

**CLOSING SUBMISSIONS**

**ON BEHALF OF WORTHING BOROUGH COUNCIL**

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**Introduction**

1. The Appeal Scheme conflicts with policy 13 of the Worthing Core Strategy (“WCS”) and policies SS1, SS4 and SS5 of the emerging Local Plan (“eLP”). It would result in substantial harm to the landscape and visual amenity of the area both at a local level and in respect of the wider landscape and setting of the South Downs National Park (“SDNP”); cause less than substantial harm to a number of designated heritage assets<sup>1</sup> and would result in a severe cumulative impact on the local highway network. As a result, the adverse impacts of the Appeal Scheme significantly and demonstrably outweigh the benefits, and permission should be refused.<sup>2</sup>
2. At the outset, it is important to note that this appeal takes place in the context of an eLP which has proceeded over the last six years to its final stages. A Local Plan Inspector (“LP Inspector”) has been appointed; has engaged with the Council; issued Matters, Issues and Questions on which all parties have had the opportunity to comment; held hearing sessions and provided advice as to the steps which the Council needs to take to make the plan sound and legally compliant.<sup>3</sup>
3. It is important also to note the fundamental contradiction at the heart of the Appellant’s case. Mr Cairnes, on behalf of the Appellant, has rightly pointed out in his examination of the Council’s witnesses that it is not the role of this Inspector to test the soundness of the eLP, yet at every turn, the Appellant’s evidence calls into question that very issue.

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<sup>1</sup> It is common ground that the Appeal Scheme will also cause less than substantial harm to designated heritage assets. The level of harm is agreed in the Heritage Statement of Common Ground (**CD C5C3**).

<sup>2</sup> NPPF, para 11d (**CD D1**).

<sup>3</sup> See para 1 of the LP Inspector’s advice letter of 9 December 2021 (**CD E6**).

The Appellant's witnesses tell you that the eLP has not been informed by the assessment required by paragraph 11b of the NPPF; that the Council's approach to unmet need does not accord with paragraph 35c of the NPPF; that the eLP policies impose a 'blanket restriction' to land outside the built-up boundary contrary to the NPPF; that policies SS4 and SS5 illegitimately apply a stricter test than that applied through the NPPF to National Parks and are wholly unjustified in light of the housing needs in the borough; that the housing requirement is unsound because it does not meet objectively assessed needs and that the eLP represents the very antithesis of the NPPF's objective of boosting significantly the supply of housing.

4. Those are the very issues which the LP Inspector has considered. He has heard the arguments that have been explored before this inquiry and he has considered whether the constraints in Worthing justify the proposed housing requirement or whether the Council should look again at additional sites, delete policies SS4 or SS5 or amend the boundaries of the built-up area or the local gaps. Had he considered that the principles of those policies, or the boundaries to which they relate were inconsistent with the NPPF, it is inconceivable that he would not have spelled out those concerns in his advice to the Council. Indeed, the PPG requires LP Inspectors to "*identify any fundamental concerns at the earliest possible stage in the examination*",<sup>4</sup> which is precisely what his advice letter does.<sup>5</sup>
  
5. The Council invites this Inspector to read the LP Inspector's advice in full and, in particular, to reflect on his view that none of that work he has asked the Council to undertake in respect of the Sustainability Appraisal should "*result in the need to prepare new evidence or alter any of the justifications that already exist in the evidence base*".<sup>6</sup> The Council invites this Inspector to consider whether a LP Inspector who felt unable, as Mr Tiley suggested, to assess the soundness of the eLP or to understand how the Council had arrived at its housing requirement figure would really give that advice. If he simply could not understand how the Council had reached its conclusions on the housing requirement or the sites to be allocated and those to be protected, would he really say that he was "*generally satisfied that the evidence base as a whole provides a clear,*

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<sup>4</sup> PPG Reference ID: 61-050-20190315.

<sup>5</sup> LP Inspector's post-hearing advice letter, para 1 (CD E6),

<sup>6</sup> Para 8 of the LP Inspector's advice letter (CD E6).

*proportionate and robust basis for the preparation of the WLP”*?<sup>7</sup> Would he really allow the Council to embark on a consultation exercise in respect of wording tweaks to policies SS4 and SS5, only to come back after that exercise and say that, in fact, he had fundamental concerns with the principle or boundaries of those policies but had failed to mention them? The only sensible answer is that he would not. No Inspector would.

6. The Council is entirely satisfied that this Inspector will read that letter with common sense and understand that where the LP Inspector has outstanding concerns, he has raised them openly. The obvious and only inference is that where he does not raise a concern, it is because he is satisfied that there are not outstanding issues of soundness for the Council to address. In respect of the areas where the LP Inspector has accepted that there are no outstanding issues of soundness or legal compliance, it would not be appropriate for an Inspector on a s.78 appeal to go behind those conclusions. The examination process cannot be replicated on a s.78 appeal, which necessarily hears from a narrower pool of stakeholders and does not allow for an overall strategic view of the issues facing the borough and the appropriate balance between them. Whilst the Appellant has sought to denigrate the rigor with which the local plan process has considered the prospect of development on the Appeal Site,<sup>8</sup> this is simply not consistent with the vast suite of technical documents and representations that the Appellant itself provided to him, which sought to persuade him of the merits of this precise development and invited him to delete the protective policies or amend their boundaries to allow for the development of part of Chatsmore Farm.

**Main issues 1 and 2: Whether the Appeal Site offers an acceptable location for development, having regard to national and local policy, the need for housing, the emerging Local Plan and the effect of the development on local green space**

7. Main issues 1 and 2 are inextricably linked, and are dealt with together.
8. The question of whether the Appeal Site offers an acceptable location for development in light of the need for housing must necessarily be informed by an understanding of Worthing’s context.

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<sup>7</sup> Para 3 of the LP Inspector’s advice letter (CD E6),

<sup>8</sup> Mr Hutchison, XX, Day 7 AM.

9. Worthing borough is tightly constrained by an administrative boundary that hugs the town, with the sea to the south and SDNP to the north. Leaving aside the SDNP, for which Worthing Council is not the local planning authority, 92% of its land falls within the existing built-up area boundary.<sup>9</sup>
10. In common with local planning authorities throughout West Sussex, the key issue facing Worthing borough is how to strike the right balance between meeting development needs whilst protecting those parts of the natural environment that are important to the setting, settlement pattern and character of the area. That is not a new issue. As Mr Moody explained, even at the time the WCS was adopted, Worthing was unable to meet the household need or dwelling need identified in the South East Plan.<sup>10</sup>

### Worthing Core Strategy

#### *Conflict*

11. It is agreed between the parties that the Appeal Scheme conflicts with policy 13<sup>11</sup> of the WCS and with the development plan, read as a whole.<sup>12</sup> Notwithstanding that agreement, Mr Hutchison sought in his Proof of Evidence to suggest that the Appeal Scheme is in “*general accordance*” with the spatial strategy of the WCS.<sup>13</sup> In cross-examination, however, Mr Hutchison ultimately conceded that the Appeal Scheme would not accord with either policy 13 or the spatial strategy to which it gives effect.<sup>14</sup>
12. The WCS describes Worthing’s “*precious environment*”<sup>15</sup> and explains that despite being principally urban in character, it contains a number of environmentally sensitive areas. It notes that Worthing’s countryside is of particular importance and specifically identifies areas of “*valuable open countryside*” to the east and west of the borough which “*represent long established breaks in development between settlements*”.<sup>16</sup> The Appeal Site is one of only four of those areas of valuable open countryside which represent a break in development.<sup>17</sup> Section 3 of the WCS explains that “*The town is surrounded by*

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<sup>9</sup> CD E29, para 1.21.

<sup>10</sup> Mr Moody, XIC, Day 6 AM.

<sup>11</sup> Mr Hutchison’s proof, para 7.26 (CD A1).

<sup>12</sup> Mr Hutchison’s proof, para 7.15 (CD A1).

<sup>13</sup> Mr Hutchison’s proof, para 7.16 (CD A1).

<sup>14</sup> Mr Hutchison, XX, Day 7 AM.

<sup>15</sup> WCS, section 2 (CD E1).

<sup>16</sup> WCS, para 2.3 (CD E1).

<sup>17</sup> See the plan on p.18 (PDF20) of the WCS (CD E1).

*high quality landscapes and the protection of the identity and setting of the borough remains a high priority” and that “it is essential...to protect the settlement pattern and where possible enhance the natural environment within and around the town”.*<sup>18</sup> The Appeal Site is an aspect of the established settlement pattern which the WCS deems “essential” to protect. Section 5 sets out the plan’s spatial strategy,<sup>19</sup> which is for development to take place on previously developed land within the built-up area boundary and on one strategic allocation at West Durrington. Outside the built up area, the emphasis is on protecting the natural environment.<sup>20</sup>

13. That objective is given effect through policy 13 and the boundary of the built-up area, which excludes the Appeal Site.<sup>21</sup> The fact that there is no gap policy in the WCS does not reflect any acceptance by the Council that the Appeal Site was unimportant in serving a gap function at the time the WCS was adopted. The Appeal Site was previously designated as a gap in the Worthing Local Plan (2003) and in the West Sussex Structure Plan (2004). However, the Inspector examining the South East Plan (2009), which was in place at the time of the WCS’s adoption, made it clear that gap policies should only be used in Local Plans where gaps between settlements could not be protected by other landscape and countryside policies and there was no gap policy ultimately adopted in the South East Plan.<sup>22</sup>
14. In accordance with national policy, the Council adopted a general countryside policy to protect the important gaps between settlements, namely policy 13. Whilst Mr Hutchison sought to characterise the settlement boundary as “arbitrary” or “crude”<sup>23</sup>, he accepted in cross-examination that its location was based on a balance between housing needs and environmental considerations.<sup>24</sup> Clearly, therefore, the location of the Appeal Site outside the boundary is no accident. In the context of a coastal plain under immense development pressure, its preservation as an undeveloped area of land was, and is, considered vital to the character, setting and natural environment of Worthing.

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<sup>18</sup> WCS, para 3.10, p.21 (PDF23) (CD E1).

<sup>19</sup> WCS, section 5, p.42 - 45 (PDF44 - 47), (CD E1).

<sup>20</sup> WCS, para 5.12, p.43 (PDF 45), (CD E1).

<sup>21</sup> WCS, policy 13, p.98 (PDF100), (CD E1).

<sup>22</sup> Mr Peck XIC, Day 6 AM. See page 58 (PDF70) of the Panel Report (CD K22).

<sup>23</sup> Mr Hutchison, XX, Day 7 AM.

<sup>24</sup> Mr Hutchison, XX, Day 7 AM.

15. Contrary to the suggestion from Mr Hutchison, policy 13 was not designed to protect sites in the “*deep rural countryside*” or those sites that are “*detached or unrelated to the urban area*”.<sup>25</sup> There are no such sites in Worthing, as Mr Hutchison ultimately accepted.<sup>26</sup> All of the sites outside the built-up area are adjacent to the urban area. Adopting his approach, it would therefore be in “*general accord*” with the WCS’s spatial strategy to develop every one of them. That cannot be right, given the WCS’s emphasis on the importance of the remaining gaps.
16. Furthermore, as Mr Peck explained, the Appeal Site is not, as the Appellant claims, ‘*well-related*’ to existing development.<sup>27</sup> To the north, there is open countryside with panoramic views to the SDNP, while to the west of the Appeal Site there is an open field. The existing development on Goring Street to the east is set back across the road, and there is screening landscaping along the boundary of the Appeal Site. The development to the south is across the railway line with a visual break as a result of the school playing field, which is situated directly opposite to the mid-point of the proposed development. It is evident from only a few steps into the site along the public footpath in the south eastern corner of the Appeal Site that the site is far more related to the countryside than the built up area because, as accepted by Mr Self in cross-examination, one’s eye is drawn to the SDNP rather than to existing development.<sup>28</sup>
17. Far from being in “*broad accord*” with the spatial strategy in the WCS, by introducing a large-scale residential development to a site which is designated as countryside that should be preserved and enhanced, the Appeal Scheme would be fundamentally at odds with the strategy.
18. In light of the Appeal Scheme’s conflict with the development plan, read as a whole, it is plain that it is not an acceptable location for development, having regard to the adopted development plan.

*Weight to attribute to the conflict with the adopted development plan*

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<sup>25</sup> Mr Hutchison’s proof, para 7.42 (CD A1).

<sup>26</sup> Mr Hutchison, XX, Day 7 AM.

<sup>27</sup> Mr Peck, XIC, Day 6 AM.

<sup>28</sup> Mr Self, XX, Day 2 PM.

19. The Council recognises that policy 13 of the WCS is out of date. However, that does not mean that the adopted development plan should be set aside or necessarily attributed limited weight. National policy does not prescribe the weight that should be attributed to out of date policies, which will always be a matter of planning judgment.
20. The Appellant’s comparison of the Appeal Scheme with land north of West Durrington is not an apt one. That site was within the built up area boundary and was identified in the WCS as a potential future development area.<sup>29</sup> It is also notable that in contrast to the Appeal Scheme, only four objections to the application were received.<sup>30</sup> In any event, the Inspector must come to his own view of the weight to attribute to policy 13.
21. A key factor informing that exercise will be its consistency with the NPPF. The Appellant would have you believe that the only policy imperative in the NPPF is to significantly boost the supply of housing, and that any policy which has the effect of putting a brake on development is fundamentally inconsistent with national policy. That is not the case.
22. The NPPF recognises that there is a balance to be struck between meeting housing needs and protecting the natural environment. The way that balance is struck will depend on particular local circumstances and is left to local planning authorities.
23. As the Court of Appeal has recognised,<sup>31</sup> just because policies were adopted a number of years ago (in that case, in the 1990s), against a different national policy background and in the context of a different housing requirement does not mean they should necessarily be attributed limited weight. In that case, the court quashed an Inspector’s decision to reduce the weight to a local plan policy because of its age and inconsistency with the “*thrust of NPPF 47 towards boosting significantly the supply of housing*”<sup>32</sup> without recognising that there were important aspects of consistency between the countryside protection policy and the NPPF.
24. As with the countryside protection policy in that case, policy 13 of the WCS is consistent with a number of policies in the NPPF. In particular, paragraph 8 recognises that there

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<sup>29</sup> WCS, para 6.10, p.49 (PDF51) (CD E1).

<sup>30</sup> Mr Peck, XIC, Day 6 AM.

<sup>31</sup> Gladman v Daventry [2016] EWCA Civ 1146 (CD J70).

<sup>32</sup> Gladman v Daventry [2016] EWCA Civ 1146 (CD J70).

are various strands to sustainable development which include protecting and enhancing the natural and built environment, and paragraph 9 explains that planning policies should play an active role in guiding development towards sustainable solutions “*taking account of local circumstances to reflect the character, needs and opportunities of each area*”. Paragraph 11b recognises that there is a balance to be struck between meeting objectively assessed housing needs and that it will not be appropriate, in every case, to meet those needs in full. Paragraph 130 explains that local plan policies should ensure that developments will function well and add to the overall quality of the area and should ensure that development is sympathetic to local character and history, including the surrounding built environment and landscape setting. Paragraph 174 provides that planning policies should contribute to and enhance the natural and local environment, including by recognising the intrinsic character and beauty of the countryside. Recognising the intrinsic character and beauty necessarily involves some response to that recognition, which is inherently a protective or safeguarding one, as recognised by the High Court in De Souza v SSCLG.<sup>33</sup> Paragraph 119 NPPF encourages policy-makers to promote the effective use of land in meeting the need for homes, while safeguarding and improving the environment, in particular by making as much use as possible of previously developed land, which is precisely what the WCS seeks to do by directing development to within the built-up area boundary.

25. Adopting the language of Sales LJ in Gladman v Daventry, there is nothing odd or new-fangled in seeking to encourage residential development in appropriate urban centres and seeking to preserve the openness of the countryside beyond those areas, which is the objective of policy 13. Those objectives were relevant and appropriate when the WCS was adopted and they remain relevant and appropriate now. Policy SS4 of the eLP, which has been tested against current national policy and with which the LP Inspector has raised no in-principle concerns<sup>34</sup>, maintains the spatial strategy established by policy 13. This strongly indicates that the principle of directing residential development towards the built-up area, whilst protecting those areas that are worthy of protection, remains a valid and appropriate policy objective. Policy 13 is the cornerstone of the spatial strategy of

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<sup>33</sup> [2015] EWHC 2245 (Admin), para 32 (CD J69).

<sup>34</sup> Gladman v Daventry, para 42, (CD J70).



the adopted development plan and the Appeal Scheme's direct and fundamental conflict with it should be accorded significant weight.

## Emerging Local Plan

### *Conflict*

26. It is common ground that the Appeal Scheme conflicts with the eLP.<sup>35</sup>
27. Policy SS1 of the eLP sets the spatial strategy for Worthing.<sup>36</sup> The explanatory text to that policy explains that the most significant constraint when considering future development is land availability and that "*there is little scope to grow beyond the current Built Up Area Boundary without merging with the urban areas of Ferring (to the west) and Sompting/Lancing (to the east) and without damaging the borough's character and environment*".<sup>37</sup> The eLP describes the spatial strategy striking a balance between planning positively to meet the town's development needs and protecting and enhancing the borough's high quality environments and open spaces around the town.<sup>38</sup> That strategy is reflected in the policy itself, which sets out the strategy for the different parts of the borough at SS1(d). Other than within the built-up area boundary and the edge of town allocations, the strategy is to protect valued open spaces and landscapes including "*important gaps between settlements*". The Appeal Site is identified as one such important gap.
28. The Appeal Scheme does not comply with any aspect of that strategy and cannot credibly be said to be in "*general accord*" with the strategy embedded in the eLP.<sup>39</sup>
29. Policy SS4 continues the approach of policy 13, in identifying a built-up area boundary and seeking to protect land outside that boundary. In recognition of the fact that "*only small pockets of countryside*" remain in Worthing<sup>40</sup> it has been deemed essential to continue the policy of protection into the new Local Plan. Policy SS4 is key to defining the areas in which development can and cannot be sustainably located.

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<sup>35</sup> Mr Hutchison's proof, para 8.45 (CD A1).

<sup>36</sup> Submission Draft Local Plan, p.48 (PDF48) (CD E2).

<sup>37</sup> Submission Draft Local Plan, para 3.8, p.48 (PDF48) (CD E2).

<sup>38</sup> Submission Draft Local Plan, para 3.10, p.48 (PDF48) (CD E2).

<sup>39</sup> See Mr Hutchison's proof, para 7.86 (CD A1).

<sup>40</sup> Supporting text to policy SS4, para 3.44, p.59 (CD E2).

30. Certain amendments have been made to the built-up area boundary in the eLP to accommodate three allocations that were outside the WCS boundary, as part of the Council's approach of "*leaving no stone unturned*" in meeting as much of its housing needs as Worthing can sustainably accommodate. However, insofar as the Appeal Site is concerned, the boundary of the built-up area is unchanged. Importantly, even in the context of the present national policy framework and the recognised need for housing, the Appeal Site remains outside the boundary.
31. Policy SS4 does not impose a blanket restriction on all forms of development outside the built-up area. With modifications which the LP Inspector has endorsed,<sup>41</sup> the policy is permissive of development that requires a countryside location and of development for entry level housing. The Appeal Scheme's residential use does not require a countryside location and does not propose entry level housing and therefore conflicts with the policy.
32. The decision to continue to place the Appeal Site outside the built up area in the eLP has been informed by a robust and detailed evidence base. As with policy 13, placing residential development on an area designated as countryside such as the Appeal Site, would conflict with policy SS4 and run directly counter to the eLP's spatial strategy.
33. Along the coastal plain from Ferring in the west, to Lancing in the east, the only breaks in the otherwise continuous band of development are at the far west (the Chatsmore Farm and the Goring-Ferring gap sites) and two sites at the far east of the borough.<sup>42</sup> As explained in the eLP, and acknowledged by Mr Self in cross-examination, the breaks in the continuous ribbon of coastal development between Brighton and Chichester are "*few and fragile*".<sup>43</sup>
34. In recognition of the value of these remaining breaks in development,<sup>44</sup> policy SS5 (Local Green Gaps) of the eLP designates certain areas as '*local green gaps*' that are to be protected from development unless certain criteria are met, in order to retain the separate identities of settlements. Chatsmore Farm, which includes the Appeal Site, is designated as one of only two local green gaps at the west of the borough. The explanatory text

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<sup>41</sup> Inspector's advice letter, para 20 (CD E6).

<sup>42</sup> CD E2, page 61.

<sup>43</sup> Submission draft Local Plan, para 3.50, p.51 (PDF51) (CD E2) and Mr Self, XX, Day 2 PM.

<sup>44</sup> Submission draft Local Plan, para 3.50, p.61 (PDF51) (CD E2).

explains that the open areas create a sense of travelling between urban areas and form a critically important component of Worthing's landscape setting.<sup>45</sup>

35. Green gap policies are an important spatial planning tool in West Sussex and reflect the nature of the heavily developed coastal plain with few and fragile breaks in development. Both of Worthing's neighbouring authorities, Adur and Arun, have green gap policies in their local plans, which were adopted in 2017 and 2018 respectively. Worthing's approach to protecting the four gaps within its boundary is part of a strategic approach shared with adjoining authorities to prevent settlement coalescence and protect settlement identity.<sup>46</sup>
36. Even without a specific gap policy in the WCS, planning inspectors have recognised the importance of the areas of undeveloped land at the west of Worthing. In 1963, an Inspector refused permission for residential development within the Goring-Ferring gap on the basis that "*there was continuous development along so much of this south coast that in order to relieve the monotony of this development, if for nothing else, it was most desirable to preserve the breaks that were in it, such as this one. Because there was so much pressure to live in this coastal strip, this should not, in his view, be an excuse for destroying these gaps*".<sup>47</sup> In a 1974 appeal in respect of Chatsmore Farm, the Secretary of State concluded that the grant of planning permission in the 1950s for development south of the railway line made the remaining open land even more valuable as an extension of the wider landscape into the urban area.<sup>48</sup> He recognised that among the people of Ferring, the maintenance of the gap fostered a lively sense of being part of a separate community, rather than an anonymous part of the larger Goring/Worthing amalgam. The number of objections which have been made in respect of this appeal, and the almost continued presence at this inquiry of the MP for Worthing West, Sir Peter Bottomley, confirms that the lively sense of being separate and distinct communities remains unabated among both Goring and Ferring residents. Ms Susan Belton, in her representations on behalf of the Worthing Society, explained that the Appeal Site is "*much more than two agricultural fields*" in the view of local residents.

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<sup>45</sup> Submission draft Local Plan, para 3.52, p.61 (PDF61) (CD E2).

<sup>46</sup> Submission draft Local Plan, para 3.53, p.62 (PDF62) (CD E2).

<sup>47</sup> CD C6B12, page 2.

<sup>48</sup> CD C6A, Appendix 3, page 69.

37. The Appellant seeks to denigrate policy SS5 by claiming that, in fact, there is no gap between Goring and Ferring – only an “*indentation*”. Indeed, Mr Self felt unable even to describe Chatsmore Farm as a “*break*” in development, notwithstanding the fact that his own company has repeatedly described it so.<sup>49</sup> Indeed, in a note on policies SS5 and SS6, CSA clearly recognised that the Appeal Site functions as a noticeable break in urban development extending along the coast which Mr Self agreed was perceptible from adjoining properties; the railway line; Littlehampton Road and the footpath on its southern boundary, and from Highdown Hill in the SDNP.<sup>50</sup>
38. Rather than dancing on the head of a pin as to whether the Appeal Site functions as a gap or a break or an indentation, the Council invites the Inspector to visit the site for himself and to form a view on its function and perception in separating Goring from Ferring. It is notable, though, that the Appellant’s linguistic gymnastics stands in stark contrast to the Council’s simple and consistent position: that the Appeal Site functions as a gap by separating the settlements of Goring and Ferring and that this gap is perceived as such from in and around the site, including from the SDNP, and is important to the settlement pattern and setting of Worthing.
39. Policy SS5 does not set a blanket restriction on development in the green gaps. Rather, subject to the modifications which the LP Inspector has endorsed,<sup>51</sup> it sets a number of criteria with which any development should comply.<sup>52</sup> The Appeal Scheme is in direct conflict with three of the four criteria. It would undermine the visual and physical separation of the settlements; compromise the integrity of the gap and fail to conserve or enhance the benefits of the area’s natural capital. As explained by Mr Duckett, the Appeal Scheme would fill the site from east to west, and occupy the entire stretch of the gap. The currently undeveloped tract of open land would reduce from a depth of 455-490m to just 61-200m.<sup>53</sup> It would leave just an “*apron*” of open land to the north.<sup>54</sup> The open land would be reduced from c.30ha to just c.8ha and the sense of openness and separation

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<sup>49</sup> Appellant’s LVIA, para 5.41, p.39 (PDF42); para 5.45, p.39 – 40 (PDF 43 – 44) (CD A11); Appendix G to the Appellant’s LVIA, paras 3.9 and 3.10, p.7 (PDF89); para 3.19, p.9 (PDF91); para 4.2, p.12 (PDF94) (CD A11).

<sup>50</sup> Appendix G to the Appellant’s LVIA, paras 3.9 – 3.10, p.7 (PDF89) (CD A11).

<sup>51</sup> LP Inspector’s advice letter, para 21 (CD E6).

<sup>52</sup> Council’s Note on the overlap between policies SS4, SS5 and SS6, p.2 (PDF3) (CD E18).

<sup>53</sup> Mr Duckett, XIC, Day 1 AM.

<sup>54</sup> Mr Duckett, XIC, Day 1 AM.

provided by the existing site would be fundamentally undermined.<sup>55</sup> The margin of land between built development and the Ferring Rife would no longer have the character of open agricultural land, but would inevitably be perceived as the landscaped fringe of a housing estate. A comparison between the base photographs and montages, particularly representative VP12, shows that the Appeal Site would no longer be perceived as a break between settlements.<sup>56</sup> There would be no perception from within the site or its immediate surrounds of where Goring ends and Ferring begins. The sense of travelling between urban areas, which is noted in the eLP,<sup>57</sup> particularly along the A529 Littlehampton Road and along the footpaths within the site, would be lost entirely.

40. As to policy SS6, local green spaces, the Council accepts that the LP Inspector has come to the conclusion that Chatsmore Farm constitutes an extensive tract of land which is unsuitable for designation as LGS, in light of paragraph 102(c) of the NPPF. However, it is relevant to note that he expressly agreed with the Council that the site is demonstrably special to the local community and of particular local significance.<sup>58</sup> He reached that conclusion having regard to the detailed evidence and discussions regarding the site and therefore rejected the evidence of Mr Self, who submitted detailed evidence claiming that the site was not demonstrably special or of particular local significance.<sup>59</sup> Undeterred, Mr Self trots out those very same arguments in this appeal.<sup>60</sup> The Appellant's obstinate refusal to accept the reasoning of the LP Inspector is in contrast to the realistic position adopted by the Council, who has accepted the Inspector's conclusions that Chatsmore Farm constitutes an extensive tract of land and indicated that it is unlikely the Council will amend the boundaries of policy SS6 to identify a smaller site.

*Weight to attribute to the conflict with the eLP*

41. Policies SS1, SS4 and SS5 of the eLP are material considerations of significant weight in this appeal. The Council accepts that in light of the LP Inspector's concerns in relation to policy SS6 (LGS), it attracts no more than limited weight.

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<sup>55</sup> Mr Duckett, XIC, Day 1 AM.

<sup>56</sup> Appendix I, PDF page 107-108 (CD A11).

<sup>57</sup> Submission draft Local Plan, para 3.52, p.61(CD E2).

<sup>58</sup> LP Inspector's advice letter, para 9, (CD E6).

<sup>59</sup> Pegasus Reg.19 submission, paras 12.6 – 12.15, p.41 – 43 (PDF 44 – 46) (CD C6E2); and Pegasus Matter Statement, para 2.11.3, p.17 (PDF 30) (CD C6E4).

<sup>60</sup> Mr Self's proof, paras 6.23 – 6.33, p.21 – 23 (PDF 24 – 16) (CD C5B1).

42. The full breadth of evidence underpinning the eLP is not before this inquiry. However, the Council invites the Inspector to have particular regard to the Issues and Options Consultation Report;<sup>61</sup> the Regulation 18 draft Local Plan;<sup>62</sup> the Inspector's initial letter to the Council<sup>63</sup> and the Council's response to that letter;<sup>64</sup> the representations submitted on behalf of the Appellant;<sup>65</sup> the Council's Topic Papers 1 and 2;<sup>66</sup> DtC statement<sup>67</sup> and Housing Matter Statement;<sup>68</sup> the Inspector's Matters, Issues and Questions;<sup>69</sup> the Note on the overlap between policies SS4 – SS6;<sup>70</sup> and the Inspector's post-hearing advice letter.<sup>71</sup>
43. A review of those documents will confirm the detailed evidence and justification underpinning the eLP and the rigorous testing to which it has been subjected. It will reveal that the Council has left no stone unturned in seeking to meet as much of the housing need as it can sustainably deliver; provide context for the significant constraints faced by the Council and its neighbouring authorities in meeting those needs; and reveal that it will never be possible to meet them in full even if every blade of grass in Worthing was built over, as Mr Hutchison accepted.<sup>72</sup> It will also reveal that the arguments run by the Appellant in this appeal have all been run before the LP Inspector.
44. Understanding the competing submissions that have been made by the Council and the Appellant to the LP Inspector will inform your understanding of the extent to which those competing arguments have been accepted or rejected by the LP Inspector. Having undertaken that exercise, it will be clear to this Inspector that the Appellant's evidence to this inquiry simply recycles arguments that have not been accepted by the LP Inspector. Notably, the Appellant urged the LP Inspector to delete or modify the boundaries of policies SS4 and SS5 and to conclude that the housing requirement figure

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<sup>61</sup> **CD E28**

<sup>62</sup> **CD E29**

<sup>63</sup> **CD E25**

<sup>64</sup> **CD E14**

<sup>65</sup> Reg 19 representation (**CD C6E2**); Pegasus Matter Statement (**CD C6E4**).

<sup>66</sup> **CD E13** and **E17**

<sup>67</sup> **CD E32** and **CD E33**

<sup>68</sup> **CD E22**

<sup>69</sup> **CD E19**

<sup>70</sup> **CD E18**

<sup>71</sup> **CD E6**

<sup>72</sup> Mr Hutchison, XX, Day 7 AM.

was not sound on the basis that additional housing needs could be met on the Appeal Site. That he has not made any such recommendations to the Council is telling.

45. Mr Tiley's attempts to obfuscate the clear advice from the LP Inspector were transparent and designed only to further the Appellant's case in this appeal. He appeared to suggest, for example, that notwithstanding the absence of any reference to paragraph 11b of the NPPF in the post-hearing advice letter, the LP Inspector had, in fact, accepted the Appellant's repeated arguments before him that the eLP was unsound because there had not been any assessment of the eLP with that test in mind. That an Inspector would conceal such a major failure in the soundness of the eLP in his advice to the Council is entirely implausible.
46. The reality is that the Appellant has taken every opportunity to persuade the Inspector that the Council's housing requirement is not justified in light of the OAHN, and that the Council had failed to apply paragraph 11 b of the NPPF or comply with paragraph 35 c of the NPPF<sup>73</sup>. The LP Inspector has not been persuaded. This Inspector will look in vain for any suggestion that the Inspector has any residual concerns in respect of the matters identified by Mr Tiley. While Mr Tiley may find it difficult to accept that someone might deign to disagree with him, it is clear that the LP Inspector has. And while Mr Tiley professes to be at a loss as to why the Council proposes to allocate certain sites and reject others, the LP Inspector appears perfectly able to do understand and is satisfied that the "*evidence base as a whole provides a clear, proportionate and robust basis for the preparation of the WLP*".<sup>74</sup> Neither he, nor the Council, anticipate that the drafting of some additional "*story telling*" in the Sustainability Appraisal will result in the need for any additional evidence or alter any of the justifications which already exist in the evidence base underpinning the eLP.<sup>75</sup> Rather than accepting the findings of the LP Inspector, as the Council has, the Appellant has been unable to accept defeat and has repeated their arguments to this Inspector, in the hope that they will become more convincing through repetition.

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<sup>73</sup> See, for example: **CD C6E2**, page 34, paras 10.1, 10.6 and 10.7.

<sup>74</sup> LP Inspector's post-hearing advice, para 3 (**CD E6**).

<sup>75</sup> LP Inspector's post-hearing advice, para 8 (**CD E6**) and Mr Moody EiC, Day 5 AM.

47. In the context of paragraph 48 of the NPPF, it is right that emerging policies SS4 and SS5 should attract significant weight. The eLP is at an advanced stage of preparation.<sup>76</sup> All that remains is for the modifications suggested by the Inspector to be subject to a 6-week consultation period which will commence in February;<sup>77</sup> publication of the Inspector’s final report and adoption of the plan, which is anticipated to take place in the summer of 2022.<sup>78</sup> The eLP has been 6-years in the making. It has engaged a wide range of stakeholders; been informed by a wealth of evidence; been thoroughly tested and is now on the final furlong.
48. As to paragraph 48(b) of the NPPF, the fact that the Appellant still objects to the eLP should not be confused with the extent to which there are “*unresolved*” objections. No doubt the Appellant still objects, and will always object, to a plan which does not allocate its site, but it has had every opportunity to raise those objections before the LP Inspector. The extent to which its arguments have or have not found favour with the LP Inspector is perfectly clear from his post-hearing advice letter.
49. On any fair reading, it is perfectly apparent that the LP Inspector has no outstanding concerns with the Council’s housing requirement figure; its proposed allocations; the principle of restricting development outside the built-up area boundary or of designating local green gaps or the areas to which policies SS4 and SS5 apply. It is true that the LP Inspector was not considering whether a plan could be made “*more sound*” or whether to recommend the allocation of omission sites, but he made it perfectly clear in his examination guidance note that if he considered the eLP to be unsound with the sites it allocates, he would ask the Council “*to consider and propose additional or alternative sites as Main Modifications to the Plan for further consideration and consultation*”.<sup>79</sup> He has now identified the main modifications which he considers necessary to make the eLP sound.<sup>80</sup> It is quite apparent from the nature of those modifications that Mr Hutchison’s characterisation of the whole plan as “*in flux*” is not an accurate one.<sup>81</sup> The proposed modifications do not include any suggestion that the Council should consider or propose additional or alternative sites. Had the LP Inspector accepted the Appellant’s arguments,

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<sup>76</sup> NPPF para 48(a) (CD D1).

<sup>77</sup> EiC Mr Moody, Day 6 AM.

<sup>78</sup> EiC Mr Moody, Day 6 AM.

<sup>79</sup> LP Inspector’s examination guidance notes, para 13 (CD E16).

<sup>80</sup> CD E6

<sup>81</sup> Mr Hutchison, XX, Day 7 AM.



he could perfectly easily have suggested that the boundaries of policies SS4 and SS5 should be amended to exclude the Appeal Site. That he has not done so, is highly significant.

50. As to paragraph 48(c) NPPF, the consistency of the eLP policies with the NPPF is a key issue for the LP Inspector considering the soundness of the plan. Where he has concerns, for example, in respect of policy SS6, he has clearly expressed them,<sup>82</sup> just as one would expect. Where he has not raised issues, his silence can only be construed as an absence of concern. Whereas Mr Hutchison considered there to be “*no doubt*” that the silence of the National Park Authority (“NPA”) on the principle of development indicated a lack of concern over the impact of the Appeal Scheme, he refused to apply the same logic to the LP Inspector’s letter. No reasonable Inspector would allow a local planning authority to embark on a consultation exercise on modifications, only to reveal in some *denouement* at the end of that process that, in fact, the whole plan is unsound on the basis of previously unvoiced issues of soundness. Indeed, the LP Inspector in Brighton & Hove, Lewes and Mid Sussex have all told the local authorities in their post-hearing advice to re-consider their housing requirements and to look again at specific sites or other potential allocations.<sup>83</sup> The Council has no doubt that this Inspector will approach the LP Inspector’s advice letter sensibly rather than in the unrealistic way suggested by the Appellant.
51. Having regard to all of the factors identified in paragraph 48 of the NPPF, eLP policies SS4 and SS5 should be attributed significant weight in the determination of this appeal.

### Prematurity

52. Paragraph 49 of the NPPF recognises that refusal of permission on prematurity grounds may be justified where (i) 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 and location of development and (ii) where the plan is at an advanced stage. Whilst paragraph 50 makes it clear that a plan is unlikely to be at an advanced stage prior to submission, it does not provide the same indication in respect of plans beyond that stage.

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<sup>82</sup> Inspector’s post-hearing advice letter, paras 9 – 17 (CD E6).

<sup>83</sup> Appendices 5 – 7 of Mr Moody’s rebuttal proof (CD C6E6, C6E7, C6E8).

53. As to the second of those issues, Mr Hutchison suggests that a local plan can only ever be at an advanced stage after an Inspector's final report has been published.<sup>84</sup> On his view, a local planning authority which has spent a number of years preparing the evidence base to inform a plan; consulted on issues and options, and Regulation 18 and 19 versions of a plan; proceeded through examination in public and consulted on main modifications would only ever be able to rely on a prematurity argument in the final weeks of the process, between publication of the final report and adoption. The Council invites the Inspector to reject that unduly restrictive view which would, in practice, rob the prematurity argument and paragraph 49 of the NPPF of any force.
54. As explained above, the eLP is clearly at an advanced stage and remains likely to be adopted within a few months.<sup>85</sup>
55. As to the first of the paragraph 49 NPPF issues, Mr Hutchison's position lacked all credibility. On his approach, no scheme could ever be premature in Worthing, even if the eLP was due to be adopted tomorrow. He suggested that a scheme could only ever distort the plan-making process if it proposed development in Town "B" when the spatial strategy in the emerging plan was to direct development to Town "A". There is no Town "B" in Worthing. There is only Worthing town. The other possibility Mr Hutchison entertained was that a scheme could be premature if it proposed development in a village when the strategy in the emerging plan was to focus development in towns. There are no villages in Worthing. There is only Worthing town and the four remaining gaps that separate it from its eastern and western neighbours. This is not a local authority that has a choice between delivering a sustainable urban extension or a garden village, or as Mr Hutchison suggested, delivering 2,000 homes away from the built-up area boundary. Given the geographic constraints, its options are extremely limited - either it develops every scrap of grass and still there would be unmet need, or it protects the remaining areas around the town which contribute to Worthing's settlement pattern, setting and character.

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<sup>84</sup> Mr Hutchison, XX, Day 7 AM.

<sup>85</sup> Mr Moody, XIC, Day 5 AM. Mr Moody explained that the expectation remained that the eLP would be adopted in early summer 2022.

56. The strategic balance between development and the protection of the natural environment through policies SS4 and SS5 has been the key issue for the LP Inspector to consider.<sup>86</sup> Mr Hutchison did appear to contemplate<sup>87</sup> that a scheme could be premature if it proposed development in the “*wrong location*”. That is precisely what the Appeal Scheme does propose. It proposes development in one of the four remaining gaps which the eLP seeks to protect. That protection is given effect through strategic policies SS4 and SS5 which are fundamental to the eLP’s spatial strategy as set out in policy SS1. If this appeal were to be allowed, a fundamental aspect of the plan’s strategic balance would be undermined.
57. In the particular circumstances pertaining to Worthing, the Appeal Scheme is so substantial, and its cumulative impact would be so significant, that to grant permission would undermine strategic issues about the scale and location of development which should properly be determined by the LP Inspector. It would also undermine public faith in the planning system for local residents and other stakeholders who have spent years shaping the eLP in concert with the local planning authority. A decision to allow this appeal would inevitably affect public confidence in the plan-making system by stealing a march on that process as it enters its final stage.

#### Housing need

58. The Council does not dispute the scale of housing need in Worthing. It has agreed as common ground that there is an exceptionally high need for housing and a substantial need for affordable housing. That will remain the position once the eLP is adopted.
59. The Council has never sought to shy away from those matters. All of the factors identified in the Housing SoCG were squarely before the LP Inspector. He understands the scale of the need, and so does the Council. They both also understand the real-world consequences that flow from the inability to meet objectively assessed needs in full: the Council does because its policy team works closely with the housing team, and the LP Inspector does because all of the points raised by Mr Tiley have been made to the LP Inspector.<sup>88</sup>

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<sup>86</sup> See, for example, the LP Inspector’s Initial Matters, Issues and Questions, Q13 and Q14 (CD E19). This was accepted by Mr Hutchison, XX, Day 7 AM.

<sup>87</sup> Mr Hutchison, XIC, Day 7 AM.

<sup>88</sup> Pegasus Reg.19 representations, paras 5.40, p.16 (PDF19); 5.44, p.17 (PDF20); para 5.46 – 5.48, p.17 - 18 (PDF 20 - 21); paras 5.34 – 5.35 and 5.38, p.15 (PDF18); para 3.2, p.4 (PDF7), (CD C6E2).

60. The suggestion that Worthing somehow chooses to “*keep the company*” of those authorities at the bottom of the HDT table<sup>89</sup> or that the significant shortfall is the “*fault of the Council*”<sup>90</sup> is so wide of the mark as to reveal the Appellant’s fundamental misunderstanding of the constraints facing the borough. It relies on evidence from witnesses who appear at dozens of inquiries across the country every year to lament the state of the housing provision, who look at Worthing’s housing figures in isolation and seek to portray Worthing as an authority that has failed to grasp the nettle of housing delivery. That is not right.
61. Worthing has genuinely left no stone unturned in identifying sites that can sustainably assist in meeting its housing needs. It has a call for sites that is always open. It has assessed every single available site within its administrative area, even asking its landscape consultants to go back and look again at sites that have previously been found unsuitable for development. It has extended the built-up area boundary to accommodate three new allocations. Indeed, it has gone beyond what the LP Inspector ultimately determined was appropriate in seeking to allocate a site at Titnore Lane which the Inspector has asked to be deleted from the eLP because the adverse impact of development would significantly and demonstrably outweigh the benefits, notwithstanding his clear understanding of the Council’s housing delivery issues and difficulties in meeting housing needs.<sup>91</sup> The Council has identified and committed to 13 specific actions which aim to boost housing supply in the area.<sup>92</sup> This includes the early release of greenfield sites such as that north of West Durrington, an action commended by Mr Hutchison;<sup>93</sup> bringing forward for housing sites owned by the Council; and allocating additional staffing and resources to proactively identify barriers to delivery on major sites.
62. Notwithstanding that every effort has been made, the simple reality is that Worthing will never be able to accommodate its full housing needs even if all four of its remaining gaps

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<sup>89</sup> As suggested by Mr Cairns to Mr Moody in XX, Day 5 AM.

<sup>90</sup> Mr Hutchison, XX, Day 7 AM.

<sup>91</sup> LP Inspector’s post-hearing advice letter, para 29, p.7 (CD E6).

<sup>92</sup> See the Council’s Topic Paper 1 – Housing Implementation Strategy, paras 6.1 – 6.42, p.27 – 35 (PDF 28 – 36) (CD E13).

<sup>93</sup> Mr Hutchison, XX, Day 7 AM.

were to be developed. This is not disputed by Mr Hutchison.<sup>94</sup> That is nothing to do with fault and everything to do with the geographical constraints of the area.

63. On the Appellant's evidence, one might be led to believe that the only objective of national policy is to meet housing needs. That is not so. As Sir Peter Bottomley, the Conservative MP for Worthing West, Father of the House of Commons and a shareholder in Persimmon, eloquently explained, it is not the policy or intention of Government to allow development that undermines the character and identity of settlements.<sup>95</sup> Housing needs do not trump everything else. They have to be balanced against other considerations and national policy imperatives in the NPPF which include the protection of the natural environment and those aspects of it which are important to the character of the area.<sup>96</sup>

#### Conclusion on Main Issues 1 and 2

64. In conclusion on this issue, notwithstanding the need for housing, the Appeal Site does not offer an acceptable location for development having regard to adopted and emerging local policy and national policy in the NPPF.

### **Main Issue 3: The effect on landscape including the setting of the South Downs National Park**

#### National Character Area

65. The Appeal Site falls within National Character Area 126, described in Natural England's profile as "*one of the most concentrated stretches of shoreline ribbon development in Britain*"<sup>97</sup> and displays a number of key characteristics of the area. In particular, as Mr Self accepted,<sup>98</sup> it constitutes one of the "*stretches of farmed land between developed areas*" noted in the NCA.<sup>99</sup> One of the Strategic Environmental Objectives for this NCA is "*to maintain and enhance areas of open countryside in this heavily urbanised National*

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<sup>94</sup> Mr Hutchison, XX, Day 7 AM.

<sup>95</sup> Sir Peter Bottomley, Day 1 AM.

<sup>96</sup> See, for example, paras 8, 9, 130, 119 and 174 of the NPPF, **CD D1**.

<sup>97</sup> Mr Self, XX, Day 3 PM and **CD G3**, page 8.

<sup>98</sup> Mr Self, XX, Day 3 PM.

<sup>99</sup> **CD G3**, page 6.

*Character Area, to preserve the distinct settlement pattern*".<sup>100</sup> The Appeal Scheme is contrary to that objective. Rather than protecting and enhancing the open countryside in the heavily urbanised coastal plan, it proposes to replace it with a housing estate, thereby undermining the distinct settlement pattern.

### County Character Assessment

66. At a county level, the Appeal Site forms part of the Worthing Fringes, South Coast Plain as identified in the West Sussex County Council Landscape Character Assessment.<sup>101</sup> One of the key characteristics of the area is "*narrow gaps of open land... which provide views to the sea and separation between the urban areas*".<sup>102</sup> As Mr Self accepted, the Appeal Site constitutes one of those narrow gaps of open land. It provides separation between the urban areas and therefore represents one of the key characteristics of the area.
67. With regards to key landscape and visual sensitivities, the character assessment identifies "*urban development pressures, especially in the gaps between settlements*" and the "*closing of open views between settlements*."<sup>103</sup> The Appeal Scheme represents the very essence of the threat identified in the character study. The Appellant is putting pressure on the gap between Goring and Worthing, and the Appeal Scheme would close the current open views between those settlements.

### SDNP View Characterisation and Analysis

68. The SDNP View Characterisation and Analysis ("the View Characterisation study") explains that the elevated position from Highdown Hill offers "*breathtaking views*" that represent the first of the SDNP's special qualities. It notes that threats to these views include intrusive development which affect the sense of tranquillity from within the SDNP.<sup>104</sup> The View Characterisation study further notes that development forms part of many of the views, often in the background. It sets management aims to ensure that the special qualities of the SDNP are retained,<sup>105</sup> one of which is to ensure that development outside the SDNP does not block or adversely affect views towards the sea.<sup>106</sup>

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<sup>100</sup> CD G3, page 15.

<sup>101</sup> CD G4

<sup>102</sup> CD G4, page 1.

<sup>103</sup> CD G4, page 2.

<sup>104</sup> CD G6, para 3.25-3.26.

<sup>105</sup> CD G6, para 3.9.

<sup>106</sup> CD G6, para 3.27.

69. There is no dispute that the Appeal Scheme would have an adverse impact on key views from Highdown Hill and therefore conflict with one of the aims of the Study, whose purpose is to protect the special qualities of the SDNP. Mr Self accepted that the Appeal Scheme would sit in the mid-ground in those views, rather than lying in the background of views, as development does currently.<sup>107</sup>
70. Mr Duckett's position is that the overall effect of the Appeal Scheme in views from Highdown Hill would be substantial and adverse.<sup>108</sup> Even on the Appellant's own evidence, the impact of the change to this view (which is identified in the LVIA as 'View from Highdown Hill', viewpoint 21) is described as 'moderate' adverse<sup>109</sup> which, on Mr Self's methodology means a clearly perceptible and noticeable change within a significant proportion of the view.<sup>110</sup> Indeed, given the high sensitivity of receptors at this location and the obvious change that the Appeal Scheme would cause to the view, the visual effects should properly be described as substantial, according to his methodology.<sup>111</sup> Mr Self ultimately accepted that the impacts would be moderate/substantial.<sup>112</sup> The same is true of the impact on views from Highdown Rise, as shown in his Viewpoint 20. There, again, adopting his categorisation of receptors of high sensitivity and an obvious change in the view, the effects can only be described as substantial.
71. It is therefore agreed that the Appeal Scheme would conflict with one of the aims of the View Characterisation study by adversely affecting views towards the sea, with the visual effect being either substantial, or on the boundary between moderate and substantial, even accounting for the proposed mitigation.
72. A comparison of the base photographs and the year 1 photographs in Photomontages 20 and 21 show how the Appeal Scheme would replace open views towards the sea with dominating urban development in the middle-ground.<sup>113</sup> The Appellant's contention that

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<sup>107</sup> Mr Self XX, Day 2 PM.

<sup>108</sup> Mr Duckett's proof, page 36.

<sup>109</sup> CD A11, Appendix J, page IX.

<sup>110</sup> CD A11, Appendix K, Table VE2.

<sup>111</sup> CD A11, Appendix K, Table VE3.

<sup>112</sup> Mr Self, XX, Day 2 PM.

<sup>113</sup> CD A11, Appendix I, PDF page 110-11 (PDF113-114).

the Appeal Scheme would not be “*intrusive*” is untenable.<sup>114</sup> It is particularly surprising that Mr Self should describe the existing pylons on the site as intrusive,<sup>115</sup> yet suggests that 475 houses and associated infrastructure will not be. The Appellant’s own photomontages show what is simply common-sense: placing 475 houses on the Appeal Site would have a substantial adverse effect on the setting of the SDNP.

73. The Appellant has sought to argue that the effect on the setting of the SDNP cannot be substantial because the NPA did not object to the Appeal Scheme.<sup>116</sup> This mischaracterises the response of the NPA, which explicitly made no comment on the principle of development, leaving that matter to the judgment of the Council.<sup>117</sup>
74. Finally, on the setting of the SDNP, the Appellant has suggested that the agreed position on heritage is potentially relevant to the assessment of landscape harm such that the agreement reached through the heritage SoCG undermines the Council’s landscape case.<sup>118</sup> This position ignores the evidence from the Appellant’s heritage witness, who made it clear that a heritage assessment concentrates on impacts to the significance of heritage assets and is not otherwise concerned with wider issues relating to views or inter-visibility.<sup>119</sup> Heritage assessment is a fundamentally different exercise from the assessment of landscape and visual effects. Plainly, though, the parties agree that the Appeal Scheme will cause less than substantial harm to heritage assets which must be weighed in the overall planning balance.

### Localised Impacts

75. The Appeal Scheme would also have substantial adverse effects on localised views from within and around the Appeal Site.
76. As shown by photographs 1 and 2 of the LVIA, there are currently open, uninterrupted views from the southern footpath at the Appeal Site towards the SDNP and Highdown Hill.<sup>120</sup> The Appellant accepts that the magnitude of impact of the Appeal Scheme on

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<sup>114</sup> Mr Self’s proof, para 5.13.

<sup>115</sup> Mr Self’s proof, para 1.4.

<sup>116</sup> Mr Self, XIC, Day 2 AM.

<sup>117</sup> **CD B17**, page 2.

<sup>118</sup> Appellant’s opening submissions (**CD K1**), para 4.2.

<sup>119</sup> Ms Stoten, Day 1 AM.

<sup>120</sup> **CD A11**, Appendix C, (PDF52).



views from within the site would be substantial, the highest possible category.<sup>121</sup> Yet its overall conclusion is that the impact on views from the southern footpath would be “*moderate*”. This conclusion is flawed on two bases. First, it rests on a judgment that the footpath users are of medium sensitivity. GLVIA 3 identifies footpath users whose attention or interest is focused on the landscape and outdoor views as the most sensitive visual receptors<sup>122</sup>; clearly, this would apply to footpath users at the southern edge of the Appeal Site whose attention, as accepted by Mr Self, would be drawn by views towards the SDNP and Highdown Hill.<sup>123</sup> Secondly, even if the receptors were of medium sensitivity, on Mr Self’s own methodology, it is sufficient for a substantial visual effect that the proposal would have a significant impact on a receptor of medium sensitivity.<sup>124</sup> As such, the Appellant’s own evidence indicates that substantial adverse effect would arise.

77. Mr Self’s position, however, is that the effects must be balanced against the creation of “*framed views*” through “*view corridors*” from within the site.<sup>125</sup> Whilst there are no photomontages to illustrate these views, it is readily apparent that narrow and filtered views through a residential housing estate is a poor replacement for the current open and uninterrupted views towards the SDNP.
78. Nor would the Appellant’s proposed new footpath next to the Ferring Rife provide an adequate replacement for the views lost from the southern footpath. As explained by Mr Duckett, this footpath would be much closer to the A259 and influenced to a greater degree by higher noise levels and intrusion from traffic.<sup>126</sup> In addition, receptors would be significantly closer to the SDNP and the open views currently available from the southern footpath would be truncated, with the road itself constituting a much more prominent feature in the foreground.
79. Finally, for the views from Littlehampton Road to the north of the Appeal Site, Mr Self describes the magnitude of change of the Appeal Scheme as “*moderate*” while Mr

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<sup>121</sup> CD A11, Appendix J, page VII.

<sup>122</sup> CD G1, para 6.3.3.

<sup>123</sup> Mr Self, XX, Day 2 PM.

<sup>124</sup> CD A11, Appendix K, Table VE3.

<sup>125</sup> Mr Self, XX, Day 2 PM.

<sup>126</sup> Mr Duckett, XIC, Day 1 PM.

Duckett says it will be high.<sup>127</sup> The only photomontage for this view is Viewpoint 12, and it is immediately apparent from this photomontage that the impact on views from Littlehampton Road will be a large and dominating change which affects a substantial part of the view.<sup>128</sup> The openness of the existing agricultural field will be entirely lost and the area to the south of the Rife will read as a curated landscape next to a housing estate. It is not possible to describe the effect as anything less than substantial adverse.

80. Taken together, it is clear that the Appeal Scheme would result in substantial adverse landscape and visual effects affecting the local area, the wider landscape and the setting of the SDNP.

**Main Issue 4: The impact of the development on the local highway network and whether the residual cumulative impacts are severe**

81. It is apparent from the Appellant’s transport studies that the Appeal Scheme will result in a severe cumulative impact on the local highway network.

82. The application was accompanied by a Transport Assessment (“TA”)<sup>129</sup> which was subsequently supplemented with a TA Addendum (“TAA”).<sup>130</sup> Despite opening on the basis that those assessments demonstrate that the Scheme will not result in severe impacts,<sup>131</sup> Mr Wares went to some lengths to try to distance himself from his own work, even going to far as to say in chief that it presented a “*very inaccurate view*”.<sup>132</sup> Eventually, he accepted that both TAs and the VISSIM models were relevant to the Inspector’s consideration of this issue and that the TAs were produced in accordance with best practice; used the ARCADY modelling software that is commonly used in transport assessments and was the only assessment which the Inspector could look to in order to understand the ratio to flow capacity of the various junctions.

83. The reason the VISSIM model was subsequently produced was to address the Council’s particular concerns about the operation of the site access, and how that might be affected

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<sup>127</sup> CD A11, Appendix J, page VI.

<sup>128</sup> CD A11, Appendix I, PDF107-108.

<sup>129</sup> TA, August 2020 (CD A12i).

<sup>130</sup> TA Addendum, February 2021 (CD A12iv).

<sup>131</sup> Appellant’s opening statement, para 6.2 (CD K1).

<sup>132</sup> Mr Wares, XIC, Day 4 AM.

by queueing from the roundabouts.<sup>133</sup> While it resolved that issue, it does not provide an accurate picture of the impacts of the Appeal Scheme against the base scenario in 2033 because it fails to account for any improvements to Goring Crossways roundabout in 2033, absent the Appeal Scheme. All of Mr Gee’s answers to cross examination on the robustness of the VISSIM model were expressly subject to that caveat.

84. As identified in the Worthing Local Plan Transport Study (“LP Transport Study”) the local highway network cannot accommodate the proposed allocations in the eLP without mitigation to Goring Crossways. As such, the study identifies a scheme of mitigation to be delivered within the plan period (i.e. before 2033).<sup>134</sup> The VISSIM model makes no allowance for that work. It assumes that all of the development in the eLP comes forward but that the road improvements, upon which those schemes have been found to be acceptable, does not. Mr Wares accepted that that was an unrealistic picture of the 2033 baseline.<sup>135</sup>

#### Transport impacts

85. The reason the Appellant seeks to distance itself from the TAs is because the picture that they paint is bleak. Even in 2018, all arms of the Goring Crossways and Goring Way<sup>136</sup> roundabouts operate close to or over capacity in the peak hours.<sup>137</sup> As Mr Wares accepted, those junctions are already under considerable strain.<sup>138</sup> The same is true in 2033, as indicated by the high RFCs, lengthy queues and long delays.<sup>139</sup>
86. The Appeal Scheme will generate an additional 357 two-way movements in the AM peak and 395 in the PM peak.<sup>140</sup> The Appellant’s TAA shows that with the Appeal Scheme in place, all arms of the Goring Crossways roundabout will be well over capacity in 2033, with queues of between 118 and 245 vehicles in the peak hours and delays of up to 22

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<sup>133</sup> See, for example, Mr Wares’ Appendix 1, p.17 (PDF 39) (CD C5D2).

<sup>134</sup> CD H3, page 74.

<sup>135</sup> Mr Wares, XX, Day 4 AM.

<sup>136</sup> Except the Ardingly Drive arm of Goring Way.

<sup>137</sup> TA, para 4.33 and Table 4.9, p.31 and para 4.37 and Table 4.11 (CD A12i).

<sup>138</sup> Mr Wares, XX, Day 4 PM.

<sup>139</sup> TA, para 4.33 and table 4.9 (CD A12i).

<sup>140</sup> TAA, para 2.32, p.9 (CD A12iv).

minutes (1,355seconds).<sup>141</sup> At Goring Way, all arms except Ardingly Drive would also be close to or over capacity with the development in place in both AM and PM peaks.<sup>142</sup>

### 2033 base scenario vs 2033 base + development + mitigation scenario

87. In order to understand the effect of the Appeal Scheme against the 2033 baseline, the Inspector cannot rely on the VISSIM model, which does not include the improvements to Goring Crossways identified in the Transport Study that informed the eLP. He therefore has two options for comparing a realistic 2033 base to the position in 2033 with the Appeal Scheme in place: he can either compare the results of the VISSIM model to “Sensitivity Test 2” in the LP Transport Study<sup>143</sup> or he can look to the results of the Appellant’s TAA.
88. As to the first of those options, Sensitivity Test 2 includes all eLP site allocations, excluding Chatsmore Farm and the Goring-Ferring gap, as well as the proposed mitigation works to the Goring Crossways roundabout.<sup>144</sup> It shows that, without the Appeal Scheme, in 2033 in the AM and PM peaks all arms other than Littlehampton Road W, would be operating within capacity.<sup>145</sup> Although not all results of the SATURN model in Sensitivity Test 2 can be compared to the VISSIM model, both produce mean max queues which can be compared. This comparison shows that the effect of the Appeal Scheme on the A259 Littlehampton Road would be to increase average queues in the AM Peak by 102 vehicles (to 229 vehicles) and to increase queues in the PM Peak by 58 vehicles (to 143 vehicles).<sup>146</sup> With the Appeal Scheme in place, maximum queues would extend to 425 vehicles in the AM peak and 280 in the PM peak – that would mean tailbacks of over 1.2km in the morning and over 800m in the afternoon.<sup>147</sup>
89. While the Appellant suggests that the VISSIM model is unduly pessimistic because it does not allow for re-routing, the lack of alternative routes means that the differences between the SATURN and VISSIM models are not significant in the circumstances of this site. To travel eastwards avoiding Goring Crossways, the only alternative route is

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<sup>141</sup> TAA, final section of Table 2.16, p.31 (PDF35) (CD A12iv).

<sup>142</sup> TAA, final section of Table 2.18, p.34 – 35 (PDF37 – 40) (CD A12iv).

<sup>143</sup> See p.76 (PDF88) (CD H3).

<sup>144</sup> Mr Gee, XIC, Day 3 AM.

<sup>145</sup> CD H3, page 76.

<sup>146</sup> Mr Gee’s proof, table 4 (CD C6C1).

<sup>147</sup> And, adopting average queue lengths, tailbacks of 687m in the AM peak and 429m in the PM peak.

the A27. That road already suffers from heavy congestion and would not present an attractive alternative.<sup>148</sup> When this was put to Mr Wares, his only response was that it was not “*beyond the realms of reality*” for drivers to choose to use the A27 rather than the A259.<sup>149</sup> This statement is hardly evidence that such a choice would be likely. Travelling west, the only other alternative route would be on Marine Drive, which is circuitous and would only be available for drivers starting their journey near the coast in Worthing. In any event, there has been no modelling of the impact of re-routing on the A27. In the absence of any modelling of reassignment onto the wider road network, the extremely limited options for drivers seeking alternative routes show that the VISSIM model not allowing for driver choice does not render its final results unduly pessimistic.

90. The Appellant has also sought to argue that the VISSIM model exaggerates the Appeal Scheme’s effects because it does not allow for the fact that drivers might choose to time their journeys to avoid congestion.<sup>150</sup> That ignores the fact that it is standard best practice for highways engineers to model the AM and PM peak hours for a reason: this is when people drive most. There is no evidence before this Inquiry quantifying people choosing to leave at different times or to use modes of transport other than cars.
91. If the Inspector does have concerns about comparing the results of two different models (i.e. SATURN and VISSIM), there is an alternative way to compare the 2033 base to the scenario with the Appeal Scheme in place which is to look to the TAA. That uses a single model and so would be an “apples to apples” comparison. In order to carry out the correct comparison, however, it is necessary to substitute the delay figures in Table 2.17 of the TAA (which assumes no improvements to Goring Crossways) with the 2033 base values shown in table 2.16 (which do assume improvements to Goring Crossways). To assist the Inspector, the results of that exercise are set out in Appendix 1 to these closing submissions. They show that rather than reducing delays by between 19 and 21%, as suggested in the TAA<sup>151</sup> the effect of the Scheme would be to increase delays by between 16 and 94%. This comparison clearly demonstrates the extent to which the Appellant’s

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<sup>148</sup> CD H1, page 66.

<sup>149</sup> Mr Wares, XX, Day 4 PM.

<sup>150</sup> Mr Wares, XIC, Day 4 AM.

<sup>151</sup> TAA, para 2.87, p.33 (PDF36) (CD A12iv),

inappropriate baseline artificially reduces the full extent of the impacts and reveals the severity of impacts caused by the Appeal Scheme.

#### Likelihood of the improvements to Goring Crossways

92. The Appellant has sought to address the flaw in the VISSIM baseline by suggesting that the improvement scheme shown in the LP Transport Study is not certain, while their proposed mitigation is. That is no answer to the point. Whilst the certainty of delivery may be considered a benefit in the planning balance, it is irrelevant to the question of whether the Appellant’s modelling of the base scenario is robust. The purpose of transport modelling is to forecast a likely future scenario. No future event can be predicted with certainty. It is not certain that all housing allocations in the eLP will come forward, yet the Appellant has included them in their modelling. On the same basis, it should have accounted for the improvement works to the roundabout shown in the LP Transport Study.
93. As the Study explains, the works will primarily be funded through CIL and s.106 contributions.<sup>152</sup> As Mr Gee explained in his rebuttal proof,<sup>153</sup> Worthing Council’s Infrastructure Delivery Plan 2021 (“IDP”) recognises that future residential growth will place an increased demand on infrastructure and explains that the purpose of the IDP is to ensure that the eLP can be supported by the necessary infrastructure. It identifies improvements to Goring Crossways as “*critical*”. Worthing’s Investment Plan identifies projects on a three-year rolling basis that should be prioritised for CIL funding. The current Investment Plan covers the period 2020 – 2023 and notes that the infrastructure required to support the eLP is likely to be prioritised in the next funding period, which runs from 2023 – 2026. In the absence of those mitigation works, the eLP allocations would result in an unacceptable impact on the local highways network, in respect of which the local highways authority would object. While nothing can be predicted with certainty, there is every likelihood that the essential improvements to Goring Crossways will be delivered within the eLP period and this should be reflected in the 2033 base scenario.

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<sup>152</sup> LP Transport Study, section 7.3,p.84 - 86 (CD H3).

<sup>153</sup> Mr Gee rebuttal proof, para 3.2 (CD C6C6).

## Conclusions on main issue 4

94. Both the TAs and the VISSIM model show that the road network is already under strain and that the effect of the development will be to exacerbate those issues. Even on the VISSIM model, the results show that if the Appeal Scheme is allowed, it would take 19 minutes for a car to travel 1.3 miles from the A259 Littlehampton Rd to Goring Way, equivalent to 4mph. Mr Gee was unaware of anywhere else in Sussex that experienced such delays.<sup>154</sup> On the A259 Littlehampton Road, , which provides the key east-west route, there would be tailbacks of over 1.2km in the morning and over 800m in the afternoon<sup>155</sup> and delays of 19 minutes (1,142 seconds).<sup>156</sup> The effect of the Appeal Scheme is to increase delays by 209 seconds, which Mr Wares accepted was a substantial deterioration.<sup>157</sup> At Goring Way, the Scheme would increase average queues on Goring Way West from 33 to 56 vehicles and maximum queues from 67 to 100 compared to a combined reduction on the other arms of 12.<sup>158</sup>
95. Standing back, the key issue for the Inspector is whether the residual cumulative impacts of the Appeal Scheme on the local highway network are severe. That means that you must consider not just the additional traffic generated by the Appeal Scheme but also the underlying situation in 2033. As the Inspector recognised in the Canterbury appeal decision, where junctions are already under pressure, even relatively small increases in traffic (which, in that case were far less than here) can be significant.<sup>159</sup> Where a road network is already under strain, it will be particularly important to ensure that any future development does not exacerbate problems with the operation of the affected junctions. In that context, it is right to describe the residual cumulative impacts of the Appeal Scheme as severe.

## **Planning balance**

96. It is common ground that the Appeal Scheme is in conflict with policy 13 of the WCS, the spatial strategy<sup>160</sup> and the adopted development plan, read as whole. The starting

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<sup>154</sup> Mr Gee, XIC, Day 3 PM.

<sup>155</sup> And, adopting average queue lengths, tailbacks of 687m in the AM peak and 429m in the PM peak.

<sup>156</sup> Mr Wares' proof, table 3.4, p.11 (CD C5D1).

<sup>157</sup> Mr Wares, XX, Day 4 PM,

<sup>158</sup> Mr Wares' proof, Table 3.3 (CD C5D1).

<sup>159</sup> Appendix 3 to Mr Gee's rebuttal. See, in particular, paras 42, 45, 55, 56 and 59 (CD C6C9).

<sup>160</sup> Mr Hutchison, XX, Day 7 AM. Mr Hutchison accepted that the appeal scheme did "not accord" with the spatial strategy set out policy 13, because it is not on previously developed land and not within the built up area.

point is that permission should be refused, unless there are material considerations of sufficient weight to displace the statutory presumption in favour of the development plan.

97. Whilst policy 13 is deemed to be out of date by paragraph 11d NPPF, it continues to serve an important planning purpose, namely to direct development to those areas which the Council considers appropriate and away from those areas which are worthy of protection. That this is the case is demonstrated by the continuation of the spatial strategy in policy SS4 of the eLP. As the courts have recognised, even old development plans continue to attract the priority afforded to them by s.38(6).<sup>161</sup> The plan-led system operates in the public interest by promoting the coherent development of a planning authority's area, allowing for development to be directed to the most appropriate places. It is not in the public interest that planning control should be the product of an unstructured free-for-all based on piecemeal consideration of individual applications for planning permission.<sup>162</sup>
98. The eLP is an important material consideration. It is common ground that the Appeal Scheme conflicts with emerging policies SS4 and SS5 and the eLP read as a whole. The proposal to place 475 homes in an area of countryside, spanning the width of one of only four local green gaps, is diametrically opposed to the eLP's spatial strategy. This conflict should be given significant weight. Furthermore, allowing the appeal would fundamentally undermine the Local Plan-making process should be refused on grounds of prematurity.
99. The Appeal Scheme also conflicts with national policy in several key respects. In particular, it would cause substantial harm to the landscape and visual amenity of the area and the setting of the SDNP and result in a severe residual effect on the local highway network. It would be illogical to reach a conclusion that the high threshold of severity had been met and to afford that harm anything other than significant weight.
100. In addition, in accordance with paragraph 199 NPPF, great weight must be given to the heritage harm that would arise if the Appeal were allowed. Mr Hutchison has sought to reduce this weight to "moderate" on the basis that the harm is at the lower end of the

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<sup>161</sup> Gladman v Daventry, para 40(1) (CD J70)

<sup>162</sup> Gladman v Daventry, para 6 (CD J70)



scale, and that the weight to heritage harm is not “*uniform*”. This represents a misreading of Bramshill v SSHCLG.<sup>163</sup> Great weight must be afforded to whatever level of heritage harm arises. The harm will vary in every case but the weight afforded to that harm does not. It would not be appropriate to reduce the weight below this level. To do so would cut across the statutory duty in section 66(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990.

101. The Council acknowledges that there are benefits to the Appeal Scheme, and it is accepted that the provision of housing and affordable housing should be given significant weight. This weighting includes the economic benefits that arise from the delivery of housing. The economic benefits of construction and construction jobs would be temporary and so should be given moderate weight. The Appeal Site is already publicly accessible and well-used by the public, and so the provision of public space should be given limited weight. The financial contributions in the s.106 are required to mitigate the impacts of the Appeal Scheme, this benefit should be given limited weight. Finally, the Council agrees with the Appellant that the provision of a new local centre should be given limited/moderate weight.
102. The essence of the Appellant’s case throughout this Inquiry and throughout the eLP process has been that housing needs must trump all other considerations. Local and national policy identify that there is a balance to be struck between meeting development needs and protecting those things worth protecting; the beauty of the countryside, the character and identity of settlements, heritage assets, the setting of the National Park, and those areas that are valued by the community they serve. This balance is not something that can be struck afresh by every section 78 Inspector. It requires a strategic perspective that is informed by a wide range of stakeholders. That is precisely the exercise that the LP Inspector has been engaged in. The Appellant has seized every opportunity to engage with this process; it has thrown every resource at it in an attempt to convince the LP Inspector of its position.
103. Those efforts have failed to persuade the LP Inspector that the Appeal Site is unworthy of protection. Rather than accepting this, the Appellant has used this inquiry as a satellite

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<sup>163</sup> Bramshill v SSCHLG [2021] EWCA Civ 320 (CD J68).

challenge to the soundness of the eLP. It is inescapable that the question facing this Inspector is the very same as that considered by the LP Inspector applying the same test (i.e. paragraphs 11b for the LP Inspector and 11d for this Inspector) namely, whether the adverse impacts of the Appeal Scheme (or the spatial strategy that protects the Appeal Site from such development) would significantly and demonstrably outweigh the benefits. Having heard extensive evidence from a wide range of stakeholders over the course of the last 6 months, the LP Inspector's clear answer is that they do. Having heard the evidence of this Inquiry over the last two weeks, the Council invites this Inspector to reach the same conclusion and to dismiss this appeal.

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**28<sup>th</sup> January 2022**

Appendix 1

Revised Table 2.17 from Appellant's TAA, with base delay times taken from Table 2.16

Arm	2033 Base Delays (including mitigation at Goring Crossways Roundabout)	2033 Base + Mitigation + Development Delays	Net Increase in Delays
A2700 Titnore Lane (AM Peak)	1022.87s	1355.86s	332.99s (32.6%)
A2032 Littlehampton Road (AM Peak)	551.61s	629.85s	78.24s (14.2%)
A259 Goring Street (AM Peak)	300.72s	584.62s	283.90s (94.4%)
A259 Littlehampton Road (AM Peak)	502.70s	583.02s	80.32s (16.0%)
A2700 Titnore Lane (PM Peak)	520.25s	898.52s	378.27s (72.7%)
A2032 Littlehampton Road (PM Peak)	403.41s	601.06s	197.65s (49.0%)
A259 Goring Street (PM Peak)	479.59s	631.60s	152.01s (31.7%)
A259 Littlehampton Road (PM Peak)	168.72s	225.89s	57.17s (33.9%)