

Land between Lodge Road and Tape Lane, Hurst

R08_Ecology and Arboricultural Rebuttal Statement

29th July 2025

1.0 Purpose

- 1.1. Tyler Grange Group Limited ("TG") has been instructed by Mac Mic Strategic Land Limited ("the Appellant") to prepare this Rebuttal Statement in response to the Wokingham Borough Council's ("the Council") Planning Proof of Evidence ("PoE") prepared by Mr Mark Croucher.
- 1.2. My rebuttal relates to Section 11 – Loss and Degradation of Irreplaceable Habitat – Veteran trees of the Council's Planning PoE, specifically the Council's interpretation of policy and guidance relating to veteran trees and the application of paragraph 193 (c) of the National Planning Policy Framework ("NPPF").
- 1.3. This rebuttal statement also responds to the LPA Planning PoE in relation to the Environment Agency's (EA) consultation response referred to in Section 10 – Flooding and Drainage. This objection is also referred to in the EA's Statement of Case (SoC), paragraphs 3.7 and 3.8.

2.0 Rebuttal of council evidence in relation to veteran trees (Section 11)

Section 11.6 of the Council's PoE

- 2.1. The Council refers to our email correspondence however they have omitted the majority of our email content from their PoE. It is appropriate to include the full content of the email so that aspects are not taken out of context. The full email chain is provided at Appendix 1 of the Ecology PoE for Emily Major (CD5.4) and included below:

"Regarding RfR 7, and NPPF Policy 193 (c), I trust the below clarifies our position on this point –

Under the BNG Regulations, certain trees may be classified as veteran based on ecological function, condition, and habitat value – there is a specific definition of a veteran tree within the BNG Regulations, and this is different to the definition of a veteran tree within the NPPF. The NPPF (paragraph 193(c)) only applies to trees that meet the definition of veteran trees as set out within the NPPF.

The removed trees did not meet the criteria to be veteran trees under the NPPF definition. This has been comprehensively set out within the submitted Tree Assessment and Compensation Strategy. As the trees in question do not meet the NPPF definition of a veteran tree, paragraph 193(c) is not triggered. Therefore, the development proposal is not subject to the irreplaceable habitat protections under the NPPF.

While unlikely, the trees had potential to meet the definition of a veteran tree under the BNG Regulations definition. Therefore, we have taken a precautionary approach and have



considered the two trees as veteran trees under the BNG definition (not the NPPF definition). Accordingly, the trees have been included in the BNG metric baseline, and we have submitted a separate Compensation Strategy to address their loss in the context of the BNG Regulations. This is consistent with the BNG guidance, which states that:

“Special compensation rules apply to irreplaceable habitat. If planning permission is given you will need to agree a compensation strategy with the LPA. Compensation for irreplaceable habitat needs to be relative to the baseline habitat type. The LPA will agree compensation as part of the determination of the planning application, on a case-by-case basis.”

Furthermore, all existing veteran trees (identified under the NPPF definition) are being retained and appropriately buffered from the proposed development, in accordance with the Standing Advice / NPPF.

We appreciate that the distinction between the NPPF and BNG definitions of veteran trees can be nuanced. In this case, the trees did not meet the criteria of the NPPF definition, however, they have been appropriately addressed under the BNG Regulations, with a robust and policy-compliant compensation strategy in place”.

- 2.2. My position is that the trees did not meet the NPPF criteria of a veteran tree and this appears to have been overlooked by the Council on a number of occasions. This position, and the supporting evidence, was provided within the Tree Assessment and Compensation Strategy prior to the preparation of PoEs. The Council's evidence makes no attempt to address this point which is key to judging whether or not policy 193 (c) is applicable to these trees.

Section 11.7 of the Council's PoE

- 2.3. Mr Croucher states that the *“The Appellant's Statement of Case recognises the ecological significance of the trees by committing to an ‘Irreplaceable Habitat Compensation Strategy’ in recognition of their possible veteran status. This confirms that the trees are considered irreplaceable in biodiversity terms and their loss cannot be addressed through standard Biodiversity Net Gain (BNG) calculations.”*
- 2.4. I do not *“recognise the ecological significance of the trees”*. It is clear within the submitted Tree Assessment and Compensation Strategy, and subsequent Ecology and Arboriculture evidence, that the trees did not meet the NPPF criteria for veteran trees and were unlikely to meet the BNG Regulations criteria. Veteran tree status was assumed under the BNG definition (not the NPPF) as a precautionary measure only, due to the inability to fully assess the trees and to comply with BNG Regulations in relation to degradation. Adjacent trees of greater stem size (T14 and T70 – see Tree Survey Schedule in CD11.6) were assessed as being of ecological importance at a local geographic scale only (pg 8 of CD 11.1).

Section 11.8 of the Council's PoE

- 2.5. Mr Croucher states that *“The PPG section on Biodiversity Net Gain sets out that national policy must still apply and be followed when considering irreplaceable habitats identified for the purpose of Biodiversity Gain”*. I believe this interpretation of the guidance to be wrong because the trees did not meet the NPPF criteria for a veteran tree.
- 2.6. My Arboriculture PoE makes clear that the BNG Regulations and the NPPF define veteran trees differently. This point has not been addressed within Mr Croucher's evidence. The threshold for a tree to be veteran under the NPPF is set far higher than the BNG definition. The threshold under the NPPF is proportionate to the high level of protection they receive, such as requiring



wholly exceptional circumstances as well as a suitable compensation strategy.

- 2.7. The fact that there are two very distinct definitions suggests that a tree must be assessed under both definitions and the application of policy can be appropriately determined. Thus, a tree could meet the criteria of a veteran tree under one but not the other (as in this case). However, I have assumed veteran status under the BNG Regulations because the definition is very different and the threshold is set far lower than that of the NPPF.
- 2.8. The PPG supports the distinction between the NPPF and BNG Regulation, stating that:
- “The Framework’s Glossary provides a definition of irreplaceable habitats for this policy.”*
- 2.9. This suggests that the NPPF’s glossary is the authoritative source for determining whether paragraph 193 (c) applies, not the BNG metric alone.
- 2.10. My understanding of Mr Croucher’s evidence is that, in his view, paragraph 193(c) automatically applies if the tree is considered veteran under the BNG Regulations and irrespective of the whether the tree meets the NPPF definition or not. This approach disregards the NPPF definition of a veteran tree and constitutes a disproportionate level of protection for the trees concerned. The NPPF definition of a veteran tree and the criteria must be met in full for paragraph 193 (c) to apply.

Sections 11.9 – 11.13 of the Council’s PoE

- 2.11. Having reviewed the PPG I do not see where it states that *“BNG does not change the protections for irreplaceable habitat in planning policy”*. This is Mr Croucher’s own interpretation of the guidance, which I view as being wrong, as explained above.
- 2.12. I do not dispute that wholly exceptional reasons and a suitable compensation strategy is required where there is loss or deterioration of irreplaceable habitats if the habitat meets the criteria as set out within the NPPF. If the trees met the NPPF criteria of a veteran tree I would agree that paragraph 193(c) applies. However, this is not the case, as the trees did not meet the NPPF criteria. In a case where 193(c) does not apply, but the trees are considered veteran under the BNG Regulations, it is my view that only the requirements of the BNG Regulations apply, which are as follows:

“Special compensation rules apply to irreplaceable habitat. If planning permission is given you will need to agree a compensation strategy with the LPA. Compensation for irreplaceable habitat needs to be relative to the baseline habitat type. The LPA will agree compensation as part of the determination of the planning application, on a case-by-case basis”

- 2.13. The BNG Regulations do not state that the requirements of policy 193(c) must be met and do not refer to wholly exceptional circumstances. It only requires a suitable compensation strategy to be agreed with the Council. In this case, a suitable compensation strategy has been prepared and agreed with the Council hence the requirements of the BNG Regulations are met.

Sections 11.14 of the Council’s PoE

- 2.14. The requirement to compensate for the removal of the two trees under the BNG Regulations is not in dispute. The agreed compensation strategy aligns with the regulations.
- 2.15. However, I disagree with the Council’s assertion that paragraph 193(c) of the NPPF automatically applies to the two trees on the basis that they have the unlikely potential to meet



the BNG definition of a veteran tree. The degradation requirements of the BNG Regulations have been applied to assume the highest reasonable value within the metric but this does not mean that the NPPF 193(c) is engaged. This interpretation overlooks the important distinction between the definitions of veteran trees under the BNG Regulations and the NPPF.

- 2.16. The Council's position appears to conflate the broader BNG criteria with the stricter NPPF threshold. It is therefore incorrect to assume that paragraph 193(c) applies by default without considering this against the NPPF's veteran tree criteria.

3.0 Rebuttal of council evidence in relation to the EA objection (Section 10)

Section 10.2 of the Council's PoE

- 3.1. The Environment Agency (EA) have objected on the grounds that de-culverting should be explored for the purposes of biodiversity enhancement. This objection is referred to in the EA's Statement of Case (SoC), paragraphs 3.7 and 3.8.
- 3.2. Whilst it is not disputed that de-culverting works can provide enhancements for biodiversity, there is no obligation to provide betterment in this specific way within policy or legislation. Not de-culverting does not cause an impact to species, habitats and wildlife. The Appellants have demonstrated that 23.75% biodiversity net gain in watercourse units can be achieved without de-culverting. This is in addition and separate to the 10.82% net gain in habitats units and 13.15% gain in hedgerow units.
- 3.3. Gains in biodiversity with specific relevance to watercourses would be achieved through the reduction of encroachment into the existing watercourse and specific enhancements to the condition of the watercourse. This is demonstrated in the Statutory Biodiversity Metric (CD11.5: 16452/BNG/4) and its delivery could be secured via a condition for a Habitat Management and Monitoring Plan. The metric and approach is agreed with Duncan Fisher, Green Infrastructure Team Manager at the Council, as shown in his email of 9th July 2025 at Appendix 1 of the Ecology Evidence of Emily Major (CD5.4). The EA have not disputed the BNG baseline.