

LAND SOUTH OF GREEN ROAD, WIVELSFIELD GREEN

Appellant's Closing Submissions

Introduction

1. For all the many documents before you, sir, as we close this inquiry the issues between the main parties have become narrow. Unless there is a “*strong reason*” under §11(d)(i) NPPF to refuse permission in relation to the Local Green Space (“**LGS**”), the parties agree that the appeal should be allowed and permission granted (strikingly, the Council does not mention this critical piece of common ground even once anywhere in its closing submissions).
2. The roadmap for answering that remaining question is as follows:
 - (a) The Appellant and Council accept that the scheme's access road passes through the LGS.
 - (b) Pursuant to NPPF §108, “*policies and decisions for managing development within a LGS should be consistent with national policy for Green Belts set out in chapter 13 of this Framework*”.
 - (c) We agree with the Council that the road comprises “*local transport infrastructure*” with a demonstrable need for its LGS location. In consequence, we agree that it is the kind of development which can *in principle* be brought forward causing no harm at all to the LGS under §154(h) NPPF. The only question is whether there is something *particular* about this access road which takes it out of that general position. There is not, not least because its detailed design and landscape mitigation/management would all remain in the control of the Council should outline permission be granted.

(d) If the access road falls into §154(h)(iii) NPPF, then the further steps in disposing of the appeal are agreed between the parties, i.e. there is no “strong reason” to refuse permission under §11(d)(i), the §11(d)(ii) balance favours permission (as Mr Dorfman has confirmed) and so **permission should be granted (on an agreed basis with the Council)**. Again, remarkably, albeit agreed, the Council does not mention this agreed point in its closings.

(e) If the access road falls outside §154(h)(iii), the scheme then includes (at least an element of) inappropriate development in the LGS. The question then is whether the scheme’s overall benefits “*clearly outweigh*” its harms, including harm to the LGS. If they do, the test at §153 NPPF is satisfied, very special circumstances are deemed to exist, and again permission should be **granted**.

3. Beyond the LGS (to which we return below), most of the important points in this appeal are **agreed**. In particular, the Council and Appellant agree that:

(a) Housing supply in Lewes has collapsed. The Council cannot demonstrate a 5-year housing land supply (“**5yhls**”) – it stands at only 2.77 years. The position on affordable housing is equally dire: only 45% of need has been delivered in the first five years of the LHNA period (2020/21 to 2024/25), leaving a shortfall of 792 affordable homes.¹ These are not marginal failures. They are catastrophic.

¹ AH SoCG (CD 6.4), §9.8.

- (b) A step-change in future supply is required. Yet there is no certainty as to if or when a new local plan might be adopted, let alone when any housing it allocates might actually be delivered on the ground. The people of Lewes cannot wait.
- (c) This scheme would deliver up to 150 homes, 40% of which would be affordable, that² is up to 60 affordable homes for families in desperate need.
- (d) The scheme would also deliver weighty additional benefits: genuine public access to the LGS - enabling the community to use and enjoy land that would otherwise remain inaccessible - together with land for education and community use, meaningful economic benefits, and BNG exceeding the statutory minimum. These are not trivial additions. They are major public gains being brought forward in a sustainable location, and one which avoids any impacts at all on the patchwork of high-level legal and policy designations that covers this district.
- (e) In short, if this Council is ever to begin *addressing* its shortfalls not of tens or hundreds, but **thousands** of market and affordable homes, this is precisely the sort of scheme it must start approving – a sustainably located site which does not affect any of the patchwork of higher-tier statutory and national policy designations that covers the district.

4. We close our case under six headings:

- (a) The plan-led system in Lewes is broken.

² P SoCG (CD 6.1), §5.3.

- (b) The development is sustainably located.
- (c) The benefits of the scheme are weighty.
- (d) The development is not inappropriate development in the Local Green Space.
- (e) The harm to the landscape will be limited and localised.
- (f) Striking the balance.

The plan-led system in Lewes is broken

- 5. As we explained in opening, this part of East Sussex has been let down by the planning system.
- 6. Years go by – whole decades pass – national policies come and go, but through it all, this Council has managed to keep its head firmly in the sand.
- 7. The Council's Local Plan (Joint Core Strategy)³ was adopted in May 2016, over a decade, pre-LHNA, and six iterations of the NPPF ago. Its preparation began long before the first NPPF was adopted in 2012. Even at adoption, the plan was predicated on accommodating just 275 dpa against an identified need of 345. Under-delivery was **baked in** from the start. That figure - 275 dpa - is now a mere fraction of current need under the standard method, which stands at 687 dpa. In that context, Mr Dorfman was clearly right to accept in XX that the Local Plan

³ CD 7.1.

is both *technically* out of date (by virtue of footnote 8 and §11(d) NPPF) and *substantially* out of date.

8. What's more, Part 2 of the Local Plan (Site Allocations and Development Management Policies),⁴ adopted in February 2020, draws settlement boundaries premised on the housing provision figures in the Joint Strategy. Policy DM1 then purports to protect land (which is all countryside) outside those boundaries. But NPPF §187 speaks only of “recognising the intrinsic character and beauty of the countryside”, a lower threshold. As Mr Dorfman rightly accepted in XX, policy DM1 is therefore inconsistent with national policy.
9. The scale of housing shortages in this part of East Sussex is staggering. Mr Dorfman fairly accepted that Lewes is “*nowhere near*” meeting either affordable or market housing need. It is in that context that Lewes District Council has been designated under section 62A of the Town and Country Planning Act 1990. That failure has real consequences for real people, to which we return below.
10. Opportunities for growth are severely constrained in Lewes district, and particularly in sustainable locations which are unaffected by any high-level environmental designations, flood risk or coastal erosion.
11. 56% of the district lies within the South Downs National Park, which is afforded the highest level of protection in both law and policy. Even more of the district is within the setting of this National Park and so is also afforded protection. Land outside the National Park or its

⁴ CD 7.2.

setting – like the appeal site – is (as Mr Dorfman agreed) sequentially preferable in landscape terms to most of the district.

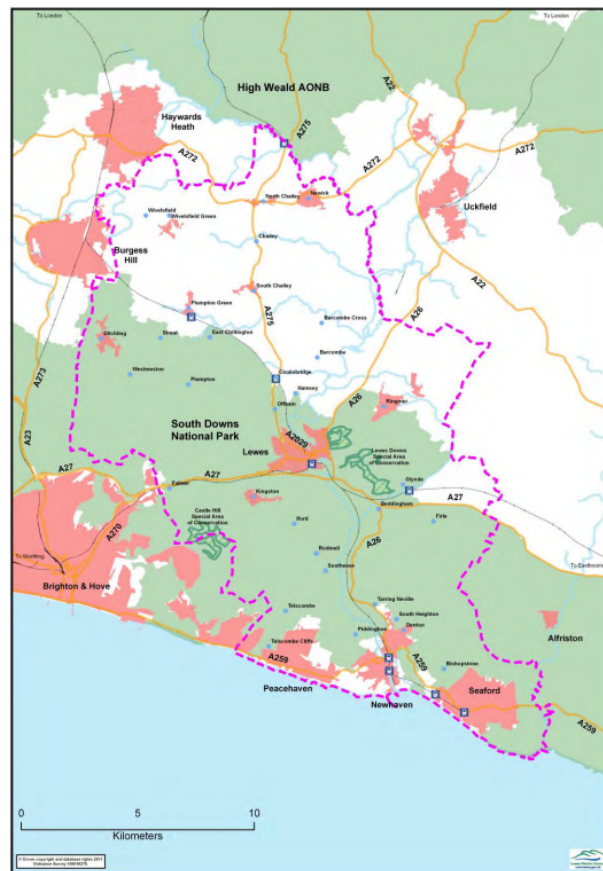


Figure 1- Characteristics of Lewes district from p20, Lewes Local Plan (2016)

12. Furthermore, there is a rich patchwork of other designations across the district including 16 SSSIs, 115 SNCIs, two nature reserves, 35 conservation areas, 1,700 listed buildings, and 100 Scheduled Ancient Monuments.⁵ None of those are affected in any way at all by the appeal scheme.

13. The upshot is clear. Without an up-to-date Local Plan, if the Council is to come anywhere close to meeting housing need, greenfield land on the edge of sustainable settlements outside

⁵ CD 7.1, Lewes Local Plan, p.22.

the National Park must be released. Existing settlement boundaries must be breached.⁶ Mr Dorfman accepts that this is inevitable – he said that brownfield land alone takes the Council “*nowhere near*” meeting its targets. He also accepts that if that is to happen, better that development comes forward without impinging on any of those designations, and we do not.

14. As Mr Dorfman confirmed in EIC, the Council has downgraded its assessment of weight to be attributed its spatial strategy from “*moderate*” to “*limited*” to account for all the above - that accords with the Appellant’s position.

15. On day 1, members of the public (e.g. Dr Kay for CPRe) pointed to various brownfield sites around Lewes that could play a role in meeting the district’s housing need. But the agreed evidence does not bear that thesis out. Not even close. The Council has reviewed its brownfield capacity many times over many years (see e.g. CD13.16 at §1.22). It does not, as Mr Dorfman accepted, have enough brownfield land for even a single year’s housing land supply. Mr Dorfman accepted in XX what this Council has confirmed (as have many planning inspectors) for years: that the Council’s housing need cannot be met on brownfield land alone. He suggested that intensification might help bridge the gap, but ultimately conceded he had “*absolutely no evidence*” for that proposition.

16. The Council’s IPSHD (March 2020)⁷ is another acknowledgment that, to facilitate the delivery of housing, existing settlement boundaries must be breached. Its explicit purpose was to “*facilitate the delivery of new housing by providing a clear and consistent approach to the assessment of development proposals on such sites over the period from 11 May 2021 until the adoption of the new Local*

⁶ P SoCG (CD 6.1), §4.6.

⁷ CD 7.7.

Plan” (§3.2) via the application of eight criteria. Nonetheless, it hasn’t worked, i.e. it is not materially improved housing delivery. The current 5-year housing land supply speaks for itself.

17. In Mr Dorfman’s PoE, he explained that the scheme meets all of the IPSHD criteria except 2 (on scale) and 7 (on whether a scheme makes efficient use of land and responds sympathetically to the existing character).⁸ In XX, he narrowed his approach to 7 accepting that the scheme makes the best and most efficient use of land and is e.g. being brought forward at an appropriate density. Local character is addressed later.

18. As to scale, Mr Dorfman told the roundtable that the scheme was “*in the right location, but it’s too big and would give the village problems*”. That was assertion without any evidence. Mr Dorfman agreed in cross-examination that the scheme is commensurate with Wivelsfield’s role as a settlement, with its local infrastructure, with its services and facilities. There is no evidence to support this concern about scale. On the contrary, Officers have accepted 80 homes as commensurate with Wivelsfield’s capacity to accommodate growth, and an Inspector nearby accepted that a scheme of 96 homes was appropriate in scale – there is no evidence from Mr Dorfman to explain why those nearby schemes are acceptable in terms of scale whilst this is not. In any event, the ultimate scale of the scheme is a question for Reserved Matters.

19. In any event, the IPSHD should have limited weight because it is not a Local Plan document or SPD (and so has not been scrutinised and adopted in the same way). Furthermore, it is out of date. This was the conclusion reached by the Inspector in the nearby Ditchling Road appeal at §43;⁹ and, if anything, the IPSHD is even more out of date three years on.

⁸ CD 9.5, §5.19 – 5.27.

⁹ CD 10.4.

20. There is no prospect of this serious situation changing any time soon. The Council's attempts to replace its outdated plan have spanned years. A high-level Issues and Options consultation took place in 2021; four years later in December 2025, a further Regulation 18 consultation followed.
21. A Regulation 19 consultation was due in Summer 2026, but Mr Dorfman confirmed it has slipped to September 2026, with submission to the Ministry now planned for December 2026 and adoption in 2027. Given the Council's track record, that timetable looks, with respect, optimistic. And December 2026 represents a cliff-edge: miss that deadline, and the plan falls under an entirely new plan-making regime, with no indication of how long that would set things back. In any event, from 1 April 2028 this Council will cease to exist.
22. Further, the emerging plan faces obvious challenges (challenges which are, Mr Dorfman confirmed, already the subject of "*discussions*" with MHCLG). It proposes to deliver under half of its identified need of 15,004. It remains to be seen whether the Ministry will allow such a plan to go forward in examination given these low figures. What they show is that the Council is not even *attempting* to meet its housing need through the plan-led system. The plan-led system in Lewes has not merely stalled, it has been abandoned. There is genuine uncertainty as to if and when this Council will *ever* adopt a plan.
23. The gravity of this Council's planning failures is now formally recognised. Lewes District Council has been designated under sections 62A and 62B of the Town and Country Planning Act 1990 for its poor decision-making on major applications and the number of appeals allowed. That designation is itself an indictment of the local planning system in this area. It is not just a procedural footnote - it is an express finding by the Secretary of State that the Council's development management performance has fallen below the standards the

Government expects. The designation confirms what is already apparent from the evidence before this Inquiry: that the plan-led system in Lewes has comprehensively failed and that this Council's approach to decision-making on schemes like this one has been, and remains, inadequate.

24. That context is directly relevant to the weight to be given to the Council's case on this appeal.

It reinforces the imperative for the decision-maker - in this case, the Inspector - to apply the national policy framework rigorously and to ensure that much-needed housing is not frustrated by the very decision-making failures that led to the designation in the first place. The social objective of the Framework at §8(b) — to support strong, vibrant and healthy communities by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations — is (as Mr Dorfman accepted) being failed in Lewes. The designation under sections 62A and 62B is the clearest possible acknowledgment of that failure.

The site is sustainably located

25. As the Council and the Highways Authority accept, the appeal site is sustainably located within the meaning of NPPF §110 and §115, with a range of local facilities within reasonable walking and cycling distance. It is agreed that these include a primary school, convenience store, post office, village hall, and pub, all within a 2-10 minute walk. The village centre is just a five-minute cycle away. Indeed, the DfT connectivity tool shows that the site is in the top 20% in the district in terms of public transport accessibility.

26. In terms of transport links, the main parties all agree that:

- (a) The nearest bus stop, on Eastern Road, is just 200 metres from the centre of the appeal site. It is served by the 168 Village Rider, an off-peak, pre-bookable local service to and from the village hall.¹⁰
- (b) A further two bus stops on Green Road, approximately 560 metres to the northwest, are served by four routes: the 149, 166, 167 Village Rider, and 168 Village Rider. These connect to Lewes, Haywards Heath, Burgess Hill, Wivelsfield Green, and Wivelsfield.¹¹
- (c) Two additional bus stops, approximately 1.3 km from the site along the B2112, provide services to Crawley, Haywards Heath (including the station), Burgess Hill, and Brighton. Haywards Heath is a major railway station offering frequent, fast, direct services to London, Brighton, and Gatwick Airport.
- (d) Finally, Wivelsfield Railway Station is within a 15-minute cycle ride of the site via local roads. This station also provides onwards access via public transport to Brighton, London Victoria, and Eastbourne. Plumpton Station is also accessible via bus from the site.¹²

27. For this reason, it is unsurprising that part of the site (the northern parcel) was identified as being potentially suitable for development in the Land Availability Assessment.¹³

28. In the existing Local Plan, Wivelsfield is classified as a service village and has been classified that way for many years. It is accepted that the Settlement Hierarchy Review Update

¹⁰ H SoCG (CD 6.3), §3.9.

¹¹ H SoCG (CD 6.3), §3.10.

¹² P SoCG (CD 6.1), §2.10.

¹³ CD 13.6, parcel 29 WV.

(December 2024) suggests classifying Wivelsfield Green as a village. However, this report should be afforded limited weight for several reasons. It is part of the evidence base for the emerging Local Plan and so has not yet been examined; nor have the range of outstanding objections been addressed. The report is an incomplete assessment: it does not refer to the village hall. Furthermore, no relevant change of service provision has informed the change - it has been downgraded due to a change in methodology and, in particular, the use of a sustainability multiplier.

29. In any case, given that the Appellant and Council agree that the site is or can be made sustainable within the meaning of the NPPF, the reasons for the suggested downgrade, regardless of weight, are not actually relevant matters in this appeal.
30. It is also agreed between the parties that the appeal scheme will provide a range of accessibility improvements including bus stop improvements, footway improvements where possible to include widening/siding works for Green Road and South Road, the provision of new crossing points and upgrading existing crossing points on Green Road, new pedestrian/cycle link from the site onto East Road, improvement/upgrading of public rights of way across the site, a public transport contribution towards improvement to existing and/or new bus services serving the site.¹⁴

¹⁴ H SoCG (CD 6.3), §3.14.

The benefits of the scheme are very substantial

(i) Affordable housing

31. The scale of the shortfall in affordable housing delivery in this part of East Sussex is dire.

32. The Council and Appellant agree that:

(a) The policy target for affordable housing delivery is 40%. The Council has not come close: gross delivery since 2010 stands at just 27%, an average of 77 homes per year.¹⁵

(b) And that figure flatters the reality. It is *gross* delivery only; it takes no account of losses through demolitions or Right to Buy sales.¹⁶ The 1,158 gross additions to affordable housing stock since 2010 is a best-case scenario, and even that is woefully inadequate.

(c) The picture is bleaker still when measured against actual need. The 2023 LHNA identifies a need of 290 affordable homes per year. Since 2020/21, only 792 gross affordable homes have been delivered against an identified need for 1,450 net dwellings, a shortfall of over 650 homes in just five years.¹⁷ Put another way: fewer than half of the affordable homes needed in this district have been built.

33. The shortfalls in delivery are having, and will continue to have, real consequences for real people. House prices are rising fast here (and are well above national averages and slightly above the South East average). Those on lower quartile incomes now need almost 10 times their annual income to buy a home. As of March 2025, there were 748 households on the

¹⁵ AH SoCG (CD 6.4), §3.1.

¹⁶ AH SoCG (CD 6.4), §3.3.

¹⁷ AH SoCG (CD 6.4), §5.1.

Housing Register. This represents a 17% increase in a single year from 641 households on 31 March 2024 (which was itself a 22% increase from 524 households on 31 March 2023). All the while, the number of households in temporary accommodation in Lewes is rising: Mr Stacey’s evidence is that 78 households are housed in temporary accommodation by the Council, with 53% of those (41 households) having children.¹⁸

34. And that position is only going to get worse. Mr Stacey’s unchallenged evidence demonstrates that 94 homes a year will be delivered moving forward versus a need of 448.¹⁹

35. In this context, Mr Dorfman agreed that Mr Stacey’s comment that “*this poor rate of delivery is nothing short of a social disaster for those who are in acute need and urgently need assistance with their housing*”²⁰ was a “*fair*” one.

36. In contrast, this scheme would deliver up to 150 homes, 40% of which, up to 60 dwellings, would be affordable. To put that figure in context: last year, only 77 affordable homes were delivered across Lewes. A single planning permission here would deliver almost a full year’s worth of affordable housing for the entire district.²¹ In fact, this scheme alone would exceed the district-wide totals for 2010/11, 2013/14, 2014/15, 2016/17, 2018/19, and 2024/25. Mr Dorfman accepted as much in XX. These homes will be used by people on the affordable housing list.

37. On day 1 of the appeal, we heard from local objectors that Wivelsfield is not “*where the need is*”, but, against the backdrop described above, that is not the Council’s position at this appeal. It

¹⁸ James Stacey’s Proof of Evidence (CD 9.4), Executive Summary.

¹⁹ James Stacey’s Proof of Evidence (CD 9.4), §vxiii.

²⁰ James Stacey’s Proof of Evidence (CD 9.4), §6.10.

²¹ AH SoCG (CD 6.4), §8.4.

is agreed that there is an acute national housing crisis and that there is an on-going and pressing need for affordable housing in Lewes District.²² Accordingly, Mr Dorfman explained that it was “*exactly right*” that the weight given to the delivery of affordable housing by the appeal scheme should be at the top of the scale.

(ii) Market housing

38. Since 2012, Central Government’s objective – now at §61 NPPF - has been to significantly boost the supply of homes. That objective represented a **radical** departure from pre-NPPF national policy by making the meeting of housing needs not just a material consideration, but one of particular standing.²³

39. To recognise the importance of that objective, the Secretary of State has attributed very substantial weight to the benefit of delivering market homes. But this Council *cannot* demonstrate a 5YHLS – which is a minimum standard (NPPF §78) - and not by a considerable margin. The Council accepts that its supply stands at only 2.77 years, amounting to a deficit of 1,535 homes. It is common ground between the parties that the extent of the shortfall is *substantial*.²⁴

40. For now, there is no material basis for giving weight to a plan-led route out of this housing crisis. It is agreed that the shortfall can be reduced if planning approval is given, including on land beyond but contiguous to or close to settlement boundaries, and on land or sites not currently allocated for housing in the adopted development plan.²⁵

²² AH SoCG (CD 6.4), §8.1.

²³ *Gallagher Homes Ltd v Solihull MBC* [2014] EWCA Civ 1610 at §8 and §16.

²⁴ P SoCG (CD 6.1), §4.27.

²⁵ P SoCG (CD 6.1), §4.29.

41. The shortfall in the supply of deliverable housing land, and addressing it, are important considerations in assessing the merits of the Appeal Scheme. This was observed by Lord Gill in *Hopkins Homes Ltd v SSCLG* [2017] UKSC 37 at §83.

42. Against this background, Mr Dorfman agreed with the Appellant in XX that substantial weight (i.e. top of his scale) should be given to the provision of market housing.

(iii) Other benefits

43. There are a panoply of other benefits which would be brought about by the appeal scheme. These include:

- (a) The provision of publicly accessible open space
- (b) Land for education/community
- (c) Economic benefits (job creation and local expenditure)
- (d) Environmental benefits/biodiversity net gain (“**BNG**”)
- (e) Sustainably located homes

44. The Council and Appellant agree that moderate weight should attach to benefits (b), (c), (d), and (e).²⁶ Yet Mr Dorfman’s evidence on several of these points is inconsistent with that agreed position.

²⁶ P SoCg (CD 6.1), §5.33.

45. On BNG, Mr Dorfman attributed very limited weight on the basis that BNG is now a statutory requirement. That approach is contrary to *Vistry Homes Ltd v SSLUHC* [2024] EWHC 2088 (Admin), where Holgate J held that meeting the 10% BNG requirement, even though mandatory, represents a genuine improvement in biodiversity, not merely an offset of adverse impacts; thus, meeting the requirement is a benefit. In any event, this Appeal Scheme exceeds the statutory minimum: BNG will be delivered at 11%.
46. On open space, Mr Dorfman attributed only limited weight - again contrary to the agreed position in the PSoCG. At §5.22 of that Statement, the Council accepts that the proposed 16.5 ha of public open space is “*significantly in excess of that required by any applicable policy within the Development Plan*”. Mr Dorfman’s position is difficult to reconcile with that concession. Furthermore, in XX, he sought to justify this by reference to associated harms: “*although you get public open space, it is the harms associated with it that the Local Authority does not support*”. But that approach double-counts: it uses harm to discount a benefit while also weighing that same harm separately in the planning balance. Accordingly, his attributed weight is misconceived.
47. On sustainably located homes, Mr Dorfman’s proof attributed “*neutral weight*”, despite the Council’s agreed position in the PSoCG. Rightly, Mr Dorfman accepted that he should review his conclusion and change his weighting to “*a level of positivity*”.

The development is not inappropriate development within the Local Green Space

48. The scheme includes a vehicular access from Green Road, part of which falls within the LGS.

At the outset, it is important to be precise about what is actually in issue. As Ms Taylor made clear, LGS policy applies only to land within the designation itself, not to development in its setting. Accordingly, when considering whether this development constitutes inappropriate development within the LGS, the relevant question concerns the access road alone, not the provision of housing, s278 works in the highway, or the works within the bridleway area.

49. It is also worth recalling why the access is proposed from Green Road rather than Eastern Road: the Highways Authority opposed an Eastern Road access because bringing that road up to adoptable standard would have required extensive tree loss.²⁷

Policy 7

50. In addressing the LGS issue, it is necessary to consider the provenance and proper interpretation of Policy 7 of the Wivelsfield Neighbourhood Plan. The Neighbourhood Plan was made in 2016, now over ten years ago. For the same reasons that the Local Plan is both deemed out of date and substantively out of date, the Neighbourhood Plan policies share that status - and for the same reasons, that out-of-datedness has a bearing on the weight its policies can attract.

51. It is important to understand what Policy 7 actually says, and what the examining Inspector intended. The policy itself is brief: it designates the land to the south of Green Road and west of Wivelsfield Primary School as Local Green Space. Nothing more. The policy text is deliberately restrained - it is the supporting text at paragraph 5.33 of the WNP which purports

²⁷ See CD9.3b, §4.2 for discussion of the reasons that the Highways Authority gave for discounting Eastern Road.

to add a development management test. That paragraph states that the policy “*will resist all proposals for development unless it can be clearly demonstrated they are minor, they are ancillary to a public recreation use or they are required for utilities development.*”

52. That supporting text is inconsistent with national policy, and with the law, and was not endorsed by the examining NP Inspector. The history is important. The original draft of Policy 7 submitted for examination restricted development in the LGS to uses “*ancillary to the use of the land for public recreational purposes*” or required for statutory utility purposes. The examining Inspector, Mr Jeremy Edge, considered that restriction at paragraph 5.54 of his report (CD13.3) and expressly recommended its removal. He explained that he had “*reservations about the possible effect of the land use planning control that this policy would impose on Site i, as there may be circumstances in the future where development proposals may be forthcoming that would maintain the openness of the land as LGS, but may not necessarily involve uses that would be, 'ancillary to the use of the land for public recreational purposes'.*” In other words, the Inspector recognised that the LGS was never intended to represent a blanket restriction on all development; it was intended to manage development consistently with Green Belt policy, which itself accommodates a range of exceptions.

53. Despite that clear recommendation, the supporting text to the made plan at paragraph 5.33 reintroduced essentially the same restriction the Inspector had removed — purporting to “resist all proposals” unless they are minor, ancillary to recreation, or for utilities. That text was added after the Inspector's review. It does not form part of the examined and endorsed policy, and it does not carry the same weight.

54. Furthermore, the restriction in the supporting text is inconsistent with national policy in the same way that was found to be impermissible in *Lochailort Investments Ltd v Mendip District Council* [2020] EWCA Civ 1259. In *Lochailort*, the Court of Appeal confirmed that LGS development-management policies must be "consistent with" national Green Belt policy — meaning substantively the same. A policy that restricts development in LGS to minor works, works ancillary to recreation, or utility works is plainly more restrictive than the Green Belt policy framework in Chapter 13 of the NPPF, which permits (among other things) local transport infrastructure that preserves openness and does not conflict with Green Belt purposes: §154(h)(iii). On the approach in the WNP supporting text, a scheme could satisfy all of the §154(h) exceptions and yet still be resisted because it is not "minor" or "ancillary to recreation". That is the very elevation of LGS policy above Green Belt policy that *Lochailort* held to be impermissible. And — as we return to — this is the error that has infected Mr Dorfman's approach to the LGS throughout.

55. The consequence is that Policy 7 of the WNP, properly interpreted, does no more than apply the national policy framework for Green Belts to the designated LGS — i.e. the framework at NPPF §§108, 153, and 154. If the development is not inappropriate under §154(h), there is no LGS policy bar. If the development is inappropriate but the §153 balance is passed, there is equally no LGS policy bar. The supporting text at paragraph 5.33 cannot lawfully impose an additional or more restrictive test than the NPPF itself provides for.

56. It follows that insofar as the Council relies upon the restrictive language of paragraph 5.33 of the WNP to argue that the access road should be refused, that reliance is misplaced. The access road falls within the §154(h)(iii) exception (as we have demonstrated above). Policy 7, on its proper interpretation, does not stand in the way.

57. Turning to national policy then, the Appellant's position is that the proposed access road does **not** constitute inappropriate development within the LGS because it falls within the exception in NPPF §154(h) in that:

- (a) The development constitutes “*local transport infrastructure which can demonstrate a requirement for a [LGS] location*” (§154(h)(iii));²⁸
- (b) It is a form of development which would “*preserve its openness*” (§154(h)); and
- (c) does “*not conflict with the purposes of including land within it*” (§154(h)).

58. The Council's primary case is the access road **would** constitute inappropriate development within the LGS. Respectfully, that position has been based on a basic misunderstanding of the key policies.

(i) The §154(h) exception

59. Mr Dorfman accepted in XX that the access road within the LGS comprises “*local transport infrastructure*” which could fall within NPPF §154(h)(ii) and also that there is an accepted need for “*green belt [LGS] location*” for that aspect of the development. However, his position in his written evidence was different, and his thinking evolved during XX.

60. The Council's case on §11(d)(i) hinges on §154(h). If the exception is met, the access road is **not** inappropriate development in the LGS and, as the Council now accepts, following Mr

²⁸ The Appellant also contends that the works also constitute “*engineering operations*” (§154(h)(ii)).

Dorfman’s evidence, the appeal should succeed, and permission should be granted. Put another way, the Council cannot invoke §11(d)(i) unless it can show that §154(h) does **not** apply. That is because there can be no “*strong reason for refusal*” under §11(d)(i) in circumstances where the exception in §154(h) is met; in such a case the NPPF would direct that that part of the development would not be ‘*inappropriate development*’.

61. Despite the importance of this gateway question, strikingly, Mr Dorfman failed to engage with or analyse the application of the §154(h) exception *at all* in his written evidence. His proof does not assess whether the access road is “*local transport infrastructure*”, whether it “*can demonstrate a requirement for a Green Belt location*”, or whether openness and Green Belt purposes are preserved. Instead, he proceeded on two erroneous assumptions:
62. First, in EIC he explained that there were various elements of inappropriate development including the access road, loss of tranquillity, loss of what the LGS looks like, business and activity generated by the access road (eg from the lighting). However, none of that is development – the only element of allegedly inappropriate development is the access road.
63. Second, Mr Dorfman assumed that because the road passes through the LGS and changes it, that “*therefore*” constitutes a strong reason for refusal (see his proof at §5.38 and §4.14). In other words, his written evidence bypassed an analysis of §154(h) and proceeded on the premise that change means harm and harm equates to a strong reason to refuse planning permission under §11(d)(i) NPPF.

64. That approach is flawed. As the Knutsford appeal decision²⁹ makes clear, LGS policy inherently accommodates change - even major change - provided it falls below the relevant threshold. The capacity for change is, to use Ms Taylor's phrase, "*baked into the policy*". This principle was affirmed by the Supreme Court in *Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council* [2020] UKSC 3, where a mine was held not to constitute inappropriate development because it could be remediated and the site returned to an open state. The critical question, therefore, is not whether there would be *change*, it is whether the nature and extent of that change would cross the relevant thresholds in the circumstances of this case. If the thresholds are not crossed, the access road passes through the LGS without causing any harm to it at all - a proposition Mr Dorfman accepted in XX.

65. This is an important point of methodology. Because, again, the Council has **accepted** that the Knutsford approach to thresholds is correct, and represents the right approach in policy and law. However, the question of thresholds is not assessed anywhere either in its written evidence, or (most strikingly) in its closing submissions. In the end, this is a fatal flaw in the Council's LGS analysis. It does not engage with the threshold question. It does not address the Knutsford decision, nor does it grapple with the principle in *Samuel Smith* that development can be appropriate notwithstanding significant physical change, provided openness is preserved. Instead, the Council proceeds (time after time) as though the existence of change is itself dispositive. It is not. As Ms Taylor explained, change is 'baked into' the policy — §154(h) exists precisely because certain categories of development, including local transport infrastructure, are capable of being brought forward within the Green Belt and LGS without constituting inappropriate development. The question is always one of degree. Even now as the inquiry closes, the Council has not explained why this *particular* access road, in this particular

²⁹ CD 20.11.

location, with the proposed landscape mitigation, crosses the threshold. It has simply assumed that it does.

(ii) The preservation of openness

66. The starting point, as Ms Taylor made clear, is that LGS openness is an entirely different planning concept from landscape openness. An open landscape, in terms of the LVIA process, might have few trees or enclosing features. Whereas an open parcel of green belt/ LGS could be heavily wooded, yet still ‘open’ in terms of green belt policy. Openness, when considering the green belt, is the absence of built form or urban sprawl – not the absence of natural features such as trees. With that distinction in mind, the Appellant’s position is that while the main issues are (i) visual and (ii) the movement of traffic, the access road would preserve LGS openness. It would not exceed the threshold of acceptability.

67. The Council contends that the proposed access road would not preserve openness. That position, with respect, is difficult to sustain, for several reasons.

68. First, the Council itself previously concluded that the proposed access road **could** preserve openness. The Council’s own pre-application advice (CD1.1) states:

“Noting that local transport infrastructure is not regarded as inappropriate development and that enhancement of beneficial use of local green space is seen as positive, it is likely that a sympathetically designed scheme would not warrant a direct refusal due to impact on the local green space and, as such, para. 11 d (i) would be disengaged.”

69. Mr Dorfman offered no rationale to justify departing from that considered advice. His only basis was his approach to national policy, which he now accepts was wrong (see below). Nothing has changed since the advice was given: the LGS designation is the same, the NPPF policy framework is the same, and the nature of the proposed access road is unchanged. There is simply no justification for the Council’s change of position.

70. Second, the physical characteristics of the proposed access road support the Appellant's position. As Ms Taylor explained, the road itself is two-dimensional and would not cause any spatial harm. Although traffic has visual and spatial aspects, these are temporary because vehicles move through the road and there is no provision for parking on the access road itself. Importantly, the access road is restricted to the northwestern portion of the site, where the LGS is closest to the built environment. The access road should be experienced against that context. The raw daily vehicle figures cited in the LPA's closings and the TA must be placed in context. The 642 figure is spread across a minimum 12-hour period. That equates to roughly one vehicle per minute — comparable to a quiet residential street. More importantly, those vehicles would be *moving through* the access road; there is no provision for parking or stationary traffic. The baseline comparison of zero is misleading: it treats the LGS as hermetically sealed from its surroundings, ignoring that Green Road already carries traffic directly adjacent to the LGS. The relevant question is not whether any traffic would be introduced, but whether the nature and degree of traffic would cause the access road to fail the openness threshold in §154(h). On any reasonable assessment, intermittent vehicular movement on a screened, two-dimensional road surface does not cross that threshold.

71. Third, the road would be screened with soft landscaping to reduce the perception of movement, headlights, and traffic. As Ms Taylor indicated, soft landscaping does not impact Green Belt (and accordingly LGS) openness because it is a natural feature. This is not the situation in *Samuel Smith*, where the landscape mitigation involved earthwork bunds (man-made engineered features designed to provide acoustic and landscape mitigation). Here, the mitigation is simply the planting of hedgerows and field trees, which the landowner could plant tomorrow without permission. Planting does not affect LGS openness. For this reason, the access road and its associated landscaping would have no enclosing effect on the LGS.

72. Fourth, no houses are proposed on the LGS. The vast majority of the open space is retained and, indeed, opened up for beneficial recreational use.

73. Fifth, the detailed treatment of the access road, including its surfacing and landscaping, is a matter for reserved matters, and no detailed consent is being sought now. These details remain within the LPA's control. As the Council's own Officers recognised, there is nothing more that the Appellant could do at this stage to demonstrate that the access road preserves openness. There is no reason why the general principle, that local transport infrastructure *can* preserve openness (a principle which the Council accepts) should not apply here.

74. Sixth, Mr Dorfman himself accepted in oral evidence that the appearance of openness will “*come back*” to the LGS over time. Any impact on openness would therefore be temporary. He suggested the LGS would be “*different*”-but that assumes LGS cannot accommodate change. It can, and Mr Dorfman accepted as much.

75. As Ms Taylor summarised: “*there is nothing presented by the Council to suggest that there is anything about this particular road that takes it beyond the type of transport infrastructure that §154 takes as being not inappropriate*”.

76. Accordingly, the proposed access road would preserve openness in accordance with §154(h).

(iii) The relevant purposes

77. NPPF §154(h) requires development to preserve openness and “*not conflict with the purposes of including land within it*”. In the Green Belt context, those purposes are set out at §143. For LGS,

§108 requires development-management policies to be “*consistent with national policy for Green Belts*”. It follows that the “*purposes*” in §154(h), when applied to LGS, are the §143 Green Belt purposes, and nothing more.

78. Mr Dorfman ultimately accepted this in XX. But his position evolved during the inquiry, and was initially built on a series of errors.

79. Mr Dorfman initially misidentified the reasons for which the LGS was designated. At §3.9 of his proof, he stated that the LGS was designated because of, among other things, its “*tranquillity and sense of rural value*” - a position he maintained in oral evidence. However, as Ms Taylor noted, the text he relied upon was not endorsed by the examining Inspector; it was added by the parish after the Inspector’s review. It is not policy. The Council now, rightly, (albeit only after Mr Dorfman had finished giving his evidence) concedes that the LGS was **not** designated for its tranquillity.

80. Mr Dorfman then treated the “*purposes*” in §154(h) as deriving from NPPF §§106 and 107. On that basis, he imported his erroneous understanding of the reasons for designation into §154(h), treating them as a freestanding development-management test, separate from, and additional to, the Green Belt policy framework. He used this construction to argue that LGS warrants **greater** protection than the Green Belt, describing the designations as “*radically different*” and explaining that the “*NPPF is asking us to operationally treat LGS as Green Belt but there is much more to say about LGS than the Green Belt. It should be distinguished from Green Belt and Green Belt purposes*”. That was the premise of his case.

81. That premise is wrong. NPPF §§106 and 107 concern the *designation* of LGS, **not** development management within it. Those paragraphs are irrelevant to the assessment of development proposals. NPPF §108 makes clear that only Green Belt policy governs that question. In other words, Mr Dorfman conflated designation with development management, a basic misapplication of national policy.
82. The consequence of Mr Dorfman’s approach is that LGS would receive *greater* protection than the Green Belt. He is, in effect, asking the Inspector to apply an additional layer of scrutiny - assessing the alignment of the access road with tranquillity, beauty, and/or reasons for the LGS designation - that would not apply if the land were Green Belt. On Mr Dorfman’s approach, a scheme could be both (a) appropriate in the Green Belt, but (b) inappropriate in the LGS.
83. The Court of Appeal in Lochailort Investments Ltd v Mendip District Council [2020] EWCA Civ 1259³⁰ has confirmed that this approach is impermissible. LGS development-management policies must be “*consistent with*” national Green Belt policy, meaning they must be substantively the same. On Mr Dorfman’s approach, the effect would be to treat the same piece of development **differently** depending on whether it arises in the LGS versus the Green Belt. LGS cannot be elevated above Green Belt. Thus, a policy that affords LGS greater protection than the Green Belt is not consistent with the NPPF - in particular §108 - it conflicts with it.
84. This position is reinforced by the language of §108 itself. Where the NPPF intends LGS to be treated *inconsistently* with Green Belt policy, it says so expressly. Footnote 45 to §108 provides: “*Excluding provisions relating to grey belt and previously developed land as set out in chapter 13*”. This is an

³⁰ CD 17.5.

expressio unius est exclusio alterius situation: the policy has explicitly identified the inconsistencies that apply. The §154(h) exceptions are not among them. It follows that §154(h) must be treated as fully applicable to LGS.

85. The LPA's grammatical point at §27 of its closings is a red herring. Even reading "its" and "it" as referring to the LGS, the question remains: what are the "purposes of including land" within the LGS? §108 NPPF answers that question by requiring consistency with Green Belt policy. The "purposes" in §154(h) must therefore be the §143 Green Belt purposes, applied consistently. The alternative — importing the site-specific reasons for designation under §107 — would mean that every LGS has its own bespoke development management test, varying from designation to designation. That is the very inconsistency Lochailort prohibited. As for the burial ground hypothetical: a burial ground that harmed wildlife richness on an LGS designated for that reason would not "escape" scrutiny — it would fall to be assessed against the Green Belt purposes including safeguarding the countryside from encroachment (§143(c)). The hypothetical does not demonstrate a gap in protection; it demonstrates that the Green Belt framework is already capable of addressing harm to the qualities that make the land special.
86. The Council has since sought to distance itself from Mr Dorfman's evidence through its line of questioning of Ms Taylor. However, that line of questioning, which substitutes LGS purposes into the §154(h), again falls foul of the test in Lochailort in that it elevates LGS policy above Green Belt policy.
87. As such, the Council's case on whether there is a "strong reason" for refusal under §11(d)(i), the very core of its case at this appeal, has been built on the wrong test.

88. Turning then to whether the development would conflict with §143 purposes, Ms Taylor explained that the only potential conflict was with NPPF §143(c): “*to assist in safeguarding the countryside from encroachment*”. On analysis, however, there is no such conflict. The LGS is central to the village, enclosed by built form on either side - it is not an open expanse of countryside extending outward from the settlement. The access road would not cause urban sprawl into the wider countryside. Site context is also important: Green Road already carries traffic adjacent to the LGS, so its presence is already felt within the site. The access road would not introduce traffic into a green area where there is presently no perception of vehicular movement. Similar reasoning was applied by the Inspector in the Knutsford decision, where a wider road servicing a larger scheme also was consistent with §143(c).

89. Accordingly, the Appellant’s case is that the proposed access road constitutes local transport infrastructure which can demonstrate a requirement for an LGS location, would preserve openness, and would not conflict with the purposes of including land within it (§154 and §154(h)). It is therefore **not** inappropriate development in the LGS, and there is no strong reason to refuse permission under §11(d)(i) NPPF.

90. For completeness, that conclusion is reinforced by the direction of travel in national policy. The consultation draft NPPF (December 2025) proposes to amend the §154(h) test so that local transport infrastructure need only “*minimise impacts on openness*” rather than “preserve” it. That confirms the Appellant’s position, i.e. the policy allows for significant change, requiring only that steps are taken to mitigate impacts as far as possible - whether by design, layout, location, or the application of landscape mitigation. The policy is, of course, only draft. But it demonstrates that the Government understanding of the relevant policy to align with the Appellant, not Mr Dorfman.

The harm to the landscape will be limited and localised

The appeal site

91. The appeal site comprises approximately 21 hectares of land, situated to the south-east of Wivelsfield. It lies outside of, but directly adjacent to, the defined settlement of Wivelsfield, as per Local Plan policy DM1.³¹ In particular, it is located directly adjacent to the settlement edge and contiguous with the existing residential dwellings off Green Road and Eastern Road.
92. The parties agree that the site is not a valued landscape³², nor subject to any statutory or non-statutory landscape designations such as National Park, National Landscape or any other locally defined landscape designations.³³
93. As Mr Atkin explained, the appeal site can be defined as three areas:

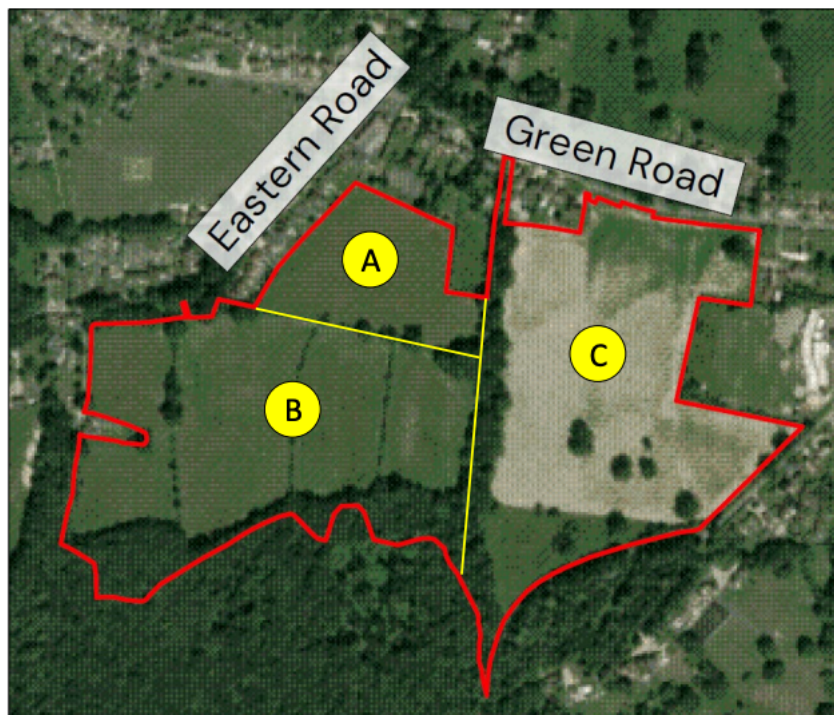


Figure 2 - Plate 2 from Mr Hind's PoE (CD 9.2b)

³¹ L SoCG (CD 6.2), §2.2.4.

³² L SoCG (CD 6.2), §2.2.1.

³³ L SoCG (CD 6.2), §2.2.2.

94. Parcels A and B include the proposed residential development. No residential development is proposed in Parcel C. The parties are agreed that the eastern part of the appeal site, between the public bridleway (WIV/30/1) and Wivelsfield Primary School, is included within the LGS. As highlighted above, it is agreed that the appeal scheme does not propose built development in this policy area, aside from a section of the proposed highways access off Green Road in the north-western portion of the appeal site.³⁴

Methodology

95. Unlike the Appellant's witness, Mr Atkin, Mr Hird has **not** prepared a detailed LVIA to support his evidence on landscape and visual matters, nor has he undertaken a "*systematic*"³⁵ appraisal of landscape and visual effects. This is an approach which leaves an "*unfortunate gap*"³⁶ in the Council's evidence: his conclusions are not adequately evidenced, undermining their weight. His specific approaches to landscape and visual effects are discussed in more detail below.

Landscape effects

96. The Appellant's case is that, in respect of the appeal site and proposals, there would be no direct physical impacts beyond the appeal site itself. Those changes would be moderate adverse falling to minor-moderate adverse in the longer term.

97. Consequent changes in landscape character would also be limited, with no perceptible or material changes in character from areas of the landscape around Wivelsfield and Wivelsfield Green. This includes the landscape context to the north of Green Road, to the east of

³⁴ L SoCG (CD 6.2), §2.26.

³⁵ Mr Hird Proof of Evidence (CD 9.6), §1.3.2.

³⁶ Mr Atkin Rebuttal Proof (CD 9.2c), §2.3.2.

Wivelsfield (beyond bridleway WIV/30/1), to the west of Wivelsfield (beyond the recreation ground), or south of Purchase Wood and West Wood (or from within these areas of woodland unless on the very northern edge). This is due to the careful incorporation of appropriate landscape mitigation.³⁷ Furthermore, the physical separation between Wivelsfield and Wivelsfield Green would remain.³⁸

98. With respect, Mr Hird's conclusions should be given limited weight for several reasons.

99. First, Mr Hird's approach is premised on the breaking down of landscape character into a series of specific and individual landscape receptors rather than adopting an LVIA which looks at landscape as a whole. This "*salami-slicing*" approach is misconceived because: (i) it magnifies particular issues at the expense of a more balanced overview and (ii) can lead to the double counting of issues. For example, the felled trees along the bridleway, considered as a landscape resource, are already covered and assessed in the AIA³⁹ and their habitat and ecological value is addressed in the Ecological Assessments. To treat them again as a separate landscape resource would risk double-counting.

100. Second, Mr Hird's reliance on settlement pattern is misplaced. He asserts that the built environment of Wivelsfield Green West has a characteristic linear settlement pattern, citing the Lewes Landscape Sensitivity Assessment at paragraph 4.61 (CD 15.4, page 26). But as Mr Atkin notes, that pattern is often described as a negative, detracting characteristic. It is not protected in policy. Furthermore, as Mr Atkin explained in the roundtable session, the linear character is confined on the basis of the residential areas along Green Road and Eastern Road;

³⁷ Mr Atkin Proof of Evidence (CD 9.2b), §2.1.8.

³⁸ Mr Atkin Proof of Evidence (CD 9.2b), §2.1.8.

³⁹ CD 1.29.

outside those frontages, there is little perception or understanding of any linear form. The Cala Homes site has added to the depth of the settlement, but the perception of the depth is not influential and the linear character of Green Road is maintained. Critically, as Mr Atkin explained, there are no unifying attributes requiring this pattern to be maintained, nor any discernible impact on the ground if the pattern were not replicated. In any case, the appeal proposals will similarly be contained by the existing settlement and green infrastructure and the perception of depth will not be apparent from Green Road or Eastern Road. As to DM25, the linear settlement pattern is a descriptive characteristic, not a protected policy constraint. As Mr Atkin explained, there are no unifying attributes requiring this pattern to be maintained, and no discernible impact on the ground if the pattern is not replicated. The Cala Homes development has already added depth to the settlement. In any event, this is an outline application — the detailed layout is for reserved matters, and there is no reason why a sympathetic layout could not be achieved. As to DM27, the Council's complaint that no "detailed landscape design" has been provided simply reflects the outline nature of the application. It would be premature and inappropriate to provide detailed landscape design at this stage. The landscape strategy set out in the ILMP demonstrates that landscape design has been integral to the scheme from the outset. The felling of four trees within a dense canopy does not give rise to a DM27 conflict when the landscape strategy proposes reinstatement of historic field boundaries and comprehensive new planting.

101. Third, the suggestion that Green Road and Hundred Acre Lane are tranquil is difficult to sustain - the western portion of the site is close to the existing settlement edge, which reduces tranquillity. The effect of Green Road and its existing traffic "*cannot be partitioned off*". Nor can the effect of children in the school playing field during breaktimes, which affects the tranquillity of the eastern part of the site.

102. Fourth, time-depth *is* in fact recognised by the submitted LVIA. The mitigation strategy is clear in its aim to retain the ‘scale and pattern’ of the landscape, particularly through the retention of green infrastructure, including field boundaries and associated hedgerows. Furthermore, as Mr Atkin highlighted in the landscape roundtable session, there is an intention to reinstate “*historic field patterns*” in the eastern parcel as part of the landscape strategy for this area. Mr Hird criticised this reintroduction as creating a “*historic pastiche*”; however, those features are already present on the appeal site.

103. Fifth, on vegetation, Mr Hird overstates the impact of the four felled trees given the density of the tree canopy.

Visual impacts

104. It is agreed that there would be no significant visual effects on medium or long-distance views.⁴⁰ The difference between the parties concerns short-range views.

105. In short, Mr Atkin’s evidence is that:

- (a) The visual effects are not considered to be significant overall.
- (b) The greatest level of visibility will be from the PROWs across the appeal site, or from locations directly adjacent to the site (see viewpoint 8, 10, 11, 12 and 13).
- (c) The comprehensive mitigation strategy will evolve over time and reduce the magnitude of impacts and significance of effects. By year 15, these effects will all have reduced to either minor adverse, minor to moderate adverse, or moderate to major adverse.

⁴⁰ L SoCG (CD 6.2), §2.6.1.

(d) Visibility along the Sussex Border path toward the appeal site would be very limited.

Approaching from the north, this is due to various screening elements, including mature trees and vegetation on the northern edge of the settlement and from the south due to extensive tree and woodland cover provided by West Wood. While there may be some partially screened views and limited visual effects along the section adjacent to the appeal site, these would occur where the route already relates to the settlement rather than the wider landscape.

106. Mr Hird's evidence in the roundtable session predominantly focussed on the proposed access road. His primary argument is that the greatest visual impact from the whole scheme (including the houses) would be felt at the war memorial and on bridleway W/30 – from where the houses would not even be seen.

107. On the war memorial, he explained that his opinion was that its backdrop is a still and calm scene, providing an opportunity for quiet reflection. The vehicular movement and recreational activity that would be introduced into that scene would “*alter the visual composition considerably*” by distracting the eye and diminishing the sense of connection visitors would have with the memorial. However, his analysis overlooks that views from the war memorial would be screened by landscaping. Vehicular movement would be hardly perceptible from that location. Further, as Mr Atkin explained, it is impossible to disassociate the restricted view from the war memorial from the general views of its context which include the existing influence of Green Road and its traffic. Much is made in the LPA's closings of the alleged failure to consider the war memorial. The LVIA viewpoints were agreed with the ESCC landscape officer as proportionate and reasonable. The War Memorial is located on Green Road, immediately adjacent to the highway — it is not a detached receptor in the open landscape. It experiences

traffic from Green Road as its primary context. Views from the memorial are encompassed within the LVIA's broader assessment of the Green Road corridor and the viewpoints that capture the northern edge of the LGS. Mr Hird's own photograph (at §3.3.12 of his proof) confirms that the view is already one set against the context of the road and its traffic. The idea that impacts from the memorial were "omitted" is flat wrong: the LVIA's assessment of the northern LGS boundary captures the relevant visual effects from this location.

108. On bridleway W/30, Mr Hird's evidence in the roundtable session was that the proposed access road would go east-west through this route creating a gap in cover (necessitated by the felling of four trees) and giving users views of the road. Furthermore, he indicated that the road platform would be 2-3 metres tall and so would appear as built form relative to the bridleway. Finally, he suggested that the tree lining of the bridleway is not so dense that this road would not be perceived through it. He supported his evidence with the addition of a new viewpoint from W/30 bridleway facing eastwards (noting that the LVIA includes viewpoints 10 and 13 here but they both face westwards).

109. Mr Hird has fallen into error in several respects here. The road platform would be only half a metre tall - it would not read as built form when viewed from the bridleway. Furthermore, as viewpoint 9 in Mr Atkin's proof demonstrates, this section of the bridleway is already a transitional zone, tempered by existing built environment features including housing and close-board fencing. The proposed road would not appear inconsistent with that suburban backdrop.

110. The photograph Mr Hird relies upon (at §3.3.8 of his proof) was taken not from the bridleway itself, but by *stepping off* the bridleway into the LGS, beyond the treeline - where there is no formal public access. Remarkably, Mr Hird offers no assessment of the scale or impact

of the view from that location. This is symptomatic of a wider issue. Mr Hird has introduced several additional viewpoints of his own devising, notwithstanding that the LVIA viewpoints were agreed with the ESCC landscape officer as proportionate and reasonable. This is a striking departure from that agreed approach. In any event, as Mr Atkin demonstrates in his rebuttal proof, these new locations add nothing: they provide no additional information or greater understanding of the relevant area. The suggestion that the LVIA is deficient because it does not include views from every compass point along Wivelsfield 30 misunderstands the purpose of an LVIA. The agreed viewpoint methodology, settled with the ESCC landscape officer, was designed to capture representative views. Viewpoints 10 and 13 do precisely that. As Mr Atkin's rebuttal evidence demonstrates, the bridleway in this section is already a transitional zone tempered by built environment features. Mr Hird's new viewpoint facing east was not taken from the bridleway itself but by stepping off the path beyond the treeline into the LGS, a location without formal public access. In any event, views facing east from W/30 would look into the LGS itself, where no houses are proposed. The access road would cross the bridleway at a single point; the "severance" of the canopy involves four trees within a dense and continuous belt of vegetation. That limited intervention does not fundamentally change the character of the route.

111. Next, Mr Hird posited in the roundtable session that the presence of the road (whilst noting that it is "*inherently not an offensive thing to see*") and vehicular movement would "*split*" the LGS. While this would be screened by a tree-belt, he argued that this would have the effect of foreshortening views and diminishing the perception of open fieldscape because the space north of the proposed road is "*relatively small*" and would create "*quite a small enclosed space*".

112. Mr Atkin's evidence on this point is revealing. The road will be screened not by a dense tree-belt, but by a hedgerow with intermittent trees. That distinction matters. It means that

views from the war memorial will not be blocked, the eye can, as Mr Atkin put it, “*sail over the top*”. The hedgerow would not create a sense of enclosure or foreshorten views. The attractive sloping topography and the oak trees at the southern edge of the site would remain visible, irrespective of the access road. More generally, the proposed access road would enhance the ability to see views across the LGS by opening up a section of the hedgerow at the bell mouth.

113. The LPA’s case that the proposed planting in the LGS would only be required in consequence of this scheme and so causes harm to the landscape misses the point of what LGS openness is about, and misconceives the nature of the proposed landscaping. As Mr Atkin explained, the screening comprises a hedgerow with intermittent trees — not a dense tree-belt. This form of soft landscaping does not block long views; it filters them. The attractive sloping topography and the oak trees at the southern edge of the LGS would remain visible from the school. Nor does the planting harm openness: as Ms Taylor explained, soft landscaping (hedgerows, field trees) is a natural feature that does not impact Green Belt openness. This is not *Samuel Smith*, where engineered earthwork bunds were in issue. The planting here is of a kind the landowner could carry out at any time without planning permission. In any event, the Council’s argument proves too much: if any planting within the LGS inherently harmed openness, then the LGS designation would freeze the land against any form of landscape management. That cannot be right and is not the policy position.

Conclusion on landscape and visual impacts

114. For the reasons already explained, the evidence of Mr Atkin should be preferred to that of Mr Hird. The scheme’s impacts on character and appearance would be at a **relatively low level**, with **localised effects**, and would **reduce over time**.

Striking the balance

115. If the access road meets the requirements of §154(h)(iii) – on which see above – permission should be granted on an agreed basis applying §11(d)(ii) NPPF. That is because we all agree on that basis that there would be no strong reason for refusal under §11(d)(i), and the scheme’s adverse effects would neither significantly nor demonstrably outweigh its very substantial benefits.

116. If §154(h) is not met, the question becomes:

Do the scheme’s benefits clearly outweigh its harms?

If they do, permission should be granted: §153 NPPF. In those circumstances, the test is passed and very special circumstances are deemed to exist. There is no *further* test, e.g. the scheme’s benefits do not need to be “remarkable” or “unusual” in of themselves.⁴¹ That they clearly outweigh the scheme’s harms is enough.

117. On one side of the scale:

- (a) The break-down in the plan-led system in Lewes has had real consequences for real people. The parties agree that for many years this Council has not come anywhere *remotely* close to meeting its needs – for market housing or for affordable housing.
- (b) As we have shown you, these shortfalls aren’t marginal. They’re staggering. We aren’t talking about missing the mark by tens or even hundreds of homes. We’re talking about over a thousand.
- (c) In Lewes, the plan-led system has broken. And our case is simple: there is no short or medium-term prospect of it being fixed. The real issue before this Inquiry is whether

⁴¹ *R. (Wildie) v Wakefield MDC* [2013] EWHC 2769 (Admin) at §29.

the many people in need now should have to wait another 3 years, 5 years, 10 years, or however long it takes Lewes to actually *adopt* a new local plan, and for sites to come forward in accordance with that plan. Or whether urgent problems require more urgent solutions.

- (d) For this reason, the Council and Appellant agree the highest level of weight should be given to the scheme's market and affordable housing offers.
- (e) Beyond these substantial benefits, further considerations attract moderate weight. First, the proposal would deliver genuine public access to the LGS, enabling the community to use and enjoy land that would otherwise remain inaccessible. The importance of that should not be understated. Second, the development would provide sustainably located homes. In a district where the plan-led system has comprehensively failed, it cannot be assumed that housing will come forward in sustainable locations, yet it is agreed that this scheme does precisely that. These homes would be within minutes' walk of local facilities including shops and a primary school, and this should be afforded appropriate weight. Third, the development would secure land for education and community use, deliver BNG at 11% - exceeding the statutory requirement-and generate meaningful economic benefits.
- (f) Finally, the scheme makes provision for 0.5 hectares of land within the LGS for the potential expansion of the primary school, a reservation which ESCC Education has expressly supported. In addition, the scheme will generate CIL contributions which can be directed towards education infrastructure, and the school has already received ringfenced contributions from other development approved in Wivelsfield.

118. On the other side of the scale, there is no credible evidence of harms of anything like that order.

119. You have two categories of harm: harm to the landscape and conflict with the spatial strategy.⁴² It is noted that Mr Dorfman's proof of evidence also refers to (i) harm to the LGS, (ii) harm to the village built environment and character, and (iii) harm and suburbanisation to PROWs. However, with respect, these are all aspects of landscape harm and so Mr Dorfman has effectively double-counted. The Council refers to NPPF §135 but does not explain what specific conflict it alleges. The scheme is in outline — questions of detailed design, layout, and landscape treatment are properly matters for reserved matters. There is no basis for concluding at this stage that the development would fail to function well or would not be sympathetic to local character. The Development Framework Plan demonstrates that the scheme can accommodate appropriate density, layout, and landscape treatment. §135(c) itself expressly states that being sympathetic to local character should not prevent "appropriate innovation or change (such as increased densities)." The point adds nothing to the Council's landscape case.

120. Further, the Council's attempt to carve out settlement pattern as a freestanding harm attracting separate weight is an exercise in double-counting. The settlement pattern is an aspect of landscape character; any harm to it is already captured within the assessment of landscape effects. There is no justification for counting it twice. In any event, as explained above, the linear pattern is not a protected characteristic, and the appeal scheme would not materially diminish its perception from Green Road or Eastern Road.

121. We now agree only limited weight attracts to the Council's spatial strategy.

122. As to landscape harm, yes, the appeal site comprises fields, including LGS, which means that there will be impacts on local character and appearance. However, where greenfield development is required to deliver much-needed housing in the district, those impacts are inevitable. And, indeed, as Mr Atkin's evidence demonstrates, that harm is ultimately localised

⁴² There is also no heritage harm – see Heritage SoCG, CD6.5).

and limited: there would be no direct physical landscape impacts beyond the site itself, while short-range visual effects would not be significant overall. The Council's reliance on §187(b) adds nothing to its case. §187(b) requires decision-makers to "recognise" the intrinsic character and beauty of the countryside — it does not prohibit development on countryside land. The parties are agreed that greenfield land on the edge of sustainable settlements must be released if the Council is to come anywhere near meeting housing need. That is precisely the situation §187 contemplates: recognition, not prohibition. In any event, the landscape harm arising from this scheme is already fully assessed and weighed in the planning balance. §187(b) does not provide an additional ground for refusal; it simply frames the consideration that is already taking place.

123. It is noted that the Council has downgraded the weight given to landscape harm from “*substantial*” to “*significant*”. But ultimately, whether the landscape harms should have moderate, substantial or significant negative weight, the answer is the same: given the disastrous scale of shortfalls in delivery of housing of all kinds in Lewes, and the failures to plan to address them, this scheme’s benefits are **profound** - far more profound than this Council wishes to accept publicly. The imperative to bring them forward on a sustainable site is compelling, and they clearly outweigh what will only be a localised impact to this appeal site and its immediate surroundings.

124. In the end, the Council overstates the impact on PROWs. The access road would cross Wivelsfield 30 at a single point, not along its length. The crossing would be designed with appropriate pedestrian priority — this is a matter for detailed design at reserved matters stage. The "traffic junction" language is hyperbole: what is proposed is a simple crossing point, not a roundabout or signalised junction. As to the Sussex Border Path (Westmeston 28b), Mr Atkin's evidence is that visibility of the development from this route would be very limited. The proposed improvements to PROWs — including upgrading of surfaces and new

connections — are agreed benefits that would enhance the network's accessibility. The Council's attribution of significant weight to PROW harm is disproportionate and again, insofar as it overlaps with the landscape harm already counted, risks double-counting.

125. For those reasons, the balance weighs decisively in favour of granting permission. We ask you to allow the appeal.

ZACK SIMONS KC
POPPY KEMP

Landmark Chambers
180 Fleet Street
London EC4A 2HG

9TH JULY 2026