative alignments are shown on the plan at ID5.71. The details of what is envisaged are set out at paragraph 3.3 of the Updated Cycle Strategy. These have been evolved through a number of iterations and were subject to detailed analysis through the DRP process²⁸⁵. Mr McKay confirmed his view that the opportunities to walk and cycle have been properly taken up²⁸⁶.

137. The walkability of the site was disputed (ineffectually) by Mr Russell. In his proof put forward a figure²⁸⁷ suggesting that parts of the site will be more than 800m from the neighbourhood centres, the plan is at his own admission simply inaccurate²⁸⁸. In fact the evidence shows that the whole of the FWA will be within 1km of the main local centre²⁸⁹ – a distance which takes approximately 12-13 minutes to walk – and within 500m of the neighbourhood centres (6 mins walk)²⁹⁰. There was some faint complaint made in questioning of Mr McKay that the Appeal Site is linear and that this does not lend itself to sustainable movements. This was wholly refuted by Mr McKay. But in any event the site itself, to the extent that it is linear, is dictated by the allocation.²⁹¹

²⁸² See Mr Kime's proof at 7.3.2; see also 4.2-4.6 of Mr McKay's rebuttal.

²⁸³ Residents will be within c.100m of a significant area of open space: see Mr Kime's proof at 7.3.2.

²⁸⁴ Which will be provided if the NHS elects.

²⁸⁵ See for example the response to the DRP comments about the proposed pedestrian experience, which led to a greater development of the parkland link character of "the Broadwalk", the east-west green axis that is aligned along the southern boundary of the FWA: Kime Proof at 6.4.40-6.4.43.

²⁸⁶ McKay proof at 6.15.

²⁸⁷ Figure 3.2 at pg 13 of his proof.

²⁸⁸ The circles should be annotated 500m radius (the yellow) and 1260m (the purple): Mr McKay rebuttal at 4.3. Mr Russell described this as a "cock up".

²⁸⁹ Mr McKay explained in EiC that Mr Russell's figure of 2.36km from east to west must include the employment area. The residential areas measure about 2.1km end to end.

²⁹⁰ Mr McKay rebuttal at 4.5.

²⁹¹ CD6.1 elec pg. 222. Mrs Porter repeatedly referred to the Appeal Scheme as a "cow pat" scheme. She explained that this was because the scheme was to be dropped into the countryside. Policy A35 allocates a new settlement at Wisley. The reference to a "cow pat" seeks to be derogatory but is meaningless and just another argument that is in truth an objection to the principle of the proposed development. This need not detain us any longer.

138. Some third parties and WAG raised parking provision as a concern. The SoCG between the Appellant and GBC²⁹² agrees that the current standard is contained in ID10 of the DMP which sets a maximum rather than minimum level. Mr Harwood suggested to Mr Williams that his recognition in the Design Audit²⁹³ that the Appeal Scheme “*meets the maximum standard*” meant that the FWA had maxed the amount of parking because the site was so unsustainable. But, as Mr McKay explained,²⁹⁴ this is just not right. The standard – to which the Appeal Scheme is compliant – is itself a maximum. It has superseded the far less sustainable minimum standard in the Neighbourhood Plan. Meeting it does no more than comply with the expectations of GBC for its strategic sites²⁹⁵.

3.2.2. Public transport provision

139. The Appeal Site (measured from its centre) is within 5km of four main line railway stations²⁹⁶; and is particularly well related to Horsley and Effingham Junction stations. Current bus services to the site are limited but offer the potential for improvement. The public transport strategy²⁹⁷, will deliver at full build out:

- (1) A service twice an hour to Guildford, likely the central bus station.
- (2) A service up to 6 times per hour to Horsley rail station and East Horsley with an extension to Effingham Junction rail station 4 times an hour via a circular route.
- (3) A DDRT service to Cobham, which may extend to fill unmet off-peak passenger demand on the route to the local rail stations if there is any. These services, which as Mr Cooper said have been developed very successfully elsewhere in Surrey²⁹⁸, are effective ways to address need where peak hour

²⁹² CD5.10 at 3.16-18.

²⁹³ At pg 19, question 46.

²⁹⁴ McKay EiC.

²⁹⁵ Point made by Mr McKay in EiC.

²⁹⁶ Mr Kime’s Proof at 4.4.3.

²⁹⁷ CD2.34.

²⁹⁸ He gave the example of another site in Mole Valley in his EiC.

demand is not sufficient to support a regular service. They can also offer complementary provision such as addressing later evening returns from London.²⁹⁹ Mr Russell accepted that in principle they can work well. Mr McKay also referred to the Mole Valley service and said that in his experience these provide a “*really good alternative*” which are supported by Government via the provision of a toolkit from DfT which assists local authorities in setting them up.³⁰⁰ The service operates either via a website or a phone app where individuals make requests for journeys and the software then directs the drivers in an optimum route. The buses are generally small (c.15 seater) and fully accessible³⁰¹.

- (4) A potential extension of the existing SCC subsidised 462/463 service between Guildford and Woking, subject to agreement with SCC as the relevant public transport authority. This is something which Mr McKay anticipated would be desirable to SCC and it is included in the costings.
- (5) This provision will be designed to ensure access for all. The bus service to East Horsley is specifically designed to enable “door to door” accessibility and will supported by financial contributions³⁰² to support the delivery of improvements to East Horsley and Effingham Junction stations, including the installation of lifts, to make them fully accessible locations. These are described in more detail by Mr McKay³⁰³.

140. The provision of bus services in perpetuity is secured under the s.106 agreement. This requires the owner and then, in time, the Community Trust to provide bus services in accordance with the approved Transport Strategy³⁰⁴. While VAWNT and the Horsleys latched onto the fact that the bus services may change in the

²⁹⁹ Mr McKay said the service could potentially run up until midnight.

³⁰⁰ Mr McKay in EiC. Mrs Porter put a series of questions to him about another Surrey scheme but the correct details for the Mole Valley scheme are now before the inquiry. ID5.35.

³⁰¹ Mr McKay explained in response to questions from you Madam.

³⁰² In the sum of £4,000,000 as agreed with SCC, see Mr Cooper’s Appendix 1.

³⁰³ Proof at 9.10-9.25.

³⁰⁴ CD2.35 is the version before the inquiry. Draft condition 96 (CD5.55) would allow a further version to be approved but overall compliance with CD2.35 is secured within the s.106 agreement nonetheless.

future this is not something which weighs against the Appeal Scheme. SCC will have full control and can be expected to direct the evolution of the bus services in a way which responds to future needs and opportunities as the travel patterns of the community change, as well as future best practice around the delivery of sustainable transport.

141. The uptake of sustainable transport modes (from walking, to cycling and buses) will be supported by a detailed travel plan³⁰⁵ which will ensure that the suite of measures put in place will be effectively publicised and promoted. These measures were set out in the TA and the supporting documents and include:

- (1) Providing cycling introduction and training activities and cycle repair workshops on the site;
- (2) Providing a mobility hub and satellite hubs that include access to alternative transport opportunities such as:
 - (a) e-bike³⁰⁶ loan schemes;
 - (b) access to the community DRT;
 - (c) a car club using electric vehicles;

142. All of this will be supported by a monitor and manage plan within the Travel Plan (so distinct from the monitor and manage strategy proposed to address any off site highways impacts) which will steer the bus services and parking strategy as the WNS is developed and future travel patterns become clearer. Mr Russell confirmed in XX that he has no criticism of any of this. That must be right. Flexibility is essential to the long term planning of sustainable transport options which will necessarily evolve in the future.

143. No main party challenged the quality of the Appellant's ambition for public transport. Mr Russell for WAG accepted that the provision was "good". The only

³⁰⁵ To be secured via condition.

³⁰⁶ Mr McKay in his EiC emphasised the potentially transformative impact which uptake of e-bikes will have - see also Appendix C (pg74) to CD2.35 which provides background evidence for the claim that.

issue raised by Mr Russell, echoed by Mr Smith and VAWNT, but not shared by SCC³⁰⁷, was that an appropriate minimum service³⁰⁸ would not be adequately secured / would not be viable³⁰⁹. This was suggested to lead to a breach of part (5) of Policy A35. However, Mr Russell (on whom Mr Hall relied) accepted in XX that:

- (1) the financial modelling was robust and shows that a profit would be made;
- (2) there was also provision through the IPFF for substantial resilience funding;³¹⁰
- (3) prior to the Appellant handing over control to the Community Trust there would be experience of actually running the bus services so that the scheme of endowment assets grant will be informed by this with the budget adjusted accordingly;
- (4) the Community Trust is to be set up as a charitable not-for-profit trust and one of its main purposes will be the provision of bus services;
- (5) The board will not just be made up of residents as positions will be offered to GBC, SCC, Ockham Parish Council, NE and the appointed travel co-ordinator.³¹¹

144. Mr Russell's evidence also seemed inconsistent with that of Sir Gerald Acher³¹² who was clear as to the ongoing value which local communities place on bus services and how his charity has made the economics of buses work. Further, as Mr McKay explained, Mr Russell's evidence on this point does not take account

³⁰⁷ CD5.11 para. 11.1.

³⁰⁸ He also raised a concern that appropriate minimum level of service was not defined. As Mr McKay explained this is unnecessary. The Appellant is agreeing to provide the service set out in the transport assessment and which Mr Russell accepts to be "good". Setting a minimum standard could attract the criticism that the Appellant might potentially provide that lower level of service from day one, reducing the financial exposure but not providing a sufficiently attractive service to generate demand.

³⁰⁹ Russell proof paras. 4.7, 4.12, 4.13 and 4.15.

³¹⁰ See CD2.34 paras 5.3.2 and 5.3.3.

³¹¹ See CD2.60 electronic p. 21 and see the answers in XX from Russell and Smith on this.

³¹² He said his existing charitable bus service which is used by commuters, school children and older people is "well used" and has 25k passengers a year. Passenger levels were now above pre-Covid levels and he anticipated that moving to electric buses is likely to make them more popular.

of the sheer scale of resilience funding provided for. This has been derived from the viability work described by Mr McKay in his proof at para 9.25-9.39 and oral evidence:

- (1) WSP have calculated the total costs and income of the package of services proposed (see 9.28 and 9.30).
- (2) This leads to a financial assessment which projects profitability for the service shortly after full build-out of the WNS (9.32). This is based on “*realistic*” assumptions³¹³.
- (3) This assessment has then been subject to resilience testing to illustrate required levels of subsidy if the reasonable assumptions in the core assessment are not met.
- (4) SCC have considered these calculations and they were the basis for the agreement recorded in the SoCG³¹⁴. No third party has criticised the calculations or indeed the core assessment.

145. Mr Smith suggested that the bus services could not be relied upon in perpetuity because the future residents of the WNS would be unlikely to support continuing payment following handover. However this is addressed through the proposals for the Community Trust. As secured in the s.106, ultimately:

- (1) The future costs of public transport will be met primarily from revenue, with a substantial endowment being made to fund potential shortfalls;
- (2) SCC will itself have control over the level of service provided through the s.106;
- (3) Public transport funding will have a degree of priority over the income to the Community Trust³¹⁵; and

³¹³ See CD2.34 at 5.3.2 and Mr McKay in ReX.

³¹⁴ CD 5.11 read paras 11.1 and 11.2 Table para 9.35.

³¹⁵ Albeit lower priority than GBC’s step in costs and SANG/SAMM+ costs.

- (4) As set out above the Board of the Community Trust/Stewardship Body provides for there to be representatives from GBC, SCC and other such bodies;
- (5) GBC will retain overall control of the Community Trust itself via its ability to step in where the Community Trust is failing to meet its obligations.

146. It follows that there is no reasonable basis on which to doubt the provision of the exemplary level of public transport provision envisaged.

3.2.3. Off-site cycling routes

147. The detail of what is proposed for the off-site cycling routes is set out in the Updated Cycle Strategy and further clarification and explanation was offered by Mr McKay in his lengthy oral evidence. Given the granularity of some of the points raised, further detailed response on a route by route basis is annexed to these submissions at Annex 6.

148. By way of introduction:

- (1) On-site, a cycle network is proposed that would allow residents to travel easily by bicycle to access any of the on-site facilities³¹⁶. Mr Russell accepted that his concerns about compliance with LTN 1/20 were limited to off-site³¹⁷.
- (2) Off-site, Mr Russell in his oral evidence said that there were “*a lot of facilities in the area in the range for cycling*”;
- (3) The roads to be the subject of improvements to encourage cycling are already well-used by cyclists³¹⁸. There are existing safety issues on these roads that the Appellant’s proposals will mitigate. Moreover, a number of these roads are – irrespective of the Appeal Scheme – targeted in the DMP

³¹⁶ See McKay proof para 10.8 and Russell answers in XX.

³¹⁷ Mr Russell in XX.

³¹⁸ Mr Russell accepted this in his oral evidence. Moreover, Mr Clegg giving evidence for VAWNT (see ID2.15 App 2.2.3.f says “*Evidence of this is that the Strava (the cycling app which is popular with keen cyclists) segment for Ockham Lane has been ridden 374,634 times by 41,201 people. Similarly Old Lane is also very popular with the Strava segment for Effingham Junction to Old Lane having been ridden 116,484 times by 22,652 people*”.

for improvement for cyclists under Policy ID9: Achieving a Comprehensive Guildford Borough Cycle Network. This is why SCC is committed fully to the delivery of these measures.³¹⁹ Somewhat perversely third parties complained about motorists speeding on local roads and yet set their faces against any of the proposed speed reduction measures on these roads. Some of this was for aesthetic reasons but the Updated Cycle Strategy sets out solutions to traffic calming in sensitive areas³²⁰ which will enable amenity and character impacts to be satisfactorily managed.

- (4) Mr Russell's proof³²¹ suggested that cycling was the only sustainable means of access to and from the Appeal Site but in XX he accepted that the public transport offer (which includes electric buses)³²² provided an alternative sustainable method of travel for non-cyclists.

149. The off-site cycling provision proposed has become a lightning-rod for objectors, featuring prominently in the evidence of Mr Russell, Mr Hall and Mr Smith, as well as in the comments of third parties and the VAWNT witnesses.

150. The Appellant's view³²³, agreed with SCC³²⁴, is that the proposed upgrades represent a "*step change*" from what was proposed on the WPIL appeal³²⁵ and will enable the establishment of five safe and suitable cycle routes which will be accessible to the average cyclist, meeting requirement (5) of Policy A35 (see further below). They will meet the aspirations of GBC as set out in Policy ID9 of the DMP and of national policy in the NPPF. They will allow sustainable access to key services including train stations and bring wider benefit to existing residents of the surrounding area. They are also designed to link with SCC and GBC's aspirations for future networks.

³¹⁹ CD5.11 and Mr Russell's EiC.

³²⁰ CD2.35 paras 2.62-64.

³²¹ Para 3.32.

³²² CD2.34 para 3.23.

³²³ As advanced in the evidence of Mr McKay.

³²⁴ As advanced in the evidence of Mr Cooper and agreed in CD5.11.

³²⁵ Two routes were proposed: links to Ripley and to Byfleet/Brooklands (Muddy Lane was not yet a bridleway).

151. The proposals have been developed by Martin Higgitt, of Martin Higgitt Associates and are set out in the Updated Cycle Strategy. He and Mr McKay have worked closely together and both have cycled all of the routes on more than one occasion.³²⁶ The design process has involved substantial engagement with stakeholders including ‘one-to-one’ and group meetings with the Guildford Bike User Group³²⁷, Woking Cycling Group, Cycling UK and the national cycling charity Sustrans.³²⁸ There was also further consultation in May 2021 with technical and non-technical stakeholders including SCC, GBC, Woking BC, Elmbridge BC³²⁹, a range of local councillors³³⁰, two MPs³³¹, Bike 50³³², all of Ripley, Ockham, Send, East Clandon, East and West Horsley, Effingham Parish Councils, the British Horse Society and RHS Wisley.³³³
152. The Appellant appointed a critical friend³³⁴ to assist during the design process. The person chosen was Mr Phil Jones, of PJA, who was the main contributor to LTN 1/20. Mr Jones’s letters³³⁵ confirm his role and involvement, that the proposals have been assessed against LTN 1/20 and his view that “*all of the appropriate opportunities to promote cycling between the site and the surrounding*

³²⁶ Mr McKay in EiC.

³²⁷ GBUG have complained about a lack of consultation. This is not accepted. GBUG played a key role in the development of the proposals as outline in Appendix B to the Updated Cycle Strategy (CD2.35). They were present at the cycle stakeholder meetings on 17 August 2020 and 6 May 2021, and a group meeting for local cycle interests on 23 April 2021. They were invited to the non-technical stakeholder meeting on 11 May 2021 but did not attend (CD2.35 pg 192). They were members of the Community Liaison Group which held meetings every two weeks between September 2020 and December 2020 and one a month since January 2021. GBUG attended meetings at which off-site cycling was discussed on 5 December 2020, 1 April 2021, 21 October 2021 and 21 July 2022.

³²⁸ On 17 August 2020 and 6 May 2021: see CD2.35 pt 2 pg 70 / ep 73.

³²⁹ This was contradicted by Mr Wise in XX of Mr McKay, but see CD2.38 pt 1 at pg 191 and pt 8 at pg 81.

³³⁰ The ward members for Lovelace, Clandon & Horsley wards and division members for Horsley and Bookham & Fetcham West all attended a targeted stakeholder engagement event on 11 May 2021 – other members were invited by did not attend: CD2.38 pt 1, pgs 190-192.

³³¹ Guildford and Mole Valley.

³³² An off-road cycling group in Surrey for the over 50s.

³³³ See SCI at CD2.38 (pt 1 of 12) at pgs 190-192.

³³⁴ This is a common and valuable approach to the design of complex schemes. Dr Marner explained in his evidence that he acted as a critical friend on some projects. The Appellant also appointed Create Streets as a critical friend to review urban design and mobility (see CD12.9E).

³³⁵ Appendix E to CD2.35.

settlements have been taken up, resulting in destinations that are safe and accessible to the average cyclist, as required by Policy A35 of the Guildford Local Plan."

153. As Mr Jones' letter implicitly acknowledged, that is not to say that the routes established are without limitations in certain stretches or areas. They make use (as they have to) of rural lanes, and as already noted the Development Plan, acknowledges the constraints on the delivery of improved cycle routes on such lanes. However, what the Appellant has done – consistent with all the available policy and guidance – is to work closely with the statutory authorities and stakeholders to develop a scheme which makes the best of what is available. Put in different (the NPPF's) terms it maximises opportunities, recognising that these are not urban/suburban purpose built cycle lanes – they are (in the most part) adaptations to existing historic lanes.
154. Mr Russell, in the end, did not say otherwise. When questioned by you Madam he suggested that there was "*an opportunity here to provide something really quite special*" but when pressed it became clear that this was a mirage, what he was talking about could not be delivered within the "*restrictive highways*" and what he was really envisaging was the use of CPO powers. The effect of such an approach would be to seriously, potentially even fatally, compromise delivery of the routes and the ability for this requirement of policy A35 to be met.
155. His only suggestions as to what more could the Appellant do was that the it should (i) focus on just the two routes to Horsley (he accepted this was, as agreed by SCC and GBC, a better destination than Effingham Junction) and Ripley³³⁶ (ii) looking to have sections of complete segregation on these routes and (iii) narrow roads or take measures to further reduce speed including by taking measures to make clear that roads are "*primarily for cyclists*".

³³⁶ As Mr McKay explained in EiC this is just untenable. Concentrating on one or two routes would fall significantly short of the Policy A35 requirement and not move matters forward from the WPIL appeal. Mr Russell's approach was to be enabled by a scorched earth strategy towards any trees that got in his way. In contrast the Appellant's approach is sympathetic towards the environment.

156. It is striking that, although he did not acknowledge this, all of these issues and options were given detailed consideration by the Appellant and SCC:

(1) The choice of routes has been worked up carefully.

(a) Following initial work by WSP³³⁷ an analysis of amenities in local settlements was undertaken, confirming the benefits of a route to Cobham and the significant advantages of providing access to Horsley over Effingham Junction³³⁸.

(b) This was supported by consultation work³³⁹ which also confirmed a preference for links to Cobham, Horsley and Ripley. A clear justification for the links to Byfleet and RHS Wisley, and to Stoke D'Abernon also emerged. The Stoke D'Abernon route not only provides a connection to a second rail station along a "*much quieter route*"³⁴⁰ but also links towards Leatherhead and provides a connection to SCC's aspirational greenway from the Surrey Hills AONB to Hampton Court. This was supported by evidence at the inquiry. While some consultees continued to believe that Effingham Junction was the most important station to serve, the reality (as recognised by Mr Russell and even Mr Clare to some degree) is that delivering Policy A35 compliant cycle provision along Old Lane is too challenging.³⁴¹

(c) In this context, Mr Russell's suggestion that only two routes should be pursued was untenable. Concentrating on one or two routes would not only fall significantly short of the Policy A35 requirement

³³⁷ CD2.35 para 2.20.

³³⁸ Mr McKay's proof at 10.16-17, see also CD2.35 para 2.22-2.23 and Table 2.1. In his EiC he explained that the line bifurcates north of Effingham Junction station - so the same level of rail service is provided at each.

³³⁹ See CD2.35 Appendix B pg 71.

³⁴⁰ CD2.35 Appendix B pg 72.

³⁴¹ CD2.35 Appendix B pg 71.

and would fail move matters forward from the WPIL appeal³⁴², but it would also run contrary to the aspirations of stakeholders.

(d) Moreover, in XX Mr Russell also accepted that SCC had agreed with the Appellant that these other routes were preferable to Effingham Junction for a number of reasons.³⁴³ While this is a departure from what was envisaged at the time of the making of the GBLP it is justified and constitutes “comparable alternative mitigation” as provided for by A35(7). There are, however, still to be buses to Effingham Junction and cycling is still an option for the more experienced cyclists with the measures to be introduced on Old Lane representing an improvement on existing conditions. Mr McKay was clear that this was a benefit.

(2) Segregation has been considered and proposed where appropriate³⁴⁴. It was plainly the focus of a number of stakeholders, as seen in the evidence of Mr Clare. However, the Appellant and SCC have had to focus on what can realistically be provided. Some of the lanes are narrow reflecting existing “constraints”. Without the use of CPO powers, improvements can only be delivered on land which is either in the ownership of the Appellant or forms part of the public highway/a public right of way. This is recognised in the DMP – see ID9(3) as discussed at Section 3.1.4 above. Thus:

(a) As Mr McKay explained in his EiC, the Appellant did look at a route along Old Lane – having recognised that the traffic flow increases from the DCO and the GBLP meant that segregation was the only approach which could meet LTN 1/20. However, it would certainly have required third party land and this would have led to serious

³⁴² As Mr McKay pointed out in EiC.

³⁴³ See Mr McKay’s proof at para 10.17 and 10.19. Effingham Junction had a low amenity score and as Mr Russell put it “there is not a lot of difference between Horsley and Effingham Junction” in terms of the number of trains.

³⁴⁴ For example, various stretches of segregation will be provided on the links to Cobham (see CD2.35 at 4.107-4.118) to Byfleet (CD 2.35 at 4.82-4.99) and to Ripley (CD2.35 at 4.61-4.74).

impacts on deliverability³⁴⁵. This is the case notwithstanding that the verges may appear wider than in other locations as the overall highway extent is still not sufficient for a segregated cycle route and vehicular carriageway to coexist to the standard likely to be required by SCC.³⁴⁶

(b) More generally, the suggestion that the Appellant should look at *“providing parallel routes on ‘the other side of the hedge’”* was looked at by Martin Higgitt Associates but it was considered that this was problematic. As they explain at pg 72 of the Updated Cycle Strategy (within Appendix B), this is both impractical in the absence of CPO powers as the developer cannot use third party land, but also potentially undesirable: *“many of these options could only transport cyclists part of the way along the route before they would be forced to rejoin a road where it was difficult to make segregated provision and therefore it did not offer an end to end route solution”*.

(3) With this in mind, and consistent with LTN 1/20³⁴⁷, the Appellant has looked to use narrowing, chicanes and other speed and behaviour altering measures. These physical measures would in turn enable SCC to implement lower speed limits via TROs, something which Mr Cooper confirmed SCC was committed to do. They have been designed to ensure that farm vehicles can continue to pass along the lanes – indeed this issue was raised specifically in the RSA process.³⁴⁸ It should be noted that these measures are designed to be self-enforcing, so the concerns of third parties about the absence of police enforcement were misplaced.

³⁴⁵ There is no safeguarding provided for in the GBLP or IDP and CPO is not seriously suggested by anyone.

³⁴⁶ Confirmed by Mr McKay in his EiC. Mr Clare raised a concern that no evidence had been presented to demonstrate land ownership but this was not put to Mr Cooper by VAWNT and they could in any event have checked the land registry themselves.

³⁴⁷ And the evidence of Mr Clare who recognised that traffic calming was an acceptable and appropriate alternative to segregation – at appropriate traffic volumes.

³⁴⁸ CD2.31 pt 5 of 17 example P6 – see also pt 6 of 17.

- (4) Many of these physical interventions in the highway will be associated with the use of Quiet Lane designations. This was something suggested to Martin Higgitt Associates following their engagement with Sustrans³⁴⁹ and incorporated into the traffic management proposals. These entail the use of signage, placemaking features and behavioural cues such as the removal of centrelines to reinforce and understanding of the priority of sustainable modes of transport over the car. They will be used on Ockham Lane, Plough Lane, Long Reach, Wisley Lane and Chilbrook Lane.³⁵⁰
157. All of this goes to demonstrate that the thinking behind the selection of cycle routes and interventions is far from “*confused*” (as Cllr Oven quite wrongly termed it). The proposals have been developed with impressive care to make use of the available land and facilities. They will be in full compliance with Policy A35, ID9 of the DMP, and the NPPF.
158. SCC agree that the proposals have been developed to a suitable level of detail³⁵¹ (thereby addressing the nub of Inspector Hughes complaint in the WPIL appeal) and confirmed through the evidence of Mr Cooper that SCC was committed to delivering them and confident that they could be delivered³⁵². This was accepted by Mr Russell in his EiC – notwithstanding the focus which WAG had put on this issue in their opening submissions and in XX of Mr McKay.³⁵³
159. SCC also agree with the principles of the improvements included and that they will as a package accord with the requirements of Policy A35.³⁵⁴ This view is shared by GBC, subject to Mrs Yates identification of a technical conflict due to the absence of a route to Effingham Junction for the average user – a conflict

³⁴⁹ CD2.35 Appendix B pg 72-73.

³⁵⁰ See CD2.35.

³⁵¹ CD5.11 para 10.2.

³⁵² In EiC it was put to Mr Cooper whether he envisaged any issues with the processes needed to achieve the highway mitigations proposed such as TROs and he said he could foresee no such issues.

³⁵³ See WAG opening at para 10 “*To take, merely as an example, cycle route improvements. It is not clear what is proposed: plans are said to be illustrative, with no detail on when they have to be in place or what happens if the improvements do not take place – perhaps because the required traffic regulation orders are not approved, for example*”.

³⁵⁴ CD5.11 para 10.3.

which she explains does not lead her to view the proposals as out of compliance with the development plan overall.³⁵⁵

160. The only remaining concern from the statutory authorities is therefore around the environmental impacts of the routes. However, it is clear that these will be subject to controls and, as Mrs Yates recognised, the delivery of the routes, as a key policy goal for both SCC and GBC, will necessarily entail some form of impact which is in principle acceptable³⁵⁶.

161. Mr Russell, and Mr Harwood in XX of Mr McKay, sought to identify areas of non-compliance with LTN 1/20. While there are specific areas along some of the routes where the best practice set out in LTN 1/20 cannot be followed due to existing constraints this does not mean that the routes are unacceptable or fail to meet the guidance:

- (1) As already stated, it is agreed that LTN 1/20 is not itself mandatory.
- (2) Further the reference in ID9(4) to cycle routes being required to be designed and adhere to the "*principles and quality criteria contained within the latest national guidance*" does not make it mandatory to meet every recommendation within LTN 1/20 or conflict with the requirements of Policy A35. ID9 needs to be read as a whole and pragmatically, recognising that GBC identify at ID9(3) that the mechanisms available to deliver routes are likely to limit proposals to land in the control of either the applicant or SCC; and in the explanatory text that all proposals "*should respond to the opportunities and constraints of the built and rural environments*".³⁵⁷
- (3) Where a cycle route falls below the recommended parameters of LTN 1/20 it may still "*adhere to its principles*" if it can be shown that LTN 1/20 has been followed in considering how to avoid this and/or that LTN 1/20 allows for

³⁵⁵ Yates proof at para 4.5. The Appellant says that there is no conflict at all with this aspect of Policy A35. This is considered further below.

³⁵⁶ Mrs Yates proof at 3.87.

³⁵⁷ DMP (CD6.2) explanatory text at 6.90 e p 215.

pinch-points of this kind to be navigated. This is essentially what Phil Jones confirms.

162. Stepping back, the hyperfocus on LTN 1/20 must also be treated with a degree of pragmatism. The Appellant is seeking to meet Policy A35 which requires links to neighbouring settlements which can only be delivered along existing roads (many rural lanes). It cannot sensibly be said that this requirement is breached where routes are provided which meet the standard set by the policy simply because the routes don't meet the standard set for all routes in all respects.
163. It should also be remembered that the routes are already in use by cyclists and some are identified as cycle routes in the DMP. All measures proposed will improve the safety of the roads as compared to the current position and with a few rather limited exceptions, discussed already, no one really suggests anything additional which could practically be done.
164. It follows that not only does the Appeal Scheme meet the requirement to mitigate the existing limited sustainability of the site, but it also gives rise to significant wider benefits for local residents and wider cycling provision³⁵⁸.
165. The approach to cycling, recognised by SCC to be "*a positive step change*"³⁵⁹ is to be contrasted with the approach taken by Mr Russell's client. RHS Wisley are in breach of a planning condition³⁶⁰ requiring it to provide a valuable shared cycle route and footway through its site. This is ironic given that despite WAG, Ockham and RHS Wisley alleging a lack of sustainability in respect of the Appeal Scheme the sustainability credentials of RHS Wisley are poor with almost all its visitors arriving by car. Against that background, the RHS's failure to provide a required cycle route is especially egregious.

3.2.4. The cycle routes condition

166. This is a matter that remains in dispute between the Appellant and GBC.

³⁵⁸ See Updated Cycle Strategy CD2.35 at section 5, pg 56ff.

³⁵⁹ CD5.11 para 10.1.

³⁶⁰ ID5.23 and 5.24 and Mr McKay EIC.

167. Off-site cycle routes are a requirement of Policy A35. The off-site cycle routes proposed were set out in the application documentation: see CD2.22 (Part 7 of 13) elec p 39 which is the Martin Higgitt Associates “*Former Wisley Airfield: Cycling Strategy Proposals*” report dated 8 August 2022. The potential environmental effects associated with these routes, and how they might be mitigated, were considered in that report itself and also in the ES: see the “*Former Wisley Airfield: ES Appendix 18.1 Offsite Infrastructure*”³⁶¹. This document concludes, see para. 9.3, that “*the assessment has shown that limited significant environmental effects are expected with the construction and operation of the highways improvements.*”
168. A revised version of the Cycling Strategy, dated 12 July 2023, was then submitted in July 2023 prior to the PIM: see CD2.35. GBC’s transport officer, Mr Knowles, was sent the revised Cycling Strategy in advance of this in May 2023: see Yates XX. Neither he nor GBC raised any issues in respect of the off-site cycle routes prior to its proofs of evidence. GBC’s Statement of Case was dated 17 May 2023 and raises no issues in this regard.
169. In Mrs Yates proof she stated that “[a]n additional issue which has arisen as a result of the Appellant’s 18 July submission relates to Cycle Route 3 to Ripley” (see para. 3.2I) and para 6.7). However, as set out above, GBC had in fact had all this information several months prior to its submission in July and prior to its Statement of Case, but despite this had raised no issues. In her proof Mrs Yates for the first time set out evidence as to why GBC considered that sensitivities on one of the five proposed cycle routes – the route to Ripley – meant that a further condition was required: see her proof at paras. 3.40, 3.61 – 3.88. Her written and oral evidence is focused exclusively on the Ripley route raising issues as regards trees, landscape, heritage and ecology. Her proof contains no evidence at all on any need for a condition on any route apart from the Ripley route.

³⁶¹ CD2.102.

170. In Mr Collins' rebuttal (section 6) and oral evidence he responded to the issues raised by Mrs Yates in her proof on the Ripley off-site cycle route indicating:

- (1) A condition was not necessary in the view of the Appellant (see para. 6.3):
- (2) But that if Madam you disagree and consider it is necessary then a condition can be imposed, as suggested in Mr Collins' rebuttal, in relation to that route requiring submission of a heritage, ecological and arboricultural report.

171. In an email dated 25 September 2023 (so on the eve of the inquiry starting) Mrs Yates indicated that (ID5.3):

- (1) GBC was *"content with the direction of travel in terms of the proposed condition, although detail remains to be agreed"* and
- (2) But added *"in the light of evidence submitted by R6 parties and Mr McKay's rebuttal proof at 4.27 we can see the need for a condition which requires more generally the design of the cycle paths and speed reduction measures to minimise their impact on their local environment."*

172. Mrs Yates maintained that position in her EiC but critically she gave no evidence (oral or written) to support there being any sensitivity on any route save for the Ripley route which could justify the need for any condition. Nor did she identify, as referred to above, what the evidence of Rule 6 Parties was that she purported to rely on in this regard. Moreover, all that Mr McKay had said in his rebuttal was *"paragraph 6.3 of Mr Collins's rebuttal contains a draft planning condition that the Appellant will accept, giving GBC control over these environmental considerations including ecology"*. This cross-reference to Mr Collins' evidence is to the proposed condition on the Ripley route not on other routes.

173. In XX of Mr McKay by Mr Bird the focus was exclusively on the Ripley route – with discussion of nearby ancient woodland and the listed Talbot Hotel. No points were put in XX to Mr McKay as to the sensitivity of any routes save for the Ripley route.

174. The following points are also of note:

- (1) On the Ripley route the evidence of GBC's ecologist following a site visit is that in terms of bats "*that whilst there may be a possible presence within the cycle route corridor at Ripley, it would not be correct to conclude that there is a reasonable likelihood of presence*"³⁶².
- (2) In any event if the works did involve any disturbance of bats this is subject to separate licencing control.
- (3) In terms of heritage there is agreement that no other routes give rise to any even potential issues³⁶³.

175. The position of the Appellant remains as follows:

- (1) There is no need for any condition on the off-site cycle routes which will be delivered via a s. 278 agreement;
- (2) If Madam you, having heard the evidence of Mrs Yates, accepts that this is necessary for the Ripley route then as per Mr Collins' rebuttal such a condition can be imposed;
- (3) However, no evidence has been adduced or shared with the Appellant to justify any condition on any of the other routes.

176. More generally the Appellant makes the following submissions:

- (1) The off-site cycle routes are not matters for which permission is being sought on this appeal;
- (2) Despite not being part of what consent is being sought for on this appeal the Appellant in the ES provided an assessment of the environmental impacts³⁶⁴ of the proposed off-site cycle routes with the conclusion being that these would not give rise to any likely significant environmental effects, GBC employed consultants to review the ES and they raised no concerns as to

³⁶² CD3.96 para 19 and Dr Brookbank's answers in XX and ReX. Moreover, as Dr Brookbank explained EPR undertook their own site visit and reached the same conclusions.

³⁶³ See the Cotswold Archaeology report at App 1 to Mr Collins' proof at paras. 2.6 - 2.7 and see also GBC's draft condition 88.

³⁶⁴ CD2.102.

this part of the assessment and, of course, no reg. 25 request was made by GBC in this regard;

- (3) The off-site cycle strategy was developed in close consultation with SCC, and with GBC's transport officer in attendance at meetings. It was also the subject of consultation at the Community Liaison Group in April 2021³⁶⁵. There was also a stakeholder engagement exercise, including a technical stakeholder engagement consultation on 10 May 2021³⁶⁶. The cycle routes, and impacts, were also discussed at meetings, including with countryside officers, with GBC planning officers invited and/or present³⁶⁷;
- (4) The General Arrangement drawings ("the GA drawings") submitted go way beyond what would be normally required for such routes at this stage of planning³⁶⁸ - this was done to allow SCC to be fully satisfied with the routes, and to enable a stage 1 RSA. GBC attended meetings with SCC discussing the GA drawings, and GBC's transport officer was keen that they were formally submitted to GBC, which they were, even though the Appellant is not through this appeal applying for consent for them;
- (5) The cycle-routes ultimately have to be agreed with SCC under s. 278 of the Highways Act 1980;
- (6) SCC, as Mr McKay explained in EiC, as a matter of course, evaluate any loss of public trees as a result of s. 278 works using the CAVAT (Capital Asset value for Amenity Trees) process as part of that. While Mr Smith pursued a line of questions about whether the CAVAT assessment could itself require the provision of replacement trees, the answer is that such replacement can be required by SCC as part of the s.278 agreement³⁶⁹;

³⁶⁵ CD2.35 Appendix B at pg 69.

³⁶⁶ CD2.35 Appendix B at pg 70.

³⁶⁷ CD2.35 Appendix B pg 70.

³⁶⁸ Collins ReX and McKay EiC.

³⁶⁹ Collins EiC and see also ID5.40 elec p 6 and see also ID5.41B and C.

- (7) SCC also have considerable countryside, and countryside access support. They own and manage much of the Ockham and Wisley Commons component of the SPA. SCC are also the statutory consultee for archaeology;
- (8) In XX of Mr McKay it was suggested that SCC did not have the financial resources to assess impacts properly through the s.278 process. But that is wrong: they have the expertise and s. 278(2)³⁷⁰ provides that all of SCC's costs of assessing these matters will be met by the Appellant in any event;
- (9) Moreover, SCC may only enter into a s. 278 agreement if "*they are satisfied it will be of benefit to the public*" (see s. 278(1) of the Highways Act 1980). This clearly allows environmental considerations to be taken into account. The evidence on their use of the CAVAT process supports this;
- (10) All of the works are within the highway and so do not require planning permission³⁷¹ so long as they do not give rise to any likely significant effects. This is not because they fall outside of the ordinary definition of development but because they fall within a specific exclusion provided for under the primary Act: see s. 55(2)(b) of the TCPA 1990 which says that the following is not development namely "*the carrying out on land within the boundaries of a road by a highway authority of any works required for the maintenance or improvement of the road but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment*";
- (11) Accordingly, there is a clear parallel between a condition which seeks to control works required for the improvement of the road and one which seeks to control operations that would otherwise be permitted development under the GPDO. In both cases, the Government or Parliament has indicated that the operations in question, subject to limitations, should not normally be under the control of the local planning authority via conditions.

³⁷⁰ ID5.39 and Collins EiC.

³⁷¹ Mrs Yates and Mr Russell both accepted in XX that the proposed cycle routes would *ordinarily* not require planning permission.

This reflects a careful balancing of public concerns which (in the s.278 context) would include that the works are subject to a different set of controls by a different statutory authority. Any proposed condition would need to be justified – applying by analogy the warnings in the PPG (see para. 17 ref. ID: 21a-017-20190723) which says that conditions restricting permitted development rights may not pass the tests of reasonableness and necessity. It is perhaps for this reason that Mr McKay and Mr Collins both said they had never seen a condition such as that proposed.

- (12) This is further supported by the line of XX pursued by Mr Harwood of Mr Collins. Mr Harwood pointed out that where such works may have likely significant effect on the environment they are treated as development but are then subject to PD rights. So under Part 9 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”). This deals with “*Development relating to roads*” and provides that the “*carrying out by a highway authority – (a) on land within the boundaries of a road, of any works required for the maintenance or improvement of the road, where such works involve development by virtue of section 55(2)(b) of the Act*” is permitted development. The position under the GPDO is that for development such as this if there is a EIA screening decision of likely significant effects the “*development is treated ...as development which is not permitted by this Order*” (see Article 3(11) of the GDPO). Moreover, the Conservation of Habitats and Species Regulations 2017 at regs. 75 – 78 provide that where development is otherwise permitted under the GDPO then if the development “*is likely to have a significant effect on a European site ... site (either alone or in combination with other plans or projects)*” then it “*must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77*” (see reg. 75).
- (13) So if the proposed works to be carried out were deemed to have a likely significant effect on the environment then this is already subject to control through planning legislation such that any condition is unnecessary. If on

the other hand there are no likely significant effects on the environment from these routes then the condition is also not required either.

3.2.5. Environmental impacts

177. For lighting, there are in practice lots of different solutions which can be employed. These are outlined in the Lighting Strategy³⁷² and were discussed by Mr McKay in his oral evidence. Widespread availability of LED lighting has enabled much closer controls – which is of particular benefit to species such as bat³⁷³ – and adaptability.

178. It was suggested the WLD is not being lit to minimise environmental impacts, but Mr McKay confirmed in his EiC he has not seen anything to suggest that this is the case.

3.2.6. Conclusions on sustainability

179. In conclusion:

- (1) On the WPIL appeal it was accepted by the Inspector and the S/S that the proposals has gone a long way towards making the site sustainable.
- (2) The bus offer on the WPIL appeal was subject to no adverse comment by the Inspector and the S/S and is similar but improved on this appeal.
- (3) The off-site cycling offer, which in the WPIL appeal was subject of some criticism by the Inspector and S/S, is now far more extensive³⁷⁴ in terms of the number of routes and the infrastructure associated with making these safe for the average cyclist³⁷⁵.
- (4) The off-site walking provision will be improved and encourage walking to nearby amenities such as those at Ripley (which include a dentist, church,

³⁷² See in particular 4.18, 4.22, 4.51 and 4.53.

³⁷³ Which may be sensitive to particular wavelengths.

³⁷⁴ All that was proposed was two cycle routes one to Ripley and one to Byfleet/Brooklands. The Ripley one was based on existing provision and the other was dependent on the status of Muddy Lane changing to bridleway. That has since been confirmed by High Court litigation: see Mr Russell's answers in XX.

³⁷⁵ As Mr Russell accepted in XX.

post office, and a school), RHS Wisley (including a shop and restaurant) and the pub at Martyr's Green³⁷⁶.

- (5) On-site walking and cycling provision will be comprehensive and carefully designed. With on-site facilities this will create a walkable sustainable settlement.

3.3. Main Issue 4: Effect on Air Quality

3.3.1. Introduction

180. The air quality case raised against the Appeal Scheme by WAG consists of a number of vehement criticisms made by Dr Marner of the very significant amount of air quality monitoring, modelling and assessment³⁷⁷ work undertaken by Dr Tuckett-Jones and her colleagues at WSP. There are a number of preliminary points to be made:

- (1) This air quality work is not in any way criticised by GBC, including by GBC's Environmental Health Officer. GBC have instead fully accepted this work.
- (2) NE have also not criticised the work but have also accepted it. This is important as the officers who considered the issues are well experienced in dealing with impacts on ecology from air quality³⁷⁸. Moreover, they "*sought specialist air quality advice from Natural England colleagues where necessary*"³⁷⁹.
- (3) Dr Marner has not, as he could have done, undertaken on behalf of WAG any of his own monitoring, modelling or assessment of air quality. There is no question but that WAG had the resources to do so. They have raised, and continue to raise, hundreds of thousands of pounds to fight the WNS. The result is that this is not one of those cases where there are two competing assessments of air quality effects. The only work that has been done in these

³⁷⁶ All detailed in Mr Russell's Table 3-3.

³⁷⁷ Marner proof para 6.33 and his answers in XX.

³⁷⁸ That is Marc Turner and Marian Ashdown. See Brookbank rebuttal at App. 10 and XX Baker.

³⁷⁹ Ibid.

regards is by Dr Tuckett-Jones and her colleagues. Dr Marner's brief is limited to critiquing that work.

181. It is clear from both his written³⁸⁰ and oral³⁸¹ evidence that Dr Marner asks you, Madam, to make a finding that Dr Tuckett-Jones and her team have been professionally incompetent³⁸². He made clear that his view is not that there are differences in professional judgment between himself and Dr Tuckett-Jones on these matters but that she and her team have been incompetent³⁸³. That is the way he has chosen to pitch his evidence. That is what he asks you to find. Unless you so find Dr Marner's case must fail.
182. While Dr Marner somewhat hesitatingly agreed in XX that he was not alleging a lack of professional integrity³⁸⁴, he did not in any way retreat from his opinion that the work done is, in his view, professionally incompetent. He could hardly do otherwise given that his proof chose to allege "*insufficient care*" had been taken with the air quality work, that it contains a multitude of "*basic and obvious errors*"³⁸⁵, that none of the points he raised are small or subtle issues but instead that they show that "*[t]he assessments are clearly and fundamentally incomplete*"³⁸⁶.
183. When challenged on this in XX he tried to suggest that the errors may be the fault of Dr Tuckett-Jones' team rather than Dr Tuckett-Jones herself and, rather condescendingly, that further training was required for those responsible for these errors. The plain fact is, however, that it is Dr Tuckett-Jones who is ultimately responsible for all this work and also for giving the air quality evidence for the Appellant.

³⁸⁰ See Marner's proof at paras. 6.33, 6.49, 6.50, 7.35, 8.5, 8.6 and 9.2.

³⁸¹ See Marner's answers in XX.

³⁸² See Tuckett-Jones rebuttal para 2.1.

³⁸³ Ibid.

³⁸⁴ See Marner's XX.

³⁸⁵ This evidence was reflected in WAG's opening which alleged that that the Appellant's "*forecasts of trip generation, modal split and modelling are inadequate and inconsistent*" and that the air quality modelling was "*riddled with further errors*", ID4.3 at paras. 4 and 5.

³⁸⁶ See Marner's proof at paras. 6.33, 6.49, 6.50, 7.35, 8.5, 8.6 and 9.2.

184. Dr Marner's criticisms are such that he says no reliance at all may be placed on the air quality assessments.³⁸⁷ He made clear his view that the work done "*falls short of the professional standards expected of air quality consultants.*"³⁸⁸ Dr Marner thus in essence asks for a finding in this inquiry that the work done is negligent (work being done with insufficient care is the very definition of negligence – a failure to take proper care over something). Regrettably, before making such very serious allegations of professional incompetence he did not have the common professional courtesy to contact Dr Tuckett-Jones, a fellow Member of the Institute of Air Quality Management, to warn her of this. But the point goes further than this. Dr Marner himself recognises that most air quality modelling takes place behind the scenes, that air quality reports do not provide each step in the modelling and that in fact only a small fraction of the data generated and used is included in most reports.³⁸⁹ Despite this, and despite having queries about the work done he at no point ever sought to make contact with Dr Tuckett-Jones to raise any queries. Dr Marner offered no explanation for such a fundamental failing on his own part.

185. So for WAG's case on air quality to be accepted it would thus need to be held that Dr Tuckett-Jones's work is blighted by professional incompetence. Given the serious consequences for Dr Tuckett-Jones of such a finding Dr Marner's allegations must be considered very carefully. There are a number of points of context which tell very strongly against the allegation of professional incompetence:

- (1) Dr Tuckett-Jones is the head of profession for air quality at WSP. She has over 30 years' experience of assessing the dispersion and impacts of pollution in the environment. She has worked in both the private and public sector³⁹⁰. She is a Member of the Institute of Air Quality Management and a

³⁸⁷ Marner's proof para. 9.2.

³⁸⁸ Marner's answers in XX.

³⁸⁹ Marner proof para 6.48 and his answers in EiC and XX.

³⁹⁰ She previously worked at the EA's air quality modelling and assessment unit for 5 years where her role was auditing of air quality modelling. She worked in academia for 8 years developing dispersion models and providing advice to Government on pollutant dispersion: see Tuckett-Jones EiC.

chartered environmentalist. She regularly provides advice to public sector clients including DEFRA and the Department of Transport as well as National Highways³⁹¹. She has given evidence at well over 20 inquiries planning appeals and examinations in public, far more than Dr Marner has³⁹². She has been the technical lead on air quality for the WNS since 2017. She is, in short, a highly respected member of the professional air quality community.³⁹³ That is the individual against whom Dr Marner invites you to find is guilty of a lack of professional competence and negligence.

- (2) As already noted the air quality work has been accepted by both GBC and NE. Both of whom had specialists available whom they consulted on it: see above. Dr Marner thus also in effect invites a finding that these bodies and individuals have also been incompetent in accepting work that he says is fundamentally flawed. In so far as Dr Marner's criticisms go to transport matters (see below), he also invites findings of failings on the part of SCC, NH and the consultants NH appointed to audit the modelling: see above.
- (3) At the WPIL appeal Dr Marner's former colleague Professor Laxen, with Dr Marner's support and advice³⁹⁴, made multiple criticisms of the air quality work undertaken³⁹⁵. These criticisms included criticism of the traffic data as well as of the verification and adjustments made in the air quality modelling. None of those criticisms of Dr Tuckett-Jones work on the previous occasion – not one of them – were accepted by the Inspector or S/S.
- (4) Dr Marner accepts that:

(a) *“All modelling, by definition, contains approximations and estimates and is thus associated with uncertainty”* ³⁹⁶.

³⁹¹ Tuckett-Jones EiC.

³⁹² As Dr Marner accepted in XX.

³⁹³ See Tuckett-Jones proof at paras. 1.6 – 1.9, her EiC and the answers in XX Dr Marner.

³⁹⁴ Marner proof para 1.9 and answers in XX.

³⁹⁵ See McKay rebuttal App B.

³⁹⁶ See Tuckett-Jones rebuttal extract 9 and Marner's answers in XX.

- (b) *“It is always easy to raise ‘what ‘if’ comments in the context of an assessment” and so “[i]t is never possible to provide an assessment which is immune to all such speculative arguments”*³⁹⁷.
- (c) *“The nature of air quality modelling also means that methodological details will always be open to debate Such debates can be healthy from a scientific perspective but are less helpful for decision makers, who typically need to know whether accepted practice has been followed and whether the conclusions are robust”*³⁹⁸.
- (d) *“[i]t is unfortunate when reviews attempt ‘professional point-scoring’ without making any credible arguments.”*³⁹⁹
- (e) *“There are a number of choices, professional judgments, that the modeller has when selecting background concentrations to apply to the modelling”*⁴⁰⁰.

The Appellant says that in a number of these respects Dr Marner has not practised what he preaches. He is guilty in this case of professional point-scoring. Moreover, the Appellant says, contrary to the view of Dr Marner, that just because Dr Tuckett-Jones may have made different professional judgments to him on certain matters does not mean that the approach she has taken is an unreasonable one or in some way inappropriate or incompetent.⁴⁰¹

- (5) Despite raising what he says are a multitude of “errors” Dr Marner failed in his written or oral evidence to provide any proper assessment of the potential significance (if any) of the alleged errors even if they were indeed errors. This is an important point and can be illustrated by the following points:

³⁹⁷ See Tuckett-Jones rebuttal extract 9 and Marner’s answers in XX.

³⁹⁸ See Tuckett-Jones rebuttal extract 9 and Marner’s answers in XX.

³⁹⁹ See Tuckett-Jones rebuttal extract 9 and Marner’s answers in XX.

⁴⁰⁰ See Marner proof para 2.7 and his answers in XX.

⁴⁰¹ See Tuckett-Jones rebuttal para. 2.22 and Dr Marner’s answers in XX.

- (a) Dr Marner's own evidence recognises that not all of the alleged errors he identifies are fundamental⁴⁰² and moreover that some of these errors are restricted to the reporting and do not go to the modelling⁴⁰³;
- (b) In his earlier March and May reviews⁴⁰⁴ of the air quality assessment Dr Marner divided his criticisms into major, moderate and minor⁴⁰⁵; with only three issues in each being identified as major, that is to say having the potential to invalidate the reported conclusions. In contrast his proof contains a very, very long list of criticisms – summarised in para. 9.1 of his proof – the potential significance of which is nowhere indicated.
- (c) Dr Marner's commentary on the traffic data also singularly fails to provide any guidance to assist the inquiry to understand the potential impact of what he alleges.⁴⁰⁶
- (6) Next, in terms of context points, the FWA is allocated in the statutory development plan for around 2000 homes and associated development. It will inevitably generate additional traffic and that that is the only relevant driver of any change in air quality as a result of the Appeal Scheme⁴⁰⁷. In the examination of the GBLP WAG raised air quality issues as reasons to delete the allocation⁴⁰⁸. Inspector Bore rejected this.⁴⁰⁹ Air quality issues were also a feature of the failed High Court challenge to the allocation of the FWA.⁴¹⁰ This is important for a number of reasons, explored in more detail in the ecology section of the closing, but also because the NPPF

⁴⁰² See Marner proof para. 9.2 and his answers in XX.

⁴⁰³ See Marner proof para. 6.50 and his answers in XX.

⁴⁰⁴ CD3.103.

⁴⁰⁵ CD3.103, para 1.2, CD3.91 Part 4 pp 5 - 6 and Marner's answers in XX. He used the same classification in another appeal in which he gave evidence: see XX of Marner.

⁴⁰⁶ See McKay rebuttal at paras. 6.3 – 6.8.

⁴⁰⁷ Tuckett-Jones EIC.

⁴⁰⁸ See CD7.24, paras. 1.2 (elec p 1) and 11.31 (elec p5).

⁴⁰⁹ CD 7.11 paras. 113-119.

⁴¹⁰ CD11.2.

advises that air quality issues be looked at as far as possible at the Plan making stage to limit the need to reconsider such matters when determining individual planning applications.⁴¹¹

- (7) Finally, Dr Tuckett-Jones accepted that there were four typographical errors⁴¹² in CD2.70 and ID1.19. None of those in any way affect the numerical modelling results. Dr Tuckett-Jones apologised for these minor errors. But it must be understood that the scale of the data collected for this project in terms of air quality is truly vast. Far more data has been collected and analysed than would normally be the case: see below. Indeed as Dr Tuckett-Jones pointed out the scale of the assessment for the Appeal Scheme is far greater than that undertaken for the J10 DCO despite that being a nationally significant infrastructure project. The Appellant has 314 monitoring points compared to the 78 used for the DCO⁴¹³. A small number of typographical errors in such a vast exercise does not establish incompetence or negligence. Far from it. Not only was the scale of the data vast but the assessments are complex in what is an ever evolving field⁴¹⁴.

⁴¹¹ Marner proof para 4.13 and his answers in XX.

⁴¹² Specifically: (i) Ecological critical levels for ammonia in Table 2-1 of CD2.70 incorrectly reflected the site-specific critical levels provided by Dr Brookbank, although the subsequent results tables and appendices are all correct ; (ii) again in CD2.70 – the headers of Tables in Appendix G should have said Future Base 2038 and with Proposed WNS (2000 units) 2038 rather than making reference to 2030 and development of 1000 units. The scenarios were all correctly referenced in the main text of CD2.70 and the tables ; (iii) in the header of Table A.2 in Appendix A, the final column should read Bias Adjusted Annual Average rather than Period Average. The data themselves are directly transcribed from data submitted to the WPIL appeal and in Table A.4 the final column is a duplicate of the distance to kerb. As Dr Tuckett-Jones explained these data were not used in the assessment and so these typographic errors do not affect the results presented; and (iv) the model adjustment factor groups presented in Appendix E of the July 23 report (CD2 2.70) do not reflect the actual model adjustment factor used in the assessment. They reflected an older version of the groupings. This was sought to be corrected in ID1.19. But there was an additional step that this did not fully reflect. In total 10 out of many hundreds of receptors had their groupings misreported. This is a reporting error only. In Group 16 which is the AQMA group, some 9 receptors were reviewed and processed with a more conservative verification factor to ensure a conservative assessment, all of which were at the periphery of the modelled area. The more conservative approach adopted was not reflected in the reporting in ID1.19. Dr Tuckett-Jones identified one error – decision to change the verification group for Walton 5 in order to take conservative approach to AQMAs. This was an error because the effect of doing so was to reduce the modelled impact at Walton 5 rather than increase it. However, while an error, this was of no consequence.

⁴¹³ Tuckett-Jones EiC.

⁴¹⁴ Tuckett-Jones EiC.

3.3.2. The context for the air quality criticisms made by Dr Marner

186. The full list of alleged errors is summarised in para. 9.1 of Dr Marner's proof. Before considering these there are a number of points to make.

187. First, the Appellant's case is that almost all of these alleged "errors" are not in fact errors at all. Rather they are merely examples of a difference in professional judgment between Dr Marner and Dr Tuckett-Jones. There is a clear difference between an error, something done that is indisputably incorrect, and a mere difference in professional judgment. There is thus a need to look carefully at each of the alleged "errors" and to ask⁴¹⁵:

- (1) Are these errors at all or are they merely differences in professional judgment?
- (2) If they are differences in professional judgment then has Dr Tuckett-Jones advanced a reasonable explanation for the choice she made even if it is not the choice that Dr Marner would have made?
- (3) In any event how significant is any error or difference in the judgment made in terms of the overall assessment?

188. Second, a number of the criticisms made by Dr Marner in his proof and summarised in his para. 9.1 are matters that relate to transport or ecology rather than air quality. These are matters which Dr Marner is not an expert on⁴¹⁶. Despite this, and despite saying clearly that any assessment of the significance of air quality impacts on ecological receptors is not for him but for Mr Baker⁴¹⁷, Dr Marner goes on in his proof to express views on these matters. Matters which are outside his expertise by his own admission: see e.g. paras. 7.20, 7.28 and 7.36. This evidence can carry no weight. Dr Marner also unwisely dipped his toe into

⁴¹⁵ Marner in XX accepted that this was the approach to be taken.

⁴¹⁶ Marner proof para 1.6 and his answers in XX.

⁴¹⁷ Marner proof para 7.22. See also Dr Marner's acceptance in XX that the IQMA guidance specifically directs that the significance of any air quality impacts on ecology is a matter for the ecologists.

legal matters to do with HRA.⁴¹⁸ Again, such evidence is of no material weight. Dr Marner's understanding of the case-law was limited.

189. Third, the focus of assessment in relation to potential impacts on ecological receptors from roads is 200m: see below in relation to ecology. This is based on a research study Dr Marner and his former colleague Professor Laxen and which indicates that NO₂ contributions from road sources drop off steeply from the roadside with the greatest effect at 50 – 100m and are no different to background levels by 100-140m.⁴¹⁹ The relevant NE guidance says that a maximum 200m from a road study area is required unless it advises in a particular case that more is required⁴²⁰. It has not done so here but despite that the Appellant has extended the study area to 250m.⁴²¹ The emergence of NH₃ as an issue has not changed the study area nor does any party suggest that it should have.⁴²²

190. Fourth, in relation to the consideration of NH₃ in the J10 DCO examination process the position is as follows:

- (1) The ExA report is dated October 2020 and the S/S's decision is dated May 2022. The S/S upheld the conclusions of the ExA on air quality including NH₃;

⁴¹⁸ See his proof at paras. 4.5 – 4.8 and his answers in XX.

⁴¹⁹ CD9.2 para 3.54, CD9.1 para 20.140; CD 7.11 para. 113; CD11.2 paras 152 – 154, 199, 203 and CD3.91 Part 2 elec p 44 – 45. See also CD13.2 para 6.6.16.

⁴²⁰ See CD12.36 at figure 2 electronic p 12, paras. 4.10 and 4.17.

⁴²¹ CD2.42 para 12.44.

⁴²² See Marner answers in XX and CD2.42 para 12.114 “*Ammonia is a highly reactive compound that readily deposits to terrestrial surface by various routes including directly, by dry deposition, and indirectly via the formation of particulate ammonium and subsequent removal by precipitation as wet deposition. Locally to the source, it is the dry deposition pathway that dominates and, given the greater surface area and turbulent interactions between pollutants and vegetation surface in woodland in comparison to lower growing vegetation, that process is more significant where there are roadside trees rather than grassland. Overall, the removal of NH₃ by deposition results in contributions to ambient pollution levels that are likely decrease more rapidly with distance from the road than would result from the dispersion of less reactive pollutants such as nitrogen oxide and nitrogen dioxide.*”

- (2) The conclusion of the ExA was that there was no requirement to consider NH₃ despite this being raised repeatedly by Professor Laxen, with Dr Marner's support and advice, on behalf of RHS Wisley⁴²³. This was because:
- (a) NE did not have "*specific guidance or rationale regarding the assessment of ammonia for effects from motor vehicles*"⁴²⁴. It still does not have such guidance;
 - (b) "*they need or otherwise to undertake any particular assessment for ammonia is not contained in 'LA105 Air Quality' ... LA105 is the relevant document within the DMRB that concerns the assessment of air quality, including within designated habitats*"⁴²⁵. This is also unchanged;
 - (c) By the date of the ExA's report CREAM v1A was available as was NH's own NH₃ toolkit⁴²⁶. Despite this the ExA with whom the S/S agreed said "[t]he ExA considers it to be relevant that neither DEFRA, NE nor the wider air quality practitioner community have published detailed guidance relating to the assessment of ammonia in this context"⁴²⁷.
 - (d) By the date of the S/S decision AQEG published a report on exhaust emissions from road transport which, as Dr Marner explained, had removed any residual doubt regarding the significance of this issue⁴²⁸. Despite this the ExA, with whom the S/S agreed, said:

"Given the absence of extant guidance mandating any particular need to undertake an assessment for ammonia, the ExA considers that the RHS's air quality advisor's position on this matter is a minority one and is unpersuasive. Accordingly, it is the ExA's view that very little/limited weight should be attached to the RHS's Examination submissions concerning the adequacy or otherwise of the Applicant's and NE's consideration of the effects of ammonia emissions on the

⁴²³ See para 6.6.20ff under the heading "*Examination of the methodology used to determine nitrogen deposition effects: inclusion of ammonia emissions*", see especially paras 6.2.20 – 22 for RHS Wisley's position.

⁴²⁴ CD3.12 para 6.6.23.

⁴²⁵ CD13.2 para. 6.6.25.

⁴²⁶ Marner XX.

⁴²⁷ CD13.2 para 6.2.25.

⁴²⁸ Marner proof para 3.10 and his answers in XX.

integrity of the TBHSPA. Given, that finding the ExA considers it unnecessary to make any further explicit reference to ammonia.”⁴²⁹

- (e) The only change that Dr Marner was able to point to in the policy context since the DCO decision was the adoption of the DMP. This was adopted in March 2023. But it should be noted that: (i) it was emerging policy at the time of the DCO decision; and (ii) the only thing relevant in the DMP in this regard is para. 4.109 of the supporting text⁴³⁰, not policy itself. which refers to a need to give consideration to NH₃. The detailed guidance from NE and contained in the DMRB remains wholly unchanged.
- (f) The ES submitted with the Appeal Scheme said “[i]t is recognised that road vehicles, and in particular petrol-fuelled vehicles, are also a source of atmospheric ammonia. At present, there is no guidance available on the assessment of ammonia (NH₃) and no widely adopted, peer-reviewed vehicle emissions factors that represent real world conditions ...”⁴³¹. Dr Marner in his March review took issue with this saying that there were two ways of assessing NH₃ open to the Appellant namely: (i) CREAM v1A or (ii) alternatively NH’s tool for calculating NH₃ concentrations⁴³². But the view as set out in the ES is consistent with the approach of both the ExA and S/S. However, the matter does not stop there. The ES went on to say that “to ensure a robust air quality assessment, the Applicant has commissioned ammonia monitoring, both in the vicinity of the FWA Site and in areas of mixed urban / strategic road traffic selected to be representative of the likely future traffic mix on roads near the Proposed WNS, to provide robust local data to further assist with the quantification of impacts”.⁴³³ Dr Marner questioned the necessity

⁴²⁹ CD13.2 para 6.2.26.

⁴³⁰ CD6.2. See Tuckett-Jones answers in XX.

⁴³¹ CD2.42 para 12.110.

⁴³² In fact as Dr Marner accepted, in XX, the NH toolkit has not been officially published. Drafts have been made available to some but despite a draft having been in existence for some time NH has taken a number of schemes through the DCO process without assessing NH₃.

⁴³³ CD2.42 para 12.117 .

for such monitoring but did not think that the decision to monitor was itself unreasonable.⁴³⁴ In the end Dr Marner was forced to concede that the Appellant has done far more than NH was required to do in the J10 DCO in terms of NH₃. The Appellant has undertaken NH₃ monitoring and has used CREAM v1A to assess NH₃ impacts. None of this was required by the S/S for the J10 DCO which he determined little over one year ago. Moreover, the Appellant has done this despite the guidance and tools being available not having materially changed since that decision. Further, as Dr Tuckett-Jones explained the outcome of doing all this additional monitoring and assessment of NH₃ has not changed the outcome of the assessment for either human health or ecology: see below on Dr Brookbank's evidence.

(3) Fifth, in relation to the criticisms of modelling the following points arise⁴³⁵:

- (a) There is no dispute that it was appropriate to use the ADMS dispersion model;
- (b) It is agreed that most air quality modelling takes place behind the scenes;
- (c) Air quality modelling involves a number of choices which are matters of professional judgment and on which views can reasonably differ.
- (d) Air quality modelling is complex and invariably contains approximations and estimates.

191. Sixth, Dr Marner confirmed he had no criticism of the proposed air quality mitigation⁴³⁶.

⁴³⁴ Marner XX.

⁴³⁵ All of which were agreed by Marner in XX.

⁴³⁶ See Tuckett-Jones proof paras. 6.8 - 6.11 and Marner's answers in XX.

3.3.3. The errors alleged

192. Turning then to Dr Marner's alleged errors⁴³⁷:

Alleged error 1: "Failed to provide the required information regarding the AADT traffic data they have used for air quality modelling or how it has been derived (Paragraphs 6.3 to 6.7). The appellant has also used traffic data despite apparently previously discounting its reliability (Paragraphs 6.10 to 6.11) and has derived and used daily-average traffic measurements which are very different from the modelled AADT flows upon which the air quality modelling relies (Paragraphs 6.12 to 6.13)."

Response:

193. This is a traffic related issue. Dr Marner is, see above, not an expert on transport matters;⁴³⁸

194. He thus ultimately deferred to Mr Russell's evidence on these matters;⁴³⁹

195. Professor Laxen at the WPIL appeal, with Dr Marner's support and advice, made similar criticisms all of which were rejected by the Inspector and S/S;⁴⁴⁰

196. The traffic modelling has been the subject of a process of validation and calibration (see above) and was accepted by NE, SCC, GBC and ultimately Mr Russell (see above);

197. Dr Marner sought to raise issues over the way the AADT was calculated from the modelling but:

(1) Dr Tuckett-Jones and Mr McKay worked closely to produce the data;⁴⁴¹

(2) Mr McKay's evidence was that "[t]here has never been any criticism of the factoring of data to produce AADT flows in any of the assessments of major

⁴³⁷ Dr Tuckett-Jones has responded in detail to these criticisms in her proof, rebuttal and in her oral evidence.

⁴³⁸ See his proof at para. 1.6 and his answers in XX.

⁴³⁹ Ibid.

⁴⁴⁰ McKay rebuttal para. 3.2 "Dr Tuckett-Jones and I work together very closely to produce the data required for the assessments she carries out and indeed also worked together on the information produced for the previous Appeal in 2017, in which no fault was found with the traffic flows produced or indeed the Air Quality assessment, as reflected in the findings of the Inspector, endorsed by the Secretary of State (CD 9.1). This was despite vehement objections by Dr Marner's colleague and predecessor Professor Laxen. The objections made by Professor Laxen in his evidence to that inquiry (Appendix B of my rebuttal) included allegations of errors in the traffic data which WSP provided. All of these criticisms were rejected by the Inspector and Secretary of State".

⁴⁴¹ Tuckett-Jones rebuttal para 2.9 and Marner answers in XX.

strategic housing sites that I have directed at WSP. I have no doubt that the AADT flow factoring has been carried out thoroughly using locally derived data and is therefore fit for purpose”⁴⁴²

- (3) In XX Dr Marner confirmed that he was ultimately not qualified to assess the validity of the AADT data. He said he could not express a view on whether it was wrong or, if it was wrong, how it might be wrong;
- (4) The alleged failure to provide the AADT data with the assessment was a point that collapsed entirely in XX of Dr Marner: see above.

Alleged error 2: “Not configured their model with sensitivity to the effects of buildings on dispersion. Their own results show that this can have a significant effect on predicted concentrations (Paragraphs 6.14 to 6.16).”

Response:

198. This criticism made by Dr Marner came down to a view that the Appellant had included in the modelling too much canyoning for trees and not enough for buildings. This is quintessentially a disagreement on a matter of professional judgment. These are not on any view “errors”. Dr Marner accepted, in XX, that this was a matter of professional judgment. The extent of canyoning is thus a choice made by a modeller based on their professional judgment. For that choice to be labelled “wrong” or an “error” it would have to be regarded as unreasonable, that is to say a view which no reasonable air quality specialist could arrive at. Dr Marner’s evidence came nowhere near establishing that this was so. So, as Dr Tuckett-Jones said in her EiC: (i) there is no dispute that Dr Marner would have made *some* different choices in terms of canyoning; (ii) but the canyoning choices made would likely have been very similar canyoning for the majority of roads with different approaches being taken on a more limited set of roads; and (iii) such different choices would not have made any difference to the conclusions of her assessment.

⁴⁴² McKay rebuttal para. 3.10.

Alleged error 3: "Made an error in the background concentrations of NOx that they have used and how these are described (Paragraphs 6.17 to 6.20). This affects all their model results for NOx, NO2, and nitrogen deposition."

Response:

199. There are not any such errors, as Dr Tuckett-Jones explained in her rebuttal at paras. 2.26 – 2.30 and in her EiC.
200. There are a number of choices, professional judgments, that the modeller has when selecting background concentrations to apply to the modelling:
- (1) Firstly what sources of data should be used; should the assessment use monitored background concentrations or mapped background concentrations. For the Appeal Scheme, the study area was too large and the road network too extensive to be able to identify monitoring sites that represented true background concentrations and avoided the potential for double counting. Therefore mapped data were used, as provided by Defra;
 - (2) Secondly, once mapped data are used, the user then has the option to remove certain contributions from the 1km background concentrations, again to avoid double counting of impacts. Where a source is explicitly modelled e.g. major roads, this should not be included within the background concentrations. As with many model input parameters, it is not straightforward to decide which contributions should be excluded from the background and, very often, the final choice is only arrived at following various rounds of model verification, model review and model adjustment;
 - (3) Thirdly, because the background data are commonly applied on a 1km x 1km grid cell basis this introduces step changes in background concentration where, for example, the monitoring along an ecological transect crosses the boundary of two 1km grid cells. As a step change in pollutant concentrations is physically impossible, therefore the approach Dr Tuckett-Jones took was to generate a spatially varying background field based on interpolation of the mapped Defra data. This, it is accepted, needs to be done carefully and with appropriate review to avoid introducing other

artificial gradients but in this case the resulting background field was relatively smooth and Dr Tuckett-Jones selected to use the interpolated backgrounds over the 1km data directly.

- (4) In the light of the explanations above, as set out in Dr Tuckett-Jones rebuttal, Dr Marner acknowledged that he simply had not considered the possibility that the data was interpolated⁴⁴³ and as a result did not pursue this point further.

Alleged error 4: “Overestimated the degree to which background nitrogen deposition fluxes will fall in the future according to the reference source which they cite (Paragraphs 6.21 to 6.24). This affects all their predicted nitrogen deposition impacts.”

Response:

201. There is nothing in this alleged error:

- (1) Dr Marner previously alleged that the claimed decrease in nitrogen deposition over time was “*unevidenced*”⁴⁴⁴;
- (2) The position Dr Marner took in his proof was different – he accepted that there would indeed be a reduction – but suggested instead that this had been over-estimated in the Appellant’s assessment. So there is now no dispute between the air quality witnesses that there is a decreasing trend for nitrogen deposition;
- (3) Dr Marner is one of the authors of the Nitrogen Futures report⁴⁴⁵ that concluded that nitrogen deposition will decrease over the UK over time, even in the least optimistic future scenario considered in the report (the Business as Usual Scenario)⁴⁴⁶;
- (4) The complaint he made in his proof and in his oral evidence was as to how this predicted decrease at the national level was applied at the local level;

⁴⁴³ In his XX.

⁴⁴⁴ See CD3.91 at paras. 2.4 – 2.5 and Tuckett-Jones rebuttal at para. 2.32.

⁴⁴⁵ CD12.27.

⁴⁴⁶ Tuckett-Jones rebuttal para. 2.32.

- (5) Dr Tuckett-Jones position is that while she was aware that the Nitrogen Futures report is not intended to be applied on a local basis “[t]he published report, by design, did not provide sufficient resolution in the data to enable a local factor to be calculated”⁴⁴⁷;
- (6) Dr Marner, of course, does have this unpublished data. He refers to it in his proof but without providing any of it to the inquiry⁴⁴⁸;
- (7) To account for the uncertainty in the rate of decrease, Dr Tuckett-Jones considered other evidence for the future decrease including data from APIS, data from the national atmospheric inventory and other scenarios from the Nitrogen Futures report, as set out in Appendix D to CD2.70⁴⁴⁹;
- (8) Dr Tuckett-Jones, in her EiC, explained that on the basis of these data, she considered it appropriate to reduce deposition by just over 1.0% per annum from the 2019 baseline to 2030. She stopped at 2030 not because improvements over time will stop abruptly at 2030 but on a precautionary basis;
- (9) There was also an issue raised by Dr Marner about the use of the NAPCP scenario in the Nitrogen Futures report⁴⁵⁰. This, he accepted in XX, is a non-issue because: (i) the Appellant has used the business as usual scenario; and (ii) the NAPCP scenario does, however, remain relevant despite legislative changes⁴⁵¹ as it shows that the business as usual scenario used by the Appellant is likely to be precautionary.

Alleged error 5: “Misrepresented current understanding of how background NH3 concentrations are expected to change in the foreseeable future (6.25 to 6.26). This affects all future-year NH3 concentration predictions.”

Response:

⁴⁴⁷ Tuckett-Jones rebuttal para 2.33.

⁴⁴⁸ Tuckett-Jones rebuttal para. 2.33 and Marner XX.

⁴⁴⁹ Tuckett-Jones rebuttal para 2.34 and EiC.

⁴⁵⁰ Marner proof para. 6.23

⁴⁵¹ Tuckett-Jones rebuttal para. 2.35; Marner rebuttal para. 4.5 and Marner XX. See further CD12.27 p. 3 irrespective of changes to the NAPCP there remain other key policies relevant to that scenario e.g. NECR, the Clear Air Strategy and the 25 Year Plan.

202. This is again not an error but rather a disagreement on a matter of professional judgment⁴⁵².
203. Dr Tuckett-Jones has held background NH₃ concentrations as constant over time, which Dr Marner criticised on the basis that the national atmospheric emissions inventory shows them to be increasing very, very slightly. Dr Tuckett-Jones does not dispute this but explains in her rebuttal proof at 2.38-2.39 that (i) those changes are so minor that they would in any event make no difference and (ii) it is possible that they will be outweighed by actions taken to reduce emissions from agriculture and other sectors.
204. Further, any optimism (limited as it is) in relation to background concentrations is more than outweighed by the conservatism now acknowledged to be built into the CREAM v1A calculator:
- (1) The Appellant used CREAM v1A to predict future NH₃ emissions and this is agreed to be “*precautionary*”⁴⁵³;
 - (2) Dr Marner, who led the development of CREAM v1A, confirmed that he did not question that it was appropriate to have used it in the modelling albeit its results will be “*precautionary*”;
 - (3) Dr Marner also accepted that CREAM v2 – were that to be used – would present a far more optimistic picture of NH₃ emissions⁴⁵⁴. In XX of Tuckett-Jones Mr Harwood ventured the suggestion that this did not matter because she had “*chosen*” to use CREAM v1A. But, of course, only Dr Marner in fact has access to CREAM v2, and so the option of using it, as it is unpublished. And what we know from him is that if it had been made available to be used the results in terms of NH₃ would have been far better⁴⁵⁵. This is because

⁴⁵² Tuckett-Jones rebuttal paras, 2,38 – 2.39.

⁴⁵³ Marner proof App A4 para A4.6, his answers in XX and Tucket-Jones answers in ReX.

⁴⁵⁴ Marner proof para. 7.21 and the appendices to his proof at p. 28 of 29. See also Tuckett-Jones answers in XX.

⁴⁵⁵ In XX it was put to Tuckett-Jones that the position as set out by Inspector Bore at CD7.11 para. 113 was “*no longer the case*” because of NH₃. But it was explained that: (i) what Inspector Bore was saying

CREAM v2 shows future decreases in NH₃ for all speeds from the current baseline. As Dr Tuckett-Jones explained when questioned by Mr Harwood, it is the trend shown on the CREAM projections which matters not the absolute emission level (which CREAM v2 thinks is currently higher than previously estimated). This is a function of the model verification process which effectively draws everything to the same point so has already (in effect) accounted for any consistent inaccuracies in the absolute levels by verifying them to the monitored readings.

- (4) Moreover, as Dr Tuckett-Jones explained had the NH toolkit been used – and Dr Marner accepts it could have been⁴⁵⁶ – the results would also have been far better.⁴⁵⁷
- (5) Dr Tuckett-Jones also explained in XX that the increases in the exceedances of the 1% of critical loads as shown in the consolidated air quality modelling issued in July 2023 as compared to the previous assessment was driven by two things: (i) consideration of NH₃ on a precautionary basis via CREAM v1 and (ii) the revision downwards of some of the APIS critical loads. But she emphasised that the concentrations driving this change were “*very, very small numerically*” and that one needed therefore to put the exceedance of the 1% “*in some sort of perspective.*”⁴⁵⁸
- (6) Given the above it is difficult to see that anything of Dr Marner’s case remains in relation to this point.

Alleged error 6: “For a number of reasons, adjusted their model to match erroneous and unreliable measurements for NO₂ (Paragraphs 6.27 to 6.33). This will affect all

in that paragraph about NO_x remained correct – it will be lower in the future; (ii) what is driving the increases in nitrogen deposition are the DCO works – and at the time of Inspector Bore’s report the DCO had not been applied for let alone granted – and that (iii) the change in position in the future as regards nitrogen deposition is driven by the precautionary nature of CREAM v.1

⁴⁵⁶ Marner proof para. 3.10.

⁴⁵⁷ Tuckett-Jones EiC, XX and ReX and see her rebuttal at para. 2.89.

⁴⁵⁸ Tuckett Jones answers in XX.

their predicted concentrations of NO₂, Nox, and nitrogen deposition. This also highlights a lack of basic quality assurance in the air quality work."

Response:

205. The assessment of the potential air quality impacts of the redevelopment of the Appeal Site has been supported by a significant⁴⁵⁹ monitoring campaign over an extended area and timeframe (2013 – 2023) focussed on human and later ecological receptors⁴⁶⁰.
206. The scale of monitoring undertaken in support of the Appeal Scheme, and in particular the extent of monitoring of ecological receptors, goes considerably beyond that which is commonly undertaken or normally expected in support of such development⁴⁶¹. The Appellant's work is based on 10 years of project specific monitoring data, plus further local authority data as well as the data produced to model and justify the J10 DCO.
207. The Appellant went above and beyond in carrying out NH₃ monitoring and verification⁴⁶². However, Dr Marner made no criticism of either the decision to verify nor the methodology used. He was critical of the adjustments made to the traffic data for this purpose but as Dr Tuckett-Jones explained this was necessary in moving from annual to monthly verification given the need to take into account seasonal variations of traffic.
208. Dr Marner was critical of the use of some data from short term surveys (e.g. less than 3 months). But:
- (1) All the surveys were for 3 months or more but for some data losses meant there was less than 3 months data, several for considerably longer than this⁴⁶³;

⁴⁵⁹ Tuckett-Jones EiC, see also Tuckett-Jones proof fig AQ1 and CD2.70.

⁴⁶⁰ Tuckett-Jones proof para 3.10 and the table at pp. 20 -21.

⁴⁶¹ Tuckett-Jones proof para. 3.11 and Marner answers in XX.

⁴⁶² Marner XX.

⁴⁶³ Moreover, as Dr Tuckett-Jones explained Defra's guidance on not annualising short term surveys (surveys with less than 3 months of data) strictly relates to the LAQM regime, and the use of annualised data in the assessment of compliance or otherwise with air quality objectives, taking into account the

- (2) Of the 314 data points used in model verification for NO₂ only 4 (so just over 1%) had less than 3 months data and the majority (77%) had more than 6 months data⁴⁶⁴;
- (3) The Appellant used a precautionary approach in that it was decided to include all monitoring data and to give all data equal weighting. The approach adopted is therefore robust and conservative⁴⁶⁵;
- (4) Bias adjustment is required to adjust diffusion tube measurements to match, insofar as is possible, measurements made using standard reference measurements. As Dr Tuckett-Jones explained WSP used local factors – derived from local co-location studies, in which diffusion tubes were collated with a continuous analyser (or reference method) for the exact duration of our monitoring – where available or national factors (derived from multiple studies by local authorities, for a 12 month period, but specific to the laboratory supplying the diffusion tubes) where they were not. This follows Defra guidance TG22⁴⁶⁶;
- (5) While Dr Marner sought to criticise the application of national factors to short term surveys. There is, however, no guidance to suggest that short term surveys should not use national factors, and indeed there are examples provided in the guidance where national factors are used for surveys less than 12 months⁴⁶⁷ These criticisms thus lack merit and do not, on any view, constitute an "error"⁴⁶⁸.

levels of uncertainty – in contrast WSP were collecting data specifically for model verification, so for a different purpose but one in which that uncertainty must be taken into account – and this is what WSP have done: see Tuckett-Jones EiC.

⁴⁶⁴ Dr Tuckett-Jones EiC; Dr Marner in XX was not able to confirm or deny this position.

⁴⁶⁵ Tuckett-Jones rebuttal para 2.44 and also her answers in EiC

⁴⁶⁶ Dr Marner proof appendices App. A2.

⁴⁶⁷ Albeit for a different purpose. Dr Tuckett-Jones view was that is that since Defra's guidance explicitly considers the annualisation of data with fewer than 9 months of data, and that had they had concerns about the use of national bias adjustment factors for these short term surveys, then they would have explicitly stated so or at the very least issued a warning/caveat – Defra do neither. See Dr Tuckett-Jones answers in EiC.

⁴⁶⁸ Dr Tuckett-Jones EiC.

Alleged error 7: "Adjusted their model to match measurements without seeking to understand why this was needed or the cause of the bias they are attempting to correct for (Paragraph 6.34 to 6.35 and 6.42 to 6.43). The appellant's comparison of model predictions against measurements highlights that their model works extremely and unusually badly, particularly where the quality of the measurements is best (Paragraphs 6.36 to 6.41). This adds significant uncertainty to all their predicted NO₂, Nox, NH₃ concentrations and nitrogen deposition fluxes."

Response:

209. This matter is responded to fully in Dr Tuckett-Jones rebuttal at paras. 2.52 – 2.67 and was canvassed at length in XX of Dr Marner and in Dr Tuckett-Jones' EiC;

(1) As Dr Tuckett-Jones explained in her EiC the aim of the modelling is not to provide a perfect model – that is an impossibility; indeed even near perfect is impractical. Rather the aim of monitoring is to provide information to assist with the assessment. Dispersion in the atmosphere is highly complex, varying on various spatial scales down to centimetres in some instances. The overarching aim of the modelling is to provide robust information to inform the air quality assessment. However, uncertainty is inherent in modelling the future as is, for that matter, monitoring the present.

(2) Moreover, as Dr Tuckett-Jones made clear the aim of verification is to identify a factor or factors, by which you can adjust your model results, to ensure a match between monitored and modelling concentrations. In relation to this she explained that:

(a) modellers, make a distinction between the sources that we are modelling explicitly (in this case roads) and all other sources and influences on air quality (this is termed the 'background');

(b) So, as Dr Tuckett-Jones explained, the verification process involves taking monitored concentrations and using Defra provided tools to isolate the contribution of the local roads to the total. The process then involves plotting this monitored road contribution against the modelled contribution. There is then a process of refining the relationship between these. For the outliers, one would check the

model set up (distance to kerb, missing sources, incorrect emissions in model, canyons); for general data, and plot the geographic distribution of the ratio of monitored to modelled concentrations and from these ascertain whether there are any spatial trends that would require an adjustment of the model set up across entire area or multiple receptor groups. Once the easily identifiable model issues are identified and the modeller has selected verification groups there is an adjustment of the model concentrations with the selected verification factor or factors in order to calculate total NO₂ for the baseline. This total NO₂ is compared against the observed concentrations as a second level check of the verification process. In many instances, the modellers have to repeat this process iteratively, if appropriate making model set up adjustments and reviewing the results, or adjusting model verification groups until, in their professional opinion, they have an optimum balance of numbers of verification groups and a robust representation of baseline conditions that can be taken forward to the assessment of future impacts. Traffic data checking forms a part of this – some of this is done by the air quality modellers (e.g. making sure we have correctly input the data to the model and the representation of junctions) and some is joint checking with the traffic modellers. At no stage during this assessment did Dr Tuckett-Jones identify with Mr McKay any systematic issues with the traffic data

- (3) The key points in response to Dr Marner are then as follows:
- (a) The issues he raised here are not errors at all but rather matters of professional judgment;
 - (b) Dr Marner ultimately accepted that it can be appropriate in modelling to use “*spatially varying model verification factors*”;

(c) He had little choice but to accept this given that Dr Tuckett-Jones rebuttal provided examples of his own firm doing so: see Table 1 and extract 2 in particular; Dr Marner's criticism had at first appeared to be an in principle objection to the use of more than one verification factor. But in XX his complaint was about the number used here namely 7. He said that up to 3 might be acceptable but never 7. In XX of Dr Tuckett-Jones Mr Harwood pursued the same line. But Dr Marner was unable to offer any principled reasoning in support of this. Dr Tuckett-Jones explained in her EiC that what is required is a risk based professional judgment. If the model performed worst (required the largest verification factor) where a scheme had the most impact that might be a cause for concern. But that is not the position here, quite the opposite. She noted that Dr Marner's colleagues (see extract 2) had used 3 verification factors for only 13 monitoring points. The Appellant's assessment uses 7 verification factors for 314 monitoring points. That is a ratio of one group per 45 monitoring points and with all bar one of the verification groups having more than 10 monitored locations and two of them where the impacts were greatest having 94 and 142 respectively. Groups J and L represent the majority of the study area - and that area is approximately 16km x 24km. The DCO - and NSIP - only had 78 monitoring points and in the end only used only 58 in the assessment with 3 verification factors (varying from 0.9 to 1.3). That is a monitoring points to verification groups ratio of 1 to 19;

(d) In relation to model performance the key points are as follows:

- (i) Dr Marner's oral evidence was that ordinarily he would expect verification factors to range from between 1.25 and 2.5;
- (ii) But this ultimately depends on the particular circumstances and Table 1 of Dr Tuckett-Jones rebuttal shows Dr Marner's own

firm using verification factors well outside that expected range:
see extracts 2 and 5;

(iii) Dr Marner in his oral evidence sought to argue that the higher verification factors in those assessments undertaken by his own consultancy were “*unusual*” but nonetheless justified on the facts of those particular cases. This just goes to show that what is justified in this regard is a matter of professional judgment based on the facts of any particular case. Given that any allegation that the model used here is “*unusually poor*” has no basis at all. Dr Tuckett-Jones in her EiC refutes this in its entirety setting out that the model performs well especially in critical areas and why it is entirely appropriate for the assessment of the impacts of the Appeal Scheme;

(iv) The suggestion that a verification factor of 8.23 signifies that the model is performing extremely badly does not bear any scrutiny for a number of reasons:

(A) Dr Marner’s own consultancy were content to use a verification factor of 7.913, very close to the 8.23 highest verification factor used here;

(B) The higher verification factors used in the Appellant’s assessment all occur at the very edges⁴⁶⁹ of the model where the impact of traffic from the scheme is negligible;⁴⁷⁰

(C) In contrast the higher verification factors used by Dr Marner’s consultancy (see e.g. extracts 2 and 5) were in critical impact areas⁴⁷¹;

⁴⁶⁹ Tuckett-Jones in XX referred to them as “*the utter edges of the model*” that is to say, “*the extremes of the dispersion model study area*” where the impacts of the Appeal Scheme are “*very small*”.

⁴⁷⁰ Tuckett-Jones rebuttal para. 2.57 and figures 3 and 4 and Marner’s answers in XX.

⁴⁷¹ Tuckett-Jones rebuttal para. 2.58 and Marner’s answers in XX.

(D) In the critical impact areas in the Appellant's assessment – the SPA and within Ripley – the verification factors range only from 1.66 to 2.16 – well within Dr Marner's expected range ⁴⁷². These values are quite close and as Dr Tuckett-Jones explained in her EiC these could easily have been amalgamated into one group but she considered the areas where they were applied i.e. ecological habitats (primarily wooded) and human habitats (roadside properties) warranted distinguishing via verification factors. These verification factors cover the area from Woking in the east, across the model domain and FWA and into Effingham and Leatherhead, and from Oxshott and Cobham to the north of M25, to Send and Burnt Common in the south and covers the key human and ecological receptors;

(e) In late evidence (ID5.6A – 5.6B) Dr Marner sought to raise further issues in relation to the verification factors applied but in XX of Dr Marner and EiC of Dr Tuckett-Jones it became clear:

- (i) That the different verification factors used, for example, at Compton reflected very different measurements on sites close to each other: see CD2.70 elec p 51 something explained at length in Dr Tuckett-Jones' EiC;
- (ii) In relation to the two locations on Old Lane they fall either side of the dividing line between groups L and J – but when viewed on an area basis e.g. Figure AQ.2– it is easy to understand why the choice was made – the more northerly site is close to the monitoring undertaken within the SPA/SSSI (group J), whilst the more southerly site is closer to monitoring sites included within (group L).;

⁴⁷² Ibid.

- (iii) The other issues raised as regards Addlestone, Weybridge 4 and Walton 5 are explained by the typographical labelling error for the verification factor for a small number of data points: see above.

Alleged error 8: “Conflated the predicted impacts of the full build-out of the scheme in 2038 with those of partial build-out in 2030 (Paragraphs 6.44 to 6.47 and 7.23). This affects all of the predictions for biodiversity effects in the July AQA, with an obvious potential to significantly underrepresent the effects of the scheme.”

Response:

210. Ultimately Dr Marner, in XX, withdrew this point.
211. The position is explained in Dr Tuckett-Jones rebuttal at paras 2.68 – 2.70. There is a typographical error in Appendix G to CD2.70 which has now been corrected and accepted by Dr Marner.
212. In oral evidence Dr Marner sought to raise a further issue in this regard as to whether the Addendum IfHRA (CD2.68) at Table 3⁴⁷³ was wrongly using the 2030 impacts. However, Dr Marner accepted in XX that: (i) as the title makes clear the table is looking at 2038 impacts⁴⁷⁴; (ii) the data used in the row “Decreased to 2030 only” matches the 2028 data in CD2.70; (iii) that is because both rows in the table are thus concerned with 2038 but with the one used in the assessment (the first one “Decreased to 2030 only”) only having decreased background levels of deposition to 2030 and not further to 2038; and (iv) that this was precautionary.

Alleged error 9: “Used incorrect critical levels to assess impacts of NH3 on protected biodiversity sites (Paragraphs 7.3 to 7.8 and 7.23). In many cases this has resulted in sites being erroneously screened out from needing further consideration.”

Response:

⁴⁷³ Below para. 3.17 on elec p 9.

⁴⁷⁴ “Table 3: Summary of the distance along modelled air quality transects (shown on Map 2) where future nitrogen deposition rates exceed the 2019 baseline as a result of the FWA proposals (full occupation, 2038) acting in combination with other development” (emphasis added).

213. Dr Marner accepts that very largely the correct critical levels and critical loads are as set out in the Appellant's assessments⁴⁷⁵.

214. Dr Marner raised only two issues in his oral evidence:

- (1) The use of value of 3 µg/m³ rather than 1 µg/m³ for Horsell Common SSSI⁴⁷⁶;
- (2) The use of value of 3 µg/m³ rather than 1 µg/m³ for Ancient Woodland⁴⁷⁷.

215. In answer to these points:

- (1) These are not on any view "errors" but rather are questions of professional judgment;
- (2) Moreover, these are matters on which Dr Marner ultimately defers to Mr Baker⁴⁷⁸;
- (3) Mr Baker, however, failed to give any evidence addressing these points.

216. In contrast both of these points are dealt with in Dr Brookbank's evidence⁴⁷⁹ and there is no evidence from an ecologist against this.

Alleged error 10: "Not carried out a full in-combination assessment for the Thames Basin Heaths SPA (Paragraphs 7.10 and 7.11)."

217. This is a matter that Dr Marner also raised in his rebuttal at para. 7.

Response:

218. The point did not survive XX:

- (1) Dr Marner stated that "[i]t is not part of my evidence to provide a comprehensive list of developments which should be considered"⁴⁸⁰. He agreed, in XX, that what

⁴⁷⁵ See Marner proof para. 4.3 and his answers in XX.

⁴⁷⁶ Marner proof para 7.5.

⁴⁷⁷ Marner proof para. 7.7.

⁴⁷⁸ Marner proof para. 4.3.

⁴⁷⁹ Brookbank rebuttal paras. 3.9, 3.10 and 3.14.

⁴⁸⁰ See Marner proof para 7.11.

is and is not to be considered in the in-combination assessment for the IfHRA was ultimately a matter for the ecologists and not for him;

- (2) Mr Baker, however, made no case on sites being missed from the in-combination assessment. He said in terms in XX that he made no criticism of this aspect of the IfHRA;
- (3) Dr Marner was clear that while he had been made aware by his clients of additional developments⁴⁸¹ not included in the assessments but: (i) it was clear he had not himself looked in any detail at any of these sites; (ii) his rebuttal refers to developments within 5km of the Appeal Site but he was wholly unaware of the significance of this. 5km being the study area agreed with GBC and the other statutory consultees through the scoping process⁴⁸²; and (iii) all of WAGs witnesses (including Dr Marner) accepted that the assessments did *not* have to be updated every time a further planning permission is applied for⁴⁸³/or granted as that would be wholly impracticable.⁴⁸⁴ This is highly material as a large number of the additional developments raised in Dr Marner's evidence post-date the assessments.

Alleged error 11: "Not carried out any in-combination assessment for the Ockham and Wisley Commons or Horsell Common SSSIs (which have different critical levels than the SPA making the outcomes from such an assessment potentially different) (Paragraph 7.13)."

Response:

219. This is again a matter for the ecologists;

- (1) As is explained in Dr Brookbank's rebuttal many of Dr Marner's criticisms stem from an apparent lack of understanding regarding the different assessment processes required for SPAs and SACs, as contrasted to SSSIs or

⁴⁸¹ See App A1 to his March 2023 review at CD3.91 and Appendix 9 to his rebuttal. Many of these permissions post-date the assessments.

⁴⁸² See Wood proof paras. 3.2.1 and 3.2.2.

⁴⁸³ Dr Marner's evidence being that for in-combination assessment under the Habitats Regulations that is what is required: see his proof at para. 4.8 and his answers in XX.

⁴⁸⁴ XX Russell, Marner, Baker and Hall.

other locally designated sites.⁴⁸⁵ The position is fully explained in Dr Brookbank's rebuttal and in her EiC.

- (2) Dr Marner's criticisms in this regard are not repeated, or supported, by Mr Baker's evidence;

Alleged error 12: "Not used the latest air quality modelling to assess the effects of changes to Nox and NH3 concentrations within the IfHRA (Paragraphs 7.15 and 7.16)."

Response:

220. This issue was addressed by Dr Brookbank at 3.15-3.18 of her rebuttal. It is a matter of ecological evidence. Dr Marner is not qualified to give evidence on this and the point was not one pursued by Mr Baker.

Alleged error 13: "Not considered within the IfHRA, the predicted effects on the Horsell Common part of the Thames Basin Heaths SPA, despite widespread predicted exceedance of the appellant's 1% screening criterion (Paragraph 7.17)."

Response:

221. See below under alleged error 14.

Alleged error 14: "Not considered impacts on Horsell Common SSSI with respect to biodiversity (Paragraph 7.24)."

Response:

222. Points (13) and (14) can be dealt with together:

- (1) These are both clearly matter for the ecologists rather than for Dr Marner;
- (2) The issue is addressed in Dr Brookbank's rebuttal at paras. 2.58 - 2.63 she concludes that "[l]ikely significant effects from air pollution on the Horsell Common component of the TBH SPA can therefore still be screened out, validating the conclusions of the August 2022 IfHRA report (CD 2.65) and ES (CD 2.63)";

⁴⁸⁵ Brookbank rebuttal section 3.

- (3) In XX Mr Baker accepted that, Madam, you had all the information necessary to screen Horsell Common, and if you deemed necessary, also to undertake an appropriate assessment;

Alleged error 15: "Not considered impacts on specific receptors with respect to Compensation Land, which will add additional uncertainty to the results over and above the limitations I have identified above (Paragraph 7.30)."

Response:

223. This is again a matter for the ecologists.

224. As explained in the section below on ecology this has been considered by Dr Brookbank.

225. So, of the 15 criticisms levelled in Dr Marner's proof:

- (1) A number were abandoned under XX;
- (2) Many were exposed under XX not to be "errors" at all but rather merely disagreements with Dr Tuckett-Jones on matters of professional judgment;
- (3) Dr Tuckett-Jones has accepted that there were some typographical errors in the assessments⁴⁸⁶ but these do not affect the numerical model results. Given the scale and complexity of the air quality work some such errors are inevitable. Dr Marner accepted that "[h]uman errors happen in air quality modelling"⁴⁸⁷ and the fact such errors are made does not itself render the work invalid or unreliable⁴⁸⁸;
- (4) A number of the 15 criticisms were matters that were for the ecologists not Dr Marner to give evidence on, and which have not been the subject of any evidence from Mr Baker;

⁴⁸⁶ See above and EiC.

⁴⁸⁷ Marner proof. 6.49.

⁴⁸⁸ Marner XX.

- (5) Most tellingly, of the 15 criticisms in Dr Marner's proof only two of these were even raised in XX of Dr Tuckett-Jones (see (5) and (7) above) with at most a further three of these raised with Dr Brookbank (see (11), (13) and (14)).
- (6) In relation to none of the alleged errors did Dr Marner make any attempt to assess the potential impact of any errors even if they were, as he alleged, errors.

226. This last point is important because crucially for these purposes, in XX, Dr Marner accepted that there were in terms of the assessments of the total pollutants (NOX and NH3) present in 2038 a number of precautionary and robust inputs:

- (1) The air quality assessment assumes 2000 units on the Appeal Site not the 1730 proposed;⁴⁸⁹
- (2) Forecast scenarios are precautionary because they are based on pre-Covid travel patterns;⁴⁹⁰
- (3) As Mr McKay's written and oral evidence illustrates in comparison to the latest government forecasts, as reflected by the TEMPro v8.0 software released in February 2023, background traffic growth in the WSP modelling is thus significantly overestimated: see above⁴⁹¹;
- (4) The modelling of NH3 was done using CREAM v1A was used and that is itself "precautionary";⁴⁹²

⁴⁸⁹ Tuckett-Jones proof para 5.29 and Marner answers in XX.

⁴⁹⁰ Tuckett-Jones proof para 3.20 and Marner answers in XX. See also CD2.22 Part 9 of 13 App J.

⁴⁹¹ Tuckett-Jones proof para 3.20 and Marner answers in XX. See CD5.11 para. 6.2 "In addition, it is AGREED that within the study area, TEMPro v.7.2 represents a robust evaluation of growth to 2038 compared with the current version TEMPro v.8 and therefore makes a more than suitable allowance for development not specifically included in the uncertainly log".

⁴⁹² Marner apps to proof at para A4.6 "Natural England and JNCC have both expressed support for the use of CREAM V1A on the basis that they consider it to be precautionary regarding its future-year forecasts." See also Marner answers in XX.

- (5) The modelling only assumes vehicle fleet improvements to 2035 and not to 2038;⁴⁹³
- (6) No allowance is made in the modelling than any of the trees removed as part of the J10 DCO works would be replanted despite there being obligations for this to occur;⁴⁹⁴
- (7) The main source of NH3 nationally is agriculture and the Appeal Scheme will take 70 acres of land out of such use. The land, as third parties emphasised, is heavily used for agricultural purposes. This will improve local NH3 levels something not accounted for in the modelling;⁴⁹⁵
- (8) The background levels of nitrogen deposition were only reduced to 2030 with no reductions beyond that to 2038⁴⁹⁶

227. Dr Tuckett-Jones when asked on these matters was asked whether it was being contended that the modelling should be set aside. Her answer was clear that this is not the Appellant's case but that it is clear that the air quality modelling is based on a number of assumptions that are precautionary and this means that the modelling is showing "*a realistic upper band for nitrogen deposition levels*".

3.3.4. Conclusion on air quality

228. In conclusion, the air quality evidence presented by Dr Tuckett-Jones should be accepted as a robust and precautionary prediction for the future air quality impacts of the Appeal Scheme. In summary the overall conclusions from the model verification exercise:

- (1) The model verification has been undertaken with due diligence and regard to the complexities of the dispersion of pollutants in the atmosphere, and

⁴⁹³ Tuckett-Jones proof para 5.26 and Marner answers in XX.

⁴⁹⁴ Tuckett-Jones proof para 5.34 and Marner answers in XX.

⁴⁹⁵ Marner XX. Mr Paton in his evidence spoke to the heavy use of fertilisers and pesticides right across the Appeal Site.

⁴⁹⁶ Marner XX, and see Table 3 in CD 2.68: see further above.

with an approach that is appropriate for the risk levels within the study area;

- (2) It has been based on the results of monitoring across a network of project specific and local authorities diffusion tubes that is unusually extensive for the assessment of a single development, or even an NSIP;
- (3) This is not to say that the model is perfectly capturing the dispersion at every single receptor in the model that is never so;
- (4) But the model results are robust and are appropriate for informing the assessment of the impacts of the Appeal Scheme on human health and ecology.

229. Impacts on human health:

230. Dr Tuckett-Jones, GBC and its EHO and Dr Marner⁴⁹⁷ are all agreed that, if the Appellant's modelling is accepted, no unacceptable issues arise in relation to human health. The impacts are not significant; they are negligible⁴⁹⁸.

231. However, Dr Marner says that the alleged errors and omissions in the assessment are such that it cannot be concluded that there would be no significant impacts on human health⁴⁹⁹. So, while the focus of Dr Marner's evidence is on the impact of air quality changes on ecological receptors there remains an issue he raises on human health. Dr Marner's case on this needs to be judged in this context:

- (1) As already mentioned the Appeal Site is allocated and it is inevitable that 2000 new homes will generate more traffic and hence more pollutants.
- (2) The WPIL appeal, which was for more homes than are now proposed on the Appeal Site, also extensively considered potential adverse effects on

⁴⁹⁷ As referred to above, see Marner proof para 7.2 and his answers in XX.

⁴⁹⁸ Tuckett-Jones EIC.

⁴⁹⁹ Marner proof para. 8.16 and his answers in XX.

human health as a result of air quality and concluded that these could be entirely ruled out.⁵⁰⁰

- (3) The J10 DCO was determined by the S/S as recently as May 2022. The air quality modelling undertaken for that proposal included the impacts, see above, in-combination with 2000 new homes and 753 jobs on the Appeal Site⁵⁰¹. The S/S concluded there would be no adverse effects on human health as a result of the DCO, in-combination with other development including the A35 allocation: see DL/43 and 46.⁵⁰²
- (4) In terms of impacts on human health none of the relevant critical levels nor any material guidance in this respect has changed since the S/S's decision in May 2022.⁵⁰³
- (5) Air quality within the Appeal Site itself is good⁵⁰⁴. Exceedances of the NO2 critical level are confined to with AQMAs (e.g. Compton, Shalford and central Guildford) but these are distant from the site and at the edges of the agreed study area where the contribution made by the Appeal Scheme is imperceptible. There are no exceedances monitored in Ripley or

⁵⁰⁰ CD9.1. DL/29 and the Inspector's Report at paras. 20.128-132.

⁵⁰¹ See CD2.65 paras 1.18, 1.20 and 1.23 and the answers of Russell, Marner and Baker in XX.

⁵⁰² CD13.1: para. 43 says "Overall, the Secretary of State agrees with the ExA that for the operational phase of the Development the Applicant's Air Quality Assessment ('AQA') has taken account of the cumulative effects of traffic growth in the area including that expected from known committed new development in the area (ER 5.3.36)". Para. 46 says "The Secretary of State is satisfied with the conclusions of the Applicant's air quality assessment. The Secretary of State agrees with the ExA that the Development would not give rise to significant adverse air quality effects for human health, with the reduction in congestion in and around Junction 10 having a beneficial effect for air quality (ER 5.3.41). The Secretary of State agrees with the ExA that in terms of the effects of air quality on human health, the Development would not give rise to conflict with paragraphs 5.10 to 5.15 of the NPSNN (R 5.3.41)". The ExA report at para 5.3.36 (referred to in DL43) says (see CD13.2) "The Applicant's AQA has been informed by the traffic growth forecasting it has undertaken, as reported in the submitted TA for the Proposed Development [APP-136]. As reported in the TA that traffic forecasting takes account of changes in household numbers and employment growth, with Table 3-1 in the TA containing the major Development Plan allocations for housing and employment within each of EBC's, GBC's and Woking Borough Council's areas. Accordingly, the ExA is content that for the operational phase of the Proposed Development the Applicant's AQA has taken account of the cumulative effects of traffic growth in the area, including that could be expected from known committed new development in the local area".

⁵⁰³ Marner XX.

⁵⁰⁴ As Mr Collins explains in his proof at pg 19, it is a further significant benefit of the Appeal Scheme that fossil fuel free heating and hot water is to be provided. This will mean that future residents will not be exposed to significant locally generated pollutant emissions unlike in existing areas with widespread use of gas for cooking/heating.

surrounding villages. There are high monitored concentrations on monitoring sites very close to the A3 but when the distance is corrected to the nearest residence the concentrations are within the relevant air quality objectives⁵⁰⁵.

(6) The focus of the assessments has been on NO₂ but similar conclusions apply to PM₁₀ and PM_{2.5}⁵⁰⁶.

(7) All impacts are assessed as negligible using IAQM criteria.

(8) In relation to NO₂/NO_x Dr Marner accepts that “[t]here can be good confidence that NO_x emissions per vehicle will fall between 2019 and 2038 as has been assumed by the appellant”⁵⁰⁷, with PM concentrations also largely falling⁵⁰⁸ as the ExA stated in the context of the DCO.⁵⁰⁹

232. **Impacts on ecology:** Potential impacts on ecology are addressed in the next section. This is because as Dr Marner accepted, and as IAQM advises, this is a matter to be assessed the ecologists not air quality consultants. But there are a number of points by way of conclusion that are relevant to this from the air quality perspective:

(1) Monitoring has taken place on multiple transects over an extended period in relation to both NO_x and NH₃⁵¹⁰;

(2) The modelling for 2038 shows:

(a) an improving picture for NO_x with exceedances of critical levels reducing between 2019 and 2038 and with all impacts negligible⁵¹¹;

⁵⁰⁵ Tuckett-Jones EiC.

⁵⁰⁶ Tuckett-Jones EiC.

⁵⁰⁷ Marner proof para 3.6 and his answers in XX.

⁵⁰⁸ Ibid para 3.7.

⁵⁰⁹ See para 45.3.24 “At the regional level emissions of NO_x and PM₁₀ are expected to decrease by the Applicant for both the opening and design years when compared with the base year of 2015, even though an increase in total vehicle kilometres travelled is predicted because of improvements in vehicle technology”.

⁵¹⁰ Nitrogen deposition cannot be monitored: see Tuckett-Jones EiC.

⁵¹¹ Tuckett-Jones EiC and CD2.70 tables 4.1 and 4.2.

- (b) NH₃ concentrations will increase (using the highly conservative CREAM v1A tool – see above and with the likelihood that had v 2 been used most increases would be removed save possibly for near J10 itself as a result of the road realignment⁵¹²) but: (i) with exceedances still confined to very near to major roads; (ii) exceedances of the relevant critical level where it is 1ug/m³ would be ubiquitous due to background levels but with exceedance of the 3ug/m³ critical level – relevant to the SPA – limited to near the roadside and this increases between 2019 and 2038 due to traffic growth and the DCO unrelated to the Appeal Scheme ⁵¹³; and (iii) with all impacts, in any event, deemed negligible save for in respect of a number of SSSIs where the impacts are confined to 10 – 20m from roads;
- (c) Finally, it should be noted that Dr Marner in his EiC drew attention to the fact that CD2.70 showed that, closest to the roadside, nitrogen deposition rates – on some but by no means all roads⁵¹⁴ – will increase into the future⁵¹⁵ and this he said was something that was highly unusual given that nitrogen deposition is decreasing nationally. But in XX Dr Marner accepted that this is a result of the J10 DCO which as between the current position and the 2038 baseline used in the assessments: (i) removes a large number of trees; and (ii) more importantly moves the M25 and A3 into the SPA. This was further explained at length by Dr Tuckett-Jones in EiC and XX⁵¹⁶. It was put to Dr Tuckett-Jones that allowing the Appeal Scheme would further slow any reduction in nitrogen deposition in this area. She

⁵¹² Tuckett-Jones EiC.

⁵¹³ Tuckett-Jones EiC and CD2.70 tables 4.3 and 4.4.

⁵¹⁴ Dr Tuckett-Jones in XX said that any increases in nitrogen deposition in the future as shown in the modelling were within “*a limited zone*” close to the roads and influenced by the change in junction layout as a result of the J10 DCO.

⁵¹⁵ Marner proof para. 5.3 and EiC; CD2.70 Tables 4.5 and 4.6 and Tuckett-Jones EiC.

⁵¹⁶ The DCO modelling did not show nitrogen deposition increasing into the future but: (i) NH₃ was not modelled as the ExA and S/S concluded this was not required; (ii) the DCO modelling was not as detailed and robust as that undertaken for the Appeal Scheme: see Tuckett-Jones EiC.

agreed that it would close to the roadside but pointed out that the impact of the Appeal Scheme in this regard is *“very, very small 0.01 or 0.02 ug/m³”* and thus *“a very small fraction of the critical load let alone the total deposition”*.⁵¹⁷

(d) There are thus widespread exceedances of critical loads now and in the future close to roadsides in the area with or without the Appeal Scheme. The contribution of the Appeal Scheme is, as Dr Tuckett-Jones explained in EiC, tiny⁵¹⁸.

3.4. Main Issue 1: Effect of the Proposed Development on ecology including protected species and protected sites

3.4.1. Introduction

233. This main issue covers a range of possible impacts on protected sites, including the SPA, as well as other protected sites, impacts on various species and BNG.

234. It arises in part from RfR 1, 2 and 3 – albeit that GBC’s position is that each of those RfR is resolved:

- (1) The impact on protected species will be addressed by conditions and the s. 106⁵¹⁹;
- (2) SANG is secured by Schedule 9 of the s. 106;
- (3) Skylark mitigation and BNG will be secured by a combination of proposed conditions and Schedule 14 of the s. 106.

235. GBC’s concerns, now resolved, are carried on by WAG and the other Rule 6 Parties.

236. We make the following preliminary points.

⁵¹⁷ See Dr Tuckett-Jones answers in XX.

⁵¹⁸ Dr Tuckett-Jones illustrated this clearly in her EiC by looking through transect tables in the July 2023 modelling report (CD2.70 pt 2 Appendix G) which showed the tiny increases in deposition as a result of the Appeal Scheme alone.

⁵¹⁹ See SoCG CD5.10 paras 4.46-4.51 (re protected species);

237. First, the ecological assessment of the Appeal Scheme has been developed in close consultation with both NE and GBC. Both confirm that they are satisfied that:

- (1) The Appeal Scheme will not give rise to adverse effects on the integrity of the SPA, including through impacts on air quality⁵²⁰ or from recreational use either alone or in-combination.⁵²¹
- (2) The updated ecological surveys provide an appropriate basis on which to determine the appeal⁵²² and any impact on protected species can be appropriately addressed under the proposed conditions⁵²³. This includes in relation to skylark⁵²⁴.
- (3) The Appeal Scheme will deliver BNG in excess of the future national target under the Environment Act 2021 and Policy P7(12) of the DMP.⁵²⁵

238. GBC's position has been reached on the basis of specialist advice from their own ecological consultant, Mrs Sutch of Lindsay Carrington Associates, who has provided detailed advice on an ongoing basis, the most recent being on 4 September 2023⁵²⁶. Mrs Sutch has reviewed all of the application documents relevant to ecology and provided comments both as to what is acceptable and where further surveying or assessment work was required. Her most recent response confirms RfR 1, 2 and 3 can be withdrawn subject to the agreement of a suitable s.106 and imposition of planning conditions.

239. NE's position has been reached on the basis of a detailed engagement with the Appeal Scheme and the considerable amount of evidence supporting it⁵²⁷. Their

⁵²⁰ For GBC see CD5.10 at 4.53-54; for NE see pg 2 CD3.67 "Following receipt of the additional air quality documentation, Natural England have no comments to make".

⁵²¹ For GBC see CD5.10 at 4.33ff for NE see CD3.67 pg 1 "Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on Thames Basin Heaths Special Protection Area (SPA) subject to appropriate mitigation being secured."

⁵²² For GBC see CD5.10 at 4.47-4.50.

⁵²³ For GBC see CD5.10 at 4.51.

⁵²⁴ For GBC see Mrs Yates' proof at 3.48-49.

⁵²⁵ For GBC see Officer Report para 26.82-26.84 (CD4.1).

⁵²⁶ See updated response at CD3.96, earlier responses are at CD3.54, CD3.55.

⁵²⁷ See CD2.97 para 1.3 and Table 2.1 of Dr Brookbank's proof.

work on the Appeal Scheme is led by Marc Turner, the Principal Planning Adviser in the Complex Casework Unit, at NE. He has overseen the provision of NE's advice throughout the design and assessment stages of the Appeal Scheme, having also provided advice in relation to the WPIL appeal and the J10 DCO⁵²⁸. Air quality information has also been reviewed by Marian Ashdown (another Principal Planning Adviser in the Complex Casework Unit), and "*specialist air quality advice*" has been sought from their NE colleagues where necessary⁵²⁹. On the WPIL appeal (through which NE, Inspector Hughes and the S/S were satisfied that no ecological reason for refusal arose), NE also reviewed the proposals through its High Risk Case Panel on two occasions⁵³⁰.

240. As will be familiar, NE are the nature conservation body under regulation 5 of the Habitats Regulations and are subject to a statutory duty to exercise their functions "*so as to secure compliance*" with the Habitats and Birds Directives.⁵³¹ They plainly have deep expertise in nature conservation matters and, as Mr Baker acknowledged⁵³², their views should be given '*great*' or '*considerable*' weight.

241. Second, the isolation of Mr Baker as the only professional of the view that adverse air quality effects on the SPA would arise is further emphasised by examination of the positions of the RSPB and SWT, which he sought to rely on at para 3.1.1-3 of his proof:

(1) The RPSB have set out their objections in three consultation responses⁵³³. Notwithstanding that the SPA is designated for the protection of birds, which is of course the RSPB's area of concern, and that the RSPB are sufficiently concerned about this site to have applied for Rule 6 status on the WPIL appeal, they raise no issues at all about air quality effects. Their

⁵²⁸ See emails at Appendix 10 to Dr Brookbank's rebuttal proof.

⁵²⁹ In XX Baker accepted that the NE officers were "*well placed to judge all his arguments on air quality impacts on ecological receptors.*"

⁵³⁰ See CD9.2 para 119.

⁵³¹ Regulation 9(1) of the Habitats Regulations.

⁵³² And who led NE's response to air quality issues in relation to the Ashdown Forest.

⁵³³ CD3.29, CD3.65 and ID5.12

main points are about recreational pressure and the efficacy of the SANG. These exact same points were pursued by RSPB and rejected by Inspector Hughes and the S/S on the WPIL appeal. Their additional point about skylarks is addressed below⁵³⁴.

- (2) SWT (who are not a statutory consultee in this case and appear to have responded on the basis of their erroneous understanding that they had been instructed as GBC's ecology consultants⁵³⁵) have raised a number of points, all of which go to the principle of the development of the WNS in this location, but from which concerns about air quality effects are somewhat strikingly entirely absent⁵³⁶.
- (3) Dr Brookbank also made the point in her oral evidence that neither of these bodies is bound by a statutory duty to engage with developers regarding ecological matters requiring assessment, which may explain why their positions show limited engagement with the detail of what is actually proposed.

242. Third, given the above, it is remarkable that Mr Baker sought to impugn NE's view not simply on the basis that he disagreed with them as a matter of professional judgement but on the basis that they (NE's Marc Turner and Marian Ashdown) had been grossly incompetent:

- (1) In his estimation, at least in his proof, they had "*not subjected this planning application to even cursory analysis*"⁵³⁷, had reached a judgement on air quality impacts which was "*clearly incorrect and ... demonstrates that NE has either not reviewed [the AQ data] or if it has, hasn't understood it*"⁵³⁸, and had made a "*frankly school boy error*"⁵³⁹ in not raising impacts on compensation land at an earlier stage of the process. He also sought to imply by reference to a

⁵³⁴ Not raised in their initial responses, but made in their further inquiry submission as ID5.12.

⁵³⁵ See Dr Brookbank's proof at 3.41.

⁵³⁶ See CD3.8.

⁵³⁷ Baker proof 7.2.5.

⁵³⁸ Baker proof 7.2.1.

⁵³⁹ Baker proof 7.2.5.

CIEEM letter to S/S in July 2023 (presented without reference to the S/S's response⁵⁴⁰) that NE might have treated the application as a tick-box exercise and called into question the availability of its resources and expertise.⁵⁴¹

(2) This was all entirely unjustified⁵⁴²:

(a) NE's approach is far from a tick-box exercise. As has already been shown, they have engaged with the WNS proposals and the Appeal Scheme itself for a long period and in detail. They have deployed significant resources and appropriate expertise.

(b) NE's 16 August 2023 consultation response⁵⁴³ that they were now satisfied that no "*likely significant effects*" would arise on the SPA as a result of air quality effects must be read in the context of the response and is plainly not⁵⁴⁴ advice that effects on the SPA could be screened out without appropriate assessment. If there was any doubt about this it is resolved by Mr Turner's email 7 September 2023⁵⁴⁵.

(c) The impacts on compensation land have been raised and addressed by the Appellant (see further below).

(d) Further, the suggestion that NE have been incompetent needs to be reached having regard to the fact that they had reached the same view as here in each of the WPIL appeal, the GBLP examination and the J10 DCO examination and on each occasion that view had been fully upheld by the relevant inspectors and S/Ss.

⁵⁴⁰ For which see Dr Brookbank's rebuttal at Appendix 11.

⁵⁴¹ See Mr Baker's proof at 7.2.8.

⁵⁴² Mr Baker accepted that in XX. He had no option but to give the evidence as to the extent of their consideration of the Appeal Scheme.

⁵⁴³ CD3.95.

⁵⁴⁴ Nor has the Appellant or GBC taken that approach.

⁵⁴⁵ Dr Brookbank rebuttal Appendix 10.

(3) Mr Baker accepted as much in XX, having been shown the materials before the inquiry.⁵⁴⁶ However, the damage to Mr Baker's credibility (as an expert acting consistent with his professional duties) had already been done.

243. This damage was further deepened by his reliance on the *Wealden* decision as an example of NE's "*history of making serious errors*". It was again a point that should never have been advanced:

(1) Although he sought to suggest that NE has a history of errors – he in fact relied on only one example⁵⁴⁷.

(2) That example was something which he had raised in precisely the same way on the WPIL appeal, where it failed to persuade either Inspector Hughes or the S/S⁵⁴⁸ to set aside NE's views.

(3) As Dr Brookbank sets out in her rebuttal proof at 2.115, the approach found to be wrong in *Wealden* was "*one which had been applied by a large number of professionals and decisionmakers over a considerable period of time*". She is right to refute Mr Baker's contention that this provides any basis for challenging or denigrating the expertise of the statutory nature conservation body generally.

(4) The approach found to be wrong in *Wealden* was not one which NE or the Appellant had advanced in this case, or indeed in the WPIL appeal⁵⁴⁹.

244. Fourth, there was much else in Mr Baker's evidence, both written and oral, which further undermined his credibility:

⁵⁴⁶ He accepted (1) that he was not suggesting that NE applied a tick-box exercise (2) that there had been engagement and consideration "*for a long period of time*" that (3) NE had sought air quality advice as needed and (4) that Marc Turner and Marian Ashdown are qualified experts to take a view on the ecological arguments which he had raised: "*Yes, that is their role*".

As to his concerns re the 16 August 2023 response, he accepted that NE's position was clearly that no adverse effects would arise following appropriate assessment.

⁵⁴⁷ Confirmed in XX.

⁵⁴⁸ CD9.1 para 7.113-114.

⁵⁴⁹ In *Wealden*, the issue was about the use of a screening threshold to screen out appropriate assessment before considering the impacts of a scheme in-combination with others. The case was referred to in the WPIL appeal IR at 7.113-114; no-one was there arguing that the 1% trigger did not have to be applied in combination.

(1) He has consistently pursued points on this Appeal which have already been considered in detail by (i) Inspector Hughes and the S/S on the WPIL appeal (ii) by Inspector Bore at the examination of the GBLP (iii) by Mr Justice Ouseley in the High Court in *Compton* and (iv) by the ExA (Inspectors Jones and Gould) and another S/S on the J10 DCO

(a) This is a clear example of unreasonable behaviour within the meaning of the PPG costs guidance⁵⁵⁰, of which Mr Baker was wholly unaware. It was clear that in determining to re-run a number of arguments that have been previously rejected by Inspectors and the S/S that Mr Baker was wholly ignorant of the fact that this is unreasonable behaviour.

(b) Mr Baker sought to defend himself from the charge of unreasonableness by emphasising that there is new evidence (i) on the role of NH₃ and (ii) on the sensitivity of relevant habitats to nitrogen deposition, as evidenced by the change in nitrogen deposition critical loads. However, the first change pre-dated the J10 DCO examination and decision; while the second post-dated the March and May review documents in which Mr Baker set out what has become his case on this appeal:

⁵⁵⁰ PPG ID: 16-049-20140306 gives as an example of substantive unreasonable behaviour by a local authority: “*persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable*”.

- (i) NH3 had been recognised as an issue and addressed by the ExA on the DCO examination⁵⁵¹ and in the decision of the S/S in May 2022⁵⁵² so is not a new issue: see above.
 - (ii) The critical loads were not revised until July 2023; some time after Mr Baker had already set out what became his case through his reviews of the application in March and May.
- (c) Further, neither of these developments really go to three of the main air quality arguments which Mr Baker advances in relation to the SPA, all of which were run by him and his clients on the previous appeal, GBLP examination and J10 DCO application (see further discussion below). These are:
- (i) His case that the approach taken by Dr Brookbank in focusing on whether bird populations are at a minimum level or increasing is “*deeply flawed*”⁵⁵³ and/or “*astonishing*”⁵⁵⁴.

⁵⁵¹ See CD13.2 6.6.20-26:

“6.6.20... the RHS asserts that the SIAA should have included assessment of the contribution of increased ammonia concentrations from operational traffic. This matter was addressed by the Applicant ... with reference to its use of DMRB guidance and the DEFRA Emissions Toolkit which do not require the inclusion of ammonia. Despite this, the Applicant also provided an estimation of the outcomes if ammonia were taken into account by doubling the calculated nitrogen deposition rates, concluding that the outcomes of the assessment would not be affected. The ExA asked the Applicant...to explain how robust this estimation is. The Applicant responded...explaining its rationale that the emissions of ammonia are expected to be less than equal to that of oxidised nitrogen, therefore an assumption that ammonia is as much as equal was used as a precautionary worst-case.

...

6.6.23... NE states its satisfaction that the Applicant had demonstrated adequately that even with the inclusion of ammonia deposition, there is no likely significant effect on the habitat features supporting the qualifying features of the SPA.

...

6.6.26 Given the absence of extant guidance mandating any particular need to undertake an assessment for ammonia, the ExA considers that the RHS’s air quality advisor’s position on this matter is a minority one and is unpersuasive. Accordingly, it is the ExA’s view that very little/limited weight should be attached to the RHS’s Examination submissions concerning the adequacy or otherwise of the Applicant’s and NE’s consideration of the effects of ammonia emissions on the integrity of the TBHSPA. Given, that finding the ExA considers it unnecessary to make any further explicit reference to ammonia.”

⁵⁵² CD13.1.

⁵⁵³ Baker proof 6.2.17.

⁵⁵⁴ See Baker’s answers in XX.

- (ii) His professional view (see further discussion below) that where critical loads are being exceeded for an ecological receptor within an SPA “*damage is being caused*”⁵⁵⁵ and thus it is “*inescapable*”⁵⁵⁶ or “*inevitable*”⁵⁵⁷ that projects giving rise to additional deposition (of whatever quantum) will fail to demonstrate no adverse effects and thereby fail appropriate assessment.
- (iii) His argument that Dr Brookbank is wrong to say that the woodlands within the SPA close to the roads are not sensitive to adverse effects from nitrogen deposition; in particular because those woodlands may provide invertebrate resource for the SPA interest species.
- (2) When challenged on his partial account of the law relating to appropriate assessment Mr Baker made clear he did not agree with the approach of Lord Carnwath (with whom all the other Justices agreed) in the *Champion* case.⁵⁵⁸ This was somewhat extraordinary evidence and rather shows how out of kilter with everyone else are Mr Baker’s views.
- (3) Further, and most seriously, he acknowledged in XX that the evidence which he was giving to the inquiry in relation to the approach to be taken towards exceedance of critical loads was contrary to his own professional opinion: he was clear that his professional view was that “*where the critical*

⁵⁵⁵ Mr Baker’s evidence in chief.

⁵⁵⁶ Baker rebuttal at para 16.

⁵⁵⁷ Baker rebuttal at para 17.

⁵⁵⁸ As recently restated by the Court of Appeal. See CD11.14 at p. 349 at held (7) “*In Waddenzee* (at paragraph 59), the CJEU emphasised the responsibility of the competent authority, having taken account of the conclusions of the appropriate assessment, to authorise the proposed development “only if [it] has made certain that it will not adversely affect the integrity of that site”. That, it said, “is the case where no reasonable scientific doubt remains as to the absence of such effects”. But as Advocate General Kokott explained in *Waddenzee* (in paragraphs 102 to 106 of her opinion), a requirement of “absolute certainty” would be “disproportionate”. As she said (at paragraph 107), “the necessary certainty cannot be construed as meaning absolute certainty ...”, the conclusion of an appropriate assessment is, “of necessity, subjective in nature”, and “competent authorities can, from their point of view, be certain that there will be no adverse effects even though, from an objective point of view, there is no absolute certainty”. Similar observations appear in the judgment itself (in paragraphs 44, 58, 59 and 61). As the Supreme Court acknowledged in *Champion*, adopting the approach in *Waddenzee*, “while a high standard of investigation is demanded, the issue ultimately rests on the judgment of the authority” (see the judgment of Lord Carnwath, at paragraph 41). This approach is, in essence, what the “precautionary principle” requires in the context of article 6(3) of the Habitats Directive and regulation 63 of the Habitats Regulations.”

load is exceeded any addition of nitrogen means appropriate assessment is failed"⁵⁵⁹ but that this "is not the approach I am taking" and that it "is not an argument I'm advancing in this case". He rejected the suggestion that what he was presenting were two arguments in the alternative⁵⁶⁰, even when it was pointed out that this meant he was in breach of the professional declaration he had given at paragraph 1.1.10 of his proof.

(4) This is not simply a formal or technical matter:

(a) The planning system depends on evidence being given by experts consistent with their professional duties. The reasons for this are manifold but one at least is to avoid decision-makers being placed in the invidious position into which Mr Baker now places you Madam which is with one hand to disclaim the "*extreme view*" he pursued previously and which was found to be erroneous by the High Court in *Compton* but with the other maintain that his view was not only right in law (which whether as a matter of European⁵⁶¹, Dutch or UK law is not something within Mr Baker's professional competence) but also that it was "*unanimously accepted within the scientific community*"⁵⁶².

(b) Here, the situation is particularly egregious because many if not all of his judgements about the impact of air quality on the SPA were infected by the professional view he was trying to suppress.

(i) So, as pointed out in XX, when he looked at Map 1 of Addendum IfHRA in his oral evidence he said that showed "*adverse effects extending well into the SPA*", when in fact what

⁵⁵⁹ As summarised to him in XX.

⁵⁶⁰ As suggested to him in XX as a way in which the contradiction in his evidence could be resolved.

⁵⁶¹ Although Mr Baker referred in his written and oral evidence to a "*widely accepted view in Europe*" he confirmed this meant the Netherlands. We observe that this is only one of what is now 27 member states.

⁵⁶² Mr Baker's words in XX.

it shows exceedances of the 1% critical load screening threshold.

- (ii) Likewise, his references to IROPI in his oral evidence also presupposed a finding that appropriate assessment was not passed.

245. Mr Baker's willingness to give evidence in this way discredits him and means that little if any weight can be given to his professional judgement.

246. With those points made, we turn to address the substantive arguments run by Mr Baker and others in objection to the Appeal Scheme.

3.4.2. Allegation of inadequate baseline surveys

247. It is important to begin dealing with what was a rather lengthy part of Mr Baker's evidence by emphasising the purpose of ecological survey work. This is not, as Mr Baker sometimes seemed to think, to achieve some theoretically complete understanding of the baseline, the scheme and its impacts, or to establish that the scheme will give rise to zero impact or zero risk – as Dr Brookbank put it, *“the task is to discern matters of potential significance and inform the decision-maker about them”*⁵⁶³.

248. The concept of proportionality therefore runs all the way through the process of surveying sites – with professional judgements being required at each step. This was explored with Mr Baker who accepted the point (at least in principle if not practice):

- (1) A good (and relevant) example is found in the latest Bat Conservation Trust Good Practice Guidelines⁵⁶⁴ which observes that when assessing the need for bat surveys professionals should note that *“surveys should always be tailored to the predicted, specific impacts of the proposed activities. Excessive,*

⁵⁶³ Dr Brookbank's rebuttal at 2.5.

⁵⁶⁴ CD12.47B at Chapter 12 elec p 18.

speculative surveys are expensive and cause reputational damage to the ecological profession and to bat conservation.”⁵⁶⁵

- (2) Also relevant are the OPDM Circular 06/2005 and British Standard 42020:2013⁵⁶⁶:

OPDM Circular 06/2005

“99. Developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.”

British Standard 42020:2013 ‘Biodiversity’:⁵⁶⁷

““5.5 Proportionality. The work involved in preparing and implementing all ecological surveys, impact assessments and measures for avoidance, mitigation, compensation and enhancement should be proportionate to the predicted degree of risk to biodiversity and to the nature and scale of the proposed development. Consequently, the decision-maker should only request supporting information and conservation measures that are relevant, necessary and material to the application in question. Similarly, the decision-maker and their consultees should ensure that any comments and advice made over an application are also proportionate.

...

6.2 Adequacy of ecological information. The shelf life of any given survey depends on the type of survey undertaken and whether environmental conditions within the study area were “normal” or unusual at the time undertaken (e.g. extreme weather), or are likely to have changed or remained the same. The greater the recent change, the greater the need for up-to-date information.”

(Dr Brookbank’s emphasis)

249. Bearing in mind the critical role of expert judgement, it is important to record Mr Baker’s express disavowal (following an evening for reflection) of any argument that Dr Brookbank or EPR’s specialist surveyors had been incompetent in any way in their approach to designing and carrying out site surveys. This (belated) concession was well made. EPR are a CIEEM registered practice of good-standing. They have been involved in the FWA and adjoining land since 2014. No criticisms of their work have been raised by GBC or NE –

⁵⁶⁵ See also paragraphs 2.2.17, 2.2.18, 2.10, 5.2.45, 7.2.35, 7.3.20 and 8.2.47 within the same document.

⁵⁶⁶ Both quoted in Dr Brookbank’s evidence at 5.46 of her proof.

⁵⁶⁷ See also 5.5 of the same document, at CD12.34 elec p 26.

albeit that there have been requests for further work, all of which have been complied with.

250. The issues then primarily turn on whether any of the professional judgements reached were unjustified, a significant part of which will entail considering whether they are in breach of relevant guidance – albeit that, as Mr Baker accepted, departures from guidance are capable of justification. As we will explain under the more detailed headings below, Mr Baker’s evidence in this respect was tainted by a tendency to allege breaches of guidance without citing specific parts or even providing copies of the guidance in question to the inquiry. Where this occurred, it is submitted that such allegations must be summarily dismissed.

251. Three further points of context can be made:

(1) First, as in many other matters, Mr Baker’s position was isolated. Neither NE or GBC and its appointed ecologist maintain any concern about the survey work. His criticisms of the survey work extend to the bird surveys and yet the RSPB raise no issues with this. GBC’s position, having previously identified deficits including in RfR3, is particularly instructive – as is Mr Baker’s failure to acknowledge or explain why he remains concerned where they have moved on following receipt of further information. Information which they requested in the light of Mr Baker’s previous representations.

(2) Second, all of the survey criticisms need to be considered in the light of Mr Baker’s concession that, as set out at 2.30 of Dr Brookbank’s proof and in more detail at Appendix 2 of CD2.71, there can be few sites which have been subject to such detailed surveying over such a lengthy period of time. As Dr Brookbank emphasised in EiC, this not only includes the standard suite of surveys but also surveys for specific species such as hobby, nightjar and white-clawed crayfish. As she explains:

“Overall, and not taking into account other visits to the site completed with stakeholders, to supervise site investigation work, or for the ongoing programme of invasive species removal, 277 survey visits were carried out at the FWA site between 2013 and 2022, with additional update survey visits carried out in 2023. A further 71 survey visits were carried out by EPR between 2015 and 2022 at the Bridge End Farm Site, located beyond the FWA but within the wider Policy A35 allocation area. In addition to that an estimated 92 survey visits were carried out of the FWA site in relation to the Highways England DCO scheme. This survey work has informed a robust understanding of the features of ecological importance present within the FWA site and its wider zone of influence, including changes in distribution and population size that occur over time in response to external variables such as habitat management.”

As Dr Brookbank also explained in her EiC, the surveys are carried out by expert ecologists and – while they might be focused on a particular task – each visit contributes to the ecology team’s understanding. In this context, the *“really extensive amount of survey work that has been carried out”*⁵⁶⁸ enables not only an understanding of the current position on site but also a deeper understanding of the trends.

- (3) Third, of all of the concerns raised by Mr Baker, the only issue advanced in XX by Mr Harwood of Dr Brookbank was in respect of bats. This tells us all we need to know about the merits of all the other species survey points pursued by Mr Baker in his written and oral evidence. They are totally without merit. They should never have been pursued.

252. This underscores the unreasonable approach taken by Mr Baker on behalf of his clients.

- (1) Mr Baker’s proof and rebuttal allege survey deficiencies for a wide range of species.
- (2) In XX, Mr Baker (belatedly) withdrew his written concerns about white-clawed crayfish and otter. He also confirmed that
 - (a) He was no longer alleging any breach of the NERC Act 2006 in relation to common toads; and that

⁵⁶⁸ Dr Brookbank EiC.

- (b) He was not concerned that the deficiencies he maintained in relation to the Hazel Dormouse survey work would lead to a “*serious underestimate of the ecological value of the site*”, the implication being that this was his position for all of the other species raised.
- (3) Therefore, despite warnings of the consequences of maintaining unreasonable positions, he persisted in full in his allegations that there was a risk of serious underestimate in relation to: (i) Bats; (ii) Birds; (iii) Newts and (iv) Invertebrates.
- (4) This evidence took up a substantial amount of time to deal with in his XX. They are concerns unsupported by any other party and, as already noted, only bats were pursued in Mr Harwood’s XX of Dr Brookbank.

3.4.2.1. Bat surveys

253. Mr Baker made three criticisms of the bat survey work:

- (1) He maintained his asserted need for further roost survey work – specifically climbed and/or emergence and/or re-entry surveys of trees to determine the existence of actual roosts (going beyond the updated tree survey provided to GBC⁵⁶⁹).
- (2) The technology used, which he said was “*outdated*” and not in accordance with up to date BCT Guidelines;⁵⁷⁰
- (3) The failure (as he saw it) to update EPR’s assessment of site value in the light of the number of different species recorded at or near to the FWA⁵⁷¹ - in particular the Barbastelle bat.
- (4) Following Dr Brookbank’s EiC, he added further comments on the significance of the eight recorded Barbastelle bat passes via his note, seeking to emphasise their significance notwithstanding that the absence of (i) any

⁵⁶⁹ Baker proof at 3.1.2.

⁵⁷⁰ Baker proof at 5.1.2.

⁵⁷¹ Critically, a number of the data points relied on by Mr Baker actually arose from survey work at Bridge End Farm.

recordings in Location 1 (the point nearest to the Stratford Brook woodland) and (ii) any recordings at or near to emergence times both point very strongly against the possibility (which he majored on when XX) that there might be a Barbastelle roost within that woodland.

254. All of these points demonstrate Mr Baker's lack of proportion:

- (1) GBC's ecologist has confirmed that she is happy with the updated tree survey work which confirms the potential for bat roosts across the FWA. The survey work must be proportionate to what is proposed by the Appeal Scheme. Thus, there is no need for surveys of trees on Bridge End Farm (raised by Mr Baker at 5.1.2 of his proof⁵⁷²) as that is outside of the FWA entirely. Further, on the FWA itself there is actually very little proposed by the Appeal Scheme in terms of tree removal. The FWA (as a former airfield) being largely devoid of trees in its interior including hedges⁵⁷³. Following XX, Mr Baker focused on the woodland around Stratford Brook as the one wooded part of the FWA interior. However, this woodland is to be retained and enhanced as part of the southern SANG in which limited works are proposed and, as already mentioned, the recordings of the most sensitive bats are away from this area. While some tree thinning and removal may be necessary there is nothing to suggest that this cannot be adequately controlled by condition and the legal protections that apply to any protected species identified. Mr Baker's insistence on full climbed and/or emergence surveys is therefore entirely disproportionate - not least because any such surveys carried out now will be out of date by the time any SANG management is carried out.
- (2) A similar lack of proportion infects his insistence on the use of full spectrum recording and analysis for bat surveys. While he is clearly passionate about

⁵⁷² "The surveys were insufficient to determine the value of the Former Wisley Airfield (FWA) site for bats, including Annex II5 Barbastelle bats, nor did they achieve even a 'high-level' (Technical Appendix 8.4, paragraph 2.29, CD2.94) identification of bat roosting constraints at Land adjacent to Bridge End Farm/Ockham Lane ('Land adjacent BEF/OL')."

⁵⁷³ See CD4.1 Officer Report at 24.22.

the advantages of these techniques he was constrained to accept (i) that his assertion that this was not based on the latest guidance was directed at 2023 guidelines not in place at the time when the surveys were being carried out and (ii) that even the most recent BCT Guidelines explicitly allow for the use of zero crossing techniques and do not say that full spectrum is mandatory. Instead, at para. 12.1.3 they recognise the validity of the use of both zero-crossing analysis as well as full spectrum devices as options for bat surveys, unlike heterodyne monitors which it warns should not be used on commercial surveys. They say that notwithstanding that zero-crossing analysis “only preserves a small proportion of the detail of recordable sounds” so “it is likely that a reasonable proportion of the bat passes received by the microphone will not be recorded when data are transformed through zero-crossing analysis”, the BCT Guidelines make clear this is not a reason for discarding the technique but just say that it is “something to assess on a site-by-site basis and revisit depending on developments in equipment”.⁵⁷⁴ As Dr Brookbank explained in her oral evidence, although EPR has used full spectrum detectors on the FWA since 2022, a decision was taken by their bat specialists to continue using zero-crossing analysis on sites (including the FWA) where surveys were ongoing so as to allow for comparison of data. This was challenged by Mr Harwood in XX, but it is plainly a reasonable approach, and is one supported by both the 2016 and current BCT guidance⁵⁷⁵.

- (3) Dr Brookbank also explained why in her view it was not likely that lots of calls had been missed. It is not impossible for calls for quieter species to be missed but this will only be if multiple bats are calling at exactly the same time. The activity levels on the FWA are fairly low, as shown by Mr Baker’s sheet at ID5.8, and Dr Brookbank’s team had reviewed the data and could confirm that calls were generally spread out.

⁵⁷⁴ See CD12.47B at 12.1.3. This acknowledges that using zero-crossing analysis.

⁵⁷⁵ See CD12.47 at 2.2.6.

255. Mr Baker's criticism of the assessment of value (something pursued at length in XX by Mr Harwood) takes aim at a classic question of professional judgement. Dr Brookbank explained in her written and oral evidence how the view had been reached as to habitat suitability and why the bat records do not mean that the FWA meets SNCI selection criteria or County status:

- (1) On habitat suitability, the view has been reached that the onsite areas to be negatively affected by the development are of low suitability; those which are to be enhanced (i.e. the areas within the SANG and elsewhere) are moderate; and only off-site areas show high suitability. This led EPR to follow the BCT guidelines then in force in the context of those areas being negatively affected.⁵⁷⁶
- (2) On SNCI/Country Status, the SNCI selection guidelines are dated 2008 so pre-date the widespread use of automated static detectors. While SNCI criteria of 5 regularly recorded species is met, these are the more common species and are same which have actually been recorded on the transects⁵⁷⁷. As for the Barbastelle, the only annex II species recorded⁵⁷⁸, as EPR explain in the Updated Survey Results Note⁵⁷⁹, the recordings represent infrequent passes by potentially only a single bat: the Surrey Bat Group has noted a possible colony around 10km to the south of the site and Barbastelle are known to travel up to 20km to reach foraging areas. It is therefore very unlikely that the species uses the FWA to any significant degree. In his oral evidence Mr Baker was unable to say where the Barbastelle bats were recorded e.g. whether these were on the Appeal Site or Bridge End Farm. Dr Brookbank, having heard Mr Baker's evidence, looked at the Barbastelle records which indicated that all of the recordings were several hours after sunset – a clear indication that their roosts are not close by. Further, none of

⁵⁷⁶ CD12.47B.

⁵⁷⁷ A point made by Dr Brookbank in EiC.

⁵⁷⁸ Although one which is now widely recorded in Surrey – weakening the argument that such a low level of Barbatelle presence could indicate an assemblage of county-level importance.

⁵⁷⁹ CD2.72 at para 2.7.

the passes were at Location 2, near Stratford Brook woodland. This puts this issue firmly to bed.

256. On bats, as with all of the alleged deficiencies⁵⁸⁰ in the survey work, it is notable that

- (1) Both WAG and GBC accept that the ES is adequate⁵⁸¹. The ecological surveys were all submitted as a part of the ES. Moreover, despite having the application since August 2022 GBC have never requested further environmental information under reg. 25. Nor did PINS in the months that have passed since the appeal was lodged⁵⁸². Again, where alleged deficiencies in the surveys have been raised by GBC, they have been addressed.
- (2) WAG never took any steps themselves to survey the FWA, the SPA or any adjoining land. As a very well-funded group, represented here by four professional experts as well as senior and junior counsel, it might be thought that they would have done – if they genuinely believed that there was a real deficiency in the Appellant’s understanding of the baseline. In fact it seems unlikely that they do.

257. Outside of survey concerns, but still in regard to bats. Mr Baker raised an issue about the impact of lighting. This did him (and his clients) no credit.

- (1) The ES includes a Lighting Strategy which Mr Baker does not challenge⁵⁸³ and mitigation will be possible under the relevant conditions. The ES

⁵⁸⁰ Another points from Mr Baker responded to by Dr Brookbank was his identification of a high level of activity at Location 4 on the runway in 2021 (see his ID5.8). This was not surprising. The activity was relatively high (compared to other locations) but in absolute terms only amounted to 414 passes over 18 nights = 23 passes/hr. Relative activity could be influenced by site management or wind direction. The suggestion that this demonstrated “surprising” suitability of bats in the open former runway was not consistent with the invertebrate report which shows interest is at the peripheries of the site.

⁵⁸¹ GBC after receiving specialist advice from Accent Consulting.

⁵⁸² CD5.9 at para. 38 “*The Planning Inspectorate has concluded that the Environmental Statement is adequate in the terms of Regulation 18 of the 2017 EIA Regulations. However, it is for the inquiry and decision making process to determine whether the environmental information provided, including that provided at the inquiry, is “adequate” as a basis for granting planning permission.*”

⁵⁸³ Agreed in XX.

considers the effect of the Appeal Scheme, concluding that after mitigation there will be no residual significant effects⁵⁸⁴. Although Mr Harwood challenged Dr Brookbank on this, his points were largely speculative. As Dr Brookbank said, there are options available which will allow impacts to be satisfactorily mitigated and GBC will be able to ensure that they are delivered.

- (2) At one point Mr Baker sought to raise the potential for impacts on the SPA as a result of lighting off-site cycle routes – apparently on the basis of the impact on bats – but was constrained to accept that:
 - (a) Bats, of course, have nothing to do with the SPA;
 - (b) He had never raised an issue about the impact of lighting on birds in the SPA and could point to nothing in the evidence before the inquiry to support such a concern;
 - (c) Indeed, most of the cycle routes are generally⁵⁸⁵ nowhere near the SPA.
- (3) Mr Harwood in XX advanced a slightly different point, the impact of the cycle routes generally (but specifically that to Ripley) on bats. This was rebutted by Dr Brookbank. As she said, the construction of the off-site cycle routes will be in the control of SCC under s.278 and any works which had a potential to impact on species which are the subject of legal protection would of course have to meet those legal requirements in due course. That could and would be likely to involve provision of mitigation and/or compensation but Dr Brookbank was able to confirm that the view of EPR’s bat specialist and Mrs Sutch for GBC is that there are no “show-stoppers” in terms of likely affected trees/roosts. She also pointed out that the route

⁵⁸⁴ See CD2.63 at 8.295 – a negative effect significant at the Local level is identified from the introduction of a lit access road to the WLD – and 8.421 which concludes that with mitigation no significant adverse residual effects remain.

⁵⁸⁵ One route (to Byfleet) skirts the western edge of the SPA.

will not involve the fragmentation of any likely commuting routes or the loss of any foraging territory.

3.4.2.2. Bird surveys

258. Notwithstanding the proximity of the SPA, none of GBC, NE or even the RSPB raise concerns about the adequacy of bird surveys.⁵⁸⁶
259. Characteristically undeterred, Mr Baker focused his criticism of the bird survey work carried out at the FWA on the techniques used for nightjar – specifically, lack of a bioacoustics approach. He then moved on to challenge the lack of bespoke surveys of the SPA, notwithstanding that the Appellant had used data collected on behalf of NE by its ecologists: 2Js⁵⁸⁷; and then to criticise the fact that 2Js surveys did not employ bioacoustics.
260. This should be enough to make clear that Mr Baker’s critique was nothing more than him grinding his personal axe:
- (1) There is nothing in any published guidance which requires bioacoustic methods to be used. Mr Baker implied there was when questioned but he was not able to point to anything before the inquiry and Dr Brookbank confirmed that it is not mandatory.
 - (2) What the Bird Survey Guidelines currently say (Mr Baker acknowledged this was updated after the surveys were carried out) is that “*Acoustic methods have been shown to be either a useful complement to traditional bird survey techniques, or a significant improvement on human surveyors*” but also that there are “*some disadvantages to the acoustic approach*”.
 - (3) As Dr Brookbank explained in her written and oral evidence a judgement must be reached in relation to the particular species being surveyed for.

⁵⁸⁶ Accepted by Mr Baker in XX.

⁵⁸⁷ See Dr Brookbank’s proof at para. 5.39 “2J’s Ecology is the consultant appointed by Natural England to carry out monitoring surveys across the TBH SPA of the qualifying SPA bird species. This data, obtained between 2010- 2022, has been used to inform assessment of the current Appeal Proposal, with the same 2Js data used to assess the previous Appeal scheme. This source of data on the number and approximate location of territories held by the SPA birds within a component patch of the SPA has never been identified as insufficient by Natural England, and in my view is therefore appropriate for the purpose of informing HRA of the Appeal Proposal.”

Nightjars have a distinct churring call and are not, as Mr Baker said (somewhat bizarrely) in his EiC, difficult to detect.

- (4) She also said that while acoustic methods offered advantages in terms of remote surveying they are limited to sound recording and cannot be relied upon to replace expert surveyors.
- (5) Critically, NE are happy with traditional method surveys – and continue to rely on the work carried out by 2Js. That data was also relied upon in the J10 DCO determination.

3.4.2.3. Newts and Common Amphibians

261. On newts and common amphibians, Mr Baker’s concern was the age of surveys – the most recent being from 2019. However, GBC now utilise GCN district licensing⁵⁸⁸ and Mr Baker no longer has any concerns about breaches of the NERC Act 2006 (see above). The Appellant will be able to make payment towards strategic GCN mitigation without the need for site-specific survey and mitigation works. However, as Dr Brookbank said in EiC, there is also sufficient information available to enable the Appellant to go down a traditional site-specific licence route. The baseline data is sufficient for this stage and further update surveys would be required to inform an European Protected Species Mitigation Licence application in any event. There is simply no need to update the surveys now.

3.4.2.4. Invertebrates

262. On invertebrates, Mr Baker confirmed in his oral evidence that he was not challenging the expertise of either Dr Alexander or Dr Jonty Denton⁵⁸⁹, both well-known specialist entomologists. His sole issue was that their work did not identify the locations of all individual sightings, but he accepted that:

- (1) This would not have been practicable;

⁵⁸⁸ See Dr Brookbank proof at 5.47 and appendix 3.

⁵⁸⁹ See Dr Brookbank’s rebuttal at 2.25-28 for his experience and further comment.

(2) And in fact, the data can be linked back to the proposal by a Pantheon analysis⁵⁹⁰ allowing the linking of favourable invert assemblages to key habitats identified by Dr Denton, which can then be targeted in the EMES⁵⁹¹.

263. Regarding the importance of what has been surveyed, he acknowledged that there is no formal published guidance at all and that EPR's assessment has been updated following Dr Denton's survey work⁵⁹². This leaves the issues of professional judgement between the ecologists. It is of course relevant to note the position of the statutory authorities and of Buglife who support the Appeal Scheme which would contribute one of the largest single B-line sites to the Buglife database.⁵⁹³

3.4.2.5.Overall on-site ecological impact /BNG

264. The final point to make before leaving Mr Baker's criticisms of the survey work is that while his evidence sought to undermine the Appeal Scheme by criticising technical survey and assessment matters, he did not actually dispute the overall biodiversity implications of the Appeal Scheme or indeed the residual effect of the Appeal Scheme on the various species groups identified. Nor was this challenged by Mr Harwood, or indeed any other advocate, in XX.

265. This is significant. Through the EcIA⁵⁹⁴, EPR report positive effects on various species assemblages, including bats, birds, GCN, invertebrates, reptiles. This is due to implementation of the SANG habitat creation and management plan: see the EMES⁵⁹⁵ maps 8.14.3 and 8.14.4 which show habitats before and after development.

266. These will lead to a significant improvement of the habitats on-site. In the place of extensive hardstanding and intensive arable there will be provided diverse

⁵⁹⁰ A tool created by NE which allows habitats to be linked with favourable status of particular invertebrate species.

⁵⁹¹ Discussed by Dr Brookbank in EiC.

⁵⁹² See Dr Brookbank rebuttal at 2.29.

⁵⁹³ See Dr Brookbank rebuttal at 2.86.

⁵⁹⁴ As summarised at CD 2.63, ES Ch8 Table 8.8.

⁵⁹⁵ CD1.37.

grasslands, woodland, scrub and wetland, all connected by habitat corridors and residential gardens. It follows that even Mr Baker does not dispute that the *net* effect of the Appeal Scheme will be positive for many species. Where this is the case, the presence of assemblages of greater ecological importance in the baseline, if one were to accept Mr Baker's challenges on bat and invertebrate evaluations, would simply have the effect of increasing the positive benefits resulting from the development.

3.4.3. Air quality impacts on the TBHSPA

267. The primary focus of WAG's ecology case fell on the air quality impacts on the SPA. The SPA is designated under the Birds Directive and Habitats Regulations for its internationally important populations of ground nesting birds, Nightjar, Woodlark and Dartford Warbler.⁵⁹⁶ The site is close to the SPA and, as Dr Brookbank explained, the Appeal Scheme has been carefully designed to respect and avoid impacts upon it.

268. The information required to carry out an appropriate assessment in respect of air quality impacts is set out not only in the original IfHRA (which also addresses recreational and other impacts) but in the three addendums which addressed in turn (1) the ammonia modelling results (but before revision of the critical loads)⁵⁹⁷ (2) SPA compensation land⁵⁹⁸ and (3) the critical load revisions in July 2023.⁵⁹⁹

3.4.3.1. Scope of the assessment

269. The air quality impacts from this scheme are essentially driven by increased traffic on roads around the FWA as a result of the Appeal Site, where road traffic emissions affect air quality in the form of airborne NO₂, NO_x and NH₃ with subsequent deposition of nitrogen to the ground. This means that the principal sources of pollution with the potential to affect ecological receptors around the

⁵⁹⁶ Dr Brookbank explained in EiC that the species themselves are not especially rare, being amber or green listed – but that the SPA regularly supports a significant proportion of Great Britain's population.

⁵⁹⁷ CD2.53.

⁵⁹⁸ CD2.69.

⁵⁹⁹ CD2.68.

site, including the SPA, are the A3 and M25 and a limited number of other roads, in particular Old Lane.

270. It is important to recognise that the site in question is an SPA, not an SAC. SACs are designated for their habitats (or more specifically their vegetation communities and rare flora) which are of nature conservation importance and are directly sensitive to air pollution. SPAs are designated for important populations of Annex I birds which are not directly sensitive to air pollution, unless levels are exceptionally high. Annex 1 bird habitat has the potential to be affected by air pollution, although it is not in itself the subject of designation under the Habitats Regulations. In the case of assessing the potential for damage in SPAs, it is necessary to examine whether SPA bird habitat that may be sensitive to air pollution coincides with areas of air quality exceedance⁶⁰⁰ or may coincide in the future. The issue is whether there is a credible pollution pathway for what is undoubtedly a small magnitude impact arising from the Appeal Scheme to affect an ecologically significant change on bird habitats in the SPA when acting in-combination with other contributors. This would involve air quality change reducing the extent or distribution of supporting habitats, or causing damage to the structure and function of the habitats of the birds.
271. APIS advise that the SPA birds can be sensitive to air quality effects on two listed broad habitats (which stand as a proxy for the supporting habitats listed in COSA): coniferous woodland and dwarf shrub heath (though noting that Nightjar is not considered to be sensitive to air pollution within coniferous woodland habitat). The relevant critical loads for nitrogen deposition were revised in July 2023, reflecting a change in scientific evidence indicating the rates at which vegetation *can be* affected by nitrogen deposition. Of course this does not change the actual rates of deposition experienced nor does it dictate a particular environmental response, but it does reduce the screening threshold

⁶⁰⁰ Both exceedance of the 1% screening threshold and exceedance of the critical load from total future pollution concentrations/deposition rates.

and therefore increases the likelihood that a scheme will require detailed (appropriate) assessment under the Habitats Regulations.

272. It is also important to recognise that exceedance of critical loads for nitrogen deposition (the only real pollutant pathway identified to be of concern⁶⁰¹) has been the case for a long period of time.⁶⁰² APIS record this back to 2005, but as Dr Brookbank explained, the loads before that were higher. This has not prevented the recorded increase in bird territory numbers in the SPA – which “*far exceed those at the point of SPA designation and have steadily increased*”⁶⁰³ – and therefore the attainment of a Favourable Conservation Status which is the key indicator of the conservation objectives being achieved. This suggests that the availability of resources necessary to support successful breeding and interrelated life history requirements have not been limited by historically higher nitrogen deposition rates and critical load exceedances. It also rebuts WAG’s speculation that the SPA may be about to meet some sort of tipping point.
273. NE’s guidance identifies a clear limit to the area where road traffic impacts on any site protected under the Habitats Regulations (SPA or SAC) can be anticipated to occur. Their guidance⁶⁰⁴ is clear that for road traffic emissions likely significant effects can be screened out if the receptor is more than 200m from the affected road. As already discussed above, this stems in part from work carried out by Dr Marner and others.
274. This advice is also set out in the IAQM’s guidance and has been applied by inspectors and the S/Ss on both the WPIL appeal and the J10 DCO decision:
- (1) IAQM’s guidance is at CD12.38. They say that “*5.3.7 For strategic planning, where substantial changes in traffic volumes are being considered, there is the*

⁶⁰¹ Mr Baker accepted that this was the focus, not the direct effect of air quality pollution.

⁶⁰² Even the higher previous critical loads. See Figure 1 at CD2.68 ep 7 which shows the growth of SPA bird territories against a backdrop of consistent (if declining) exceedances of the historic critical load (10kg/ha/yr).

⁶⁰³ Dr Brookbank at 2.74 of her proof.

⁶⁰⁴ CD12.36 at pg 15.

potential for wider-scale impacts, which can potentially affect the future background concentrations, as well concentrations within 200m of individual roads within the affected network. In these circumstances, the modelling may need to encompass a large road network.” (our emphasis)

- (2) In the WPIL appeal⁶⁰⁵, the same approach was advanced by the appellant (see IR7.118) and accepted by Inspector Hughes (at IR20.140-141) relying on the former DMRB guidance. The S/S agreed at DL29.⁶⁰⁶
- (3) On the DCO, NH also relied on the 200m screening area (see 6.4.2 of ExA report⁶⁰⁷) which was accepted by the ExA and S/S.

275. Mr Baker also accepted this advice. He was clear when questioned in XX and by you, Madam, that it is appropriate to screen on the basis of the 200m rule. That can only mean that he accepts that likely significant effects from traffic generated nitrogen deposition can be excluded beyond this distance. While he caveated this with the theoretically correct but practically meaningless⁶⁰⁸ observation that when conducting appropriate assessment potential impacts should be considered beyond 200m, he made no criticism (nor could he) of the soundness of NE’s ecological view on this matter. Mr Baker’s view of how this worked was that if an SPA started 1 millimetre beyond the 200m then any impact in any part of the SPA could be screened out. In contrast if just 1mm of an SPA lay within 200m then one had to go on and consider impacts not just for the part of the SPA that was within the 200m but across the whole of the SPA. There is no logic to such an approach.

276. In any event the Appellant has in fact extended the study area up to 250m in order to fully capture all possible contributions, but this was not because it was requested by NE or any other consultee.

⁶⁰⁵ CD 9.1.

⁶⁰⁶ CD9.1.

⁶⁰⁷ CD13.2.

⁶⁰⁸ It is right as a matter of law that no potential effects can be excluded. However, the whole point of NE’s ecological advice is that potential *ecological* effects from road transport emissions can be excluded beyond 200m. That is why it can be used as a screening criterion.

277. Map 1 of the Addendum IfHRA⁶⁰⁹ allows a visualisation of the areas where nitrogen deposition from the WNS both on its own and in-combination with other plans and projects will exceed 1% of the new critical loads for heathland habitat⁶¹⁰; mapped against (i) the 200m linear distance from the affected road network (as it will be post-DCO construction) (ii) the types of vegetation within those areas and (iii) the location of SPA bird records. It is correct to note that the zone across which 1% of the critical load is exceeded is greater than that modelled in March 2023⁶¹¹ but that is not because the development impacts, in terms of actual pollution in kg N/ha/yr contributed, are significantly greater, but because the July exceedance zone is based on the revised critical load for heathland.⁶¹²
278. In his written evidence Mr Baker suggested that there were inconsistencies in the way the data had been presented between Map 1 and the underlying data in the Consolidated Modelling Report⁶¹³. That was explained by Dr Brookbank in her rebuttal at 2.53-2.57 and Mr Baker did not pursue the point.
279. The other concern he raised in both his written and oral evidence was the use of the territory centres shown as points on a map to indicate the locations of the birds. These are taken from 2Js survey work on behalf of NE and, as Dr Brookbank explained in EiC, there is no other more accurate and effective way of doing it. It would be extremely difficult to define the edge of territories as they constantly change, and a fixed radius approach (as suggested by Mr Baker) would be just as if not more likely to mislead. Moreover, Mr Baker was forced to accept that this was the exact same approach that was used both on the WPIL appeal and in the DCO. Mr Harwood did not pursue the point in XX.

⁶⁰⁹ CD2.68.

⁶¹⁰ The assessment has focussed on heathland habitat since this is the principal supporting habitat type present within this part of the SPA. So, Map 1 shows the 1% CL contour for heathland only.

⁶¹¹ See Map 3 of CD2.53 at elec p 11.

⁶¹² The same point applies in relation to the SPA Compensation Land plans : see CD2.69 which was prepared in June 2023 – before the July 2023 CL revisions.

⁶¹³ CD2.70.

3.4.3.2.Horsell Common SPA

280. Dr Brookbank accepts that the revised critical loads for Horsell Common, as a component part of the SPA, mean that likely significant effects can no longer be screened out in relation to that receptor on the basis of 1% critical load exceedance alone.

281. However, as Dr Brookbank explains at 2.59 of her rebuttal, the distribution of supporting habitat within Horsell Common – with no suitable SPA bird habitat within 200m of the affected road network (the A245) means that the potential for likely significant effects could have been previously scoped out on the basis of Step 3 of NE’s guidance. This states:

“4.18 Many sites are designated for several different qualifying features. Not all features are present within a given location within the site. In some cases, a road surface and its adjacent verges may be included within a designated site boundary. This does not necessarily mean that it, and its associated verges, will be of nature conservation interest and form part of a qualifying feature. The inclusion of the hard surface of a road and/or its adjacent verges might simply have been unavoidable when denoting a boundary and included simply for convenience. These areas will therefore constitute ‘site-fabric’, being of no special nature conservation interest.

...

4.21 If none of the site’s sensitive qualifying features known to be present within 200m are considered to be at risk due to their distance from the road, there is no credible risk of a significant effect which might undermine a site’s conservation objectives. The screening thresholds adopted in step 4 below need not be applied and no further assessment is required. In these circumstances, a screening conclusion of no likely significant effect on the site can be advised with regard to air quality.”

(our emphasis)

282. However, even if you Madam disagreed and were minded to carry out appropriate assessment, all of the information which would be needed to do so is before the inquiry⁶¹⁴. HRA is ultimately a matter for the decision-maker and Dr Brookbank has explained why, however it is expressed, a conclusion can be reached that no adverse effects on the integrity of the SPA will arise at Horsell Common.

⁶¹⁴ As Mr Baker accepted in XX.

3.4.3.3.Horsell Common SSSI

283. Dr Brookbank was also XXd on the approach taken to the Horsell Common SSSI. She explained that this was scoped out (in EIA terms) on the basis of the correct approach to the assessment of such a designation.⁶¹⁵

3.4.3.4.Mr Baker's main arguments

284. As already mentioned, Mr Baker's evidence to this inquiry is discredited by the degree to which he is willing to run arguments which have previously been considered and dismissed. We deal with each of the arguments in turn.

3.4.3.4.1.1. "Extreme" position on significance of critical load exceedance.

285. This is the position which Mr Baker is not formally advancing but which, as explained above, nevertheless infects his ecological assessment.

286. Mr Baker and his clients advanced this argument expressly at the WPIL appeal⁶¹⁶, at the GBLP examination and in the *Compton* case, and against the J10 DCO⁶¹⁷:

⁶¹⁵ See Dr Brookbank's rebuttal at 3.9 and 3.10, especially the following text "the CL used to assess ammonia for the Horsell Common component of the TBH SPA, which was assessed as part of the HRA, applied the CL of 3ug/m3 (as specified by APIS for the TBH SPA) not the CL specified by APIS in relation to the SSSI (1ug/m3). Contrary to the criticism raised by Dr Marner at paragraph 7.5 of his PoE, the CL assessed for Horsell Common within the IfHRA air quality assessment is therefore correct" (emphasis in the original). Moreover, as is explained in the rebuttal and Dr Brookbank's EiC, SSSIs were subject to cumulative assessment though not in combination assessment. This is sufficient to meet the requirements of NPPF 180 b).

⁶¹⁶ On the WPIL appeal the arguments (being made before the Court of Justice's decision in *People Over Wind*) assumed that mitigation measures could be taken account at the screening stage. This led the final conclusion to be expressed in terms of an exclusion of likely significant effects. However, the scope of the assessment was essentially the same.

⁶¹⁷ See summary at CD11.2 para 153 of *Compton* "The appeal Inspector also considered nitrogen and nitrous oxide levels in the SPA. He rejected the extreme position put forward by Wisley Action Group and Ockham Parish Council, for whom Mr Harwood appeared at the appeal Inquiry, that because the critical level for NOx and the critical load for nitrogen were already being exceeded, not one single vehicle movement could be generated without infringement of EU law, so planning permission would have to be refused ...".

- (1) This position was characterised as extreme on the WPIL appeal, not only by WPIL⁶¹⁸ but by GBC who despite objecting to the scheme disclaimed that argument in closing⁶¹⁹. It was rejected by the Inspector⁶²⁰ and the S/S.
- (2) Following the adoption of the GBLP, WAG brought one of the claimants in *Compton*. The extreme argument of Mr Baker was canvassed and rejected by Mr Justice Ouseley at para 207:

“It is perfectly clear, in my judgment, that Guildford BC, whose task it was to undertake the HRA, did consider whether significant adverse effects were likely from the development proposed in the Local Plan; it then undertook an appropriate assessment to see whether there would be no adverse effect on the SPA. That could not be answered, one way or the other, by simply considering whether there were exceedances of critical loads or levels, albeit rather lower than currently. What was required was an assessment of the significance of the exceedances for the SPA birds and their habitats. Guildford BC did not just treat reductions in the baseline emissions or the fact that with Plan development, emissions would still be much lower than at present, as showing that there would be no adverse effect from the Plan development. The absence of adverse effect was established by reference to where the exceedances of NOx and nitrogen deposition would occur, albeit reduced, and a survey based understanding of how significant those areas were for foraging and nesting by the SPA birds. The approach and conclusion show no error by reference to the Regulations or CJEU jurisprudence. I have set out the 2019 HRAs at some length. The judgment is one for the decision-maker, as to whether it is satisfied that the plan would not adversely affect the integrity of the site concerned; the assessment must be appropriate to the task...” (our emphasis).

- (3) On the J10 DCO, the ExA relied specifically on this paragraph of *Compton* at 6.6.40 of the Report, commenting:

⁶¹⁸ CD9.1 IR7.111 and 115.

⁶¹⁹ CD9.1: IR8.30 “GBC does not accept WAG/OPC’s extreme approach to the deposition effects on the TBHSPA as an ecological receptor as being supportable. The UK’s obligations cannot sensibly be interpreted as meaning that any development that has the potential to add to traffic flows on the A3, wherever that development may be located in the UK, must be refused because of a potential additional effect on the SPA. Proportionality is a key component of European Law. Where there is evidence that the objective of SPA designation is being met, within the terms of the number of birds within the species of interest in the SPA, and that the effects of new development would not affect habitats of principal relevance to those species, it would not be proportionate to refuse permission.”

⁶²⁰ CD9.1 “20.137 I have some difficulty with the position of the expert witness representing WAG/ OPC which is derived from the agreed position that the critical level for NOx and the critical loads for ND are already being exceeded. The advocate for GBC described his approach as being “extreme” (ID120 paragraph 51) and did not consider his approach to be supportable; the Appellant described it as an “utterly extreme view” (ID125 paragraph 337). WAG’s position was clarified under questioning and is quite straightforward. Its position is that any additional traffic, even a single additional vehicle, on the adjoining roads (A3 and M25) generated by any development would result in an adverse impact on the integrity of the SPA. This being the case, under European law planning permission must be refused.”

“6.6.41. It is clear from the extract of the Compton judgement quoted above that what needs to be considered when undertaking an appropriate assessment of the type concerned, is the significance of the effect on QFs and their habitats. The ExA is therefore content that the increase in nitrogen load within the woodland of the SPA would have no direct bearing on the wellbeing of either the QFs or their heathland habitat and therefore is not likely to result in AEoI to the TBHSPA”

287. Mr Baker’s extreme approach to critical loads and levels is therefore not to be followed.

3.4.3.4.2. Whether nitrogen deposition close to the roadside gives rise to adverse effects?

288. The COSA for the SPA⁶²¹ set out that the supporting habitat for breeding SPA birds is rotationally managed coniferous woodland and dwarf shrub heath habitat. These are the habitat types that require air quality assessment. As Dr Brookbank explains, the habitats within the SPA located within the 200m road corridor do not contain rotationally managed coniferous woodland, nor are they proposed to in the future⁶²², including as a result of the DCO restoration and enhancement proposals⁶²³. The roadside woodlands are recognised, including by NE as providing an important shelter belt effect, which protects the interior heathland habitats that support the breeding SPA birds. Potential effects on dwarf shrub heath habitat are therefore the focus for further assessment.

289. Dr Baker disputes this in two main respects:

- (1) He argues that a much smaller shelterbelt would be effective and as such there was potential in the future for some of the woodland within 200m to be restored to supporting habitats;
- (2) He argues that the roadside woodland habitat plays a role in providing an invertebrate resource which *may*⁶²⁴ be affected by either nitrogen deposition or NO_x and NH₃ concentrations in the air.

⁶²¹ CD12.45, see elec p 4.

⁶²² with reference to SWT’s Management Plan, CD 12.54.

⁶²³ See CD 12.39.

⁶²⁴ He said “*We don’t know*” whether NH₃ and NO_x.

290. Each of these arguments have been run before and rejected.
291. Mr Baker was unable to deny that:
- (1) the COSA do not set out absolute requirements, for example when they refer to a goal of restoring nitrogen deposition to below critical loads or of restoring supporting habitats;⁶²⁵ and
 - (2) in contrast to some of his previous arguments, that at least some of the roadside woodland can be considered as site fabric not itself of conservation interest.⁶²⁶
292. He also contended that there may be a delayed response/time lag in the impact of nitrogen deposition on heathland habitat and thereby the birds. This argument fails to grapple with the long period of critical load exceedance already outlined above. As Dr Brookbank explained in her oral evidence there is no credible evidence of harm and it is striking that NE has not recommended a monitoring approach as they have elsewhere.⁶²⁷
293. It also fails to address the complexities of heathland habitat. Mr Baker and Dr Marner both referred to the (somewhat unhelpful) metaphor of a full bath about to overflow. Amongst other shortcomings, this image does not allow for the removal of nitrogen from the soil which occurs as a result of plant growth, grazing, management and other processes. As Dr Brookbank explained in her oral evidence, nitrogen accumulation is influenced by underlying geology, soil type, depth of soil and hydrology. Heathland is a mid-succession community. Heathland in the absence of management will revert to scrub and woodland. Air quality may or may not have a dominant effect on habitats and in Dr Brookbank's view management is more likely to be a dominant driver of the distribution of habitats and condition within the SPA – something borne out by comparable examples like the Thursley, Ash, Pirbright and Chobham SAC (so a

⁶²⁵ Accepted in XX.

⁶²⁶ Mr Harwood then, as on many occasions, cross-examined Dr Brookbank on the basis of an approach that was contrary to the clear concessions made by his own witnesses.

site designated for the actual habitats present) which has a similar level of background pollution and yet is largely in favourable condition.

3.4.3.4.3. Impact on potential for the expansion of the supporting habitat

294. This argument was run at each of the WPIL appeal, GBLP examination and J10 DCO examination.

(1) In the WPIL appeal it was WAG's case⁶²⁸:

"9.30 Where a project is likely to have a significant effect on a European site, alone or in combination with other plans or projects, then an appropriate assessment must be carried out (CHS Regs). That is a deliberately low threshold and the exceedances of the critical level and the 1% threshold show that it is met. The Appellant carried out a detailed assessment which was not called an appropriate assessment as it did not include a full in-combination assessment. The site has conservation objectives and supplementary advice which includes as a target the reduction of nitrous oxide to below the critical level.

9.31 The appeal scheme contravenes this target by raising NOx levels. On the Appellant's figures this will occur on between 22 and 63ha of the SPA; the higher figure being for the SPA within a 140m band. The SWT are continuing to clear trees and restore habitat, including within the 140m band. This land could provide habitat for the three bird species. The WAG/ OPC witness is an expert in bioacoustics and birds, particularly nightjars and his evidence is that traffic noise only had an effect on birds if it drowned out their calls; the roads caused only very limited disturbance.

9.32 The land is part of the SPA, the conservation objectives include its restoration and so the effects cannot be discounted because they occur on land that is presently in an unfavourable condition. A target for that land is breached by this scheme. The prudent conclusion, therefore, is that the proposals affect the integrity of the SPA. It cannot be said, beyond reasonable scientific doubt, that it would not cause such harm. NE's response fails to engage with these issues."

This was rejected by the Inspector at 20.141-142, in particular saying the following:

"the likelihood of this land returning to heathland in the foreseeable future is limited. The woodland shelters the SPA from noise, light and other pollutants. The Management Plan shows no forestry clearance in this area. It also shows that heathland within what is now the SPA has increased in area substantially since 1971"

⁶²⁸ See CD9.1.

- (2) The same argument was also advanced at the GBLP examination – WAG’s closing submissions from WPIL were appended and summarised.⁶²⁹ Inspector Bore rejected it again at paras 113-114 of his report⁶³⁰.
- (3) On the J10 DCO, the ExA set out specific sections which looked at the air quality effect on the mature woodland (6.6.28-6.6.41) and another on the implications of the air quality effects for future restoration of supporting habitats (6.6.46-6.6.48).
- (4) On each of these, RHS Wisley/Mr Baker’s case was rejected. The ExA specifically noted NE’s advice that

“the achievement of favourable condition for the OWC SSSI component of the TBHSPA is dependent on the improvement of the conditions of the existing heathland and not the expansion of heathland through large-scale felling of woodland” and

“that in the event (currently not foreseen) of a decision made to replace the existing woodland buffer with heathland or another habitat, nutrient levels would be a consideration but would not prevent this from being achieved.”

This was accepted as part of their (and the S/S’s) overall conclusions.

295. The recognition that nitrogen deposition would not impact upon or prevent the establishment of future additional supporting habitat, coupled with wider points about the trend in both the numbers of SPA qualifying species and the availability of supporting habitats, reveals the hollowness of Mr Baker’s concerns. It also addresses the issue he raised regarding the DCO Compensation Land. As Dr Brookbank explained in her written and oral evidence:

- (1) the purpose of the DCO Compensation Land is to meet the requirement for compensation for the direct taking and thus loss of SPA land for which

⁶²⁹ CD7.24 elec p 1 and 5 section 1.2 and 11.3.

⁶³⁰ CD7.11. Note that during the XX of Mr Baker, Madam, you raised Inspector Bore’s reference to the ruling in *Dutch Nitrogen* and queried that given that the passages relied on by Mr Baker are not in the judgment of the CJEU but rather the Advocate-general’s opinion. The explanation for this is that Inspector Bore was not in that paragraph (see para. 113) was considering Mr Baker’s contentions on critical loads. He was considering the case context of the implications of the judgment of the Court of Justice (not the Advocate General’s opinion) for situations where reliance is placed on future strategic measures or autonomous improvements. It did not concern the issues raised on this appeal. His approach was upheld by the High Court: see CD11.2, see paras. 198, 203, 204 and 207.

IROPI were accepted to be needed. The objective is to convert species-poor grassland into low maintenance pasture woodland so as to increase the abundance of invertebrates and provide improved foraging.⁶³¹

- (2) Mr Baker asserts that the Appellant needs to assess effects on the DCO Compensation Land and invertebrate resource supported, but EPR have sought to do that in the only way possible based on available information - that is interpreting the air quality impacts in the context of the relevant habitats and their critical loads.⁶³²
- (3) Mr Baker criticises that assessment, but his position is a wholly unacceptable one in that he offered no alternative (at least until his oral evidence⁶³³) and says, in terms, that assessment is not possible because critical loads for invertebrates are not set by APIS.

296. While Mr Baker continues to maintain his position (even if it requires him to describe the positions of previous decision-makers, including the S/S on the J10 DCO as “bizarre”) it is clear that this, rather tired, issue is a non-starter.

3.4.3.4.4. Impact on invertebrate resource within the existing woodland.

297. This case was also run at the J10 DCO. There the ExA recorded that NH and NE had agreed through a SoCG that “*the woodland buffer may contribute to the invertebrate resource but that the predicted air quality changes will not lead to a substantial enough change to this resource as to affect the qualifying bird species of the TBHSPA.*” This position was accepted and endorsed by the ExA and S/S.

298. When this was put to Mr Baker he claimed that in the intervening time more evidence has emerged about the impacts of nitrogen deposition on invertebrate

⁶³¹ CD2.69 para 2.5.

⁶³² CD2.69 para 4.2.

⁶³³ In response to XX, Mr Baker suggested that the assessment might be carried out by looking at deposition across the site and then comparing with scientific literature on the sensitivity of beetles and moths. However, he had not put any of this information before the inquiry or sought to carry out such an assessment himself. Dr Brookbank’s response was that this is not appropriate. The sensitivity to air pollution of a particular invertebrate species would not infer an effect on the overall abundance of prey for generalist feeders of the kind present here. The only sensible approach is to look at the habitats and whether they are/would be affected which is what she has sought to do.

species, but he was not able to point to where this was in the information already before the inquiry (despite being given an opportunity to provide a list after he had finished giving his oral evidence)⁶³⁴. Dr Brookbank explained her view in her oral evidence. The invertebrates are relied upon as a food source. Their overall populations will be a function of the resources available and air quality is unlikely to change this. While some invertebrate species may be more sensitive to air pollution than others (although Madam you will note that the evidence only shows net increases of pollutants within a narrow band adjacent to the affected roads and for a short period of time – the exception being where the SRN has itself moved, a function of the DCO consent not the WNS) even this (unlikely) outcome would only matter to the SPA birds if any of them were very prey-specific. As confirmed by NE as well as the SWT representations to the DCO they are in fact regarded as being generalist feeders⁶³⁵.

299. The distinction between SACs and SPAs was a major issue at the previous inquiry with Dr Brookbank and Mr Baker each maintaining positions remarkably similar to those expressed here.
300. Dr Brookbank provides a specific response to Mr Baker's assertion of a need for a separate assessment of air quality effects on invertebrates.⁶³⁶ As she says, a habitat led approach remains the only avenue for robust assessment of potential air quality effects on the SPA.

3.4.3.5. Conclusions on air quality effects on the SPA

301. It follows that, for the reasons set out by Dr Brookbank in her written and oral evidence⁶³⁷, adverse effects on the integrity of the SPA by way changes in of air quality will not occur either alone or in combination with other plans and projects.

⁶³⁴ The appendix to his proof dealing with the issue lists c. 30 papers almost all of which pre-date the S/S's DCO decision: see Dr Brookbank's answers in RX.

⁶³⁵ CD12.44 ep 1.

⁶³⁶ Dr Brookbank rebuttal at 2.74.

⁶³⁷ See in particular paras 2.70-2.75 of her proof.

3.4.4. Other effects on the SPA

3.4.4.1. Recreational impacts

302. The Appeal Scheme seeks to mitigate the risk of increased recreational use of the SPA by providing:

- (1) 44.52ha of bespoke SANG;
- (2) Contributions to the TBH SPA Partnership's strategic SAMM programme on the basis of the established tariff⁶³⁸;
- (3) Additional bespoke SAMM+ measures including dedicated wardening of the SPA and SANG and delivery of a public engagement strategy as set out in the IfHRA at 7.98 and Annexes 7 and 8⁶³⁹. This (together with ongoing management and monitoring of the SANG) will be secured in perpetuity via the Stewardship Body⁶⁴⁰.

303. This follows the Thames Basin Heath SPA strategy⁶⁴¹ which provides for a 400m exclusion zone, following by a 400m-5km Zone of Influence within which mitigation in the form of SANG and SAMM will be required.

304. The SANG falls within the part of the Appeal Scheme for which full planning permission is sought and has been worked up in detail in consultation with NE, GBC and others. Other contributions and measures have also been agreed, following closely on from those put forward on the WPIL appeal and accepted as adequate by Inspector Hughes and the S/S.

305. WAG through Mr Baker attack the adequacy of the SANG – arguing that the presence of footpaths between the Appeal Site and the SPA will undermine any attempts to divert recreational users.

306. VAWNT also made a concerted attack on the efficacy of established mitigation techniques. They did so mainly by reliance on the position of various other

⁶³⁸ See the SPD at CD7.4 for more detail.

⁶³⁹ CD2.65.

⁶⁴⁰ See CD2.60 and CD2.62, documents relied upon by NE in reaching the view at CD3.105.

⁶⁴¹ CD7.4 ep 6-7 CD12.52 for the Delivery Framework.

bodies with an interest in nature, in particular SWT, RSPB and the Surrey Nature Partnership; although Mrs Porter and Mr Campbell also challenged Dr Brookbank in XX.

307. The efficacy of SANG was challenged in very similar terms on the WPIL appeal by the RSPB⁶⁴², supported by WAG.⁶⁴³ There, as here, the focus was on the inability of the SANG to function properly due to the existing PROW (e.g. “*The RSPB considers that the main issues are whether the mitigation measures overcome the issue of the existing PROWs and how well the SANG would function, that is to say whether it would intercept existing SPA visitors*”⁶⁴⁴). However, the Inspector and S/S rejected it⁶⁴⁵.
308. This is then a textbook example of Mr Baker’s unreasonable conduct in seeking to reargue an issue previously resolved by the S/S – and he accepted as much in XX.
309. The same unreasonable approach can also be seen in the responses of RSPB, SWT and the Surrey Nature Partnership, none of whom acknowledge or address the WPIL appeal decision. Surrey Nature Partnership’s position is perhaps the most egregious in that they appear to be actually addressing the WPIL appeal⁶⁴⁶ (they refer to a proposal for 2,068 homes).

⁶⁴² See CD9.1 para 15.1-15.18 (elec p 76). The RSPB’s concerns were exactly the same as Mr Baker is now pursuing:

“15.18 The RSPB considers that the main issues are whether the mitigation measures overcome the issue of the existing PROWs and how well the SANG would function, that is to say whether it would intercept existing SPA visitors. There are serious reservations about the quality of the SANG and hence its ability to be a credible alternative to the SPA. The calculations put forward by the Appellant to the effect that there would be no net increase in numbers are challenged. The calculations are based upon the residents within the TBHSPA zone of influence (a 5km radius) visiting 5 times per year.

15.19 The Appellant has not taken distance into account. The use of a visitor study showed that 38% of visitors came from 400m to 2 km and that 31% came from 2km to 5km fails to take account of the fact that far more residents live within the 2 to 5km zone than the 400m to 2km zone. The number of visits declines with distance; people living in the new development would be within 800m of the SPA. Living so close to the SPA they would be likely to visit more often.”

⁶⁴³ See CD9.1 para 9.11 (elec p 54).

⁶⁴⁴ CD9.1 IR 15.18.

⁶⁴⁵ See CD9.1 IR 20.45 and 20.48-49 (elec p 101) and DL22.

⁶⁴⁶ CD3.104.

310. Some of the objections made by third parties and the Rule 6 Parties are directed at the effectiveness of SANG in principle.⁶⁴⁷ NE's position on this is very clear. They regard the SPA mitigation strategy (which combines SANG and SAMM) as a successful example of a strategic approach to mitigating recreational disturbance which according to their recent evidence to the House of Lords Environment Select Committee has "*delivered positive environmental outcomes*" while enabling over 45,000 housing completions within 5km of the SPA between 2009-21⁶⁴⁸. They report that their monitoring "*shows that despite an 12% increase in housing stock within 5km of SPA, there has been no statistical increase in visits to the SPA and populations of the 3 SPA bird species have increased.*" The first part of this conclusion is drawn from their 2018 SPA Visitor Survey monitoring report (notably carried out by EPR on behalf of NE and led by Dr Brookbank). As the executive summary sets out⁶⁴⁹:

"The 2018 visitor survey recorded a statistically significant drop in visitor numbers across the 24 access points surveyed in both 2005 and 2018, despite a concurrent 12.9% increase in housing numbers within 5km of the SPA boundary over the same period. A non-significant decrease in the numbers of both visitors and dogs compared to 2012/13 was also recorded, in line with the overall trend."

311. Dr Brookbank endorsed this. Her professional view (drawn from her wider experience at Dorset Heaths and Wealden Heaths⁶⁵⁰ as well as closer at Longcross⁶⁵¹ and elsewhere in the TBH SPA) is that SANG has been shown to be effective in discouraging visitors to protected sites.⁶⁵² This was not substantially challenged – the focus in XX was really on the specific context of the proposed SANG and its design.

312. On context, the first thing to say is that Dr Brookbank fully recognised that the proximity of the SPA and the existence of the PROWs represents a challenge.

⁶⁴⁷ See e.g. Mr Campbell's evidence ID2.15 Appendix 2.3.2.1.i.; Mr Waite's questions in XX of Dr Brookbank.

⁶⁴⁸ ID1.2 para 5.6.

⁶⁴⁹ CD12.53.

⁶⁵⁰ Which she referred to in EiC.

⁶⁵¹ A site referred to by Mr Waite in XX which Dr Brookbank said she and EPR had been involved in for a long time.

⁶⁵² In EiC.

However, she also pointed out that the large number of houses already within the SPA's visitor catchment and the proposed location of the Northern SANG between the WNS and the SPA both represent opportunities for the SANG to fulfil its function.

313. She also explained in her oral and written evidence⁶⁵³ just how the criteria in NE's SANG guidelines have been applied including ease of access, size of circular walks (minimum 2.3km), safe open space, effective signage, interpretation and waymarking, and variety of attractive semi-natural habitats including open water:

- (1) All housing is within 400m of the SANG⁶⁵⁴, so within easy walking distance;
- (2) There is ample parking, with car park options;
- (3) There are features to draw visitors from a wider catchment including no parking charges, a café/visitor centre, dog training areas⁶⁵⁵, dog wash, natural play areas and wetlands;⁶⁵⁶
- (4) There is a variety of dry well maintained walks with clear marking⁶⁵⁷ and a range of walk lengths⁶⁵⁸. These will not have an "urban feel" (as suggested by Mr Campbell⁶⁵⁹) but will be delivered via a self-binding gravel treatment and/or boardwalk⁶⁶⁰ in full accordance with the SANG Guidelines' aspirations for accessible, year-round, but appropriate treatments.⁶⁶¹ The timber edging is common in SANG/country parks and will, over time, be grown over and probably not visible.⁶⁶² Although the paths will not always be a full 100m apart, they will be in the most open areas. NE have focused

⁶⁵³ In EiC and see her proof at 2.55; CD2.65 IfHRA at 7.48.and Table 7.2 at ep 62.

⁶⁵⁴ See Map at CD2.65 ep 121.

⁶⁵⁵ CD1.36 map 8.15.3.

⁶⁵⁶ See the General Arrangement plan at CD1.29.

⁶⁵⁷ CD2.65 ep181 SANG Street Furniture and Signage Plan.

⁶⁵⁸ See CD1.24.

⁶⁵⁹ In XX of Dr Brookbank.

⁶⁶⁰ In the southern SANG area.

⁶⁶¹ See CD1.27.

⁶⁶² As Dr Brookbank explained.

in detail on the areas where 100m is not achieved⁶⁶³. Where the distances are narrower, either ephemeral wetland and ditches or mounds and structural planting are proposed to separate opposing sections of the circular walking route. This will ensure physical and visual separation – important not only in discouraging people from choosing to short circuit routes but also in creating a sense of isolation and space.

- (5) The landform⁶⁶⁴ has been specifically designed to reduce intervisibility with the PROW leading north into the SPA and to increase the attractiveness of the alternative routes within the SANG by maintaining the visual focus on the SANG and its attractions.

314. It is also worth noting that the overall quantum of SANG is bespoke having been agreed in detail with NE and is significantly in exceedance of the usual requirement: see paras 7.36-7.39 and 7.42 of the IfHRA⁶⁶⁵. NE were provided with detailed analysis demonstrating the intercept potential of the proposed SANG on the WPIL appeal, forming part of the basis on which they and the S/S concluded that it was effective. Dr Brookbank did not consider it necessary to repeat that exercise in relation to the Appeal Scheme and, although Mr Smith questioned her on this, no point was taken by Mr Baker or pursued by Mr Harwood in XX.

315. Ultimately there is no reasonable justification for departing from the approach endorsed by the S/S in the WPIL appeal. NE confirm that the provision is not just adequate but actually goes beyond what would normally be required such that some reductions would be acceptable⁶⁶⁶. GBC, who have not only a

⁶⁶³ See DAS responses summarised at Dr Brookbank's proof Table 2.1.

⁶⁶⁴ CD1.23.

⁶⁶⁵ CD2.65.

⁶⁶⁶ CD3.64: *"The provision of Suitable Alternative Natural Greenspace (SANG) at the Former Wisley Airfield was assessed by Natural England through a site visit confirming its suitability to act as SANG in principle subject to enhancement works. Due to the close proximity of the Thames Basin Heaths SPA to the Former Wisley Airfield site, SANG was requested at a greater provision rate than the standard 8ha/1000 population. The rate of 10.35ha/1000population (10.3ha/1000 after discounting) was proposed and accepted by Natural England. It has been highlighted by Guildford Borough Council to Natural England that mitigation for impacts to skylark might be required and that this may be provided on SANG land. If this is the case, then Natural England would*

consultant ecologist but also a specialist SANG officer also are satisfied.⁶⁶⁷ They both confirm that they consider that no adverse impacts on the integrity of the SPA will arise as a result.

3.4.4.2. Cat predation and dog fouling

316. Some third parties, as well as Mr Campbell, have raised concerns about cat predation in the SPA. This point was not supported by any of the ecologists who have given evidence or provided representations to the inquiry⁶⁶⁸. EPR have assessed potential effects from cat predation within the ES.⁶⁶⁹ Dr Brookbank confirmed her view that the SPA is sufficiently distance from the WNS that it is beyond normal cat roaming distances. There is thus no issue in respect of the SPA in this context. In relation to the Appeal Site itself and the areas designated as SNCI the new habitats to be provided would offset any population level effects from predation ensuring no adverse effects.

317. Dog-fouling (raised by VAWNT⁶⁷⁰) is addressed by the SANG, SAMM and SAMM+ measures which will avoid a net increase in visits to the SPA and hence dog fouling within it.

3.4.5. BNG

318. The Appeal Scheme is predicted to result in significant overall gains for biodiversity through the conversion of intensive agricultural land to over 44 ha of species-rich grassland, scrub, woodland and wetland habitats within the proposed SANG, as well as habitat creation within other green infrastructure areas, all to be managed for people and wildlife in perpetuity.

recommend that the skylark plots are fenced off and that these areas are inaccessible to visitors, therefore being discounted from overall SANG capacity. This would not detract from the suitability of the site to act as SANG and Natural England would accept a small reduction in SANG area, providing that this is not significantly lower than 10.3ha/1000population.” See also CD3.95.

⁶⁶⁷ See CD4.1 Officer Report “*Whilst objector comments from Surrey Wildlife Trust, the RSPB and the ecologist of WAG raise objection on the basis that public footpaths go from the site to the SPA, the proposal includes SAMM+ measures with a warden and the fact the circular walks of the SANG have the potential provide other attractive routes there appears to be scope to sufficiently discourage access to the SPA. The GBC Ecologist is satisfied with the approach.*”

⁶⁶⁸ As Mr Maurici put it to Councillor Oven, “*even Mr Baker did not raise this point*”.

⁶⁶⁹ See CD2.63 paras 8.297, 8.301, 8.308, 8.313, 8.317, 8.320, 8.322 and also Table 8.6A at ep 63.

⁶⁷⁰ Statement 2.3.2.a.

319. Overall, a 48.62% gain in areal habitats and a 25.34% gain in hedgerows/lines of trees is predicted, in addition to an 11.05% gain in river/stream habitats. A condition is proposed to secure a minimum of 20% BNG and Schedule 14 of the s. 106 sets out a mechanism for ongoing monitoring and controls. On this basis, Mrs Yates confirmed that GBC no longer maintain RfR 2.⁶⁷¹
320. Mr Baker challenged (i) the approach taken to demonstrating the required 'additionality' when calculating BNG for SANG and (ii) also raised several 'technical' issues (at Table 7 of his proof) which mainly entailed disagreement with the characterisation of existing or future habitats. He also raised the fact that the Appellant's assessment (i) used v3.1 of the published metric rather than the most recent v4.0 and (ii) projected less than 20% gains for river/stream habitats as "*other basic issues with the BNG*".
321. These are all bad points.
322. First, there is no requirement to update the BNG metric used. NE's guidance on the application of v4.0 is clear that there no need to update assessments for promoted projects unless requested to do so⁶⁷². This point was not pursued by Mr Harwood in XX.
323. Second, the projected gains for river/stream units will exceed the 10% proposed to be required under the Environment Act 2021. Policy P7(12) of the DMP seeks 20% gain (once the national scheme for requiring BNG has come into effect⁶⁷³) but does not specify that this needs to be for all habitat types. GBC's position (as expressed in the Officer Report) was that this means that there is no conflict with Policy P7(12)⁶⁷⁴. In any event, the implications of not meeting 20% gain for river/stream units can only be limited given that the starting point is that the Appeal Scheme will not actually entail the loss of any river/stream units. The

⁶⁷¹ See her proof at 3.50- 3.53 and her oral evidence.

⁶⁷² See Dr Brookbank rebuttal at 2.105 and Appendix 9.

⁶⁷³ This is currently scheduled for January 2024, prior to which there is no requirement for any level of BNG to be secured.

⁶⁷⁴ CD4.1 para 26.84.

only relevant habitat is Stratford Brook which will be enhanced within the SANG⁶⁷⁵. Again, no criticism was made by Mr Harwood in XX.

324. Third, the suggestion that the Appellant has not followed guidance on additionality (which was pursued in XX to some degree) is entirely misplaced. The guidelines referred to by Mr Baker at para 7.1.1 are SANG guidelines, and only deal briefly with the issue of additionality where BNG is to be delivered within a SANG. The relevant paragraph⁶⁷⁶ contains no recommended approach to calculation of BNG⁶⁷⁷ and would not in itself allow for a robust approach to be derived⁶⁷⁸. In this context, the Appellant cannot be criticised for the approach taken⁶⁷⁹ which was to specifically agree their method (including a rather more specific approach to calculation) with NE's National BNG team⁶⁸⁰. In any event, Dr Brookbank explained in her oral evidence the reasons why she did not agree with Mr Baker's approach. The BNG metric is supposed to compare post development uplifted biodiversity unit score with the pre-development biodiversity unit score. Mr Baker's approach would compare the post-development uplifted score with a post-development basic SANG score. This significantly underrepresents the positive gains from the development.

325. Fourth, the other technical issues are all questions of subjective judgement for the surveyor or related to GIS mapping. Mr Baker has not himself surveyed the site. He advances his points only by reference to the maps and guidelines and has disclaimed any criticism of the professional competence of EPR and its subcontractors. Even if his judgement were to be preferred on some or other of the points he raises, he accepted⁶⁸¹ that his evidence offers nothing which would

⁶⁷⁵ CD2.73 Table 3.1 (for baseline), Tables 3.2 and 3.3 for post-development targets, and Table 4.4 for summary.

⁶⁷⁶ Mr Baker accepted in XX that he relies only on para 10 of CD12.46.

⁶⁷⁷ Accepted by Mr Baker in XX.

⁶⁷⁸ The essence of the guidance is "*in order to ensure a clear audit trail and allow for simple demonstration of the additional biodiversity unit uplift beyond the minimum SANG requirement*" (CD12.46 e p 10 of 21)

⁶⁷⁹ See Dr Brookbank's rebuttal at 2.102 and Appendix 8.

⁶⁸⁰ Note that the SANG Guidelines are issued by a different team, with lesser responsibility for BNG matters.

⁶⁸¹ In XX.

allow you Madam to understand their significance. Again, this was not pursued by Mr Harwood in XX.

326. It follows that, irrespective of any of the criticisms made, the Appeal Scheme will:

- (1) Deliver significant biodiversity gains above the mandatory 10% outlined within the Environment Act 2021, with habitats and hedgerows/lines of trees satisfying the 20% target outlined in Policy P7 of the DMP⁶⁸².
- (2) These gains will be maintained in perpetuity, not just the minimum 30 years required under the Environment Act, through management of the SANG and green infrastructure areas by the Community Trust.
- (3) As discussed further below, these gains should be given significant weight as a benefit of the Appeal Scheme⁶⁸³.

3.4.6. Other issues

327. As with any scheme of this size, there are inevitable impacts on ecology. Dr Brookbank confirmed that EPR and DLA have worked closely through the evolution of the masterplan process in order to ensure compliance with the mitigation hierarchy as set out in CIEEM's EcIA guidelines⁶⁸⁴. The Appellant has encouraged innovation to achieve the best scheme possible and taken up opportunities to plan for a Buglife B-Line, hedgehog highways and arable plant reserves⁶⁸⁵. Open mosaic (a priority habitat) has been lost but re-provided. Mr Campbell alleged the breach of various statutory provisions but had no proper basis for doing so.

3.4.6.1. Skylarks

328. Loss of skylark habitat is an inevitable consequence of the development of the FWA and loss of habitat for farmland birds is identified in the ES⁶⁸⁶. Various

⁶⁸² CD6.2 pg 39.

⁶⁸³ Agreed with GBC.

⁶⁸⁴ CD12.35.

⁶⁸⁵ See Map 18.14.4 of the EMES at CD1.37.

⁶⁸⁶ See CD2.63 8.485.

third parties raised concern about the loss (the loss of habitat in its present locations on site is an inevitable consequence of the allocation)⁶⁸⁷, or about the on-site mitigation option put forward by GBC with the agreement by NE⁶⁸⁸. These included Mr Baker but he confirmed that his objection at least would disappear with an acceptable off-site mitigation option.

329. Dr Brookbank explained her thinking when questioned by Mr Harwood. There are limitations to what can be achieved within the SANG as any skylark plots would have to be fenced off, but given the overprovision of SANG (as remarked upon by NE) there is no reason in principle why some on-site provision should not be achievable. In the event that off-site provision is required (whether for the totality of the compensation or via a hybrid approach) the Appellant has identified land at Blackmoor Farm where this *could* occur, but the details would need to be approved by GBC.

330. This is entirely appropriate. Skylark mitigation plots are well-understood and frequently provided through agri-environment schemes. The RSPB publishes guidance which would be used in devising and approving the scheme. While VAWNT sort at the s.106 roundtable to cast doubt on whether Blackmoor Farm was appropriate there was nothing in the points they made, and in any event Blackmoor Farm is just one possible location. As Dr Brookbank advised, Madam you can have confidence that suitable scheme can be secured under the proposed condition(s)⁶⁸⁹ and Schedule 14 of s.106 obligation.

⁶⁸⁷ See Mr Collins' proof para. 11.32 "Skylarks are birds associated with arable land and it is entirely foreseeable that the allocation of a site of this size and land use will result in a negative impact on skylark territory. Dr Brookbank notes that the residual effects, are in her view, offset by the significant biodiversity benefits that arise owing to the Appeal Scheme."

⁶⁸⁸ CD3.95 elec p 2 "The rate of 10.5ha/1000population was proposed and accepted by Natural England. It has been highlighted by Guildford Borough Council to Natural England that Skylark mitigation might be required and that this may be provided on SANG land. If this is the case, then Natural England would recommend that the Skylark plots are fenced off and that these areas are inaccessible to visitors, therefore being discounted from overall SANG capacity. This would not detract from the suitability of the site to act as SANG and Natural England would accept a small reduction in SANG area, providing that this is not significantly lower than 10.5ha/1000 population".

⁶⁸⁹ See Condition 57A-B of ID5.55.

3.4.6.2.Badgers

331. A number of third parties raised concerns about badgers on the FWA including Mr Shatwell of the West Surrey Badger Group. It is not in dispute that there will be some impact on the badger population during construction but, as Dr Brookbank explained in her oral evidence, this will be minimised and managed appropriately in accordance with the relevant legal and policy requirements. Mr Shatwell was wrong on a number of matters including the source of the Appellant's evidence. He denied that the Appellant had obtained information from his organisation (West Surrey Badger Group) but (as he later accepted before XX of Dr Brookbank) EPR had obtained data (for a fee) and corresponded with them about records. EPR also obtained information from the Surrey Biodiversity Information Centre. In relation to Mr Shatwell's evidence the following further points arise:

- (1) In her EiC Dr Brookbank referred to the Government's advice on badgers in planning decisions⁶⁹⁰. This makes clear that it is best practice to be a CIEEM qualified ecologist to carry out badge surveys. EPR are so qualified. Mr Shatwell is not. Dr Brookbank provided the qualifications of EPR's badger lead for the FWA which are extensive⁶⁹¹.
- (2) It is also clear from the advice that the presence of badgers is not going to be a reason to refuse planning permission but applicants must ensure mitigation and protection. Of course in any event legislation protects this species outside planning.

⁶⁹⁰ ID5.38.

⁶⁹¹ EPR's badger surveys were led by Suzanne Melhuish. She has 18 years' experience in ecology, 17 years within the consultancy sector, has been a Member of CIEEM for 12 years. She is an NE Badger Class Licence holder, a Member of The Badger Trust, the North East Badger Group and New Forest Badger Group, a Member of the Hampshire Mammal Group (Committee Member 2011-2021). She was trained under Dr Julian Brown (National Badger expert) and Martin Noble (Chairman of New Forest Badger Group). She is a named ecologist on numerous Natural England sett licences, that have involved complex scenarios of sett locations, live digs, temporary and permanent closures, excavation of setts, supervision of sub-terranean fencing and artificial sett creation. She is also accredited agent on licences held by Dr Julian Brown.

(3) It is also made clear that surveys up to 3 years old can be acceptable. The Appellant is content to accept a condition requiring further survey work and appropriate licensing.

332. Mr Baker, unable to avoid any chance to attack the Appeal Scheme, also expressed his “surprise” at the number of badgers on site. He agreed however that they are a widespread species, not subject to conservation concern and that any long-term pressure as a result of creation of the WNS would have to be weighed against the allocation. No statutory authority including GBC has expressed any concern.

3.4.7. De-designation of the SNCI

333. Some limited parts of the FWA are designated as an SNCI under the GBLP. The Appeal Scheme will result in the loss of about 1.6ha of semi-natural habitat within the SNCI, but the ecological effect will be compensated by the improvement of the remaining part⁶⁹². This leads the ES to the view that no significant adverse effect arises (after mitigation)⁶⁹³

334. Mr Paton raised a separate issue as to the reasons why the SNCI had not been designated across the whole of the FWA. This is not really material but, for completeness, Dr Brookbank addressed this in her oral evidence and rebuttal proof. The draft GBLP did identify the whole of the FWA within the SNCI but this was resisted by WPIL. EPR prepared a review report⁶⁹⁴ which identified (see Map 1) the areas capable of meeting the SNCI criteria. This was accepted by GBC⁶⁹⁵. The views of Inspector Bore were expressed in a note to GBC which seems to have not been put onto their website but was later provided to Mr Paton. But the fact is the matter is dealt with in Inspector Bore’s report at para. 190 where he says “*[t]he site includes an area designated as a Site of Nature Conservation Interest. The development advantages of the site outweigh the protection*

⁶⁹² CD2.63 ES Chapter 8A advises that post-development the habitats within the SNCI will be “*more diverse, better connected, and in better condition*”.

⁶⁹³ CD2.63 para 8.345.

⁶⁹⁴ Appendix 1 of Dr Brookbank’s rebuttal proof.

⁶⁹⁵ See CD7.1 Figure 57 ep 159.

afforded by the designation of the SNCI and it is not appropriate to maintain the designation within the area for development, but there is scope for the designation to be made on parts of the site that are proposed to remain undeveloped”⁶⁹⁶. That is what then happened; the logic of this approach is irrefutable.

3.4.8. Ancient woodland

335. Mr Campbell questioned whether the impact on the ancient woodland at Hunts Copse had been assessed. It has been.⁶⁹⁷ Dr Brookbank in her oral evidence took you Madam to Table 8.4 and 8.5 of the ES Chapter, which shows, in accordance with the EcIA guidelines⁶⁹⁸, which sites have been assessed. The assessment of Hunts Copse is set out in Table 8.8.

3.4.9. Conclusions on ecology

336. In conclusion:

- (1) The survey work provides an robust and appropriate baseline understanding of the FWA site.
- (2) This supports and informs the assessment of the overall impacts of the Appeal Scheme in ecology terms which will be overwhelmingly positive and result in significant BNG above both the (future) statutory and policy targets.
- (3) The Appeal Scheme will not give rise to any adverse impacts on the integrity of the SPA, alone or in combination.

4. Other Alleged Harms

337. These are points raised not by GBC or any of the statutory consultees but pursued by Rule 6 Parties or third parties.

4.1. Landscape character impact / Design

338. Landscape is, or should be, a relatively straightforward issue.

⁶⁹⁶ CD7.11 para. 190.

⁶⁹⁷ CD2.63 ES Chapter 8A Table 8.4 and Table 8.8.

⁶⁹⁸ CD12.

339. Inspector Bore, examining the GBLP, concluded that the impact of the site allocations as a whole would be “*relatively limited*” and that “*Wisley airfield is on a plateau and is not a prominent site*”⁶⁹⁹, this led him to conclude that the spatial strategy accommodated substantial development “*whilst avoiding significant landscape harm*”⁷⁰⁰. In relation to the WNS itself he noted “*Development here would be self-contained visually and would not contribute to urban sprawl*”⁷⁰¹.

340. The ES chapter on landscape⁷⁰² sets out a GLVIA 3 compliant assessment of the impacts of the Appeal Scheme on the various landscape and visual receptors. This was reviewed by GBC officers and by had, an experienced landscape consultancy appointed by GBC⁷⁰³:

(1) HDA, who as authors of the local landscape character study have a particular knowledge of local character, agreed that with the ES conclusion that any new settlement was “*highly likely*” to include adverse major and moderate effects but that here there would be no long term significant adverse effects.⁷⁰⁴ As summarised by officers, their view was that the residual impacts “*should be balanced against the numerous landscape benefits which result from the proposed scheme. Overall, it is considered that the landscape scheme is a very positive part of the proposed development and that in landscape terms, the aspirations of the allocation have been met. HDA agree with the conclusions in the submitted LVIA at para 7.474 which state overall, there will be a significant increase in quality, quantum, and connectivity increasing the baseline value through improved biodiversity, opportunities for recreation, experiences and overall longevity. These benefits will assimilate the FWA site back into the surrounding landscape framework.*”⁷⁰⁵ (our emphasis)

(2) This officers to advise that:

⁶⁹⁹ CD7.11 para 109.

⁷⁰⁰ CD7.11 para 110.

⁷⁰¹ CD7.11 para 182.

⁷⁰² Chapter 7, prepared by Mr Davies’ fellow director Samantha Hart.

⁷⁰³ See CD4.1 Officer Report para 22.16.

⁷⁰⁴ Officer Report 22.40 (CD4.1).

⁷⁰⁵ Ibid at 22.41.

Conclusions

22.50 Whilst the character of the application site will permanently change, the proposal been sensitively designed through a landscape led approach to avoid significant adverse landscape and visual effects as a first principle. There is the potential to deliver a significant landscape enhancement through SANG and comprehensive green infrastructure, secured by the parameter plans that will limit significant adverse effects where possible whilst creating a high quality setting to the new settlement.

22.51 The application has the opportunity to create its own sense of place and an attractive residential environment surrounded by green space. HDA raises no objection to the scheme proposed, and considers the amendments have appropriately addressed the concerns raised.

22.52 The application as proposed complies with the relevant part of A35, which states there should be sensitive design at site boundaries that has significant regard to the transition from village to greenfield. It is also considered to comply with D1 which acknowledges the strategic site allocations may not be able to reflect locally distinct patterns of development. No conflict is identified within Lovelace Neighbourhood plan policy LNPEN1B.

22.53 So whilst a level of landscape harm has been identified, there are no conflicts with the relevant Development Plan policies which have accepted the allocation of this site. There are sufficient controls available through the Reserved Matters applications and the flexibility of the parameter plan to minimise the limited harm identified."

(our emphasis)

341. Mr Davies and Mr Williams, both of whom hold qualifications in landscape design⁷⁰⁶, each confirmed their view that the design of the Appeal Scheme meets the aspirations of policy by successfully assimilating the FWA site into the landscape. They point in particular to the Second DRP's view that the proposals constituted "genuinely landscape-led development"⁷⁰⁷; this is something that DRPs do not say "lightly"⁷⁰⁸ and is "not a small point"⁷⁰⁹ in support of the Appeal Scheme. They agreed with Inspector Bore's conclusions.⁷¹⁰

342. Mr Hall confirmed that he did not contest Mr Davies' evidence. Despite this, Mr Harwood did contest it on the (entirely unevidenced) basis that the conclusions

⁷⁰⁶ See Appellant's List of Appearances, Davies proof at 1.4 and Williams proof at 1.1.1.

⁷⁰⁷ CD12.4.

⁷⁰⁸ Mr Davies in ReX; Mr Williams made similar comments.

⁷⁰⁹ Mr Williams in EiC.

⁷¹⁰ See responses in ReX.

of Inspector Hughes and the S/S on the WPIL appeal could be directly applied across to the Appeal Scheme. Mr Davies robustly rejected this approach and rightly so.

343. There are a number of significant differences between the WPIL appeal and what is now proposed. As already set out, the Appeal Scheme:

- (1) Is significantly less dense (1730 vs 2000), reflecting the broader aspiration to spread the WNS across the whole of the land allocated under Policy A35 – an option which even Inspector Hughes acknowledged would overcome some of the constraints of the location⁷¹¹
- (2) Has been developed with a “*different approach*” leading to a “*looser*”⁷¹² development pattern overall – able to incorporate green corridors.
- (3) Involves lower height buildings (maximum four storey vs five) and focuses those higher buildings to the central areas.
- (4) Takes care taken to respect boundaries to the rural lanes to the south and east (Ockham Lane and Old Lane) and to the SANG.

344. Mr Davies was therefore quite right to reject the suggestion that the Appeal Scheme was either “*wholly at odds with the loose informal settlements in the area*” or “*imposed on the landscape*”⁷¹³. In his view it had been “*very well considered*” and that the design choices had “*assimilated the development into the landscape*”.⁷¹⁴

345. He was also right to point out that the WPIL appeal had been determined in a different local planning context – not only has the WNS now been allocated but also the policy background (including the SPD) recognises that there is “*an opportunity for change*” and that the character and form of what is proposed should not seek to replicate that of current settlements.

⁷¹¹ See CD9.1 IR20.93 “*the inclusion of that additional land, with the same amount of development as set out in eLP Policy A35, would allow a less dense and linear development, as envisaged in the eLP.*”

⁷¹² Mr Davies in XX.

⁷¹³ Mr Harwood, paraphrasing the conclusions of Inspector Hughes.

⁷¹⁴ Mr Davies in XX.

346. This is, effectively, recognised in Inspector Bore’s examination report⁷¹⁵. He held that:

(1) The GBLP’s site allocations would have a “*relatively limited*” impact on the wider landscape and that the plan successfully accommodated development “*whilst avoiding significant landscape harm*”⁷¹⁶. In doing so he noticed specifically that the FWA was “*on a plateau and is not a prominent site*”.

(2) It was “*important to note*” that Inspector Hughes’ conclusions on character and appearance were “*made in the context of the background of the saved policies of the Guildford Borough Local Plan 2003, against which the scheme as unlikely to be considered anything other than inappropriate development in the Green Belt and development affecting the character of the countryside*”.⁷¹⁷

(3) Overall, the allocation was sound⁷¹⁸.

347. While there will clearly be a significant change to local character it is far from clear that it will be negative or that there will any breach of the development plan. The Appeal Scheme draws deeply on local character studies which were prepared during the design process⁷¹⁹. There is a necessary tension between the ambition for a new settlement and the character of the surrounding scattered hamlets. As the DRP put it, “[t]he scale of this new place makes applying the design detailing of the smaller settlements problematic, as they may not translate well into this kind of setting.”⁷²⁰

348. It is also important to consider Policy D1 of the GBLP. A number of objectors (including Mr Smith) cited Policy D1(4) which says that “[a]ll new development will be designed to reflect the distinct local character of the area and will respond and reinforce locally distinct patterns of development, including landscape setting”. But

⁷¹⁵ CD7.11.

⁷¹⁶ IR 109-110.

⁷¹⁷ IR 181.

⁷¹⁸ IR 194.

⁷¹⁹ Referred to by the Second DRP panel at 6.1 (CD12.4) and submitted at CC12.2.

⁷²⁰ CD12.4 para 6.3.

they ignored D1 (5) that says in terms that “[g]iven the size, function and proposed density of the strategic allocations it may not always be desirable to reflect locally distinct patterns of development. These sites must create their own identity to ensure cohesive and vibrant neighbourhoods”. Mr Smith⁷²¹ also cited policy LNPH3 of the Neighbourhood Plan on density⁷²² but this says “[o]utside the strategic sites residential developments within the Ripley and Wisley settlement areas should have a minimum density of 20 per hectare and a maximum density of 40 per hectare. Developments in Ockham should reflect the current low density of the area “. So again this policy is accepting of higher densities than existing for the WNS.

349. Mr Smith for the Horsleys raised landscape and character issues. However, as he acknowledged in XX, he is not an expert in relation to landscape and visual matters. His evidence should be considered with that in mind.

350. We make the following points:

- (1) In terms of evidence, the photos exhibited by Mr Smith should be treated with particular care. They have not been produced in accordance with professional guidelines⁷²³. Madam, you will of course have the benefit of your site visit but insofar as you need to have regard to photographic material in determining the level of impact, you should give more weight to the visualisation produced by Mr Davies which meet relevant technical standards. No issue has been raised by GBC or any other party about the adequacy of the information provided on landscape impacts.
- (2) A 2000 home⁷²⁴ new settlement is always going to be out of character with what preceded it and cannot be expected to reflect the character and density of dispersed settlements. As already set out, this is not what policy requires. This was accepted by Mr Smith in XX. It follows that, if not focused on specific design choices made in developing a scheme, concerns about a

⁷²¹ Mr Smith proof para 4.2.18.

⁷²² CD6.3 elec pg 34 of 111.

⁷²³ Mr Smith confirmed in XX.

⁷²⁴ The full WNS allocation figure.

change in character or density are really challenges to the principle of the development⁷²⁵.

351. Undeterred by this risk, Mr Smith's concerns were focused fairly generically on (i) longer views from the AONB (ii) the impact on Ockham Lane and (iii) the acceptability of the overall parameters in particular density and height⁷²⁶.

352. On the AONB⁷²⁷ views,

- (1) There has been no objection from parties who might have been expected to raise concern. Specifically there is no objection from: (i) the Surrey Hills AONB Planning Adviser⁷²⁸; and (ii) no objection from the landscape consultants appointed by GBC who agree with Mr Davies that the impact would be "*negligible*"⁷²⁹.
- (2) Mr Davies in EiC looked at views from the AONB⁷³⁰ to explain that the views very limited and filtered by woodland and other development at Woking, Heathrow etc which make it very hard to make out the site.
- (3) A number of third parties raised concerns as regards the impact on views from the Appeal Site towards the AONB. But as was held by Ouseley J. in *Stroud DC v SSCLG* [2015] EWHC 488 (Admin) that in relation to what is now para. 176 of the NPPF it goes too far to say that the obligation to give great weight to the conservation of the beauty of the AONB covers land from which the AONB can be seen and great weight must be given to the conservation of beauty in the AONB (see [26]) because the effect of such an approach would be to give very widespread protection to land outside the AONB and not significant in views from the AONB.

⁷²⁵ Accepted by Mr Smith in XX.

⁷²⁶ Agree in XX.

⁷²⁷ As set out in the relevant definition in Annex 1, notwithstanding the "rebranding" of AONBs, no legislative or policy changes have been made to support this and – to avoid confusion – we continue to refer to the AONB terminology.

⁷²⁸ CD3.2 and CD5.10 para. 4.56.

⁷²⁹ See CD3.56 at 2.28; see also Mr Davies proof at 5.39 and CD5.10 para. 4.57.

⁷³⁰ See ID5.22 pgs 22 and 48 – 49.

- (4) On Ockham Lane⁷³¹, Mr Smith appeared to be focused more on the development of the Hallam Land which of course is not part of the Appeal Scheme. He referred to 850m of site boundary along Ockham Lane but the FWA boundary to Ockham Lane is only 330m long. For that stretch, the parameter plans (to be secured) will ensure:
- (a) Building heights at 2 – 2.5 storeys in this location⁷³²
 - (b) A setback frontage⁷³³
 - (c) Structural planting⁷³⁴
- (5) The other fields further west between FWA and Ockham Lane also will contain mitigation. Again, the boundary has planting proposed and set back and then southern SANG.
- (6) As set out in section 2.2 above, these features depart significantly from the WPIL appeal (referred to by Mr Smith in his proof at 4.3.8). In particular, that scheme proposed a very different treatment along these edges including potential for 3 and 4 storey buildings.

353. Mr Smith's point about acceptable parameters really shaded into concerns about density and design. He argued that the density of the Appeal Scheme is too high and that too many tall buildings were proposed.

354. On heights, he had misunderstood what the Appellant was proposing in terms of the number of four storey buildings on the FWA. In his proof he suggested that this might be 30% of the buildings across the site⁷³⁵, in fact, as now made entirely clear by the amended parameter plans, the 30% of four storey buildings is limited to specific areas within the central areas around the spine road. The

⁷³¹ Mr Smith's proof at para 4.3.2 p 13.

⁷³² Building Heights Parameter Plan ID5.17A.

⁷³³ Land Use Parameter Plan CD1.2.

⁷³⁴ Green and Blue Infrastructure Plan CD1.4.

⁷³⁵ Mr Smith proof at para 4.2.12 "The submitted Parameter Plans show up to 30% of dwellings may be 4 storey dwellings with building heights of up to 14 metres, whilst another 20% may be 3-storey buildings up to 12.6 metres in height".

plans have been amended to make this clear. The result is that at most about 7.5% of the residential built areas within the FWA may be up to 4 storeys⁷³⁶.

355. On density, there was some confusion in his use of gross and net densities⁷³⁷ (he was not always comparing like for like) and he acknowledged that it was important to recognise that the larger difference between the two figures for the Appeal Scheme was reflective of the much greater provision of public open space and other communal amenities. Further, it would not be appropriate to replicate density in adjoining settlements and he accepted as much: his local densities were available “*more as a reference point*” to inform the assessment “*not to suggest that they should be replicated*”⁷³⁸:

- (1) Further, as Mr Smith was also constrained to accept, the indicative net density shown on the A35 masterplan is c.42dph and c.45dph across the FWA site (which includes the denser areas of the sustainable transport corridor and Local Centre).⁷³⁹ This is consistent with the requirements in the SPD which states that: “*...The SDF is predicated on the basis that land at Wisley should be used efficiently, with residential densities above the typical suburban average of 30-35 dwellings per hectare, and closer to 40-45 dwellings per hectare.*”
- (2) The SPD sets an indicative land use budget which is entirely in accordance with the Appeal Scheme. It identifies an opportunity for higher densities within central areas⁷⁴⁰. And, as Mr Smith accepted in XX, net density gives a comparison of the intensity of development, so a more intense development (higher net density) is generally more compact and walkable.

⁷³⁶ Only 6% across the WNS allocation as a whole.

⁷³⁷ See Smith’s proof at para 4.2.10-11; He had 8.1 dpha for East Horsley and 10.8 dpha for West Horsley, which he compared to 42dpha on the Appeal Scheme. However, the Appeal Scheme figure is net (i.e. excluding all of the public open space etc) and would be much lower if assessed on a gross basis. Mr Smith his figures for the Horsleys are gross. While this would not make as much difference to the Horsleys as to the Appeal Scheme that is reflective of the lack of public facilities in the existing settlements.

⁷³⁸ Accepted by Mr Smith in XX.

⁷³⁹ See Mr Kime’s proof at 7.2.5.

⁷⁴⁰ CD7.1 para 8.6.2.

- (3) GBC's Urban Design Officer's comments reflect GBC's keenness to promote an assessment of scale and massing based on townscape and design quality rather than one based solely on residential density: "... note that Policy D4 makes clear that the density of a proposal should be based on a design-led approach to working up a scheme, not simply by imposing a number." As Mr Kime says:

"Density is not the same as scale and massing and can often be a simplistic and crude instrument for assessment. Neither is density an indicator of urban quality and different proposals with similar densities can provide quite different character and townscape qualities. Our proposals have therefore provided vignettes developed in consultation with GBC officers, that demonstrate the potential design responses in addition to density proposals in the DAS (CD REF 2.51, p. 157). This demonstrates that we can provide high quality design solutions at the densities required by the allocation, making efficient use of land as required by the NPPF, 2021 (CD REF 8.1) and LPDMP, March 2023 (CD REF 6.2) policy D4 (7) ."

- (4) This is fully in accordance with the NPPF⁷⁴¹ in particular:
- (a) Para 124 which supports "*development that makes efficient use of land*".
 - (b) Para 125(c) which provides that "*local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework.*"
 - (c) NPPF 130(c) (which Mr Smith alleged was breached) qualifies the protection of local character by stating that this should not be "*preventing or discouraging appropriate innovation or change (such as increased densities).*"
- (5) The illustrative masterplan identified by the SPD recognises an aspiration for three neighbourhoods, one settlement.
- (6) Mr Smith sought to argue that the densities led to a breach of Policy D1(4), (5) and (6) but, as he accepted in XX, compliance with the SPD is a powerful indicator of compliance with Policy D1 given the role the SPD has in

⁷⁴¹ See Williams EIC.

determining the appropriateness of planning applications and preparation of masterplans for the allocated sites covered.⁷⁴²

356. Mr Smith's other point was that the gaps between the neighbourhoods to the west did not meet the reflect what was shown in certain of the illustrative figures in the SPD. While it is right that the gap between the central and western neighbourhoods is smaller than shown on Figure 59⁷⁴³, the masterplan is not to be applied rigidly⁷⁴⁴. Moreover, the narrowing of the gap was agreed by GBC and the DRP. There are only two deviations from the general structure of the SPD, both of which were agreed with GBC officers⁷⁴⁵:

- (1) First, the Local Centre was relocated further to the west. This was both to avoid conflict with equine users of the Hatch Lane bridleway and to enable the opportunity for visual connections with the Surrey Hills, a key part of the Appellant's design concept. Officers agree that *"the Local Centre is proposed in a suitable location which is better than that indicated in the SPD,"*
- (2) The second is the relocation of the formal sports field shown on the SPD between the west and the central neighbourhoods to the old hangar area. This is an option enabled by additional land owned by the Appellant, outside of the allocation. GBC officers agree it is *"the most appropriate position"* for these uses⁷⁴⁶. Advantages include that it is more self-contained and would not be as restricted in terms of noise and floodlighting; also as Mr Williams explained when questioned by Mr Smith, flexible open space between the neighbourhoods offers better opportunities to bring people together than formal sports pitches. This had also informed the concerns of the DRP that a 200m wide gap would be a deterrent for walking, leading to

⁷⁴² See CD7.1 at 1.2-1.2.2 *"Once adopted, the SPD will be a material consideration in determining the appropriateness of planning applications and in moving forward through implementation, including the preparation of master plans by the developers to inform their planning applications as required by Policy D1 of the Local Plan"*

⁷⁴³ Elec pg 163 of the SPD.

⁷⁴⁴ For example it shows housing areas extending up to the SPA buffer zone and down into the conservation area.

⁷⁴⁵ See Mr Kime's proof at 8.3.

⁷⁴⁶ CD4.1 Officer Report (CD4.1).

a smaller gap which will encourage active travel towards the school and local centre.

357. Mr Smith's only other point relates to the detail of how off-site cycle interventions will be designed and implemented. When shown the example treatments⁷⁴⁷ and lighting solutions⁷⁴⁸ detailed in the Updated Cycle Strategy, he accepted that an appropriate solution could be found. He also agreed that off-site cycle routes are an inevitable consequences of the allocation – given the requirements of Policy A35.
358. WAG did not advance any evidence on landscape character. Mr Harwood questioned Mr Davies as to the applicability of the conclusions of the S/S and Inspector Hughes but as already set out this line of argument misses the differences (i) between the schemes and (ii) the policy context (as noted by Inspector Bore).
359. Some objectors, and you Madam, commented on the proposed viewing gallery which is to be located within the Local Centre. This will be up to 23.5m and is designed to embed the hierarchy of the Local Centre within the Appeal Scheme. Its impacts in LVIA terms have been assessed⁷⁴⁹ and it has been supported by both GBC's Urban Design officer⁷⁵⁰ and the DRP.
360. If Madam you conclude that it is inappropriate, its overall height could be further controlled by condition⁷⁵¹. However, for the reasons set out by Mr Davies and Mr Williams, it is a valuable and positive feature of the Appeal Scheme. When looking at the images for the proposed viewing gallery in the DAS, Madam, you commented that it looked like a church. That reflects what is intended it terms of a feature that embeds the hierarchy of the Local Centre

⁷⁴⁷ CD2.35 para 2.62-63.

⁷⁴⁸ CD2.35 para 2.53.

⁷⁴⁹ As Mr Davies explained in his oral evidence.

⁷⁵⁰ See CD4.1.

⁷⁵¹ Mr Collins in EiC.

within the Appeal Scheme – a ‘postcard building’ to anchor the local centre in the heart of the new settlement and wider Ockham.

4.2. Heritage

361. As with landscape, Mr Smith and Mr Hall both sought to rely on heritage harm in the absence of any specialist witnesses called by either WAG or the Horsleys.
362. The only detailed heritage evidence before the inquiry is provided by the Appellant’s consultants Cotswold Archaeology and GBC’s conservation officer⁷⁵².
363. Cotswold have prepared:
- (1) ES Chapter 10⁷⁵³ and the relevant appendices include the HEBDA⁷⁵⁴; and
 - (2) A response to third party comments which is at Appendix 3 to Mr Collins’ proof.
 - (3) A rebuttal note at Appendix 1 to Mr Collins’ rebuttal proof.
364. They conclude (in the ES Chapter) that “*the impact upon the assets would fall within the level of less than substantial harm (in accordance with the NPPF) equating to minor adverse impact, in EIA terms a non-significant effect.*”
365. This is agreed with GBC⁷⁵⁵ whose position on each relevant asset is set out at 4.62 of the SOCG⁷⁵⁶. Each judgement falls at either the lower, lowest or low end of the less than substantial harm range.
366. Historic England do not object. This appeared to be misunderstood by Mr Smith, who relied on a superseded response at his para 4.13.10. The most recent

⁷⁵² See CD3.99, CD3.59.

⁷⁵³ CD2.85, see para 10.4.

⁷⁵⁴ CD2.40.

⁷⁵⁵ CD5.10 p27.

⁷⁵⁶ “4.62 The Council’s Conservation Officer concluded that the Appeal Scheme would result in heritage harm which is “less than substantial” in all cases, being at the lower end of the scale of harm in respect of Ockham Conservation Area, and the Listed Buildings comprising Upton Farmhouse, Appstree Farmhouse and Bridge End House (all Grade II), whilst being at the low end in respect of Listed Building Yarne, (Grade II), and the lowest end in respect of RHS Wisley Registered Park or Garden and Chatley Semaphore Tower, (Grade II*).”

response (as he accepted in XX) is that dated 7 June 2023⁷⁵⁷ which offered no comments beyond suggesting that the Council seek the views of its specialist conservation and archaeological advisors.

367. Mr Hall's position was also predicated in part on a misunderstanding as to whether heritage had formed a reason for refusal by the S/S⁷⁵⁸. GBC clarified this in the SoCG: on the WPIL appeal, heritage was not something which GBC defended at the appeal.⁷⁵⁹
368. Mr Smith ventured some additional impacts from traffic calming measures in the Ockham Conservation Area (at 4.13.12 of his proof) these are responded to in detail by Cotswold Archaeology at Appendix 3 to Mr Collins' rebuttal (see paras 2.4-2.7. This issue was considered by GBC and forms part of the assessment already reached. The interventions can and will be designed sensitively.
369. Apart from this, neither witness sought to challenge the expert views reached by Cotswold Archaeology and GBC⁷⁶⁰. Mr Hall accepted this and, having been taken through the various differences between the WPIL appeal and the Appeal Scheme relevant to heritage⁷⁶¹, he agreed that the public benefits of the Appeal Scheme would outweigh the heritage harms identified. There is therefore no breach of D3.
370. Mr Smith did not advance an argument that D3 was breached, although he did (inconsistently) maintain that the equivalent provision in NPPF 202 was

⁷⁵⁷ CD3.86.

⁷⁵⁸ It was a reason for refusal by GBC, but not defended at the appeal.

⁷⁵⁹ CD5.10 pp 8-9.

⁷⁶⁰ Mr Hall also clarified that when he used the word "significant" in his proof in relation to heritage impacts he did not do so in a technical way or intend to suggest that the harm was "substantial". Neither his client, nor any other objectors, had called heritage evidence.

⁷⁶¹ The Appeal Scheme has (i) fewer units (ii) lower height parameters (max 4 vs max 5) (iii) is further from some assets including Yarne and (iv) incorporates specific design changes (see DAS pt 5 of 12 at elec p 6 re the buffer provided on the land immediately to the north of Bridge End House and at elec p 20 the agreed set back from Hatch Lane and Ockham Lane. Both of these changes were agreed to mitigate heritage effects).

breached. However, he acknowledged that GBC had concluded that D3 was not breached.⁷⁶²

371. Overall, it is submitted that the public benefits clearly outweigh the limited heritage harm, which is in large part an inevitable consequence of the allocation Mr Collins proof para. 7.49 – 7.51. To find otherwise would be wholly inconsistent with the WPIL appeal. That scheme involved a greater number of units on the Appeal Site closer to the affected heritage assets but despite this the S/S found that “*the public benefits of the proposal would outweigh the harm*” and that therefore the heritage policies in the NPPF were “*favourable to the proposal*”. The position is *a fortiori* in this case.

4.3. BMV

372. Mr Smith had argued that the loss of BMV should attract substantial weight. In his EiC he revised this to limited weight. In XX he withdrew this point entirely, accepting that the allocation of the FWA meant that no weight could be placed on a harm which was an inevitable consequence of the allocation.

373. It follows that no professional now argues that weight should be given to the loss of BMV.

374. Mr Campbell sought to resurrect the argument for VAWNT. His reliance on the Swadlincote appeal decision⁷⁶³ was deeply flawed. The scheme there was for a solar farm. It was on an unallocated site. A 25 March 2015 WMS states that any proposal for a solar farm involving the best and most versatile agricultural land (BMV) would require to be justified by “*the most compelling evidence*”⁷⁶⁴. That policy approach does not apply here.⁷⁶⁵

4.4. Green belt

375. The argument that the Appeal Scheme would cause damage to the green belt despite not actually being within it was canvassed by Mr Smith in his written

⁷⁶² See SOCG at CD5.10 para 4.64.

⁷⁶³ CD10.8.

⁷⁶⁴ CD10.8 DL8.

⁷⁶⁵ Accepted by Mr Campbell in XX.

evidence⁷⁶⁶ before being effectively dropped when XXd. So far as the point remains it is unsustainable. There is nothing in national or local policy which supports the concept of there being a setting for the green belt. A central purpose is the prevention of urban sprawl and it is implicit in this that green belt will often be in close proximity to development without being undermined. As Mr Collins says in his proof, the suggestion made by Mr Smith equates green belt protection with landscape protection (a common mistake but regrettable in a planning professional:

“The Openness of the Green Belt cannot be harmed by development outside of its boundaries. The Appeal Site is not located within the Green Belt and the Green Belt is not a landscape designation that provides landscape protection. Thus, the Green Belt does not have a setting.”

376. There is no basis for a finding that the Appeal Scheme causes any harm to the Green Belt.

377. There are two further Green Belt matters to deal with:

378. First, to the extent that any of the off-site cycle works are within, or partly within, the Green Belt that is not an issue if they do not require permission: see above. In any event the cycle routes, and associated improvements, are a key requirement of the allocation and it was only recognised these would be delivered on roads in the Green Belt. The NPPF also excludes from the definition of “*inappropriate development*” for “*local transport infrastructure which can demonstrate a requirement for a Green Belt location*” so long as “*they preserve its openness and do not conflict with the purposes of including land within [the Green Belt].*”⁷⁶⁷ That would clearly apply to the proposed works which all lie within the highway. Different issues might arise if the off-site proposals involved widening of roads. Had that been intended then doubtless land would have been safeguarded for that purpose in the GBLP.

⁷⁶⁶ Mr Smith proof at 4.4.10: “*Since ‘openness’ is capable of having a visual impact, consideration of the impact of the proposed development on the surrounding Green Belt areas must be of paramount importance in the determination of the appeal, including consideration of the impact on local traffic.*”

⁷⁶⁷ See Smith answers in XX.

379. Second, Mr Wise's evidence was (to say the least) somewhat confused on the Green Belt. First, he suggested (for wholly unfathomable reasons) that some part of the Appeal Site actually remained in the Green Belt. This is simply not the case. Second, he argued in any event that the whole of the site should be treated as still being in the Green Belt. That is clearly wrong; and little more than wishful thinking on his part. Third, he suggested that the land would in the future be put back in the Green Belt by GBC when the GBLP was reviewed. There is simply no evidential basis for such a contention and this can be given no weight. In any event exceptional circumstances would now be required to seek to place any land back in the Green Belt: see *Carpets of Worth, Ltd v Wyre Forest DC* (1991) 62 P. & C.R. 334.

4.5. Energy Sustainability / Climate Change

380. The energy sustainability of the Appeal Scheme was challenged by a number of third party objectors.⁷⁶⁸ It seems that few if any had bothered to look at what is proposed.

381. Mr Smith raised (1) limited use of solar panels (2) low standards of insulation and (3) uncertain functionality of the proposed Energy Centre.

382. These points entirely ignore the fact that the Appeal Scheme is in outline in respect of the residential areas:

(1) The Appellant proposes to install solar panels to the apartment blocks and non-domestic roof space to further reduce carbon emissions on site. There is no policy and or other requirement to do more.

(2) Insulation specifications are to be determined, but will of course need to comply with building regulation standards in place at the relevant time.

(3) The Appellant is proposing to step away from fossil fuels by installing a district heating network. This will be in the planned energy centre in the west of the site and will serve the heating and hot water demand across the

⁷⁶⁸ See for example Councillor Young.

development. Electricity will be provided independently in the normal way. It is to be a flagship scheme for the Appellant and is secured by the s. 106. Detailed design and specification will have to follow later but GBC will have control over the option finally chosen. Mr Collins referred to other examples where Taylor Wimpey have relied on district heating. It is right that there will in some cases be teething troubles, but overall it is plainly an important and ambitious part of meeting the challenge of climate change.⁷⁶⁹

383. The officers' view, informed by their specialist advisers APSE, is instructive (see para 21.54 of CD4.1):

- (1) *"Overall, the scheme is very good on sustainability across the board."*;
- (2) *"A lot of detailed work has been done looking at sustainability from strategic to building level scales and the applicant has paid close attention to GBC policy and guidance as well as industry good practice and made a large number of positive commitments"*;
- (3) These commitments can be secured by conditions and *"exceeds good planning practice for new developments"*.

384. In reality this is not a harm but (as agreed with GBC) a benefit of substantial weight⁷⁷⁰. As Mr Collins explained in his oral evidence, the Appellant is looking to provide in advance of the requirements of the development plan which are set out in D2 of GBLP and D14-17 of the DMP.

4.6. Impact on services / lack of infrastructure

385. Mr Smith and others raised concerns about harm to social and other local infrastructure⁷⁷¹. Much of this depends on the timing of new services but, as was explored at the roundtable session and in Mr Collins oral and written evidence, the Appellant is proposing to provide everything that the relevant statutory

⁷⁶⁹ Leybourne Chase, referred to by Mrs Porter as an example of somewhere where complaints have been made, does in fact have some district heating provision for a converted apartment building and adjoining outhouses, not for all of the development on site.

⁷⁷⁰ CD5.10 paras 4.83-85.

⁷⁷¹ Smith proof section 4.12.

authorities have requested and have agreed triggers designed to ensure that the WNS can be built out in effectively as a sustainable development:

- (1) On school provision, a primary school will be provided on site before occupation of 650 units. While Mr Smith said this was too late, the triggers have been agreed with SCC and are appropriate. Chapter 6A of the ES demonstrates some interim capacity in schools in the wider area before the primary school opens. Further, as Mr Collins said in his oral evidence it is important for sufficient school numbers to be present to make a school viable, something exemplified by the fairly recent closure of Ripley Primary School (August 2018) owing to lack of demand. Ms Wood's updated social-economic chapter provides that the impact on early years and primary education will be minor beneficial, that on secondary education negligible.⁷⁷²
- (2) The education calculator is updated every year, but there may be a need for the school to expand by the end of the build period.
- (3) No land is now reserved for a secondary school. This is at the election of the SCC. The land shown hatched for educational provision on the Land Use Parameter Plan will be used as required for primary school expansion if an updated calculation requires the provision of a further entry form.
- (4) On health provision, the Appeal Scheme provides a clear option for a medical facility within the local centre but with an obligation to pay a financial contribution to expand existing services, or provide some combination of the two, if this is preferred by the ICB: see paragraph 3 of Schedule 5 of the s106 agreement. The ICB explained their position at the s.106 roundtable and they and Mr Luder (for GBC) made it clear that (i) every step has been taken to deliver on site provision and (ii) that there are good off-site options which the ICB would seek to manage sustainably. However, ultimately this is, as you Madam said, "*not in the gift of Taylor*

⁷⁷² ID2.4 paras 6.283-285.

Wimpey". While this may give rise to a greater degree of future uncertainty, that does not weaken the planning case for the Appeal Scheme which must be evaluated in the context of the site allocation.

- (5) The Appellant will provide a contribution towards the proposed upgrades for the Ripley Waste Water Treatment Works, these are to be secured by condition 104. GBC recognises them to be acceptable⁷⁷³.
- (6) The Local Centre to contain a range of facilities over at least 3,550sqm GEA including convenience food retail floorspace of at least 280sqm⁷⁷⁴; a café/restaurant/drinking establishment; some offices and potential research and development premises. The Appellant has agreed to restrict Class E in order to protect the proposed uses. It will be designated as a local centre within the GBLP under Policy E9 which will ensure protection under the sequential test⁷⁷⁵.

5. Benefits

386. The benefits of the Appeal Scheme are set out in detail in the written and oral evidence of Mr Collins, who also summarises the position reached with the other main parties in Annex 5 to this closing.

387. It is striking how much agreement there now is. This had already been achieved with GBC prior to the inquiry⁷⁷⁶. A similar position has now been reached (following XX of Mr Hall and Mr Smith) with the WAG and the Horsleys.

388. Mr Hall agreed:

(1) That substantial or significant positive weight should be given to:

(a) Housing;

(b) Gypsy and traveller provision;

⁷⁷³ CD4.1 Officer Report para 25.17.

⁷⁷⁴ Which Mr Collins explained would enable late and Sunday opening – allowing (theoretically) 24/7 convenience shopping for essentials.

⁷⁷⁵ See CD6.1 e p 95 Policy E9(5)(c).

⁷⁷⁶ See Mr Collins' rebuttal proof table 8-1.

(c) Energy and Sustainability;

(2) He also agreed the following as benefits to which weight should be given, although he did not say how much in the light of his acceptance that (if WAG's technical evidence were rejected) then the benefit would outweigh the harms:

(a) Increased spend by new residents;

(b) BNG;

(c) Playing fields and other new facilities;

(d) SANG; and

(e) Sustainable transport improvements including bus services and off-site cycle routes.

389. Mr Smith also agreed that significant weight should be given to each of:

(1) Housing;

(2) Affordable housing (in the light of the housing registry evidence);

(3) Gypsy and traveller provision.

390. Our comments in closing are as follows:

391. Housing/Affordable Housing. Despite Mr Smith's reservations, it is clearly appropriate to give substantial weight to each of housing, and affordable housing.

(1) The WNS forms a central plank of GBC's strategy for achieving its spatial vision. This is a vision adopted in a context of "*crisis*"⁷⁷⁷ where:

⁷⁷⁷ Mr Collins' word in EiC.

- (a) Waiting lists from GBC's Social Housing statistics webpage show that as of the 31st March 2023 there are 1,910 people on the GBC Joint Housing Needs Register⁷⁷⁸.
 - (b) Only 153 properties were let by Housing Associations between April 2022 to March 2023.
 - (c) There is a need for GBC to 'catch up' on delivery - a lot of the trajectory mid/latter part of plan period.
- (2) As Mr Collins explained in his oral evidence, there have been years (prior to the adoption of the GBLP) where delivery has not kept pace with need. There is a backlog left to address. This is effectively the position recognised by Inspector Bore in concluding that very special circumstances existed to justify the release of green belt allocations within the GBLP:

*"Guildford has a pressing housing need, severe and deteriorating housing affordability and a very serious shortfall in the provision of affordable homes. There is additional unmet housing need from Woking. There is no scope to export Guildford's housing need to another district; the neighbouring authorities in the housing market area are significantly constrained in terms of Green Belt and other designations and both have their own significant development needs. The overall level of provision will address serious and deteriorating housing affordability and will provide more affordable homes. The headroom can also accommodate the likely residual level of unmet need from Woking."*⁷⁷⁹

- (3) Inspector Bore, in his report, went on to explain at paragraphs 83-85 why very special circumstances existed for allocating the strategic green belt sites despite the fact that the potential supply under the GBLP exceeded the housing requirement by around 4,000 dwellings.⁷⁸⁰ These provide a total answer to Mr Harwood's (bad) point in XX of Mr Collins which sought to resurrect the objection dismissed by Inspector Bore. The overall provision is intended to work as a whole and delivers a wider range of benefits. It needs

⁷⁷⁸ Mr Collins rebuttal para 7.4.

⁷⁷⁹ CD7.11 paragraph 79

⁷⁸⁰ The Issue addressed by Inspector Bore was "Whether the difference between potential supply of 14,602 dwellings and the latest MM2 housing requirement of 10,678 implies that the plan should allocate fewer sites and release less Green Belt land"

to be robust and capable of meeting delivery failures or slippage on one or more sites, something it ensures through headroom. It needs a range of sort and long terms sites to spread its housing trajectory across the plan period.

- (4) The Appeal Scheme will provide a full 40% affordable housing, from which around 50 Affordable Homes per year across the 10-year build programme may be delivered⁷⁸¹. Under the Affordable Housing Tenure Split set out in the s. 106 agreement 70% of this will be Affordable Rent or Social Rent. At the present time there is no requirement in H2 of the GBLP or evidence base in the existing SHMA to require the provision of Social Rented units, but the s.106 leaves open the opportunity for GBC to require Social Rent in the future via the approval of the Affordable Housing Scheme (Neighbourhood Area) and the reserved matters application but as you, Madam, observed in the s.106 session it can do little more than that. At 70% Affordable Rent this will equate to around 35 Affordable rented homes per annum which is in turn 22.8% of the total provision let out between April 2022 and March 2023.⁷⁸² Over the whole build-out period it will provide more affordable housing than the entire borough wide delivery over the past 8 years⁷⁸³.
- (5) To address a point made by VAWNT at various stages of the inquiry, these 490 Affordable Rented homes directly assist GBC's waiting list. The s.106 agreement defines Affordable Rented Housing as "*housing let to households who are eligible for Affordable Housing by an Affordable Housing Provider through the Borough Council's Allocation Scheme*". Eligible Households are defined as "*a purchaser/purchasers or existing private or social tenant/tenants who are in need of housing because of their limited means and who are unable to access private rented/owner occupier accommodation on the open market within the Borough of Guildford at a cost low enough for them to afford determined with regard to local incomes and local house prices*". In summary, the s. 106 is clear that 70% of the

⁷⁸¹ CD2.21 Appendix 2.

⁷⁸² Mr Collins in EiC.

⁷⁸³ Mr Collins in EiC.

affordable housing provision will go to people on the GBC housing waiting list. The mix provided for affordable directly addresses the SHMA mix⁷⁸⁴.

392. Gypsy and traveller plots. This should also be given substantial weight. There is an ongoing deficit of suitable sites against which the Appeal Scheme overprovides.
393. Economic benefits / Increased local spending. These should each be given significant weight. This is set out in Mr Collins' proof. The Appeal Scheme will provide significant economic benefits to the surrounding local communities, proposed new community and GBC, including the provision of over 6,000 sqm of a range of business floorspace, including Class B2/ B8 and E(g) to support new and established local businesses and the creation of over 300 new jobs within a range of occupations. These are detailed within the submitted Economic Benefit Statement⁷⁸⁵. As officers identified in the Officer Report "*This is a significant boost to the local economy, as a public benefit.*"⁷⁸⁶
394. Mr Harwood asked Mr McKay about the jobs projections underlying the calculated benefits in the Economic Benefit Statement but it should be appreciated that it was looking at a different issue to that relevant to Mr McKay. Whereas the Economic Benefit Statement contains a projection of the total number of potential jobs which may be created, applying well-established and unchallenged methodologies, Mr McKay is only looking at trip generation which (as explained above) he does by reference to comparator sites not by generating a projected number of jobs. Each approach is valid and appropriate for the task for which it is designed.
395. Landscape / biodiversity improvement. These should each be given significant weight. As summarised by Mr Collins, the Appeal Scheme will deliver an overall BNG figure of 48.62% - well in excess of national and local targets. This reflects the myriad ways in which the Appeal Scheme will improve the landscape for

⁷⁸⁴ See Mr Collins EiC.

⁷⁸⁵ CD2.49.

⁷⁸⁶ CD4.1 para 27.121.

wildlife, the massive gain in tree cover and the removal of the derelict runway and hanger areas.

396. Sport and Open Space. This should be given significant weight. On sport, multiple sporting bodies have written to the inquiry or attended to express their support⁷⁸⁷. Mr Fox for the Guildford Hockey Club attended the inquiry and explained that local pitches have reached peak use and that there are currently up to 100 children training on a single pitch. The proposed location of the public pitches is more suitable for floodlighting⁷⁸⁸, the details of which will be determined in reserved matters. It will allow reductions in travel times and significantly increase the opportunity for sports in school hours⁷⁸⁹. The school sports facilities will also have a community use: the s.106 requires a covenant to be imposed allowing suitable community access outside of school hours. The proposals for a Multi Use Games Area surface adjacent to the sports pavilion will allow for a wider range of sports and make them accessible throughout the year. The support of Sport England (CD3.11) for this appeal is also an important consideration in this context.

397. Further, the Appeal Scheme will result in the creation of new publicly accessible greenspaces in the form of 44.5 ha of new SANG and significant areas of formal and informal open space provision⁷⁹⁰. The new green spaces will provide a recreational space and enhance biodiversity around each of the three neighbourhoods that will make up the FWA. The substantial areas of parkland will be useable to all proposed and existing residents beyond the FWA, providing a positive space for recreation, sport and relaxation.

⁷⁸⁷ Sport England - letter 12th September 2022 (C3.11).

Guildford Hockey Club - letter 6th June 2023 (CD3.14).

Woking and Guildford Tennis Club also indicated support to the Appeal Scheme - letter 28th April 2023 (CD3.13).

Surrey FA - Letter 15th May 2023 (CD REF 3.12).

⁷⁸⁸ See proof of Mr Kime.

⁷⁸⁹ Mr Fox identified that a problem with much of the current capacity is that it is only available outside school hours.

⁷⁹⁰ CD2.13 and CD2.10.

398. Improved transport sustainability. The wider benefits of the transport proposals are set out in Mr McKay's proof in section 11. Each of the public transport, cycling provision and rail station improvements will each have much wider benefits for the local community improving accessibility and sustainability. They should be given significant weight.
399. Placemaking / Community Trust. As Mr Williams emphasised in his EiC, the neighbourhoods have been designed to connect with local communities. The community, retail, employment buses, cycle routes and other infrastructure will all benefit existing settlements as well and make it sustainable.

6. Development plan compliance and planning balance

400. As we set out in section 2 of this speech, allocation policy A35 is the most important policy for the assessment of the Appeal Scheme against the development plan.
401. Mrs Yates for GBC confirmed that, subject to the agreement of a suitable s.106 agreement, she considered that *"the appeal scheme would be in compliance with policy A35, where any conflicts with the policy have been justified."*⁷⁹¹
402. The two areas of "conflict" which she identifies are with requirements (4) and (6) which, respectively, require the delivery of transport infrastructure and cycling improvements that include (i) Burnt Common Slips and (ii) a route to Effingham Junction. As Mrs Yates acknowledges, and we have already set out, there is a robust justification for each 'omission' and they have been agreed with (as relevant) SCC, NH and GBC.
403. While it perhaps does not matter to the final conclusion that the Appeal Scheme does comply with Policy A35, the Appellant does not agree that in these circumstances there is a conflict with the policy.

⁷⁹¹ Mrs Yates' proof at 4.8.

- (1) Mr Hall and Mr Smith⁷⁹², as well as with Mr Russell, each agreed that the requirement for specific infrastructure set out in Policy A35 needs to be read in the context of requirement (7) of the Policy⁷⁹³, which allows for “*alternative mitigation*” to any that is set out in “*set out in the Infrastructure Schedule in the latest Infrastructure Delivery Plan*”. This encompasses both Burnt Common Slips and the off-site cycle route to Effingham Junction⁷⁹⁴.
- (2) Mr Harwood in XX of Mr McKay and Mr Collins advanced the contention that (7) could only apply to “other” infrastructure, referring to the subheading. This is an unduly restrictive approach which makes no sense of the broad terms in which (7) is itself drafted or indeed of the practical implications of a policy trying to fix infrastructure requirements at a point in time. In any event, even if there were a technical conflict along these lines it can be given no weight if, as is the case, the evidence is that infrastructure which is not being provided is either not needed (as is agreed re Burnt Common Slips) or undeliverable/not as good as the alternatives being offered (re off-site cycle route to Effingham Junction).

404. As for other alleged breaches of A35, these are all addressed in Annex 3 to this speech. The main points focus on the provision of social infrastructure but – as set out there – the Appeal Scheme seeks planning permission for all relevant supporting social infrastructure, including a secondary school and a GP practice, to be provided on site. When Mr Smith and Mr Hall gave evidence neither the NHS ICB nor SCC as education authority had yet reached a final view as to whether to seek on-site provision of these facilities. SCC later confirmed that they do not want on-site provision and the s. 106 was drafted accordingly, then changed following your comments such that it now provides the opportunity

⁷⁹² XX Mr Hall and Mr Smith.

⁷⁹³ CD6.1 p. 220 “*When determining planning application(s), and attaching appropriate conditions and obligations to planning permission(s), regard will be had to the delivery and timing of delivery of the key infrastructure requirements on which the delivery of the plan depends, set out in the Infrastructure Schedule in the latest Infrastructure Delivery Plan, or otherwise alternative interventions which provide comparable mitigation*”.

⁷⁹⁴ See CD6.1 p. 220 and p. 297 – see SRN 7 and 8 and p 303 – see AM3. See also CD7.20 elec p. 110 and 116. And see McKay answers in XX by Smith.

for SCC to change its mind at a later stage. In any event, it is plain that the choice of these third party authorities to require off-site provision cannot in itself give rise to a breach of either requirement (9) or allocation (11). Mr Smith was the only witness to suggest the latter⁷⁹⁵ but he quickly accepted in XX that this was not tenable. Mr Hall ventured a breach of requirement (11) but this provides that *“every effort should be made to reduce [harm to the SNCI]”* and he does not advance any criticism of the mitigation put forwards. Other concerns as to the delivery of SANG, bus services or local highway mitigation are addressed by the s.106 agreement.

405. The only remaining point is then Mr Harwood’s (unsupported by any of his witnesses) that there might be a breach of requirement (1) if more vehicular movements are modelled to use the Old Lane access than the WLD. This is without merit. The identification of a “primary” access is more a matter of masterplanning than transport modelling. In masterplanning terms, the WLD is treated as the primary access with a “higher level” of junction (roundabout vs T-junction) and the procession of entrances from that direction given careful thought in the design process⁷⁹⁶. It is defined as the primary access in the description of development. Further, as Mr McKay said, the modelled preference of future residents for a particular access is ultimately a function of the desirability of off-site rather than on-site features. Given requirement (2) of Policy A35 (providing a through vehicular link to Old Lane) it is hard to see how a breach of the policy could arise from residents choosing to make use of Old Lane.

406. It follows that the Appeal Scheme is in full accordance with Policy A35.

6.1. Other development plan policies

407. Mr Hall and Mr Smith each alleged conflict with a wide range of other policies in the development plan.

⁷⁹⁵ In his Appendix X (pg 78) but not in his proof at 4.1.4.

⁷⁹⁶ See e.g. CD12.5 1.10 and 3.3.

408. However, it is an important piece of common ground, not only with GBC but also with Mr Hall on behalf of WAG, that were you to conclude that WAG's technical evidence (on transport, air quality and ecology) should be rejected then the benefits of the Appeal Scheme would outweigh its harms⁷⁹⁷.
409. This in some ways short circuits the exercise of looking at the various breaches of policy which Mr Hall alleged in his proof at para 5.111 and the following table⁷⁹⁸. This is particularly attractive because it appeared from his answers in XX that he had not given enough attention to the details of how any of the policies he identified had been breached - a criticism he accepted.⁷⁹⁹ Nevertheless, having conducted the exercise, and having regard to Mr Smith's evidence the position should be set out: see Annex 2 attached.
410. Mr Smith's analysis of compliance with the development plan was somewhat confused as it included consideration of the NPPF:⁸⁰⁰ see further Annex 4 below.
411. Regarding the Lovelace Neighbourhood Plan it is relevant to note that the plan was amended following examination to ensure consistency with the GBLP including Policy A35. Mr Hall listed eight policies, going some way beyond the three identified by GBC in the putative RfR⁸⁰¹ which were: (i) LNPEN2 (in putative RfR 1 and 3) and (ii) LNPI1 and LNPI2⁸⁰² in putative RfR 7. He also went some way beyond WAG's statement of case⁸⁰³ where just three were said to be breached: LNPEN, LNPI2 and LPNI3. The allegations of breach of the Neighbourhood Plan by Mr Hall and Mr Smith are set out in the attached Annex 2.

⁷⁹⁷ Mr Hall said in XX that if the technical evidence was rejected "*then it would be very difficult to object, the benefits would outweigh the harms*".

⁷⁹⁸ He confirmed in XX that this was the full and comprehensive list of his alleged development plan breaches.

⁷⁹⁹ In response to the suggestion, he confirmed that "*no*" he had not. He also at various points accepted that "*I haven't looked at the detail like that*" and "*I have obviously not put enough thought into this particular aspect*"

⁸⁰⁰ See his proof at para. 4.1.3, his App X at p. 78 and his answers in XX.

⁸⁰¹ see SoC of Council CD 5.2 pp 10 - 13 for putative RfR.

⁸⁰² There is a typo in the RfR.

⁸⁰³ CD 5.8 para 7.2 p 15 - 16.

412. Gathering these strands together, Madam you are asked to agree with the Appellant and GBC that the Appeal Scheme is in accordance with the development plan taken as a whole.

413. We would draw attention to the following themes, developed in more detail in Annex 2:

- (1) The Appeal Scheme is key to the delivery of the overall spatial strategy of the GBLP and derives strong support for Policy S2: see further in the GBLP (CD6.1): para 3.1 setting out the Spatial Vision and explicitly referring to the WNS; para 4.19⁸⁰⁴; para 4.1.10, Table S2b⁸⁰⁵;
- (2) There is explicit and strong support for the Appeal Scheme in a number of policies of the GBLP see e.g. Policy E3(7) and E9(5) dealing with employment and local centres. Further support is provided in policies E1 and E2;
- (3) There are a number of housing policies that provide the strongest possible support for the Appeal Scheme including Policy H1 and H2 of the GBLP. H7 of the DMP and LNPH1 of the Neighbourhood Plan;
- (4) The biodiversity, energy and design credentials of the Appeal Scheme – see above- also result in strong support for the Appeal Scheme.

7. Planning balance and conclusion

414. The harms identified above have each been taken into account in deciding whether or not the Appeal Scheme complies with the development plan as a whole. That is not strictly true in relation to all of the benefits, as the Appeal Scheme offers benefits above and beyond those required for policy compliance in a number of respects, specifically:

⁸⁰⁴ *“The following spatial hierarchy has been applied as part of developing the plan’s spatial strategy for meeting planned growth:*

- *countryside beyond the Green Belt*
- *urban extensions*
- *new settlement at the former Wisley airfield*”

⁸⁰⁵ CD6.1 ep 26.

- (1) Biodiversity and landscape benefits as reflected in the BNG score;
- (2) The exceptional quality of placemaking; and
- (3) The Community Trust.

415. These all therefore form additional material consideration which weigh in favour of the grant of planning permission.

416. Further, national policy in the NPPF also weighs strongly in favour (as explained in Annex 4).

417. The only thing that remains is to observe that, as is the case on all its sites, the Appellant is committed to continued engagement with the local community. There is a lot of detail; but the Appellant's attempts to explain and engage should, we hope, shine through⁸⁰⁶. Appeals of this kind can generate strong feelings but in the end this is about making exemplary places for existing and future communities. The Appellant is committed to delivering the allocated site and believes that the Appeal Scheme is of the highest quality. With this in mind, we would simply conclude by reminding you Madam (for the last time) of the words of NPPF 11(c) and asked to grant permission for the Appeal Scheme as a proposal in accordance with the development plan "*without delay*".

JAMES MAURICI K.C.

MATTHEW DALE-HARRIS

LANDMARK CHAMBERS

20 December 2023

⁸⁰⁶ Including in innovative ways – see for example the Storybook at CD12.1.

ANNEX 1: TABLE OF ABBREVIATIONS

AONB, the	The Surrey Hills Area of Outstanding National Beauty. On 22 November 2023, AONBs were “rebranded” as National Landscapes However, no legislative or policy changes have been made to support this and – to avoid confusion – we continue to refer to the AONB. https://www.gov.uk/government/news/government-pledges-to-boost-britains-access-to-nature-ahead-of-cop28	
APIS	Air Pollution Information System	
Appeal Scheme	The hybrid proposal for which permission is sought – see paragraph 1.3 of the SoCG	CD5.10
Appeal Site	The former Wisley Airfield	
Appellant	Taylor Wimpey UK Ltd	
AQEG	Air Quality Expert Group	
Birds Directive	Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (consolidated version)	ID5.7
BNG	Biodiversity Net Gain	
CHA	County Highways Authority (here SCC)	
COSA	Conservation Objectives Supplementary Advice	CD12.45
CREAM	Calculator for Road Emissions of Ammonia	
DCO	Development Consent Order, in particular the Junction 10 DCO (“J10 DCO”)	
DDRT	Digital Demand Response Transport	
DMP	Development Management Plan	CD6.2
EiC	Evidence in chief	
ES	Environmental Statement	
ExA	Examining Authority (on the DCO)	
FWA	Former Wisley Airfield (the Appeal Site)	
GBC	Guildford Borough Council, the LPA	
GBLP	Guildford Borough Local Plan 2015-34 (adopted	CD6.1
GCN	Great Crested Newt	
GEH	Statistical closeness of observed and modelled traffic flows explained in DfT TAG	
Habitats Regulations	Conservation of Habits and Species Regulations 2017	
HEDBA	Built Heritage Impact Assessment and Desk-Based Archaeological Report	CD2.40
Horsleys, the	East and West Horsley Parish Council (the Rule 6 party)	
HRA	Habitats Regulations Assessment	
IDP	The Infrastructure Delivery Plan prepared by the Appellant to accompany the Application	CD2.77
IEEM	Institute of Ecology and Environmental Management	
IEMA	Institute for Environmental Management and Assessment	
IfHRA	Information for HRA	CD2.65, CD2.68 and CD2.69
IPFF	In perpetuity funding framework for the Community Trust – appended to the s.106 agreement	CD2.60, with addenda at Collins rebuttal appendix 2;
LMVR	Local Model Validation Report (Appendix K to the TA)	CD2.22 (Appendix K)
LRN/LHN	Local road network/Local highway network	

NAPCP	National Air Pollution Control Programme	
NE	Natural England	
NH	National Highways	
NH3	Ammonia	
NMU	Non-Motorised User	
NO2	Nitrogen Dioxide	
NOX	Nitrogen Oxides	
NTEM	National Trip End Model	
PIM	The Pre Inquiry Meeting	CD5.9
PM 10	Particulate matter with a diameter of 10 microns or less	
PM 2.5	Particulate matter with a diameter of 2.5 microns or less	
PRC	Practical Reserve Capacity	
ReX	Re-examination	
RTF	Road Transport Forecast workbook produced by DfT	
S/S	Secretary of State	
SANG	Suitable Alternative Natural Greenspace	
SCC	Surrey County Council	
SDF/the SPD	Strategic Development Framework, adopted as an SPD by GBC	CD7.1
SNCI	Sites of Nature Conservation Importance	
SoCG	Statements of Common Ground between the Appellant and GBC (CD5.10), SCC (CD5.11) and other landowners (CD5.12)	
SPD	Supplementary planning document	
SRN	Strategic road network	
TA	Transport Assessment	CD2.22
TAG	Transport Analysis Guidance (online resource published by Defra) also known as WebTAG.	
TEMPro	Trip End Model Presentation Programme	
TFR	Traffic Forecasting Report	CD2.22 - Appendix F
The WPIL appeal	WPIL's 2017 appeal	CD9.1
TRICS	Trip Rate Information Computer System, a widely used trip rate database	
TW	The Appellant	
WAG	Wisley Action Group	
<i>Wealden</i>	<i>Wealden DC v SSCLG</i> [2017] Env LR 31	CD11.7
WNS	Wisley New Settlement	
WPIL	Wisley Property Investments Land, the corporate vehicle (now owned by the Appellant) which owns the FWA	
XX	Cross-examination	`

**ANNEX 2: COMPLIANCE WITH OTHER DEVELOPMENT PLAN POLICIES
(EXCLUDING POLICY A35)**

<u>POLICY</u>	<u>POSITION ON COMPLIANCE IN LIGHT OF THE EVIDENCE</u>
<u>THE GBLP</u>	
Policy S1: Presumption in favour of sustainable development	Mr Collins proof p. 79 sets out the Appellant’s case as to how the Appeal Scheme accords with this policy. Mrs Yates proof p. 29 indicates that, subject to s. 106/conditions, the Appeal Scheme “ <i>would be sustainable development</i> ” and so accords with Policy S1. In terms of Mr Hall’s evidence: (i) he accepted in XX that S1(1)-(2) are not breached. Although Mr Hall claimed in XX (having never addressed the issue before) that if Mr Russell’s evidence was accepted there would be a breach of all of the three paragraphs, when made to explain himself he conceded that at least (1) and (2) could not be breached; and (ii) he retained a criticism of the overall sustainability of the FWA – based primarily on his concern that the employment land was too small – which he connected to paragraph (3). This makes no sense: that paragraph reflects what is now NPPF 11 d) and is irrelevant, there being an up to date development plan including a site allocation. Mr Smith alleges no breach of this policy: see App X to his proof p. 78.
Policy S2: Planning for the borough - our spatial strategy	Compliance with Policy S2 is achieved via compliance with the requirements of Policy A35. So, the Appeal Scheme will deliver a significant number of new homes over the Plan period until 2034: see Mr Collins proof at p. 79. Mrs Yates agrees (see her proof at p. 29) “ <i>Appeal proposal results in delivery of housing and G&T accommodation in accordance with the spatial strategy, policy compliant</i> ”. Neither Mr Hall nor Mr Smith allege any breach of this policy: see para. 5.7 and p. 33 of Mr Hall’s proof and App X p. 78 to Mr Smith’s proof.
Policy H1: Homes for all	The Appeal Scheme is clearly in accordance with this policy and draws very strong support from it: see Mr Collins proof pp. 79 referring to paras. 6.22, 19.48 and also to para. 35.10 of the Officer Report which details compliance with this policy (CD4.1): “ <i>The Appeal Scheme will deliver a Strategic Housing Market Assessment (“SHMA”) compliant mix of housing tenures, types, and sizes. The SHMA forms a key part of the GBLP evidence base, the supporting text within the GBLP (Paragraph 4.2.3) details that “We will have regard to the findings of the latest SHMA when determining the right balance of homes in new developments.”</i> In Mrs Yates proof pp. 29 – 30 she says that the proposed mix is generally in accordance with Policy H1 save that there is some limited conflict in respect of self-build and custom build “ <i>but a proportionate level is proposed which is appropriate and for this reasons, the conflict in the policy is given no material weight</i> ”. As Mr Collins said in his oral evidence, full provision of self-build would be too high given the size of the Appeal Scheme and an appropriate and fair share has therefore been agreed (12 custom build plots – see Schedule 6 part 3 of the s. 106). On this basis he considers there is no breach of H1. Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Hall’s proof p. 33 and Mr Smith’s App X p. 78.
Policy H2: Affordable homes	Mr Collins (see proof p. 80 and paras. 11.25 – 11.27) and Mrs Yates (proof p. 30) are agreed that this policy is complied with. See also

	<p>the Officer Report (CD4.1) paras. 19.48 and 35.10 noting the <i>"particularly important contribution towards meeting the Affordable Housing needs of the borough"</i>.</p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith's App X p. 78 and Mr Hall's proof p. 33.</p> <p>There was discussion at the s. 106 session of the possible provision of social rented housing. This is not required by either the Development Plan or the latest SHMA but the s. 106 allows for social rented to be provided where the evidence base changes to support this and would allow GBC to refuse a scheme that did not so provide. The Appellant has made a fully compliant affordable housing offer through the s. 106 and this is agreed with GBC.</p>
Policy P1: Surrey Hills Area of Outstanding Natural Beauty and Area of Great Landscape Value	<p>There is no breach of this policy for the reasons set out in detail in Mr Davies proof at paras. 3.53 -3.55 and 6.25 - 6.27.</p> <p>Mrs Yates proof (p. 30) confirms that this policy is complied with because the <i>"proposal has regard to protecting the setting of the AONB. No conflict"</i>.</p> <p>Mr Hall does not allege breach of this policy.</p> <p>Mr Smith does allege a breach see his App X, p. 78 and section 4.3 of his proof.</p> <p>For the Appellant's position on this issue see the main closing under <i>"other alleged harms"</i>.</p>
Policy P4: Flooding, flood risk and groundwater protection zones	<p>There is no conflict with this policy for the reasons set out in Mr Collins proof at paras. 11.18 - 11.20 and section 13 of his proof.</p> <p>Mrs Yates confirms that this policy is not conflicted with see her proof at p. 30.</p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith's App X p. 78 and Mr Hall's proof p. 33.</p>
Policy P5: Thames Basin Heaths Special Protection Area	<p>There is no conflict with this policy for the reasons set out in Mr Collins proof at paras. 11.16 - 11.17 and also in the proof and rebuttal of Dr Brookbank. Mrs Yates proof p. 29 says that subject to s. 106/conditions the Appeal Scheme this policy would be complied with: see p 31.</p> <p>Mr Hall alleges breach of this policy (see his proof p. 33 and para. 5.50) as does Mr Smith (see his App X p 78 and his proof section 4.6). These allegations of breach are though wholly dependent on Mr Baker's evidence being accepted.</p>
Policy E1: Meeting employment and retail needs	<p>The Appeal Scheme clearly complies with, and is strongly supported by this policy, see Mrs Yates proof p. 31 and Mr Collins proof p. 80.</p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith's App X p. 78 and Mr Hall's proof p. 33.</p>
Policy E2: Location for new employment floorspace	<p>The analysis is as for Policy E1 above, and see also the Officer Report (CD4.1) at para. 35.22.</p>
Policy E9: Local Centres and isolated retail units	<p>Mrs Yates confirms compliance with this policy: see her proof at p. 31. The Officer Report (CD4.1) records at para. 23.75 that <i>"Policy E9 of the LPSS states that the role of Local Centres will be supported as the focus for local communities in providing for their everyday shopping and service needs. Proposals for residential use of upper floors add to the liveliness of centres, and will be considered positively; (5) advises that when developed, the new local centre planned to be built at the strategic site of the former Wisley Airfield (site allocation A35) will be treated as a Local Centres within the context of this plan, and its location and boundaries designated in the next Local Plan review."</i></p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith's App X p. 78 and Mr Hall's proof p. 33.</p>

<p>Policy D1: Place shaping</p>	<p>This policy is complied with, see Mr Collins proof at para 16.37, and referring to the officer Report at para. 23.22.</p> <p>Mrs Yates evidence is (proof p. 32) that: <i>“The Parameter Plans demonstrate a proposal that would create a distinctive ‘place made up of three neighbourhoods of differing character. This will be secured through a number of conditions inclusive of the Design Principles Document, and a number of Design Codes. This policy acknowledges the strategic site allocations may not be able to reflect locally distinct patterns of development, and therefore no conflict is identified in this regard.</i></p> <p><i>The Appellant has produced an indicative masterplan in collaboration with the other principal landowners of A35 as required, and has been through a through design review process inclusive of Design Review Panels. No conflict with this policy is identified.”</i></p> <p>On Policy D1, Mr Hall alleges a breach of paragraphs (1)⁸⁰⁷, (6)⁸⁰⁸, (14)⁸⁰⁹ and (15)⁸¹⁰.</p> <ol style="list-style-type: none"> 1. On (1), Mr Hall suggested that this is limited to his concern about the lack of clarity as to how high quality design will be achieved – but it is notable that he disclaimed any concern about non-compliance with paragraph (4). 2. Paragraph (6) depends on Mr Russell’s evidence regarding the off-site cycle routes. That evidence is disputed by the Appellant but it should be noted that even if Madam you did accept that certain off-site routes did not meet the requirement to be safe and accessible to the average cyclist (which is in effect the height of Mr Russell’s case so far as relevant in terms of paragraph (6)) then you would still need to consider whether there was any evidence that opportunities had not been maximised (which there is not) and whether the Appeal Scheme is appropriately designed as a whole (which it is).
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⁸⁰⁷ *“(1) All new developments will be required to achieve high quality design that responds to distinctive local character (including landscape character) of the area in which it is set. Essential elements of place making include creating economically and socially successful new places with a clear identity that promote healthy living; they should be easy to navigate, provide natural security through layout and design with attractive, well enclosed, and overlooked streets, roads and spaces with clear thought given to the interrelationship of land use to external space.”*

⁸⁰⁸ *“(6) All new development will be designed to ensure it connects appropriately to existing street patterns and creates safe and accessible spaces. Particular regard shall be given to maximise opportunities for pedestrian and cycle movement and the creation of a high quality public realm.”*

⁸⁰⁹ *“(14) In order to ensure future cohesive and vibrant neighbourhoods, they must demonstrate how the development responds to the immediate context as well as;*

- (a) Creates functional places*
- (b) Supports mixed use tenures*
- (c) Includes successful public spaces*
- (d) Is adaptive and resilient*
- (e) Has a distinctive character*
- (f) Is attractive*
- (g) Encourages ease of movement*
- (h) Creates a sustainable environment in relation to access to services and facilities”*

⁸¹⁰ *“(15) Planning applications will be consistent with the Masterplans, which must be kept under review.”*

	<p>3. Mr Hall’s attempts to rely on requirements (14) and (15) (which must be read with (13)⁸¹¹) were without merit. A masterplan has been prepared following not one but four rounds of work with the DRP and extensive engagement with local stakeholders and the wider community (as we have already set out). The masterplan, which is endorsed by GBC and agreed with other landowners⁸¹², meets requirement (14) and Mr Hall makes no suggestion that the masterplan has not been followed in the Appeal Scheme. When questioned, he sought to introduce an additional concern that a design code had not yet been submitted but it was clear that he had not given enough attention to the Design Principles Document and how it will secure site-wide (both WNS and FWA) and neighbourhood wide coding. As he accepted in XX, there is no requirement in national policy for a design code to be submitted at this stage.</p> <p>Mr Smith’s case on breaches of Policy D1(4), (5) and (6) (see his App X p. 78 and section 4.2 of his proof) are considered under “other alleged harms” above in relation to both character and density.</p>
Policy D2: Climate change, sustainable design, construction and energy	<p>The Appeal Scheme complies with this policy: see Mrs Yates proof at p. 32.</p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: : see Mr Smith’s App X p. 78 and Mr Hall’s proof p. 33.</p>
Policy D3: Historic environment	<p>Mr Collins and Mrs Yates agree that this policy is complied with see their respective proofs at p. 80 and 32.</p> <p>On Policy D3, as already set out under “other alleged harms” above, Mr Hall accepted that compliance with this policy would turn on whether the public benefits of the Appeal Scheme outweighed the identified less than substantial heritage harm and agreed that it does. There is therefore not a breach of this policy although Mr Collins accepts that any heritage harm should of course be weighed in the balance.</p> <p>Mr Hall does not refer to Policy D3 as being breached.</p> <p>Mr Smith does not allege that this policy is breached: see his App X, p. 78.</p>
Policy E5(3) Rural economy	<p>This is dealt with above under “other alleged harms”.</p> <p>Mr Collins considers the issue at para. 18.10 of his proof “As recognised in the Planning Statement (CD REF 2.20) the Appeal Scheme</p>

⁸¹¹ “(13) Developers will be required to produce Masterplans for... the former Wisley airfield (A35) and these will be subject to assessment by a Design Review Panel. The masterplanning process shall engage with the local community.”

⁸¹² In accordance with policy D1(13) of the GBLP, the developers must work together to produce a masterplan for the whole allocated site. Where it is not possible for a single outline planning permission to be submitted for the whole of an allocated strategic site, para. 9.2.2 of the SPD (CD7.1, p.174) permits separate planning applications to be submitted, provided that they are “coordinated and consistent with the SPD framework plans and the submitted site master plans”. Furthermore: “Planning applications will need to demonstrate that they do not prejudice the delivery of the strategic site. Piecemeal and ad hoc planning applications which fail to deliver coherent and integrated strategic infrastructure will be resisted”. Following discussion with GBC and four Design Review Panel sessions, the Appellant, Harris and Hallam agreed Site Wide Parameter Plans (CD2.5-2.8) and the Site Wide Illustrative Masterplan (CD2.4). The landowners have also agreed a Position Statement (CD2.58), a Statement of Common Ground (CD5.12) and a Design Principles Document (CD1.9) (which in turn will inform a Site Wide Design Code).

	<p><i>will result in the loss of 45.5ha of Best and Most Versatile (BMV) agricultural land. The loss of this land was considered as part of the GBLP Examination, and the principle of development already established through the allocation. In this context, I consider it to be a harm of limited weight – ultimately it is a matter which would go to the principle of residential development in this location, which cannot be reasonably disputed given the allocation”</i></p> <p>In XX Mrs Yates confirmed that in her view any loss of BMV was immaterial given the allocation.</p> <p>The Officer Report (CD4.1, para 34.10) concludes that “<i>the loss of 45.5ha of BMV agricultural land does not conflict with any local or neighbourhood plan policies and does not therefore represent a harm arising from the scheme.</i>”</p> <p>Mr Hall does not allege breach of this policy.</p> <p>Only Mr Smith persisted on this issue (see his App X, p. 78, his proof section 4.5 and his answers in XX). In EiC he downgraded the weight to be given to this issue to “<i>limited</i>”. Under XX he abandoned the point entirely.</p>
Policy ID1: Infrastructure and delivery	<p>Subject to conditions and a s. 106 this policy is complied with: see Mr Collins proof at para. 11.21 and Mrs Yates proof at p. 32.</p> <p>On Policy ID1, Mr Hall’s evidence relies entirely on Mr Russell’s transport evidence. However, as he accepted in XX, the policy itself encourages the use of <i>Grampian</i> conditions (see paragraph 4) where appropriate and so was not conflicted with on any view.</p> <p>Mr Smith’s proof does not allege any conflict with this policy: see App X p. 78.</p>
Policy ID2: Supporting the Department for Transport’s “Road Investment Strategy”	<p>This policy is complied with see Mrs Yates proof at p. 33.</p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith’s App X p. 78 and Mr Hall’s proof p. 33.</p>
Policy ID3: Sustainable transport for new developments	<p>This policy is complied with, see Mr Collins proof at paras. 11.23 and 11.24.</p> <p>Mrs Yates proof accepts that this policy is complied with, given the position of SCC, see her proof at p. 33.</p> <p>Mr Hall alleges breach of this policy (see his proof at para. 5.21, 5.35, 5.39 and p. 33) Mr Smith does not (see his App X p. 78).</p> <p>On Policy ID3, Mr Hall relied on the evidence of Mr Russell and Dr Marner. However, as he acknowledged in XX (and as was also accepted by Dr Marner who in his proof (para. 4.18) cited only the supporting text to Policy ID3 not the actual policy itself) paragraph (6) (which is the relevant provision in relation to air quality) does not include a requirement to enhance air quality. What that requires is that new development will be required to provide mitigation of its otherwise adverse material impacts (including in relation to “air pollution”). Dr Marner in XX made clear that he had no issues with the proposed mitigation in relation to air quality. Mr Hall’s position was ultimately that if it was accepted that the transport and air quality evidence by the Appellant was inadequate then this policy could not be complied with. However, it was plain that (as with almost all other development plan policies explored with Mr Hall in XX) he had not really given any attention to how the policy was intended to work or how it applied to the facts of this appeal.</p>
Policy ID4: Green and blue infrastructure	<p>Subject to conditions and a s. 106 Mrs Yates and Mr Collins are in agreement that this policy is complied with: see Mrs Yates proof at p. 33 and Mr Collins proof at para. 11.22.</p>

	<p>Mr Hall alleges a breach of this policy (see para. 5.49 and p. 33 of his proof) but this is allegation is again reliant on Mr Baker's evidence.</p> <p>Mr Smith does not allege breach of this policy (see his App X, p. 78).</p>
<u>THE DMP</u>	
Policy H7: First Homes	<p>Mrs Yates (see her proof at p. 34) agree that this policy is not fully complied with. Mrs Yates says in her proof that "<i>Appeal proposal results in policy compliant provision, no conflict. <u>The policy states the quantum of affordable homes is expected, not required, and the supportive text of this policy makes it clear that where there is agreement that compliance with the required provision may lead to an adverse planning outcome in relation to a sub-optimal affordable housing tenure/mix or site design there may be scope for some flexibility.</u></i>" (emphasis added). Mrs Yates also explained this position at the s. 106 session.</p> <p>The position on First Homes is agreed in the OR (CD4.1) and also the SoCG (CD5.10): see Mr Collins proof at pp. 83 -84. The former says "[t]he Affordable Housing Statement Version 2 proposes that to avoid First Homes dominating the provision of 1-bed units, and to ensure a range of affordable units including affordable rent, the Applicant will provide a policy-compliant delivery of First Homes in the first phase of development with the position monitored thereafter to establish future demand for the later phases."</p> <p>Neither Mr Hall nor Mr Smith in fact even allege that this policy is breached: see Mr Smith's App X p. 78 and Mr Hall's proof p. 33.</p>
Policy P6: Protecting Important Habitats and Species	<p>There is no breach of this policy for the reasons set out in Mr Collins proof at paras. 11.28 – 11.29, 11.31, 11.33, 11.35, 11.37, 11.39 – 40, 11.46, 14.5, 14.18 and 14.21. See also Dr Brookbank's proof and rebuttal.</p> <p>Mrs Yates agrees that subject to conditions and a s. 106 this policy is complied with (see her proof p. 34).</p> <p>Mr Hall alleges a breach of Policy P6: see his proof at p. 33. But he sets out no substantive case for this relying instead entirely on the evidence of Mr Baker.</p> <p>Mr Smith alleges a breach of this policy (see App X p. 78 and section 4.7 of his proof).</p> <p>This is dealt with in the main closing under Main Issue 1.</p>
Policy P7: Biodiversity in New Developments	<p>Mr Collins' evidence is that this policy is complied with see his proof at p. 84. See also the Officer Report (CD4.1) at para 30.5 and the SoCG (CD5.10) at para. 4.90.</p> <p>Mrs Yates agrees that subject to conditions and a s. 106 this policy is complied with (see her proof p. 34).</p> <p>Mr Hall alleges a breach of Policy P7: see his proof at p. 33. But he sets out no substantive case for this relying entirely on the evidence of Mr Baker.</p> <p>Mr Smith does not allege any breach of this policy: see his App X p 78.</p> <p>This is dealt with in the main closing under Main Issue 1.</p>
Policy P8: Land affected by Contamination	<p>Mr Collins and Mrs Yates agree that subject to a conditions this policy is complied with (see Mr Collins proof at p. 84 and Mrs Yates proof at p. 34).</p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith's App X p. 78 and Mr Hall's proof p. 33.</p>
Policy P9: Air Quality and Air Quality Management Areas	<p>Mr Collins (proof pp. 84 – 85) and Mrs Yates (proof p. 36) agree there is no breach of this policy.</p> <p>See also the SoCG (CD5.10) at para. 4.55.</p>

	<p>On P9, Mr Hall confirmed in XX that he had not examined which of the criteria was breached on the basis of Dr Marner's evidence. He was thus able to give no material evidence on compliance with this policy.</p> <p>Mr Smith alleges no breach of this policy, see his App X, p. 78.</p>
Policy P10: Water Quality, Waterbodies and Riparian Corridors	<p>This policy is complied with see Mr Collins proof at para . 13.6. Mrs Yates says that this policy is breached but that any conflict carries only moderate wight: see her proof at p. 36 and her answers in XX.</p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith's App X p. 78 and Mr Hall's proof p. 33.</p>
Policy P11: Sustainable Surface Water Management	<p>This is agreed, subject to conditions, to be complied with: see Mr Collins proof at p. 85 and Mrs Yates proof at p. 36.</p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith's App X p. 78 and Mr Hall's proof p. 33.</p>
Policy D4: Achieving High Quality Design and Respecting Local Distinctiveness	<p>There is, subject to conditions, compliance with this policy: see Mr Collins proof at p. 85 and Mrs Yates proof at pp. 36 – 37.</p> <p>Mr Hall alleges that this policy is breached (see his proof at p. 33 and para 5.49). There is, however, no substantive analysis set out supporting that allegation.</p> <p>Mr Smith does not allege any breach of this policy: see his App X p. 78.</p> <p>This is dealt with further above under "other alleged harms".</p>
Policy D5: Protection of Amenity and Provision of Amenity Space	<p>This policy is complied with see Mrs Yates proof at p. 37.</p> <p>Mr Hall does not allege that this policy is breached, see his proof at p. 33.</p> <p>Only Mr Smith alleges a breach of this policy (see App X p. 78 and section 4.14 of his proof).</p> <p>This is dealt with in the main closing under "other alleged harms".</p>
Policy D6: External Servicing Features and Stores	<p>This policy is complied with see Mrs Yates proof at p. 37.</p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith's App X p. 78 and Mr Hall's proof p. 33.</p>
Policy D7: Public Realm	<p>This policy is complied with see Mrs Yates proof at p. 37.</p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith's App X p. 78 and Mr Hall's proof p. 33.</p>
Policy D11: Noise Impacts	<p>This policy is complied with see Mrs Yates proof at p. 37.</p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith's App X p. 78 and Mr Hall's proof p. 33.</p>
Policy D12: Light Impacts and Dark Skies	<p>This policy is complied with see Mrs Yates proof at p. 37.</p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith's App X p. 78 and Mr Hall's proof p. 33.</p> <p>This is of some note given the various lighting points pursued in evidence by both WAG and the Horsleys.</p>
Policy D14: Sustainable and Low Impact Development	<p>This policy is complied with subject to conditions: see Mrs Yates proof at p. 37.</p> <p>Mr Hall does not allege any conflict with this policy.</p> <p>Only Mr Smith alleges a breach of this policy (see App X p. 78 and section 4.8 of his proof).</p> <p>This is dealt with in the main closing under "other alleged harms".</p>
Policy D15: Climate Change Adaptation	<p>This policy is complied with see Mrs Yates proof at p. 37.</p> <p>Mr Hall does not allege that this policy is breached.</p> <p>Mr Smith does allege breach, see App X p 78 and his proof section 4.8.</p> <p>This is dealt with further above under "other alleged harms".</p>

Policy D16: Carbon Emissions from Buildings	This is complied with: see Mrs Yates proof p. 37. This is dealt with further above under “other alleged harms”. Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith’s App X p. 78 and Mr Hall’s proof p. 33.
Policy D17: Renewable and Low Carbon Energy Generation and Storage	This policy is complied with see Mrs Yates proof at p. 37. Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith’s App X p. 78 and Mr Hall’s proof p. 33. This is dealt with further above under “other alleged harms”.
Policy D18: Designated Heritage Assets	Mrs Yates confirms compliance with this policy: see her proof p. 38. See also Mr Collins proof at paras. 2.18, 2.21, 2.24 and 2.30. Mr Hall accepted in XX compliance with the requirement in Policy D18 to provide a heritage assessment and that compliance with the substantive tests in D19 and D20 (like D3) referred back to the paragraph 202 balance required by the NPPF. Mr Smith alleges breach of this policy (see his App X p. 78 and his proof sections 4.2 and 4.14). The issue of heritage is considered above under “other alleged harms”.
Policy D19: Listed Buildings	See D18 above.
Policy D20: Conservation Areas	See D18 above.
Policy D22: Registered Parks and Gardens	See D18 above.
Policy ID6: Open Space in New Developments	This is complied with: see Mr Collins proof at para. 15.10. This policy is agreed by GBC to be complied with subject to conditions: see Mrs Yates proof pp. 38 – 39. Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith’s App X p. 78 and Mr Hall’s proof p. 33.
Policy ID7: Community Facilities	This is complied with see Mr Collins proof at para. 3.17 quoting from para 32.63 of the Officer Report. Subject to conditions this is agreed by GBC to be complied with: see Mrs Yates proof p. 39. Neither Mr Hall nor Mr Smith allege that this policy is breached: : see Mr Smith’s App X p. 78 and Mr Hall’s proof p. 33.
Policy ID9: Achieving a Comprehensive Guildford Borough Cycle Network	The Appellant’s case on this is dealt with above under Main Issues 2 and 3. Subject to conditions Mrs Yates agrees this policy is complied with see her proof p. 39. Mr Hall alleges breach of this policy in reliance on Mr Russell’s evidence. Mr Smith does not allege any breach of this policy: see his App X, p. 78. That is of some note given the case pursued by Mr Smith in XX in relation to the proposed cycle routes.
Policy ID10: Parking Standards	This policy is agreed to be complied with see Mrs Yates proof at p. 39 and the SoCG (CD5.10) at paras. 3.15 – 3.16. Neither Mr Hall nor Mr Smith allege that this policy is breached: : see Mr Smith’s App X p. 78 and Mr Hall’s proof p. 33.
<u>LOVELACE</u> <u>NEIGHBOURHOOD PLAN</u>	
LNP1 Housing	This policy is clearly complied with and strongly supports the Appeal Scheme. Mr Smith alone alleged breaches of criteria (a), (b), (d) and (i), see his App X p. 79 and sections 4.2, 4.3, 4.6, 4.12, 4.13 and 4.15 of his proof. These assertions are of no merit whatever and cannot sit

	with Mr Smith's <i>volte face</i> on the weight to be given to the provision of housing as a benefit of the Appeal Scheme.
LNP2 Housing for all	<p>Mrs Yates finds some conflict based on housing mix but concludes that any conflict is to be given limited weight and any conflict is justified: see her proof pp. 39 – 40 and the officer Report (CD4.1) at para. 19.21.</p> <p>Mr Collins agreed that there was a technical breach (in his EiC) but explained why no weight should be given to such a breach. The Appeal Scheme provides for a SHMA compliant mix which meets the aspirations of the GBLP and needs of the borough. As he says at para 11.43 of his proof: <i>“Requires development proposals to meet the identified needs of the Lovelace community. The proposal provides a SHMA compliant mix of housing. The Committee Report (Paragraph 19.21, CD REF 4.1) addresses compliance with this policy “The proposed mix does not comply with policy LNP2, which requires fewer 1 beds than the identified SHMA. In this case, the application is the largest strategic site in the borough, and for this reason it is considered that seeking a SHMA compliant mix strikes the right balance and is the best way to ensure that the Borough’s overall accommodation needs are met”. I agree, that as a strategic site, to meet borough-wide need, that greater weight be provided to the SHMA, than the LNP on this matter”</i></p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith's App X p. 79-80 and Mr Hall's proof p. 34.</p>
LNP3: Housing Design and Density	<p>Mr Collins (see proof para. 11.43) and Mrs Yates (p. 40) agree that this policy is complied with and is a matter to be considered at reserved matters stage.</p> <p>Mr Hall does not allege that this policy is breached.</p> <p>Mr Smith alleges breach of criteria (e) and (m) see his App X p. 79. This is dealt with under “other alleged harms” in relation to density.</p>
LNPEN1: Local Green Spaces (LGS) and Local Views	<p>Mr Collins (see proof para. 11.43 <i>“states that developments should be designed to respect the existing landscape character set out in the Guildford Landscape Character Assessment and the important local views across the Lovelace landscape from within or from outside the area. I note that landscape per se is not a main issue of contention at this Inquiry. Nonetheless, landscape matters relevant to character and amenity are addressed by the PoE of Mr Davies”</i>) and Mrs Yates (p. 40) agree that this is complied with.</p> <p>Mr Hall does not allege that this is breached.</p> <p>Mr Smith alleges breach of this policy based on impacts on local views: see his App X, p 79 and section 4.3 of his proof.</p> <p>This is considered above under “other alleged harms”.</p>
LNPEN2 Biodiversity and Natural Habitats	<p>See Mr Collins proof at para. 11.42</p> <p><i>“LPEN 2 states that development must ensure compliance with the regional approach to protection of the TBH SPA and in respect of residential development provide or contribute to SANG and SAMP. This was addressed through the provision a substantial SANG provision, with the SANG Management Plan (CD REF 2.62) provided to PINS as part of the July 2023 submission setting out how the mitigation will be secured long term.</i></p> <p><i>LNPEN 2 also requires the retention and enhancement well-established species-rich features of the landscape, including ancient woodland, mature trees, hedgerows, ponds, and existing waterways. The Committee report (CD REF 4.1) details that the Council's Tree Officer is satisfied that adequate protection would be provided to ensure all retained trees are</i></p>

	<p><i>protected throughout development, subject to conditions and details in the reserved matters to be in accordance with this policy.</i>"</p> <p>Mrs Yates agrees that subject to conditions and a s. 106 this is complied with: see Mrs Yates proof at p. 40.</p> <p>Mr Hall argued that this policy was breached but accepted in XX that this was entirely reliant on Dr Marner and Mr Baker's evidence being accepted.</p> <p>Mr Smith alleges breach based on impact on woodlark: see his App X p. 79 and section 4.7 of his proof. But any impact can be compensated for by conditions: see Mr Collins rebuttal, the relevant agreed condition and the s. 106.</p> <p>This is dealt with under Main Issue 1.</p>
LNPEN3 Flooding	<p>Mr Collins (see proof para. 11.43 "<i>LNPEN3 requires development to minimise the impact of any new development in respect of flooding. The Committee Report states (Paragraph 25.5) "In the absence of hydraulic modelling for the southwestern SANG in the flood plain of the Stratford Brook which includes the potential boardwalks, sculptures and bridges, it is not known if there would be any potential loss of floodplain storage or impedance of flood flow, which would have to be mitigated against to prevent an increase in flood risk elsewhere". As such the proposal was at the time of the Committee considered to be in contravention of Policy LNPE3. Additional information was provided to PINS on the 18th July 2023, including a Flood Risk Addendum Assessment setting out the Fluvial Flood Modelling (CD REF 2.56). The EA have subsequently confirmed in a letter 27th July that subject to conditions they have no objection to the Appeal Scheme (CD REF 3.88)."</i>") and Mrs Yates (pp. 40 - 41) agree that this is complied with.</p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached: see Mr Smith's App X p. 79-80 and Mr Hall's proof p. 34.</p>
LNPEN4 Light pollution	<p>Mr Collins (see proof para. 11.43) "<i>... I refer to the submitted Lighting Assessment (CD REF 1.41) prepared by FLATT which noting that the Site does not fall within a Dark Sky area considers the existing brightness is typical for its location close to the Greater London Urban Area. The Flatt report concludes (Paragraph 5.20 "artificial lighting can be provided that considers the mitigation of intrusive light by careful luminaire selection and positioning and accurate levels of light intensity to meet with the design criteria deemed appropriate for the surrounding environment." Overall, to ensure appropriate lighting, the matter can be addressed via the Reserved Matters and appropriate condition.</i>" and Mrs Yates (pp. 41) agree that this is complied with.</p> <p>Mr Hall does not allege that this policy is breached.</p> <p>Mr Smith alleges a breach of criteria (a) (see his App X, p. 79 and his proof sections 4.3, 4.7 and 4.10).</p>
LNPEN5 Air Quality and Traffic	<p>Mr Collins (see proof para. 11.43) and Mrs Yates (pp. 41) agree that this is complied with.</p> <p>Mr Hall argued that this was breached but accepted in XX that this was entirely reliant on Dr Marner and Mr Baker's evidence being accepted.</p> <p>Mr Smith argues to the contrary: see his App X p, 79 and his section 4.10 of his proof.</p>
LNPI1 Infrastructure	<p>Subject to the s. 106 Mr Collins (see proof para. 11.43) and Mrs Yates (pp. 41) agree that this is complied with.</p> <p>Mr Hall accepted in XX that his case on any breach was entirely reliant on Mr Russell's evidence: see above under Main Issues 2 and 3. Mr Smith argues to the contrary (his App X p 79 and his</p>

	<p>proof section 4.6 “<i>New infrastructure at the development will have adverse impacts on the TBHSPA</i>”) based on impact on the SPA: see above under Main Issue 1. This has no merit.</p>
LNPI2: Public Transport and Sustainable Travel	<p>Subject to a s. 106 Mr Collins (see proof para. 11.43) and Mrs Yates (pp. 41) and Mr Cooper agree that this is complied with. Mr Hall accepted in XX that his case on any breach was entirely reliant on Mr Russell’s evidence: see above under Main Issues 2 and 3. Mr Smith alleges a breach (see his App X p 80 and his proof section 4.11. This is considered above under Main Issue 3.</p>
LNPI3 Cycling and Walking	<p>Mr Collins (see proof para. 11.43) and Mrs Yates (see proof pp. 41) agree that this is complied with. Mr Hall accepted in XX that his case on any breach was entirely reliant on Mr Russell’s evidence: see above under Main Issues 2 and 3 and see Annex 6. Mr Smith argues to the contrary (see his App X p 79 and his proof section 4.6) based, bizarrely, on impact on the SPA: see above under Main Issue 1. He was not able to sustain this analysis under XX. He says in his proof “<i>New footpaths connecting the SANG footpaths with PRoW’s running through the site and leading to the TBHSPA will increase visitor pressure on the TBHSPA, (Section 4.6).</i>” But even if this was a good point (which it is not) it would be relevant to ecology policies not Policy LNPI3.</p>
LNPI4: Parking	<p>See the SoCG (CD5.10) at paras. 3.15 – 3.16. This policy is superseded. Mr Hall alleged breach of this policy but accepted in XX that he should not be arguing this, recognising the force of the position agreed between the Appellant and GBC in the SoCG. Mr Smith does not allege a breach of this policy.</p>
LNPI5: Community Facilities	<p>Mr Collins (see proof para. 11.43) and Mrs Yates (pp. 42) agree that subject to a s. 106, this is complied with. On LNPI5 and LNPI6 it appears from his proof at paras 5.56 and 5.57 that Mr Hall considered that any alleged breach was linked to the SANG, however when questioned he said he had “<i>got a bit lost here</i>” and made clear that the concerns of WAG are with the adequacy of the walking offer, not the facilities. Mr Smith alleges no breach of this policy, see his App pp. 79 – 80.</p>
LNPI6: Healthcare and Education	<p>Mr Collins (see proof para. 11.43) and Mrs Yates (pp. 42) agree that subject to a s. 106, this is complied with. For Mr Hall’s position see LNPI5 above. Mr Smith argues to the contrary at his App X p. 80 and his proof section 4.12. He says “[t]he use of existing facilities for Healthcare and Education facilities across the local area and away from the site will increase village traffic”. This is without any merit and is dealt with under Main Issue 2 above.</p>
LNPBE1: Business and Employment	<p>Mr Collins (see proof para. 11.43 “<i>supports proposals providing additional retail facilities. This is outlined within the Planning statement (CD REF 2.20), Design and Access Statement (CD REF 2.51) and draft IDP (CD REF 2.77). The proposed local centre at WNS (entirely within the Appeal Scheme) corresponds with the SDF SPD, Policy A35 and the GBLP designation of a local centre in this location.</i>”) and Mrs Yates (pp. 42) agree that subject to a s. 106, this is complied with. Mr Hall alleged breach of this policy (see his proof para. 5.8) linked to the protection of the SPA but, as he accepted in XX, Mr Baker</p>

	<p>does not raise any concerns regarding the impact of the employment land on the SPA. That was a thoroughly bad point arising from Mr Hall's lack of proper consideration of the policy context.</p> <p>Mr Smith did not allege that this policy is breached see his App X pp 79 - 80.</p>
<u>SOUTH EAST PLAN 2009</u>	
NRM6: Thames Basin Heath Special Protection Area	<p>Mr Collins (see proof paras. 11.44 - 11.46) and Mrs Yates (para. 4.22) agree that subject to a s. 106, this is complied with.</p> <p>Neither Mr Hall nor Mr Smith allege that this policy is breached. That is of some note given their reliance on Mr Baker's evidence which covers SANG. See Main Issue 1 above.</p>

ANNEX 3: COMPLIANCE WITH POLICY A35

1. In terms of the allocation paragraphs Mr Hall in XX accepted that all (11) were complied with. Mr Smith contended that Allocation 11 (11) in relation to the secondary school. But in XX he conceded that the Appeal Scheme in allowing for such a use was in fact compliant.
2. In terms of the requirements, there is full agreement between Mr Collins and Mrs Yates, that subject to conditions and a s. 106, all of the requirements of Policy A35 are met. For WAG:
 - a. Mr Hall alleged breaches of Requirements (3), (4), (5), (6), (11) , (12) and (13);
 - b. Mr Smith alleged breaches of Requirements (4), (5)⁸¹³, (6), (7), (9), (11), (15) and (24).
3. The position on the evidence is as follows:

(1) Primary vehicular access to the site allocation will be via the A3 Ockham interchange	Mr Hall and Mr Smith both accepted that this was complied with: see answers in XX and see Smith App X p. 78. Mr Russell’s evidence contains no allegation of any breach of this requirement. Despite that Mr Harwood in XX of Mr McKay sought to suggest this was not complied with. That allegation has no basis in the evidence: see above in Section 6.
(2) A through vehicular link is required between the A3 Ockham interchange and Old Lane	Mr Hall and Mr Smith both accepted that this was complied with: see answers in XX and see Smith App X p. 78
(3) Other off-site highway works to mitigate the impacts of the development. This will include mitigation schemes to address issues: (a) on the A3 and M25 and at the M25 Junction 10/A3 Wisley interchange (b) on B2215 Ripley High Street (c) at the junctions of Ripley High Street with Newark Lane/Rose Lane (d) on rural roads surrounding the site (e) at junction of Old Lane with A3 on-slip (Guildford bound)	Mr Hall, in reliance on Mr Russell’s evidence, alleged a breach of this requirement. However, Mr Smith does not allege any breach of this requirement: see App X p. 78.
(4) The identified mitigation to address the impacts on Ripley High Street and surrounding rural roads comprises two new slip roads at A247 Clandon Road (Burnt Common) and associated traffic management	The non-provision of the Burnt Comon Slips is dealt with above in section 6. The SoCG between the Appellant and SCC agrees that the proposed mitigation, comprising measures to reduce traffic speeds on the local highway network, has the effect of reducing traffic volumes on a number of local roads including B2215 Portsmouth Road and Ripley High Street when compared to flows without the development and that “[a]s a consequence the mitigation identified in the GBLP Policy A35 of two new slip roads onto the A3 at Burnt common from the A247 is not required” (see

⁸¹³ His App X says he alleges a breach of Requirement (7) but he clearly means (5).

	<p>para. 7.1). alternative mitigation is allowed under Requirement (7).</p> <p>Mr Hall and Mr Russell in XX accepted that Requirement (7) applied to Burnt Common Slips.</p>
<p>(5) A significant bus network to serve the site and which will also serve Effingham Junction railway station and/or Horsley railway station, Guildford and Cobham. This will to be provided and secured in perpetuity to ensure that residents and visitors have a sustainable transport option for access to the site.</p>	<p>Compliance with this requirement was disputed in the evidence of Mr Hall and Mr Russell. This is on the basis of issues related to funding and “<i>minimum service</i>” see Section 3.2.2 above.</p> <p>Mr Smith (see his App X, p. 78) seems to suggest that is breached. He says, “<i>Bus services are meant to be in perpetuity but the subsidy costs are so high it is unlikely future site residents will support continuing to pay for these costs after the site handover, (Section 4.11)</i>”. This would thus seem to be an allegation of breach of Requirement (5) not (7) as he suggests in his proof.</p>
<p>(6) An off-site cycle network to key destinations including Effingham Junction railway station, Horsley railway station/Station Parade, Ripley and Byfleet to be provided with improvements to a level that would be attractive and safe for the average cyclist.</p>	<p>Mr Hall, Mr Russell and Mr Smith all contend this is breached.</p> <p>Mr Hall and Mr Russell in XX accepted that Requirement (7) applied to the cycle routes. See Section 3.2.3 above.</p>
<p>Other infrastructure</p> <p>(7) When determining planning Application(s), and attaching appropriate conditions and obligations to planning permission(s), regard will be had to the delivery and timing of delivery of the key infrastructure requirements on which the delivery of the plan depends, set out in the Infrastructure Schedule in the latest Infrastructure Delivery Plan, or otherwise alternative interventions which provide comparable mitigation</p>	<p>This is considered above in relation to Requirements (4) and (5).</p>
<p>(8) The airfield site hosts an aeronautical navigation Beacon, known as the Ockham DVOR/DME. This is an integral part of the UK aeronautical infrastructure and serves several major airports in the Southeast. When considering planning Application(s), engagement with the operator (NATS En Route PLC) should be sought as early as practicable in order to ensure that any impact may be assessed and so that any relevant conditions and obligations to planning permission(s) can be attached.</p>	<p>No one suggests that this is breached. See Mr Collins proof at para. 4.6.</p>
<p>(9) Other supporting infrastructure must be provided on the site, including a local retail centre including a GPs surgery and community building, open space (not associated with education provision) including playgrounds and allotments; and a two-form entry primary school to serve the development</p>	<p>Mr Hall and Mr Smith alleged this is breached because of a failure to guarantee delivery of an on-site medical facility.</p> <p>This is a matter dealt with in the s. 106 agreed with GBC. Mr Collins in his proof at p 75 says “Other Infrastructure Requirement 9 - No confirmation of delivery of GP Surgery on site, as required by the Appeal Site: The Appellant’s have been in regular dialogue with</p>

	<p><i>the ICB and other local providers to ensure that a site-specific solution for health care can be delivered. This will be secured via the S106 Agreement. This dialogue is recognised within the consultation response from the ICB (19/07/2023) (CD REF 3.74) which details the proposed approach to healthcare infrastructure. It is noted by the ICB that "Taylor Wimpey's preference remains on-site provision, it was acknowledged that flexibility was required, so that the means of mitigation could align with the ICB's Strategy. <u>Suitable healthcare provision will be secured via the S106</u>"</i></p> <p>There is no breach of this Requirement.</p>
(10) Secondary educational need will be re-assessed at the time a planning Application is determined at which time any recent new secondary school provision will be considered. The associated playing fields must be dual use and secured through the planning Application process.	<p>Neither Mr Hall nor Mr Smith alleged this was breached: see answers in XX and see Smith App X p. 78.</p> <p>The matter has been reviewed and agreed with SCC. There is no need for an on-site secondary school. There is therefore a contribution instead and this compliant with the requirement.</p>
(11) Every effort must be made to reduce the harm to the SNCI through appropriate avoidance and mitigation measures	<p>Both Mr Smith and Mr Hall alleged this was breached.</p> <p>Mr Hall accepted in XX that this was not breached because it does not require there to be no harm: see Dr Brookbank's proof at paras. 6.89 – 91 and Dr Brookbank's EiC.</p>
(12) Green corridors and linkages to habitats outside of the site, and the adjoining SANG (13) Bespoke SANG to avoid adverse effects on the integrity of the SPA (See the IDP for further information)	<p>Mr Hall alleged this was breached relying on the evidence of Mr Baker.</p> <p>Mr Smith does not allege this to be breached.</p> <p>See also Dr Brookbank's proof, rebuttal and oral evidence.</p>
(14) Appropriate mitigation for flood risk and flood risk management, and have regard to the recommendations of the Level 2 SFRA	<p>Neither Mr Hall nor Mr Smith alleged this was breached: see answers in XX and see Smith App X p. 78.</p>
(15) Ensure that sufficient capacity is available within Ripley wastewater treatment works to accept wastewater from this development within its permitted limits.	<p>Mr Smith alleges this is breached. Mr Hall does not. See above under Section 4.6.</p>
(16) - (22) deal traveller pitches	<p>Neither Mr Hall nor Mr Smith alleged this was breached: see answers in XX and see Smith App X p. 78.</p> <p>Mr Collins acknowledged (see his EiC) that the phasing of gypsy and traveller pitches would not be in strict accordance with requirement (22) but said this was mitigated by overprovision on the FWA of the whole quantum of pitches required under A35 (the full 8 plots needed for the WNS).</p>
(23) Limit development in flood zones 2 and 3, and no increase in flood risk on site or elsewhere	<p>Neither Mr Hall nor Mr Smith alleged this was breached: see answers in XX and see Smith App X p. 78.</p>
(24) Sensitive design at site boundaries that has significant regard to the transition from village to greenfield	<p>Mr Hall did not allege breach of this requirement. Mr Smith alleges Requirement (24) is breached. Mr Davies evidence directly dealt with Requirement (24). He as the only expert landscape and visual witness expressed the view that this</p>

<p>(25) Create unique places that combine the highest standards of good urban design with well- designed streets and spaces</p> <p>(26) Incorporate high quality architecture that responds to the unique context of the site</p>	<p>Requirement was compiled with see his answers in ReX.</p> <p>See Section 4.1 above.</p>
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ANNEX 4 – NPPF COMPLIANCE

<u>PARAGRAPH OF THE NPPF</u>	<u>POSITION ON THE EVIDENCE</u>
8 – achieving sustainable development	Mr Smith alleges a breach of this para. of the NPPF – see his App X p. 77 and his proof at section 4.13. No allegation of breach by Mr Hall. See Mr Collins proof para. 7.34 and 16.25. The Appeal Scheme contributes to all three dimensions of sustainability.
10 – <i>“at the heart of the Framework is a presumption in favour of sustainable development”</i>	See Mr Collins proof at para. 7.30. There is no allegation of breach of para. 10 of the NPPF by Mr Hall (see his proof at paras. 5.2 and 5.3) nor Mr Smith (see App X p. 77)
11 – a presumption in favour of sustainable development across economic, social, and environmental characteristics. For decision-taking, paragraph 11c outlines that this means: <i>“approving development proposals that accord with an up-to-date development plan without delay”</i> : see Mr Collins proof para. 7.30.	See Mr Collins proof at paras. 7.30 – 7.31 and 16.24. This is complied with given that the Appeal Site is allocated and meets all the requirements of the allocation policy: see above. No allegation of breach by Mr Hall (see his proof at paras. 5.2 and 5.3) nor Mr Smith (see App X p. 77 and his answers in XX)
38 ⁸¹⁴ – Local planning authorities should approach decisions on proposed development in a positive and creative way	See Mr Collins proof at para 6.37, 7.32 and 7.36.. No breach alleged by Mr Hall or Mr Smith.
47 – <i>“Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible ...”</i>	Paragraph 47 reiterates that planning law requires applications are determined in accordance with the Development Plan unless material considerations indicate otherwise: see Mr Collins proof para 7.33. This paragraph strongly supports the appeal being allowed. No breach alleged by Mr Hall or Mr Smith.
68 – requires planning policies to identify <i>“a sufficient supply and mix of sites, taking into account their availability, suitability, and likely economic viability”</i> and supply of specific, deliverable sites for years one to five of the plan period and developable sites	Clearly complied with see Mr Collins proof at para. 7.37. This strongly supports the Appeal Scheme. No breach alleged by Mr Hall or Mr Smith.

⁸¹⁴ Wrongly referenced as para. 34 in Mr Collins proof: see para. 7.36.

for years 6-10 and where possible years 11-15 of the plan	
82 - states that LPAs should set out a clear economic vision and strategy for their area which positively and proactively encourages sustainable economic growth	See Mr Collins proof at para. 7.38. This strongly supports the Appeal Scheme. See Mrs Yates proof at paras. 5.17ff. No breach alleged by Mr Hall or Mr Smith.
93 - notes that to deliver the social, recreational, and cultural facilities and services the community needs, planning decisions should plan positively for the provision of shared space, community facilities, open space, and other local services to enhance the sustainability of communities	See Mr Collins proof at para. 7.39. No breach alleged by Mr Hall or Mr Smith.
95 - It is important that a sufficient choice of school places is available to meet the needs of existing and new communities	See Mr Collins proof para. 7.40 and see Section 3.2 of this speech. No breach alleged by Mr Hall or Mr Smith.
104 - Promoting sustainable transport	Mr Hall, relying on Mr Russell's evidence alleges a breach of this para. see his proof para. 5.35. Mr Smith does not allege breach of this para: see App X p. 77. See Mr McKay's proof and see Section 3.2 of this Speech.
105 - Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes	Mr Hall, relying on Mr Russell's evidence alleges a breach of this para. see his proof para. 5.35. Mr Smith does not allege breach of this para.: see App X p. 77. See Mr McKay's proof and see Section 3.2 of this Speech.
110 a) appropriate opportunities to promote sustainable transport modes can be - or have been - taken up, given the type of development and its location; b) safe and suitable access to the site can be achieved for all users; c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current	There is no breach of this para. of the NPPF - see Mr McKay's proof at page 10. This para. is alleged to be breached by Mr Russell: see Section 3.2 of this Speech. Mr Hall, relying on Mr Russell's evidence alleges a breach of this para. see his proof para. 5.35. Mr Smith does not allege breach of this para.: see App X p. 77.

<p>national guidance, including the National Design Guide and the National Model Design Code 46; and</p> <p>d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.</p>	
<p>111 - Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe</p>	<p>This para. is alleged to be breached by Mr Russell and Mr Smith (see App X p. 77 and section 4.10 of his proof).</p> <p>See Section 3.1 above and Mr McKay’s proof.</p>
<p>112 - give priority first to pedestrian and cycle movements</p>	<p>Mr Hall, relying on Mr Russell’s evidence alleges a breach of this para. see his proof para. 5.35.</p> <p>Mr Smith does not allege breach of this para.: see App X p. 77.</p> <p>See Section 3.2 above and Mr McKay’s proof.</p>
<p>130 - are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities)</p>	<p>Mr Smith alleges this is breached because the Appeal Scheme is not sympathetic to local character and history (see App X p. 77 and section 4.2 of his proof).</p> <p>See under “other alleged harms” (section 4.1) above.</p>
<p>134 - design</p>	<p>Mr Smith does not allege breach of this para.: see App X p. 77. Nor does Mr Hall.</p> <p>See the proofs of Mr Kime and Mr Williams. See above under Section 4.1 above.</p>
<p>137 - Green Belt</p>	<p>Mr Smith alleges impact on the surrounding Green Belt (see App X p. 77 and his proof section 4.4): see Section 4.4 above. Mr Hall does not.</p> <p>There is nothing in this point see above under “other alleged harms”.</p>
<p>174 - BMV</p>	<p>Mr Smith alleges loss of BMV (see App X p. 77 and section 4.5 of his proof) in breach of para. 174(b): see under “other alleged harms” above. In his EiC he revised this to limited weight. In XX he withdrew this point entirely, accepting that the allocation of the FWA meant that no weight could be placed on a harm which was an inevitable consequence of the allocation.</p>

176 - AONB	<p>Mr Smith alleges (see App X p. 77 and section 4.3 of his proof) breach of this para. based on the impact on views from the AONB: see under Section 4.1 above.</p> <p>Mr Hall does not allege a breach of this para.</p>
180 - Biodiversity.	<p>Mr Smith alleges harm to biodiversity (App X p. 77 and section 4.6 of his proof): see Section 3.4 above and the evidence of Dr Brookbank and also that of Mr Davies dealing with SANG design.</p>
181 - SPAs	<p>Mr Baker alleges breach of this para.: see para 6.2.24. See Section 3.4 above and the evidence of Dr Brookbank.</p>
185 - pollution	<p>Mr Smith does not allege breach of this para.: see App X p. 77. Nor does Mr Hall. See Section 3.3 above and the evidence of Dr Tuckett-Jones.</p>
190 - historic environment plan making	<p>Mr Smith alleges that this is breached: see App X 0 p. 77.</p> <p>This para. is concerned with plan-making. It is clearly not relevant to this appeal.</p>
194 - heritage assets	<p>See Mr Collins proof para. 7.49 and the appendices to his proof and rebuttal.</p> <p>See Mrs Yates proof paras. 5.6 - 5.7 and the SoCG (CD5.10) at paras. 4.63 -4.64.</p> <p>No breach alleged by Mr Hall or Mr Smith.</p>
195 - heritage assets	<p>See Mr Collins proof para. 7.50 and the appendices to his proof and rebuttal.</p> <p>See Mrs Yates proof paras. 5.6 - 5.7 and the SoCG (CD5.10) at paras. 4.63 -4.64.</p> <p>No breach alleged by Mr Hall or Mr Smith.</p>
197 - heritage assets	<p>Mr Smith alleges breach of this para. based on impact on local character (see App X p. 77 and his proof section 4.2).</p> <p>See Mrs Yates proof paras. 5.6 - 5.7 and the SoCG (CD5.10) at paras. 4.63 -4.64.</p> <p>See Mr Collins proof para. 7.49 and the appendices to his proof and rebuttal. See also Mr Davies and Mr Williams proofs.</p>
199 - heritage assets	<p>See Mr Collins proof para. 7.49 - 7.51 and the appendices to his proof and rebuttal. See also Mr Davies and Mr Williams proofs.</p> <p>See Mrs Yates proof paras. 5.6 - 5.7 and the SoCG (CD5.10) at paras. 4.63 -4.64.</p> <p>Mr Smith does not allege breach of this para.: see App X p. 77. Nor does Mr Hall: see proof at 5.95</p>
202 - heritage assets	<p>Mr Smith alleges breach of this on the basis that the public benefits do not outweigh the harms (App X p. 77 and his proof sections 4.13 and 6.2).</p>

	<p>See Mrs Yates proof paras. 5.6 - 5.7 and the SoCG (CD5.10) at paras. 4.63 -4.64. Mr Hall also accepted in XX that the public benefits <u>would</u> outweigh the harms. See also his proof at 5.95.</p> <p>See Mr Collins proof para. 7.49 - 7.51 and the appendices to his proof and rebuttal. See also Mr Davies and Mr Williams proofs</p>
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ANNEX 5 - UPDATED ANALYSIS OF EVIDENCE ON BENEFITS

Key to Tables 8.1 and 8.2

Weighting
Substantial / Severe
Significant
Moderate
Limited / Low
Neutral

Planning Benefits Table (Post Inquiry Position)

Topic	Mr Collins' Proof	GBC & Rule 6 Party Assessment			
		GBC*	WAG#	Horsley #	VAWNT#
Delivery of Housing (Market and affordable)	Substantial	Substantial	Substantial	Significant	Limited
Delivery of Gypsy / Traveller accommodation and housing for older people	Substantial	Substantial	Substantial / Significant	Significant	
Re-use of PDL	Substantial				
Economic Benefits	Significant	Significant	Moderate	Limited	Limited
Increased local spending	Significant	Significant	Neutral		
Energy and Sustainability	Significant	Significant	Substantial / Significant		
Landscape and biodiversity improvements	Significant	Significant	Neutral		
Biodiversity net gain	Significant	Significant	Neutral		
Sport and Open Space Benefits	Significant	Significant	Neutral		
Off Site Transport Improvements	Significant	Significant	Neutral		
Placemaking	Moderate				
WACT	Moderate				
Section 106 Deliverables			Neutral		
New Facilities on site being enjoyed by existing community			Neutral		
Other Benefits				Limited	

*GBC - taken collectively from the proof of Mrs Yates, her answers in XX and the Committee Report (CD4.1).

WAG, Horsleys, VAWNT - taken collectively from proofs and answers in XX.

Table 8.2: Planning Harm Table

Topic - Harm	Mr Collins Proof	GBC & Rule 6 Party Assessment			
		GBC*	WAG	Horsley	VAWNT
Loss of Skylark Habitats	Moderate	Policy conflict			
Loss of BMV Agricultural Land	Limited	No Weight		Limited/none	
Localised Landscape harm	Limited	No Weight			
Heritage	Limited	Low	Significant	Significant	
SNCI	No Weight				
Local Character				Substantial	Severe
Local Appearance				Substantial	Severe
Surrounding Green Belt				Significant	
TBH SPA				Substantial	
Biodiversity				Significant	
Local Road Network			Substantial	Significant	
Strategic Road Network			Substantial	Substantial	Severe
Lack of Transport Sustainability			Substantial	Substantial	Severe
Social Infrastructure				Substantial	Severe
Inadequate Site Sustainability				Substantial	
Failure to address Climate Change				Significant	
Residential Amenity				Substantial	
Air Quality Impacts			Substantial		
Ecology Impacts			Substantial		Severe
Landscape Impacts			Moderate		
Cumulative Development			Significant		
Failure to Comply with Development Plan			Substantial	Substantial	
Local Community					Severe

*GBC - taken collectively from the proof of Mrs Yates, her answers in XX and the Committee Report (CD4.1).

WAG, Horsleys, VAWNT - taken collectively from proofs and answers in XX.

ANNEX 6 - CYCLE ROUTES

Route to East Horsley/Horsley Rail Station.

418. See Updated Cycle Strategy para 4.24-4.49.
419. This was a route identified for some criticism in (i) its use of footpath 99 and (ii) reliance on Long Reach where more confident cyclists might take the more direct route down Ockham Road North.
420. As to directness, Madam you were referred by Mr McKay to the table at paragraph 4.22 of the Updated Cycle Strategy. The Long Reach route is 0.8 of a mile longer than direct route via Ockham Road North, so would take between 3 and 6 minutes longer than the direct route. However, the flows and speeds of traffic would be much lower and the last stretch would be traffic free. This would potentially be faster than the alternative floated by Mr Clare of using multiple signalisations to allow for segregation (which would need to pass from side to side of the road).
421. Starting from the north, a specific design involving a partial directional segregation has been put forward to allow cycle movements from Alm's Heath to Long Reach. The centreline will be removed and a rumble strip will be placed down the centre of the road – discouraging drivers from driving on the side of the road. This will be combined with priority pinch points and surfacing treatments to calm traffic.
422. A parallel crossing will be placed at Ockham Road North which will allow cyclists to cross to access Long Reach. See paragraphs 4.21-22 of the Updated Cycle Strategy. Long Reach will then be used. All chicanes and other features will be designed to allow continued access by existing farm vehicles and there was no basis for Mr Hourhan's fear that his business at Springreach Farm will not be accessible. A similar arrangement has been installed by SCC in a virtually identical context on Tuesley Lane near Godalming⁸¹⁵.
423. The route then follows Footpath 99 after using Lollesworth Lane. As to deliverability/desirability issues raised:
- (1) SCC have examined the route and are committed to bringing it forward.

⁸¹⁵ CD 2.35 para 2.66 and McKay EiC

- (2) Lollesworth Lane is subject to an existing bridleway and upgrades can be made by SCC in accordance with their statutory powers.
- (3) Surveys contained in Mr McKay's proof Table 17 show this route is already popular with cyclists and SCC PROW team have confirmed to the TW team in meetings that they have received representations in the past for it to be made a cycle route due to existing usage, similar to Muddy Lane.
- (4) The surface of the footpath will be improved using sensitive no-dig construction techniques (avoiding impacts on tree roots) to the definitive width (c.2m). This will improve useability for a path which is currently used and shown on GBC's aspirational map for cycle routes in the district⁸¹⁶. This is at the absolute minimum of LTN 1/20's recommendations for 2-way cycle track⁸¹⁷. That allows sufficient clearance for cyclists although as Mr McKay fairly recognised in XX, care would need to be taken if meeting another cyclist along the narrower section.⁸¹⁸
- (5) Madam, you expressed some concerns about the safety of this part of the route. Mr McKay noted that he had actually observed a lot of children already cycling on this route. Surrey itself is a relatively low crime rate area, with only about a third of the national average crime rate⁸¹⁹. The footpath was the site of a serial murder in the 1980s but this was unique. The Appeal Scheme will introduce more self-enforcing security once the route is more popular.
- (6) Mr McKay also confirmed that the Appellant expects that there would be some form of lighting along this stretch – which could take a number of forms. Those could give sufficient light to address security concerns without risking significant light pollution.

424. The Appellant proposes a new junction arrangement at Station Approach/Ockham Road South to assist all road users in crossing this junction: See Figure 13 of Mr McKay's proof. Cycle parking is proposed, indicatively described as at Horsley Station, East Horsley Village Hall and outside Horsley Convenience Store⁸²⁰.

⁸¹⁶ At Appendix A to the DMP

⁸¹⁷ Table 5-2

⁸¹⁸ Table 5-1 Solo upright cycle is 0.65m. So 2 cycles passing along 2m path have 700mm clearance and a cycle passing one with a trailer would still have 500mm clearance.

⁸¹⁹ See McKay rebuttal para 4.29.

⁸²⁰ CD2.35 Appendix D

Route to Ripley

425. See Updated Strategy at 4.52-74.
426. This was a route identified by Mr Russell as one of the routes he would focus on to deliver “*something really special*”. It connects the WNS to the longer Painshill to Guildford route being much improved by NH as part of the J10 DCO works and aims to extend the improvements provided for by the J10 DCO into the heart of Ripley .
427. Ripley is a sustainable location with a number of key amenities including convenience shopping, independent shops, restaurants, and civic amenities. As set out in the Table at paragraph 4.51 of the Updated Cycle Strategy it will take only 9-13 minutes to cycle from the centre of the site to Ripley. Other less direct routes via Rose Lane were considered but rejected.
428. After joining the DCO’s 2 way segregated cycle path on the WLD and around Ockham Park Roundabout, the route joins back onto Portsmouth Road further to the west. Travelling westbound cyclists will be on a segregated track. Travelling eastbound there is a stepped cycle track⁸²¹, separated by a flat bullnose curb.
429. There is a pinch point over the bridge at entrance to the village so speed management is required⁸²² to achieve a safe mixed traffic environment. The traffic will be slowed to 20mph. This has been safety-audited and approved. No party at the inquiry voiced objection to this aspect.
430. NH and SCC are discussing further traffic management measures in Ripley itself to deal with the DCO outcomes, and mitigate any potential community severance. No details are available on this as yet. As we know the traffic effects of the DCO scheme included the WNS. Cycle Parking is proposed, indicatively described as outside Tablot Inn, opposite Rose Lane and at Ripley Green (Appendix D CD 2.35).

Route to Byfleet

431. Updated Cycle Strategy para 4.75-4.99.

⁸²¹ At a slightly higher level to the existing carriageway

⁸²² CD2.35 at para 4.65

432. This route was one of the two previously promoted on the WPIL appeal. It has been further improved by the WLD bridge and the formalisation of the bridleway status of Muddy Lane.
433. It is a particularly attractive route in that it is considerably shorter being 3.1 miles long compared with 7.1 miles via road. This means that it would take a commuter the same time to travel by bike as it would be car and be 3 minutes quicker than the car on an e-bike.⁸²³ Mr Clare was supportive of this route.
434. One part of the route relies on the improvements required by what is now Condition 8 of the RHS Wisley planning permission. While the RHS appears to be seeking to avoid delivering the required connection, they also confirm that it is not their intention to frustrate the delivery of cycle routes.
435. Muddy Lane has now been upgraded to a bridleway and confirmed as such by the High Court. SCC are addressing some of the outstanding physical obstructions and the works proposed by the Appellant will address the rest.
436. Mr McKay's survey at Table 17 para 10 of his proof shows that the route is already used by cyclists.

Route to Cobham

437. This is a route derived from the public consultation that flagged Cobham as a high priority destination and the subsequent analysis of amenities which ranked it highest of the surrounding settlements. See Updated Cycle Strategy from para 4.100.
438. It is also an efficient route. As shown at Mr McKay's paragraph 10.32 the route to Cobham takes only 2 minutes longer by ebike than the car.
439. It is already a popular route for recreational cyclists: see Mr McKay's Table 17.
440. There is reason for concern about flooding. This has been specifically investigated by Chartered Civil Engineering Consultants GTA ⁸²⁴ who conclude, based on both desktop and onsite assessments, that the risk comes from surface water rather than fluvial flooding⁸²⁵. Resilience measures are proposed (as indicated in Mr Cooper's ID1.5A). A

⁸²³ Mr McKay in EiC.

⁸²⁴ CD 2.35 Appendix F

⁸²⁵ Ibid, see conclusions.

backup route is proposed details of which will be highlighted to residents via the residents' welcome pack and other media⁸²⁶.

441. Cycle parking is proposed, indicatively shown on Hollyhedge Road (Appendix D CD 2.35).

Route to Stoke D'Abernon

442. See Updated Cycle Strategy from para 4.122. This is an alternative route to a railway station (Cobham and Stoke D'Abernon) and also makes use of a well-used path. The survey at Table 17 of Mr McKay's proof shows that it is already used by cyclists and he understands from discussion with SCC PROW team it is used to access local schools.
443. It could provide an alternative route in the event of flooding on Plough Lane and the travel pack materials will make this plain. There is scope for notification of this route in the event of Plough Lane flooding, via the Travel Plan co-ordinator.
444. The majority of this route is quiet rural lanes and a traffic-free section towards Stoke D'Abernon.
445. This is another route that offers a competitive journey time being only 4.1 miles via the cycle route but approximately 4.8 miles via road. The journey times are longer by bike but only by 2 minutes on an e-bike. Cycle Parking could be improved at the station.

⁸²⁶ CD2.35 para 4.121. Mr McKay explained the alternative route via Stoke D'Abernon, accessing Cobham from the east along Tilt Road and Stoke Road. More confident cyclists may choose to re-route via Downside Road. Figure 4.1 in CD 2.35 shows the direct route via Plough Lane in a continuous red line, with the two diversionary routes shown in dotted red lines.

A website / social media channels could also be established to issue notifications of when the route via Plough Lane is flooded. There is also the option for people to use the bus service to Cobham as an alternative. There may be an opportunity for SCC to locate a depth gauge on Plough Lane to help inform road users as they reach the flooding point.

ANNEX 7 - RESPONSES TO OTHER CLOSINGS

PARA. NO. OF CLOSING	RESPONSE																					
(i) GBC																						
39	It was agreed at the conditions session that conditions 4 and 9 (aeronautical navigation beacon) are not necessary in the light of the evidence.																					
49	The Appellant does not accept that the evidence before the inquiry demonstrates the need for provision of skylark mitigation in perpetuity. Existing plots will be lost, but they are not currently secured and are vulnerable to changes in land management practices. This is relevant to the scope of any mitigation. The Appellant's position is that the circumstances which justify provision mitigation now is the current evidence of declining numbers – which underpins its “red list” status. Accordingly, it is submitted that the condition should allow for the mitigation scheme to fall away when no longer needed.																					
(ii) WAG/OCKHAM/RHS																						
3 – <i>“As the previous Appeal Inspector observed ‘The long, linear shape of the site does not assist in the creation of a sustainable community’”</i>	The Inspector will remember that the WNS as allocated is less linear than the WPIL scheme, as it includes the Hallam and Harris land. In any event, see paragraph 137 and fn 711 – to the extent that the Appeal Scheme can still be said to be linear this is dictated by the allocation.																					
15 – Appeal Scheme <i>“secure[s] far less than the policy or the previous application sought.”</i>	<p>In accordance with the expectations of Inspector Bore, the Appeal Scheme will deliver each of employment land, school, shops and community facilities.</p> <p>The comparison between the Appeal Scheme and the WPIL scheme is not correct. A comparison is set out below. You, Madam, have the WPIL s106 at CD9.5 and 9.6.</p> <table border="1"> <thead> <tr> <th></th> <th>WPIL Appeal</th> <th>This Appeal</th> </tr> </thead> <tbody> <tr> <td>Nursery (x2)</td> <td>Yes</td> <td>Yes</td> </tr> <tr> <td>Primary School</td> <td>Yes (2FE)</td> <td>Yes (scope to go to 3FE)</td> </tr> <tr> <td>Secondary School</td> <td>Yes but SCC opposed on-site and so there was option for off-site contribution</td> <td>Off-site contribution</td> </tr> <tr> <td>Community Building (500sqm)</td> <td>Yes</td> <td>Yes + WACT offices 50-100 sq m</td> </tr> <tr> <td>Health Centre (500 sqm)</td> <td>Yes (off site option £1m)</td> <td>Yes (off site option or hybrid £2m+)</td> </tr> <tr> <td>Library</td> <td>Offsite contribution of £100k</td> <td>Yes (off site option)</td> </tr> </tbody> </table>		WPIL Appeal	This Appeal	Nursery (x2)	Yes	Yes	Primary School	Yes (2FE)	Yes (scope to go to 3FE)	Secondary School	Yes but SCC opposed on-site and so there was option for off-site contribution	Off-site contribution	Community Building (500sqm)	Yes	Yes + WACT offices 50-100 sq m	Health Centre (500 sqm)	Yes (off site option £1m)	Yes (off site option or hybrid £2m+)	Library	Offsite contribution of £100k	Yes (off site option)
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	Police	Contribution / on-site space (£85k)	Contribution/ on-site space (c. £330k)
	Mobility Hub	No	Yes
	Local Centre (retail etc)	Yes - condition re: village centre implementation plan. (2,240 sq m)	Yes - 600-1100 sq m retail + mixed use Class E flexible 550 sq m.
	Employment Area (B2/B8)	Yes - 2500 sq m B2/B8	Yes - 2500 sq m B2/B8
	Energy Centre	No	Yes
	Offices/ Innovation Centre	Offices only - 1800 sq m.	Offices 1800-2500 sq m offices + Innovation centre.
	Sports Pavilion	Yes	Yes
	SANG cafe	No	Yes
	Temp Community Building	Yes	Yes
18 (ii)-(iii)	<p>The average figures derived at pg 4 of the Trip Generation Note⁸²⁷ are not wrong/incorrect.</p> <p>Each row presents a figure which (depending on the category) are either the trip rate for a specific site (e.g. Dunsfold) or the average trip rate for a category of sites (i.e. TRICS Sites Surrey (Mixed private and affordable).</p> <p>The row entitled "Average Excluding West Horsham" is calculated averaging the relevant figures above it (i.e. the figures in the first five rows). It is mathematically correct.⁸²⁸</p> <p>It is correct to note that this entails an 'averaging of averages'; but the only effect of this (not discussed by Mr Russell or put to Mr McKay). Is to change the <i>weighting</i> given to particular sites / inputs.</p> <p>In practice, the effect of the approach taken is to increase the weight given to Dunsfold Park (which has the same mathematical weight as each of the other grouped categories). However, this is entirely appropriate given that it is obviously the most comparable site. This is expressly justified in the Trip Generation Note commentary section (see pg 1-3).</p> <p>This note (and the methodology described) was finalised in consultation with SCC - who have agreed the trip generation rates derived. See Appendix G.4 to</p>		

⁸²⁷ Appendix B to Mr McKay's proof

⁸²⁸ $(0.440+0.292+0.452+0.439+0.444)/5 = 0.4134$, rounded to 0.413

	the TA (CD2.22) – in particular Mr McKay’s email of 26 March 2021 to Mr Cooper which states “ <i>I have revised our trip generation note and reviewed the method we talked about using.</i> ”
18 (iv)	It is right that the TRICS sites identified are not, in themselves “new town/settlement” sites. However, Dunsfold is and this greater similarity is reflected in the greater weight it is given (see response to 18(ii)-(iii) above.
20 – “ <i>The Hallam land vehicle trip generation figures, again derived from TRICS, show much higher levels: 0.511 against 0.426 in the AM peak; 0.503 against 0.413 in the PM peak</i> ”	The figures derived for the transport assessment of the Hallam site is not an appropriate comparator. As the extract provided by Mr Russell shows, it has been derived in a context where permeability with the wider A35 allocation is uncertain and hence uses much smaller sites as its comparators. ⁸²⁹
24 – “ <i>This is part of a pattern of Taylor Wimpey trying to make it as difficult as possible for the public and the Inspector to understand their modelling.</i> ”	Obviously this is refuted. The Appellant has responded to every request for information. The application was preceded and supported by an exemplary programme of engagement. While choices have to be made as to what material to put before the decision-maker (over disclosure can be its own form of obfuscation) the Appellant and its consultants have sought to assist all parties to understand the Scheme at every stage.
27	Much of this is new evidence, unsupported by anything addressed by Mr Russell. Mr Harwood’s questions to Mr McKay have already been addressed. The Inspector will note the position of GBC, who called Mr Cooper, who confirm in their closing at paragraph 16 their view that: <i>“This conclusion is not disturbed by the “rabbit out of the hat” issue that RHS/WAG has sought to raise regarding the LinSig modelling for the Ockham Park Roundabout. As you would expect, having regard to the detailed scrutiny the access proposals have undergone, this issue was raised and considered months ago by the highway authorities and resolved to their satisfaction.¹⁸ The transport assessment as a whole is robust and there is no conflict with paragraph 111 of the NPPF. Neither did the purported discrepancies¹⁹ alighted upon by RHS/WAG between LinSig and SATURN outputs amount to anything that would lead to the conclusion of an unacceptable safety impact or any severe residual cumulative impact on the network.”</i>
29 – submission that SATURN should have been run	This is without merit. NH reviewed the revised LINSIG modelling and did not ask for the SATURN model to be rerun. The SATURN model already contained a model of the junction which was not infected by the error in the coding for the original LINSIG layout – so it is unclear how a “rerun” would result in different outputs.
30 “ <i>That is a severe impact on the local highway network</i> ”	As above, this was unsupported by any evidence from Mr Russell. This is particularly egregious. “severity” in

⁸²⁹ Mr Russell rebuttal Appendix C.

	<p>traffic terms is a quintessential question of highways planning evidence. There is no basis for Mr Harwood's submission. Mr McKay when XXd refuted the suggestion that there was an capacity issue let alone a severe impact. Mr Cooper also confirmed there was no severe effect in his evidence.</p>
<p>41 <i>"Taylor Wimpey have failed to [design Cycle routes to comply with LTN1/20]...They have crippled their design by being determined to stay within the highway boundary. That means they have not designed routes which comply with A35, ID9 and LTN1/20"</i></p>	<p>As set out above at paragraph 117(3), no witness during the evidence suggested that ID9 could require the use of compulsory purchase powers to deliver route required by site specific policies.</p> <p>Mr Harwood now appears to make that argument by contending that Taylor Wimpey have <i>"crippled their design"</i> by staying within the highway boundary. This is hopeless and completely ignores the clear implication of ID9(3) which sets out the mechanisms to be used in securing the desired routes.</p>
<p>46 Horsley is <i>"the only other likely rail destination"</i></p>	<p>There is no evidential basis for this submission. Indeed Mr Clare and Mr McKay both referred to the possibility of connecting to Byfleet & New Haw Rail Station (see Updated Cycle Strategy at pg 47 (CD2.35)) and the fourth route is to Cobham & Stoke D'Abernon Station (Updated Cycle Strategy at pg 53, see also Annex 6 of this speech at paragraph 443).</p>
<p>56 <i>"Consequently there is no certainty that the necessary traffic regulation orders will be made. The planning obligation means that in such cases the works will not be carried out for the substantial parts of the routes which require speed limit reductions."</i></p>	<p>There is no need for certainty. SCC have confirmed their commitment to delivering the routes which accord with GBC's wider aspirations under Policy ID9.</p> <p>Mr Harwood was not present, but, as we set out at paragraph 158 of the speech above, Mr Russell addressed this in giving his evidence in chief. He expressly said that <i>"I have heard what SCC say in terms of commitment and am no longer concerned"</i> and when questioned further my you madam, <i>"SCC say they will do it so I am taking them on their word for that"</i>.</p>
<p>58 <i>"no confidence that [railways improvements] will be made in whole or major part"</i></p>	<p>This point departs from the evidence. Mr Cooper explained SCC's approach in his EIC. Mr Russell made no criticism. As Mr Murray said during the s.106 session, it is expected that all of the proposed measures would come forward together but partial proposals would also be possible.</p>
<p>61-62 - acceptance that likely significant effects on the SPA cannot be excluded as a <i>"fundamental change"</i> from the position on the WPIL appeal.</p>	<p>This submission does not acknowledge the impact of People Over Wind which has changed the approach to be taken to the screening of likely significant effects: see fn 667 above.</p>
<p>66. <i>"The advice is to restore and increase the heathland."</i></p>	<p>This is an oversimplification of the COSA. The COSA states: <i>"Where habitat conditions are currently unsuitable, management should seek to increase the availability and continuity of lowland heath or other suitable open habitat."</i> This is generic advice across the TBH SPA as a whole, it does not indicate a requirement to increase heathland at Ockham and Wisley Commons. To the contrary the DCO examination established that the current area of heathland was sufficient for the achievement of SPA</p>

	bird favourable conservation status, and that there was no requirement to increase the area of heathland.
78 <i>"The change is due to the running of new modelling, but also to two other factors. Firstly the very recent recognition by the air quality community that ammonia emissions from vehicles are a significant source of pollution. The need to assess ammonia emissions is recognised in Guildford's Development Management Policies, but not otherwise widely in policy and guidance. However there is a need to consider the best scientific knowledge. Those effects have to be considered, including where the 1% exceedance is more than 200 metres from a road."</i>	Paras 78 and 79 contain several incorrect statements. <ol style="list-style-type: none"> 1. The change is not due to running of a new model. 2. The increase over time is due to the inclusion of ammonia - in a highly precautionary way based on CREAMv1A. 3. The revision of the critical loads has no impact on the trend over time. It is just a change of assessment level.
84 <i>"The Air Quality modelling and its reporting has been strewn with errors"</i>	It is not - see the main closing above that analyses all of the alleged errors and where these are left in the light of the oral evidence.
<i>"The modelling has used seven verification groups ... which appears to be unprecedented"</i>	See 209(3)(c) of the main closing - the scale of monitoring is unprecedented and that is reflected in the number of verification factors.
85 - <i>"These differences are caused by errors in the model which Taylor Wimpey don't know about. They are correcting for things that they don't know what they are correcting for"</i>	This statement is true of any air quality modelling. It would be true of any air quality modelling undertaken by AQC, SWP and any other consultancy. They would all recognise this as a feature of air quality assessment. This is not, as seems to be suggested, some unique feature of this case. Dr Tuckett-Jones dealt with the reasons why the model may be performing differently in different locations in full in her EIC.
86 - on the use of multiple verification factors - <i>"It is not possible to predict for the future when you can't understand why the model can't describe the present"</i>	The majority of the model area is well represented. And multiple groups are at the edges of the model. See further the main closing above.
88 - <i>"adjusted to 2019 by what were said in the AQA to be constant factors. Yet those adjustments changed the figures both up and down when they should have been constant in one direction"</i>	Dr Tuckett-Jones was not asked in XX about adjustment to 2019 other than one short question on whether it was the median shown on graphs that was used. Where you are projecting forwards in time, the factor would be a decrease in concentrations; where you are projecting backwards in time, the factor would be an increase in concentrations i.e. fitting in with the general trend of improving concentrations over time. Mr Harwood seems to be confusing bias adjustment (which Dr Tuckett-Jones was asked about in XX) and the projection between years, which she was not. So this goes nowhere.
88 - <i>"Dr Tuckett-Jones came up with a completely new explanation of the procedure in cross-examination to try to explain the figures"</i>	This is simply not correct, she did not.
89 - quoting Dr Marner - <i>"The number of errors which I have observed, including many which are fundamental to all aspects of the assessment, make it impossible to have any confidence in the air quality modelling which has been carried out, or any conclusions which are drawn from it"</i>	As set out in detail in the main speech Dr Marner failed to identify any errors in modelling. He drew attention merely to some typographic errors in the reporting of the modelling. The other points are matters of professional judgment.
90 - <i>"Extreme" view of Dr Brookbank</i>	This submission follows Mr Baker in a flagrant mischaracterisation of Dr Brookbank's approach (see paragraph 244(c)(i) above) which is set out in her proof

	<p>at para 2.70-75. Her point in her rebuttal was that Mr Baker’s approach was oversimplistic and that an appropriate assessment for an SPA <u>should be focussed on the birds</u>, the habitats being important only insofar as they are required to support the birds.</p> <p>She certainly never suggested that the air quality modelling was unnecessary – indeed, the extent of nitrogen deposition it is central to much of her evidence on the impact on the SPA.</p>
<p>94 – “list of investigations which she said that Mr Baker should have carried out for the Rule 6 Party”</p>	<p>This is not what Dr Brookbank said. Her list was a list of factors that influence nitrogen accumulation in soil which give reasons why an exceedance of critical loads do not already lead to adverse effects even on <i>habitats</i> (remembering the distinction between SACs and SPAs). Further, the list is incomplete and includes hydrology and management. There is no requirement for investigations of these factors to have been carried out. Neither NE nor GBC’s ecologist ever asked for any of these matters to be considered prior to sign off of the appropriate assessment. The HRA was scoped with these authorities.</p>
<p>102 – inference that WPIL inspector had not had to apply an equivalent degree of precaution because he had not carried out appropriate assessment and so had applied the ‘beyond reasonable scientific doubt’ test.</p>	<p>This is not an accurate reflection of the legal approach. Properly speaking there is no rigid separation between the “screening stage” and full appropriate assessment. As Lord Carnwath put it in <i>Champion</i> (CD11.15)</p> <p><i>“41 The process envisaged by article 6(3) should not be over-complicated. As Richards LJ points out, in cases where it is not obvious, the competent authority will consider whether the “trigger” for appropriate assessment is met (and see paras 41 – 43 of Waddenzee). But this informal threshold decision is not to be confused with a formal “screening opinion” in the EIA sense. The operative words are those of the Habitats Directive itself. All that is required is that, in a case where the authority has found there to be a risk of significant adverse effects to a protected site, there should be an “appropriate assessment”. “Appropriate” is not a technical term. It indicates no more than that the assessment should be appropriate to the task in hand: that task being to satisfy the responsible authority that the project “will not adversely affect the integrity of the site concerned” taking account of the matters set in the article. As the court itself indicated in Waddenzee the context implies a high standard of investigation. However, as Advocate General Kokott said in Waddenzee [2005] All ER (EC) 353, para 107:</i></p> <p><i>“the necessary certainty cannot be construed as meaning absolute certainty since that is almost impossible to attain. Instead, it is clear from the second sentence of article 6(3) of the Habitats Directive that the competent authorities must take a decision having assessed all the relevant information which is set out in particular in the appropriate assessment. The conclusion of this assessment is, of necessity, subjective in nature. Therefore, the competent authorities can, from their point of view,</i></p>

	<p><i>be certain that there will be no adverse effects even though, from an objective point of view, there is no absolute certainty."</i></p> <p><i>In short, no special procedure is prescribed, and, while a high standard of investigation is demanded, the issue ultimately rests on the judgment of the authority."</i></p>
110 – <i>"Taylor Wimpey' consultants have also taken the bizarre step of monitoring with their detectors set at zero crossing. That is like watching snooker with the TV screen turned down to black and white. The reason given (in oral evidence) was that it would make the results consistent with poorer quality surveying which had been carried out previously"</i>	Mr Harwood submits that the rationale for maintaining consistent approaches to surveying techniques is "ridiculous", but notably does not deal with the current (2023) Bat Conservation Trust guidelines which directly supports the approach taken. See paragraph 254(2) above.
111 - Barbastelle records 'withheld from the inquiry'.	This is not correct or fair. The existence of Barbastelle records was clearly set out in the evidence including the Updated Survey Results Note (see discussion at paragraph 255 above). No request for them was made by Mr Baker or any other party. At set out at paragraph 255(2), Dr Brookbank's provision of the detail followed on from Mr Baker's EiC where he speculated (for the first time) as to where on the site the recordings might have been made.
<u>(iii) THE HORSLEYS</u>	
2.1 <i>"During his Evidence-in-Chief on behalf of the Appellant, Mr Collins described Site Policy A35 as "the most important policy" for determining this appeal. I agree with him up to a point but there are also other Local Plan and Neighbourhood Plan policies which are very significant too, as I shall come on to later"</i>	Mr Smith in XX accepted unequivocally that Policy A35 was the most important policy. That was his evidence. So his closing contradicts his own evidence.
2.3 – 2.6 Policy A35(1) – primary access	Mr Smith accepted in XX that this was complied with. His closing seeks to directly contradict his own evidence. He seeks to justify this complete <i>volte face</i> by saying that new evidence emerged showing more vehicles now use the Old Lane access. But this is just wrong. The modelling always showed this to be the case. Mr Smith has misunderstood the transport evidence. So there is no justification here for the attempted <i>volte face</i> .
2.7 – 2.11 Policy A35(4) – Burnt Common Slips	Mr Smith in XX accepted that A35(7) applied to A35(4). That concession is omitted from his closing. Mr Smith Burnt Common Slips is dealt with in the main closing at paras. 75(4), 402 and 403. Mr Smith ignores the fact that GBC, SCC and NH all specifically agreed that – post the J10 DCO - Burnt Common Slips are not required to mitigate the impacts of the scheme. That was Mr McKay's view. Even Mr Russell said he was unable to say that Burnt Common Slips was required.
2.12 – 2.21 – Bus services	There is a selective reliance by Mr Smith on Mr Russell's evidence, omitting his acceptance that the proposed bus service was "good". These matters are dealt with in the main closing in detail and were discussed in full at the s. 106 session which Mr Smith did not attend. The s. 106

	<p>binds the WACT to in-perpetuity provision of bus services.</p> <p>Mr Russell's point, to which Mr Smith points, as to the absence of a "guaranteed service level" is a bad point. In EIC Mr McKay explained that SCC had not required the definition of "a minimum service level" at this stage of planning. It has instead proceeded on the basis that the proposed services will operate as set out in the Public Transport Strategy – and this is secured by the s. 106. To have a minimum service level could potentially risk dropping to that at some point instead of addressing the issue which is to seek to keep the service level proposed.</p>
2.23 - 2.26 – Policy A35(6) – cycle routes – and see especially para 2.2.6 "I also agree with the position of WAG that the "comparable mitigation" clause in requirement 7 does not relate to transport infrastructure but to "other" infrastructure"	<p>Mr Smith in XX accepted the precise opposite position was the case. He accepted that A35(7) applied to A35(6): see the main closing para. 403. This <i>volte face</i> is again unjustified.</p> <p>Cycle routes are dealt with in detail in Annex 6 by reference to the evidence.</p>
2.33 – Policy A35(11) - SNCI	<p>Not correct, there are measures to mitigate the harm to the SNCI – i.e. BNG, expansive SANG etc. All of this was addressed in Dr Brookbank's oral evidence. Plus the test in Policy A35(11) is to reduce the harm but accepting some harm will occur.</p>
3.2 – 3.8" ... detailed visitor analysis submitted by my clients in their September 2022 objection, which demonstrated how the very large number of dogs at the settlement (estimated at 723 dogs from national pet profiles) would inevitably overwhelm the nearby SPA, which lies very close by and is easily accessible along four separate PROW's" and see also 5.6	<p>This evidence given by Mr Smith – and fully refuted in XX and ReX by Dr Brookbank - can carry very little, if any, weight against the expert views of NE and Dr Brookbank on these matters.</p> <p>No ecologist (including Mr Baker) gave any evidence to support Mr Smith's analysis of dogs living at the WNS.</p> <p>The view of the Ockham & Wisley Commons site manager (see the Horsley's closing at para. 3.11) can not be accorded anything like the weight that is accorded to NE as the appropriate nature conservation body. As noted above NE has given lengthy and detailed consideration to the SANG and visited the site a number of times. Mr Smith says he has no confidence in NE's views. That is, with all due respect, of little significance.</p> <p>At para 5.6 Mr Smith misrepresents the WPIL appeal on this matter. The SANG was challenged by RSPB and WAG but found to be acceptable by the Inspector and S/S.</p>
3.13 – 3.15 Place-making	<p>The only point pursued by Mr Smith in closing is in relation to "garden squares". The very limited case being made on design is telling. Mr Smith, of all the Rule 6 Parties, advanced the most detailed case (albeit still not very detailed). In closing his design case comes down to quibbling on the design proposals for garden squares.</p>
3.18 – Policy ID9	<p>The Healthy Streets for Surrey guide to which Mr Smith refers helps the Appellant, as Mr Collins explained in ReX. Policy ID9 is dealt with fully in the main closing.</p>
3.20 – 3.22 – amenity (and see also para. 5.16)	<p>The view of Mr Smith that there is any harm to the amenity of local residents. This is not supported by any other planning witness. Construction impacts are to be</p>

	managed by conditions dealing with a CEMP. Mr Smith's concerns were not shared by officers: see CD4.1 and Mrs Yates proof and oral evidence.
3.23 - 3.24 - Rural economy (and see also para. 5.5)	Mr Smith accepts the loss of BMV is inevitable. He still though in closing seeks to accord some weight to this loss. In XX he accepted this matter could carry no weight. So again Mr Smith's closing is not consistent with his own evidence.
3.25 - 3.27 - AONB (and see also paras. 5.2 and 5.3)	No other planning witness has raised these issues. The only landscape witness called, Mr Davies, refuted the points.
4.1 - 4.13 - the Neighbourhood Plan	In his proof Mr Smith alleged breach of 15 Neighbourhood Plan policies. That was always wholly unsustainable and out of kilter with all the other planning witnesses. In closing he focuses on 5 only: LNPH1, LNPH3, LNPI3, LNPI6 and LPEN4. These are all dealt with fully in Annex 2. In relation to most of these 5 policies - all but LNPI6 - the allegations of breach are based on alleged harm to the SPA. These issues are dealt with in the main closing. Mr Smith can add no relevant ecological evidence on these issues.
Section 5	Here Mr Smith seeks to row back from a number of concessions he made in XX as to the harms and benefits of the Appeal Scheme. The evidence he actually gave is properly reflected in Annexes 2 - 3 of this closing.
<u>(iv) RIPLEY AND SEND</u>	
p. 1 - 2 Burnt Common Slips	<p>The inconsistent position of RPC on Burnt Common Slips is dealt with in the main speech. Cllr Osborn's closing seeks to suggest that the Appellant's position is inconsistent because on the last appeal the Slips were promoted. This is a good try. But it fails:</p> <ol style="list-style-type: none"> 1. The previous appellant was WPIL. The appellant is now Taylor Wimpey which acquired WPIL. So the appellants are not the same between the two appeals. 2. Moreover, the traffic modelling pre J10 supported the Slips. Despite that RPC opposed it. Now the modelling makes clear that post J10 there is no need for the Slips. Now RPC opposed the Appeal Scheme for not providing the Slips. What then is the reason for this very odd position being taken by RPC? Odd because RPC seem to support on each appeal the position that is in fact contradicted by the evidence. It is very simple. Whatever a promoter of this site proposes RPC will oppose. 3. Cllr Osborn ignores the fact that GBC, SCC and NH all specifically agreed that - post the J10 DCO - that the Burnt Common Slips are not required to mitigate the impacts of the Appeal Scheme. That was Mr McKay's view as an expert transport professional. That was also Mr

	<p>Cooper's view as a transport professional. In XX Mr Russell said he was unable to say that Burnt Common Slips was now required. There is thus <i>no</i> expert evidence whatsoever supporting the necessity of Burnt Common Slips.</p> <ol style="list-style-type: none"> 4. Reliance on Inspector Bore's conclusions on the necessity of the Slips is nothing to the point. The GBLP was adopted before the J10 DCO had been applied for let alone granted. Mr Collins confirmed this when XXd by Cllr Osborn. 5. There are alternative mitigations - including speed reduction measures - and which fall within A35(7) and which therefore override A25(4).
(v) VAWNT	
P. 1 <i>"The failure of Taylor Wimpey to actually engage with residents rather than just give presentations and the continued lack of answers to questions asked during the Community Liaison Group Meetings."</i>	<p>VAWNT rejected meetings, so it lies ill in their mouths to make this complaint.</p> <p>Despite Mrs Porter's comments about engagement, the CLG for example was made up of 20 community stakeholder representatives who agreed the topics, were given the opportunity to ask questions, and review the meeting minutes before they were published on the community website. Indeed, on the contrary Mrs Punter (CEO of the Surrey Chamber of Commerce) who spoke in support of the scheme commended TW on these engagement meetings.</p> <p>See also paragraph 33 of the speech above.</p>
P. 1 <i>"has proved to be riddled with inaccuracies, mistakes and errors that have cast so much doubt on the validity of what has been submitted"</i>	That is wholly refuted.
P. 2 the trigger for the primary school	This is what SCC - as education authority want. The Appellant must rely on SCC on these matters.
P. 2 <i>"The latest idea from SCC is the hypothetical solution of a school at Gosden Hill. The head of GBC planning has advised that "this site remains some way off being submitted as an application". So where will the children from the appeal site go in the meantime?"</i>	What is the source of the evidence of the head of GBC planning? Where was this advised? No reference is given to any evidence before the inquiry.
P. 2 <i>"the initial lack of a primary school and the permanent lack of an on-site secondary school will create more traffic - has this been modelled? We think not!"</i>	The worst case has been modelled. This is made clear in the TA. This was accepted to be the case by Mr Russell when XXd.
P. 3 <i>"We heard WAG's Air Quality Expert raise queries on the errors (think the Appellant just called them mistakes?) whatever they were, the Appellant's expert had to clarify that an error had been made, which had to be rectified and then those results also had to be adjusted.... all very concerning"</i>	<p>This is a misunderstanding of the evidence.</p> <p>The vast majority of the points raised by Dr Marner were not errors or mistakes. They were differences in professional opinion. There were a small number of typographical errors in the reporting. There were none identified in the modelling.</p>
Pp. 3 - 4 SANG	<p>There is nothing raised here that has not been fully addressed in the evidence of Dr Brookbank and through consultation with NE.</p> <p>The arguments around the footpaths are identical to those run and rejected by the RSPB and VAWNT at the</p>

	WPIL appeal and were rejected by Inspector Hughes and the S/S.
P. 3 <i>"this site is just in the wrong location being too close to the SPA, the SSSI and the SNCI"</i>	The Appeal Site is allocated. This is an objection in principle to the proposal. It therefore carries no weight.
P. 3 criticisms of Dr Brookbank	A series of wholly unjustified, unfair and misconceived criticisms were made. Dr Brookbank's evidence was impeccable. Despite the days of questioning not one cross-examiner got anywhere at all. A number of the submissions made by VAWNT are predicated on numerous misunderstandings of the ecological evidence given.
P. 5 reliance on views of Surrey Nature Partnership	The letter (CD3.104) in referring to a proposal for 2068 homes is referring to the WPIL appeal prior to its amendment. It is unclear that SNP have any actual understanding of the Appeal Scheme.
P. 6 - Cat predation	Misconceived: see main closing at section 3.4.4.2.
Pp. 6 - 7 Skylark	There is no issue given the proposed conditions and s. 106. This is agreed with GBC. The account of the proposals in VAWNT's closing is inaccurate and must be treated with caution.
P. 7 - loss <i>"of open countryside with PROWs altered beyond recognition will effectively mean any existing sense of amenity will be totally lost"</i>	The characterisation of the scale of loss of amenity is not accepted: see Mr Davies evidence. In any event this is an allocated site. Some loss is inevitable. This is an objection to the principle of the development.
P. 8 <i>"With the best will in the world people will use their cars to get to work. That pop to shops will not be on the bus, the doctor's appointment when you are poorly will not be on the bus, that lunch or dinner with friends in Cobham, Ripley, Horsley or Guildford will not be on the bus, they will be in the car."</i>	The policy requirement is to offer sustainable choices. The Appeal Scheme does this. A developer cannot force people to travel in a particular way but it can give them options that include sustainable choices.
<u>(vi) MR WISE/ COBHAM</u>	Mr Wise's unsolicited closing makes no substantive points of any merit. All of his points have been dealt with fully in the body of the main closing. As we have come to expect with Mr Wise: (i) the document is riddled with errors and misunderstandings of the evidence (e.g. that the Appellant <i>"will make the site sustainable but only by the end of the development, at least a decade from now"</i> - wrong; <i>"the Appellant does not intend to deliver any social rented homes"</i> - wrong;); and (ii) its tone is highly intemperate (<i>"the developer has treated the Inquiry with disdain"</i> and with <i>"disrespect"</i>). Mr Wise submits <i>"the inspector should apply no weight to the provision of houses at this site."</i> That submission really sums up Mr Wise's evidence - and that of many of the third parties and Rule 6 Parties. It is a submission that is contrary to the statutory Development Plan, the NPPF and all the evidence given to this inquiry by professional planners (including those giving evidence on behalf of WAG and the Horsleys).