APP/Y3615/W/16/3159894

LAND AT WISLEY AIRFIELD, HATCH LANE, OCKHAM GU23 6NU

CLOSING STATEMENT ON BEHALF OF THE APPELLANT

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1. Introduction

1. This appeal seeks planning permission for a new sustainable settlement of up to 2,068 dwellings[1] (of which 40% are to be affordable housing) together with community provision, nursery provision, a primary school, a secondary school, a health facility, a local centre, an employment area and sports and recreational facilities including an area of SANG[2] ("**the Appeal Scheme**") on land at Wisley Airfield, Hatch Lane, Ockham GU23 6NU ("**the Appeal Site**").

2. The decision whether to grant planning permission for the proposed new settlement falls to be determined in the context of an acute need within Guildford borough for both market and affordable housing. Guildford Borough Council (**"GBC"**) agrees[3] that its current housing land supply is just 2.36 years and accepts that land will have to be released from the Green Belt in order for the need to be met[4]. The Appeal Site contains the largest area of previously developed land ("**PDL**") within the part of the Metropolitan Green Belt that lies within Guildford borough.[5]

3. A second highly significant aspect of the context to this appeal is that GBC is one of only 7% of local planning authorities in England without a post-2004 Local Plan. The application for planning permission for the Appeal Scheme was originally made to support the emerging Guildford Borough Local Plan ("**eGBLP**") process. Unfortunately that process has been delayed by a number of years[6]. It is the Appellant's case that but for that delay the Appeal Site would already have been removed from the Green Belt and allocated.

4. As a result of the delay, the present position is that, having been included in successive versions of the eGBLP over the last four years, an area of land of which the Appeal Site is the largest part is allocated in the June 2017 Proposed Submission version of the eGBLP[7] for a residential and mixed-use development pursuant to

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[1] Including up to 60 C2 units and 8 Gypsy and Traveller pitches.
[2] Suitable Alternative Natural Greenspace.
[3] SoCG CD12.3 para 6.14.
[4] See the OR at CD6.1 para. 10.4.11 and also see the Foreword to the eGBLP itself: CD8.24 p. 5.
[5] Accepted by Mr Sherman in XX.
[6] The original proposal was to adopt in 2015, three subsequent LDSs have pushed this back to December 2018.
[7] CD 8.24.

draft Policy A35[8]. The eGBLP and the allocation that includes the Appeal Site is supported by an extensive evidence base prepared by GBC and expert consultants on its behalf. That allocation is now the largest in the eGBLP in terms of number of dwellings and is critical to GBC being able to plan to meet its housing needs, especially in the first ten years of the eGBLP plan period. The latest June 2017 version of the Sustainability Appraisal ("**SA**") in support of the eGBLP identifies a new settlement on the Appeal Site as a "*given*".[9]

5. GBC's long-standing support for the allocation of the Appeal Site in the emerging eGBLP demonstrates that it considers that the "*exceptional circumstances*" necessary[10] to justify removing the Appeal Site from the Green Belt are present.[11] GBC's case is that whilst there are exceptional circumstances that justify removing the Appeal Site from the Green Belt, nevertheless planning permission should not be granted for the Appeal Scheme because the "*very special circumstances*" ("**VSC**") that would justify approving the Appeal Scheme notwithstanding its impact on the Green Belt[12] are absent.

6. That position is not made good by the evidence, which in the Appellant's submission shows plainly that the potential harm to the Green Belt by reason of inappropriateness together with the limited other harm identified is clearly outweighed by other considerations, including the very significant benefits that the Appeal Scheme would secure. The requisite VSC are thus present.

7. We first address a number of overarching matters before considering the agreed twelve main issues in this appeal.

2. Overarching matters

8. These are the following:
    - 8.1. Policy context
        - 8.1.1. Existing development plan
        - 8.1.2. The eGBLP
            - 8.1.2.1. Compliance
            - 8.1.2.2. Weight

[8] The allocation also includes land to the south at Bridge End Farm. The allocation does not include the land proposed for SANG as part of the Appeal Scheme albeit that this land is proposed to be removed from the Green Belt: see para 4.11 of the SoCG (CD12.3).
[9] CD8.31 para. 6.6.12. It is also said "N.*B. This is an evolution of the position in 2016, when Wisley Airfield was taken to be a 'variable'. This position in 2016 reflected a decision taken by GBC Planning Committee (inline with a recommendation by Development Management Officers) in April 2016 to refuse a planning application, on a number of grounds. However, work was subsequently undertaken by site promoters, in collaboration with the Council, to consider means of addressing the various ground for refusal. The outcome was a greater degree of confidence in the potential for a new settlement at the site to be suitable, with the right planning application."*
[10] Pursuant to para. 83 of the National Planning Policy Framework ("**NPPF**").
[11] Confirmed by Mr Sherman in XX.
[12] See para. 87 of the NPPF.

8.1.2.3. Evidence base

8.1.2.4. Prematurity

8.1.3. Lovelace Neighbourhood Plan

8.2. The proper approach to the VSC test

8.3. The application of the NPPF

8.4. GBC's position: withdrawal of Reasons for Refusal ("**RfR**")

8.5. Position of Surrey County Council ("**SCC**")

8.6. RIS

8.7. The Wisley Airfield Community Trust ("**WACT**")

8.8. Environmental Statement ("**ES**") compliance

8.9. Design

8.10. Support for the scheme

8.11. Third parties

2.1. Policy context

2.1.1. Existing development plan

2.1.1.1. Weight

9. The adopted Guildford Borough Local Plan[13] ("**the Local Plan**") is out-of-date for the purposes of the NPPF. It was adopted over fourteen years ago, in January 2003.[14] Its plan period ran up to 2006: eleven years ago now. Its evidence base is twenty years old: work on the Local Plan began in 1997, followed by its Public Local Inquiry in 2000 and the Inspector's report in September 2001.

10. The Local Plan was saved a decade ago (September 2007), the Secretary of State making clear in issuing the Saving Direction[15] that the exercise of extending saved policies was "*not an opportunity to delay DPD preparation*", that GBC "*should make good progress*" with its local development framework and that the Local Plan policies had been "*extended in the expectation that they will be replaced promptly*". The progress expected by the Secretary of State has not occurred. Moreover, as already noted GBC is one of only 7% of local planning authorities in England without a post-2004 Local Plan.

11. GBC thus agrees[16] that the Local Plan is out-of-date. Its policies on housing provision (H1) and new residential development (H10) were not included in the September 2007 Saving Direction[17] and thus expired

[13] CD8.1
[14] See the Foreword.
[15] CD8.2.
[16] Statement of Common Ground ("**SoCG**") between GBC and the Appellant at para. 4.15; also XX of Mr Sherman.

in 2007. The other housing related policies in the Local Plan are less relevant to this appeal and in any event, their plan period ran to 2006.[18] No new housing policies have been adopted since the expiry of the relevant Local Plan policies. Mr Sherman accepted in cross-examination that GBC does not have any housing supply policies at all in its (saved) Local Plan.

12. As Mr Collins explains,[19] the origins of the Local Plan's Green Belt policies pre-date 2003. The Green Belt in Guildford borough was first designated under the 1987 Local Plan and its boundaries remained unchanged in the 1993 and 2003 Local Plans. National policy has, however, changed dramatically since the initial designation of the Green Belt in 1987, with local planning authorities now expected by Government to increase housing provision. Furthermore, the Local Plan would have been produced under the Green Belt guidance contained within PPG2 and in accordance with the relevant national (and regional) planning policy of the time, including for example policy in respect of new towns elsewhere in the south east.[20]

13. In the light of all the above matters (which were agreed by Mr Sherman in cross-examination), limited weight should be given to the adopted (2003) Local Plan.

14. The significant delay to the eGBLP process is evident from considering GBC's Local Development Schemes ("**LDS**") since June 2013.[21] These are summarised by Mr Collins at paras. 7.2 to 7.6 of his proof. In short, the eGBLP was originally due to be adopted in September 2015; the timetabled date for adoption then fell back to July 2016, December 2017 and December 2018. It is apparent that had any of the earlier LDS been followed, the eGBLP would by now have been adopted and the Appeal Site would no longer be in the Green Belt.

2.1.1.2. Compliance with the adopted Local Plan

15. GBC now alleges breach of only three Local Plan policies: RE2, G1 and G5. Whilst Policy RE2 (Green Belt) does not expressly refer to VSC, Mr Sherman agreed in cross-examination that it implicitly recognises VSC and that if VSC were established, the Appeal Scheme would comply with Policy RE2.[22]

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[17] CD8.2.
[18] As Mr Collins explained in EinC, his proof mistakenly states that these other housing policies ran to 2011.
[19] Paras. 10.5 and 10.6 of his proof.
[20] As Mr Collins explains at para. 5.16 of his rebuttal, the review of the Green Belt boundary that is being undertaken in the eGBLP provides GBC with the opportunity to update its Green Belt policy so that it reflects the NPPF, the present boundaries having been created under PPG2. For example, a number of villages presently washed over by Green Belt are proposed to be inset within the Green Belt with new settlement boundaries. This is because PPG2 allowed for major developed sites to remain in the Green Belt, whereas the NPPF does not support that approach. The Green Belt has remained unchanged in Guildford for over 30 years now: see below.
[21] CD8.40.
[22] See also the proof of Mr Collins at p.129.

16. Policies G1 and G5 relate to RfR8 (effect on character and appearance of the area). GBC does not consider that the Appeal Scheme would be so harmful to the character and appearance of the area as to justify withholding planning permission on those grounds.[23] In those circumstances it is submitted that on GBC's own case no breach of Policy G1 or G5 can be established at all but if there were any breach of Policy G1 and/or Policy G5 this would not justify refusing planning permission.

17. Within Policy G1 the relevant policy is Policy G1(12), *Safeguarding and enhancement of the landscape and existing natural features*, which requires that development be designed to safeguard and enhance the characteristic landscape of the locality and existing natural features on the site (hedgerows, trees etc.). Mr Davies explains how the Appeal Scheme fully complies with Policy G1(12) at paras. 7.8 to 7.22 of his proof. As he notes at paras. 6.3 and 6.4, the construction of the airfield has resulted in a landscape that has lost many of its pastoral key characteristic features and contrasts with the more enclosed and well managed character of the wider landscape character area. The only remaining key characteristic features are the remnant hedgerows, hedgerow trees and woodland that lie around some of the Appeal Site boundaries[24], together with a single tree belt. The Appeal Scheme would significantly increase the presence of those key characteristic features on site, providing (*inter alia*) an additional 6.2ha of woodland and 3,021 linear metres of native hedgerows.[25]

18. Policy G5 is the Design Code. As Mr Bradley explains,[26] the Appeal Scheme has been designed in line with its requirements. The Appeal Scheme's response to the constituent elements can be summarised as follows:

    18.1. Policy G5(1) *Context for design*. New development is required to respect the established context (street patterns, topography, established views etc.). Mr Bradley has explained that the need to ensure that the new settlement was <u>sustainable</u> meant that it was not possible to replicate the Appeal Site's surroundings[27]. However, very careful consideration has been given to the relationship of the Appeal Scheme to the surrounding area: see the Design and Access Statement[28] at para. 2.2.1 *Site History and Heritage*[29] and the figure that shows *Historical and Cultural Designations*[30] and also Mr Bradley's responses in re-examination[31]. In particular, additional restrictions to the parameters have addressed the relationship of the Appeal Scheme with Ockham Lane and Grade II listed Yarne.

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[23] GBC SoC, CD1.6, para. at 6.8.3 and proof of Mr Sherman at para. 2.21.
[24] Some also remain in the site.
[25] Table 4 within the proof of Mr Davies (p.50).
[26] Para. 5.1.1.2 of his proof.
[27] See his proof at para. 5.1.1.4.
[28] CD2.16.
[29] P.36.
[30] P.37.
[31] There were, of course, design workshops with GBC and SCC as set out in Mr Collins's proof.

18.2. Policy G5(2): *Scale, proportion and form*. Mr Bradley's evidence has explained how the design of the Appeal Scheme respects the scale, height and proportions and materials of the surrounding environment. Detailed design is of course a reserved matter, and subject to a number of conditions that will set the design framework for the overall site and for sub-phases.

18.3. Policy G5(3): *Space around buildings*; Policy G5(4) *Street level design*; Policy G5(5) *Layout.* These policies require existing spaces of value to be respected and new spaces to have an attractive and identifiable character; buildings and spaces at pedestrian level to provide visual interest and a sense of place and identity; and the built layout to be easily understood by the user and to create areas of identifiable character. Mr Bradley's evidence in respect of the illustrative masterplan for the Appeal Scheme with its four distinct neighbourhood areas shows how these requirements have been met.

18.4. Policy G5(6): *Important public views and roofscape.* Mr Bradley explains[32] that views from the surrounding landscape (including those from the AONB[33]) have been important considerations in the design of the Appeal Scheme. The parameter plans, as shown by the illustrative masterplan, allow the roofline of the Appeal Scheme to be crenelated:[34] this will break up massing and also accords with the supporting text to this policy, which refers to "*adding interest*" to the skyline.

18.5. Policy G5(7) *Materials and architectural detailing*. Compliance with this policy will be secured at reserved matters stage.

18.6. Policy G5(8) *Traffic, parking and design*. Mr Bradley discusses at para. 4.2.9 of his proof how the car parking strategy of the illustrative masterplan aims to avoid the streets of the Appeal Scheme being dominated by cars. He also explained in oral evidence how the "*network of shared space streets*" referred to at para. 4.2.5.1 of his proof will function.

18.7. Policy G5(9) *Landscape design.* As noted above, the Appeal Site has lost many of its key characteristic features and the Appeal Scheme would significantly increase the presence of those features on site. It would provide extensive green infrastructure (as described by Mr Davies at paras. 6.25 to 6.30 of his proof), thus ensuring the successful integration of the new settlement into the existing landscape. Indeed, the Appeal Scheme is landscape-led, as Mr Bradley explained in cross-examination. Grant Associates, a multi-award-winning landscape practice have worked alongside Mr Davies and his firm to create a landscape concept.

18.8. Policy G5(10): *Open spaces of value.* As Mr Davies explains,[35] open spaces in the borough were surveyed in 1997 and those "*considered to make a positive contribution to the character and visual amenity of the area are*

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[32] Paras. 4.2.3.3, 4.2.7.1, 6.3.1.7 in his proof.
[33] See also the proof of evidence and EinC of Mr Davies on how long views to the AONB will be retained within GI corridors accommodating the footpaths.
[34] Paras. 6.68, 6.77, 6.83, 6.97 in his proof.
[35] Paras. 3.25 to 3.28 and 7.30 to 7.32 of his proof.

identified on the Proposal Map". No part of the Appeal Site was so identified, as Mr Miles accepted in cross-examination. Mr Davies has additionally undertaken his own assessment of the Appeal Site, which establishes that its overall value is low.[36]

19. Mr Miles additionally asserted breaches of Local Plan policies G12 and RE5. As he accepted in cross-examination, GBC has never alleged any breach of either of those policies.

20. Further points relevant to the Appeal Scheme's compliance with the Local Plan policies mentioned above are addressed below under the relevant main issue.

2.1.2. The eGBLP

2.1.2.1. Compliance with the eGBLP

21. GBC has not at any point alleged that the Appeal Scheme fails to comply in any respect with the draft policies of the eGBLP. In the Appellant's submission those draft policies are fully complied with.

22. As regards draft Policy A35 of the eGBLP (the allocation of the Appeal Site), the Appeal Scheme complies fully with its requirements, as explained in detail in Table 7.4 of the proof of Mr Collins.[37] Mr Sherman agreed in cross-examination that the Appeal Scheme was capable, subject to completion of a satisfactory section 106 agreement, of being consistent with draft Policy A35. Mr Miles accepted in cross-examination that the Appeal Scheme was generally compliant with the draft policy and that he had not provided an assessment of the extent of the Appeal Scheme's compliance with it. Mr Kiely confirmed in cross-examination that he was not alleging that the Appeal Scheme conflicted with the draft policy in any respect.

23. It is necessary to make one further point in respect of draft Policy A35, which is that properly interpreted, it allows for potential performance issues on the local road network ("**LRN**") and strategic road network ("**SRN**") to be addressed by alternative mitigation measures to the Burnt Common slips:
    23.1. Para. (5) of the infrastructure requirements section of Policy A35 states that "[w]*hen determining planning application(s), and attaching appropriate conditions and obligations to planning permission(s), regard will be had to the delivery and timing 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, <u>or otherwise alternative interventions which provide comparable mitigation</u>*" (emphasis added). The Infrastructure Schedule to the Infrastructure

[36] Paras. 7.31 and 7.32 of his proof.
[37] P.84.

Delivery Plan includes expressly SRN9 and SRN10, which are the Burnt Common slips.[38] Draft Policy A35 thus plainly allows for alternative mitigation measures to the Burnt Common slips to come forward;

23.2. The fact that para. (4) of the infrastructure requirements section identifies the Burnt Common slips as mitigation to address impacts on Ripley High Street and surrounding rural roads does not militate against that conclusion. The draft policy functions by identifying Burnt Common slips as the relevant mitigation but recognising additionally that alternative interventions that provide comparable mitigation are permitted; and

23.3. While this point is not critical to the outcome of this appeal, as the section 106[39] agreement provides for the Appellant either to deliver or fund the Burnt Common slips, it is an important point that needs to be got right.

24. Turning to the other policies in the eGBLP, as Mr Miles accepted in cross-examination these must be read in the light of the content of draft Policy A35. Mr Collins sets out at Table 7.5 of his proof[40] how the Appeal Scheme complies with the other policies. Mr Sherman confirmed in cross-examination that GBC had not sought to cite any breaches of these policies.

25. Significant weight should be given to the Appeal Scheme's compliance with the draft policies of the eGBLP.

2.1.2.2. Weight to be given to the eGBLP

26. As regards the weight that should be given to the eGBLP itself, all three criteria set out at para. 216 of the NPPF must be considered:

27. The stage of preparation of the eGBLP. The eGBLP is at an advanced stage, as both Mr Collins and Mr Miles acknowledge. It has passed through the following stages of production:

27.1. Issues and Options (2013):[41] this document included the creation of a new settlement in the spatial options for delivery of the requisite growth and specifically referenced only the Appeal Site as a possible location for a new settlement.[42]

27.2. Draft GBLP - Regulation 18 (2014):[43] the Appeal Site was included in the draft GBLP as Allocation 66.[44]

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[38] Appendix C to June 2017 eGBLP (CD8.24).
[39] References to the section 106 agreement are to the main agreement with GBC and SCC, the separate education section 106 agreement with GBC is referred to as the "***education section 106 agreement***".
[40] P.93.
[41] As discussed in the proof of Mr Collins at 7.9.
[42] *Ibid*. at para. 7.11.
[43] *Ibid*. at para. 7.13.
[44] *Ibid*. at para. 7.15.

27.3. Proposed Submission GBLP - Regulation 19 (2016): the Appeal Site was included as draft Allocation A35.[45]

27.4. Targeted Regulation 19 consultation (2017): an amendment to the eGBLP that would have deleted draft Allocation A35 was lost at a meeting of Full Council.[46] The Appeal Site is identified as a strategic development site in the current draft of the eGBLP[47] and is key to the spatial strategy that it sets out[48].

28. As explained by Mr Collins at para. 7.22 of his proof and as Mr Sherman accepted in cross-examination, at each stage of production Full Council has voted in favour of the eGBLP, which has at every stage made provision in respect of a new settlement on the Appeal Site.

29. By the time this appeal is determined by the Secretary of State, the eGBLP will have been submitted for examination. Whilst GBC disagrees with the Appellant (and Mr Miles) as to the weight that can be afforded to the eGBLP at present, it accepts that once it has been submitted for examination it will be possible to afford significant weight: see the Officer Report ("**OR**") at para. 9.6.[49] This sits at odds with Mr Sherman's assertion that this is a plan which today can only be given "v*ery little weight*". Mr Collins[50] confirmed his understanding that submission is only "*some six weeks away*" now.

30. <u>The extent of unresolved objections to the draft policies of the eGBLP.</u> There are no longer any objections to the 2016 version of eGBLP from statutory consultees[51]. As to the objections made by other parties, as Mr Collins explains in his rebuttal[52] it is necessary to go beyond a simple numerical assessment (as Mr Collins explained in evidence-in-chief, a large number of the objections are standard form "*cut-and-paste*" objections). Rather, the content of the objections made must be considered: it is the Appellant's case that it has demonstrated, through the material that it has provided (i) in support of its initial planning application (ii) in its representations on the eGBLP and (iii) in support of this appeal, that many of the objections to the eGBLP can be overcome.

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[45] *Ibid*. para. 7.21.
[46] *Ibid*. para. 7.22.
[47] CD8.24 at para. 4.1.9
[48] See in particular paras. 4.1.6, 4.1.8 and 4.1.9.
[49] CD6.1.
[50] Mr Collins's EinC.
[51] See the proof of Mr Collins at paras. 7.62 to 7.65; responses to the 2017 eGBLP are not yet available.
[52] At para. 5.6.

31. Moreover, whilst as Mr Collins recognises[53] regard must be had to the extent of unresolved objections, even if that is a criterion that indicates that less weight should be afforded to the eGBLP, that criterion is outweighed by the other two listed in para. 216 of the NPPF, which strongly support more weight being given.

32. The degree of consistency of the draft eGBLP policies to the NPPF policies. The eGBLP - and particularly the allocation of the Appeal Site - is fully consistent with the NPPF, as explained by Mr Collins at para. 7.66 of his proof. This was agreed by Mr Sherman in cross-examination. Mr Miles contended that this third criterion was more properly addressed through the eGBLP process itself but "*fully accepted*" that there was a degree of circularity in his argument. In the Appellant's submission it is, with respect, entirely circular. Para. 216 requires compliance with the NPPF to be considered in respect of any draft plan whatever stage it has reached, including plans not yet submitted to examination. To say that compliance with the NPPF is an issue for the examination would be to seek to denude this criterion in para. 216 of any meaning.

33. Having proper regard to all three criteria set out in para. 216 NPPF, significant weight should be given to the eGBLP in the determination of this appeal.

2.1.2.3. The eGBLP evidence base

34. The eGBLP, including draft Policy A35, is supported by an extensive evidence base that was most recently updated in June 2017. This includes, *inter alia*, a Strategic Housing Area Market Assessment ("**SHMA**") (October 2015), SHMA Addendum (October 2017), Land Availability Assessment Addendum (2017), topic papers on housing delivery, green belt and countryside, transport as well as a draft Infrastructure Delivery Plan, a Strategic Highway Assessment Report, a Habitats Regulations Assessment, an Air Quality Review and a Transport Strategy[54].

35. The up-to-date eGBLP evidence base contrasts sharply with the twenty-year old evidence base of the Local Plan, which dates back to 1997 (as described above).

36. It is necessary to consider two elements of the eGBLP in particular detail: (i) the Sustainability Appraisals that have been produced in support of the eGBLP and (ii) GBC's Green Belt and Countryside Study ("**GBCS**"),[55] another key element of the evidence base.

eGBLP Sustainability Appraisals

[53] Para. 5.3 of his rebuttal.
[54] See CD8.6 – 8.34 and 8.48 – 8.49.
[55] CD8.8 has volume 5 extracts only.

37. GBC commissioned independent expert consultants AECOM to prepare an initial Sustainability Appraisal, which was published alongside the Proposed Submission draft of the eGBLP in 2016.[56] AECOM subsequently produced an updated Sustainability Appraisal that was published alongside the Targeted Regulation 19 consultation in 2017 ("**the SA**").[57]

38. In addition to having been prepared by independent expert consultants, the SA has to comply with numerous regulatory requirements imposed by the SEA Regulations.[58] Those include a requirement to assess "*reasonable alternatives*" to the eGBLP. There has been no serious suggestion that the SA does not satisfy all applicable regulatory requirements. Mr Sherman accepted in cross-examination that it did so. Mr Miles asserted that the SA had failed to consider alternatives (to the spatial strategy set out in the eGBLP) that did <u>not</u> include a new settlement on the Appeal Site. However, it is plain that spatial strategy alternatives that did not include development on the Appeal Site were considered[59].

39. The latest (June 2017) version of the SA in support of the eGBLP says the following key things about the Appeal Site[60]:
    39.1. Without allocation of Wisley Airfield there was either a need to accept low growth overall or high growth at other locations. Allocation of Wisley Airfield enabled the potential to provide for 'OAHN plus a buffer' whilst following a low growth strategy at other sensitive locations;
    39.2. While Wisley Airfield performs well as a location for growth;
    39.3. The preferred option to perform well as a large scheme at Wisley Airfield avoids the need to place pressure on the most sensitive Green Belt and/or landscapes designated as being of larger-than-local importance;
    39.4. GBC has supported the option of a new settlement since 2013/14, when the principle was established through consultation and multiple endorsements by Full Council[61]. Also, at this time, it was established that Wisley airfield is the only realistic site in contention. This remains GBC's view at the current time as repeated in its closing speech;
    39.5. A 2,000 home Wisley Airfield scheme would support the achievement of certain community infrastructure objectives[62].

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[56] CD8.17.
[57] CD8.31.
[58] Environmental Assessment of Plans and Programmes Regulations 2004.
[59] See e.g. Table 6.2 in the original 2016 SA, Options 1, 2 and 3 within which clearly show "*0*" units coming forward on the Appeal Site.
[60] CD8.17 boxes 6.4 & 6.6 and paras. 6.6.12 and 10.4.4.
[61] With motions by Cllr Cross to remove the allocation defeated.
[62] "*Growth at Ash and Tongham gives rise to some concerns, from a perspective of ensuring easy access to services/facilities. In total, the Ash and Tongham area (including Ash Green) is set to receive a quantum of growth comparable to Wisley airfield, but without comparable supporting uses and infrastructure...*" (see para. 10.4.4.)

The GBCS

40. The GBCS was also prepared by independent expert consultants, Pegasus. Pegasus is a very well-established planning consultancy of 190 professionals. It provides expertise across a range of areas including town planning, environmental planning and design (both urban and landscape). It won the 2017 Planning Award for Best Housing Scheme (500 homes or more) and has been shortlisted for a stakeholder engagement award and for an RTPI planning excellence award.[63]

41. Mr Sherman accepted in cross-examination that the methodology used in the GBCS was appropriate. GBC's June 2017 *Green Belt and the Countryside* topic paper (also part of the eGBLP evidence base)[64] shows[65] how extensive the exercise undertaken by the GBCS was (resulting in a study comprising six volumes) and why GBC correctly regards the methodology as sound[66].

42. The topic paper also states clearly that the GBCS is to be regarded as the up-to-date evidence base on Green Belt issues.

43. The contrast between the up-to-date analysis provided in the GBCS and the origins of the Local Plan's Green Belt policies is particularly stark. As noted above, the latter pre-date 2003, the existing Guildford borough Green Belt boundaries dating from 1987.

44. The substantive content of the GBCS is addressed below under the first main issue.

2.1.2.4. Prematurity

45. There is no basis for refusing planning permission for the Appeal Scheme on prematurity grounds. Of the four expert planning witnesses who have provided evidence in this appeal, Mr Sherman, Mr Kiely and Mr Collins all accept this point.

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[63] See further ID87.

[64] CD8.27

[65] At paras. 3.1 to 3.7.

[66] "*3.6 Further work was undertaken following a resolution made at an extraordinary meeting of the Council on 13 January 2014. This resulted in a special Local Plan Scrutiny Forum, held on 4 March to enable the community to share their views on the evidence base and raise issues concerning methodology and fact only. This exercise led to the preparation of Volume II addendum and a re-issue of Volume IV.*

3.7 Subsequent to this, a further Volume II addendum has been prepared in 2017. This builds further upon the work previously undertaken in that it assesses the Green Belt sensitivity of the next layer of land parcels around the urban areas on the assumption that the sites proposed in the Regulation 19 Local Plan (2017) are built".

46. The Court of Appeal has held (***R (Luton Borough Council) v Central Bedfordshire Council*** [2015] 2 P&CR 19[67]) that para. 83 of the NPPF does not lay down a presumption or create a requirement that the boundaries of the Green Belt must first be altered via the process for changing a local plan before development may take place on the area in question. Paras. 87 and 88 of the NPPF "*plainly contemplate*" that development may be permitted on land within the Green Belt, without the need to change its boundaries in the local plan, provided that VSC exist.

47. The Government's Planning Practice Guidance ("**PPG**") states[68] "*arguments that an application is premature are <u>unlikely</u> to justify a refusal of planning permission[69]*"other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. It says that such circumstances are likely, but not exclusively, to be limited to situations where both:

> "(a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or neighbourhood planning; and
> (b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area."

48. It is no part of GBC's case that planning permission for the Appeal Scheme should be refused on prematurity grounds.[70] The OR[71] at section 10.3[72] considered "*Prematurity and the Local Plan process*" and stated at para. 10.3.6 that "[i]*t can therefore be concluded that the Council should determine the current application and that the proposal should be considered on its merits*". Mr Sherman accepted in cross-examination that the Appeal Scheme would not offend point (a) set out in the PPG extract above (i.e. that it would not undermine the plan-making process).

49. The Secretary of State's decision at Perrybrook[73] establishes two key points. First, a proposal should not be regarded as premature within the terms of NPPF para. 216 if it is in keeping with an emerging Local Plan.[74] Second, a proposal will be "*plan-led development*" rather than one which would undermine the plan-making process where the purpose of making the application for planning permission for the proposal was to support

[67] CD11.15.
[68] CD9.2, Reference ID 21b-014-20140306.
[69] Emphasis added.
[70] There is no reference to prematurity in the RfR, GBC's SoC or Mr Sherman's written evidence.
[71] CD6.1.
[72] P.30.
[73] CD10.2.
[74] See the Secretary of State's decision letter dated 31 March 2016 (*ibid.*) at para. 19 ("*Since the proposal is in keeping with the emerging JCS, he agrees that the proposal should not be regarded as premature within the terms of Framework paragraph 216*") and the Inspector's report at IR15.52.

the Local Plan process.[75] The Appeal Scheme is fully in keeping with the eGBLP (above). Furthermore, the application for planning permission for the Appeal Scheme was made to support the eGBLP process[76].

50. Mr Miles attempted to distinguish this appeal from the factual position in the Perrybrook appeal. The points raised by Mr Miles (and Mr Kiely[77]) are, however, irrelevant to the two key points noted above. Furthermore, whilst the Perrybrook appeal was not opposed by the relevant local authorities,[78] many other elements of the Perrybrook appeal are also present in this appeal:

    50.1. The Perrybrook scheme included up to 1,500 houses and was similar in nature and scale to the Appeal Scheme.[79]

    50.2. The Perrybrook appeal site was in the Green Belt and it was common ground that it would, by definition, result in loss of openness and would conflict with the stated Green Belt purpose of safeguarding the countryside from encroachment; as well as one other purpose.[80]

    50.3. The Perrybrook appeal site was also identified as a site of strategic value (to be removed from the Green Belt) in the emerging Joint Core Strategy (**"JCS")** - cf. the allocation of the Appeal Site in the eGBLP here.

    50.4. The area containing the appeal site in Perrybrook had been studied for a decade to establish its suitability for removal from the Green Belt.[81] The Appeal Site has been identified for removal from the Green Belt in versions of the eGBLP and studies that date back to 2013 (above).

    50.5. Whilst the JCS process was further on in the Perrybrook appeal than is the eGBLP process *at present*, nevertheless the JCS was still under examination when the Secretary of State determined the Perrybrook appeal.

    50.6. Finally, the benefits of the Perrybrook scheme are mirrored by those of the Appeal Scheme: a significant quantum of housing (the context in Perrybrook was one of a "*significant undersupply of land for housing, as well as a pressing social need*");[82] affordable housing;[83] satisfaction of "*longstanding strategic planning aims*";[84] economic benefits (that in Perrybrook were found to attract considerable weight);[85] local sports and recreational facilities;[86] education, health and community facilities;[87] and environmental gains.[88]

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[75] *Ibid*., IR15.52, accepted by the Secretary of State at para. 19 of his decision letter.
[76] See the proof of Mr Collins at paras. 6.23 and 8.74. None of the other expert planning witnesses disputed this point.
[77] Mr Kiely also attempted to distinguish the facts of Perrybrook, albeit not in the context of a prematurity argument, which he agreed that he was not making.
[78] The local planning authority, Tewkesbury Borough Council, did not oppose the application; Gloucestershire County Council (highway authority) did not object and Gloucester City Council supported the early release the appeal site (IR15.52).
[79] Outline planning permission for the mixed use development of up to 1,500 dwellings including extra care housing, community facilities including Al, A2, A3, A4 and A5 local retail shops, B1 /B8 employment uses, D1 health facilities and formal/informal public open space,
[80] IR6.2.
[81] IR15.53.
[82] IR15.71.
[83] *Ibid*.
[84] IR15.72.

2.1.3. The Lovelace Neighbourhood Plan

51. Finally as regards the local planning policy context for the determination of this appeal, the draft Lovelace Neighbourhood Plan is not yet a public document.[89] No weight can therefore be accorded to it at this stage.[90] All four expert planning witnesses agreed on this point.[91] Mr Collins's evidence-in-chief was that adoption of this plan is at least 18 months off; it only being at stage 2 of 7 as laid out in the PPG. In addition it has been accepted that this plan cannot influence or affect the allocation of Wisley Airfield[92].

2.2. The proper approach to the VSC test

52. Para. 87 of the NPPF provides that "*inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances*". "*Inappropriate development*" includes (subject to exceptions that are not relevant in this appeal) the construction of new buildings in the Green Belt. VSC will not exist "*unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations*" (para. 89 NPPF).

53. The correct approach to VSC is usefully summarised in ***Wildie v Wakefield MDC*** [2013] EWHC 2769 (Admin)[93] "*... in considering whether to allow development in the Green Belt, the decision maker must consider, first, the "definitional" harm arising from the inappropriate development as well as such further harm to the Green Belt as is identified as being caused by the development in that case* [and any other non-Green Belt harm][94]*, and then secondly consider countervailing benefits said to be served by the development; and then consider whether those benefits clearly outweigh the harm so as to amount to very special circumstances. Secondly, in order to qualify as "very special", circumstances do not have to be other than "commonplace" i.e. they do not have to be rarely occurring ...*". This approach is very well-established and was accepted by Mr Sherman and Mr Kiely in cross-examination. The words "*very special circumstances*" thus do not need to be given any further meaning as Mr Bird QC suggested in cross-examination of Mr Collins. Where the other considerations clearly outweigh the harms there are VSC.

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85 IR15.65.
86 IR15.54.
87 *Ibid*.
88 IR15.63.
89 Oral statement of Suzie Powell-Cullingford on behalf of RPC.
90 Para. 216 of the NPPF provides that decision-takers may give weight to relevant policies in emerging plans from the day of publication.
91 The Lovelace Neighbourhood Plan Group's website (CD13.5) expressly asks "*What about the former Wisley airfield?*" and recognises in response that "*the Neighbourhood Plan has to work alongside the Borough Council Local Plan*" and that "*if the next draft of the new Local Plan from Guildford identifies this area as a 'strategic development site' our Neighbourhood Plan can't forbid this*". The Appeal Site has since been identified in the eGBLP as a strategic development site. Furthermore the Chair of the Group has acknowledged that "*strategic sites within the GBC Local Plan (including the former airfield)* [are] *outside our remit*" and that the Group has "*no influence*" over development on the Appeal Site (CD13.4, second para.).
92 CD13.4 and 13.5.
93 CD11.27.
94 See ***Redhill Aerodrome Ltd v SSCLG*** [2015] PTSR 274 (ID102).

54. Ministerial statements make clear that a shortfall in housing is "*unlikely*" alone to amount to VSC but: (i) national policy does not say that it never can even alone see: ***Doncaster MBC v SSCLG*** [2016] EWHC 2876 (Admin); and (ii) in any event it can be a VSC when considered as part of a wider set of factors that together make up VSC see: ***R (Smech Properties Ltd) v Runnymede District Council*** [2016] JPL 677[95]; ***R (Lee Valley) v Broxbourne BC [***2015] EWHC 185 (Admin)[96] and the Secretary of State's decision at Perrybrook[97].

55. It is acknowledged that case-law holds that the VSC test is stricter than the exceptional circumstances test that governs the alteration of Green Belt boundaries through the local plan process. However, the distinction between the two tests is not explored further in the relevant authorities: there is no judgment that sets out how the requirements of the two tests differ.[98] In ***Calverton Parish Council v Nottingham City Council & Ors*** [2015] EWHC 1078 (Admin)[99] Jay J held (at [20]) that:

> ""*Exceptional circumstances*" remains undefined. The Department has made a deliberate policy decision to do this, entrusting decision-makers with the obligation of reaching sound planning judgments on whether exceptionality exists in the circumstances of the individual case."

56. GBC has set out its correct understanding of the definition of exceptional circumstances[100]. But there can be no question but that the considerations relevant to these two tests overlap to a considerable degree, as Mr Sherman acknowledged in cross-examination.

57. It is the Appellant's case that whilst the Appeal Scheme would (as "*inappropriate development*") result in "*definitional harm*" to the Green Belt, and there would be impact on openness nonetheless it would result in only limited other harm. On a proper application of the VSC test, the benefits of the Appeal Scheme clearly outweigh the totality of the harm that would result, such that the VSC test is satisfied. We will return to this as the twelfth and final main issue on this appeal.

2.3. The application of the NPPF

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[95] CD11.20.
[96] CD11.17 at para. 68.
[97] CD10.2.
[98] Accepted by Mr Sherman in XX.
[99] CD11.33
[100] See Appendix 4b Sub Appendix A Joint Scrutiny Committee Resolution 8, published in connection with the Scrutiny Committee on the draft Local Plan: see Mr & Mrs Paton's proof at para. 4.4.2.7:
"There is no definition of what constitutes exceptional circumstances, as this will vary locally. Legal advice suggests that it is likely to be interpreted as circumstances arising that are not commonplace. We consider that a combination of factors exist locally that together constitute exceptional circumstances that enable us to take the decision to amend our Green Belt boundaries. This includes the high level of housing need, including affordable homes, exacerbated by a significant backlog of unmet need, the lack of suitable alternative land, the general lack of affordability across the borough and issues with housing mix. Additionally we need to consider the consequences of not amending our Green Belt boundaries which would be to significantly worsen an already difficult housing position, and the consequential economic situation".

58. Since the Local Plan is part of the development plan and is agreed to be out-of-date, the "*tilted balance*" in the second part of para. 14 of the NPPF would ordinarily apply, requiring planning permission to be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (when assessed against the NPPF policies taken as a whole). The tilted balance would also apply having regard to the judgment of the Supreme Court in ***Hopkins Homes Ltd v SSCLG*** [2017] 1 WLR 1865:[101] the Supreme Court held that the absence of a five year housing land supply (as here) suffices to trigger the operation of the second part of para. 14 NPPF.

59. However, para. 14 NPPF goes on to provide (in effect) that planning permission should not be granted where "*specific policies in* [the NPPF] *indicate development should be restricted*". The question whether the tilted balance applies in this context has not been resolved by the Courts. The case-law provides two potential approaches: (i) the tilted balance does not apply, the relevant test being provided instead by the "*specific policy*" in question; alternatively (ii) the "*specific policy*" test falls to be applied first and if it is satisfied, the tilted balance then comes back in.[102] As Mr Collins explains in his proof[103] and as agreed by Mr Miles in cross-examination, it is unnecessary to resolve the question on this appeal. None of the case-law authorities that have considered the question to date concerned the specific policies in the NPPF relating to Green Belt. In the Green Belt context with which this appeal is concerned, the specific policy test is the VSC test i.e. whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If a planning decision maker concludes that any harms are "*clearly outweighed*" by the benefits then it will grant planning permission. The addition of the tilted balance (i.e. whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits) after the VSC test adds nothing.

2.4. GBC's position: withdrawal of Reasons for Refusal

60. Subject to completion of a satisfactory section 106 agreement and/or imposition of suitable planning conditions, of the fourteen RfR originally given by GBC, only two remain in dispute between GBC and the Appellant. They are RfR1 (Green Belt) and RfR8 (Indicative Quantum and Scale).[104] Furthermore and as noted above, GBC does not consider that RfR8 itself provides justification for refusing planning permission for the Appeal Scheme.[105]

2.5. Position of SCC

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[101] CD11.24.
[102] See ***Watermead*** [2016] EWHC 624 (CD11.25), ***Forest of Dean*** [2016] PTSR 1031 (CD11.21) and ***Watermead*** [2017] EWCA Civ 152 (CD11.26).
[103] At para. 22.
[104] See the SoCG between the Appellant and GBC at para. 6.8 ff.
[105] See Mr Sherman's proof of evidence at para. 2.21.

61. SCC is the local highway authority, the minerals and waste planning authority for the Appeal Site and the local education authority. It is not objecting to the appeal and has not presented any evidence to the Inquiry[106]. On highway matters SCC has written a letter of support[107].

2.6. The Road Investment Strategy ("RIS")

62. If (and it is only if at this stage) RIS requires any land take from the Appeal Site this can be accommodated with only very minor alterations to the illustrative masterplan as shown in ID68. This matter can be conditioned. It must be emphasised that this appeal does not seek consent for RIS. That would be the subject of a separate process, most likely a development consent order under the Planning Act 2008 **("DCO").** In relation to the Appeal Site this would operate in a way akin to a drop-in application in the overall outline permission. The DCO would, of course, require full compliance with EIA processes including an assessment of the impacts of RIS in-combination with the Appeal Scheme as committed development.

2.7. The WACT

63. The Appeal Scheme includes *circa* 50ha of Suitable Alternative Natural Greenspace ("**SANG**") that is to be maintained as public open space, along with community and leisure facilities that will also require sustained management and investment to ensure that they serve the community and remain well maintained and equipped. The bus services to and from the Appeal Site are to be provided in perpetuity with resilience funding to ensure sustained viability and affordability.

64. A Community Trust has been determined to be the most appropriate mechanism through which to ensure, in the long term, quality management of the SANG, provision of bus resilience funding and ownership and management of the community and leisure facilities.[108] The Appellant is seeking to establish a locally managed organisation with local participative governance that is able to fulfil the above aims and also plan and support community development activities that are designed to build a sense of community amongst the local residents.[109] Community Trusts are independent, not-for-profit organisations (usually with charitable status) that aim to respond to local needs and are intended to bring about social, economic and environmental benefits for the communities that they serve. Both Surrey Wildlife Trust ("**SWT**") and the Land Trust have expressed a strong interest in operating the WACT[110]. Further detail is provided at para. 1.2 of the Outline Business Plan ("**OBP**").[111] The latter document has been prepared through consultation with primary

[106] The position taken on education is considered below.
[107] ID22.
[108] See App. 6 to the section 106 agreement at para. 1.2.
[109] *Ibid.* at para. 1.1; and note also the comments of Mark Patchett at the conditions/section 106 session.
[110] See Mr Collins's proof at para. 3.63.
[111] App. 6 of the Section 106 agreement.

stakeholders and through drawing on the research gathered through the masterplanning process for the Appeal Scheme.[112]

65. The OBP sets out[113] the proposed principal aims and related activity areas of the proposed WACT:

1) Own, maintain and effectively manage the on-site SANG in accordance with the SANG Management Plan and the Landscape and Ecology Management Plan, and provision of SAMM Plus wardening of the Ockham and Wisley Commons element of the Thames Basin Heaths SPA.
2) Maintain and effectively manage the permanent provision of frequent bus transport services for Wisley Airfield residents, pupils and business employees to Effingham Junction / Horsley, Cobham and Guildford including resilience funding where required.
3) Own, maintain and effectively manage endowed Village Hall, Clubhouse, major playing fields and other community assets including maintenance in perpetuity of strategic planting and landscaping to protect the setting of nearby heritage assets including Yarne and Ockham Conservation Area.
4) Provide community development activities designed to build a strong, healthy, and cohesive community of which everyone who lives, works or studies at Wisley Airfield can feel a part.

66. The OBP makes clear that the WACT is to be an "*organic and entrepreneurial organisation*" with the capacity to respond to needs and opportunities. Other potential aims and associated activities are set out at paras. 2.2 and 3.5 of the OBP and will be considered once development is underway.

67. The WACT will be a charitable limited company. This model has been chosen because it provides a sufficiently robust but dynamic organisational structure that includes the necessary legal framework for asset ownership and responsibility for resources, whilst also ensuring strong management and accountability[114] for service delivery and demonstrable public benefit. Further detail is provided at para. 4 of the OBP.

68. It is proposed that initially the WACT Board of Trustees may include one GBC trustee, one SCC trustee, one ecology specialist, three community trustees, three developer trustees (during the construction phase) and two co-opted trustees with specialist contributions or to meet skills gaps.[115] The governance of the WACT is explained in more detail in the OBP. The independent status of the WACT will require the appointment of an executive team to initiate and undertake practical day-to-day tasks as required by the Board.

69. A financial model has been prepared[116] that is designed to ensure financial self-sufficiency in the long term through income derived from (i) endowed income generating assets and/or financial endowment[117] (ii) an annual levy paid by residents of the Appeal Scheme. Start-up funding and revenue in the early years will be

[112] *Ibid*, para. 1.2.
[113] Para. 2.2.
[114] Trustees are registered with both the Charity Commission and with Companies House - they are both trustees under charity law and company directors under company law.
[115] See App. 6 to the section 106 agreement at para. 4.1.1.
[116] OBP at para. 6.1.
[117] The details will be approved in due course, and an independent accountant has to audit it for the purposes of GBC approval; and it is regularly reviewed with an obligation on the developer to to-up if the assets under-perform. The Appellant also has to consult the WACT on the robustness of the endowment prior to hand over.

provided by the Appellant. The WACT has been fully costed and those details are provided in the OBP. As Mr Collins explained in evidence-in-chief, they show that the WACT will go beyond the break-even point by the end of the build out period (Year 16).

70. The WACT will be secured through the section 106 agreement and has the full support of both GBC and SCC. As Mr Collins explained, the Community Trust model is becoming increasingly common; a view also expressed by Mark Patchett at the conditions/section 106 session. Relevant examples from the more than 500 Community Trusts across the UK are provided as Appendix A to the OBP.

2.8. ES compliance

71. GBC has expressed its satisfaction that the ES meets the relevant regulatory requirements[118]. Mr Miles also accepted that position in cross-examination, dropping his earlier assertion to the contrary[119].

72. GBC's conclusion was reached following (i) independent review by Nicholas Pearson Associates of the original December 2014 ES, in April 2015; (ii) the production of a revised ES ("**ES Addendum**") in December 2015 in response (*inter alia*) to the conclusions of the independent review; and (iii) independent review of the ES Addendum (again by Nicholas Pearson Associates) in February 2016. As the OR notes, the review used criteria adopted by the Institute of Environmental Management and Assessment ("**IEMA**") for use in the Environmental Impact Assessment ("**EIA**") Quality Mark registration scheme.

73. Wisley Action Group & Ockham Parish Council (hereafter "**WAG**") belatedly wrote to PINS on 13 September 2017 to assert (*inter alia*) that the ES was defective because it did not include any assessment of the amended highways mitigation proposals that the Appellant had set out and discussed in its proofs of evidence and rebuttals. That assertion is entirely without foundation, for the following reasons (which are stated more fully in the letter from the Appellant's solicitors to PINS dated 18 September 2017):[120]

74. First, most of the highways mitigation measures that were assessed in the ES remain as proposed mitigation measures.

75. Second, the Burnt Common slips have been part of the evidence base for the eGBLP since 2016 (draft Policy 43a)[121] and have been identified as mitigation specifically for development at the Appeal Site since June 2017

[118] See para. 5.3 of the OR CD6.1.
[119] Mr Baker in XX accepted there were no breaches of the EIA Regulations.
[120] ID3.
[121] CD8.24.

(draft Policy A35).[122] The *Habitats Regulations Assessment for Guildford Borough Proposed Submission Local Plan: Strategy and Sites*[123] and the *Air Quality Review of Guildford Borough Proposed Submission Local Plan: Strategy and Sites*[124] took account of all the development proposed within the eGBLP, including the new settlement proposed for the Appeal Site and the Burnt Common slips. They concluded, respectively, that the eGBLP was not likely to have any significant effects on the Thames Basin Heath SPA and that the effect of the eGBLP on annual mean NO_2 concentrations would be negligible.

76. Third, as is very frequently the case, the highways mitigation proposals evolved over time as part of the discussions with GBC and SCC on the appropriate form of conditions to be imposed on any grant of planning permission and of the section 106 agreement that would accompany it. The Appellant has not changed its planning application by including the Burnt Common slips in its mitigation package.

77. Fourth, it must be recognised that "*the environmental assessment process is not intended to be an obstacle course that a developer has to overcome*" (***Jones v Mansfield DC*** [2003] EWCA Civ 1408 *per* Carnwath LJ as he then was). On the specific argument made by WAG, it is important to give proper consideration to the judgment of Sullivan J (as he then was) in ***R (o.a.o. Linda Davies) v SSCLG*** [2008] EWHC 2223 (Admin).[125] It was argued[126] that additional environmental information put forward by the applicant for planning permission at the inquiry should not have been taken into account either by the Inspector or the Secretary of State; alternatively, that they should have taken it into account only after requiring the application to publicise the additional information and carry out a consultation exercise such as that prescribed by reg. 19 of the then-extant EIA Regulations (now reg. 22 of the EIA Regulations applicable to this appeal "**Reg. 22**")[127]. Sullivan J rejected that argument. The key points are:

    77.1. "*[i]n an ideal world the applicant's Environmental Statement would be the last word on the environmental impact of a proposal because it would contain the "full information" about its likely environmental impact. However, the Regulations are not premised upon such a counsel of perfection (see **Blewett**, paragraph 41). A local planning authority may accept that an Environmental Statement contains sufficient material to comply with the Regulations, but still contend that the assessments therein of the various environmental impacts are inaccurate, inadequate or incomplete*";

[122] *Ibid*.
[123] CD8.48.
[124] CD8.49.
[125] ID3.
[126] See para. 37 of the judgment.
[127] Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

77.2. *"If planning permission is refused on the grounds of, inter alia , environmental impact, and the applicant for planning permission appeals to the Secretary of State …, then those contentions will be examined in detail, often in very great detail, in written representations or at a hearing or a public inquiry"*;

77.3. *"If the accuracy, adequacy or completeness of the applicant's Environmental Statement has been challenged, the applicant will almost certainly submit further evidence as to the likely environmental impact of the proposals..."* [128];

77.4. *"The opportunity for evidence to be given orally and to be cross-examined is one of the recognised advantages of holding a public inquiry"*; and there is no legal issue if a witness in oral evidence attributes a different weighting to an impact to that given in the ES e.g. "*moderate*" rather than "*slight*", or "*significant*" rather than "*moderate*". This wholly contradicts the approach taken at this inquiry in cross-examination of a number of the Appellant's witnesses by Messrs Bird, Harwood and Westmoreland-Smith[129];

77.5. If there was no possibility of such additional or new environmental information (including about proposed mitigation) emerging as a result of the inquiry process, then there would be little point in arranging inquiries where there had been an Environmental Statement, but environmental impacts were still in issue[130];

77.6. It was wholly wrong to argue that "*if additional environmental information, ie environmental information that is in addition to that which was contained in the Environmental Statement and the responses thereto under the Regulations, is produced at an inquiry, that additional information either should not be considered by the decision taker, or should not be considered by the decision taker unless it has been subject to the same degree of publicity and consultation as the information in the original Environmental Statement*".

78. No request for further information pursuant to Reg. 22 of the EIA Regulations has at any point been made by GBC or PINS. Nor has any party to the appeal requested that either GBC or the Inspector make such a request. If the conclusion reached is that the ES is defective because it does not include adequate assessment of the amended highways mitigation proposals to include Burnt Common (which for the avoidance of doubt is strongly denied), or fails to include assessment of any other requisite matter (again strongly denied) having regard to ***Davies*** the proper course will be for the Inspector or the Secretary of State (as appropriate) to request further information on that point pursuant to Reg. 22. There is support for the lawfulness, and appropriateness, of this approach: see ***Jaytee (Rainton) LLP v SSCLG*** [2013] EWHC 2835 (Admin) and the

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[128] The ***Berkeley*** "*paper chase*" analysis is wholly inapplicable where there is an Addendum ES; and the application to which it relates goes on appeal where further evidence is heard See para. 39 of the judgment. Mr Harwood QC's XX of Dr Tuckett-Jones hinted at the air quality assessments being a paperchase; that though would be a bad point – contrary to ***Davies*** and was (rightly) not pursued in WAG's closing.

[129] And in closing – see the Horsley Parish Councils' closing at paras. 85 – 88. The Addendum ES does not set in stone the weight to be given to benefits in the overall assessment. That is not the role of an ES.

[130] See also para. 42 of ***Davies***"*[i]n addition to ignoring the essential function of the inquiry — to elicit further information, including environmental information — the claimant's submission ignores one of the inquiry's most important characteristics: that it is a public inquiry. Thus, any member of the public who is concerned about the environmental impact of a proposal is able to attend, and insofar as additional evidence is given in or reduced to writing, to obtain copies of the relevant documents."*

ongoing appeal by Cuadrilla Elswick Limited in respect of the proposed shale gas development at Roseacre Wood.[131]

79. Much the same can be said of the points raised by the Horsley Parish Councils[132] in relation to sewage treatment; the suggestion being that the Addendum ES should have considered any off-site sewage upgrades that may be required. On this point the facts are:
    79.1. There is no objection from the EA or Thames Water[133];
    79.2. An impact study was undertaken by WSP[134];
    79.3. The Addendum ES did consider these issues[135];
    79.4. The issues are considered further in Mr Collins's proof App. 8. Sewage that flows from the Appeal Site would ultimately end up at Ripley sewage treatment works (2.6km north-west of the Appeal Site). Various upgrade options are being considered – in order to meet the needs generated by the eGBLP. There is the possibility of a contribution being made to off-site infrastructure in due course. No consent is being sought for this. The precise proposals for upgrade are undecided at this time. They are a matter for another day. The parameter plans do show a possible pumping station on the Appeal Site; that has been assessed.

80. None of the above in any way invalidates the ES; but ultimately if more environmental information is wanted than has been provided then a Reg. 22 request can be made. The Appellant says this is not necessary but if that is not accepted that is the solution.

<u>2.9. Design</u>

81. The Appeal Scheme has been designed by Feilden Clegg Bradley Studios, a multi-award-winning architectural practice. Its work includes the only housing project to win the Royal Institute of British Architects ("**RIBA**") Stirling Prize, the UK's most prestigious architectural award. Notably, the practice has won numerous awards in respect of sustainability, including a Queen's Award for Sustainable Development (the first in the UK), the RIBA Sustainability Award (2006); the Civic Trust's Sustainability Award and AJ100 Sustainable Practice of the Year (on three occasions). The practice was named BD Sustainability Architect of the Year for 2016. Furthermore, as mentioned already Grant Associates, a multi-award-winning landscape practice have worked alongside Mr Davies and his firm to create a landscape concept.

[131] Appeal reference APP/Q2371/W/15/3134385.
[132] And adopted by WAG in closing.
[133] CD6.1 para 7.7
[134] *Ibid*.
[135] CD14.1.4 paras. 4.32 – 4.35; CD14.1.7 paras. 7.3.2 – 7.3.33 and CD14.1.29 App. 4.5 which contains the Sewer Impact Study.

82. As noted above, Mr Bradley explained in his oral evidence that the Appeal Scheme is design-led. He was asked in cross-examination by Mr Harwood QC whether his clients had briefed him by saying that they wanted 2,100 homes and his response was the following:

> "In fact they didn't. It was a long process investigating how the site would work. In fact it took us a little while to get to what was thought to be the appropriate critical mass. We were never given a straightforward brief. We worked through, design development, testing sites, looking at the ingredients required and it becomes a much more iterative process".

83. It was then put to Mr Bradley that the Appeal Scheme was one "*which needs everything which you've managed to get in to it*" in order to work. His response was:

> "To make it a truly sustainable scheme, yes, though there are schemes across the country happening without these facilities. We are going well beyond the minimum requirement for these facilities. Really trying to make this an exemplary sustainable settlement - that was the brief".

<u>2.10. Support for the scheme</u>

84. The Appeal Scheme has attracted considerable support. In an initial telephone survey of 1,002 Guildford borough residents in March 2015, 46% of respondents expressed support for the scheme, against 31% who opposed it. A telephone survey of 502 Guildford borough residents aged 18 to 40 in June 2016 found that 45% of respondents supported the scheme, against 15% opposing. That survey was in effect repeated in March 2017 and found that support had increased (57% in support against 10% opposing).[136] 1,434 persons have now signed up through the Appellant's website as supporters[137] of the Appeal Scheme since October 2016.[138]

85. More generally - and contrary to the assertion of a third party that the 18 to 40 demographic is a "*nomadic generation*" - a 2017 telephone survey of 18 to 40 year-olds in Guildford found that 89% of respondents wanted to buy their own home and 71% said that houses in the area were simply too expensive.[139] As discussed in more detail below, the Appeal Scheme is critical to GBC being able to plan to meet its housing needs (especially in the first ten years of the eGBLP plan period) and would be able to contribute *circa* 12-14% of the level of affordable housing planned for the eGBLP plan period:[140] a level of affordable housing that is more than has been delivered in the entirety of the borough since 2009/10.

<u>2.11. Third parties</u>

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

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[136] CD13.59, p.2.

[137] Some signed up as supporters but included free form comments against the scheme; these have now been removed from the list and the net number of supporters is 1,434.

[138] *Ibid*., p.18. Mr Miles in XX accepted that there was also support for the Appeal Scheme.

[139] *Ibid*., back page.

[140] *Ibid*. at para. 6.17, based on overall delivery of 15,000 dwellings at 40% affordable housing provision.

87. First, hardly any third parties acknowledged the need for more housing in Guildford borough. However, as Mr Miles accepted in cross-examination, it is a well known dynamic at planning inquiries that those who object tend already to have a house whilst those who need a home do not tend to turn up. Mr Miles also accepted that younger people could be underrepresented in the East and West Horsley survey responses. In the Appellant's submission such underrepresentation is probable, given that the level of owner-occupation is 86% in East Horsley and 87% in West Horsley and that Mr Miles himself explained to the Inquiry that hardly any households had returned more than one form.[141]

88. Second, a number of third parties recognised that there will inevitably be some development on the Appeal Site in future (e.g. Councillor Cross for Ripley Parish Council ("**RPC**") and third party Annie Cross[142]). This is so because of the extent of constraints in GBC's area which include the fact that 89% of the borough is Green Belt, combined with the level of needs for housing and economic development and the fact that the Appeal Site is the largest area of brownfield land in the borough.

89. Third, many third parties appeared to take the view that the Appellant's pursuit of an appeal was in some way an abuse[143], given GBC's refusal to grant planning permission for the Appeal Scheme. To the contrary, the Town and Country Planning Act 1990 accords a statutory appeal right to the Appellant.

90. Fourth, repeated reference was made to the submission of late evidence by the Appellant. However the only change of any substance that has been made to the Appellant's proposals is the inclusion of Burnt Common slips as highways mitigation, which was discussed in the Appellant's proofs of evidence that were submitted in accordance with the bespoke timetable for the appeal. Transport Technical Note 1[144] was a submission made to Highways England at the latter's request on 18 September 2017. Moreover (as the Inspector observed)[145] it contained a detailed technical transport submission under the Design Manual for Roads and Bridges ("**DMRB**"). This was of little if any relevance to the concerns raised by third parties.

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[141] The Appellant further notes that in a recent speech to council leaders at the Local Government Association's annual conference, the Communities Secretary Sajid Javid said that families living in some of the most sought-after parts of the country would have to accept more homes being built near them to tackle the housing crisis and that he wanted communities which had benefited from soaring property prices to play their part in solving the problem: http://www.telegraph.co.uk/news/2017/07/04/families-living-wealthiest-parts-country-must-accept-new-homes/.
[142] ID54.
[143] The costs applications are based on a similar (misconceived) theme.
[144] ID4.
[145] Ruling on Day 2 of the Inquiry (20 September 2017).

91. Fifth, it is well established that the identity of the applicant is generally not relevant to the decision on whether planning permission should be granted.[146] The Appellant refutes entirely the wholly unfounded inferences and allegations of wrongdoing made against it by third parties.

3. Main issues

3.1. The effect of the proposals on the openness of the Green Belt and on the purposes of including land in the Green Belt

3.1.1. Definitional harm

92. The Appellant does not dispute that the Appeal Scheme is "*inappropriate development*"[147] for the purposes of para. 87 of the NPPF such that it is, by definition, harmful to the Green Belt. It is accepted that this must be given substantial weight in the balance and has been[148].

3.1.2 Openness

93. The Appellant also accepts that the Appeal Scheme will impact on the openness of the Green Belt[149]. However, in arriving at a proper assessment of the extent of the impact and then of the consequences of that impact in the overall planning balance, a number of points must be considered.

94. First, GBC recognises that there will have to be release of Green Belt land[150]. 89% of the borough lies within the Green Belt and Mr Collins explained in evidence-in-chief that the June 2017 Land Availability Assessment ("**LAA**")[151] shows that the borough's urban capacity would not enable even the "*interim*" housing figure of 322 dpa to be met, still less the figure of 654 dpa identified in the March 2017 SHMAA Addendum.[152] The inevitability of the need for Green Belt release is also, as noted elsewhere, recorded in the OR and the foreword to the June 2017 eGBLP.

95. Second, GBC's own GBCS[153] acknowledges that a loss of openness is inevitable on any site on which a new settlement is introduced within Guildford borough[154]. The Appeal Site has been chosen by GBC for release

[146] See e.g. ***Basildon DC v Secretary of State for the Environment, Transport and the Regions*** [2001] JPL 1184.
[147] Parts of what is proposed e.g. the SANG and playing fields are not in themselves inappropriate development but the Appeal Scheme must be judged as a whole. The point raised by WAG in closing (para. 23) about the SANG car park being inappropriate development is really neither here nor there.
[148] See Mr Collins's proof at para 10.11; the suggestion made to Mr Collins in XX by Mr Bird QC (twice) that he did not as required by the NPPF afford substantial weight to this harm is unfounded.
[149] Mr Bird QC in XX of Mr Collins sought to suggest that he had not had regard to impact on openness. He clearly did see e.g. para. 23.7 of his proof and his answers in RX.
[150] See footnote 4 above.
[151] CD8.25.
[152] CD8.23.
[153] The status of, and weight to be given, to this study is dealt with above. It is a key part of GBC's up-to-date evidence base for the eGBLP: see CD8.19 section 3.

because it has been assessed as being less sensitive in Green Belt and other terms than would be the release of land elsewhere[155]. The SA states that "*a large scheme at Wisley Airfield avoids the need to place pressure on the most sensitive Green Belt and/or landscapes designated as being of larger-than-local importance*"[156]. It rates the Appeal Site as amber[157] (as contrasted to more sensitive "*red-rated*" areas).[158] Bringing forward the Appeal Scheme will thus protect the more sensitive areas of the borough's Green Belt[159] and also designations such as the AONB.

96. Third, the extent of the Appeal Scheme's impact on openness must be properly understood. The Court of Appeal in ***Turner v SSCLG*** [2016] JPL 1092[160] held[161] that a number of factors are capable of being relevant when it comes to applying the word "*openness*" to the particular facts of a specific case. "*Prominent*" among those factors are (i) visual impact[162] and (ii) how built up the Green Belt presently is and would be following development. In ***Goodman Logistics Developments (UK) Ltd v SSCLG*** [2017] EWHC 947 (Admin) Holgate J considered the effect of the decision in ***Turner***:

> "[82] It is plain from ***Turner*** , which is binding on this court, that visual impact, as well as spatial impact, is relevant to the assessment of the effect of a development on openness. The absence of visual impact is insufficient to found a conclusion that there is *no* impact on the openness of the Green Belt, but there is nothing in ***Turner*** to support the SSCLG's proposition that on a correct interpretation of the NPPF, an assessment of the visual impact of a development cannot ameliorate the harm to openness attributable to the spatial impact of that development.
> ...
> [85] I conclude that there is nothing in Mr Buley's analysis of the case law to justify the proposition that on a true interpretation of Green Belt policy, the visual effect of a development cannot be taken into account as reducing the spatial or physical harm that a development would cause to the openness of the Green Belt. Instead, I agree with Goodman that the principles on Green Belt policy laid down in ***Turner*** support their contention that it is relevant to take into account visual perception as a factor which may reduce the spatial harm from the effect of a development on the openness of the Green Belt" (original emphases).

97. Thus in assessing impact on openness, the extent to which proposed development is visible will be relevant.

98. As regards visual impact, the only Landscape and Visual Impact Assessment ("**LVIA**") before the Inquiry is that produced by Mr Davies. His evidence is discussed in detail below in relation to Main Issue 8 but (in summary) is that the Appeal Site benefits from strong enclosure around its boundaries and is not widely influential within the wider landscape; moreover the Appeal Scheme would result in these boundaries being further reinforced. That is supported by GBC's own GBCS, which refers at para. 24.76 to "*the visual enclosure*

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[154] CD 8.8 para. 24.76.
[155] Mr Collins in his EinC referred to the Green Belt plan in appendix 3 of the Planning Statement (CD2.15); this helps to show the context.
[156] CD8.31, p.21, Box 6.6.
[157] The SA records GBC's view that in terms of the Policy A35 the impact on the Green Belt would be "*moderate*": CD8.31 p 21 box 6.6 third bullet from the end and p. 79, para. 10.11.4.
[158] *Ibid.* at 10.11.4.
[159] Which we know forms 89% of the Borough.
[160] CD 11.22.
[161] At [14].
[162] Mr Sherman agrees at para. 7 of his rebuttal that openness has a visual factor.

provided by woodland and hedgerows" as one of the factors that justifies the loss of openness that would occur within the Appeal Site; moreover the summary conclusion on the Appeal Site namely that it has the potential to accommodate a new settlement is said to be justified by, *inter alia*, that "*[w]hen combined with the previously developed nature of much of the site, and partly enclosed nature of it*[163]". The conclusion reached by Mr Davies is that adverse landscape and visual impacts from the Appeal Scheme are localised and no widespread significant harm is caused. This considerably limits the extent to which openness would be impacted[164].

99. As to the openness of the Appeal Site at present, it is common ground that approx. 30 hectares of it is PDL. That constitutes a significant proportion of the Appeal Site (26%). Moreover, approximately 16.75 hectares of the Appeal Site benefits from an extant planning permission for an In-Vessel Composting ("**IVC**") facility, which comprises a composting building measuring 160m x 70m x 11.7m to ridge, with standing 9.2m above the ridge.[165] These matters are relevant to openness both in the strategic and visual sense; there is not currently an absence of development on the Appeal Site. Further, the PDL has a negative visual impact within the Appeal Site.

100. As regards how built up the Green Belt would be following development, critically the Appeal Scheme includes 65 hectares of interlinked green infrastructure, including approximately 50 hectares of SANG provision.

101. To conclude on openness, the spatial impact that the Appeal Scheme would have is reduced having regard to the fact that a significant proportion of the Appeal Site is presently PDL and that an even more significant proportion of the Appeal Site would be public open space (and other forms of green infrastructure) following development of the Appeal Scheme. That spatial harm is further reduced by the fact that the adverse visual impact of the Appeal Scheme would be limited and localised: see ***Goodman***. In addition, when the impact on openness is taken into account in the planning balance it must be acknowledged that a release of Green Belt land in Guildford borough is inevitable, that a loss of openness is similarly inevitable on any site on which a new settlement is introduced within the borough and that bringing forward the Appeal Scheme will enable more sensitive parts of the borough's Green Belt to be protected.

3.1.3. Green Belt purposes[166]

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[163] Emphasis added.
[164] Confirmed by Mr Collins in his oral evidence (RX).
[165] See para. 5.2 of the proof of Mr Davies and also CD4.10 at para. 21 of the Inspector's report.
[166] In XX Mr Harwood QC raised with Mr Collins a sequential preference for release of Green Belt sites adjoining towns but there is no policy support for this approach.

102. It is the Appellant's case that only one of the five purposes of including land in the Green Belt[167] would be offended by the Appeal Scheme - namely, safeguarding the countryside from encroachment. That position is supported by the evidence of both Mr Collins and Mr Kiely. It is also supported by the GBCS, which explains that the land parcel within which the Appeal Site lies "*is not one of the parts of the borough that best serves the purposes of the Green Belt*".

103. The that of offence to the purposes of the Green Belt is relevant to whether there is harm to the Green Belt, and if so how much[168].

104. As regards each of the five Green Belt purposes, the Appellant comments as follows:

105. **Checking the unrestricted sprawl of large built-up areas**. The Appellant considers that the GBCS was entirely correct to conclude that "[d]*ue to the airfield site not adjoining the main urban areas within the borough, it does not offer the opportunity for such urban areas to sprawl within it. As a result the Green Belt does not serve this purposes in this location*".[169] Only Mr Miles asserted that the Appeal Scheme would conflict with this purpose,[170] arguing that properly understood the purpose was for the Green Belt "*as a whole, to stop the urban sprawl of London*" and that it ought not to be "*salami sliced*". However, as Mr Collins explained in evidence-in-chief, it is clear from para. 83 of the NPPF that Green Belt boundaries are to be altered at the local level, through the preparation or review of the Local Plan - national policy does not provide for the entirety of the Green Belt around London to be considered "*as a whole*". Furthermore, whilst Mr Miles in cross-examination referred to the views expressed by the London Green Belt Council, the latter is a pressure group and as such only limited weight should be given to its views (particularly in circumstances where they have only belatedly commented in respect of the Appeal Scheme).[171]

106. **Preventing neighbouring towns merging into one another**. The GBCS conclusion was that "[l]*and parcel C18 did not include any settlements, and as a result there was not the potential for development within this part of the Green Belt to result in coalescence between existing neighbouring towns, and the land parcel was not considered to serve this purpose accordingly...*". In the Appellant's submission, having regard to the extent of the separation between the Appeal Site and the towns in that part of the Borough it is obvious that the Appeal Scheme would not offend this second Green Belt purpose. Mr Miles again stood alone in contending for the contrary conclusion.

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[167] NPPF para. 80 (CD9.1).
[168] See Perrybrook CD10.2 at DL11 (and DL19 – 21) and contrast what seems to be suggested in closing by GBC at para. 17 that this sits on the benefits side.
[169] CD8.8, "Stage 4" within the appendices.
[170] Para. 6.2.29 of his proof.
[171] EinC of Mr Collins.

107. **<u>Safeguarding the countryside from encroachment</u>**. The Appellant accepts that the Appeal Scheme would conflict with this Green Belt purpose. It notes however the following passage from the GBCS:

> "...some responses to the publication of Volume II have suggested that encroachment in the countryside should relate to the potential to introduce any development to the countryside, without it needing to extend / encroach from an existing cluster of development. If such an approach is taken, the development of the PMDA would of course represent a significant encroachment in the countryside. However, this will always be the case wherever a new settlement is introduced to the Green Belt.
>
> As a result, whilst recognising that this purpose of the Green Belt is currently active in this location, the introduction of a new settlement will be considered to represent an encroachment in the countryside in the vast majority of locations, rather than this particular site being more sensitive than most in terms of this purpose".

The Appellant reiterates that the Appeal Scheme is, as the GBCS acknowledges, less sensitive than other parts of the borough's Green Belt.

108. **<u>Preserving the setting and special character of historic towns</u>**. As the GBCS explains, "[i]*f the precise wording of this purpose is followed, then there are no historic towns in the vicinity of the airfield, and as a result development of it would not conflict with the intentions of the purpose*". In the Appellant's submission the precise wording of para. 80 of the NPPF <u>should</u> be followed. The Appeal Scheme does not offend this purpose.

109. Mr Sherman is the only professional witness to assert that the Appeal Scheme conflicts with this fourth Green Belt purpose. He explained in his oral evidence (i) that he was not asserting that the Appeal Scheme would harm the significance of the Ockham Conservation Area as a designated heritage asset and (ii) that his position was that there would be negligible harm to the Conservation Area but material harm to Ockham Village (which extends beyond the Conservation Area boundaries).

110. Mr Sherman's approach is at odds in this respect with GBC's own GBCS. Notwithstanding the observation set out above (that there are no historic towns in the vicinity of the Appeal Site), the GBCS goes on to use <u>Conservation Areas</u> associated with towns and villages to assess "*whether there is any likelihood of the purpose being active for a particular area*". The conclusion reached is that careful consideration will need to be given to potential impacts upon the Ockham Conservation Area but that "[g]*iven the considerable area of the PMDA and ability to allocate certain land uses to different parts of it in response to the site's constraints, there is considered to be potential to provide a layout that will ensure that this purpose of the Green Belt is satisfied as part of any development of the PMDA*".[172] Para. 24.76 of the main text of the GBCS states that "[t]*he location of PMDA C18-A at Wisley Airfield would not likely affect historic settings due to physical separation from the designated Conservation Area at Ockham village (Purpose 4)*". This view is repeated in the OR (CD6.1, para 10.4.8) "[w]*ith regard to purpose 4, it*

[172] Stage 4 within the appendices.

was considered that the wider land parcel within which the application site sits preserves the setting of Ockham village and its conservation area".

111. Three points should be made here:

111.1. First, GBC have not at any stage expressed concern about the potential impact of the Appeal Scheme on Ockham Conservation Area: see e.g. the OR[173] at para. 10.20.7: "[i]*t is considered that the proposed development is sufficiently distant from the Ockham Conservation Area such that there would be no material harm to its character and appearance and, therefore, no harm to its significance as a heritage asset*"[174]. Dr Massey has assessed the potential impact of the Appeal Scheme on the Conservation Area and has concluded that, at most, there would be less than substantial harm to the significance of the designated heritage asset as a result of increased traffic flows (see below in relation to Main Issue 9).

111.2. Second, the GBCS does not support the view that even if there will be negligible harm to the Ockham Conservation Area (which is the view held by Mr Sherman and GBC), nevertheless the fourth Green Belt purpose is still offended by the impact of the Appeal Scheme upon elements of Ockham Village that fall outside the Conservation Area.

111.3. Third, GBC's case in relation to this purpose sits uncomfortably with the suggestion made by Mr Sherman in his rebuttal that the scheme should have been designed to include Bridge End Farm. Bridge End Farm is closer to, and adjoins, the Ockham Conservation Area.

In any event, Mr Sherman's assertion that the Appeal Scheme would adversely impact elements of Ockham Village beyond the Conservation Area and thus offend the fourth Green Belt purpose is inadequately evidenced. The only written evidence before the Inquiry in support of the allegation of harm to elements of Ockham village beyond the Conservation Area is the bald assertion made at para. 4.12 of Mr Sherman's proof that "[t]*he development proposed* [...] *would have a significant impact on the setting of the historic village of Ockham and its hamlets*". Conversely, Dr Massey describes Ockham village (as distinct from its Conservation Area) at paras. 8.2, 8.5 and 8.6 of his proof and then considers Mr Sherman's assertion in relation to the fourth Green Belt purpose in detail at paras. 5.1 to 5.6 of his rebuttal. He explained in re-examination that on the northern side of Ockham, the extent of the Conservation Area and the village are more or less the same thing, such that there is in that location not much difference at all in term of the impact of the Appeal Scheme on (i) the setting of the Conservation Area and (ii) the setting of the village. Furthermore, Mr Sherman recognised in cross-examination that the GBCS suggests that conflict with this Green Belt purpose could be avoided.

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[173] CD6.1.

[174] In Mr Collins's oral evidence he explained that the Appeal Site falls within parcels C18 and C18-A both of which are more extensive in terms of land area, including to the south, than the Appeal Site itself.

112. **Assisting in urban regeneration, by encouraging the recycling or derelict and other urban land**. In the Appellant's submission the fifth of the Green Belt purposes is not relevant here, given that (as the GBCS notes)[175] "*the potential for developing this site and other areas on the edge of existing towns and villages is only being explored through the Green Belt and other studies, due to recognition that there is no sufficient suitable urban land within the borough to accommodate the Council's growth requirements*". This view was also recorded in the OR (CD6.1) paras. 10.4.9 and 10.4.11.

113. In conclusion, it is plain that only one purpose of the Green Belt is served by the Appeal Site and hence its classification as less sensitive than other Green Belt is justified; thus the GBCS notes that "*there are a number of other parts of the borough in which more of the Green Belt purposes are being served by the Green Belt designation*". While it is accepted that weight must still be given to the harm caused by encroachment into the countryside it is relevant, and highly material, that properly analysed the Appeal Site serves only one of the five purposes of the Green Belt listed in the NPPF. This is a strong indication that the Green Belt harm in developing the Appeal Site is less than it would be at other Green Belt locations. This view is strongly supported by the GBCS – an independent study undertaken on behalf of GBC.

3.2. Whether GBC can demonstrate a five-year housing land supply and the implications for this on local and national planning policy

114. It is agreed that GBC cannot demonstrate a five year housing land supply: it can show only a 2.36 year supply.[176] As the Inspector in the Guildford Road appeal[177] concluded (in April 2016 when GBC's housing land supply stood at about 2.4 years[178]), that is a significant shortfall against the requirement.[179] That point is also accepted by GBC.[180] It is additionally accepted[181] that GBC has "*a record of persistent under delivery of housing*" such that a 20% buffer falls to be applied pursuant to para. 47 of the NPPF. Mr Sherman in cross-examination agreed that GBC had not been able to show a 5 year housing land supply for some time and did not dispute the figures on p.3 of CD13.59, which show that of the 4,338 residential units for which planning applications were made to GBC between April 2015 and April 2017, 3,670 were either refused or not determined (leaving only 668 consented).

[175] Stage 4 within the appendices.
[176] SoCG between GBC and the Appellant (CD12.3) at para. 6.14.
[177] CD10.7.
[178] Para. 10.
[179] Para. 35.
[180] SoCG (CD12.3) at para. 6.14 and Mr Sherman's XX.
[181] *Ibid* at para. 6.16.

115. We return to these matters below under the final main issue. Their importance should not, however, be underestimated simply because they are agreed. Nor should the need for housing beyond 5 years be ignored. The NPPF (para. 47) requires local planning authorities to identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15. The Appeal Site is crucial in this regard. Added to this, the NPPF sets local planning authorities the imperative of significantly boosting the supply of housing.[182] Here, GBC has not - for some time - come anywhere near meeting even the bare minimum requirement of demonstrating a five year housing land supply. GBC is not even meeting its interim housing target of 322 let alone its full objectively assessed need which currently stands at more than twice this at 654.

3.3. The effect of the proposals on the Thames Basin Heath SPA

116. This main issue is focused on possible recreational impacts on the SPA; air quality impacts on ecological receptors are considered under Main Issue 10 below. This main issue arises from RfR2.

117. The following key points arise.

118. First, the planning application was accompanied by what Mr Baker rightly called *"a considerable volume of ecological data"*[183]. The Addendum ES was accompanied by an Information for HRA report (CD8.14) that assessed in considerable detail possible recreational impacts on the SPA and other related issues such as cat predation[184]. The Addendum ES as we know was also subject to external independent review by Nicholas Pearson Associates. The considerable work done on these issues has been further supplemented by the proof of Dr Brookbank that provides a lengthy, detailed and comprehensive analysis of the issues.

119. Second, Natural England ("**NE**") have on these issues been consulted over a long period of time (2014 – 2017) and carried out extensive and careful review. This is summarised at pp. 52 – 60 of Dr Brookbank's proof, and included review on two occasions by NE's High Risk Case Panel. A number of iterations of the Information for HRA reports were consulted upon and considered by NE in draft: see Dr Brookbank's proof at paras. 3.190(3) and 3.192. Detailed consultation with NE has informed development of an appropriately tailored package of impact avoidance and mitigation measures, which has allowed NE to conclude that the Appeal Scheme is unlikely to lead to likely significant effects ("**LSE**") on the SPA: see Dr Brookbank's proof at para.

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182 Para. 47 of the NPPF.
183 Mr Baker's March 2016 report made some criticisms of some of the ecological work done. These points were responded to in Dr Brookbank's App. 1 to her proof and no rebuttal was made to these points by Mr Baker.
184 See chapters 5 and 6; and see also the main chapter of the ES on ecology (CD14.1.8).

3.181 and App 3. They have also concluded that the mitigation required can be satisfactorily secured: see Dr Brookbank's proof at para. 3.182. Great weight should be given to NE's views in these regards.

120. Third, GBC in the light of NE's position have not sought to pursue RfR2. The SoCG records at p. 28 that this is not pursued because *"[t]he proposed Section 106 documents address this reason for refusal"* and that the bespoke Impact Avoidance and Mitigation Strategy ("**IAMS**") is to be secured via the proposed section 106, SANG Management Plan and WACT Framework. The maintenance of the SANG is one of the key functions of the WACT (see above).

121. Fourth, as noted above the conclusion of no LSE by NE and GBC is based on a bespoke package of mitigation that is described in detail in the proof of Dr Brookbank. The package (together referred to as IAMS) consists of:
    121.1. a prohibition on any housing within 400m of the SPA in part to deal with cat predation, and also to protect the SPA from significant "*urban edge effects*";
    121.2. 50ha of SANG;
    121.3. contribution to the NE Thames Basin Heaths SPA Strategic Access Management and Monitoring ("**SAMM**") Project, as set out within GBC Thames Basin Heaths Special Protection Area Avoidance Strategy 2017, which delivers visitor access management measures and educational initiatives across the Thames Basin Heaths SPA; and
    121.4. bespoke "SAMM Plus" measures that will provide dedicated site-specific heathland access management efforts (most notably 1.5 FTE Ockham and Wisley Wardens) and educational initiatives tailored to local circumstance and need, whilst supporting the wider Thames Basin Heaths initiatives and also funding and providing off-site public rights of way ("P**R**oW") improvements.

122. This package goes beyond the "*standard provision*". Thus what is normally required is 8ha of SANG per 1,000 persons which for the Appeal Scheme would generate a requirement for 38.6 ha of SANG whereas 50 ha is proposed. The SAMM Plus is obviously also above and beyond standard provision.

123. The purpose of the IAMS is to secure no net increase in visitor pressure on the SPA. The SANG provides an alternative to the SPA for recreational use. The SAMM contributions and SAMM plus and in particular the warden will seek to address any harm done by users of the SPA.

124. Fifth, Mr Baker, the only ecologist called to give evidence by rule 6 parties confirmed in cross-examination that he does not give any evidence on recreational impacts. It is not difficult to infer why not; the IAMS

clearly means there will be no LSE. The only rule 6 party that has pursued these issues in any detail is the RSPB. They did not though attend the inquiry[185] or call any witnesses; their evidence must for that reason carry less weight than that of Dr Brookbank[186]. Moreover, Dr Brookbank in her proof and rebuttal has provided full responses to each and every point raised by the RSPB in its January 2017 Statement of Case **("SoC")** and its August 2017 Further Written Statement and there has been no rebuttal or other come-back from the RSPB. Other points raised on recreational impacts by other rule 6 parties and third parties have also been addressed in Dr Brookbank's evidence[187]. None of the concerns raised by rule 6 parties are shared by NE or GBC.

125. The Secretary of State can thus be assured that in terms of recreational impacts there will be no LSE from the Appeal Scheme.

3.4. The effect of the proposed development on the safe and efficient operation of the strategic and local roads network

3.4.1. Introduction

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

127. First, highways issues have been given detailed and careful consideration in relation to the Appeal Scheme: see e.g. the TAA (CD3.15); the Addendum ES (CD14.1.14); the proof and rebuttal of Mr McKay and ID 4 and 72.

128. Second, GBC have not offered any evidence to support RfR3. This stated that "*[i]t has not been demonstrated that the development proposed would not give rise to a severe adverse impact on the safe and efficient operation of the strategic road network (A3/M25), nor that it would not give rise to a severe impact to the efficient operation of the local road network, in particular in Ripley and the junction of Newark Lane / Rose Lane*"[188].

129. Third, SCC are entirely content with the highways mitigation package offered[189]. SCC thus also offers no evidence against the appeal scheme on transport grounds. This is significant as it is the local highway authority with responsibility for all the roads around the Appeal Site save for the A3 and M25.

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[185] Other than for the conditions and obligations session.

[186] Attempts to agree a SoCG with RSPB have been mired by delays on the part of the RSPB in responding.

[187] Dr Brookbank faced almost no questions in XX from any parties on recreational impacts.

[188] See further Mr Sherman's proof at paras. 2.9 and 2.10 and his answers in XX. The SoCG records (CD12.3) at p. 28 "*[t]he proposed Section 106 documents address this reason for refusal including the preference for the delivery of Burnt Common Slip Roads*".

[189] See GBC's opening at para. 1(iii) (ID6) and the letter from Mike Green at SCC (ID22); it will be recalled that former county councillor William Barker pointed out that Mike Green had done a tour of the area with him and had a very good knowledge of the transport issues related to the Appeal Scheme.

3.4.2. The highways mitigation package proposed including Burnt Common slips

130. Despite vociferous complaints from WAG and other third parties the highway mitigation package proposed is very largely unchanged from TAA save for two connected matters. First, Burnt Common slips – considered below. Second, Ripley mitigation – itself unnecessary because of Burnt Common slips.

131. The mitigation package proposed, and the changes there have been, are set out in an annex to the Appellant's opening[190].

132. Leaving aside Burnt Common slips the most common complaint has been that the Appellant has changed its position in its evidence on the appeal on proposed local road closures. This is incorrect. While some road closures were proposed in the original TA by the time of the TAA in December 2015 – nearly 2 years ago now – the position was made clear. The proposed mitigation was listed in para. 6.1.7 and remains very closely aligned with what is now proposed. And in para. 6.1.8 it was said that a "*further range of potential mitigation is available in relation to providing for Non-motorised users of Ockham Lane, Plough Lane and Guileshill Lane. These could be implemented if seen as beneficial and if supported by all stakeholders, but are not seen as necessary for the mitigation of the development impacts*". Thus, the position was clear as long ago as December 2015 that these were not actually proposed, nor seen as necessary but rather they were things that could be implemented if seen as "*beneficial*". Subsequently it was determined in discussions with SCC not to pursue these further measures[191]. The TAA looked at Scenarios C and D – the latter taking into account these road closures, the former not.

133. The only transport witness called by parties opposed to the scheme (leaving aside HE who are not concerned with local roads) was Mr Robinson, and he confirmed in cross-examination that he made no criticisms[192] of the proposed mitigation on local roads in terms of its design, layout, safety etc. Indeed, in relation to

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[190] In terms of the mitigation proposed on local roads this involves:
- Send Roundabout: see Mr McKay's proof at paras. 8.59 – 8.62 and scheme drawing 0934/SK/020 Rev C;
- Old Lane / Forest Road Crossroads at Effingham Junction: see Mr McKay's proof at paras. 8.63 – 8.69 and scheme drawing 0934/SK/053 Rev C;
- Old Lane Site access: see Mr McKay's proof at paras. 8.70 – 8.73 and scheme drawing 0934/SK/025 Rev K;
- Old Lane/A3 Junction and Old Lane southbound restriction: see Mr McKay's proof at paras. 8.74 – 8.80 and scheme drawing 0934/SK/017 Rev K;
- Bus turning facility at Station Parade, Horsley: see Mr McKay's proof at para. 9.5;
- New cycle route to Brooklands and Byfleet including improvements to A245 Parvis Road cycling and crossing facilities: 4.10 and 10.24 – 10.33;
- Funding of bus access improvement works at Effingham Junction station;
- Provision of upgraded bus stops at Effingham Junction and Horsley to serve the stations.

[191] See Mr McKay's rebuttal at para. 2.2 and 2.3.

[192] He did raise an issue as to whether the Horsley turning facility would accommodate a bus but accepted he had not tracked this movement. This is a non-issue as Mr McKay confirmed in his oral evidence.

Effingham Junction he readily accepted in cross-examination that "*it's an overall improvement [as against the current situation] I don't argue with that*". It should also be noted in passing Mr Robinson confirmed he raised no issues in relation to impacts on the SRN, or construction traffic[193].

Burnt Common slips

134. The Appeal Scheme will either deliver or fund Burnt Common slips. This mitigation was introduced following discussions with GBC and SCC on the section 106 agreement submitted with the appeal. Both authorities strongly support this proposed mitigation; and their position of not adducing evidence in support of RfR3 is predicated on the delivery of Burnt Common slips, see for example the SCC letter of support at ID22 which says that the impacts of the Appeal Scheme will not be severe on the basis of, *inter alia*, the provision of Burnt Common slips.

135. There are a number of points to make about Burnt Common slips:

135.1. Burnt Common slips have been included in the eGBLP and evidence base since June 2016 – see policy A43a and see the draft GBC Infrastructure Delivery Plan 2016[194]; the Guilford Borough Transport Strategy 2016[195]; the Topic Paper: Transport June 2016 (CD 8.20[196]) and the GBC Strategic Highway Assessment Report[197];

135.2. Burnt Common slips are also safeguarded in the June 2017 version of the eGBLP, and draft Policy A35 has been amended to add a requirement that "*[t]he 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*" (see (4)[198]);

135.3. The revised, and updated evidence base for the June 2017 eGBLP also deals in a number of places with Burnt Common slips, including the benefits and delivery of the same[199];

135.4. The Burnt Common slips provide two principal benefits[200]:

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[193] A condition provides for approval of a Construction and Environmental Management plan (draft condition 5). This will deal with concerns, including those of Mr & Mrs Paton, on construction impacts.
[194] CD8.16 where these slips are referred to as SRN9 and 10, see p. 68.
[195] CD8.18 pp 9, 10 and 22.
[196] Para. 5.52 of which says "*[n]ew north facing junctions to the A3 are also proposed at the A247 Burnt Common interchange. These accesses are referenced as SRN9 'A3 northbound on-slip at A247 Clandon Road' and SRN10 'A3 southbound off-slip at A247 Clandon Road' in the Appendix C Infrastructure Schedule. These junctions are being promoted to mitigate the impact of the level of strategic planned growth and in particular the development traffic flows resulting from the development of a new settlement at the former Wisley airfield site (site allocation Policy A35), as well as limiting any increase in traffic joining and leaving the A3 at the Ockham interchange*".
[197] CD8.21, see paras. 4.5.6; 4.7.9; 4.7.12 & 4.11.6 and fig. 4.11.
[198] The policy does allow though for infrastructure listed in the Infrastructure Delivery Plan, and which includes Burnt Common slips "*alternative interventions which provide comparable mitigation*" (see (5)).
[199] See e.g. the Topic Paper: Transport (CD 8.28) at paras. 5.52, 5.53, 5.56 and 5.57 and also see CD8.29, 8.33 and 8.34.
[200] See Mr McKay's proof at paras. 4.4 and 8.5.

135.4.1. They allow traffic to join and leave the A3 before reaching Ockham Interchange, creating headroom at that location on the SRN in response to concerns expressed by HE about the capacity of the northbound on slip road;

135.4.2. They reduce significantly traffic through Ripley and on other local roads[201] allowing the growth planned in the eGBLP including the Appeal Scheme[202];

135.5. By alleviating existing traffic issues on the A3 itself and on local roads Burnt Common slips allow the development proposed in the eGBLP to come forward. Thus the provision of Burnt Common slips via this appeal provides wider economic benefits above and beyond those that derive from the Appeal Scheme (as to which see below). These benefits are very substantial running to hundreds of millions of pounds in gross value added as well as thousands of jobs. This is all set out in paras. 9.7 – 9.12 of Transport Technical Note 1[203] and has not been challenged by any evidence given by any rule 6 parties. In cross-examination Mr Sherman recognised the wider benefits that Burnt Common slips bring could thus be seen as important benefits of the scheme. Those benefits form part[204] of the Appellant's case that there is VSC: see below[205];

135.6. As Mr Bird QC pointed out on Day 2 WAG did not object in representations on the 2016 or 2017 versions of the eGBLP to Burnt Common slips. The extent to which any of the other rule 6 parties objected to Burnt Common slips is unclear[206]. Cllr Cross indicated that RPC objected; if so this is bizarre as Ripley is the village that benefits most from the Burnt Common Slips[207]. Moreover, it is clear that the chair of the Lovelace Neighbourhood Plan Group accepts that impacts on local roads "*could be partly mitigated by the creation of additional access to the A3 at Burnt Common*"[208];

135.7. Burnt Common slips are not within the Appeal Site or something for which consent is being sought on this appeal. Rather the section 106 agreement provides for the Appellant to deliver them or to pay for their delivery. Despite this Mr Harwood QC has continued to erroneously argue[209] that the Appellant has changed its scheme[210];

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[201] E.g. the junction referred to in paras. 15 and 16 of Mr Harwood's proof namely the A3 Junction with A3100 Clay Lane, Burpham – Junction with A247 Clandon Road, Burnt Common Northbound.
[202] See also the GBC Strategic Highway Assessment Report June 2016, CD8.34 at para. 4.7.9.
[203] ID4.
[204] The Appellant says there would be VSC even without the provision of Burnt Common slips, and this was the case of the Appellant in the Planning Statement and SoC when Burnt Common slips was not proposed to be delivered via the Appeal Scheme.
[205] Mr Collins's EinC provided further details on the benefits including "*likely dependent development*" of c. 3,000 dwellings (including the Appeal Scheme) and c. 12,000 sq m of employment floorspace.
[206] It appears though that the Horsley Parish Councils did not object to Burnt Common slips in the June 2016 eGBLP.
[207] See Mr McKay's proof at para. 8.55 and his evidence in RX. It was evident from Cllr Cross's XX of Mr McKay that he totally misunderstood what the effect of Burnt Common slips would be and the extent of the benefit it would bring. This misunderstanding might well explain RPC's objection which would otherwise best be characterised as cutting off their nose to spite their face.
[208] See CD13.4 which are the Group's notes of a meeting on 10 April 2017, and note also that the secretary of the group is a RPC councilor.
[209] See closing para. 20.
[210] This submission was expressly rejected by the Inspector in his ruling on Day 2 allowing Transport Technical Note 2 to be admitted in evidence.

135.8. In due course Burnt Common slips would be the subject of a separate process. Mr Harwood in his oral evidence said that the slips would need to be delivered by a "*side roads order*" – that is an order under s. 14 of the Highways Act 1980. While that power could be used it is not accepted by the Appellant[211] that they would have to be delivered under such powers but they clearly could be. Also, HE can delegate its powers: see s. 6 of the Highways Act 1980 e.g. to SCC. Such orders are subject to the procedures in Schedule 1 and 2 of the Highways Act 1980 so if there are objections an inquiry must be held. There is also not surprisingly a requirement for EIA: see s. 105A of the Highway Act 1980;

135.9. Complaints have been made by WAG as to a lack of assessment in the ES of Burnt Common slips; this is dealt with fully above and in ID3. In addition, HE as part of the processes by which it is considering the Burnt Common slips has, in accordance with normal procedure, required information on environmental issues[212]. This is covered in Transport Technical Note 1[213] in terms of air quality and ecology – the only environmental issues being pursued by WAG. Moreover, Professor Laxen and Mr Baker both accepted that their evidence was wholly unaffected by whether Burnt Common slips was provided or not. No other environmental issues (e.g. noise etc.) have been raised in relation to the slips. And, of course, we know WAG don't actually object to the slips (see above);

135.10. The land required by Burnt Common slips is subject to an option agreement between the owners and GBC. Moreover, this land is safeguarded under draft Policy 43a. That policy makes no express link to the Garlick's Arch allocation in A43. Given the strong support for the slips SCC and GBC have indicated a willingness to use CPO powers if necessary to secure the land[214]. Mr McKay in re-examination expressed the view that it was highly likely that if necessary CPO would be used[215]. That view was based on his experience of the use of CPO on other schemes and his discussions with SCC and GBC. The Secretary of State can have a good level of assurance that Burnt Common slips will happen given their importance to the eGBLP[216].

136. The position of HE on Burnt Common slips, to which they do not object in principle, is set out below.

3.4.3. Issues raised by rule 6 parties on traffic impacts

3.4.3.1. Introduction

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[211] As Mr McKay made clear in XX by Mr Westaway.

[212] See Mr Harwood's proof at para. 53 referring to the requirements of Circular 02/2013.

[213] ID4.

[214] It should further be noted that Mr Green (for SCC) has said "*but we're mindful that we want to avoid the possibility that your client might be held to ransom by another land owner on this matter*": see the appendices to Mr McKay's proof at p.156.

[215] A view endorsed in GBC's closing at para. 68; and the costs are provided for in the s. 106.

[216] See Mr McKay's evidence in RX. The value of the land the subject of Policy A43a is as agricultural land absent the Garlick's Arch allocation and if that site is allocated the option is effective and CPO is not required.

137. Leaving aside for the moment HE the other rule 6 parties between them called only one transport witness namely Mr Robinson on behalf of the Horsley Parish Councils. The issues he raised concerned: (i) traffic modelling; (ii) cycling safety; (iii) the bus proposals; and (iv) the environmental/safety impacts on Ockham Lane. Matters (i), (ii) and (iv) are considered further below in this section; the bus proposals are considered under Main Issue 5.

138. WAG called no evidence on transport issues, as is confirmed in Mr Kiely's proof at para. 5.07 and in cross-examination. Despite this Mr Harwood QC on behalf of WAG was granted the considerable indulgence of cross-examining Mr McKay on issues on which his client had called no evidence and advanced no case. The issues raised by WAG are considered below but it must be noted at the outset that they have through evidence advanced no case at all on transport issues.

139. The evidence of Mr Robinson can, it is submitted, be given very little weight for the following reasons:
   139.1. He was wholly unaware when called to give evidence that GBC and SCC were not pursuing RfR3 and 4 despite this being clear from the SoCG, GBC's proofs and the Appellant's proofs;
   139.2. He had not even read the transport chapter of the Addendum ES;
   139.3. Large parts of his proof appear to be based on the TA, with it being far from clear that he ever looked at the TAA;
   139.4. His proof is written without a single mention of the severe test in para. 32 of the NPPF[217] and it was only in evidence-in-chief that he identified what he considered were the severe traffic impacts that arise from the Appeal Scheme namely: (i) cycling safety; and (ii) environmental impacts on Ockham Lane;
   139.5. He was wholly unaware of some of the fundamental concepts that underlie the verification of modern traffic models, such as GEH. He had never heard of this and had to telephone Mr McKay shortly before the inquiry to ask what it was. This is somewhat extraordinary as it is a standard WEBTAG statistical measure. It is fundamental to the verification of all traffic models not just SINTRAM[218]. Moreover, it is in fact described in the TAA appendices and Mr McKay's proof which it does not seem that Mr Robinson had read or understood before his call to Mr McKay. It is plain that Mr Robinson has

[217] Mr Robinson's proof cited para. 32 of the NPPF in two places (paras. 3.4 and 3.31e)) without mentioning the severe test. His only mention of the word "*severe*" coming in para 4.3 in the context of the views of respondents to a survey. The proof reads like a proof from pre-NPPF days; the major change effected by para. 32 goes wholly unacknowledged in Mr Robinson's proof. In the ***Redhill*** case Sullivan LJ noted that the introduction of the severe test in the NPPF was a major change in national policy and made clear that planning permission should only be refused on transport grounds where the residual impacts were severe. So if the conclusion is that there will be transport impacts even after the proposed mitigation but those impacts fall short of being severe then that is not according to the NPPF a basis for refusal of permission. According to the Oxford English Dictionary severe means "*Grievous, extreme*".

[218] Mr McKay said in his oral evidence that if you don't know about GEH it very much reduces your ability to review modelling.

no experience of the construction, validation or management of modern traffic models[219]. He readily accepted in cross-examination that he had no direct experience of the SINTRAM model used here;

139.6. Mr Robinson's proof lists a number of what are said to be anomalies in the Appellant's traffic modelling and when asked in evidence-in-chief if he had similar concerns in relation to the further modelling provided in Mr McKay's proof and appendices he made clear he didn't know because he had not had a chance to consider them – despite the proof having been provided 6 weeks before[220].

More could be said in this regard but perhaps this is a case of least said the better.

140. Before considering the issues raised by Mr Robinson further it is necessary to recall that para. 32 of the NPPF is clear that development should only be prevented or refused on transport grounds where the residual cumulative impacts are severe.

3.4.3.2. Traffic modelling issues

141. This section will be structured under these headings:

141.1. The verification/auditing process undertaken in respect of the Appellant's traffic modelling;

141.2. The issues raised by Mr Robinson on behalf of the Horsley Parish Councils;

141.3. The issues raised in Professor Laxen's supplementary proof and in cross-examination by Mr Harwood QC of Mr McKay.

3.4.3.2.1. Modelling verification/audit

142. The following matters are key:

143. First, the TA submitted in December 2014 was largely replaced by a comprehensive TAA in December 2015, along with a fully substituted new transport chapter in the Addendum ES. The ES as we know was reviewed twice by Nicholas Pearson Associates for GBC[221]. Moreover, the ES was subject to a scoping process with SCC on *inter alia* transport maters before it was submitted[222].

144. Second, the traffic generation and trip distribution for the Appeal Scheme was agreed by SCC: see Mr McKay's proof at paras. 5.1 and 5.6 and his evidence in cross-examination and re-examination. Any suggestion that these matters were not in fact agreed has no proper evidential basis whatsoever and really

[219] Mr McKay in his EinC said that while Mr Robinson has a broad range of experience his not knowing about GEH did illustrate a fundamental gap in his knowledge and experience in this key area of his case and hence one should be wary on his observations on the model.

[220] He said "*I haven't had time to check them to the same level so I can't answer whether anomalies still pertaining today*".

[221] See e.g. CD14.1.16 pp. 16 – 17 and CD14.1.17.

[222] See CD14.1.14, p. 5 para 14.2.34.

should not have been pursued in cross-examination by Mr Harwood QC on behalf of WAG[223]. Indeed, in cross-examination Mr Robinson, the only opposing transport witness who dealt with these issues, accepted the trip generation or distribution used by the Appellant[224].

145. Third, the modelling used by the Appellant has been the subject of lengthy and detailed processes of audit and verification[225]. The model used was SINTRAM; which is being used by SCC to support the eGBLP. The validation was undertaken in accordance with WEBTAG "*the standard normally used as a basis for local model validation*"[226]. WSP was given a copy of the SCC model to allow local validation[227]. WSP has a dedicated team of experts on modelling engaged by a number of UK and overseas public bodies and developers and who also do work for HE across the UK. WSP found some anomalies in the model and sought to rectify these. The modelling was then repeatedly audited by SCC and is now agreed to represent the local network in accordance with WEBTAG and is fit for purpose. The model has thus been subject to significant authority-validated improvements[228] and has reached a stage where neither SCC nor HE are seeking further work (*ibid*.). Indeed, HE are using the Appellant's modelling in stage 1 and 2 of their RIS work, something that lends further credibility to the modelling. There is attached to the TAA[229] a local model validation report dated September 2015, the base modelling for which was audited and passed by Emma Brundle at SCC, a Senior Transport Planner, and "*fastidious*" auditor[230]. She declares in an email dated 16 October 2015 (*ibid*) that she is "*very content with it*". The validation process involved network refinement by adding local roads and junctions (see section 3); zoning (section 4); and validation and calibration using GEH. In his oral evidence Mr McKay described this as a full new validation process, which involved considerable time and cost[231].

146. There was a further audit in September 2016. This followed a request from SCC to make changes to the model; having done that WSP re-ran a check of the model validation. A full revalidation was deemed unnecessary and this work was passed by SCC[232]. The model was found to be sufficiently robust to be used with the changes such as to be acceptable to SCC without the need for a further full validation; that said it is

[223] Moreover, his XX focused on utterly insignificant issues about trips by employees to the proposed primary school: see below.
[224] See Robinson XX answers.
[225] See Mr McKay's proof at para. 3.12, his rebuttal at para. 4.12 and his EinC Mr McKay in his EinC explained that while he is not himself a modelling specialist as a Project Director on many large housing development proposals he regularly deals with model commissioning, validation and forecasting using a wide range of strategic models. As such he regularly reviews reports including the levels of validation achieved. His work also includes being asked by local authorities to adopt refinements of the outputs from models to take account of the inevitable local variations in results between the model and on-site counts.
[226] See Mr McKay's proof at para. 5.8. In XX Mr Robinson accepted that he could not dispute that SCC had concluded that the validation undertaken was fully WebTAG compliant.
[227] See Mr McKay's proof at para. 5.10.
[228] Mr Robinson accepted in XX that "*of course a model once validated is a more valid one than one that's not*".
[229] CD3.14 App. E.
[230] As Mr McKay described her in his oral evidence.
[231] In XX Mr Robinson indicated he was not disputing the methodology by which the modelling was undertaken, and validated. His complaint was he said with the "*outputs*".
[232] See Mr McKay's proof App. B.

clear that an updated Local Model Validation Report was provided (App. B Mr McKay's proof) and that this allowed SCC to indicate that the audit was "*passed*".

147. In May 2017 a further run of the model was undertaken and this was the basis for the modelling evidence in Mr McKay's proof. Following this[233]:

    147.1. No request for any further work on the modelling has been made by SCC;

    147.2. Mr McKay has attended a number of meetings and had extensive correspondence with Mr Green and other officers at SCC none of whom have ever raised any issues with the modelling or validation;

    147.3. SCC wrote to PINS[234] in September 2017 supporting the Appeal Scheme and raising no modelling issues, as Mr McKay said in re-examination, if SCC had any remaining issues they would have raised them;

    147.4. Moreover, we know what SCC's final position is from the email exchange between Mike Green of SCC and Martin Knowles on behalf of GBC (ID86):

> "Despite SCC not formally signing off various aspects of the inputs to the Transport Assessments, SCC are content that the Transport Assessment work prepared by WSP on behalf of WPIL has enabled SCC to adequately assess the impact of the development proposals on the local road network and the mitigation required. This has resulted in SCC removing their highway objection subject to the highway and transport mitigation currently before the Appeal being secured in any planning consent and obligations"[235].

148. In contrast to the above in cross-examination Mr Robinson accepted that he had not carried out any sort of technical audit of the modelling using WEBTAG or any other method.

3.4.3.2.2. The issues raised by Mr Robinson

149. It is difficult to make much of the points Mr Robinson raises. There are a number of points:

150. First, in paras. 5.6-5.38 of his proof Mr Robinson sets out his thoughts on the differences in flows across the network. The fact is that with any strategic model assignment there will be variations on different links and to deal with this, SCC requested WSP deal with these variations in traffic flows using a factoring process utilising the observed flows. This is set out in para. 4.7 of Mr McKay's rebuttal and Mr Robinson had no criticisms of this other than to say that he did not understand parts of it. Mr McKay was correct to say in his evidence-in-chief that it was brave of Mr Robinson to criticize the model outputs given his limited understanding of the modelling and validation processes. Furthermore, Mr Robinson took issue with the use of average peak period flows output by SINTRAM, rather than peak hour flows. In fact, Mr McKay's

[233] All confirmed in RX by Mr McKay.
[234] ID22.
[235] That is the context in which one must read the comments made by Mike Green in the earlier email relied on by the Horsley Parish Councils (see their closing at para. 67).

thorough explanation in para. 4.7 of his rebuttal shows that the adjustments made to SINTRAM outputs also take account of the potential differences between peak hour and average peak period flows in the detailed capacity assessments of the offsite junctions.

151. Second, in relation to the "*differences*" Mr Robinson draws attention to it is difficult to see what if any point he draws from these. This, for example, in relation to Ockham Interchange[236] having referred to various outputs from the model he discusses the noise impact from this traffic, but in cross-examination accepted there was no noise issue at this Interchange. Furthermore, ultimately, Mr Robinson did not suggest in either his written or oral evidence that there were any severe impacts on any of the junctions he commented on in his proof, including Effingham Junction crossroads. This reflects the position of Mr McKay, GBC and SCC.

152. Third, Mr Robinson's evidence infers that some of the traffic flows do not make sense[237] because "*these pairs, generally, should be roughly equal as they represent opposing flows*". In general terms, new developments would see a higher exiting flow in the morning peak hour and then a higher returning flow in the evening peak hour. Also routes into employment centres would see higher inbound flows in the morning and higher exiting flows in the evening peak hours. The links in and around the Appeal Site will contain a mix of traffic moving to different locations and would not conform to this simplistic idea of traffic movements. For example, a review of the observed traffic flows from the June 2016 Manual Classified Counts show that 302 vehicles head north from Forest Road to Horsley Road, however only 199 make the returning journey[238]. The traffic survey is contained within Appendix KK of Mr McKay's rebuttal. It is evident that, given the strategic nature of the highway network and the many route choices available, traffic is utilising a number of routes to reach its destination, which the model is replicating. It is therefore inappropriate and overly simplistic to suggest the opposing flows should be roughly equal[239].

153. Fourth, Mr Robinson raised issues about the Effingham Junction crossroads[240] questioning the queuing predicted by the model at this junction based on a survey undertaken by the Horsley Parish Councils[241]. Regrettably the modelling outputs referred to by Mr Robinson come from the TA, not the TAA. In any event there are proposals for mitigation works at this junction that will reconfigure the junction[242]. The revised layout has been tested by modelling and the mitigation approved by SCC. Mr Robinson accepted the mitigation would be an improvement and that with these works the queuing patterns would change and

[236] See his proof at paras. 5.16 – 5.19.
[237] See para. 2.12 of his proof and his oral evidence, and ID25.
[238] And again, Old Lane south to Howard Road sees 168 vehicles in the morning peak hour, with only 34 making the return trip.
[239] See Mr McKay's rebuttal at paras. 4.8 – 4.10.
[240] In paras. 5.9 – 5.43 of his proof.
[241] Without any expert input.
[242] See Mr McKay's proof at paras. 8.63 – 8.64.

could only be predicted by modelling. The reason the junction was modelled, and mitigation proposed, was to deal with concerns raised by GBC and SCC on queuing; which issues have been resolved by that mitigation. The mitigation proposed is the same as that considered at the Howard of Effingham appeal heard earlier in the year and has also passed a road safety audit[243].

154. Fifth, Mr Robinson wrongly referred to "*coarseness of the model*" as meaning "*not very accurate*". This is incorrect; and misunderstands the modelling. In the context of this model it is referring to the model's larger degree of granularity in these areas, meaning that not every side road in the network has been coded. This is how most models are built, with the extremities containing a coarser coding with more detail in the study area[244].

155. Sixth, in oral evidence but not in his proof, Mr Robinson sought to criticize the zoning undertaken in the Local Model Validation Report[245]. Mr McKay explained that the process used was entirely usual. The SINTRAM model does not include every destination as a zone and there is no requirement for this to be so. The intention, as Mr McKay explained in his oral evidence, is to represent the likely changes in travel patterns that are then assessed through the detailed modelling of junctions having adjusted the flows from the model to take account of peak hour observed flows. The total vehicles generated by the Appeal Scheme, which has been agreed by SCC, is 796 out in the am peak and 203 in in the pm peak, spread over the whole of the Model. There are 610 Zones in the model some with more than one zone connector[246] and the model uses origin destination data gathered by a variety of means to estimate the trips to each zone. However, the development has key destinations to larger settlements so the distribution is biased towards the zones representing these destinations[247].

156. Seventh, Mr Robinson again in oral evidence but not in his proof, criticised the performance of the model as set out in Apps I and J of App. E of CD3.14. These graphs show tolerances from the journey times assessed in the model. As the Inspector pointed out during Mr Robinson's evidence-in-chief there is no particular problem with these journey times as they generally lie within or very close to the tolerances given. In his oral evidence Mr McKay refuted Mr Robinson's diagnosis of the situation where the journey times lie below the line. He said that this represents less traffic (hence the high speed) but in fact all it means is that the journey times are being modelled shorter because it is not a perfect model. No model can ever be perfect (which is the

[243] See Mr McKay's proof at para. 8.65.
[244] See Mr McKay's rebuttal at para. 4.5.
[245] CD3.14 App. E pp. 4 – 5.
[246] *Ibid*, App. E p. 4.
[247] E.g. in Table 4-2 on p 4 of App. F of CD3.14 Guildford attracts approximately 34% of trips and Woking 22%, so it is not surprising that the number of trips to a local destination such as Effingham is lower as Mr Robinson highlights. This is entirely usual.

whole point for having statistical measures such as GEH)[248]. Mr McKay also makes adjustments to the flows used in the detailed capacity assessments of off-site junctions to take account of this potential anomaly[249].

Cycling safety

157. No issues as regards cycling safety are pursued by GBC or SCC at this appeal; indeed SCC's letter of support for the appeal sent to PINS specifically draws attention to *"a significant contribution/provision in kind for material improvements to the cycling network in the wider vicinity of the site"* as being one of three reasons SCC no longer allege any severe impacts and consider the "*site to provide sustainable transport solutions*". This is an issue raised only by Mr Robinson and some third parties. The Appellant's position is as follows.

158. First, the provision to be made for a route to Byfleet, improvements at Ockham Interchange and the financial contribution for cycling are discussed in more detail under Main Issue 5.

159. Second, the agreed trip rates show that cycling off-site[250] is likely to be in the order of 3% - or 50 peak hour trips[251]. The cycling gravity model in Mr McKay's App. EE is aimed at putting the level of predicted demand on each of the compass point routes into some context to inform the discussions with SCC about the package of measures. It was not, as he explained in his oral evidence, intended as a forensic exercise. Relative levels of potential demand are forecast from the application of a very simple gravity model. The key point is that set out below the table on p. 256 of App. EE, i.e. 70% of trips will be provided for by existing or planned routes[252].

160. Third, safety including cycling safety is considered in detail in the Addendum ES. This was reviewed (twice) by Nicholas Pearson Associates and ultimately cycling provision is agreed with SCC.

161. Fourth, Mr McKay's proof also gives detailed consideration to road safety issues[253]. In this analysis he has used over 6 years of data as set out in para 11.8 of his proof and the commentary in App. R. This is more than the 5 years Mr Robinson indicated needed to be used, although he accepted (in cross-examination) that 3-5

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[248] Mr McKay's evidence was that it is more relevant to compare in the journey times in App. E to CD3.14: e.g. table 5-7 p. 19 (3/8pass) with table 5-19 p. 26(6/8pass) and Table 5-13 p. 22 (6/8pass) with table 5-25 p. 29 (7/8pass) which show that the validation process improved these journey times so that more were within tolerances i.e. less than 15%. At 30mph this represents 4.5mph difference on a 30 mph road. Mr McKay in his EinC also explained that it did not matter that in the post-validation tables there remained some "nos". WebTAG says modelled times along 85% of routes should be within 15% of surveyed times and here 85% of 8 routes is 1.2 so there is no issue.

[249] See Mr McKay's rebuttal at para 4.7.

[250] As discussed under Main Issue 5 cycling is likely to be popular as a way of getting around the Appeal Site which is to be designed to allow this to happen.

[251] See Mr McKay's proof at para 10.41.

[252] In addition targeting expenditure on a route to Cobham would seem to yield a poor rate of return, especially when there is a bus service proposed.

[253] See paras. 11.3 – 11.12 and his App. R.

years data was acceptable. App. R shows there have been 52 Non Motorised Users ("**NMU**") accidents. Although Mr Robinson was at pains to say that they should be set in the context of local roads, the only two fatalities and one of the serious PIAs involving a NMU were on the A3. NMUs are involved in 7% of accidents in the study area. Using the information in App. R and Table 1-1, as a proportion of accidents on the local road network (e.g. excluding the A3 and M25) NMUs comprise about 26%. Cyclist accidents comprise 17% and pedestrians comprise 9%. In Surrey the rates in 2015 were 11% for cyclists and 9% for pedestrians. Thus although the accident rates in the local area are a little higher when looking at cyclists, the situation is not unusually different in this area[254].

162. Fifth, the Appellant is promoting a safe and secure environment in the development where cycling and walking to the local facilities in the site will be purpose designed for safety and convenience. The Appellant is also delivering the route to Byfleet/Brooklands. Once complete this will provide a quiet route to a major employment centre. Mr Robinson stated that Mr McKay's App. CC was a "*good report*" on this proposal. The Appellant is improving facilities at Ockham roundabout for cyclists thus improving the safety for those travelling to Ripley. Moreover, the Appellant is providing funding via section 106 for SCC to further improve conditions for cyclists. The Appellant is providing £2 million funding[255] so that SCC can begin to address the issues alongside seeking opportunities to fulfill the Guildford cycling strategy. In his evidence-in-chief Mr McKay indicated that he saw the monies being used to meet a holistic need for creating a zone around the development in which everyone can be more aware of cyclists. This could include many of the roads used by the existing recreational cyclists. The monies could be used to create a specific cyclist awareness zone including entry points using gateways and intermittent speed awareness measures, a section on the SCC website, and SCC proactively monitoring the condition of the carriageway, so that potholes are dealt with before they cause problems. This would still be directly related to the Appeal Site in terms of the legal tests for planning obligations.

163. Sixth, Mr Robinson in his proof asserted the possibility of cycle accident rates in the area quadrupling. In cross-examination he admitted to not having any data or analysis to back it up, other than taking the weekend rate which he did not provide and applying it without justification to the rest of the week. Mr McKay in his oral evidence referred to the transport Chapter of the Addendum ES (CD14.1.14)[256]. In para. 14.2.34 the Addendum ES refers specifically to six points required to be assessed by the IEMA Guidelines, which includes "*Accidents and safety*". Cycle amenity and safety is one of the specific impacts addressed in the

[254] Mr McKay urged some caution here as the Surrey statistics include the motorway and trunk roads.
[255] Mr Westmoreland-Smith (closing para. 57) was wrong to suggest that this can be spent anywhere in the Borough; it is restricted see the section 106 agreement: see the definition of the "*cycle and public rights of way improvement contribution*".
[256] Which Mr Robinson had not read.

Addendum ES. Paras. 14.2.59 - 61 set out the criteria used. Under these well-established criteria flows of less than 1,400 vehicles per hour in the peak hour are taken as representing low levels of cyclist delay. Para. 14.2.61 states (correctly) that no specific guidance exists for cycle amenity impacts. Table 14.9 sets out the existing conditions for cycling. For example Ockham Lane is described as low delay and having average amenity. Table 14.20 sets out the position in 2031 for Scenarios A and C. It shows no change in the assessment of cycling on the links assessed except for an improvement from poor to average based on its inclusion in the Guildford Cycling Strategy for improvement. Neither Mr Robinson nor any third party has provided any objective alternative assessment to the same level of detail that questions these findings. The Addendum ES was assessing Scenario C, if one then considers Scenario C3 with Burnt Common slips with reference to the AADT data for Scenario C3 in Professor Laxen's supplementary Proof (supplied to him by Dr Tuckett-Jones), some of these links would not now even qualify for assessment at all because AADT traffic with development is lower[257]. Mr McKay's proof looks at Scenario C3 and his conclusions on cycling safety in that proof are therefore of direct relevance if assessing the position with Burnt Common slips.

Ockham Lane

164. This point really only emerged in Mr Robinson's oral evidence. In his evidence-in-chief he said that on Ockham Lane the "*flow on it is going to - triple or quadruple, there is going to be a very big leap in traffic on what is meant to be an amenity rather than a traffic route so again a very severe impact environmentally. Fear and trepidation and all that jazz when walking down that road*". In cross-examination he indicated that there was no capacity issue and that the issue he raised was not just about "*environmental impact*" but also safety. He again referred to "*Fear and Trepidation*". In addition, when cross-examined he ventured to suggest that the Addendum ES, which he had not read, would not have dealt with impacts on Ockham Lane because at that time it was proposed to be closed to traffic. This is quite wrong, as Scenario C (as opposed to D) did not assume closure of Ockham Lane. The impact on Ockham Lane was one of only two points Mr Robinson has suggested result in a severe impact. He has not been clear what aspects of amenity on Ockham Lane he means but he did in his oral evidence use the term "*fear and trepidation*" (in fact "*Fear and Intimidation*" in the IEMA guidance). His concerns on this matter were not set out in his proof and he produced no rebuttal. The Addendum ES deals specifically with Fear and Intimidation at para.14.3.20, setting out the criteria- there is no formal guidance – and so it is down to the assessor. This assessment needs to be related to infrastructure and numbers of pedestrians, which are considered to be very low currently. Baseline conditions are set out in Table 14.10 and future conditions in Table 14.21. There is not predicted to be any significant change in terms of the criteria used. In Scenario C3 this link would still need to be included in the assessment of links, but as the peak hour flows are less than 1,400 per hour being 276 AM (one every 13 seconds) and 241 PM (one every 15 seconds)

[257] E.g. Link 8 Ripley High Street, Link 11 Guileshill Lane and Links 12 and 13 Ockham Road North.

they are still low enough not to be considered as significant. The ES Addendum looks at the impact on roads judged against all the IEMA criteria[258]. Mr Robinson accepted he had not done any IEMA assessment of impacts on Ockham Lane.

165. Finally, Mr and Mrs Paton raised a further issue on Ockham Lane as to it becoming a "*bypass*". In his oral evidence Mr McKay explained that this was not his reading of the situation. There will be some rerouting of traffic as shown in the plots in App. O. 142 vehicles per hour ("vph") in AM (1 every 25 seconds) and 166 vph in the PM (1 every 22 seconds). That though does not constitute becoming a bypass. He also questioned what it is considered was being bypassed here. There is no link through the Appeal Site at present so there cannot be an argument that Ockham Lane forms an alternative to anything and the directional nature of the connections onto the A3 mean that there are few occasions when one might wish to use Ockham Lane as bypass to incidents on the A3.

3.4.3.2.3. The issues raised by Professor Laxen/WAG

166. The issues raised on behalf of WAG in Professor Laxen's supplementary proof need to be judged against the fact that he is not, as he readily accepted in his oral evidence, a transport expert[259]. Moreover, as we know WAG's evidence makes no transport case at all. This is a weak position indeed to start from but undeterred Mr Harwood QC cross-examined Mr McKay and effectively accused him of professional incompetence. This was a frankly wholly unjustified slur. It should not have been made. What remained of Mr Harwood QC's cross-examination was in any event very largely confined to points of no significance whatever to the traffic analysis and the accusation had no proper basis in the evidence. With those points made we deal with the points raised in turn.

167. First, WAG have raised issues about what was included in the transport assessments in terms of other developments. This is a matter also dealt with below in relation to Main Issue 10. The criticisms made here are totally without merit. Thus:

167.1. The TAA for Scenario A included committed development and background growth of c. 24%, that is c. 1.3% per annum derived from TEMPRO. The Scenario A assumptions are set out in CD3.14 App. F; again these were approved by SCC[260]. App. A to App. F contain the full list of committed development included. This is an extensive list[261] of committed developments between 2009 and 2013. In cross-examination of Mr McKay, Mr Harwood QC sought to raise an issue as to why post-2013 committed

[258] All of the above was confirmed in Mr McKay's oral evidence.
[259] In his EinC he said *"I'm not a traffic expert … so its just an observation …"*.
[260] See the email in App. F of CD3.14 dated 12 November 2015.
[261] It includes 2134 residential units and 63,000 sq m gross floor area of commercial development.

development was not included but this is very simply answered in App. F para 3.1.2. The model was built from a 2013 forecast year and so after 2013 any developments are accounted for by the background growth rate applied. This is entirely usual practice as Mr McKay confirmed in re-examination;

167.2. In relation to other draft allocations in the eGBLP (including Garlick's Arch): these were not included in the modelling at the direct request of SCC. These allocations are not committed development; there are no planning applications for any of them. In relation to Garlick's Arch while this was not included in the SINTRAM modelling it has been included in the assessments included in Transport Technical Note 1[262]. In re-examination Mr McKay confirmed the approach taken to this matter is entirely the usual one;

167.3. RHS Wisley: the relevant permission post-dated the TAA as it was granted in 2016. Mr McKay's oral evidence was that the majority of the trips generated are off-peak and at weekends and so have little impact on the transport assessments for the Appeal Scheme. And the occasional large-scale events held are outside typical conditions and so not required to be modelled. Even so comparing the TAA App. G (CD3.14) with Mr McKay's proof App. O the Wisley zone connector am peak includes growth of 21% and looking at the Wisley Lane flow diagrams the am peak shows growth of 47% on this link. Mr McKay's evidence was thus of the view that the Secretary of State could have assurance that this level of background growth at these locations did take account of the new permission if not fully, then substantially. It is of no great importance however, as HE clearly did not object to the RHS application and are silent at this inquiry in regard to the Appellant's treatment of it.

167.4. RIS: this was rightly excluded from the assessment for the reasons set out below under Main Issue 10.

168. Second, Mr Harwood QC cross-examined Mr McKay on trip rates as included in his App. J. These it will be recalled are agreed with SCC, and are again the subject of no evidence from WAG. The point was put that the trip rates (see Table 3.16) do not include trips for the primary school, community uses and the sports pitches. These points are of no merit for the following reasons:

168.1. The use that generates the vast majority of the trips is the residential, and in addition trips are allowed for in respect of the B1, B2, B8, A3 and A5 uses and the secondary school. Even if trips were expressly provided for in respect of the primary school, community uses and the sports pitches the number of trips would be wholly insignificant given the volume of trips from the residential and other accounted for uses;

[262] ID4, as Mr McKay further explained in his oral evidence.

168.2. Moreover, the primary school, community uses and the sports pitches[263] will primarily be used by residents of the Appeal Site and will not generate off-site trips;

168.3. Mr Harwood QC's concern was staff trips to the primary school. But even if one allowed for the same number of trips for the primary school as for the secondary (a very generous allowance indeed given that it is half the size and likely to be attended only by children living on the Appeal Site) the total two-way trips would be 55 in the am peak and 14 in pm peak. In context of an overall 998 and 1027 such trips from other uses this is wholly inconsequential. The position is *a fortiori* with the community uses and the sports pitches.

169. Third, issues were raised as regards the traffic data used for Scenario C in Mr McKay's proof: see ID34. This is dealt with in section 2 of Transport Technical Note 2[264]. Despite the amount of time spent on this in cross-examination by Mr Harwood QC it is a wholly inconsequential point as Mr McKay made clear the Appellant's case is based on Scenario C3, not Scenario C. The error arose because a previous now superseded model run for Scenario C was included in Mr McKay's proof. This error has now been corrected but its significance is limited given that the focus is on Scenario C. If anyone was "*misled*"[265] by this error it is wholly inconsequential[266].

170. Fourth, issues were raised about the traffic data used in the air quality assessment in the Addendum ES: see Professor Laxen's supplementary proof table 1. These errors are matters of transcription related to the air quality assessment. There is no error in the transport data. This matter is considered further below under Main Issue 10. It is wholly irrelevant in transport terms.

171. Fifth, Professor Laxen raises other issues in his supplementary proof: see tables 2 – 4. These are responded to in section 3 of Transport Technical Note 2[267]. There are no errors in this regard for the reasons explained by Mr McKay. The repeated cross-examination on this by Mr Harwood went nowhere. The differences Professor Laxen highlighted arise from factoring of peak flows to AADT. These are of no significance to the traffic issues. Again these matters are also considered under Main Issue 10.

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[263] See Mr Sherman's proof at paras. 4.31 and 4.32; and note also such trips as these generate are very unlikely to be peak trips.
[264] ID72.
[265] And this is not accepted.
[266] One further point. Mr McKay was berated by Mr Harwood QC, and this was returned to inc losing (see para. 19) for not answering this point sooner, as ID34 was given to the Appellant in week 1 of the inquiry. It is correct that the note was handed over to the Appellant in week 1 as were two other notes. None of these notes were though submitted to the inquiry. At the end of week 1 confirmation was sought by the Appellant as to which of these notes would be submitted by WAG; Mr Harwood QC declined to provide that confirmation. ID34 was eventually submitted on 3 October 2017 – in week 3; and responded to in Transport Technical Note 2 on 10 October a week later. Of the other two notes one was submitted, one not. The Appellant was entitled to wait to see what was actually submitted before responding to the same and as Mr McKay correctly said in his cross-examination on this point, to provide a full account of the consequences, or rather lack of any, to the inquiry.
[267] ID72.

3.4.4. HE objection

172. It is accepted that as matters stand HE has an outstanding objection to the Appeal Scheme based on potential impacts on the Strategic Road Network ("**SRN**"). Strenuous efforts continue to agree matters with HE and to secure the removal of this objection. It is very important, of course, that the position as it currently stands is fully reported to the Secretary of State; but it must be recognised that it is inevitable that the position will have moved on by the time the Secretary of State comes to determine the appeal. Any updates in this regard will be reported directly to the Secretary of State[268]. WAG's closing says that as the evidence stands today the Appellant agrees permission must be refused. This is not accepted. The Appellant considers that with its proposed mitigation there would be no severe impacts on the SRN; but it is acknowledged that HE does not yet agree. In any event this appeal is not being determined today[269]. The position will have moved on by the time it is determined.

173. The position is as follows, and is further set out in the 1st HE SoCG (ID31).

174. First, the Appellant and HE are agreed that there needs to be mitigation provided in respect of the SRN.

175. Second, HE agrees that the traffic modelling used by the Appellant is "*fit for purpose*" in assessing impacts on the SRN (see para. 2, ID31).

176. Third, the mitigation for the SRN proposed by the Appellant consists of four main elements[270]:
   176.1. Improvements to M25 Junction 10;
   176.2. Improvements to the southbound A3 between M25 Junction 10 and Ockham Interchange;
   176.3. Improvements to Ockham junction roundabout; and
   176.4. Burnt Common slips.

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[268] This will not necessarily require the re-opening of the inquiry as Mr Harwood QC has intimated. The way in which the Secretary of State deals with any update provided by the Appellant and HE is a matter for him. He could, for example, allow for further written representations. What is material in this regard is that no rule 6 party or third party has adduced any evidence of impact on the SRN; Mr Robinson's evidence is devoid of any consideration of the SRN as he accepted in cross-examination. He said he had left this issue to HE. While some parties have referred to HE's position, as have WAG in its evidence and XX, no actual evidence has been adduced on the SRN by any party other than HE. Further, RfR3 did raise issues in respect of the SRN but those issues have not been pursued on this appeal by either SCC or GBC.

[269] Mr Harwood QC in XX of Mr Collins speculated on what the position would be if the eGBLP were being examined today. It is not being examined today but it will soon be submitted for examination. Any developments in this regard, in so far as relevant to the appeal, including in terms of work undertaken by GBC in support of Burnt Common slips (See Mr Sherman's App II) will have to be reported to the Secretary of State in written submissions.

[270] Para. 5, ID31.

177. Fourth, this mitigation is put forward on the basis that the RIS scheme is not in place. It is agreed by the Appellant and HE that it is reasonable to believe that the RIS scheme if delivered would obviate the need for any further mitigation having to be provided by the Appellant in respect of the SRN[271]. The Appellant's position is that with the mitigation it proposes there is no need for the Appeal Scheme to await implementation of RIS. But, on the evidence before this inquiry, it is clear that were RIS to happen then any need for further mitigation of the SRN would be obviated.

178. Fifth, in relation to the Appellant's proposed SRN mitigation the first three elements set out above are agreed in principle by HE as providing suitable mitigation: see ID31 para. 6; with only detailed design aspects yet to be agreed. HE's closing refers to these as "*minor outstanding points*"[272].

179. Sixth, what remains in issue between HE and the Appellant is Burnt Common slips, and the residual impact (if any) of the development on the northbound A3 between Ockham and M25 Junction 10. The position in respect of this is:

    179.1. In this appeal HE do not object in principle to Burnt Common slips[273]. This is consistent with the fact that HE is "*neutral*" as to the proposal in the eGBLP for Burnt Common slips[274]; and there are ongoing discussions on this[275];

    179.2. HE is currently gathering information in order to plan for future investment and inform the Road Investment Strategy for the Period 2020 – 2025. As part of this in March 2017 HE published a Route Management Strategy ("**RMS")** for the M25 – Solent Route. This Route includes the A3 past the Appeal Site. The RMS notes that "*[o]pportunities have also been identified … for … the introduction of north-facing slips at the A3/A247 at Ripley to support local plan aspirations and relieve some pressure on local roads accessing the A3 at Guildford.*" While Mr Harwood's proof says that this does not mean that the slips will necessarily be included in the Road Investment Strategy for 2020-2025 what is clear from what he says is that they might be; and this does constitute a very clear recognition by HE of the benefits of the slips[276];

    179.3. As matters stand HE is not yet persuaded that Burnt Common slips mitigate impacts on the SRN; can be provided safely and would benefit the economy. In addition agreement is yet to be reached on

[271] This is what was said by Mr Harwood in his rebuttal to Mr & Mrs Paton, his EinC, and is further confirmed in the agreed meeting notes in Mr McKay's rebuttal App. GG para. 3.2. It was also confirmed by Mr McKay to be his view in RX.
[272] Para. 3.
[273] See ID31 para 7, Mr Harwood's proof para. 4 and the email referred to in Mr McKay's proof at para. 3.45.
[274] See para. 42 of Mr Harwood's proof.
[275] See Mr Harwood's proof at paras. 19 and 43 and App. II to Mr Sherman's proof.
[276] See Mr Harwood's proof at paras. 37 – 39.

what DMRB departures may be required[277]. The "*prime consideration*" for HE is safety, see paras. 9 and 10 of DfT Circular 02/03 quoted in Mr Harwood's proof at para. 51. While HE must be satisfied on other matters including the economic case and the need for departures the prime consideration is safety. If HE is ultimately satisfied on the safety of what is proposed then the rest is likely to fall into place;

179.4. Detailed submissions have been made to HE by the Appellant, including Transport Technical Note 1[278], on the above matters and HE continues to consider these. There are regular meetings and discussions ongoing;

179.5. HE accepts the issues are not incapable of resolution[279] and the Appellant is confident they will be resolved[280];

179.6. If matters are agreed and the HE objection lifted then the concerns raised by HE as to there being a severe impact on the SRN (Mr Harwood's proof at para. 63) fall away completely.

180. In relation to the proposed trigger for Burnt Common slips:

180.1. Mr McKay explained in his oral evidence (questions from the Inspector and in re-examination) that the 1,000 house trigger for Burnt Common slips is supported by the safety analysis in Transport Technical Note 1[281] in terms of impacts on the SRN; and in terms of Ripley the position with 1,000 houses and no Burnt Common slips is no worse than the position in Ripley would be in 2031 without the Appeal Scheme;

180.2. Importantly the trigger is agreed with GBC and SCC[282];

180.3. Further details are provided in the Appellant's note for the conditions and obligations session[283] which draws out from the evidence before the inquiry[284] that which is relevant to the 1,000 unit trigger for Burnt Common slips: see section 3. Suggestions made that there is "*no evidence*" to support this trigger are refuted;

180.4. It is acknowledged that HE currently object to the trigger but discussions are on-going on this in the context of trying to remove HE's objection; the Secretary of State will be updated in due course on the position reached.

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[277] See ID33 paras. 10 – 12.
[278] ID4.
[279] See e.g. ID31 and also Mr Harwood's proof at para. 21; HE's opening at para. 25 and Mr Harwood's rebuttal at para. 46.
[280] Mr McKay's EinC.
[281] *Ibid*.
[282] SCC's letter to PINS (ID22) that Mr Green states that "*[s]ome of the triggers that are being agreed in the Section 106 Agreement are slightly later in time than would normally be considered necessary in order that the impacts are mitigated, but this is to provide sufficient time and resources to be accumulated by the developer to allow for scheme detailing and crucially, implementation*".
[283] ID100.
[284] Mr McKay's proof and Transport Technical Note 1 (ID4).

3.4.5. Other transport issues

181. A number of other issues have been raised by Mr & Mrs Paton and Mr Bellchamber as well as other third parties including Mr Eve. These matters have been responded to in Mr McKay's rebuttal, Transport Technical Note 2[285] as well as in his evidence-in-chief and his answers in cross-examination to these parties. There is no merit in any of these points. To save time the Appellant's responses are not repeated in this document.

3.5. Whether the proposals would deliver the required transport sustainability measures necessary to enable sustainable travel choices

182. The Appellant contends that the Appeal Scheme would deliver the required transport sustainability measures necessary to enable sustainable travel choices[286]. Critically, this is a conclusion endorsed by GBC, as local planning authority, and by SCC, as local highway authority. There are a number of key points.

183. First, GBC at this appeal has not pursued RfR4 that previously alleged "*[i]n the absence of a suitable legal agreement, the application fails to deliver the transport sustainability measures required to enable sustainable travel choices such as walking, cycling and public transport*". The SoCG with GBC records[287] that "*[t]he proposed Section 106 documents address this reason for refusal including the WACT*"[288].

184. Mr Sherman's proof[289] noted the need for "*the provision of bus services, improvements to transport infrastructure and the delivery of a range of services on this site that allow for trips to be internalised*", and suggested that it was important that "*the best possible package of transport sustainability measures is secured and that these measures are available for the lifetime of the development*". He noted that "*[a] suitable package will be agreed with the appellant and will be secured through the s.106 agreement and planning conditions*" and would include "*delivery of a high frequency bus service from the site to local railway stations as well as a mechanism to ensure that this service is maintained in perpetuity*", "*the provision of cycling and pedestrian routes as well as a contribution to Surrey County Council to deliver off-site cycle and public rights of way enhancements*". In cross-examination Mr Sherman accepted that GBC was not advancing any case, or any evidence, to suggest that the Appeal Scheme would be

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[285] ID72.
[286] There is no definition of sustainable transport in the NPPF or eGBLP. Development does not need to achieve a certain proportion of trips by bus or cycle nor reduce car use below a certain benchmark level. The NPPF is very much about doing everything possible in the context of the site that is cost-effective to take up the opportunities that exist for giving people a real choice about how they travel. The NPPF is also very clear in stating that planning should take account of the extent to which development can be made sustainable and therefore is not reliant on the existing sustainability of sites. Having said this, it is a major objective to ensure that development proposals that provide housing to meet national and local demand reduce emissions by: (i) reducing the need to travel; and (ii) providing opportunities to travel by sustainable modes of transport. See Mr McKay's proof paras. 7.2 – 7.4.
[287] See p. 28, CD12.3.
[288] The SoCG also records:
"*Sustainable Development*
6.12. The Proposed Development represents the largest proportion of the proposed allocation of housing and only proposal for a new settlement in the emerging GBLP. The Proposed Development provides for the mix of land uses envisaged to be required by the emerging GBLP."
[289] At paras. 2.11 and 2.12.

unsustainable development; and thus it was accepted that what was proposed could be said to be a sustainable new settlement, something that was a positive that should weigh in the planning balance.

185. Second, SCC wrote to PINS on behalf of SCC in its capacity as local highway authority[290]. The letter notes that the delivery through a section 106 of "*robust provision for a comprehensive network of public transport local bus services in perpetuity*" and "*a significant contribution/provision in kind for material improvements to the cycling network in the wider vicinity of the site*" were integral to the ability of the Appeal Scheme to "*provide sustainable transport solutions*" and on this basis SCC were not contending that "*the proposals will not provide sustainable transport solutions*".

186. Third, sustainability has been key to the design of the new settlement from the outset[291]; as Mr Bradley explained in cross-examination his brief was to create an exemplar new sustainable settlement. There are a number of points to make in this context:

    186.1. Achieving a sustainable development is key to the Appeal Scheme. Therefore sustainability workshops were held between GBC Officers and SCC Officers in February and March 2014. The workshops were also attended by relevant members of the Wisley Airfield project team including transport[292];

    186.2. The density of the Appeal Scheme has been influenced by the need to ensure sustainability; thus in order to reduce residents' reliance on private transport, the Appeal Scheme has been designed to have walkable neighbourhoods, where local services are within easy walking distance of homes.

    186.3. Mr Bradley's proof explains that "*[t]he density of a settlement is a key factor in the creation of a sustainable place. This is what determines how closely people live to the local services they use on a daily basis. The appropriate density for a sustainable settlement should enable all residents to have easy access to key local services without the use of private transport*"[293]. In cross-examination Messrs Sherman and Robinson agreed that a certain quantum of people is needed in order to provide on-site facilities that are sustainable. Mr Bradley's evidence was that studies have shown a recommended "*average density of 40-50 dph for new developments*" as "*the minimum density to support a good bus service*"[294] among other things;

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[290] ID22.

[291] See also Mr Bradley's proof at para. 2.2.1.1 "*[t]he main aim of the Appeal Proposal is to create a highly desirable and sustainable place where people want to live, work and be, now and for generations to come. The vision is to create a New Sustainable Settlement …*". And see also para. 2.1.2.2 "*[a]t Wisley, we wish to create a new sustainable settlement combining the best of the Garden City approach to place-making with the benefits of twentyfirst century living …*". Mr Collins's proof at para. 3.21 says in addition "*[s]ustainability has been at the heart of the evolving masterplan Proposals and through liaison with GBC the sustainability credentials of the scheme have been increased …*"

[292] Also ecology, landscape, planning and architecture consultants: see the proofs of Messrs Bradley and Collins.

[293] *Ibid*. para. 2.5.1.1.

[294] *Ibid*. at para. 2.5.2.10.

186.4. The SoCG with GBC records at p. 26[295]"*[a] community of approximately 2,000 homes at Wisley Airfield would be fourth in the Guildford Borough settlement hierarchy (CD 8.16), and, subject to the terms of the planning obligation has the potential to provide the services and amenities associated with a Sustainable Settlement*";

186.5. A similar view is reflected in the SA[296] 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 would enable good potential to provide a high quality bus service in perpetuity and deliver some cycle route improvements to important destinations*"[297];

186.6. Moreover, Pegasus in the GBCS[298] set 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*"[299];

186.7. Finally, in this regard, the Housing Topic Paper (2017)[300] notes that Wisley Airfield "*is also of a scale (approximately 2,000 homes) which will also provide other uses that benefit the future occupants and the wider community, and provide or contribute towards a significant level of infrastructure*".

187. Fourth, it is necessary to examine the key elements of the transport sustainability case.

3.5.1. On site provision

188. The Appeal Scheme seeks to provide local facilities in order to prevent the need for residents to travel off-site[301]. This includes: employment, shops, nurseries, an all through school, a health centre[302], a community

[295] CD12.3.
[296] CD8.31 paras. 10.3.3 and 10.16.5.
[297] GBC's long-standing support for the removal of the Appeal Site from the Green Belt is based on an extensive evidence base and demonstrates that GBC considers that the exceptional circumstances test has been met and that the Appeal Site is a sustainable location for development. The Appellant supports that view. The Housing Delivery Topic Paper (2017) (CD8.29) sets out that the "*significant benefits of development*" at the Appeal Site "*outweigh the harm that may be caused by removing this land from medium sensitivity Green Belt*" constituting exceptional circumstances (para. 4.142).
[298] CD8.8, para. 22.2.
[299] 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.*"
[300] CD8.29, para. 4.137.
[301] See Mr Collins's proof at para. 3.35 "*it engenders social sustainability by combining design of the physical realm with design of the social world – infrastructure to support social and cultural life, social amenities, systems for citizen engagement, and space for people and places to evolve. The sustainable communities created will meet the diverse needs of existing and future residents, their children and other users, contribute to a high quality of life and provide opportunity and choice*".
[302] Mr Collins's evidence in chief provided details of the capacity within existing GP surgeries to meet the needs of residents of the Appeal Scheme if a medical centre did not come forward or only came forward later: see ID90. Two of those surgeries can be accessed by bus from

centre, sports facilities, playspace and public open space: see Mr Bradley's proof at section 2.5 showing that what is to be provided is in excess of what would normally be provided for a population of c. 5,000[303]. The new settlement would be third in the Guildford Borough settlement hierarchy providing the sustainable services and amenities associated with a sustainable settlement[304].

189. The new local centre will be at the heart of the sustainable new settlement and is within the 800m walking distance guideline for all the homes in neighbourhoods 1 and 2 and well over half of 3: see Mr Bradley's proof and his evidence in cross-examination to Mr Harwood QC. For those living in the eastern part of neighbourhood 3 and 4 the walking distance will be greater than 800m but for those not prepared to or able to walk there are other sustainable travel options.

190. Moreover, the whole site is within the 5km cycling distance and there will be on-site a number of cycle facilities. The site will be designed to ensure that the opportunities for residents to walk and cycle within the site can be taken up using safe and pleasant routes specifically designed with these modes in mind[305]. A frequent bus service runs down the Ridgeway with all homes within approximately 200m of a bus stop: see again Mr Bradley's proof at section 4.2, his answers in cross-examination to Mr Paton[306] and Mr Robinson's comment in cross-examination that the linear nature of the site was "*ideal*" for bus transport[307].

191. In terms of employment the number of jobs generated on site is estimated to be 776[308]. As a proportion of the 2,835 residents that Mr Miles calculates would be economically active the on-site employment offer would accommodate 27% of these people. Mr Harwood QC in cross-examining Mr Bradley raised the prospect of a resident living in neighbourhood 4 needing to walk 1.2km to the employment site. Mr Bradley's response was "*Yeah very pleasant … The walking to work thing, the 800m is about comfortable easy walking distances to schools and neighourhood shop etc. It's not about workplace. 1.2km or so for most able-bodied people is very easy to do*". But if that future resident did not fancy the pleasant walk to work s/he could cycle or use the bus service.

192. Mr Collins's evidence predicts 292 home working jobs on the Appeal Site. The proposed initiative of the homeworking hub on the site, supported by the placemaking proposals in the masterplan and Residential

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the Appeal Site. No serious challenge was made by any party to this evidence. Contrary to what is said in WAG's closing (para. 77) Mr Bellchamber's XX of Mr Collins did not undermine any of this evidence and in any event focused on one surgery only of seven surveyed.

[303] And see Mr McKay's proof at para. 7.7

[304] See the Planning Statement CD2.15.

[305] See Mr McKay's proof at para. 7.16.

[306] Mr McKay's proof states at para. 7.14 "*Buses will connect the various areas of the site. This can be done very easily because of the layout of the site as shown in the Addendum DAS (CD ref. 3.11), meaning that the services can be within easy walking distance of all residents without the need for convoluted loops in the bus routes, which would make for inefficient bus services*".

[307] Mr Harwood QC's closing, ignoring the evidence, suggests that the linear layout will encourage car use – quite the reverse; and that is the view of the only transport witness called by a rule 6 party who considered sustainability.

[308] See Mr Collins's proof App. 2 p. 7.

Travel Plan, will add to the attractiveness of homeworking and make the maximum possible use of this opportunity to reduce the need to travel beyond the site[309].

<u>3.5.2. Access to train services</u>

193. The following are the key points.

194. <u>First</u>, the Appeal Site is within 5 miles of a number of main line railway stations[310]; and is particularly well related to Horsley and Effingham Junction stations[311].

195. <u>Second</u>, the Appeal Scheme provides connections to Horsley and Effingham Junction stations through new bus services (see below); these are the nearest stations to the Appeal Site. Cllr Cross raised the issue of there being no bus service to Woking but neither GBC nor SCC has ever sought such provision. While Woking provides faster trains it takes longer to get to (much longer according to some of the third parties who spoke) and the reality is that most residents will seek to use Horsley and Effingham Junction stations and will have a high frequency bus service to allow them to do so. Mr McKay's view was that to encourage the use of buses to get to the stations it was important that the bus trip at the beginning or end of the journey was not "*unpredictable and long*"; frequent buses to the close by Horsley and Effingham Junction stations (every 10 minutes) avoided these issues.

196. <u>Third</u>, Mr Robinson sought to suggest that there was insufficient capacity on the trains but no issue in this regard has ever been raised by SCC or the train companies and as Mr Robinson's own evidence acknowledges there are capacity increases planned in any event. Mr McKay in cross-examination, by Mr Westmoreland-Smith, explained that the increase in capacity is precisely to allow for development, and hence increased usage along the line. A number of developments – including if granted permission the Appeal Scheme - will come forward and will take up the new capacity. This is why this capacity is being provided. Mr McKay said "*what's the point of having a railway if it doesn't convey people*"; in other words the capacity is being added to cater for development and that includes the Appeal Scheme. He also pointed out that in the peak hour the new planned capacity on Mr Robinson's own calculations amounted to an extra 1,400 spaces on trains, of which the Appeal Scheme it is anticipated would use up to 150 in that peak hour.

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[309] See Mr McKay's proof at para. 7.11.
[310] See Mr Bradley's proof at para. 3.1.1.4
[311] See Mr Collins's proof at para. 3.48 and Mr McKay's answers on this in XX by Mr Westmoreland-Smith. Mr McKay said "*they're obviously the closest, a short hop to get there on the bus, services to London assuming [the] predominant destination [is] going be north bound to London, [it] takes slightly longer than [it] would do from Woking but quid pro quo is that Woking further from site*".

197. Fourth, Mr Robinson also raised issues about lack of parking at Horsley and Effinghan Junction stations. However, his own surveys show that there are spaces available, thus his surveys showed 30 spaces on average at Horsley and 20 at Effingham Junction (see his proof at para 8.12) and he calculated a demand created by the Appeal Scheme for parking at the stations of around 25 spaces (para 8.15). This shows there is parking to meet that need, but Mr Robinson refuted that because he doubled and then quadrupled the demand figure on the basis of the peak period and inclement weather. He had no principled or evidential basis for such an approach. He also intimated that it was his view that in the future the station car parks would be expanded[312]; the Appellant does not rely on this and there is no evidence to say it would happen (the relevant rail franchise only recently having been awarded to a new train company) but were it to happen it would alleviate the concerns Mr Robinson has on parking spaces. But the plain fact is that residents of the Appeal Site are being offered an alternative to competing for car parking at these stations through use of the bus. Moreover, if any lack of parking encourages residents of the Appeal Scheme to use the bus that is a good result in sustainability terms.

198. Fifth, the Horsley Parish Councils have questioned the relative costs of parking at the nearby stations as against using the bus; thus in opening it was said that "*at £5.40 return the proposed bus trip to the station is more expensive than parking at the station if a weekly or monthly parking ticket is purchased*". This theme was continued in Mr Robinson's evidence and in cross-examination of Mr McKay. It is not a good point for the many reasons explained by Mr McKay in his oral evidence[313]. Thus:

198.1. £5.40 is the average return fare assumed in a number of scenarios tested in the bus modelling[314]. For the very much shorter journeys from the Appeal Site to the nearby stations that cost is likely to be below the average[315];

198.2. The comparison made is not a fair one. The daily parking cost is £6.50 so more than the average (daily) return fare. While the costs of a season ticket for parking is less, so would be the cost of a season ticket for the bus[316];

198.3. The scenarios used in the modelling allow for the possibility of the resilience funding being used to bring the costs down – at its lowest to an average cost of £1.50 each way – this is a cost well below the parking costs either on an average daily or season ticket basis;

198.4. Mr Robinson's speculation on costs ignores the costs of fuel and car ownership[317];

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[312] Decking was discussed by Mr Westmoreland-Smith in his XX of Mr McKay.

[313] Mr Robinson's view on bus usage also appears to give no weight to the travel plan.

[314] See Mr McKay's proof p. 83.

[315] Mr McKay explained in XX that the average is "*based on a basket of fares and the figure in the table [at p. 83 of his proof] is the average of that basket of fares, some more expensive some cheaper*", that "*shorter trips will be cheaper than longer trips*" and while "*season tickets tend to be one price, fare stage tickets tend to be based on distance*".

[316] Mr McKay explained in his answers in XX that "*the bus service is naturally going to be available for season tickets as well which is bound to be cheaper than the single fare, so the price will come down*"

198.5. Mr Robinson's view fails to take into account the limit on station parking which itself may well drive use of the bus as an alternative.

3.5.3. Bus services

199. The Appeal Scheme will deliver in perpetuity new bus services. These will enable sustainable travel around the Appeal Site and will extend beyond the site to other communities making it possible to reach services, stations, employment opportunities[318] and facilities outside the site without use of the car. The bus services proposed are based on extensive discussions with GBC, SCC and operators[319].

200. The three minimum services to be provided go from: (i) Wisley to Guildford every 30 minutes; (ii) Wisley to Cobham every 30 minutes; and (iii) Wisley to Horsley and Effingham Junction every 12 minutes[320]. These services run Mondays to Saturday 0600 to 2300[321]. These bus services will link the Appeal Site, Guildford, Ripley, Cobham, East Horsley and Effingham Junction.

201. In addition the Appellant is providing additional and improved bus facilities at East Horsley and also improvements at Effingham Junction[322].

202. The Appellant has provided detailed evidence of viability[323] of the proposed services. The mode shares on which this is based have been agreed with SCC and Mr McKay's oral evidence was that the 5.9% mode share for bus use by those living on the Appeal Site was "*conservative*" and took no account of the travel plan which if successful could well see increased bus usage. The buses are to be provided early on; the trigger being the 76th dwelling. This is possible via developer funding[324]; the OBP (*supra*) shows total developer contributions (not including via the WACT – see below) of c £3 million. The service is projected to break even by the completion of the development but notwithstanding this c £280,000 funding is also to be provided in

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[317] Mr McKay in XX explained "*in addition to the parking cost you've got to run a car to get there in the first place, fuel maintenance insurance and finance on the car itself, so it is not like it is a straight comparison between fare and parking charge at the station*"

[318] In XX of Mr McKay it was suggested by Mr Westmoreland-Smith that the proposed employment is shown on the illustrative masterplan in the north-west of the Appeal Site closest to the SRN and with parking meaning that bus travel is less likely to this location. Mr McKay refuted this suggestion, and in RX also pointed out that the B1 uses were in fact in the village centre – and clearly well served by bus.

[319] See Mr McKay's proof at para. 9.1

[320] *Ibid.* para. 9.3.

[321] *Ibid.* at para. 9.3; and see the draft timetables at para. 9.4.

[322] *Ibid.* at para. 9.5. In XX Mr McKay explained that the bus turning facility proposed at East Horsley was related to the planned circular bus route and that was "*a proposal potentially available for those running this bus service, an alternative is run to Horsley on its own and to Effingham Junction separately*". He said that it "*really depends on what operators choose to do with the assets that are available to them*"; "*[w]e were looking at this turning facility in the context that if the County felt it was better to have close access to a station, was much easier at East Horsley than at Effingham Junctio*n" this "*allow us to turn around and go back to the site, serve a railway station on London route and provide access to East Horsley's facilities*". He added that parking surveys on station parade showed there was spare capacity and that any loss of parking was immaterial.

[323] *Ibid.* at paras.. 9.6 – 9.19 and App. BB. In his EinC Mr McKay explained the parameters used in the financial modelling and the resulting subsidy profit, see e.g. p. 171 – 177.

[324] See the Transport subsidy table in App. 6 to the section 106 agreement.

perpetuity through endowment[325] under the WACT[326]. This "*resilience funding*" can be used for a number of purposes including: supporting the services if patronage is lower than anticipated; increasing the number of services[327], reducing ticket prices etc[328]. Thus as Mr Collins's evidence explained this funding is to be used "*to encourage the use of buses, for example by offering enhanced levels of frequency*" and will be achieved through the implementation of the WACT such as to "*greatly improve sustainable transport access both to the Development and to the local villages*"[329]. SCC would not have withdrawn its objection and have written to PINS or signed up to a section 106 agreement supporting the bus provision if it had not agreed that what is provided is suitable. Mr McKay in his oral evidence noted that SCC's agreement followed "*extensive discussions about the subsidy level, the resilience funding level and the mechanism in the S106 for reviewing the reliance funding depending on the optimum combination of fare and service level to achieve the required patronage level*".

203. Mr McKay's evidence was that accordingly the Secretary of State could have a "*high level of confidence*" that the bus services would be provided in perpetuity. He described the level of assurance around the funding proposed as unique and far superior to other schemes he had been involved in. In cross-examination Mr McKay provided comprehensive and detailed responses to such questions as he was asked on the funding. The bus viability modelling is, contrary to suggestions made in cross-examination, wholly unaffected by the date on which housebuilding begins.

204. In addition on site bus stops will be provided within the Appeal Site at key locations and at the optimal locations along the spine road for access by all residents and workers. It is intended that the bus stop facilities will incorporate shelters that have seating and provision for real-time information on expected next bus arrivals, route timetables and maps, contact information and be highly accessible to all users[330].

205. Mr Robinson, in cross-examination, said that as a transport planner he "*welcomed*" the provision of a frequent bus service; unfortunately though, as he accepted, he had based his assessment of the adequacy of what was proposed on the wholly superseded and somewhat lesser provision proposed in the TA, not what is now proposed or even what was proposed in the TAA. He also helpfully agreed that the linear nature of the Appeal Site was "ideal" as regards serving the Appeal Site by bus. The level of bus service to be provided is

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[325] Mr Collins explained in his oral evidence that this endowment could be made up of properties; and in XX by Mr Westmoreland-Smith Mr McKay said "*I not think there any great doubt that those assets will be in place or that they will generate that amount, it's a central estimate of what the asset could perform at, it's definitely an amount that would be realised by the assets*".

[326] It will be seen that the WACT endowment is for a number of years not the only funding proposed with there being additional developer contributions on top, see again ID77, p. 66. Mr McKay explained "*the £280,000 is there to provide resilience funding for the whole service so it's over and above what the developer is already putting in to the cost of the service*".

[327] See ID77 p 54, para 3.2 and the Table in relation to the base service level provision and enhanced services.

[328] See Mr McKay's para 9.17.

[329] See Mr Collins's proof at para. 3.33.

[330] See Mr McKay's proof at paras. 9.20 and 9.21.

vastly superior to the present level of bus services in the area, and will allow for increased bus usage in existing towns and villages[331]. This is a benefit of the scheme and one that should be weighed in the balance in deciding if there are VSC[332].

3.5.4. Cycling

206. A network of cycle routes already exists within the vicinity of the Appeal Site, including the 2012 Olympic Cycle Route; supplemented with the PROW network (see CD 13.59, p 15).

207. The Appeal Scheme will provide:

 207.1. A new route to Brooklands and Byfleet including improvements to A245 Parvis Road cycling and crossing facilities;

 207.2. Improvements for cyclists to facilities at Ockham Interchange – of benefit to those cycling to Ripley; and

 207.3. A £2 million contribution to local cycle schemes and Guildford Cycling Strategy. It is envisaged that they may comprise a mix of specific highway improvement schemes as and when opportunities arise alongside more holistic behavioural measures such as local speed awareness campaigns for drivers or a zoned reduction in speed limits on local roads around the site targeted at improving conditions for all cyclists (see Mr McKay's proof at para. 10.12).

208. Thus, the Appeal Scheme takes the opportunity to deliver significant improvements to the local cycle network in the surrounding area by working in conjunction with the Guildford Borough Cycling Plan.

209. The onsite cycle infrastructure is shown in the DAS Addendum (CD 3.11) at Section 3.4 Illustrative Public Transport and Cycle Connections. This infrastructure will be designed and constructed as an integral part of the masterplan to encourage its use. It will take account of the existing points of connection to bridleways. Facilities will include cycle-friendly shared streets, dedicated crossing points and segregation from motorised traffic where possible. Covered and secure cycle storage or parking will be available at key locations such as the local centre, sports areas and schools as well as being included in residential units as required by GBC policy in line with SCC guidance[333].

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[331] See the TA, CD2.21 p. 33 table 4.5, paras 8.4 and 8.5 of Mr Robinson's proof and his answers in XX on this matter. While the census shows bus usage in the area of the Appeal Site to currently be 1% (see Mr McKay's proof at p. 85) that is a reflection of the existing poor level of service and the provision of new frequent bus services will drive that figure up. The submission made in the Horsley Parish Councils' closing at para. 55(iii).

[332] See below, and see Mr McKay's proof at para. 12.2 and his answers in XX to Mr Westmoreland-Smith.

[333] See Mr McKay's proof at para. 10.14.

3.5.5. Travel Plan

210. Details of the proposed travel plan are set out in Mr McKay's proof at para. 4.11. SCC have confirmed that the main provisions of the Travel Plan are acceptable[334]. In cross-examination Mr Robinson said that "*[a]s far as I can tell is a pretty good travel plan*" which he took "*no issue with whatsoever*".

211. Thus in conclusion the Appeal Scheme is in full compliance with paras. 30, 32, 38 and 52 of the NPPF, policy G12 of the adopted Local Plan, the Sustainable Design and Construction SPD 2011 as well as the eGBLP and in particular draft Policies S1, ID3 and D2. The Appeal Scheme includes a package of measures that will greatly improve sustainable transport access both to the Site and to the local villages and which have been agreed by GBC and SCC. It provides a sustainable transport package is designed to achieve modal shift away from the private motor car. Moreover, the bus services for the residents will also be available for existing local residents, thus enhancing the sustainability of the wider community at no cost to the local authorities.

3.6. Whether the proposals would deliver an appropriate quantity and mix of affordable housing

212. GBC has not advanced any evidence in support of RfR5. It is common ground between GBC and the Appellant that the proposed provision of 40% affordable housing is appropriate.[335] It is also agreed that the affordable housing proposal satisfies the affordable housing policy in the eGBLP and that the Appeal Scheme would be able to contribute *circa* 12-14% of the level of affordable housing planned for the eGBLP plan period.[336] As Mr Sherman accepted in cross-examination, that level of affordable housing is more than has been delivered in the entirety of the borough since 2009/10. Indeed, it is almost twice as much.[337]

213. GBC is also satisfied with the mix of affordable housing tenures proposed by the Appellant: see Appendix 13 to the proof of evidence of Mr Collins.

214. We address the weight that should be given to affordable housing provision as a benefit of the Appeal Scheme below, under the final main issue.

3.7. Whether the loss of a safeguarded waste site is outweighed by other considerations

215. Whilst part of the Appeal Site is an extant allocation in the Surrey Waste Plan (2008) ("**SWP**"), in the Appellant's submission the loss of a safeguarded waste site is very plainly outweighed by other considerations. No party to the appeal has made any suggestion to the contrary. GBC no longer contests RfR7

[334] See Mr McKay's proof at para. 4.14.
[335] SoCG between GBC and the Appellant at para. 6.8.
[336] *Ibid*. at para. 6.17, based on overall delivery of 15,000 dwellings at 40% affordable housing provision.
[337] 800 affordable homes as against 435 delivered in the borough since 2009/10: see also Mr Collins's proof at para. 14.7.

and it is common ground between GBC and the Appellant that very little weight should be afforded to the Appeal Scheme's conflict with the Surrey Waste Plan (2008) ("**SWP**"). That is appropriate for the following reasons (and again, has not been disputed by any party):[338]

215.1. Although the planning permission for the IVC facility was implemented and remains extant, the Appellant does not intend to build out the IVC facility. The draft section 106 agreement contains a covenant on the part of the Appellant not to construct or operate the IVC facility.

215.2. The SWP is out-of-date. It is not in conformity with either the NPPF or the National Planning Policy for Waste. A review of the SWP has been envisaged since 2014/2015 but no draft revised plan has been published. SCC does not intend to include the Appeal Site in its new Waste Plan: see Appendix 10 to the proof of evidence of Mr Collins. It has confirmed that there is no justification or intention on its part to seek compulsory purchase for waste use.[339]

215.3. Whilst the SWP allocation continues to be noted in the eGBLP (a position that the Appellant disagrees with),[340] it is common ground between the Appellant and GBC that the Appeal Site is not currently available for a waste use[341] and GBC does not expect the Appeal Site to be safeguarded in the new Waste Plan.[342]

3.8. The effect of the proposed development on the character and the appearance of the area

3.8.1. Introduction

216. The conclusion stated in RfR 8 was that "*it has not been demonstrated that the level of development could be accommodated without causing significant harm to the character of the surrounding area and as such the development would fail to comply with policies G1 and G5 of the Guildford Borough Local Plan 2003*". The quantum and scale of development were cited in support of that conclusion.

217. GBC's position has since evolved. It now considers that the additional restrictions that the Appellant proposes to impose on the parameter plans ("**the Additional Restrictions**"[343]) have been effective in limiting the harm that would be caused to the character of the surrounding area, such that the Appeal Scheme would not be so harmful as to justify withholding planning permission on this ground.[344]

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[338] See Section 15 of Mr Collins's proof.
[339] CD 8.15 at para. 4.114 and CD 8.29 at para. 4.140.
[340] See the proof of Mr Collins at para. 15.8 ff.
[341] SoCG (CD12.3) at 6.35.
[342] *Ibid*.
[343] See drawings 1715/SK/709 and 1715/SK/710B; CD1.13.6.
[344] Proof of evidence of Mr Sherman at para. 2.21.

218. The Appellant agrees with GBC's position. There are no landscape, visual amenity, masterplanning, architectural or design reasons for planning permission to be refused. To the contrary, the limited harm that the Appeal Scheme would cause to the character and appearance of the area would be outweighed by the landscape benefits, ecological enhancement and improvement in amenity value that the Appeal Scheme - through its comprehensive, landscape led design strategy - would secure.

219. We will first address the landscape evidence and then the design evidence. We have explained above how (contrary to the assertion made in RfR 8) the Appeal Scheme complies with Policies G1 and G5 of the Local Plan.

3.8.2. Landscape evidence

220. The only evidence from a qualified landscape architect is that of Mr Davies on behalf of the Appellant. He produced the LVIA for the ES of the Appeal Scheme[345]. On a related point, it became clear from the oral evidence given to the Inquiry that several parties had not appreciated that only public views are relevant to the LVIA process[346].

221. The starting point is that GBC cannot meet its housing needs without expanding outside the urban areas of the borough. Mr Davies explains at para. 2.10 of his proof that some degree of landscape and visual harm will inevitably arise from the Appeal Scheme "*by definition*" i.e. because the character of the Appeal Site will significantly change. Such significant change would, however, result from any residential development proposal outside the urban areas of the borough, unless the specific site were PDL.[347]

3.8.2.1. Site context and character

222. There are no specific landscape designations within or immediately adjoining the Appeal Site.[348] It lies within the *Ockham and Clandon Wooded Rolling Claylands* landscape character type ("**LCT**") in both the Surrey Landscape Character Assessment ("**LCA**") and the GBC LCA.[349] This is the largest LCT in the GBC LCA, comprising approx. 1,328ha ("E2" - the broader *Wooded Rolling Claylands* LCT ("E") that includes E2 extends

[345] Confirmed by Mr Davies in EinC.
[346] See GLVIA (3rd ed) p. 107 paras. 6.16 and 6.17. It is important to note that a residential amenity assessment was not requested by GBC, but nevertheless an assessment of visual effects on residential amenity has been undertaken, without access to private spaces and gardens as clearly stated in the Adddendum ES and in Mr Davies' evidence. No evidence has been submitted by GBC or any rule 6 party that finds any additional harms from private viewpoints than was predicted in the Addendum ES and Mr Davies' evidence.
[347] EinC of Mr Davies.
[348] See Mr Davies' proof at p.9.
[349] Mr Paton disputed that the Appeal Site lies on clay, but the borehole evidence discussed in Dr Massey's EinC establishes that point conclusively.

over approx. 2,192ha across the borough). The Appeal Site represents only approx. 0.05% of LCT "E" and less than 0.1% of LCT E2.[350]

223. Mr Davies' evidence is that whilst the Appeal Site is broadly representative of this landscape character type, it particularly lacks the regular, large and medium geometric field pattern bounded by hedgerow enclosures and is not immediately influenced by historic parkland which is strongly present within the LCT.[351] Long views towards the higher ground of the chalk downs to the south are a key feature from farmland to the north and are not unique to the Appeal Site.[352] LCT E1 is closer to the AONB.[353]

224. The majority of the Appeal Site has low landscape value and no part of it is a "*valued landscape*" within the meaning of para. 109 of the NPPF. Mr Davies referred to the ***Stroud*** case (CD11.18) where it was held "*to be valued would require the site to show some demonstrable physical attribute rather than just popularity*". Only Mr Paton asserts that para. 109 of the NPPF has any application here and as Mr Davies explained in evidence-in-chief, he has not produced any assessment of landscape value to the Inquiry.

225. As noted above the SA for the eGBLP notes that a large scheme at Wisley Airfield "*avoids the need to place pressure on the most sensitive Green Belt and/or landscapes designated as being of larger-than-local importance*"[354].

226. We return to the physical changes that the Appeal Site has undergone through history below under Main Issue 9 (Heritage). The construction of the airfield resulted in the substantial loss of key landscape features, including hedgerows, trees, rural lanes and farmsteads.[355] Mr Davies' evidence[356] is that the resulting large scale open landscape of the Appeal Site today contrasts markedly with the landscape typology of the medium scale enclosed agricultural landscape to the south and wooded heathland to the north around Ockham Common. The Appeal Site has fewer of the key characteristic features of the E2 LCT and those which do remain are in a declining condition.[357] The current management of the airfield is not aimed at landscape and biodiversity enhancement, allowing scrub encroachment to the west. In addition, whilst the Appeal Site benefits from strong enclosure around its west, northwest and southwest boundaries the hedgerows to the

[350] Mr Davies' rebuttal at paras. 2.10 and 2.11.
[351] Mr Davies' proof at para. 4.65.
[352] Mr Davies' summary at para. 3.4.
[353] EinC of Mr Davies.
[354] CD8.31, p.21, Box 6.6.
[355] Mr Davies' proof at para. 4.80 and Mr Davies' answers in XX by Mr Paton which demonstrated there had been significant loss of hedgerows and copses over a 150 year period.
[356] Paras. 3.6 and 3.7 of his summary and para. 4.80 of his proof.
[357] Mr Davies' proof at para. 4.81.

east and southeast have become gappy. It is difficult to avoid the degraded effect of approx. 30ha of concrete runway and hardstanding across the airfield ridge.[358]

3.8.2.2. Landscape character impacts

227. Mr Davies recognises that the character and appearance of the Appeal Site will substantially change. Major magnitude and significant adverse effects will, however, only occur from the PRoW within the Appeal Site and from a small number of dwellings that border it.[359] There will be negligible adverse effects on wider landscape character (i.e. beyond the Appeal Site).[360] Mr Davies summarised his further conclusions on the landscape character of the Appeal Scheme as follows:[361]

> "I have determined that the Appeal Site is not widely influential within the wider landscape and none of the features are rare or extra-ordinary.
>
> The proposed SANG and other areas of GI will include the protection and integration of existing features resulting in relatively few losses of any magnitude or sensitivity.
>
> Significant new planting and habitats will be provided to include new woodland, scrub, hedgerows, grassland and wetland, which are interconnected by a new footpath network increasing public accessibility.
>
> Interlinked open spaces will provide for a range of formal and informal recreational activities including a number of new circular walks.
>
> The topography of the site has already been significantly altered and the proposed tump will not be widely visible, providing a point of interest and affording new panoramic views.
>
> The proposals would not erode the character of the local settlements or cause coalescence. Some increase in traffic on local lanes will be inevitable, but improvements to roads can be designed in a sympathetic manner.
>
> A phased programme of planting to include advanced nursery stock will provide immediate maturity and visual interest within the SANG areas".

228. Mr Davies explained in evidence-in-chief that of the "*Key positive landscape attributes*" listed for LCT E2 in the GBC LCA,[362] only the final attribute (views to the open slopes and wooded crest of the chalk downs to the south forming a rural backdrop to the area) would be affected. Those views are not unique to the Appeal Site (above). Moreover, public access to the site (to avail of those views) is at present limited to the existing PRoW. It is proposed to retain those PRoW within green corridors to allow some views out.[363] Perhaps more significantly, a very extensive green infrastructure network (65ha) is to be provided as part of the Appeal Scheme and will open up new views to the public, including those from a circular footpath network through

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[358] Mr Davies' proof at paras. 4.79 to 4.85 and paras. 3.6 and 3.7 of his summary.
[359] Mr Davies' summary at para. 6.8.
[360] Mr Davies' summary at para. 6.11.
[361] Paras. 6.1 to 6.7 of his summary.
[362] CD13.48 at p.81.
[363] EinC of Mr Davies.

attractive landscape[364] and those from the viewing tump. Mr Sherman accepted in response to a question from the Inspector that the loss of views out from the existing PRoW would be compensated by the additional areas of open space being provided.

229. Mr Miles in cross-examination implied that two further key attributes of the E2 LCT (historic farmsteads; historic villages and village cores) would be impacted by the Appeal Scheme. He provided no evidence in support of this, however. The farmsteads on the Appeal Site were finally all demolished with the advent of the airfield. As to potential indirect effects from traffic on historic villages and village cores, Mr Davies' view[365] was that since the roads and lanes in the area are regularly used by traffic at present (such that the area is not "*deeply rural*"), the predicted increases in traffic would not materially affect this key attribute of the E2 LCT.

230. In closing Mr Westmoreland-Smith says[366] the Appeal Scheme *"fails to respect both the existing settlement pattern of the area and the nature and form of existing villages"*. This assertion is though contradicted by Mr Davies' evidence-in-chief by reference to the Wider Land Use plan in the Addendum ES[367].

3.8.2.3. Visual impacts

231. These are outlined at paras. 6.14 to 6.36 of Mr Davies' summary:
    231.1. Existing residences: no obtrusive overlooking or loss of privacy is predicted from any properties. Mr Davies' professional view (shared by GBC) is that the loss of visual amenity from existing residences would not warrant refusing planning permission.
    231.2. Chatley Semaphore Tower: built development is already a characteristic feature in views from this structure and such development adds to, rather than detracts from, enjoyment of it. It is open to members of the public for 3 or 4 days a year.[368] Views of the Appeal Scheme would occupy a relatively narrow (30 degrees) arc within a full 360 degrees panorama. Mr Davies' view is that the Appeal Scheme would successfully assimilate into the landscape backdrop and would not materially affect views of the AONB in the distance[369]. There has been no objection to the Appeal Scheme on landscape character and/or visual impact grounds from SWT, who manage the Tower. No other party to the

[364] *Ibid*.
[365] EinC.
[366] Closing para. 32.
[367] ES fig. 8.
[368] EinC of Mr Davies; Mr Bellchamber's closing seeks to suggest the Tower is open more often this is new evidence and it is wrong:
[369] The suggestion in WAG's closing (para. 54) that the Appellant accepted that there would be harm to views from the Semaphore Tower is just wrong. Mr Davies in XX said that he had set out the reasons why it would not harm the enjoyment of the view from the Tower and he accorded moderate/major adverse effect to this only by reason of the nature of the change. He did not see the impact as materially harmful. It was not put to Dr Masset by Mr Harwood in XX that his assessment of lack of harm to the Tower in heritage terms was wrong.

appeal has provided any assessment of the Appeal Scheme's visual impact from the Tower and GBC has not raised any concerns in this regard.

231.3. Views from roads: it is apparent from Mr Davies' evidence that visual amenity from roads and lanes would not be significantly harmed.

231.4. PRoWs: whilst the character of views from the PRoW within the Appeal Site will fundamentally and permanently change, most adverse effects will occur where views are already degraded by the runway/hardstanding.

231.5. RHS Wisley: there will not be any significant harm to views from RHS Wisley. Minor glimpses of the taller landmark buildings at the western end of the Appeal Scheme will be seen within a 360-degree panorama from the fruit mound. Furthermore, there is no evidence that there are significant views towards the Appeal Site from the two recently approved developments within RHS Wisley. There has been no objection to the Appeal Scheme on landscape character and/or visual impact grounds from RHS Wisley. No other party to the appeal has provided any assessment of the Appeal Scheme's visual impact from RHS Wisley and GBC has not raised any concerns in this regard.

232. Mr Davies explained in evidence-in-chief that he had additionally considered the points raised by Effingham Parish Council ("**EPC**") but that the Appeal Scheme would not have a significant impact in views from Effingham. Mr Davies explained in evidence-in-chief that parts of Effingham lie within the refined ZTV (ES Appendix 11.12 - Fig 11) and the PRoW within this area and were subsequently visited during the preparation of the LVIA and a representative view recorded from this location (RVP 13). His conclusion is that mature woodland and tree belts prevent any significant views of the Appeal Site from Effingham. Whilst EPC correctly identify views of London and Heathrow on the skyline from some vantage points, these lie to the east of the Appeal Site, which remains blocked and heavily filtered by foreground woodland.

3.8.2.4. The AONB

233. Longer range views of the Appeal Site are available from a limited number of public viewpoints off the elevated slopes of the AONB. The Appeal Site is however difficult to discern and is viewed as a minor component within a long-distance panorama that is dominated by tree cover and interspersed by numerous villages, towns and the large urban conurbations around London.[370]

234. Mr Davies' photomontages 3, 4 and 5[371] illustrate views of the Appeal Scheme from the AONB. However (as he explained in evidence-in-chief) they are a massing model analysis, not a representation of individual

[370] Mr Davies' summary at para. 4.11.
[371] Within Appendix 2 to his proof.

buildings. No landscape mitigation measures are accounted for in the photomontages. The built development that the Appeal Scheme would comprise is also deliberately rendered in light shades to enable the reader to see where it would lie - those buildings would not in reality be so lightly rendered and muted brick colours would recede into the darkened landscape backdrop.

235. The figures at pages 50 and 51 of Mr Bradley's proof of evidence show how locations along Ridgeway Avenue have been identified from the initial massing analysis, with the tallest being located around the village centre. It is not proposed to bring forward a continuous line of 4/5 storey apartment blocks along the Avenue. Mr Davies also explained in evidence-in-chief (i) how the widest of the green infrastructure corridors that is proposed will appear as a substantial green corridor that will reduce and break up linearity in views from the AONB[372] and (ii) how the staggered roofscape that is proposed will similarly break up linearity and massing, reducing the potential impact of the Appeal Scheme from the AONB.

236. Mr Davies' conclusion[373] was that taking into account all of the above and once the green infrastructure gaps are planted up, whilst the upper elevations and the roofscape would still be visible from the AONB, the buildings (which will be rendered in materials appropriate to the local vernacular) sit very comfortably in those views and are relatively inconspicuous.

237. Both the OR and the Surrey Hills AONB Planning Adviser concluded that the Appeal Scheme would not materially impact the AONB: see the OR at paras. 10.10.7 and 10.10.9. Mr Sherman affirmed that view in cross-examination. Mr Kiely expressly agrees with the case officer's assessment and also "*with the appellant's* [LVIA] *in that long range views would not be adversely affected*".[374] Having regard to the above, Mr Davies is correct to concur with their views and to conclude that views from the AONB are not significant and that the impact of the Appeal Scheme would not be materially harmful to the AONB. No landscape evidence was produced by the Horsley Parish Councils to back up their claims of harm to the AONB. The Secretary of State can be confident that there would be none.

3.8.2.5. Landscape enhancements

238. The range of landscape and other related recreational and amenity benefits that the Appeal Scheme would provide is set out at paras. 6.27 to 6.29 of Mr Davies' proof and in Table 4 on p.50.

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[372] See Tab 4 within Appendix 1 to Mr Davies' rebuttal.
[373] EinC.
[374] Para. 5.34 of his proof.

239. It should be noted that the viewing tump is not required as mitigation for any harm and so is provided as an enhancement rather than as mitigation[375]. Also, the management of the SANG and the maintenance in perpetuity of strategic planting and landscaping are two of the principal aims of the WACT (secured by the section 106 agreement). This management and maintenance is a key enhancement that will ensure that both existing and proposed landscape features remain in good condition and, from an ecological perspective, provide enhanced opportunities for habitats and species.

240. It is also necessary to consider how the proposed landscape enhancements respond to what is said in the GBC LCA. As Mr Davies explained in examination-in-chief, woodlands and networks of hedgerows and hedgerow trees are listed amongst the "*Key positive landscape attributes*" of the E2 LCT[376] and would be enhanced by the Appeal Scheme. The Landscape Strategy for LCT E2 is "*to conserve the rural pastoral landscape with its network of hedgerows, frequent historic parklands, woodlands and the traditional farmsteads and villages. Elements to be enhanced are the hedgerows, tree cover, and the settlement pattern where this dilutes the rural character of the area*".[377] The Appeal Scheme would not impact upon historic parklands, traditional farmsteads or villages and would greatly enhance provision of hedgerows, woodlands and tree cover within the Appeal Site. Mr Davies also explained[378] why the Landscape Guidelines for built development[379] cannot be used as a template for creating new settlements.

3.8.3. Design evidence

3.8.3.1. A design and landscape-led scheme

241. As already noted, the Appeal Scheme is design-led. As Mr Bradley explained: "*the main aim is to create a highly desirable and sustainable place where people want to live, work and be, now and for generations to come. The vision is to create a new sustainable settlement, a beautiful and enduring place; with spaces for attractive streets, garden and squares; space for food growing and/or foraging; imaginative and innovative play spaces; and open spaces to engage with the wider countryside and immerse oneself in nature*". Mr Bradley gave a detailed explanation in his evidence-in-chief of how the Appellant proposes to realise those objectives.[380]

242. Landscape considerations have been a key influence in the masterplanning process.[381] Mr Bradley explained that what others referred to as "*constraints*" were, in his view, opportunities[382]: "[t]*he requirements for circa 50*

[375] See Mr Davies' proof para. 6.28; 8th bullet.
[376] CD13.48, p.81
[377] *Ibid.* p.82.
[378] EinC.
[379] CD13.48, pp. 83-85.
[380] Summary, para. 1.1.1.2.
[381] EinC of Mr Davies.
[382] EinC of Mr Bradley.

hectares of SANG and the other sports/play spaces create a development with more than half of the site designated as open space. This creates a unique opportunity for a landscape-led scheme". As well as being surrounded by landscape, the Appeal Scheme is permeated by it. The four distinct neighbourhoods have generous landscape corridors between them, ranging from approx. 130m to 50m (which Mr Bradley considered to be "*still very large*"). Each neighbourhood then has its own landscape structure, comprising a principal garden square, green streets, green links, street trees and the private gardens as well. Contrary to the assertion made by Mr Miles[383] that the open space within the Appeal Scheme is merely peripheral, Mr Bradley's evidence was that creating very strong green infrastructure at all levels had been a design principle and that a "*living in the landscape*" concept had been very much a driver in the masterplanning process.[384]

243. Mr Bradley also explained how immersing the elements of the Appeal Scheme in landscape had enabled FCB to reduce the urbanising effects of the scheme, by avoiding "*the typical urban sprawl of cul-de-sacs and everything else*" in to the landscape. His view was that the Appeal scheme was a "*garden settlement*" that was "*suburban and in some parts rural in the way it relates to its landscape*".

244. The WACT will play a key role in ensuring the success of this design and landscape-led scheme. It will be a key placemaking body, guaranteeing long-term stewardship of the Appeal Scheme. It will manage the SANG and maintain structural planting and landscaping in perpetuity. It will also provide for community development activities and assets to nurture and ensure a thriving community.[385]

245. It is important to appreciate that there is flexibility within the design parameters that have been established. Responding to the assertions made by Mr Miles at para. 6.3.56 ff. of his proof, Mr Bradley explained that the nature of applications for outline planning permission is to create a degree of flexibility. The Appeal Scheme would be developed phase by phase – with a more detailed design framework set through submission of conditions, in advance of reserved matters[386]. Mr Bradley expressed the hope that the parameter plans under consideration on this appeal had preserved the flexibility to create a richer character than it was possible to demonstrate at the initial, outline stage.

3.8.3.2. Scale and density

[383] Para. 6.3.48 of his proof.
[384] EinC.
[385] Summary of Mr Bradley at para. 1.1.1.5.
[386] Mr Bradley EinC.

246. As to scale, Mr Bradley emphasised several times in his oral evidence the importance that had been given to ensuring that the Appeal Scheme respected surrounding areas, even though (owing to sustainability requirements) it was not possible to replicate their scale in the design of the scheme.

247. Mr Bradley responded to the assertions made by Mr Miles at para. 6.3.70 of the latter's proof (that the Appeal Scheme failed to respect its context, etc.) by illustrating the "*huge*" variation in building types and heights. He explained that without that variation the Appeal Scheme would be monotonous and that the design therefore deliberately presented a majority of buildings in the lower spectrum of height (2/3 storeys) with "*accents*" of higher buildings (that would also perform a wayfinding function) and then terraces and individual homes with slightly more grandeur to them. This pattern of trying to create variety and interest is well accepted.[387]

248. In particular, Mr Bradley confirmed that the proposal to place 4 storey dwellings along the northern edge (the boundary with the SANG) was deliberate and design (rather than constraint) led. His view was that the SANG required a more defined edge (albeit one deliberately perforated by three green corridors) and that a smaller-scale edge "*wouldn't feel right*". Of course, the details are all for reserved matters stage.

249. As to density, GBC's SPG is still in force but relates to Local Plan Policy H10, which was not saved in 2007 and has expired. It also reflected national guidance in PPS3, which is no longer extant. No figure or range is specified in the eGBLP. The Housing White Paper at para. 2.5.2.9 states that where housing demand is high, best use should be made of density[388]. Demand for housing is high in Guildford and land is scarce (because 89% of the borough is within the Green Belt). The Government's view is that in such a situation high density should be encouraged where possible. All of these points were accepted by Mr Sherman in cross-examination.

250. We have dealt with the (erroneous) suggestion that the design brief for the Appeal Scheme was to fit 2,000 dwellings on to the Appeal Site.

251. Mr Miles argues that "*density and form has to have regard to local character and context as set by the existing villages within the local area*" and that the Appeal Scheme is defective in this respect. Local densities are too low to be adopted in a sustainable development, however.[389] Mr Bradley explained that whilst local densities had (for that reason) not been adopted, the Appeal Scheme had been designed in a way that he considered to be sensitive to local context and setting. The density is: 30 to 32 dwellings per hectare ("**dph**") gross across the Appeal Site excluding the SANG; 49 dph net calculated in accordance with former PPS3 methodology (there

[387] EinC.
[388] For all of these see Mr Bradley's proof at section 2.5.
[389] Mr Bradley's EinC.

being no up-to-date methodology) and 18 dph gross across the Appeal Site including the SANG. Mr Bradley's evidence was that a net density within the 30-50 dph range was regarded as a good approach to creating efficient, optimum density and sustainable neighbourhoods.

3.8.3.3. The south-eastern corner of the Appeal Site

252. In response to questions from Mr Bird QC about the design response to the south-eastern corner of the Appeal Site (the proposed "Orchard Neighbourhood" and the context of Ockham), Mr Bradley explained that there had been a conscious design intent to touch Ockham Lane and Old Lane - sensitively - because it was considered important both in landscape terms but also in terms of the local community to connect the new neighbourhood to the existing neighbourhood. The south-eastern corner of the Appeal Site is the only place that such a connection can be achieved.[390] In his evidence-in-chief Mr Bradley showed how that part of the Appeal Scheme could be brought forward in compliance with the Additional Restrictions[391]: his evidence was that it would not be necessary to build out right to the edge of the parameters shown; there would be opportunity to pull back, create space and create a much more interesting set of boundary and edge conditions.

253. Furthermore, the net density of the Orchard Neighbourhood is 39.5 dph, which is nearly 10 dph lower than the net density of the entirety of the Appeal Site[392].

3.8.3.4. Bridge End Farm

254. Finally on design matters, Mr Sherman at para. 9 of his rebuttal states: "*[w]hile I remain of the view that the design approach now employed would help to minimise the impact of the appeal scheme, the creation of a settlement in this location is not one which needs to be restricted to the appeal site. The development of a wider site could further reduce the harm that would be caused to the character and appearance of the surrounding area*". He is referring to the possibility of developing the entirety of the draft Policy A35 allocation in the eGBLP (i.e. the Appeal Site together with the Bridge End Farm land to the south: "**the A35 Allocation**").

255. The suggestion that the A35 Allocation should be comprehensively developed is made for the first time in Mr Sherman's rebuttal. The document that Mr Sherman was taken to in re-examination in an attempt to show that the suggestion had been made previously dates from June 2017.[393]

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[390] *Ibid.*
[391] CD1.13.7.
[392] ID101.
[393] CD8.29, the Housing Topic Paper.

256. Mr Sherman confirmed in cross-examination that he was not suggesting that allowing this appeal would prejudice the possibility of development coming forward to the south, on the remainder of the A35 Allocation. Mr Bradley's evidence was that it would not do so; his view was that if the Bridge End Farm land were to come on-stream it would be possible to produce an integrated and sensitive development context.

257. Mr Sherman's argument was, rather, that the impact of the Appeal Scheme on the character and appearance of the area would be reduced if it were laid out across the entirety of the A35 Allocation. There is, however, no requirement within draft Policy A35 that a single application for planning permission be submitted and/or a single masterplan be produced, for the entirety of the allocation. There is no requirement that the whole allocation be comprehensively developed. As Mr Sherman accepted, other draft policies in the eGBLP do include such a requirement: see e.g. draft Policies A6 and A7.

258. GBC flatly contradicts itself in advancing the suggestion made by Mr Sherman. He argues that the Appeal Scheme should be developed across the land to the south at Bridge End Farm as well as the Appeal Site because it would allow for a better layout. The land at Bridge End Farm is however closer to Ockham and abuts the conservation area. Elsewhere in its case on this appeal GBC argues against the Appeal Scheme on the ground that it would offend the fourth Green Belt purpose by impacting on Ockham village. Furthermore, whilst GBC itself does not assert any harmful impact to the Ockham Conservation Area (as opposed to Ockham village), Dr Massey in response to Councillor Cross said that if the Bridge End Farm land were developed it could have a considerably greater impact on the Ockham Conservation Area than would the Appeal Scheme.

3.8.4. Conclusions

259. Whilst there are some significant localised visual impacts and whilst the landscape character of the Appeal Site would change significantly, these impacts are not sufficient to justify refusing planning permission. The Appeal Site presents a unique opportunity for a new sustainable settlement and the comprehensive, landscape led strategy that is proposed will provide significant landscape benefits, ecological enhancement and improvement in amenity value, which will outweigh the localised harm identified. Overall therefore there are no landscape, visual amenity, masterplanning, architectural or design reasons for planning permission to be refused.

3.9. The effect of the Appeal Scheme on Grade II listed Yarne and other nearby heritage assets

3.9.1. Introduction

260. Main Issue 9 relates to RfR9. We make the following preliminary points.

261. First, RfR9 refers only to Yarne and does not raise any issues in respect of the other heritage assets referred to by Rule 6 parties. As to Yarne, whilst RfR9 states that it has not been demonstrated that the Appeal Scheme could be accommodated without giving rise to either significant or less than significant *[sic]* harm to Yarne, having since taken into account the additional restrictions that is it proposed to impose on the relevant parameter plan and secure by way of planning condition ("**the Additional Restrictions**": we return to these below), GBC is now satisfied that the Appeal Scheme "*could be accommodated without material harm to the setting or the significance of Yarne*"[394] and that, provided that the Additional Restrictions are imposed, the Appeal Scheme "*would not materially impact*" on the setting or significance of Yarne.[395] Having reached those conclusions, GBC chose not to present detailed evidence in respect of RfR9 to the Inquiry.[396]

262. Second, Dr Massey is the only professional heritage witness to have presented evidence to the Inquiry.[397] The methodology that he has used in undertaking the relevant assessment is summarised at para. 2.1 of the summary of his proof and a fuller account provided in sections 2 and 6 of his proof. Dr Massey explained in evidence-in-chief that the methodology that he had employed was as advised in current Historic England guidance. He confirmed that the designated heritage assets that he had assessed were the following:

262.1. Yarne;

262.2. Ockham Conservation Area;

262.3. The listed buildings set out at para. 3.29 of his proof;

262.4. Chatley Semaphore Tower;

262.5. RHS Wisley; and

262.6. The impact of potential increases in traffic flow on the following Conservation Areas: East and West Horsley, Ripley, Ockham and Downside.

263. Third, having undertaken the above assessment Dr Massey's conclusions are that the Appeal Scheme would result in less than substantial harm to the following designated heritage assets only[398]:

263.1. Yarne (the harm would fall within the lower range of "*less than substantial harm*");[399]

263.2. Upton Farmhouse (again, the harm would fall within the lower range of "*less than substantial harm*");[400]

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[394] GBC SoC (CD1.6) at 6.9.2 and 6.9.3.
[395] Proof of Mr Sherman at 2.25 and 2.26.
[396] *Ibid*.
[397] For the avoidance of doubt and as confirmed by Dr Massey in RX, the Appellant's case on Main Issue 9 is as presented in Dr Massey's evidence.
[398] WAG's closing says that Dr Massey accepted harm to six heritage assets (see para. 54); this is not correct.
[399] See Dr Massey's summary of his proof at para. 7.4.
[400] *Ibid*., para. 9.5.

263.3. Appstree Farmhouse (indeed, in evidence-in-chief Dr Massey confirmed that he considered that "*negligible harm*" would be caused to Appstree Farmhouse, as stated at para. 8.13 of his proof); and

263.4. Ockham Conservation Area (harm from the impact of potential increases in traffic flows only, as opposed to harm from the impact of the development that it is proposed to bring forward on the Appeal Site itself).[401]

3.9.2. Yarne

3.9.2.1. A proper understanding of setting

264. As Dr Massey explained in evidence-in-chief, a proper understanding of the concept of "setting" is fundamental to heritage impact assessment. Para. 132 of the NPPF provides that "[s]*ignificance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting*". The issue as regards Yarne is potential harm/loss of significance through development within its setting, as the Grade II listed building will not itself be altered or destroyed by the Appeal Scheme.

265. The setting of a heritage asset is defined in the NPPF Glossary in the following terms:

> "The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral".

266. Mr Paton did not accept that a heritage asset has a singular setting, albeit made up of a number of aspects, and explained that he had referred to "settings" in the plural[402] deliberately. He referred to Historic England's *Historic Environment Good Practice Advice Note 3: The Setting of Heritage Assets*[403] ("**GPA3**") and the mention on p.2 of that document of "*nested and overlapping*" settings. Dr Massey clarified in re-examination that Yarne is not an instance of nested or overlapping settings but rather has a single setting.

267. Mr Miles[404] and Mr Paton[405] both criticised Dr Massey for placing too much reliance on visual evidence and visual reasoning in assessing the extent of the relevant heritage assets' settings. As to that criticism:

267.1. The significance of views to setting is very evident from GPA3,[406] which addresses "*Views and setting*" at paras. 5 to 8 and states that:

> "The contribution of setting to the significance of a heritage asset is often expressed by reference to views, a purely visual impression of an asset or place which can be static or dynamic, including a variety of views of, across, or including that asset, and views of the surroundings from or through the asset, and may intersect with, and incorporate the settings of numerous heritage assets".

[401] Para. 2.9 of Dr Massey's rebuttal.
[402] P.24 of his rebuttal.
[403] CD13.52.
[404] Para. 6.4.70 of his proof.
[405] Section 3.4 of his rebuttal.
[406] CD13.52.

GPA3 goes on to explain the importance of a "*Zone of Visual Influence*" or "*Zone of Theoretical Visibility*" in identifying the heritage assets affected and their settings: see para. 14. Thus, whilst the surroundings in which a heritage asset is experienced will not in every case necessarily be limited to the surroundings from which the heritage asset can be seen,[407] GPA3 plainly advocates an approach in which visual reasoning plays a key role.

267.2. "*Other sensory impacts*" are expressly considered at paras. 4.2 and 6.3 of Dr Massey's proof. He describes his approach more fully in his rebuttal. Having noted what is said in GPA3, he explains (para. 2.2) that:

> "...The extent and importance of setting is often expressed by reference to visual considerations, but may also comprise other factors which contribute to the ways in which the heritage asset is experienced, including noise, vibration, pollutants and nuisances, tranquillity, remoteness etc.
>
> 2.3 Due consideration has been given to all aspects of setting in respect of all designated heritage assets assessed within my Proof of Evidence, including historical and functional associations, spatial and visual relationships with other designated assets and village centres, together with extraneous factors affecting the appreciation of setting, including noise, traffic, intervening topography and vegetation, and seclusion (i.e. Yarne). This has been fully in accordance with current sectoral guidance and statutory requirements...".

267.3. Dr Massey then explains that "[i]*n view of the exclusively rural circumstances pertaining to the heritage assets assessed for the purposes of this Appeal, the only additional sensory impact which can reasonably be considered is that of sound*". His assessment of this impact is provided at paras. 2.4 and 2.5 of his rebuttal.[408]

267.4. Mr Paton argued that Dr Massey's approach failed to accord with what was said by Lang J in ***Steer v SSCLG*** [2017] EWHC 1456 (Admin).[409] Two key points should be drawn from that decision:

267.4.1. Whilst a physical or visual connection between a heritage asset and its setting will often exist, it is not essential or determinative. The term setting is not defined in purely visual terms in the NPPF which refers to the "*surroundings in which a heritage asset is experienced*". The word "*experienced*" has a broad meaning, which is capable of extending beyond the purely visual: see [64] of the judgment.

267.4.2. The term "*surroundings*" in the NPPF definition of setting does place a geographical limitation on the extent of the setting: see [67].

267.5. As is evident from the above and as Dr Massey made clear in his oral evidence, in identifying the settings of the relevant heritage assets Dr Massey has not impermissibly restricted himself to consideration of intervisibility only, albeit that such consideration has - legitimately - formed a key

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[407] The bells of a listed church might, for example, be audible even where the church itself is not visible.

[408] See also para. 4.3.

[409] ID75. The case is presently on appeal to the Court of Appeal.

plank of his assessment. Rather, he has considered the various ways in which the relevant heritage assets might be experienced. That approach accords entirely with the judgment of Lang J in ***Steer***.

267.6. It is particularly important to understand the relevance of historical associations to setting correctly. A central theme of Mr Paton's criticism of Dr Massey's work was that Dr Massey had ignored a number of historical associations that Mr Paton considered to be relevant. However, as Dr Massey explained in his oral evidence and as clearly results from the definition of setting given in the NPPF, historical associations do not *per se* necessarily constitute setting. They comprise part of setting only if they are part of the surroundings of the heritage asset that can be experienced.

268. In considering the impact that the Appeal Scheme would have on the significance of Yarne, it is also important to acknowledge that the question is not whether the setting of Yarne would change. Rather, the question is whether the setting of Yarne would change in a way that harms the significance of the listed building. Thus, where development within the setting of a heritage asset will alter or remove views out from the asset, the proper analysis is to ask what those views contribute to the heritage significance of the asset.[410]

3.9.2.2. Yarne: Process of assessment

269. An initial assessment of Yarne was undertaken in the October 2013 desk-based assessment.[411] That was subsequently reflected in the Addendum ES[412] and then in May 2016 Dr Massey produced a comprehensive *Additional Setting Impact Assessment Addendum* (CD13.56), a 44 page document that is concerned primarily with the impact of the Appeal Scheme on the setting of Yarne. At paras. 8.7 to 8.11 of that document Dr Massey recommended a number of mitigation measures that would "*further assist in reducing any potential impacts to the setting of Yarne and the Ockharm Conservation Area*".

270. Following production of the May 2016 assessment, the Additional Restrictions were proposed in August 2016: they are shown on drawing 1715/SK/709 (CD1.13.7). Dr Massey confirmed in evidence-in-chief that in his view the Additional Restrictions gave effect to the recommendations that he had made in the May 2016 assessment. Detailed analysis on this point is provided at paras. 7.27 to 7.34 and 7.39 to 7.47 of Dr Massey's proof. We consider the Additional Restrictions further below.

271. Mr Paton suggested to Mr Bradley that the Additional Restrictions were (in short) imposed too late, after the Appeal Scheme had been designed. Dr Massey's evidence on that point was that the timing of the May 2016

410 Dr Massey's EinC.
411 CD13.53 at paras. 6.12 to 6.16; intervisibility represented at fig. 30.
412CD14.1.10 at 10.4.17 to 10.4.21.

assessment was immaterial, because exactly the same conclusions would have been arrived at had potential effects been assessed to the degree of detail contained in the May 2016 assessment at an earlier stage.[413] In the Appellant's submission Dr Massey was correct to observe that the claim made by Mr Paton[414] that no steps have been taken to mitigate the effects of the Appeal Scheme on Yarne is "*patently untrue*".

3.9.2.3. Yarne's significance

272. A proper understanding of the significance of Yarne is essential to a correct assessment of the heritage impact that the Appeal Scheme would have upon it. Mr Paton has, with respect, failed to understand where the heritage significance of Yarne lies, as a result of which his argument is fundamentally flawed. Yarne's significance relates to the architectural and historic interest inherent in the surviving later medieval and/or post-medieval fabric of the building, and the evidence of later change and adaptation (although none of the later changes and additions are in themselves of sufficient architectural or historical interest to merit designation).[415] No heritage values or significance relating to Yarne's relatively early origins are readily apparent from its current external appearance.[416] The position is well summarised by Dr Massey at para. 7.18 of his proof in the following terms:

> "The Listed Building itself represents a number of successive, accretive phases of historical development, not all of which contribute equally to its significance. Its current appearance, and most particularly that of its principal southern elevation, offers little immediate sense of its historic character, or significance. Those aspects of its historic fabric from which it derives its principal significance are not readily appreciable from its exterior, and have no visual or historical connection with the wider setting of the house. The modern form of the house and surrounding garden which are visible from parts of the Appeal Site are essentially the result of more recent cosmetic changes, which do not necessarily reflect the historic character of the building or its surroundings".

3.9.2.4. The extent of Yarne's setting

273. Dr Massey's position is that part of the Appeal Site forms a part of the wider setting of Yarne. He explained in evidence-in-chief that he used the term "wider" in distinction to the primary or immediate[417] setting of the listed building, which in his view was confined to the curtilage of Yarne (within the boundary hedgerows). It is important to appreciate the extent to which the boundary hedge limits views into the Appeal Site from the listed building itself and from within its immediate setting (i.e. its curtilage). Dr Massey's view was that the

[413] Dr Massey's EinC.
[414] Rebuttal, para. 1.8.
[415] Para. 7.6 of Dr Massey's proof; and EinC.
[416] *Ibid.*, para. 7.7. Mr Paton did not pursue his assertion that Yarne was refronted by Voysey. There is no evidence to that effect before the Inquiry and Mr Paton himself admitted (whilst XXing Dr Massey) that he could not prove it.
[417] He confirmed in XX that he used those two terms interchangeably.

boundary hedge seemed deliberately designed to restrict visibility between Yarne and the Appeal Site and to make Yarne a visibly enclosed entity.[418]

274. Turning to the wider setting of Yarne, Mr Paton asserts that the Appeal Site is "*the main tract of agricultural land*[419] *in the centre of the Parish of Ockham and it forms an integral part of the setting of Ockham's hamlets and its Conservation Area*",[420] that Ockham village is an "*integrated whole*" that includes the Appeal Site,[421] that Yarne is "*all of a piece*" with the other designated heritage assets within the Ockham Conservation Area[422] and that Yarne's wider setting is Ockham.[423] As to those assertions:

    274.1. Ockham village is not an integrated whole: see the view expressed by Pevsner;[424] the Appellant additionally notes that both Historic England[425] and GBC[426] acknowledge that it is a "*dispersed settlement*".

    274.2. As Dr Massey explained in his evidence-in-chief, whilst there are historical associations between Ockham village (including the Conservation Area) and Yarne, the former is not part of the latter's setting. In any event, given the location of the Appeal Site the historical associations between Yarne and Ockham would not be impacted by the Appeal Scheme.

    274.3. Mr Paton specifically criticised Dr Massey for omitting to include the Ockham Park Estate in his assessment of Yarne's setting. Again, however, it does not follow from the fact that there are historical associations between Yarne and the Ockham Park Estate that the latter is part of the former's setting: it is not.[427] In any event, Dr Massey's evidence was that those historical relationships would not be affected by the Appeal Scheme.

275. Mr Paton further asserts[428] that there are "*strong grounds*" for expanding the Ockham Conservation Area to include Yarne. No evidence was produced in support of that assertion. Dr Massey's view was that it was hard to pinpoint any degree of unity or other reason was Yarne should be included in the Conservation Area and that Yarne was located at a sufficient distance from Ockham village to make the claim "*impossible*".

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[418] This effect will of course be heightened in the event that a wall is erected within the curtilage of Yarne at its boundary with the Appeal Site, as Mrs Paton informed the Inquiry was her intention should the Appeal Scheme be granted planning permission. This was also included in the list of suggested conditions from Mr and Mrs Paton. Mr Paton in XX said that if Yarne was removed from the Green Belt, as is currently proposed, his land would be developed before the Appeal Site.
[419] There is no evidence of the Appeal Site being farmed from Yarne, save that a very small area was leased with Yarne in the 1930s and early 1940s.
[420] Rebuttal para. 2.4.12.2.
[421] *Ibid*. 2.4.3.2.
[422] *Ibid*. para. 2.4.4.3.
[423] *Ibid*. para. 2.4.1.
[424] Para. 8.3 of Dr Massey's proof.
[425] CD5.13.
[426] The OR (CD6.1) at para. 10.20.6.
[427] Evidence-in-chief of Dr Massey.
[428] Rebuttal para. 2.4.14.

3.9.2.5. The contribution made by Yarne's setting to its significance

276. Having regard to where the significance of Yarne lies (above) and to the guidance set out in GPA3 at *Assessment step 2: assessing whether, how and to what degree settings make a contribution to the significance of the heritage asset(s)*,[429] in the Appellant's submission Yarne's setting does not greatly contribute to its significance. There is not, for example, any intentional intervisibility with other historic and natural features, nor are there any cultural associations.[430] In this regard it is also necessary to consider the way in which Yarne's setting has evolved through to the present day.

3.9.2.6. The evolution of the Appeal Site as part of Yarne's setting

277. As Dr Massey explained in his evidence-in-chief, it is important to consider the evolution of Yarne's setting through time because those aspects of setting that most closely relate to the period of time from which the heritage asset principally draws its significance (here, the later medieval and/or post-medieval period) are of more heritage value than those aspects of setting that are related to other periods in time, which are of very limited heritage value.

278. The evidence of historical mapping provided at para. 7.23 of Dr Massey's evidence illustrates the historical landscape character of the Appeal Site (as part of Yarne's setting) prior to the advent of the airfield in the mid-20th century. Additional historical maps are reproduced in the 2013 desk-based assessment (CD13.53, figures 3 to 14). Dr Massey explained that the coming of the airfield represented radical change to the quality of the landscape within the Appeal Site. Although the historical mapping shows some evidence of field amalgamation by 1920, all remaining field boundaries were removed by the airfield. In addition, three historical farmsteads were demolished.

3.9.2.7. The current nature of the Appeal Site as part of Yarne's setting

279. The Surrey Historic Landscape Characterisation Survey records the Appeal Site as principally comprising "*disused airfield*", with small elements comprising "*miscellaneous valley-floor fields and pastures*" and "*medium to large regular fields with wavy boundaries*".[431] As to whether the Appeal Site is properly regarded as falling within Landscape Character Type E2 (Ockham and Clandon Wooded Rolling Claylands), the borehole data[432] establishes conclusively that clay lies underneath the Appeal Site (beneath the initial sand/gravel layer) but

[429] P.9.
[430] Dr Massey's EinC.
[431] Dr Massey's proof at 4.8.
[432] CD14.1.64.

that question is in any event entirely irrelevant to the assessment of heritage impact, as Dr Massey explained in evidence-in-chief.

280. Mr & Mrs Paton claim that the Appeal Scheme "*will remove historic green spaces which contribute so much to the character and provide the valuable historic and visual context to the historic parish settlements*".[433] However, as Dr Massey explains at para. 4.20 of his rebuttal, "*no explanation is given as why it is inherently 'historic', or now constitutes 'green space'. This area may once have comprised part of the historic landscape setting of Yarne, but is now a former airfield consisting partly of previously developed land, and elsewhere of commercial arable farmland. Surviving elements of the former airfield have very limited heritage significance. Reference should be made in this context to the description of the Appeal Site in the Asset of Community Value application of 2016, which was refused on 24th January, 2017 (CD2.20)*".

3.9.2.8. The contribution currently made by the Appeal Site to Yarne's significance

281. In summary, that aspect of the wider setting of Yarne comprising the Appeal Site has itself been subject to considerable historical change and consequently makes no positive contribution to the significance of Yarne.[434] As Dr Massey explains at paras. 7.19, 7.21 and 7.22 of his proof, whilst Yarne retains much of its original historic setting to the south and east, there has been major change to the character of its setting to the north and west. Mr & Mrs Paton are thus plainly wrong to suggest that "[o]*ccupants of Yarne continue to experience the landscape in a form that would be recognised by their predecessors before the Napoleonic Wars*": see Dr Massey's rebuttal at para. 4.21.

282. The common usage of part of the Appeal Site with Yarne immediately prior to its acquisition for the airfield is also a historical association of very limited heritage value, as Dr Massey explains at para. 4.13 of his rebuttal (and as he confirmed in evidence-in-chief).

3.9.2.9. The impact that the Appeal Scheme would have on the significance of Yarne

283. Coming finally, in the light of the points made above, to the question of what impact the Appeal Scheme would have on the significance of Yarne, in the Appellant's submission Dr Massey's conclusion that there would be only less than substantial harm (and within the lower end of that range) to Yarne's significance is well supported by the evidence[435]. Two points in particular merit more detailed consideration:

[433] Proof at 2.4.2.6.
[434] Dr Massey's summary at 7.1, confirmed in EinC.
[435] The reasons for his conclusion are summarised at paras. 7.36 and 7.37 of his proof.

284. First, views. As noted above, the boundary hedge at Yarne seems deliberately designed to restrict visibility between Yarne and the Appeal Site and to make Yarne a visibly enclosed entity. Views from Yarne into the Appeal Site are therefore possible from the first floor, but limited from ground level. Furthermore, as the evidence of Mr Davies shows,[436] the ridge heights of those buildings within the part of the Appeal Scheme that is adjacent to Yarne (55.7m AOD) and of Yarne itself (55.52m AOD) are very similar. One of the Additional Restrictions (see drawing 1715/SK/709) prohibits terracing and requires frontages to be permeable with max 2:1 building to gap ratio. There will also be a 20m separation between the curtilage of Yarne and any building within the Appeal Site (we return to this below). As regards the "*Enhanced Boundary Vegetation*" that is illustrated in section B-B within Appendix 1 to the proof of Mr Davies, it should be noted that one of the proposed principal aims of the WACT is the "*maintenance in perpetuity of strategic planting and landscaping to protect the setting of nearby heritage assets including Yarne and Ockham Conservation Area*" (above).

285. At para. 7.17 of his proof Dr Massey states that the views from Yarne across the site are of "*no particular visual amenity or aesthetic value, or historic significance*". He clarified in evidence-in-chief that it is the latter aspect, historic significance, that is relevant to an analysis of the impact of the Appeal Scheme on Yarne's significance. Dr Massey's evidence was that whilst views from Yarne across the Appeal Site would be blocked by elements of the Appeal Scheme, those views did not of themselves have any heritage value. See the following passage from his rebuttal:

> "Such long-range key views are only possible because of historically-recent landscape changes within the Appeal Site, and do not relate to any aspect of the wider setting of Yarne which contributes to its significance. Such views have no intrinsic heritage significance. Those views which do have heritage significance i.e. which comprise aspects of setting which contribute to the significance of Yarne, are those views to the east and south which visually connect Yarne with surviving elements of enclosed landscape with which it had a functional and historical relationship".

Dr Massey confirmed that those views to the east and south would be not be affected by the Appeal Scheme. Thus, "*any aspects of wider setting which contribute to the significance of Yarne, including visual connections with Ockham Lane, Martyr's Green and surviving elements of historic landscape to the south and east, would remain unimpaired*".[437]

286. A second important element of the reasoning behind Dr Massey's conclusion that there would be low level less than substantial harm to Yarne's significance is summarised at para. 9.7 of his proof:

> "Those identified heritage values which principally contribute to the significance of Yarne, relate entirely to its physical fabric, and these would remain wholly unaffected by the Proposed Development".

[436] Appendix 1 to his proof, sections BB and E.
[437] Para. 9.7 of Dr Massey's proof.

287. As explained above, Mr Paton has failed to appreciate where the significance of Yarne lies. He was unable in cross-examination to explain what he had understood by the concept of "*substantial harm*" (as used in the NPPF in contrast to "*less than substantial harm*") and stated that understanding that concept had not been essential to his case. No definition of the concept is articulated in his written evidence.

288. The SA of the eGBLP (CD8.31) states at para.10.8.3 that "*there should be good potential to mitigate impacts*" on designated heritage impacts. Dr Massey agreed with that statement and explained that in his view the Additional Restrictions had done so.[438]

289. In short: under consideration is change to a <u>part</u> of the <u>wider</u> setting of a Grade II listed building, which part has evolved through time such that it presently makes no positive contribution to the asset's significance. Dr Massey is correct to conclude that any harm resulting from the change that would occur here falls within the lower end of the less than substantial range. Indeed, GBC considers that there will be <u>no</u> material harm to Yarne's significance.

<u>3.9.2.10. The Additional Restrictions</u>

290. Dr Massey's professional view[439] having regard to drawing 1715/SK/709 (CD1.13.7) was that the proposed Additional Restrictions sufficed to make the Appeal Scheme acceptable in heritage terms, because he regarded a separation of between 20-30m between Yarne's curtilage and buildings within the Appeal Site as acceptable.

291. It has, however, been observed that drawing 1715/SK/709 shows a separation of *circa* 10m[440], with the appendices to the proof of Mr Davies showing *circa* 17m separation. The Appellant has therefore proposed that Condition 16 provide that "[t]*he relevant reserved matters applications* [...] *shall ensure that no building shall be within 20mm of the site boundary with the Grade II Listed Building Yarne...*", to ensure the separation distance that Dr Massey considered to be acceptable[441].

<u>3.9.3. Ockham Conservation Area</u>

292. Dr Massey's professional view (see para. 9.12 of his proof) is that development within the Appeal Site would be minimally visible from the margins of the Conservation Area, which would result in a negligible level of

[438] RX of Dr Massey.
[439] Expressed in RX.
[440] Albeit that the drawing is labelled "*Do not scale*", and is a plan to show the areas of development and the separation is that of edge plot to boundary.
[441] ID78 demonstrates that the indicative masterplan as revised to reflect the Additional Restrictions shows the nearest buildings to be c. 20m from the curtilage of Yarne.

harm to the significance of the Conservation Area. Dr Massey has additionally assessed (in his rebuttal) the impact of potential increases in traffic flows and has concluded (para. 2.9) that only a low level of harm, falling considerably below the level of "*substantial harm*" (in NPPF terms) would result from the Appeal Scheme.

293. There is no evidence before the Inquiry that contradicts Dr Massey's assessment of the impact on Ockham Conservation Area:

293.1. Whilst Historic England does not routinely comment in respect of Grade II listed buildings, it does provide advice on proposals that would affect the character or appearance of Conservation Areas.[442] It has not objected to the Appeal Scheme.

293.2. The OR[443] concludes at para. 10.20.7 that there would be no material harm to the character and appearance of the Conservation Area and no harm to significance (it should also be noted that the OR concludes at para. 10.20.10 that there would be no material impact on the setting or significance of Upton Farmhouse);

293.3. Ockham Conservation Area is not mentioned in the RfR;

293.4. GBC's SoC[444] states at para. 6.9.1 that "[t]*he Council is satisfied that the development would be sufficiently distant from the Ockham Conservation Area such that there would be no material harm to its special character, appearance or setting*"; and

293.5. Although Mr Sherman refers to the Conservation Area at para. 4.12 of his proof in relation to the fifth Green Belt purpose that is set out at para. 80 of the NPPF, he confirmed in oral evidence that he was not asserting (and had never asserted) that the Appeal Scheme would harm the significance of the Ockham Conservation Area as a designated heritage asset.

3.9.4. Chatley Semaphore Tower

294. Chatley Semaphore Tower was raised by WAG in cross-examination of Dr Massey. It is a Grade II* listed building.

295. As such, Historic England is a statutory consultee on proposals that would have direct or indirect impacts on it.[445] As noted above, it has not objected to the Appeal Scheme.

296. The Tower is managed by SWT.[446] SWT has not objected in respect of the Tower either.

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[442] Historic England (then English Heritage) initial consultation response dated 23 January 2015 (CD5.13).
[443] CD6.1.
[444] CD1.6.
[445] Historic England (then English Heritage) initial consultation response dated 23 January 2015 (CD5.13).

297. GBC's view is that the Appeal Scheme "*would not impact on the significance or setting of the Chatley Semaphore Tower*" (SoC, para. 6.9.1).[447]

298. Dr Massey provides an assessment of the impact of the Appeal Scheme on the Tower in his proof.[448] His conclusion (para. 9.17) is that the Appeal Scheme would not result in any appreciable harm to the significance of the Tower. He refers at para. 8.34 of his proof to the 2013 desk-based assessment,[449] which at paras. 6.31 and 6.32 notes that "*the intervisibility with other signalling stations and topographic situation form the key aspects of the setting of the Listed building*" before concluding that the Appeal Scheme would not inhibit that intervisibility and would not impact upon the Tower's topographic situation.

299. It was not suggested to Dr Massey that any of the above assessments were incorrect.

300. WAG has not produced any heritage impact assessment of its own in respect of the Tower (nor has any party save for Dr Massey). WAG's SoC[450] includes at para. 3.27 a list of the listed buildings that WAG considers will be harmed by the Appeal Scheme. The Tower does not feature on that list. The advice given by leading Counsel to WAG was that there "*may*" be harm to the Tower (wrongly stated to be Grade II listed).[451]

301. Having regard to the above, there is no evidence before the Inquiry that the Appeal Scheme would cause any appreciable heritage harm to the Tower.

3.9.5. RHS Wisley

302. RHS Wisley was also raised by WAG in cross-examination of Dr Massey and a very similar analysis obtains, that is:

    302.1. RHS Wisley is also Grade II* listed;

    302.2. Historic England expressly stated that they did not wish to object to the proposals insofar as they related to RHS Wisley;[452]

    302.3. RHS Wisley has not itself objected to the Appeal Scheme on grounds of heritage impact;

    302.4. GBC does not consider that the Appeal Scheme would materially impact on the listed gardens at RHS Wisley;[453]

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[446] Proof of Mr Davies at p.66.
[447] CD1.6.
[448] Paras. 3.14, 3.17, 3.20, 8.34, 9.17.
[449] CD13.53.
[450] CD1.11.
[451] Advice of Mr Harwood QC dated 17 May 2016, attached to WAG's SoC (*ibid*.).
[452] CD5.13.

302.5. Dr Massey has assessed the impact of the Appeal Scheme on RHS Wisley.[454] His conclusion (see para. 4.17 of his rebuttal) is that only a negligible level of harm would result; he said there would be "*very, very, limited*" impact in heritage terms[455]. He confirmed in re-examination that the evidence provided by Mr Davies in relation to Battleston Hill[456] did not change his conclusion.

302.6. It was not suggested to Dr Massey that any of the above assessments were incorrect.

302.7. WAG has not produced any heritage impact assessment of its own in respect of RHS Wisley (nor has any party save for Dr Massey).

303. There is no evidence before the Inquiry that the Appeal Scheme would cause any material heritage harm to this heritage asset.

3.9.6. Conclusions on heritage impact

304. Dr Massey is correct to conclude that the Appeal Scheme would result in only less than substantial harm to Yarne, Upton Farmhouse, Appstree Farmhouse and Ockham Conservation Area (and would not harm any other designated heritage asset). We return below to the influence of that harm upon the overall planning balance (see Main Issue 12).

3.10. Whether the proposals would give rise to an unacceptable air quality impact on local receptors (human and wildlife)

3.10.1 Introduction

305. Main Issue 10 arises from GBC's RfR10 which alleged that it had not been demonstrated that the development would not give rise to unacceptable air quality impacts on local receptors - human and ecological.

306. It should be noted that:

306.1. GBC does not offer any evidence to support this RfR, as it is no longer disputed[457]. This position is a considered one based on having taken specialist advice, on more than one occasion, from AECOM on air quality issues. GBC thus accepts[458] that "*it has been demonstrated that the Proposed Development will have satisfactory air quality impacts.*" GBC, as local planning authority, thus does not suggest that planning permission should be withheld on the basis of air quality issues.

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[453] SoC (CD1.6) at para. 6.9.1.
[454] Proof, paras. 3.15, 3.17, 3.19, 3.20; rebuttal, para. 4.17.
[455] Para. 54(b) of WAG;s closing is just wrong.
[456] Proof of Mr Davies, paras. 5.35, 5.40 and 9.25.
[457] See GBC's SoC (C1.6) and Mr Sherman's proof at para 2.27.
[458] See the SoCG, CD12.3 p 30.

306.2. In so far as the air quality issues give rise to possible ecological impacts NE raises no objection to the Appeal Scheme, having given lengthy, careful and detailed consideration to all the ecological issues, including the air quality issues (see further below).

306.3. Thus it is only some of the rule 6 parties, most notably RPC and WAG, who continue to raise air quality issues[459].

3.10.2. The assessments undertaken and the expert reviews of these undertaken on behalf of GBC by AECOM

307. The air quality assessments undertaken on behalf of the Appellant in 2014 and 2015 were undertaken by WSP; and the evidence given to this inquiry was by Dr Tuckett-Jones who is head of air quality in the environmental group of WSP.

308. The original ES submitted with the planning application in December 2014 contained chapters covering air quality and a separate chapter on ecology which looked at possible air quality impacts on human or ecological receptors. The ES was subject to a scoping process with GBC and SCC as well as other relevant bodies including NE (see below).

309. GBC commissioned external expert consultants, Nicholas Pearson Associates, to review the ES[460] and that review extended to the air quality and ecology chapters. GBC were though also advised to seek specialist advice on the technical adequacy of the air quality assessment and the application of relevant standards and guidelines[461].

310. As a result of this review in December 2015 Appellant submitted an Addendum ES. This contained fully substituted new chapters on air quality and ecology[462] and further traffic modelling which was assessed in those chapters[463] along with a number of new appendices including *inter alia*: a summary of the traffic data used in the air quality assessment[464]; model verification[465]; air quality figures[466]; a lengthy and detailed report entitled "Information for Habitats Regulations Assessment" (Final Report, November 2015) - chapter 9 of

[459] Indeed it should also be noted that the RSPB, who have continued to object to the Appeal Scheme, raise issues focused on recreational impacts and not air quality impacts.
[460] CD14.1.16
[461] CD14.1.16 para. 2.27.
[462] CD14.1.1. para 1.26.
[463] *ibid* para 1.2.3.
[464] App. 6.3; CD14.1.34.
[465] App. 6.7; CD14.1.38.
[466] App. 6.10; 14.1.41.

which considered air quality[467]; an SSSI Air Quality Report[468] and an Air Quality technical note providing an updated summary of air quality impacts following the updated air quality modelling completed in 2015[469]

311. The Addendum ES was again subject to review by Nicholas Pearson Associates. Moreover, GBC accepted the previous advice from Nicholas Pearson Associates that it should commission specialist advice on air quality and AECOM were instructed. AECOM's first review (CD5.18) took place shortly before GBC refused planning permission for the Appeal Scheme. AECOM sought some "*additional information and clarification*" albeit that it stated as an overall conclusion was that "*AECOM agrees with the conclusions of the Appellant's Environmental Statement Volume 1 and Report to Inform an HRA, that the scheme is not likely to lead to a significant air quality effect on either the Thames Basin Heaths SPA or Ockham and Wisley SSSI during construction, or during operation, with regard to nitrogen deposition or NOx concentrations*" and it also concluded "*AECOM agrees with the conclusions of the air quality assessment on the effect of the scheme on human health*". Regrettably the Appellant was given no chance to respond to AECOM's request for additional information and clarification prior to planning permission being refused. However, following the refusal of permission WSP, on behalf of the Appellant, submitted further information in response to the AECOM review. The submission (CD13.69) consisted of a letter and attachments running to 189 pages; it was a very substantial submission of further information[470]. This information was then reviewed by AECOM. The position reached is recorded in GBC's SoC as follows:

> "6.10.2 ... Following the refusal of the application the appellants submitted further information in respect of this issue (WSP/Parsons Brinkerhoff - Air Quality Submission of Further Information, 13th June 2016) and this was also subject to independent review. This further assessment (AECOM, 8th August 2016) advises that, subject to minor clarifications, the concerns previously raised have been resolved.
> 6.10.3 In light of the independent expert advised commissioned by the Council, it is now the Councils position that air quality is not a determining issue in this appeal and that any impacts can be avoided or mitigated by suitable conditions or obligations secured through a legal agreement …"

312. WSP responded to the remaining "*minor clarifications*" sought by AECOM in a letter dated 3 August 2017 (CD13.85) and these matters are also considered in detail in the proof of Dr Tuckett-Jones. The 3 August 2017 letter contained a number of further sensitivity tests of air quality; and one of these was also included in Dr Tuckett-Jones's proof: see further below. GBC have confirmed (in cross-examination of Mr Sherman) that they regard air quality issues in respect of the Appeal Scheme as "*resolved*".

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[467] App. 8.13; CD14.1.55
[468] App. 8.15; CD14.1.57
[469] App. 8.20; CD14.1.62 (17 December 2015).
[470] RfR10 states that "*[f]urther verification should be provided using site specific measurement data collected*". This is a reference to the 2014 monitoring undertaken by WSP on behalf of the Appellant and is considered further below. The advice of AECOM was though in fact that (CD5.18, final page) that what was required was "*<u>Further information on</u>, or updated verification using, the 3 months of site specific measurement data collected*" (emphasis added). The June 2016 WSP letter provided the former and AECOM was satisfied. Professor Laxen accepted in XX that this was the position.

313. The individuals at AECOM who reviewed, and ultimately approved, the Appellant's air quality work were highly expert and included not only two air quality specialists but also ecology specialists including Dr James Riley (CEnv MCIEEM): see CD5.18 and the answers of Professor Laxen in cross-examination.

314. Thus, the position of GBC, as local planning authority, is that air quality is no longer a disputed matter and in so determining GBC have had access to, and relied on, independent expert advice from AECOM on a number of occasions. AECOM have fully reviewed the air quality assessments undertaken by WSP on more than one occasion and the view now taken is that the work done on this issue is acceptable and allows it to be concluded that there is no adverse air quality impact which would justify refusal of planning permission.

315. It should also be noted that in relation to the eGBLP GBC commissioned from AECOM a "Habitats Regulations Assessment for Guildford Borough Proposed Submission Local Plan: Strategy and Sites 2017 Update" and an "Air Quality Review of Guildford Borough Proposed Submission Local Plan: Strategy and Sites 'June 2017'"[471]. These assessments take into account both the Wisley allocation (Policy A35) and Burnt Common slips. The conclusion on air quality[472] is that "*the effect of the Draft Local Plan on annual mean NO_2 concentrations will be negligible and not a key constraint on development …*" and it is also concluded[473] that there will be no LSE on any ecological receptors from air quality as a result of the eGBLP.

316. As already noted air quality issues have been further considered in detail in the proof and rebuttal of Dr Tuckett-Jones; and the possible ecological impacts considered in the lengthy and detailed evidence of Dr Brookbank[474]. WSP's letter of 3 August 2017 and Dr Tuckett-Jones's evidence contain a number of sensitivity tests going beyond the Addendum ES. The sensitivity test involved what Professor Laxen calls "*completely new air quality modelling*" (see his supplementary proof at para. 2.8).

317. A further sensitivity test is included in Transport Technical Note 1[475] on the basis of updated traffic data, the May 2017 traffic data. Professor Laxen in his supplementary proof refers to this as a "*new assessment of the impacts*" (see para 3.1). How one labels it is not really important. What is important is the following:

317.1. It contains new modelling, which Professor Laxen accepted in cross-examination was "*better modelling*" and which he confirmed he raised no issues with in terms of either the modelling itself or its verification[476] and adjustment;

[471] CD8.48 and 8.49.
[472] P.19.
[473] CD8.48
[474] The inference in WAG's closing (see para. 66) that Dr Brookbank lacks specialism in air quality issues as they affect ecology s unfounded; and was not put to her. He did not XX her on the noise and other issues that she said would affect birds.
[475] See ID4 section 7 and App 10.1-3.

317.2. That modelling was verified as against a full 12 months of monitoring at multiple locations[477]. Importantly, Professor Laxen made no criticisms at all of this monitoring and accepted in cross-examination that it could be relied on and that accordingly WAG's additional monitoring data presented in his evidence which was undertaken for only 3 months and on the basis of a far more limited number of locations could be ignored;[478]

317.3. The modelling used the latest available traffic data, the May 2017 traffic data[479] – and in respect of which data Professor Laxen raised only minor points[480] – which points have been fully answered (see above);

317.4. The modelling used the CURED methodology, developed by Professor Laxen's company. Professor Laxen accepted in cross-examination that it was appropriate to be used and that it is a methodology that is more conservative than DEFRA emission factors (see further below on this);

317.5. The only criticism made by Professor Laxen in his supplementary proof of the sensitivity test employed in Transport Technical Note 1 is that (ID4, see para 3.1) while the Addendum ES assessed the year 2031, using 2019 emissions "*which was clearly designed to be conservative*" the new approach assessed 2031 using the CURED model, which while appropriate in itself required in addition an assessment of an interim year. But as Professor Laxen accepted in cross-examination the 3 August 2017 letter from WSP that was sent to GBC employed three sensitivity tests, and thus goes beyond her proof. Only the third uses the CURED model. The other two sensitivity tests used 2019 emissions, an approach which Professor Laxen accepts does not require assessment of an interim year. Regrettably despite this letter being referred to in Dr Tuckett-Jones's proof (provided in early August 2017) when he gave his oral evidence Professor Laxen had not read this letter because he had wrongly "*assumed it was just a covering letter*"; the letter is in the CDs. It is also regrettable that this point about the need for an interim year assessment was made for the first time in Professor Laxen's supplementary proof. That document was allowed in to respond to Transport Technical Note 1[481]; but this point is in fact seeking to rebut evidence in Dr Tuckett-Jones's proof provided in early August 2017. As he explained in cross-examination, Professor Laxen failed to provide a rebuttal in accordance with the bespoke timetable

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[476] In his oral evidence Professor Laxen said that Transport Technical Note 1 "*does meet many of my concerns* , that he "*doesn't make any complaint about verification*" and that it is "*largely correct in terms of modelling*". On the traffic data use in the Note he said there were far less what he has called "*anomalies*". In relation to the latter point there are in fact no anomalies: see below.

[477] Dr Tuckett-Jones explained that the verification undertaken with this data, and which Professor Laxen accepted was appropriate, produced a verification factor of 1.2, very close to the 1.13 verification factor derived from the ES verification process. The analysis did not stop there as because geographic patterns emerged the area was split into regions and south of the M25 (within the SPA) the verification factor went down to 0.87; meaning the modelling is over predicting results. Professor Laxen in XX accepted that the monitoring the Appellant had done was "*quite comprehensive*".

[478] The Appellant's monitoring is in any event entirely consistent with this WAG monitoring.

[479] Dr Tuckett-Jones in her EinC explained why she had not used this data in her proof namely: (i) her proof was responding to the minor clarifications raised by AECOM on the ES and so used the ES traffic data for consistency; and (ii) in her discussions with Mr McKay it was concluded that the impact of the new traffic data would be negligible in the context of the assessment conclusions.

[480] He accepted in XX that his key issues on transport data was with the Addendum ES not the May 2017 data.

[481] ID4.

because of his holiday commitments. It is quite wrong for him to have used the supplementary proof to make a late rebuttal. In any event the point he raises is a bad one, which he would have realised had he read the 3 August 2017 letter. This disposes of Professor Laxen's one written criticism of the assessment in Transport Technical Note 1[482];

317.6. In his oral evidence Professor Laxen sought to add further criticisms not made in his supplementary proof. These were:

317.6.1. Transport Technical Note 1[483] contains no updated baseline. This was dealt with in Dr Tuckett-Jones's evidence-in-chief. She explained that because the focus of the HE submission was the impact on Burnt Common slips no modelled baseline concentrations were provided but she confirmed that the modelled concentrations were below air quality objectives;

317.6.2. Transport Technical Note 1[484] contains modelling only for NOx and not for ND or PM10; again Dr Tuckett-Jones dealt with this in her evidence-in-chief with effectively no challenge in cross-examination:

317.6.2.1. PM10: this is irrelevant to the SPA, and no issues are raised by Professor Laxen concerning PM10 on human health. This is a complete red herring;

317.6.2.2. ND: Professor Laxen accepted in cross-examination that the 1% critical level scheme contribution contours for NOx would extend further into the SPA than for ND (and this was also accepted in cross-examination by Mr Baker). Therefore, the modelling of NOx can be seen as looking at the worst-case position; Dr Tuckett-Jones's oral evidence was that impacts on ND are approximately an order of magnitude lower than for NOx such as not to necessitate separate consideration beyond NOx.[485] What this modelling shows in respect of impact on the SPA is considered below.

In cross-examination and in re-examination Dr Tuckett-Jones emphasised that there was nothing missing from the air quality assessments taken in their totality and these allowed the Secretary of State to comfortably conclude that there would be no adverse air quality impacts.

318. In terms of the assessments undertaken of air quality impacts by the Appellant it is necessary to deal briefly with Burnt Common slips. The assessments undertaken in the ES and Addendum ES did not consider Burnt Common slips as these were not at that time proposed as mitigation. This matter has though been carefully

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[482] *Ibid*

[483] *Ibid.*

[484] *Ibid.*

[485] ND has been considered within the context of the NOx modelling information.

considered[486] and the overall finding is again that the conclusions on air quality presented in the Addendum ES and in the updated further sensitivity testing are robust and that this applies whether or not Burnt Common slips are operational (*ibid*, paras. 7.2 and 7.9). Moreover, the ecology assessments in terms of air quality are also unaffected. In cross-examination Professor Laxen and Mr Baker, for WAG, accepted that their case on air quality impacts was in no way dependent on what happens with Burnt Common slips.

3.10.3 Traffic data issues

319. At the eleventh hour WAG have sought to raise issues concerning the traffic data relied on in the air quality assessments: see Professor Laxen's supplementary proof and also ID34. These have been comprehensively responded to in Transport Technical Note 2[487]. The errors identified in the ES traffic data (see Professor Laxen's supplementary proof at Table 1) were transcription errors the effect of which is explained in Transport Technical Note 2:

> "3.3 This has, however, no significant impact on the outcome of the AQ assessment.
> 3.4 The explanation for the lack of sensitivity in the air quality model results is that the same method for inputting traffic data and emissions into the AQ model was used for the ES Baseline, and future year Do Minimum/No Development (ScA) and With Development (ScC) air quality model scenarios for the ES. As such, the slight underestimation of emissions at the junction in all scenarios was adjusted for by a slight overestimation in the model verification factors.
> 3.5 The AQ modelling based on the May 2017 traffic data did not revisit the model verification since the 2013 baseline traffic datasets were not amended. The decrease in model verification factors therefore results in an overall decrease in the predicted concentrations that is negligible in magnitude".

320. Dr Tuckett-Jones addressed this matter further in her evidence-in-chief and was not cross-examined at all on such matters[488]. The Appellant's explanation of why these transcription errors are immaterial (Dr Tuckett-Jones in her evidence-in-chief described them as "*insignificant*"[489]) was thus not the subject of challenge in cross-examination of the relevant witness. The other errors alleged by Professor Laxen (supplementary proof Tables 2 – 4) in terms of the traffic data are not errors at all for the reasons explained in Transport Technical Note 2[490] and at length in the oral evidence of Mr McKay and Dr Tuckett-Jones. They result from factoring up peak flows to AADT using different factors.

3.10.4. Criticisms of the air quality assessment in the Addendum ES

[486] See Transport Technical Note 1; ID4.
[487] ID72.
[488] Mr Harwood QC tried instead to cross-examine Mr McKay on these points but he was asking the wrong witness; he missed his chance. The transcription errors are in the air quality chapter of the Addendum ES – there is no error in this regard in the traffic data in the transport assessment.
[489] She explained that while the number of cars on the links mis-transcribed went up the percentage of HGVs went down significantly – the resulting under-prediction being 1 or 2% at most.
[490] ID72.

321. Professor Laxen's supplementary proof seeks to argue that the Addendum ES "*should be withdrawn*" because of issues he raises with the traffic data (dealt with above) and also "*other limitations of the air quality modelling for the ES identified by Dr Tuckett-Jones in her proof of evidence*". The fact is though that Dr Tuckett-Jones's professional opinion is that having carried out a number of sensitivity tests and further modelling the findings of the air quality assessment have been supported; the conclusions reached "*hold good*". The Addendum ES thus remains a document on which reliance can be placed, albeit that in any event there is now further modelling[491] and further assessment of air quality impacts in Dr Tuckett-Jones's proof and Transport Technical Note 1 (ID4).

322. Moreover, it is necessary albeit briefly to consider the criticisms made of the Addendum ES by Professor Laxen. He had the Addendum ES available to him for a year and 9 months prior to the submission of his proof and the only criticisms made are those he sets out in section 3 as having already been made by him in a report dated March 2016 (CD13.70).

323. These points are responded to fully in the proof of Dr Tuckett-Jones at para. 7.8ff:

323.1. **Failure to consult Elmbridge BC given possible impacts on the Cobham AQMA**: Elmbridge BC were consulted on EIA scoping and consulted on the planning application[492]. They objected to the Appeal Scheme but not on air quality grounds[493]. Moreover, the May 2017 traffic data shows within Cobham either very small increases in traffic or decreases in traffic[494]. Professor Laxen accepted all these points in cross-examination;

323.2. **The Addendum ES reports monitoring carried out in 2014 but made no use of the results in verifying the air quality modelling**: This is a historic complaint of little relevance given the modelling in Dr Tuckett-Jones's proof and Transport Technical Note 1 (ID4), which Professor Laxen accepts was appropriately verified using 12 months monitoring data. Briefly though, the Addendum ES did report the 3-month monitoring undertaken in 2014[495]. This was rejected for use in verification though because it was only 3 months of data and mainly from kerbside sites (at the grade separated Junction 10) or background locations distant from major roads. The rejection of the use of that data for verification is supported by DEFRA guidance[496]. This was an issue raised by AECOM on behalf of GBC but having reviewed WSP's letters of June 2016 and 3 August 2017[497] AECOM accepted it was appropriate to have

[491] Referred to by Professor Laxen in XX as "*better modelling*".
[492] See Dr Tuckett-Jones's proof at para. 7.10.
[493] See OR, CD6.1, para 7.28.
[494] See App. O to Mr McKay's proof Scenario C3 vehicle flows AM and PM.
[495] See the Addendum ES, CD14.1.6, paras. 6.6.8 and 6.9.
[496] LAQM.TG(16) guidance, CD13.83, paras. 7.526 and 7.519: see Dr Tuckett-Jones's proof at paras. 3.9 and 4.46 and also the 3 August 2017 letter from WSP to AECOM (CD13.85).
[497] CD13.85.

rejected the use of this data for verification purposes. The dispersion modelling in the Addendum ES was instead verified against the single, long established, GBC monitoring location[498];

323.3. **Absence of detail on traffic data:** the then relevant traffic data and the resulting emissions factors used in the modelling were appended to the Addendum ES (CD14.1.34). Professor Laxen accepted in cross-examination that despite raising this issue about the absence of data in his March 2016 report at no point prior to the start of the inquiry did Professor Laxen ever make any request for further information on traffic data. This is significant given he was instructed in January 2016. Moreover, at no stage did GBC or SCC seek further traffic data. Moreover, as set out above the traffic modelling using SINTRAM was fully locally validated and approved by SCC as highway authority. Finally, the traffic data issues raised in Professor Laxen's supplementary proof have been dealt with above;

323.4. **Traffic data incorrect as HGV flows used not HDVs and so buses were excluded:** this point is fully answered in Dr Tuckett-Jones's proof at para. 7.21; and Professor Laxen readily accepted in cross-examination that any inconsistencies resulting from this would be "*small*" and hence inconsequential.

323.5. **Model not appropriately verified and adjusted:** There are a number of points to be made here:

323.5.1. Professor Laxen accepted that the issues raised here were superseded by the fact that he accepted that the further modelling in Dr Tuckett-Jones's proof and Transport Technical Note 1 (ID4) was properly verified and adjusted and that he had no criticisms to make of the further modelling[499] nor its verification and adjustment.

323.5.2. In terms of the modelling in the Addendum ES:

323.5.2.1. the impacts of the development were considered for the Addendum ES in a dispersion modelling exercise using the ADMS-Roads model. This is "*an industry standard model, widely used in the UK for modelling the impacts of new developments*"[500];

323.5.2.2. the modelling was undertaken in accordance with the guidance set out in Defra's technical guidance [501]and the DMRB[502];

323.5.2.3. the only complaint made in Professor Laxen's proof about the modelling in the Addendum ES is in terms of its verification and adjustment. This criticism is focused on the non-use of the 2014 monitoring data and this is addressed above;

323.5.2.4. Moreover, what Professor Laxen's March 2016 report and proof wholly fail to mention is that in terms of modelling one of the key inputs is the future projection of vehicle emissions and in this regard the modelling undertaken for the

[498] GD5, Figure AQ.1: see Dr Tuckett-Jones's proof at para. 4.24. She further explained these matters at length in her EinC.
[499] Which he somewhat begrudgingly referred to as "*better modelling*".
[500] See Dr Tuckett-Jones's proof at para. 4.16.
[501] LAQM.TG(16)) (CD Ref. 13.83).
[502] HA207/07 Air Quality) (CD Ref. 13.42); and see Dr Tuckett-Jones's proof at para. 4.22.

Addendum ES assumed that vehicle emissions do not improve in line with national forecasts but that emissions (per vehicle) and background pollutant concentrations in 2031 (the year of full development opening) will be no better than forecast for 2019[503]. The modelling in the Addendum ES did not use DEFRA emissions factors or any alternative approach such as the subsequently developed CURED model[504] – these would have produced lower results in terms of impacts. As Professor Laxen has belatedly acknowledged [505] this was an approach that "*was clearly intended designed to be conservative*" – so conservative in fact that Professor Laxen accepts that use of the 2019 emissions obviates the need to assess any interim year[506];

323.5.2.5. Moreover, as regards the modelling and verification issues raised by WAG on the Addendum ES:

323.5.2.5.1. Professor Laxen accepted in cross-examination that neither he, nor WAG nor any other rule 6 party has undertaken any modelling of air quality at all;

323.5.2.5.2. in opening it was said on behalf of WAG that "*[t]here will be some debate about the particular modelling*" (see para. 6);

323.5.2.5.3. the inputs into a model and the extent of the work required in terms of its verification and adjustment are matters of professional judgement on which views may differ. That is to say two experts may reasonably differ on these subjects without either being wrong. This was agreed by Professor Laxen in cross-examination;

323.5.2.5.4. Dr Tuckett-Jones and the experts at AECOM who reviewed the Addendum ES are satisfied that the modelling in the Addendum ES can be relied on, Professor Laxen disagrees. In any event the criticisms made by Professor Laxen in these respects do not extend to the further modelling in Dr Tuckett-Jones's proof and Transport Technical Note 1 (ID4).

323.6. **Acid deposition was not considered:** acid deposition is considered at length in WSP's June 2016 letter to GBC (CD13.69) and it is also considered in Dr Tuckett-Jones's proof. Professor Laxen accepted in cross-examination that this was a historic criticism of the Addendum ES and had fallen away. In his proof Professor Laxen argues that the impacts of the scheme in terms of acid deposition cannot be

[503] See Dr Tuckett-Jones's proof at para. 4.24.
[504] See Dr Tuckett-Jones's EinC referring to CD 13.86, fig. 33 p 45.
[505] In his supplementary proof at para 3.1 and in XX.
[506] See Professor Laxen's supplementary proof at para 3.1 and his responses in XX.

ignored as they are greater than 1%. If one examines the detailed information provided on acid deposition in the WSP June 2016 letter[507] it will be seen that the process contribution of the Appeal Scheme exceeds 1% at two kerbside locations 2_DT_0 and 5_DT_0 only; and at one non-kerbside location 5_1_5. That location though is only 5m from the kerb and is in a non-SPA location[508]. Moreover, the exceedance of 1% is marginal at its highest 1.2%. Likely significant effects from acid deposition were screened out[509] and it is telling that, despite acid deposition having the potential to affect ecological receptors, Mr Baker's proof in considering ecology impacts makes no mention at all of acid deposition, as he agreed in cross-examination.

324. As noted above the Appellant's air quality assessment in the Addendum ES was the subject of expert review by AECOM on more than one occasion; and was ultimately accepted by GBC.

<u>3.10.5. The case against the Appeal Scheme on air quality grounds</u>

325. A number of rule 6 parties have raised air quality issues. However, it is only WAG who have called expert witnesses on these issues. And in arguing that the appeal should be refused on air quality grounds Professor Laxen and Mr Baker disagree with the views of the following persons and bodies and must be of the view that all these other views are not just wrong, but grossly wrong:

325.1. GBC, as local planning authority;

325.2. AECOM, GBC's expert advisers on air quality both in the context of this appeal and the eGBLP;

325.3. Natural England;

325.4. Dr Tuckett-Jones and Dr Brookbank who have provided to this inquiry detailed and lengthy assessments of air quality impacts.

326. Professor Laxen and Mr Baker wrote reports in March 2016 in response to the planning application raising the very same issues raised in their proofs. Those reports ultimately failed to persuade any of the above persons and bodies that the Appellant's air quality assessment was in any way flawed and/or that there is any good reason now to withhold permission on air quality grounds.

327. WAG raise no issue on air quality impacts from the construction phase[510]. The focus is on operational impacts only and is exclusively focused on additional emissions from motor vehicles associated with the Appeal Scheme[511].

[507] CD13.69, App. B, Scenario C (DS2) vs. Scenario A(DM)).
[508] See CD14.1.41, fig 6.3.
[509] See Dr Brookbank's proof.
[510] See Professor Laxen's proof at para 2.2.

3.10.6 Human receptors - Ripley

328. In terms of human health, the position is as follows.

328.1. First, as Professor Laxen agreed in cross-examination, the only relevant location raised in terms of human health impacts is in Ripley[512].

328.2. Second, the only issue that is raised is NO_2. Professor Laxen further agreed that the relevant objective here is the 40 µg /m3 as an annual mean, and not the hourly mean. No issue is raised with PM10.

328.3. Third, the assessments undertaken by the Appellant in the Addendum ES conclude no likely adverse effects on human receptors. And that conclusion is specifically endorsed by AECOM (CD5.18).

328.4. Fourth, based on GBC's own monitoring data there are no breaches of the annual mean NO_2 objective in Ripley: see Dr Tuckett-Jones's proof at para 3.6 and Table AQ4 and see also the Transport Technical Note 1 (ID4) at App. 10.4, Table A.10.4.1. There is no designated AQMA in Ripley.

328.5. Fifth, RPC have produced their own monitoring data for Ripley and Professor Laxen's proof seeks to make use of this to suggest that there are currently exceedances of the NO_2 annual mean objective in Ripley. This is not accepted for these reasons:

328.5.1. There are serious concerns with the data collected and what appears to be missing data: see Dr Tuckett-Jones's rebuttal at paras. 2.4 – 2.6;

328.5.2. The data collected is only 4 months data and therefore requires annualisation, something that involves inherent uncertainty (see Professor Laxen's proof at para. 4.2);

328.5.3. Moreover, the annualisation used is unusual (see Dr Tuckett-Jones's rebuttal at paras. 2.9 – 2.15) and on the high side. No explanation of this is provided in the TRL report, in RPC's evidence or in the evidence of Professor Laxen. The bias adjustment is also unusual (*ibid*) and again no explanation of this has been provided. This is key because it is the annualisation and bias adjustment, not the monitoring results themselves, that is driving the alleged exceedances of the NO_2 annual mean objective in the TRL report;

328.5.4. Notwithstanding incorrect annualisation and questionable bias adjustment, the annual mean objective only applies at locations with relevant exposure. Locations with relevant exposure are identified by DEFRA (CD 13.83), and include building façades of residential properties, schools, hospitals and care homes. With the exception of tube 7, all the tubes were located at kerbside with at least 2 metres distance between the kerb and nearest building façade. According to TRL, tube 7 was on a lamppost at 8 Newark Lane. However, this cannot be so as

[511] *Ibid* para. 2.2

[512] Some third parties sought to raise issues about the air quality impacts within the Appeal Site including on the proposed sports pitches in the north-west of the site. This was dealt with by Dr Tuckett-Jones in her oral evidence. There is in short no possible impact here; and Professor Laxen did not suggest any such impacts.

there was/is no lamppost at 8 Newark Lane. The nearest lamppost is some 25 metres to the east, next to the façade of Wills & Smerdon Estate Agents facing Newark Lane where the annual mean objective does not apply. For tubes that are not located at relevant building façades, it is necessary to extrapolate the annual mean concentrations that are indicated for the TRL sites. Dr Tuckett-Jones investigated this using the 'NO₂ Fall-Off with Distance Calculator (Version 4.1)', made available by DEFRA and originally created by Air Quality Consultants Ltd. Her calculations are provided i2n Appendix B of her rebuttal. With extrapolation, the indicated annual mean concentrations are clearly well below the objective of 40μg/m3 at nearest façades with the exception of tube 7 at Wills & Smerdon Estate Agents where the extrapolated annual mean concentration is 52.4μg/m3. But that is not a relevant exposure point: see Dr Tuckett-Jones's rebuttal at paras. 2.13 – 2.15.

328.6. Sixth, the modelling in Transport Technical Note 1 (ID4) shows that in 2031 there will also be no exceedances of the NO_2 objective in Ripley: see App10.4, Table A.10.4.2. Indeed the modelling shows substantial falls in the annual mean compared to the present position. This is based on the May 2017 traffic data and has been appropriately verified and adjusted. Professor Laxen's only criticism in this regard is the absence of assessment in an interim year (see his supplementary proof at section 3). The fact is though that based on GBC's monitoring data there is no breach of objectives at the present time, and on the modelling there will be no breach in 2031. Thus as Dr Tuckett-Jones explained in her evidence-in-chief there is simply no basis for suggesting that the Appeal Scheme would in the period between now and 2031 would cause exceedances of the NO_2 annual mean where there are currently none albeit that it might cause the rate of improvement to slow if, but only if, the Appeal Scheme materially added to traffic in Ripley. She said:

> "My judgment or professional opinion based on GBC monitoring that are no exceedance of air quality standards in Ripley at the moment and won't be in the future based on our results. I can't conceive of a situation in which concentrations between now and the future would increase in Ripley, we've got more reason than ever to believe that vehicle emissions will decrease even by time of opening of development, as such I fully expect concentrations to be below those now".[513]

Dr Tuckett-Jones vigorously defended this view in cross-examination and reiterated in more detail the reasons why she had as a matter of professional judgment taken that view. The cross-examination failed to dislodge or affect this view in any way.

328.7. Seventh, the Appeal Scheme by way of mitigation will deliver or fund the delivery of Burnt Common slips one of the key purposes of which is to significantly reduce the amount of traffic in Ripley compared to the present. No evidence has been produced to suggest that this would not be the effect

[513] Note of Dr Tuckett-Jones's EinC.

of Burnt Common slips. Professor Laxen accepted that if Burnt Common slips were delivered, and had the predicted effect of reducing traffic in Ripley, this would be a benefit in air quality terms.

329. In conclusion for all these reasons the evidence does not support the view that there are current exceedances of the NO_2 annual mean objective nor that there would be in the future as a result of the Appeal Scheme. Dr Tuckett-Jones's evidence-in-chief was that none of the modelling indicates any risk to human health in the future with the Appeal Scheme in place[514].

3.10.7.Ecological receptors

3.10.7.1. Introduction

330. It is important to appreciate the confines of the debate.

331. In relation to the SPA issues have been raised by WAG about NOx, nitrogen deposition ("**ND**") and acid deposition.

332. Acid deposition need not be considered further. As noted above Professor Laxen back in March 2016 in his report complained that the Addendum ES had failed to consider this but he accepted in cross-examination that it had been comprehensively addressed in WSP's June 2016 letter. Moreover, Mr Baker accepted in cross-examination that it formed no part of his evidence to allege any impact from acid deposition.

333. The issue raised by WAG thus focusses on impacts from NOx and ND on the SPA; there is in this part of the Thames Basin Heaths no SAC[515]. 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. Whereas SPAs are designated for important populations of rare birds which are not directly sensitive to air pollution, unless levels are exceptionally high[516]. Annex 1 bird habitat has the potential to be

[514] But if contrary to this analysis it was considered that there might be exceedances (which fact is not accepted) this would be a material consideration that weighed against the grant of permission but there is no legal requirement to refuse permission: see Professor Laxen's response in XX and the case of ***R (Shirley) v SSCLG*** [2017] EWHC 2306 (Admin) and see also CD13.81 at para. 4.17. One factor that would weigh on the opposite side of the balance is the adverse health impacts caused by lack of adequate housing in Guildford, something that the Appeal Scheme would make a significant contribution towards addressing (see above, and see Mr Collins's proof at paras. 14.8 and 14.11).

[515] See Professor Laxen's proof at para 4.5; which in XX he accepted was an error.

[516] As explained in Dr Brookbank's proof and in her EinC. Thus, she explained that while habitats for SACs and SPAs may have the same critical load class on APIS, SACs are designated directly for their rare habitats and plants, which are particularly reliant on low nutrient status. So even small changes in nitrogen levels can bring about changes in species diversity and composition, resulting in direct and significant effects on the qualifying features. In contrast birds are not directly sensitive to air pollution. To have a significant effect on the qualifying features of an SPA, the SPA birds, air pollution from a scheme needs to bring about a big enough change in the habitat so as to affect its ability to support the birds. Hence the potential for a significant effect is one step removed when compared to the impact pathway of an SAC. Depending on an SPA's site circumstances there is not always a viable impact pathway. And this is a view acknowledged by other ecologists see the DTA article by Honour and Flavell (ID81). SACs are more sensitive to air pollution. This is made clear in NE's Atmospheric

affected by air pollution, although it is not in itself the subject of nature conservation designation. 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 coincide with areas of air quality exceedance or may coincide in the future[517]. The issue is whether there is a credible pollution pathway for what is undoubtedly a small magnitude impact arising from the Appeal Scheme to effect an ecologically significant change on bird habitats in the SPA when acting in-combination with other contributors. This would involve air quality change causing damage to the structure and function of the habitats of the birds[518].

334. The principal sources of pollution in the vicinity of the SPA are the A3 and M25[519].

335. The issue is whether the additional traffic that the development will put on the A3 and M25 will result in any harmful ecological effects on the SPA. Given the greater protection given to SPAs over and above SSSIs the focus will be on the former, as indeed it is in Mr Baker's evidence[520].

336. The position Mr Baker takes is as follows. He says that within the SPA the critical level for NOx and the critical loads for ND are already being exceeded. This is a fact which is accepted[521]. He then says that where the critical level or loads are being exceeded harm to the SPA cannot be ruled out. Therefore, it is said, any additional traffic from development even a single vehicle on the A3[522] will result in adverse effect on the integrity of the SPA such that under EU law planning permission must be refused. Dr Brookbank correctly characterises Mr Baker's view thus:

> "… because at present the SPA is already exceeding the CL, no other plans or projects can come forward that add nitrogen to the ecosystem in any way. Essentially therefore, no plans or projects adding traffic to the sections of the M25 and A3 around junction 10 can be consented, wherever these might occur nationally - including presumably Guildford Borough Council's entire Local Plan - without catastrophic effects on the integrity of the SPA."

337. This utterly extreme view has no proper basis in terms of either ecology or law and the Secretary of State is invited to robustly reject it[523]. This is for a number of reasons that will now be explored.

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nitrogen theme plan (CD 13.73, p. 7). Also the NE report "*Potential risk of impacts of nitrogen oxides from road traffic on designated nature conservation sites*" focuses entirely on SACs, not SPAs (CD 13.64). This is not to say that an SPA cannot be affected, it is just less likely to be.

[517] See Dr Brookbank's proof at para. 5.13.

[518] See the conservation objectives in ID33, and Mr Baker's responses in XX.

[519] Dr Tuckett-Jones's proof at para 3.12 and accepted by Professor Laxen in XX.

[520] NE's view on impacts on the SSSI is clear, see the March 2016 letter in Dr Brookbank's proof App. 3 namely that the Appeal Scheme will not damage or destroy any SSSI interest features.

[521] See Dr Tuckett-Jones's proof at Table AQ6.

[522] A road which in the vicinity of the Appeal Site has daily flows in the order of 90,000 vehicles per day.

[523] The approach of Mr Baker offends what was said by Advocate-General Sharpston in ***Sweetman*** and cited in para. 50 of the ***Wealden*** case (CD11.23) namely that "*[t]he requirement that the effect in question be "significant" lays down a de minimis threshold. Plans or projects that have no appreciable effect on the site are thereby excluded. If all plans or projects capable of having any effect whatsoever on the site were to be caught by Article 6(1) , activities on or near the site would risk being impossible by reason of legislative overkill." It is also worth noting what Jay J. said in* ***Wealden*** *at para. 44 (vii) "a third party alleging that there was a risk that cannot be excluded on the basis of objective information must produce credible evidence that there was a real as opposed to hypothetical risk that must have been considered:* ***Boggis v. Natural England*** *[2009] EWCA Civ 1061 at paragraph 37".*

3.10.7.2. NE's view

338. NE is the appropriate nature conservation body under the Habitats Regulations and the Government's statutory adviser on nature conservation. Its views on ecological issues affecting European sites can and should be given great weight by planning decision-makers. A planning decision-maker must give cogent reasons for departing from NE on ecological issues: see e.g. the ***Hart***[524] and ***Prideaux***[525] cases, and endorsed by the Supreme Court in the ***Morge*** case[526].

339. In this case NE has carried out a detailed, thorough and lengthy review of the Appeal Scheme including on air quality issues and has concluded that there is not likely to be any significant effect on the SPA from air quality. In cross-examination Mr Baker at first sought to say he had seen no evidence that NE had considered air quality issues at all. It is plain from his oral evidence, and his proof, that he gave no consideration at all to what was the position of NE, indeed he appeared to be wholly unaware of their engagement with and consideration of air quality issues up until when he was cross-examined on these points.

340. The extent of NE's involvement in considering air quality issues needs to be fully recorded:

340.1. in their EIA scoping opinion[527], NE specifically advised that an air quality assessment be undertaken to establish likely impacts on the SPA[528];

340.2. NE reviewed several versions of the Information for HRA report and SSSI Air Quality report during the pre-application consultation process, including review by their High-Risk Case Panel. Table 3 provides a summary of this consultation feedback which included feedback on air quality issues[529];

340.3. During May and June 2015, NE reviewed the draft air quality assessments set out for the SPA and SSSI within the Information for HRA and SSSI Air Quality reports, and provided targeted feedback in their

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[524] CD11.4.

[525] CD11.9 per Lindblom J. as he then was at para. 116 *"As the committee was well aware, by the time FCC's proposals came before it for a decision, the effects of the development on ecological interests, including European Protected Species, had been discussed over a long period, both with the County Council's officers and with Natural England. It is clear that the committee gave considerable weight to the conclusions reached by Natural England. This is hardly surprising. It is exactly what one would expect. Natural England is the "appropriate nature conservation body" under the regulations. Its views on issues relating to nature conservation deserve great weight. An authority may sensibly rely on those views. It is not bound to agree with them, but it would need cogent reasons for departing from them (see, for example, the judgment of Sullivan J., as he then was, in R.* ***(Hart District Council) v Secretary of State for Communities and Local Government*** *[2008] EWHC 1204 (Admin); [2008] 2 P. & C.R. 16 , at para.49), and the judgment of Owen J. in* ***R. (Akester) v Department for the Environment, Food and Rural Affairs*** *[2010] Env. L.R. 33 , at para.112)"*.

[526] CD11.15 per Lady Hale at para. 45 *"…it is the function of Natural England to enforce the [Habitats] Directive … The planning authority were entitled to draw the conclusion that, having been initially concerned but having withdrawn their objection, Natural England were content that the requirements of the Regulations, and thus the Directive, were being complied with. Indeed, it seems to me that, if any complaint were to be made on this score, it should have been addressed to Natural England rather than to the planning authority. They were the people with the expertise to assess the meaning of the updated bat survey and whether it did indeed meet the requirements of the Directive. The planning authority could perhaps have reached a different conclusion from Natural England but they were not required to make their own independent assessment"*.

[527] CD5.2.

[528] See Dr Brookbank's proof at para 5.1 and Mr Baker's responses in XX.

[529] See Rows 1, 4 and 6 referring to responses and meetings with NE dealing with air quality issues; see Dr Brookbank's proof at para. 5.57, App. 6. and Mr Baker's responses in XX.

DAS response of the 24 March 2015. The air quality assessment was also discussed during a meeting on the 24 August 2015[530].

341. Based on this comprehensive review work, NE has declared that they have no objection to the proposed development in relation to potential air quality impacts on the SPA SSSI, as set out in their statutory response to the planning application (February 2016)[531]. Its views can, and should, be given significant weight. And, of course, this view is supported by AECOM who also reviewed the possible ecological impacts in its review of the Addendum ES. It is also the view of Dr Brookbank who has been involved in this matter since 2014 and has worked with a number of other senior ecologists at EPR[532] including Mr Andrew Cross, the senior botanist at EPR[533].

342. Mr Baker's position must be, although he was very reluctant indeed to accept this, that all these persons and bodies are not just wrong but "*grossly wrong*" and that includes NE. He says that the Appellant's assessment of air quality impacts on ecological receptors is "*flawed*" and "*erroneous*"[534] that the Appeal Scheme will increase pollution in the SPA where critical levels/loads are already exceeded and that therefore, without the need for any more detailed consideration at all, adverse effects on integrity will result (or at least cannot be ruled out) and that therefore granting planning permission would be a breach of EU law. One thing is certain. That is not NE's view. If it were then NE would be objecting. But after very careful and lengthy consideration of air quality issues they are not objecting. It has to be Mr Baker's position that they have got it "*grossly wrong*" and have been negligent in the exercise of their duties under the Habitats Regulations. It is also worth noting here that NE are not objecting to the eGBLP.

343. There are two further points to make on the position of NE.

344. <u>First</u>, at one point in cross-examination Mr Baker referred to the Talbot Village appeal decision in support of his position (see his proof at para. 5.5). This appeal was not concerned with air quality issues at all but concerned recreational impacts. Moreover, in that case where permission was refused on ecological grounds NE objected to the appeal scheme and appeared at the inquiry through counsel and called witnesses against the scheme. It is also noteworthy that Appropriate Assessment had been triggered. The position could not be more different here. Dr Brookbank in her evidence-in-chief explained the key differences but recognised that

[530] See Dr Brookbank's proof at para. 5.58 and Mr Baker's responses in XX.
[531] See Dr Brookbank's proof at para. 5.39, App. 3 and Mr Baker's responses in XX.
[532] See Dr Brookbank's rebuttal at para. 3.15.
[533] Confirmed and elaborated on in EinC. Thus Dr Brookbank explained that in addition to the surveys carried out by Andrew Cross she had visited the SPA on many occasions, including with EPRs senior ornithologist Dr Rob Souter in 2017 to assess the suitability of bird habitat.
[534] See his proof at para. 2.5.

the appeal was relevant in that it establishes the importance of considering restoration potential but that is something considered in detail in her evidence (see further below).

345. Second, at one point in his cross-examination, on realising (for the first time it would seem) the extent of NE's consideration of air quality issues in this case Mr Baker sought to rely on the ***Wealden*** case[535] to say that NE does not always get it right[536]. The ***Wealden*** case does not assist Mr Baker at all. This can be dealt with briefly[537]:

345.1. Judgment in the ***Wealden*** case was handed down on 20 March 2017 and NE's final position in respect of this appeal was determined shortly thereafter[538], moreover at no time since then has NE sought to re-open its consideration as a result of the ***Wealden*** case and that is not surprising as there is no basis for doing so;

345.2. The ***Wealden*** case concerned the 1,000 AADT screening methodology set out in the DMRB. No use whatever has been made of that methodology in the Appellant's assessments of the ecological impacts[539];

345.3. In the ***Wealden*** case the only assessment of air quality impacts undertaken was to look at whether the Joint Core Strategy would alone exceed the 1,000 AADT threshold on any road. There was no air quality monitoring or modelling done, and no use was made of the 1% methodology. There was no assessment of in-combination effects at all. The position in this case is completely different as explored further below. Importantly, Mr Baker accepted that it is no part of his evidence on this appeal to seek to rely on the ***Wealden*** case to challenge the use of the 1% rule in assessing air quality impact;

345.4. The ***Wealden*** case does not, and cannot overrule, what is said by other Courts, and endorsed by the Supreme Court in ***Morge*** namely that the views of NE must be given great weight on nature conservation issues. That is all the more so where, as here (and unlike in the ***Wealden*** case) there has been such careful and detailed consideration of air quality issues by NE;

345.5. Finally, it is worth noting what is said by AECOM on this matter in the HRA they have undertaken in respect of the eGBLP and which, of course, includes the Wisley draft allocation (CD8.48) at paras. 12.4.1 – 12.4.3[540]. What is said provides the strongest possible support for Dr Brookbank's analysis: see below.

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[535] CD11.23.
[536] As Dr Brookbank noted in her EinC Mr Baker had given no consideration to NE's assessment.
[537] See further Dr Brookbank's poof at paras. 5.89 – 5.116.
[538] See App. 3 to Dr Brookbank's proof.
[539] Confirmed by Dr Brookbank in her EinC.
[540] *"12.4.1 In early 2017, a Judicial Review brought by Wealden District Council against Lewes District Council and the South Downs National Park Authority with regard to the Ashdown Forest SPA concluded that in the judge's opinion it was not appropriate to use the '1,000 AADT' metric presented in the Design Manual for Roads and Bridges as the sole basis on which to conclude that a given Local Plan will not contribute materially to an 'in combination' air quality effect from changes in vehicle flows past a European site. As can be seen from Section 2.5 of this report, that particular*

<u>3.10.7.3. Why Mr Baker's extreme view must be rejected</u>

346. There are a number of points to be made:

347. <u>First</u>, Mr Baker's entire analysis depends upon a seriously flawed understanding of critical loads and levels.

348. The correct position is set out in Dr Brookbank's proof and given its importance is worth setting out in full (emphasis on original):

> "5.10 The common measure of environmental sensitivity to air quality change is the 'critical load' (also referred to within guidance as the 'environmental standard'). For gaseous pollutants the term 'critical level' is used. This is a quantitative estimate of exposure to one or more pollutants below which significant harmful effects on sensitive elements of the environment do not occur according to present knowledge (JNCC).
> 5.11 The critical load for nitrogen deposition on habitats has a range, with lower and upper critical load values provided to reflect variations in habitat responses under differing environmental conditions, such as precipitation level, height of the water table and intensity of habitat management, as well as geographical locations across Europe. Notwithstanding the precautionary use of lower critical load values in air quality assessment, APIS advises that upper critical loads should be used in systems with a high water table, high precipitation and where sod cutting has been practised (as opposed to lower intensity management). This is because these conditions result in more rapid removal of nitrogen from the system. APIS also advises on any uncertainties regarding the critical load values, since these are based on evidence mainly comprising observations from experiments that do not necessarily precisely predict habitat responses to pollutants in a natural system.
> 5.12 The exceedance of a critical load or level ('CL') is not a quantitative estimate of damage to the environment; it represents <u>the potential for damage</u>. More detailed air quality assessment is required to understand whether significant damage to a Designated Site is likely, and this assessment is informed by a number of factors such as the extent to which air quality within the Designated Site is already exceeding relevant CLs, the area of habitat within which exceedance of the CL is predicted to occur, whether there are qualifying features present within that exceedance area, and whether those qualifying features are sensitive to the air pollution pathways concerned."

349. Thus the position is that where NOx/ND is below the critical level/load you can assume without any further consideration or analysis that there will be no harm to ecological receptors. But where the level/load is exceeded that does not mean that there will be damage, just that there is "*the potential for damage*" e.g. damage cannot automatically be ruled out without there being further analysis and consideration. Mr Baker's view is

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metric (i.e. whether a change of more than 1,000 AADT will result from the Local Plan on any roads within 200m of the SPA) was not utilised in the 2016 Guildford Local Plan HRA. Rather, the analysis progressed immediately to undertaking air quality calculations, including consideration of 'in combination' air quality from all growth over the Local Plan period. As such, this judgment does not pose any directly relevant implications for the air quality assessment that was undertaken for the Guildford Local Plan in 2016.

12.4.2 Moreover, the conclusion no LSEs was based primarily on the following factors:

• No accompanying increase in nitrogen deposition or acid deposition;

• A general lack of nesting habitat for SPA birds within the affected areas and the low likelihood that plantation clearing habitat would be negatively affected in any event; and

• The fact that total 'in combination' NOx concentrations by 2033, while in some cases still in excess of the Critical Level, are predicted to be well below the level at which effects on vascular plants (other than growth stimulation due to nitrogen deposition) are likely to arise.

12.4.3 Indeed, examination of the air quality modelling in Appendix D shows that NOx concentrations and nitrogen deposition rates within 200m of the Thames Basin Heaths SPA are expected to be better at the end of the plan period than they are at the moment, due to expected improvements in vehicle emissions from the introduction on Euro6 standard vehicles and Government initiatives to improve background air quality. That is the case despite the fact that a precautionary judgment was taken regarding those improvements, taking them into account for the first half of the Local Plan period but assuming no further improvement in emission factors or background air quality for the second half of the Local Plan period."

that exceedance of the level/load means that one basically has to assume there will be damage and that no assessment or analysis is necessary, or useful, to determine whether there will in fact be such damage because it is to be assumed. This is a view which Dr Brookbank rightly characterises as "*overly simplistic and pessimistic*"[541]. Thus she notes that "*it does not take proper account of a multitude of other factors that can interact to influence whether impacts are likely to occur, in the context of an SPA's conservation objectives, following Nitrogen addition in a given scenario and ecological system. Such factors include habitat type, existing suitability for SPA birds, existing nutrient nitrogen status, soil type, degree of nitrogen leaching, existing site management, and so on*".[542] If anything Dr Brookbank is being somewhat kind in saying that Mr Baker's view doesn't take "*proper account*" of these matters, as it was clear from his responses in cross-examination that in fact he has taken no account at all of any of these matters.

350. Mr Baker's view is directly contradicted not just by Dr Brookbank's evidence but by many other sources, for example:

350.1. AECOM's HRA of the eGBLP (CD8.48)[543] (emphasis added):

> "2.5.4 There are two measures of relevance regarding air quality impacts from vehicle exhausts. The first is the concentration of oxides of nitrogen (known as NOx) in the atmosphere. In extreme cases NOx can be directly toxic to vegetation but its main importance is as a source of nitrogen, which is then deposited on adjacent habitats either directly (known as dry deposition) or washed out in rainfall (known as wet deposition). The guideline atmospheric concentration advocated by Government for the protection of vegetation is 30 micrograms per cubic metre (µgm-3), known as the Critical Level. This is driven primarily by the role of NOx in nitrogen deposition. If the total NOx concentration in a given area is below the critical level, it is very unlikely that nitrogen deposition will be an issue. If it is above the critical level then nitrogen deposition could be an issue and should be investigated.
>
> 2.5.5 The second important metric is a measure of the rate of the resulting nitrogen deposition. The addition of nitrogen is a form of fertilization, which <u>can</u> have a negative effect on heathland and other habitats over time by encouraging more competitive plant species that can force out the less competitive species that are more characteristic of such grassland. Unlike NOx in atmosphere, the nitrogen deposition rate below which we are confident effects would not arise is different for each habitat. The rate (known as the Critical Load) is provided on the UK Air Pollution Information System website (www.apis.ac.uk) and is expressed as a quantity (kilograms) of nitrogen over a given area (hectare) per year (kgNha-1yr-1)."

350.2. NE's supplementary advice on the SPA conservation objectives. This was a document that Mr Baker himself produced to the Inquiry, presumably to support his case. It says in terms on p. 2 of 21 that "*[e]xceeding critical values for air pollutants <u>may</u> result in changes to the chemical status of its habitats substrate ….*" (emphasis added)[544]. Mr Baker was forced to say he disagreed with this statement; his simplistic and demonstrably wrong view is that exceedance without more means there is harm. Moreover, the approach taken in the supplementary advice is to recognise that the target is to

[541] Dr Brookbank's rebuttal at para. 3.4.
[542] *Ibid.*
[543] See also Dr Brookbank's rebuttal at para. 3.3.
[544] See also Dr Brookbank's EinC on this matter.

"[*r*]*estore as necessary the concentrations and deposition of air pollutants to at or below the site-relevant Critical Load*" (*ibid*). That is because it may not always be necessary to do so if for example the habitat in a particular part of the SPA is not sensitive to nitrogen or because despite exceedances there is otherwise no harm being caused. Indeed, the table notes that (p. 7) that "*the SPA is an extensive complex of geographically-separate component sites*" and the objectives may differ given this.

351. Mr Baker's approach is also contradicted by the evidence thus:

351.1. Dr Brookbank's rebuttal shows that despite the fact there are currently widespread exceedances of the NOx critical level (and ND critical loads) in the SPA bird territories are holding or increasing and thus the conservation objectives are being met: see Dr Brookbank's rebuttal at para. 3.27;

351.2. Dr Brookbank's proof at Map 11, shows that there are bird populations within areas of the SPA where the critical level for NOx is being exceeded. Although not shown on Map 11, there are also site-wide exceedances of the ND critical loads that are not deterring bird nesting;

351.3. Despite historic exceedances of the critical levels and loads the amount of heathland in the SPA is increasing as a result of habitat restoration and management efforts[545].

352. In short the first step in Mr Baker's analysis is flawed and his whole analysis therefore collapses. Where the critical level/load is exceeded what is required is a detailed analysis of whether this is causing harm, and whether adding pollutants would result in a LSE. We turn to this analysis next. Dr Brookbank's evidence considers all the relevant factors influencing whether NOx or ND as a result of the Appeal Scheme is likely to cause significant effects. There is no counter-analysis to this in Mr Baker's evidence. His simplistic view is that no such analysis is needed or indeed of any utility.

353. Second, Mr Baker's view ignores the fact that there needs to be a pathway for what is undoubtedly a small magnitude impact arising from the Appeal Scheme to effect an ecologically significant change on bird habitats in the SPA either alone or in-combination. Without that there can be no LSE.

354. The DMRB (CD Ref. 13.42), which provides guidance on assessing (including scoping and screening) air quality impacts for road projects, states that "*only properties and Designated Sites within 200m of roads affected by the project [through increases in traffic flows] need be considered*"[546]. Mr Baker accepted in cross-examination that there would be no LSE on the SPA beyond 200m. In fact although NOx impacts can be discernible up to 200m

[545] See Dr Brookbank's proof at paras. 5.144 and 5.145 and Map 12.

[546] See Dr Brookbank's proof at para. 5.5. While the ***Wealden*** case cast some doubt on parts of the advice in DMRB the 200 metre assessment range was expressly cited by the Judge who made no criticism of it.

from a road, impacts are thought to be greatest within the first 50-100m[547]. The 200m zone for scoping sites with the potential to be affected by air quality change is therefore precautionary, and beyond 200m NOx dispersion falls to background concentrations such that road traffic contributions have no discernible and no tangible effect[548]. A research study by Laxen and Marner (CD13.30) indicates that NO_2 contributions from road sources drop off steeply from the roadside and are no different to background levels by 100-140m. In cross-examination Professor Laxen sought to suggest that the position might be different with NOx but ultimately he accepted that the fall-off rate would be "*similar*"; Dr Tuckett-Jones in her oral evidence explained why the position was not different between NOx and NO_2 – and she was not cross-examined on this[549]. As both Dr Tuckett-Jones and Dr Brookbank explained in evidence-in-chief, WSP's monitoring data also supports NOx decline with distance. Thus what must be considered in this case is potential effects of air quality change on the SPA within 200m of the A3 and M25, but with the real focus clearly being on up to 140m.

355. It should be noted that WAG's evidence as well as providing no air quality modelling also contains no analysis of the possible spatial distribution of air quality exceedances either now or in future years.

356. Thus looking at the evidence the position is as follows:

356.1. The Addendum ES air quality modelling shows, see Dr Brookbank's proof, Map 10, that in 2031 with the Appeal Scheme the critical level exceedance contour for NOx will be well within 140m of the A3 and M25;

356.2. The further modelling in Transport Technical Note 1 (ID4) shows this contour in 2031 to be largely unaffected with exceedances of the critical level significantly less than 140m in all scenarios[550]. Thus under Scenario C3 the maximum distance of exceedance of the critical level into the SPA is 65m[551]. This is important because as noted above Professor Laxen accepts that this latest modelling was properly verified and adjusted[552];

356.3. Modelling of process contributions to ND is shown in the Information for HRA report appended to the Addendum ES, and in any event as Professor Laxen accepted in cross-examination the process

[547] CD Ref. 13.24, Dr Brookbank's proof at paras. 5.5 and 5.6 and Professor Laxen's responses in XX.
[548] See Dr Brookbank's proof at para. 5.5 and her further explanation of the basis for this view in her EinC. She made reference to CD13.30 at para. 3.10 where in the paper produced by Professor Laxen he said that "*at 100m or more from the road, the difference between the total concentration and the background concentration should be as close to zero as will make virtually no difference*". Such an effect is certainly best described as having no "*tangible*" effect and it is difficult to see why in XX Professor Laxen resisted this characterisation.
[549] She made reference to the fact that the monitoring done for this appeal shows that the declines in impact as distances increase from the road do apply to NOx.
[550] See para. 7.8 and App 10.2 Table A11.4 and App. 10.3 figure A10.1
[551] Transects 1 and 2: 65m; Transect 6, 10m; Transect 7, 40m; and Transect 8 less than 5m.
[552] And is "*better modelling*" (see above).

contribution contour for ND exceedance is likely to be smaller than for NOx, so focusing on NOx is focusing on the worst case in terms of air quality effects;

356.4. The updated modelling in Transport Technical Note 1[553] shows that the process contribution from the Appeal Scheme for NOx falls to less than 1% significantly before 140m, and this was accepted in cross-examination by Professor Laxen[554]. Thus Transects 1 and 2[555] shows no exceedance of the 1% rule in the SPA; Transect 6 shows exceedance of the 1% rule 65m into the SPA; Transect 7 shows exceedance to 70m and Transect 8 shows no such exceedances. Thus areas where the Appeal Scheme makes a 1% or greater contribution to NOx is only very close to the road. All well within 100m.

357. Thus any damage that might occur to the SPA would be damage happening well within 140m of the A3 and M25. It is therefore necessary to examine what broad habitats there are, and likely to be in the future, within 140m of the roads. The most important habitat for the Annex I birds is heathland, referred to for AQ assessment as 'dwarf shrub heath': see Dr Brookbank's proof at paras. 5.17 and 5.18. In respect of Dartford Warblers and Nightjar they are habitat specialists and thus are only potentially affected by impacts on heathland. Woodlark could also be affected by impacts on coniferous woodland because they use it for breeding but only where it is managed by rotational felling which creates areas of open habitat.

358. EPR on behalf of the Appellant has undertaken detailed vegetation surveys of the SPA within 200m of the A3 and M25[556]. Mr Baker confirmed in cross-examination that neither he nor his firm had done any such surveys or even visited the site and he confirmed his evidence did not seek to challenge the findings of the surveys EPR had undertaken.

359. Within 140m of the A3 and the M25 in the SPA there is hardly any heathland, as can be seen from Dr Brookbank's Map 10. Predominately the broad vegetation type present is dry woodland and scrub. Thus much of what is present e.g. dense bracken, bramble and gorse is not attractive to Annex I birds (see Mr Baker's proof at para. 4.4) and not sensitive to nitrogen (see Dr Brookbank's rebuttal at para. 3.17). While it is correct that there is within 140m of the road coniferous woodland such woodland is not in these particular

[553] ID4 see Table A10.3.

[554] Moreover, in their January 2016 Position Statement 'Use of a Criterion for the Determination of an Insignificant Effect of Air Quality Impacts on Sensitive Habitats' (CD Ref. 13.66), the Institute of Air Quality Management (IAQM) state "*[u]ltimately, a conclusion on whether air quality impacts are likely to be the cause of an adverse effect on the integrity of a designated site is best made by a qualified ecologist*". In relation to the EA's methodology for screening insignificant air quality effects, the IAQM statement advises: "*…it is the position of the IAQM that the use of a criterion of 1% of an assessment level in the context of habitats should be used only to screen out impacts that will have an insignificant effect. It should not be used as a threshold above which damage is implied and is therefore used to conclude that a significant effect is likely. It is instead an indication that there may be potential for a significant effect, but this requires evaluation by a qualified ecologist and with full consideration of the habitat's circumstances*": see Dr Brookbank's rebuttal at paras. 3.13 and 3.14 and her EinC.

[555] On the basis of the SPA boundary as contended for by the Appellant; but even on the basis of the boundary argued for by WAG exceedance of the 1% rule would only exist a mere 5m from the road.

[556] see Dr Brookbank's proof at para. 5.28 and Map 10.

areas managed by rotational felling such that would make it useable by woodlark. And indeed as one would expect given the vegetation present[557] there are in fact no bird territories within 140m of the relevant roads: see Dr Brookbank's Map 10. None of this was disputed by Mr Baker in cross-examination; his case is though that the SPA should be managed differently in order to create different vegetation types close to the roads. In taking that view he appears to have had little regard to the realism of such an approach.

360. It should be noted though that this is not (as WAG seek to suggest) the Appellant's case that the SPA is already degraded and therefore it is acceptable to degrade it further.

361. The woodland that lies within 140m of the A3 and M25 has a number of important functions in terms of providing a shelterbelt effect that protects the remainder of the SPA, and the Annex I bird populations, from increased mortality from bird strikes, noise, light and the dispersion of pollutants such as NOx. This makes it highly undesirable to remove woodland either in terms of rotational felling or for clearing it to seek to create heathland. The fact is that it provides an important protective function (indeed the DMRB recognises the shelterbelt effect of trees near roads) and even if it were removed the birds would not be likely to use such areas because of bird strike, noise and light impacts. There is no requirement that all land within an SPA be managed in order to create one type of vegetation; variations are allowed. Woodland is itself a natural and important component of heathland ecosystems.

362. Dr Brookbank explained in evidence-in-chief SPAs were designated on the basis of pre-existing SSSIs and thus it is hardly surprising that not every part of the SPA supports nesting birds. She explained in her oral evidence that creating the "*heathland monoculture*" that Mr Baker appears to contend for would be harmful to the biodiversity of the SSSI. She made the further point that habitat within an SPA can perform a function other than providing an area to nest e.g. it can be part of a roadside buffer protecting bird habitat.

363. In cross-examination it was suggested to Dr Brookbank that her approach involved "*disregarding*" a significant area of the SPA namely 50 -70 ha if one is looking at areas 140m from the major roads in issue. But Dr Brookbank rightly rejected this suggestion in her oral evidence for two key reasons. First, these areas are not being "*disregarded*" rather the different function of such areas is being recognised. Second, while the detailed assessment undertaken has looked at a zone up to 140m from the roads the exceedance contours and areas where the Appeal Scheme makes a 1% or more contribution is significantly less than 140m as explained above. Moreover, the SPA is 8274.72 ha in total. Thus the areas in issue form a very small part of the SPA[558].

[557] And other associated factors with the road e.g. noise, light disturbance and bird strike.
[558] See further Table 12 of Dr Brookbank's proof.

364. Dr Brookbank's evidence-in-chief set out a stage by stage approach to the restoration scenario that forms Mr Baker's case:

364.1. **Would heathland creation or plantation clearing creation be likely to be pursued in the future close to the A3 and M25?** No because it is likely to be desirable to maintain a tree belt along major roads as it provides a protective buffer from noise, light, air pollution, bird strike. DMRB advocates buffers as best practice in road design Moreover, as Mr Baker accepted in cross-examination, the SWT management plan for the SPA (2010-2020) does not seek to alter the vegetation types within 140m of the roads.

364.2. **If contrary to this there was a future target to "*restore*" heathland/plantation clearings close to the roads would air pollution prevent this?** No. Heathland restoration has taken place despite historic exceedance of critical levels and loads: see Map 12 to Dr Brookbank's proof.

364.3. **If habitats were created close to the roads, assuming they could successfully be, would air pollution preclude bird nesting?** Plainly not as Dr Brookbank's Map 11 to her proof shows birds nesting across habitats exceeding air quality objectives[559]. In any event birds would not nest in such areas for other reasons related to the road (see above).

364.4. **What effect would increased nitrogen have?** Mr Baker argues that ND would cause bare ground to cover making any restored habitat unsuitable but natural succession already results in the cover of bare ground and ultimately transition to woodland but this is a slow process. Thus on Wisley Common bare ground scrapes created *circa* 2 years ago have still not vegetated over despite existing air quality objective exceedances. In relation to the Appeal Scheme all the modelling (for the ES and update) shows that ND in heathland habitat (which would be the restored habitat type under examination) can be completely screened out as insignificant according to the 1% rule[560]. The Appeal Scheme is thus making such a small contribution to ND that any effect on plant growth would be indiscernible[561].

364.5. **Even if one considered the *de minimis* contribution of the Appeal Scheme as having the potential to act in-combination and affect the suitability of restored habitat is there a way to avoid any such effect?** Yes increasing habitat management would *avoid* any LSE from occurring. Some such management is already happening and the Appellant is proposing additional funding for more such management[562]. This would avoid any net air quality effect from the Appeal Scheme and indeed go

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[559] See also Dr Brookbank's rebuttal at Table 1, p 12.
[560] See fig AQ.11 to Dr Tuckett-Jones's proof.
[561] See Dr Tuckett-Jones's proof at Table AQ11.
[562] As noted elsewhere the Appellant proposes a 'monitor and manage' approach for SSSI. There is a financial contribution and provision of warden, to cover vegetation and invertebrate monitoring, and any necessary habitat management, over and above ongoing management

further and help address potential effects from other sources. Dr Brookbank rejected the suggestion in cross-examination by Mr Harwood QC that this was "*compensation*"; it is plainly not such given it is a measure that is aimed at avoiding adverse effects occurring. Mr Baker's oral evidence also referred to compensation, but as Dr Brookbank explained in her evidence-in-chief additional compensation habitat would only be required if habitat was being lost, and that would not be the case here.

365. It is also the case that other factors such as geohydrological conditions, habitat management and disturbance have the potential for a greater impact on SPA bird habitat suitability than air quality change, something Mr Baker accepted in cross-examination that he had not considered[563]. Moreover, consideration needs to be given to factors such as habitat type, existing suitability for SPA birds, existing nutrient nitrogen status, soil type, degree of nitrogen leaching, existing site management, and so on[564]. Dr Brookbank's evidence[565] is that these other factors are likely to have a greater relative effect on habitat suitability than air quality.

366. Thus we come to Dr Brookbank's careful and detailed analysis of why there would not be a LSE on the SPA[566]. The assessment concluded no LSE from air quality change on the SPA based on the following observations made in respect of NOx (the same conclusions apply to the assessment of effects from ND, which for this assessment has a much smaller exceedance footprint than NOx):

366.1. The context of the modelled assessment is one of background improvements between the baseline year in 2013, and the modelled 2031 Scenario C[567]. This wider context of improvement is considered below;

366.2. The exceedance areas are likely to be exaggerated due to the likely 'shelterbelt' or 'barrier' effect of the roadside trees in reducing nitrogen penetration into the site (Mr Baker accepted in cross-examination that in terms of pollutants the trees did have a shelterbelt effect);

366.3. The majority of the habitat types present within the exceedance areas are not suitable for the Annex 1 birds that seek out open ground within heathland and recent coniferous plantation clearings. Mr Baker, in cross-examination, accepted that there is currently no suitable habitat[568] for birds close to the

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efforts. The OBP (CD77, p 15) includes annual financial provision for heathland creation, woodland and scrub management, and these funds can be used as required to address any discernible effects from air quality.

[563] This was discussed in the proof and EinC of Dr Brookbank. She referred to the IPENS report (ID82) to support her view.

[564] See Dr Brookbank's rebuttal at para. 3.4.

[565] As explained in her EinC.

[566] See Dr Brookbank's proof at para. 5.42.

[567] See below, and this was not disputed by Professor Laxen in XX.

[568] In XX Mr Baker sought to argue that the habitat close to the roads is unsuitable because of existing poor air quality but Dr Brookbank in her EinC responded by pointing out that the dense vegetation found next to the A3 and M25 is also found across other parts of the SPA away from the roads where background nitrogen levels would be lower, such that presence of that habitat type not driven by air quality, but other factors such as previous disturbance, soils, natural succession and lack of management

A3 and M25. This being so any additional pollution will not make this habitat less suitable. It is already unsuitable;

366.4. The areas experiencing air quality decline are a considerable distance away from known Annex 1 bird territories;

366.5. The majority of the habitats within the areas of exceedance already have a prolific cover of bracken, bramble or gorse that are not dependent on low Nitrogen levels. They are therefore unlikely to be significantly altered in terms of their composition and structure, and therefore their potential suitability for Annex 1 birds, as a result of ND;

366.6. The habitats present within the areas of exceedance are predominantly comprised of habitats unlikely to be particularly sensitive to the direct toxicity effects of airborne NOx, and so their potential suitability for Annex 1 birds is not likely to be significantly altered by increases in airborne NOx concentrations;

366.7. The habitat types within the exceedance areas are unlikely to significantly change in the future as a result of management intervention, making them suitable for Annex 1 birds, because the woodland is likely to be retained in the long-term as a woodland shelterbelt protecting the rest of the site and to provide screening of the road;

366.8. Even if the habitat types were suitable, due to the location adjacent to the roads they would be unlikely to be used by the Annex 1 birds as a result of bird strike, noise and light disturbance (this conclusion is supported by AECOM's review (CD 5.18) "*habitat so close to the road is unlikely to be used by SPA birds even if it is suitable…at Chobham Common, scrutiny of territory maps undertaken by AECOM for Highways England's M3 Smarter Motorway scheme identified that no SPA birds nest closer to the motorway than 70m distant, despite the presence of suitable habitat closer to the road*");

366.9. As a result of the highways mitigation measures proposed, there is an area in the core part of the SPA away from the A3 and M25 that will experience improvements in air quality (NOx); and

366.10. Precautionary mitigation has been proposed to address potential effects on the SSSI, to be secured by the S106 agreement. The measures are likely to deliver benefits for the SPA/SSSI habitat complex as a whole and could result in increases in the area of habitat that would be suitable for Annex 1 birds, if other factors associated with the M25/A3 were not precluding them (such as could be the case in the future), and therefore a net benefit to site integrity. Such measures will ensure that the Appeal proposals make no contribution to a potentially significant adverse in combination effect.

367. Third, Mr Baker raises issues as regards in-combination assessment. These points lack any merit for the following reasons. Mr Baker's proof states unequivocally that the Appellant's Addendum ES is defective

because in-combination effects were not considered. And in cross-examination this was his starting point, albeit he soon beat a hasty retreat from this wholly indefensible position[569]. The position is as follows:

367.1. Mr Baker accepted in cross-examination that the only respect in which he alleged the Addendum ES and Information for HRA was not in compliance with the EIA Regulations and/or the Habitats Regulations was because he thought that it failed to consider in-combination effects;

367.2. The fact is that in-combination effects were considered in the Appellant's assessments:

367.2.1. The Appellant's use of the 1% rule has not precluded there being an in-combination assessment for the reasons set out in detail in Dr Brookbank's proof at paras. 5.64 – 5.152; see especially para. 5.84. Much of this analysis is now unnecessary given that Mr Baker has in cross-examination made clear that he is not challenging the use of the 1% rule in this case;

367.2.2. The contributions of future development linked to plans and consented/proposed projects included in the SINTRAM and long distance sources of air pollution modelled as part of the DEFRA background to a potentially significant impact on the SPA/SSSI as a result of air quality change have been modelled as part of the future 2031 baseline, and considered in combination with the Appeal Scheme under Scenario C and C3: see Dr Brookbank's proof at para. 5.115; Transport Technical Note 1 (ID4) and the TAA (CD3.14, at App F, p 2);

367.2.3. See also in the Information for HRA (CD14.1.56) paras. 1.5, 9.4, 9.57, 9.58, 9.64 and 10.4.

367.3. When faced with this evidence in cross-examination Mr Baker accepted that there had been an in-combination assessment but that it was incomplete;

367.4. He alleged two matters only which had not been considered in the in-combination assessment:

367.4.1. The RHS Wisley permissions granted in September 2016 and June 2017[570];

367.4.2. The RIS scheme.

367.5. In relation to the RHS Wisley permissions these post-dated the Addendum ES and Information for HRA and as explained above the background growth applied to Wisley Lane and nearby roads in the model comfortably accounts for any increases in traffic as a result of these permissions (see above, under Main Issue 4);

367.6. In relation to the RIS scheme this requires consent under the Planning Act 2008 and while consultation has taken place no preferred route has yet been announced. Moreover, as is explained in Mr Harwood's rebuttal at para. 19 at the present time "*any designs for the M25 Junction 10 scheme are concepts*" without detailed design. As matters stand there is no basis upon which one could assess the

[569] In making these comments in para. 5.1 Mr Baker was looking at the original ES, and not the ES Addendum (as he accepted in XX and see also ID63). It should be noted that he also suggests in this paragraph that only NOx was considered in the Information for HRA and not ND. In XX he accepted that this was not so as ND was modelled in respect of coniferous woodland and which has a lower critical load than does dwarf shrub heath.

[570] See Mr Davies' proof at para. 5.39; Professor Laxen only mentioned the September 2016 permission in his oral evidence.

RIS in-combination. There is no certainty as to what is proposed and no absolute guarantee it will be implemented, albeit there is a reasonable prospect the RIS scheme in some form will happen. This is important because MANAGING NATURA 2000 SITES The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (CD13.9) says that in terms of what need to be considered in an in-combination assessment it is "*[p]lans and projects which have been approved in the past and which have not been implemented or completed should be included in the combination provision*". That clearly does not cover the RIS. The guidance goes on to say that "*[o]n grounds of legal certainty, it would seem appropriate to restrict the combination provision to other plans or projects which have been **actually proposed***" (CD13.9, emphasis in original). Until there is a finalised design the subject of a DCO application this test is not met for RIS.

368. Fourth, while Mr Baker's view is that his approach is somehow mandated by EU law given how extreme a view it is, and the absurd results it would give rise to, some consideration should be given to the impacts of accepting such view. Mr Baker sought to downplay this saying that the situation is similar to that prior to the ***Hart*** case and the development of SANG in respect of recreational impacts on the Thames Basin Heaths SPA and which resulted in a moratorium on development within 5km of the SPA. But the impacts of this extreme view are far, far greater. The effect of Mr Baker's position is that there could be no development anywhere in the UK if it risked adding in any way to nitrogen within the SPA by for example generating a single vehicle movement on the A3 or the M25 or indeed on other roads elsewhere. Mr Baker accepted this and said it was an "*inconvenient truth*"; it is no such thing – his view is utterly untenable. Furthermore, and somewhat bizarrely, as noted above Professor Laxen and WAG make no objection to the Appeal Scheme on air quality grounds in terms of construction impacts. This cannot easily be reconciled with Mr Baker's views as a number of additional vehicular movements would be required on the A3 and M25 for construction. Despite that Professor Laxen accepts any such impacts can be conditioned. It should be added that in cross-examination Mr Kiely as a planner working in Guildford was to say the least less than enthusiastic about Mr Baker's view.

369. Fifth, in cross-examination Dr Brookbank was asked whether there was any difference between the detailed assessment she undertook to establish that there were no LSE and what would be required for an appropriate assessment. She confirmed that so detailed was the assessment that there is no substantive difference. This approach finds support in the Supreme Court's decision in ***Champion***[571]. Dr Brookbank explained in her evidence-in-chief that the detailed assessment she has undertaken provides the "*objective information*" on

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[571] CD11.19 per Lord Carnwath at para. 42 "*[i]n the present case, in the light of the new information provided and the mitigation measures developed during the planning process, the competent authority, in common with their expert consultees, were satisfied that any material risk of significant effects on the SAC had been eliminated. Although this was expressed by the officers as a finding that no appropriate assessment under article 6(3) was required, there is no reason to think that the conclusion would have been any different if they had decided from the outset that appropriate assessment was required, and the investigation had been carried out in that context*".

which she is able to conclude there are no LSE[572], an approach that is supported by ***Hart***[573]. Thus, despite screening out certain effects (see paras. 5.117 and 118 and Table 10 of Dr Brookbank's proof and her evidence-in-chief) nonetheless a detailed assessment of air quality impacts has been carried out. Dr Brookbank in evidence-in-chief referred to the CJEU decision in ***Waddenzee***[574] which says that a project which has an effect on a European Site *"but is not likely to undermine its conservation objectives .. cannot be considered likely to have a significant effect on the site concerned"*[575]. Her careful assessment focussed on those objectives (see ID33) and concludes that these are not being undermined for the reasons set out above. There is thus no LSE from the Appeal Scheme either alone or in-combination.

370. Sixth, Dr Brookbank's evidence was that any assessment of the ecological impacts had to have regard to the context of predicted improvements in air quality[576]. There are some important context points to have regard to:

370.1. There are no designated AQMAs anywhere in Guildford (see Dr Tuckett-Jones's proof at para 3.3 and Professor Laxen's response in cross-examination;

370.2. There have been substantial declines in NOx emissions since 1990, with continuing projected declines[577];

370.3. GBC have developed a Transport Strategy (2017) (CD 8.51) that contains a joint transport and air quality strategy; this recognises the contribution of road transport to air quality and commits GBC to road investment to tackle congestion[578]. AECOM's air quality review of the eGBLP (CD8.49) says at para. 2.2.2.2 "*GBC and partners have introduced initiatives such as a car club, park and ride, emissions based parking charges and walking and cycling schemes which can encourage travel by non-car modes and accordingly help to improve local air quality in relation to emissions from traffic*";

370.4. There is an Air Quality Strategy (2016) that accompanies the Surrey Transport Plan (CD Ref. 8.38) which promotes the use of smarter travel choices to reduce air pollution from road traffic sources[579];

370.5. In the UK initiatives including 'Site Improvement Plans' (SIPs) (CD Ref. 13.72) and the 'Atmospheric Nitrogen theme plan' (CD Ref. 13.73) that, form part of the wider 'Improvement Programme for England's Natura 2000' (IPENS)(CD Ref. 13.74), are enabling key partners (including Natural England)

[572] See the ***Wealden*** case at para. 44(ii), CD11.23.
[573] See Dr Brookbank's proof at para. 3.61 and her EinC.
[574] CD11.12
[575] See also Dr Brookbank's proof at para. 3.45.
[576] She set out the relevant considerations in her proof and further elaborated on these in her EinC.
[577] Dr Brookbank's proof at para. 5.20; CD Ref. 13.80; accepted by Professor Laxen in XX.
[578] See Dr Tuckett-Jones's proof at para 2.13 and Professor Laxen's response in XX.
[579] See Dr Tuckett-Jones's proof at para 2.12 and Professor Laxen's response in XX.

to plan and work towards the strategic recovery of Natura 2000 sites, including addressing effects arising from air pollution[580];

370.6. The Government has also just published the final draft of its 'National Air Quality Plan' in July 2017 (CD13.75), which commits to investing over £2.7 billion in air quality improvement and transport initiatives– including funding to increase the uptake of ultra-low emission vehicles (ULEVs), various Funds for upgrading public transport and roads networks, a Cycling and Walking Investment Strategy and an Air Quality Grant scheme to help local authorities tackle air quality (see Dr Brookbank's proof at para. 5.22, and Professor Laxen's response in cross-examination);

370.7. Legislation is currently being developed within the European Union that would introduce improved and more stringent vehicle emissions testing (Real Drive Emissions, RDE) that should make it much more difficult for manufacturers to distort the results of vehicle emissions testing than under existing procedures. Both the AQC and DfT reports make clear that it is reasonable to expect the introduction of Euro 6c/d (i.e. vehicles subject to RDE test cycle) will further reduce fleet average emissions from existing Euro 6a/b vehicles[581];

370.8. In terms of ecological impacts, the focus is of course on the impact of the development within the 140m corridor, and the conservation objective for air quality in the supplementary advice (ID33) is to "*[r]estore <u>as necessary</u> the concentrations and deposition of air pollutants to at or below the site-relevant Critical Load or Level values given for this feature of the site on the Air Pollution Information System (www.apis.ac.uk)*" (emphasis added). It includes a caveat in the Explanatory Notes "[i]*t is recognised that achieving this target may be subject to the development, availability and effectiveness of abatement technology and measures to tackle diffuse air pollution, within realistic timescales*". Leaving aside the question of whether it is 'necessary', achieving the objective will, undoubtedly, be dependent on actions within the UK and Europe to reduce pollution from all sources (transport / power generation etc.) and then the question is "*will the development affect the reduction of pollution to within critical load or level*" within realistic timescales. Dr Tuckett-Jones's view was 'no it won't' – even at the local scale. The small proportion of traffic from the development running past the SPA will not offset the long-term benefits of national and international measures that will provide the year on year reductions in the future. She confirmed in evidence-in-chief that she did not think it likely that any delay to achieving the critical loads/levels will be perceptible[582].

<u>3.10.8. SPA boundary</u>

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[580] See Dr Brookbank's proof at para. 5.21.
[581] See Dr Tuckett-Jones's proof at para. 4.56; accepted by Professor Laxen in XX.
[582] See further Dr Tuckett-Jones's EinC.

371. This issue raised late in the day by WAG need not detain us long. The Appellant's position relied on detailed GIS mapping provided by NE and the JNCC – the bodies charged with updating SPA boundaries with the European Commission: see further ID35. In any event, as Dr Brookbank explained in her evidence-in-chief the area of discrepancy between this mapping and the older designation map held by DEFRA relates to land immediately adjacent to the A3 that does not comprise suitable bird habitat nor would it ever whilst the roads are present and so this issue has no bearing on the outcome of the assessments made.

3.10. 9 Conclusions

372. For all the above reasons there is no remotely credible case that the appeal should be refused on air quality grounds.

3.11. Whether the proposals make adequate provision for community and other facilities including education, police, health and libraries

373. The section 106 agreement makes adequate provision for community and other facilities including education, police, health and libraries. Indeed, the provision made by the Appeal Scheme in this respect goes beyond simply providing the facilities required by the residents of the new settlement and will be beneficial beyond the Appeal Site. We return to this in considering the next (and final) main issue[583].

3.12. Whether the other material considerations advanced in support of the development are very special sufficient to clearly outweigh any harm to the Green Belt, and any other harm, such as to amount to the circumstances necessary to justify the development

374. It is the Appellant's case that the "*other considerations*"[584] advanced in support of the Appeal Scheme clearly outweigh the harm to the Green Belt together with any other harm such as to give rise to VSC.

3.12.1. Green Belt harm

375. The Green Belt harm is considered under Main Issue 1 above.

3.12.2. "*any other harm*"

376. In terms of "*any other harm*"[585] the Appellant's case is that the other harms are[586]:

376.1. Some harm from loss of best and most versatile ("BMV") agricultural land[587];

[583] A summary of the key triggers in the section 106 agreement are set out in ID97, along with their justifications.
[584] See the language in para. 88 of the NPPF; CD9.1.
[585] *Ibid*.
[586] See Mr Collins's proof at para. 20.129 and his EinC.
[587] See Mr Collins's proof at para. 27, p. 10 – to be given limited weight.

376.2. Some localised harm to character and appearance;

376.3. Harm to heritage assets limited to impact on the settings of Grade II-listed buildings falling within the lower range of "*less than substantial*" harm and/or "*negligible harm*";

376.4. Loss of part of the Appeal Site as a potential waste facility designated in the SWP.

377. In relation to these "*other harms*" point 2. above is dealt with under Main Issue 8; and point 4. under Main Issue 7.

378. In relation to point 3. And heritage the harms are "*less than substantial*" and/or "*negligible*" and while considerable importance and weight must be given to the harms the test is whether these are outweighed by public benefit (see para. 134 of the NPPF). The Appellant's case is that this test is satisfied. The further point made in WAG's closing at para. 57 that the scheme cannot be designed to avoid any such harms has no proper basis.

379. In relation to point 1. above part of the Appeal Site contains currently BMV agricultural land. There are a number of points:

379.1. The Planning Statement Addendum (CD 3.10) included at App. 3 a plan which provides clarity on the loss of this land. The area of agricultural land proposed for built development extends to approximately 32.2ha, of which 19.3 ha is classified as BMV;

379.2. The relevant Agricultural Land Classification Report is included in Addendum ES and this indicates c 44 ha of Grade 2 and 3a agricultural land across the whole Appeal Site[588], not all of which is to be lost to built development – again this concludes that the net loss of BMV to built development is 19.3 ha;

379.3. GBC's RfR did not contain any RfR based on loss of BMV;

379.4. In the OR (CD6.1, para 10.8.4) it was accepted that the net loss would be approximately 20ha of BMV land and that while this "*would be contrary to the objectives of objectives of paragraph 112 of the NPPF*" nonetheless "*this harm could be minimised through the reuse of suitable soils and the protection of those within areas not shown for development and accordingly this is not, in itself, a reason to withhold planning permission*";

379.5. The SoCG with GBC agrees the losses of agricultural land and notes *that "[i]n the event of a national emergency or change of circumstances the undeveloped land has the potential to be returned to agricultural use*" (see para. 6.1[589]);

[588] Confirmed by Mr Collins in his oral evidence. Mr Collins did not accept, as is suggested in WAG's closing at para. 84, that all the BMV would be lost.
[589] And confirmed by Mr Collins in XX.

379.6. Importantly NE who are the statutory consultee charged with responsibility for BMV were consulted but did not object on this basis. NE noted that *"[a] proportion of the agricultural land within the development site will remain undeveloped. The built development will occupy 32.2ha of agricultural land, of which 19.3ha is classified as best of most versatile (BMV) agricultural land (5.3ha Grade 2 and 14ha Grade 3a), and would give rise to an irreversible loss of BMV land"*. It recommended *"if the development proceeds, the developer uses an appropriately experienced soil specialist to advise on, and supervise, soil handling, including identifying when soils are dry enough to be handled and how to make the best use of the different soils on site"*;

379.7. A draft condition is thus proposed to deal with this.

380. Mr Sherman for GBC in his proof indicated only three other harms[590]: (i) harm to character and appearance (to which he afforded moderate weight); loss of BMV to which he afforded moderate weight) and conflict with the SWP (to which he attributed little weight).

3.12.3. *"other considerations"*

381. In terms of the material considerations advanced in support of the Appeal Scheme, the OR on the application for planning permission accepts[591] that the Appeal Scheme includes "*significant benefits*" and GBC has agreed a summary of key benefits in the SoCG with the Appellant[592].

382. There are fourteen key factors advanced in support of the Appeal Scheme and which together give rise to VSC[593]. These are:

382.1. Support from the eGBLP and consistency with the emerging evidence base;

382.2. The uniqueness of the Appeal Scheme and Site, notably the absence of a viable, feasible and available alternative for a new settlement in the borough;

382.3. Job creation and delivery of economic growth[594];

382.4. Increased consumer spending and retail provision;

382.5. Upgrades to local infrastructure, notably to the strategic highways network, upgrades to existing public transport and provision of new public transport; and cycling infrastructure benefits[595];

382.6. Delivery of a significant proportion of the borough's housing requirements, notably market and care homes, and provision for gypsy and travellers;

[590] See paras. 5.6 – 5.7 of his proof
[591] CD 6.1 at para. 1.4.
[592] Para. 6.7.
[593] See Mr Collins's proof at pp. 191 -215
[594] The SoCG cites: 6,000 sq m of employment and retail floorspace potentially accommodating 350 full time equivalent permanent jobs; per annum: £12.2m of new convenience goods expenditure and £27.5m of new comparison goods expenditure within the local area by 2021; and significant infrastructure improvements.
[595] The cycle and bus provision made by the scheme would benefit the wider community as well as the residents of the new settlement. The proposed upgrades to highway infrastructure would be similarly beneficial.

382.7. Delivery of up to 800 affordable homes in the context of poor past delivery in the borough[596];

382.8. Improvements to education, including on site provision of a primary school and secondary school[597], which partly meets the wider demand, and improvements to health and community provision including sports provision;

382.9. Re-use of brownfield land[598], including a derelict runway;

382.10. Creation of new publicly accessible Greenspaces;

382.11. Landscape[599] and biodiversity[600] enhancements;

382.12. The sustainability of the proposals, particularly the provision made for ongoing management of the Appeal Site through the WACT[601] and which includes, SANG management, SAMM plus provision, bus provision and community asset management;

382.13. Flood risk mitigation at Ockham interchange;

382.14. Improvement to local policing.

383. Before turning to look at these there are some general points to make.

384. First, the Appellant's case is that the above factors combine to give rise to VSC. Mr Bird QC in cross-examination put to Mr Collins that the Appellant had to persuade the Secretary of State of all of the above points to establish VSC. That is clearly wrong; and as Mr Collins pointed out some of these "*other considerations*" are more important than others. The most important being: 1) – 9) and 12). The others 10) – 11) and 13) – 14) give rise to benefit but clearly are less important. The Secretary of State may not agree on all of the above other considerations, even some of the important ones but the Appellant says he could still nonetheless very easily conclude, given the overall scale of benefits as outlined below, that there is VSC. There is not a set number of factors which are required to clearly outweigh the harms. VSC is undefined in law – it is a matter of planning judgment[602].

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[596] Up to 25% of the borough's annual affordable housing need, or 14% of the total eGBLP requirement.

[597] The SoCG correctly notes that the secondary school provision would be beneficial beyond simply meeting the needs generated by the scheme. It is also common ground between GBC and the Appellant that the 4 form entry secondary school element will, in part, cater for the needs of the eastern part of the borough (circa 20% of the needs identified over the eGBLP plan period, see the SoCG at para. 6.22).

[598] The largest area of PDL in the GBC part of the Green Belt.

[599] The Appeal Scheme would enhance the quality and quantity of characteristic landscape features within the Appeal Site.

[600] The statement also correctly records that the package of ecological measures proposed will have positive ecological benefits, as opposed to merely mitigating the ecological impact of the scheme.

[601] The Appeal Site would be the fourth largest settlement in Guildford borough with the necessary services and amenities.

[602] Contrary to the line of XX pursued by Mr Bird QC of Mr Collins there is no requirement for the benefits to be of regional or national importance as opposed to of local importance. The only issue being whether it the overall balance the benefits clearly outweigh the harms.

385. Second, the characterisation of the Appellant's VSC case as being based exclusively on housing need is refuted. Thus, looking at the list of 14 matters relied on as constituting VSC see Mr Collins's proof at para. 20.11 the following factors:

385.1. 1) allocation in eGBLP;

385.2. 2) uniqueness of site/absence of alternatives;

385.3. 3) – 5): job creation, delivery of economic growth, increased consumer spending and retail provision, and infrastructure upgrades;

385.4. 8) – 14): education provision for wider Borough, re-use of brownfield land, creation of new public open spaces, landscape and biodiversity improvements, delivery of sustainable development, flood mitigation at Ockham Interchange and improvements to local policing.

are not based on housing need. There is, of course, some overlap in the VSC relied on but that is inevitable and more importantly unobjectionable.

386. Third, and related to this, one can consider by way of analogy the Perrybook case (CD10.2). There as we have seen the Secretary of State found a number of harms to the Green Belt (see DL11) going well beyond the harm here (see above) as well as moderate harm to landscape character and visual impact (DL12), harm to the setting of listed buildings (DL13) and loss of 42ha of BMV (DL16). Despite these findings he concluded that the other considerations outweighed all this harm. Those other considerations being: (i) the housing benefits (DL18); (ii) the fact that the proposal was in accordance with emerging policy (DL19); (iii) the fact that numerous studies over the years had identified the site for development (*ibid*); (iv) the considerable economic benefits; and (v) benefits from open space, sport and recreation; education and other facilities as well as "*environmental gains*". There is thus some considerable similarity in terms of the other considerations in play as between that case, not surprising given it was a proposed development of a similar type and scale and this albeit that the list of other considerations in play in the present appeal is rather more extensive. It has to be said if the criticism that all the VSC relied on were just about housing were a good point (which it is not), that would be *a fortiori* in the Perrybrook case given how much more extensive are the list of VSC here.

Other consideration 1) – support from the eGBLP and the evidence base

387. In large part this has been considered above. The fact is that like the site in the Perrybrook case (see above) the Appeal Site has been consistently concluded as suitable for release from the Green Belt and for allocation for housing for a number of years. It has been the selected site for a sustainable new settlement since 2013 in no less than four iterations of the eGBLP – and at each stage it has been the subject of a resolution of the Full Council. The eGBLP is on the brink of submission for examination – and will almost certainly have been submitted by the time the Secretary of State considers this appeal. The Appeal Site thus, at this critical point,

very much remains an allocated site in the eGBLP; as it has been for some years. It is indeed absolutely critical to the spatial strategy of the eGBLP: see Policy S2 CD8.24.

388. Moreover, the Appeal Site has consistently been assessed by both GBC and expert consultants appointed by it as the best site for Green Belt release for a new settlement given its relative lack of sensitivity in Green Belt terms and its distance from the AONB. This is the conclusion of an iterative SA procedures, the GBCS, and numerous topic papers. GBC, of course, take the view and have consistently – over a number of years - taken the view that the Appeal Site meet the exceptional circumstances test for release from the Green Belt. While the VSC test is a stricter test the factors relevant clearly overlap and the factors that have led GBC to the conclusion that there are exceptional circumstances (e.g. housing need, affordability, economic and employment needs, lack of alternatives and the need to avoid out-commuting and unsustainable travel patterns[603]) are also clearly relevant to VSC. The ***Calverton*** case (CD11.33) is useful here. Looking at the factors the Judge concluded were relevant to whether here were exceptional circumstances it is not difficult to see why GBC has come to the view it has and these factors are also relevant to VSC. So:
    388.1. The acuteness/intensity of the objectively assessed need: this is critical in this Borough – see below;
    388.2. The inherent constraints on supply/ availability of land: the Borough is 89% Green Belt with other major constraints – SPA, AONB;
    388.3. The difficulties in achieving sustainable development without impinging on the Green Belt – GBC's view is clear, as explored above, that Green Belt release is inevitable to meet anything like the needs it has;
    388.4. The nature and extent of the harm to this Green Belt – the Appeal Site has consistently been rated as the least sensitive Green Belt (see above); and
    388.5. The extent to which impacts can be ameliorated – the Appeal site is well-enclosed and the impact on openness (which has a visual aspect) is reduced by this and by extensive proposed landscaping mitigation.

389. It is also important in this regard that all the planning witnesses agreed that the Appeal Scheme is consistent with/compliant with Policy A35 in the eGBLP. This is why, applying Perrybrook, the Appellant says that this proposal is "*plan led*". In this context the absence of an up-to-date Development Plan is also highly material.

<u>Other consideration 2) – the uniqueness of the Appeal Site</u>

390. There are a number of points to be made in this regard:

[603] These were the factors identified in various documents put to Mr Sherman in XX and which he accepted. These matters were also dealt with in Mr Collins's oral evidence. It is self-evidently not correct to say (as it does it Horsley Parish Councils' closing at para. 7 that the only factor relied on by GBC for exceptional circumstances is housing need.

390.1. As we know the Appeal Site contains the largest area of PDL in Guilford Borough[604];

390.2. It alone (see above) has been in the eGBLP process GBC's preferred site for a new sustainable settlement since 2013;

390.3. It has been robustly tested and favoured in numerous studies undertaken as part of the eGBLP evidence base;

390.4. It has in successive SAs been assessed against reasonable alternatives and remained the preferred site for a new settlement – indeed as we know in the latest SA it is said to be a "*given*"[605]. GBC's closing states[606] that "*[a]s is clear from the evidence base for the [e]merging Local Plan, the Council sees the site as essential to meeting the Borough's needs and has been unable to identify any reasonable alternative …*".

390.5. There are no alternatives. Given the constraints in the Borough that is hardly surprising. Rule 6 parties have suggested somewhat weakly there are alternatives but the evidence to back this up has been somewhat lacking. Thus for example, Mr Kiely put forward Normandy/Flexford but this was deleted because it was red rated in terms of Green Belt harm (as opposed to the Appeal Site which is amber rated) and it impacted on the AONB. In any event it has half the capacity of the Appeal Site[607]. Mr & Mrs Paton suggested as alternatives sites that are also draft allocations in the eGBLP. These are not alternatives. They are needed in addition to the Appeal Site to meet housing needs. Indeed it will be seen that the eGBLP proposes growth all across the Borough including around Guildford. The level of need requires this;

390.6. The SA notes that the Appeal Site is a "*preferred option*" because it avoids the need to put pressure on "*the most sensitive Green Belt*" and is away from national landscape designations like the AONB[608];

390.7. It offers a truly unique opportunity for a high quality designed sustainable new settlement: see above.

<u>Other considerations 3) and 4) – job creation, delivery of economic growth, increased consumer spending and retail provision</u>

391. The economic benefits of the Appeal Scheme are very considerable indeed. The most up-to-date evidence of these is in Mr Collins App 2 to which there has frankly been no challenge at all in any of the evidence by rule 6 parties including notably GBC. The case advanced against the Appellant has largely been confined to forensic points about the assessment of these benefits in the Addendum ES. This line of attack lacks any merit. The relevant up-to-date evidence is in App 2 to Mr Collins's proof; the benefits are now considerably greater than were assessed in the Addendum ES. This does not give rise to any kind of legal issue – and the suggestion that it does is quite hopeless.

[604] Cllr Cross accepted that something would have to happen at the Appeal Site – he said he was no opposed to all development.
[605] CD8.31 p 1 and para 6.6.12
[606] Para. 62.
[607] See the SA (CD8.31) at p 32, 35 and para 10.11.4.
[608] CD8.31 p 21.

392. The benefits include:

392.1. 776 total direct jobs[609];

392.2. 1410 indirect jobs[610];

392.3. A GVA uplift per annum (net) of £57,551,000[611];

392.4. Rates income gain of £500,000 per annum[612];

392.5. Gross Council tax of £3.5 million per annum[613];

392.6. New Homes Bonus of £21 million over 6 years[614];

392.7. A cumulative net income gross of £130 million[615].

393. One need only glance at these figures to see just how significant these benefits are. They are even more extensive than were the economic benefits relied on in the Perrybrook case.

394. The suggestion that these benefits are to be viewed as anything other than significant lacks any credibility. Indeed, notwithstanding Mr Bird QC's cross-examination of Mr Collins by reference to the Addendum ES it should be noted that Mr Sherman himself accepted in cross-examination that: (i) App 2 of Mr Collins's proof was unchallenged and was the best evidence of the economic benefits; (ii) that these benefits weighed in favour of the grant of planning permission; and (iii) that these benefits carried "*considerable weight*"[616]. Moreover, Mr Kiely also accepted in terms that the development "*will generate economic benefits*"[617]. The line of cross-examination pursued by Mr Bird QC by reference to the ES Addendum was all the more surprising given that the SoCG (CD12.3) agreed the economic benefits[618].

395. Because these benefits have very largely gone unchallenged less attention has been given to them than other issues during the inquiry. This should not detract from the very significant benefits that there would be. These benefits should clearly be given great weight.

396. The regional, if not national, significance of the economic benefits of the Appeal Scheme are further supported by the Enterprise M3 Housing Evidence Study, September 2014 conducted by Regeneris

[609] Collins App 2, Table 4.3.
[610] *Ibid*.
[611] Collins App 2 Tables 4.4 and 4.5.
[612] Collins App 2 Table 5.1.
[613] *Ibid*.
[614] *Ibid*.
[615] *Ibid*.
[616] Mr Sherman's proof at para. 4.20.
[617] Mr Kiely's proof at para 5.15.
[618] See para. 6.7.

Consulting for the LEP (CD13.1). This study is considered in detail in the Planning Statement (CD2.15) and is also considered in Mr Sherman's proof (para 4.19) and was discussed in re-examination by Mr Collins. The study was produced following a number of local businesses expressing the importance of housing for their workforce and how the lack of housing affordable to their workforce was affecting their businesses and their ability to retain and draw in the right talent. It specifically refers to the Appeal Site as a large and important site in terms of housing delivery[619].

397. On retail matters GBC has withdrawn its reason for refusal. Mr Collins App 4 assesses the commercial floorspace proposed and it is this which resulted in GBC's change of position. No party other than RPC has tried to argue retail harm. This has no merit. There is no such harm and indeed the new retail will be a benefit[620].

Other consideration 5) – upgrades to local infrastructure

398. The benefits in this regard that go wider than mere mitigation are set out in paras. 12.1 and 12.2 of Mr McKay's proof:

    398.1. The commitment of the Appellant to the preferred A3 mitigation scheme of new North-facing A3 slip roads at Burnt Common lead to overall reductions in traffic on many local roads including within Ripley as well as improved conditions on the SRN by reducing traffic joining the A3 at one of its most congested and substandard locations;

    398.2. The Appellant's cycle route proposal to Byfleet provides a publicly available enhancement to local cycle facilities for use by all cyclists;

    398.3. The bus service provision provides additional transport options for the local communities through which they pass, thereby bringing additional potential retail and commercial expenditure and potential employees to these communities;

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[619] The Study sets out that there is *"a strong economic case to support the delivery of additional homes beyond that which is proposed"* (p. 4). The economic benefits are set out in the report and include:

• Maintaining a diverse population base, which in turn supports labour mobility and recruitment, the availability of sufficient public and private services as well as expanding the local income base which in turn supports the growth of town centres

• Supporting local authority income through the New Homes Bonus, a scheme introduced to incentivise local authorities to increase the delivery of new homes

• Meeting an identified need for housing to support future demographic projections and to address current issues such as rising waiting lists for housing

• Addressing issues related to housing such as affordability issues (which can in turn impact on the functioning of a healthy economy) and addressing social issues

• A comparison of the housing scenarios for the Enterprise M3 LEP area suggests that there are significant variations in terms of the level of benefits which will result under each option. The economic benefits to the Enterprise M3 area are likely to be greatest under the employment scenario and lowest if local authorities continue with proposals to deliver their housing targets. This needs to be recognised in the context of the NPPF which sets out a presumption in favour of sustainable development.

[620] See Collins App 4 section 8 p 25.

398.4. The commitment to substantial additional financial contributions towards promoting cycling and road safety measures will benefit all road users;

398.5. The capacity improvements to M25 Junction 10 in the absence of the RIS scheme would extend the life of Junction 10 by reducing queuing on the approaches and thus be of benefit to the users of the SRN in terms of improved and more reliable journey times and increased safety.

399. In relation to the delivery of Burnt Common slips the economic analysis is set out in Transport Technical Note 1 (ID4) and has been wholly unchallenged. The benefits are dealt with in section 9 and have been assessed in two ways:

399.1. Using the TUBA tool: This uses the outputs from the SINTRAM model to estimate economic changes related to the difference between user costs in Scenario A (no scheme and no Wisley Airfield development) compared with Scenario C3 (with scheme and with Wisley Airfield development); and

399.2. In addition the benefits to the local economy that would be lost if the Burnt Common slips were not constructed have been assessed: This takes the stand-point that the Burnt Common slips are a prerequisite to realising the benefits not only of the Wisley Airfield proposed new sustainable settlement, but of the eGBLP as a whole, given the position expressed in the Strategic Highway Assessment as part of the eGBLP evidence base that the slips are included in the Scenario 5 infrastructure required for the eGBLP[621]. The assessment suggests that the loss from not providing the slips may be in the order of £250m[622] GVA per annum.

400. Mr Collins's evidence was that these benefits should be given significant weight. Looking at them it is impossible to suggest otherwise. The support for the mitigation package, including Burnt Common slips, from SCC is also of importance (ID22).

<u>Other consideration 6) - housing</u>

401. The ***Doncaster*** case ([2016] EWHC 2876 (Admin)) referred to in the Appellant's closing makes clear (per Gilbert J. at para. 69) that national policy "*regards it as unlikely that unmet need … are to be enough to overcome the*

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[621] In this regard para. 32 of GBC's closing is of importance as it recognizes Burnt Common slips is "*critical to the delivery of growth within the Borough and without them there is no realistic prospect of it being able to meet its identified needs*"; it is also noted that no one has identified an alternative.

[622] The total additional direct and indirect operational jobs generated by the eGBLP is likely to be in the order of 10,745 jobs. An additional 1,286 jobs per annum in construction (direct and indirect jobs) will be generated. Based upon the GBLP full delivery of 12,426 homes, 39,900 sqm of office space, 39,000 sqm of employment land, and 41,000 sqm of retail floorspace across the 19 year plan period, it is estimated the potential economic impact to include: 1,286 construction jobs per annum and a total of 10,745 operational jobs; £604 million GVA per annum; £4.2 million in business rates, and £18.6 million in Council Tax revenue per annum. These sums constitute significant funding which can be used to support public services. Whilst it is not suggested that these benefits would be completely lost to the local community as a consequence of not constructing the new slips at Burnt Common, the further delays resulting from the necessary changes to the eGBLP strategy would incur a considerable loss particularly over the next 5-10 years.

hurdle posed by Green Belt policy. It does not say that either or both could not do so". The Court thus recognises that depending on the facts housing need alone *could* constitute VSC. A submission that this appeal is bound to fail is thus wholly erroneous and based on a flawed understanding of national policy as interpreted by the Courts. Moreover, in the ***Lee Valley*** case (CD11.17) Ouseley J. said at para. 68 "[*a] shortfall in housing land supply can, as a matter of policy, be a very special circumstance*". Of course, the Appellant here does not rely on housing need alone; it is one of a number of other considerations which together give rise to VSC. The Judge in the ***Lee Valley*** case went on to add that "*there is nothing unlawful in a planning decision-maker] treating it [housing need] as one of a number of very special circumstances*"[623].

402. The housing need situation in this Borough really is critical. The key points are as follows.

403. First, there is no real dispute that this is a benefit which carries significant weight. Certainly that is Mr Collins view, but Mr Sherman's proof similarly says that this is a matter to which significant weight must be given[624]. Moreover, Mr Kiely for WAG says that the absence of a 5YLS and the "*Council's continued underperformance in this regard carries considerable weight in the decision making process*"[625].

404. Second, as noted above there is no dispute that GBC does not have a 5YLS[626]; it has a 2.36 YLS[627]. This is a "*significant shortfall*" as against the NPPF requirement for a 5YLS[628]. Moreover, as Mr Collins expanded in his evidence-in-chief GBC has not had a 5YLS for many, many years. It almost goes without saying that GBC is a 20% authority that is to say an authority with a persistent record of under-delivery of housing[629][630]. It really is a woeful record; and as we will see the statistics only get worse the more one looks at them. The Appeal Scheme could contribute up to 210 homes[631] in the 5YLS period. Mr Bird QC in cross-examination of Mr Collins said "*only 210*" or "*only 4 months supply*" but as Mr Collins retorted that is about the same amount of housing as GBC has managed to deliver in any year since 2009/2010.

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623 That latter point articulated by Ouseley J is also supported by the Court of Appeal's decision in ***Smech*** (CD11.2) and the Secretary of State in the Perrybrook appeal.
624 See Mr Sherman's proof paras. 4.24 and 4.26.
625 Mr Kiely's proof at para. 5.18.
626 WAG's closing (para. 28) acknowledges for the first time that GBC "*does not have a 5YHLS and has to work on delivering housing in the future* ..". The need – which is acute – though exists now.
627 SoCG CD12.3 para 6.14.
628 As was held by the Inspector in the recent appeal decision in CD10.7: see paras. 10 and 35; and as agreed in XX by Mr Sherman.
629 SoCG CD12.3 para. 6.16.
630 Indeed as is shown in CD13.59 (p. 3) in the period April 2015 to April 2017 of 4,338 homes for which planning permission was applied for GBC refused/failed to determine permission in respect of 3,670; of which 3,056 were allocated in the eGBLP. It granted permission for just 668 homes.
631 Mr Sherman suggests 150 in the 5YLS. WAG in closing (para. 28c) suggested that the Appeal Scheme might not deliver any housing in the 5YLS; that is refuted. There is nothing in the conditions and proposed phasing that supports that view; nor is there any other evidence to support it.

405. Third, the 5YLS position is just the beginning. Para. 47 of the NPPF requires local planning authorities "*to identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15*". As is explained in Mr Collins's proof at paras. 3.43 and 3.44 recent appeal decisions have emphasised the importance of this requirement in granting permissions even in areas with a 5YLS. Thus in an Appeal at Money Hill (CD 10.3) the Secretary of State at para. 14 of his decision agreed with his Planning Inspector that "*local planning authorities must also plan for housing supply beyond the five year period and, as set out in para. 47 of the Framework, identify a supply of Sites for 6-10 years and where possible, 11-15 years*" and that "*there is also a current national imperative to boost the supply of housing*". The Inspector and Secretary of State attached significant weight to provision of market and affordable housing. There is no doubt that the Appeal Scheme makes a crucial contribution to the planned housing supply in the 6 – 15 year period: see Mr Collins's proof at para. 11.22[632]; and see also Mr Collins's proof fig 11.3 showing how the Appeal Site is likely to deliver more quickly than other large sites in the eGBLP.

406. Fourth, GBC has had no housing requirement in Development Plan policy since 2006. Some five years ago GBC set an interim target of 322 units per annum. This was a modest target and was never tested[633]. The SHMA update assesses the need as being 654 homes per annum. In the absence of any housing requirement the PPG clearly advises the first thing to be looked at is the SHMA. The SHMA is the best evidence there is of the housing needs in this Borough. The arguments against giving this weight advanced by Mr Miles were very weak. Absent a housing requirement case-law is clear (see ***Hunston*** CD11.11[634]) that on a s. 78 appeal the decision-maker must assess and have regard to the unconstrained FOAN. The best most up-to-date evidence of the FOAN comes from the SHMA. This was undertaken in 2015 and updated for Guildford in 2017. Suggestions by Mr Miles that housing need was a matter for the eGBLP examination is just bizarre. The level of housing need is an issue on this appeal. The case-law is clear that a view will need to be taken on this on this appeal. It is also relevant in terms of weight that the SHMA has been examined in the Waverley examination[635]. But even if for some inexplicable reason the SHMA were set aside one falls back to the household projections[636] which gives an annual need of 538 dwellings per annum in Guildford. On the CLG standardised methodology it is 789. Mr Miles sought to rely on the Neil MacDonald report (CD1.11). The weight to be given to this evidence is limited given that the authors were not called as witnesses but the conclusion of the report is a need of 510 homes per annum. What is key is that whatever one assesses the need as being: 322, 510, 538, 654 or 738 looking at table 11.1 of Mr Collins's proof the fact is that since 2012/13 GBC has met none of these targets save for the interim target of 322 in 2016/17. It is not a record to be proud of. As

[632] Agreed in XX by Mr Sherman; and see the trajectory in the LAA CD8.25 p 8.
[633] Mr Collins's proof at para 11.8.
[634] Mr Miles in XX said he had never heard of the case.
[635] See Mr Collins's rebuttal; and the housing requirement raised to reflect the unmet needs of Woking.
[636] At one point Mr Miles in XX sought to question CLG's household projections – that was a frankly hopeless line of defence.

against this sorry tale the Appeal Scheme provides for 18% of the housing allocations in the eGBLP and 16% of the housing when judged against the FOAN in the SHMA[637].

407. Fifth, Mr Collins's oral evidence dealt with the indicative mix and how this reflected needs.

408. Given all of this there is little wonder Mr Sherman accepted that significant weight should be given to the housing to be provided by the Appeal Scheme.

409. In addition the Appeal Scheme would make a significant contribution to meeting traveller and gypsy needs: 13% of these need: see ID91[638]. The OR (CD6.1) indicated that this was a significant contribution and should be given significant weight[639].

410. Finally, the Appeal Scheme provides Wisley can deliver 60 much needed homes specifically for the elderly which adds some more weight[640].

Other consideration 7) – affordable housing

411. There is agreement again between GBC and the Appellant that this is a matter that should be given significant weight[641]. There is no serious dispute by any of the parties as to the acute needs there are.

412. The position is as follows:

413. First, based on the SHMA Addendum (CD8.23) there are 517 households per year in Guildford which require support for their housing needs, and thus are eligible for affordable housing. It is also recorded that lower quartile house prices in Guildford are 11.5 times lower quartile earnings. This is marginally below the other two HMA authorities, but is substantially above the national average. GBC's closing[642] recognises that there is "*a pressing need for affordable housing*" in the Borough.

414. Second, only 485 affordable homes have been built in Guildford Borough since 2009, with only 17 in 2013/14[643]. This is c. 60 per annum.

[637] See Mr Collins's proof at para, 11.21 accepted in XX by Mr Sherman.
[638] This provides further detail on the design and planning for the gypsy and traveler site.
[639] See paras. 10.5.12 and 10.5.14; and accepted by Mr Sherman in XX.
[640] See the OR, CD6.1, para. 10.5.15 and Mr Sherman's answers in XX.
[641] See Mr Sherman's proof at para. 4.27 and his answers in XX.
[642] Para. 34.
[643] See Mr Collins's proof at para. 3.38.

415. Third, the Guildford Housing Strategy – Statistical Update (2015-16) (CD 8.58) sets out that as of 1 April 2016 there were 2,768 households on the affordable housing register in Guildford Borough of which 2,203 were in the top priority bands (A-C)[644]. The housing situation is exacerbated by the time it takes for families and individuals to be re-housed, which has been growing since 2009 for 1 and 2 bedroomed properties, and which now takes over four years[645].

416. Fourth, there is a wider Surrey issue, thus the Homes for Surrey campaign's website outlines that according to CLG, the number of families on the local authority waiting lists in Surrey is 14,333. In contrast, housing associations and local councils in Surrey built just 850 homes in 2015/16[646].

417. Fifth, it is a "*key ambition*" of GBC to increase the supply of affordable housing[647]; it is a key corporate ambition.

418. Sixth, the lack of affordable housing has real effects on real people in term of health and well-being[648].

419. Seventh, the Appeal Scheme will deliver 800 affordable houses, more than GBC has delivered since 2009/10 across the whole of the Borough.

420. Eighth, GBC in the SoCG (CD12.3, p. 26) recognise that the provision of affordable housing satisfies the social dimension of sustainability.

421. For all these reasons this matter constitutes a very significant material consideration in favour of the Appeal Scheme[649].

Other consideration 8) – education provision

422. In relation to education provision the Appellant made the following points:

423. First, the SoCG (CD12.3) states that "*[t]he All Through School is proposed as mitigation, but also has the potential to serve the wider secondary education needs arising (and hence is part of the proposal)*" and that "[t]*he 4 forms of entry*

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[644] See Mr Collins's proof at para.14.8 and Fig 14.1
[645] See Mr Collins's proof at para. 14.10 and fig. 14.2.
[646] *Ibid* para. 11.4.
[647] See CD8.11; Mr Sherman's answers in XX and Mr Collins's oral evidence.
[648] Mr Collins's proof at paras. 14.11 – 14.12
[649] It should be noted that in the Perrybrook decision the Secretary of State said "*the provision for 40% affordable homes, equating to 600 units, makes a valuable contribution in the context of an identified need for 1600 affordable homes across the Borough (IR15.49) and that the wide range of tenure and dwelling types in this large scale proposal will make a valuable contribution to local housing (IR15.50). Overall, the Secretary of State attaches considerable weight to the housing benefits of the scheme*.": see DL18.

secondary school element will, in part, cater for the needs for the eastern part of the Borough (circa 20% of the needs identified in the GBLP plan period).[650]"

424. Second, the OR (CD6.1) says "*the provision of a school of greater capacity could count significantly in favour of the scheme*[651]." That is what via separate section 106 agreement ("**the education section 106 agreement**") with GBC will now be delivered by the Appellant; the Appellant is thus delivering a school that will cater for more than just the needs generated by the Appeal Scheme.

425. Third, a 4FE school will thus meet identified future needs within the Borough and provide Guildford Borough with the necessary Site for inclusion in the Local Plan[652]. The need evidence is set out in detail in the proof of Mr Collins at paras. 20.69 – 20.76 and was not the subject of any challenge in cross-examination.

426. Fourth, the provision of an "*All Through School*" on the Appeal Site:
    - 426.1. is in accordance with the description of the development applied for;
    - 426.2. is compliant with policy A35 of the eGBLP[653];
    - 426.3. is supported by the evidence base for the eGBLP: see e.g. SA[654], which talks about a school on the Appeal site "*provid[ing] for the additional educational need arising in the eastern part of the borough*" and also the Housing Topic Paper[655];
    - 426.4. will increase the choice of secondary school places available, as supported by the NPPF (para. 72) (CD 9.1) and will reduce pressure on other surrounding secondary schools[656];
    - 426.5. is important to the sustainability and place-making[657] of the new settlement;
    - 426.6. has been the subject of an expression of interest from a leading educational provider[658];
    - 426.7. creates a wider benefit going beyond mitigation the impacts of the Appeal Scheme and therefore may contribute towards VSC.

427. Fifth, it is regrettable that the education section 106 agreement could not be agreed with SCC. The need for the school to be provided is clearly evidenced and SCC did not produce any evidence to the inquiry to suggest that the school was not needed. It is important to note that SCC is not opposed in principle to the

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650 Para. 6.22.
651 See para. 10.15.3.
652 See Mr Collins's proof at paras. 3.21. and 3.28.
653 See Mr Collins's table 7.4.
654 CD8.31 at para. 10.4.4
655 CD 8.29 para. 4.138; WAG's closing (see para. 76) provides no evidence to support its case.
656 Mr Collins's proof at para 20.8.
657 See Mr Bradley's proof at paras. 4.2.1.2, 4.2.1.4, 4.2.2.3, 4.3.4.2, 4.3.4.3, 4.3.4.6, 4.3.6 and 6.4.1.3,
658 See Mr Collins's proof App. 7.

provision of a school on the Appeal Site[659]. The concern raised was in relation the timing of the provision, and whether depending on timing there might be an overprovision of school places. It wants flexibility; but factors going beyond just education (e.g.) place-making etc. justify the provision of the school on-site.

Other consideration 9) - reuse of brownfield land, including derelict runway

428. The key points in relation to this matter are as follows.

429. First, as a matter of principle it is well-established that the fact that land in the Green Belt is PDL/brownfield land may constitute, or be part of a case of, VSC. Thus in the case of ***Smech*** (CD11.20) the Court of Appeal upheld a decision of a local planning authority to grant planning permission for scheme for a mixed use development in the Green Belt where the VSC relied on included that the "*site is a previously developed site*" along with, *inter alia*, "*[t]he contribution this site will make to housing delivery to meet the housing need and ensure a 5 year housing land supply*".

430. Second, the facts as regards the PDL nature of part of the Appeal Site are beyond dispute[660]:
   - 430.1. The proportion of the Site which is PDL is agreed in the SoCG (CD12.3, para. 6.1): c. 74 acres (29.9 hectares);
   - 430.2. This constitutes 26% of the total Appeal Site: see Mr Collins's rebuttal at para. 2.2 and accepted by Mr Sherman in cross-examination;
   - 430.3. The Appeal Site is the largest area of PDL in the Green Belt within the GBC area: accepted by Mr Sherman in cross-examination;
   - 430.4. The Secretary of State in the IVC appeal decision in respect of the Appeal Site held that the concrete standing on the Appeal Site constituted PDL: see CD10.4 para. 9 of the Decision Letter and paras. 4, 27, 42, 181 and 201 of the Inspector Report. Moreover, and importantly, both the Inspector and the Secretary of State both held that the PDL nature of the Appeal Site was part of the VSC justifying the grant of permission: see the Secretary of State's decision letter at paras. 11 and 22 and the Inspector's Report at para. 202;
   - 430.5. The overall condition of the PDL areas is low in terms of landscape features[661][662].

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[659] See the letter in Mr Collins's proof App. 6.
[660] Cllr Cross sought to argue that Wisley Airfield did not contain PDL because it fell into the exception to the definition of PDL in the NPPF namely "*where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time*". It is clear though that the runway and other fixed surface has not blended in to the landscape: see e.g. Mr Collins's proof at pp. 26 – 27. This is a hopeless argument and flat contrary to the Secretary of State's IVC decision in respect of the Appeal Site. Moreover, suggestions made by Cllr Cross that what can be seen in the photographs is not hardstanding but sileage are without any merit as the site visit will show.
[661] See Mr Collins's rebuttal at para 3.5.
[662] See Mr Davies' proof at para. 4.131.

431. Third, the significance of part of the Appeal Site being PDL is that the NPPF encourages the re-use of such land, see e.g. para 17 (which recognises as a core principle *"encourag[ing] the effective use of land by reusing land that has been previously developed (brownfield land)"* and 111 ("[*p]lanning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land)*"[663].

432. Fourth, the consultation on proposed changes to the NPPF suggests even stronger support is emerging in national policy for the re-use of PDL: see the relevant passages set out in Mr Collins's proof at paras. 8.87 – 8.90[664]; and see also in this regard the similar theme in the Housing White Paper[665].

433. The development of the Appeal Site is thus in line with the imperative of the NPPF, and also emerging national policy[666], of seeking to ensure the use of brownfield land for housing. The proposed amendments to the NPPF to make clear in national policy that "*substantial weight*" should be given to the benefits of developing brownfield land for housing should be considered in relation to the Appeal Scheme, particularly in the context of Guildford which contains a large amount of greenfield land[667].

434. Fifth, the evidence base for the eGBLP relies on the PDL nature of part of the Appeal Site as part of the justification for the release of the site from the Green Belt and its allocation for housing: see for example the SA (CD8.31) at p 140 which notes that a significant proportion of the Wisley Airfield Site is PDL[668], and see also in the GBCS (CD8.8) para. 24.76 and the overall conclusion which states "[*d]evelopment of the site would not conflict with the majority of Green Belt purposes, indicating it does not lie in the more sensitive parts of the Green Belt in this respect. When combined with the previously developed nature of much of the site, and partly enclosed nature of it, this is considered to justify the loss in openness that will inevitably occur with this site, or any other site on which a new settlement is introduced"*. The housing topic paper (2017) (CD8.29) at para 4.32 notes that GBC's "*spatial hierarchy identifies a brownfield first policy including, where appropriate, previously developed land in the Green Belt*"; and goes on to state (emphasis added):

"**New settlement at the former Wisley airfield**

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[663] In the context of the Green Belt note also para 89 of the NPPF which while not directly relevant has some bearing on the issue of reuse of PDL: see Mr Collins's proof at para 7.67.

[664] Para. 50 of the consultation document states that the Government are "*firmly committed to making sure the best possible use is made of all brownfield land that is suitable for housing, to reduce the need as far as possible to release other land. This could potentially include some brownfield land that sits within the Green Belt that already has buildings or structures and has previously been developed*." Para. 53 continues "*[w]e propose to change policy to support the regeneration of previously developed brownfield sites in the Green Belt by allowing them to be developed in the same way as other brownfield land"*.

[665] See the relevant passages in Mr Collins's proof at paras. 8.110; 8.113 -8.114.

[666] See Mr Collins's proof at para. 20.93 "*Government policy attracts significant support to the re-use of previously developed land. This includes the roll out of Brownfield Land Registers, and focus on the sustainable re-use of surplus public-sector land*".

[667] See Mr Davies' rebuttal proof App. 1 Tab 2.

[668] See also Mr Collins's proof at para. 7.43.

> 4.136 This site is located in a yellow land parcel. Given the partly brownfield element, the sustainability merits of strategic sites due to the infrastructure that can be provided alongside them, the extent to which it can help deliver the homes needed and the NPPF support given to this development option, this site is also included as an allocation in the Proposed Submission Local Plan."

435. Sixth, the appeal proposal also involves the reuse of materials something which itself should attract some weight as Mr Sherman accepted in cross-examination[669].

436. Seventh, whilst the IVC facility is not a "*fall back*" because the Appellant does not intend to build it out (above), it nevertheless benefits from an implemented and extant planning permission. As Mr Davies explains at para. 5.2 of his proof, the IVC facility comprises a composting building measuring 160m x 70m x 11.7m to ridge (approximately 120,550 sq ft) with stacks standing 9.2m above the ridge.[670] The grant of planning permission for the IVC facility demonstrates that development of that scale on the Appeal Site is accepted by the Secretary of State.

437. In conclusion, it is submitted, that the reuse of a substantial area of PDL proposed should carry significant weight in the planning balance and that this makes a substantial contribution towards establishing VSC. This approach reflects the previous approach of the Secretary of State in relation to the IVC appeal on the Appeal Site.

Other consideration 10) - creation of new publicly accessible greenspaces

438. The Appeal Site consists of predominately private land with the only public access being on the rights of way. This is one of the key reasons that the ACV application failed[671].

439. As recorded in paras. 3.45 and 3.46 of Mr Collins's proof the Appeal Scheme will provide: approximately 9.51 (ha) of formal playing field space (7 ha of sports pitches and 2.51 ha non-pitch sports provision) and 6.8 ha of children's playing space (with 1.3ha of equipped playing space and 5.5ha of informal playing space). It will also provide extensive proposals for c. 50 ha of SANG. All of this is new publicly available open space[672].

440. Moreover, as noted above the SANG provision is above standard; as is the playspace[673].

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[669] See Mr Davies' rebuttal at para. 2.14 which in considering the local landscape character area says *"[w]hat is unique … to E2 is that it contains approximately 30ha of previously developed land that has already lost many of its key characteristics, some of which could be reinstated through these proposals".* And note also his proof at para. 8.27 referring to the creation of new public open spaces that will *"[r]eplace and utilise approximately 30ha of previously developed land that is an eyesore, into beautiful open spaces".*
[670] See also CD4.10 at para. 21 of the Inspector's report.
[671] CD13.2 and 13.3.
[672] The recreational benefits of the appeal scheme are also covered in the proof of Mr Davies' proof pp. 48 – 50.
[673] See OR CD6.1, para 10.14.4.

441. Given the above the SoCG recognises "*[t]he Proposed Development would open up land which is presently private and would allow public access to large parts of the site for recreational opportunities. The only publicly accessible parts of the site at present are the identified rights of way*"[674].

442. This provides additional benefit which must be weighed in the balance. In this regard the OR notes[675] that "*according to paragraph 81 of the NPPF, enhancement of the beneficial use of Green Belt should be sought. Examples given are looking for opportunities to provide access and for outdoor sport and recreation … The development includes the creation of a large area of public open space …*".

Other consideration 11) - landscape and biodiversity enhancements[676]

443. **Landscape:** Mr Davies' evidence is that overall the landscape benefits of the appeal proposal outweigh the harms; see especially his Table 4[677]. This view has support from Mr Sherman whose rebuttal says that GBC "*accept that the landscape enhancements to the site outweigh the landscape character impacts of the scheme*[678]." This is clearly a benefit[679].

444. **Ecology:** the evidence of Dr Brookbank was that there will be a net gain in ecological terms on-site from the Appeal Scheme: see her proof at table 13, p 156 and figure 11. Mr Baker did not challenge this. While some third parties argued there would be on-site ecological harm this was not supported by any expert evidence. The SoCG agrees that the Appeal Scheme "*has the potential to provide ecological improvements over the present baseline situation. This is on the basis of habitat improvement across the Site including an area of some 55 hectares which could be managed for biodiversity purposes, in addition to approximately 3.2km of species rich hedgerow*[680]." This is also clearly a benefit.

Other consideration 12) - the sustainability of the proposals, particularly the provision made for ongoing management of the Appeal Site through the WACT and which includes, SANG management, SAMM plus provision, bus provision and community asset management

445. The Appeal Scheme is fully compliant with para. 7 of the NPPF. Para. 7 identifies that there are three dimensions to sustainable development: economic, social and environmental. In terms of an economic role the planning system should contribute to building a strong, responsive and competitive economy by ensuring

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[674] CD12.3 p 27; the public open space created will be open to the public in general and accessible by those in the east of the Borough, and it is larger than Stoke Park in Guildford.
[675] CD6.1 para. 10.4.13.
[676] CD6.1 para. 6.20; and Mr Sherman's answers in XX; the SoCG also notes "*here are environmental and ecological benefits arising from the extensive open spaces and mitigation measures associated with the proposed development. which may benefit local environment*".
[677] Proof p. 50.
[678] See para. 10.
[679] Mr Sherman's rebuttal

that sufficient land of the right type is available in the right places and at the right time to support growth and innovation. A social role would support strong, vibrant and healthy communities by supplying housing required to meet the needs of present and future generations, and an environmental role that contributes to protecting and enhancing the natural, built and historic environment.

446. The sustainability credentials of the Appeal Scheme are considered in detail above in relation to:

446.1. The way in which sustainability was key to the design of the Appeal Scheme under Main Issue 8: character and appearance;

446.2. Transport sustainability, including walkability, cycling and public transport under Main Issue 5;

446.3. The SANG under Main Issue 2;

446.4. Landscape and biodiversity enhancements under VSC Factor 11) above;

446.5. In relation to social sustainability and

446.5.1. the provision of affordable housing under VSC Factor 7) above;

446.5.2. the creation of new publicly accessible greenspace under VSC Factor 10;

446.6. In terms of the economic aspect of sustainable development under SVC Factors 3) and 4);

446.7. The WACT.

447. The detailed submissions on each of these aspects of the case are not repeated here but these matters are prayed in aid of an overarching submission which is made here namely that the Appeal Scheme would result in sustainable development as defined by the NPPF and this is one of a number of VSC that justifies the grant of planning permission. The Appellants thus very deliberately describes the Appeal Scheme as being for "*a New Sustainable Settlement*"[681].

448. Importantly, GBC and the Appellant are agreed, see the SoCG (CD12.3, pp. 26 – 27), a number of "*Key Benefits*" relevant to the three dimensions of sustainable development. Thus:

448.1. Economic Role: the delivery of a number of direct and indirect jobs; gross additional household spending of many millions of pounds per annum, additional employment space and the delivery of significant infrastructure improvements;

448.2. Social Role: provision of on-site services and amenities and infrastructure (including schools, open space, healthcare facilities etc.) associated with a sustainable new settlement; the very significant provision of affordable housing; and

448.3. Environmental Role: numerous ecological benefits onsite and the opening up of private land for recreational opportunities.

[681] See e.g. Mr Collins's proof at para. 1, p. 5 in the Core Case of the Appellant and indeed throughout the Appellant's proofs.

449. It must also be recalled here that the eGBLP has subjected the Appeal Site to a series of SAs[682] which have provided a key part of the evidence base for the proposed allocation in what is now draft Policy A35. Further the eGBLP evidence base contains a number of other assessments of the sustainability credentials of the Appeal Site including, as discussed above, the GBCS produced by Pegasus for GBC.

Other consideration 13) – flood risk mitigation at Ockham Interchange

450. The delivery of the Site accesses shown on plan (ref. 0934-SK-005F CD 1.13.5) will via detailed design stages required under the Highways Act, enable existing flood risk issues on Ockham Lane to be alleviated, providing additional benefits to the existing road users. The report prepared by WSP included at App. 9 to Mr Collins's proof the sets out the associated mitigation and benefits associated with the delivery of highways improvements at Ockham Interchange. This will clearly have associated benefits to existing road users, and is therefore a benefit. Indeed, one third party, Mrs Boothby referred in her statement to existing flooding and said this was a real issue for local people. The Appeal Scheme deals with this.

Other consideration 14) – local policing

451. The financial provision for the police also provides some benefit[683]. The Appeal Site is located within the Send, Ripley, Wisley, Ockham, The Horsleys, The Clandons & Effingham Neighbourhood Policing Area. Following the closure of Ripley policy station, this area is presently served from Guildford Police Station. Surrey Police's representation of February 2016 seeks a number of measures, all included in the section 106. This includes resourcing for policing/ staff, a police car and also space in the Community Building on the Appeal Site. The latter may be seen as a wider benefit in terms of provision of extra local police facilities.

3.12.4. Conclusions on Main Issue 12

452. It is the Appellant's case that the material considerations in support of the Appeal Scheme clearly outweigh the totality of the harm that would result from the scheme. The requisite VSC are thus present.

4. Overall conclusion

453. In overall conclusion the Appeal Scheme is a *"plan led"* form of development, *"full square"*[684] compliant with Policy A35 of the eGBLP which is at an advanced stage; and should be given significant weight. The Appeal Scheme is key to the overall spatial development strategy of the eGBLP and is strongly supported by the

[682] See the summary in Mr Collins's proof at paras. 7.30 – 7.43; and see CD8.31.
[683] See Mr Collins's proof p. 215 and his oral evidence.
[684] To use Mr Collins's language in his oral evidence.

eGBLP evidence base – which is extensive. It is a site that has been identified for release from the Green Belt, and for a new sustainable settlement in successive versions of the eGBLP going back to 2013. It is a unique site, containing the largest amount of PDL in the borough's Green Belt, and there is no viable alternative site for a new sustainable settlement. Any harm resulting from the Appeal Scheme in addition to "*definitional*" Green Belt harm would be limited. The totality of harm that would result from the Appeal Scheme is very clearly outweighed by the considerable benefits that the Appeal Scheme would secure (which include significant housing, affordable housing, job creation, economic growth, upgrades to local infrastructure, education, new public open space, landscape and biodiversity enhancements) together with the other material considerations that support the Appeal Scheme. There are therefore VSC that justify approving the Appeal Scheme and we ask that in due course planning permission be granted.

JAMES MAURICI Q.C.
HEATHER SARGENT

LANDMARK CHAMBERS
180 FLEET STREET
LONDON
EC4A 2HG
Friday, 20 October 2017

APP/Y3615/W/16/3159894
LAND AT WISLEY AIRFIELD
HATCH LANE, OCKHAM GU23 6NU

CLOSING STATEMENT ON BEHALF OF THE APPELLANT

HERBERT SMITH FREEHILLS LLP
Exchange House
Primrose Street
London EC2A 2EG