



The countryside charity  
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The Planning Inspectorate

Attention Case Officer: Pauline Dun

10 October 2024

**Appeal Reference: APP/Z3825/W/24/3349208**

Appeal by: Castle Properties Ltd

Appeal Site Address: Land West of Smock Alley, Haglands Lane,  
West Chiltington, West Sussex, RH20 2QX

Dear Ms Dun,

CPRE SUSSEX THIRD PARTY SUBMISSION

**DC/21/2007 Land West of Smock Alley South of Little Haglands West Chiltington.  
Erection of 14 no.2, 3 and 4 bedroom dwellings, including 4 bungalows with access  
from Smock Alley, vehicle parking, public open space and landscaping**

Our concerns and reasons for objecting to this application are explained below.

1. The applicant's Planning Statement, at paragraph 9.2, states that

“This planning application has been brought forward within the context that HDC are unable to demonstrate a 5-year housing land supply. HDC recognise the need to support sites outside of the settlement boundary. This is reflected within the emerging local plan that identifies West Chiltington with a housing need of 36 and the allocation of the application site as suitable for development. Further to this, the site has also been allocated for residential development within the draft West Chiltington Neighbourhood Plan with amendments made to the built-up area boundary to reflect this.”

1.1 Accordingly, the application is predicated on the presumptions that the proposed scheme cannot be refused because:

- HDC is unable to demonstrate a 5-year housing land supply.
- The ‘emerging local plan’ ‘identifies West Chiltington with a housing need of 36 and the allocation of the application site as suitable for development.
- The site has been allocated for residential development within the draft West Chiltington Neighbourhood Plan with amendments made to the built-up area boundary.

2. However, although the Horsham District Local Plan (2023 – 40) has been submitted to the Planning Inspectorate, it has yet to be examined in public, and West Chiltington’s not-yet-examined draft Neighbourhood Plan is subject to further public consultation.

3. DC/21/2007 must be determined in accordance with the extant statutory development plan, the Horsham District Local Plan Framework (HDPF).

**4. The Court of Appeal ruling on two appeals by Gladman Developments shows that that even where development plan policies are rendered out of date by housing land shortfalls, they remain potentially relevant to the application of the tilted balance and decision-makers are not legally bound to disregard policies of the development plan when applying the tilted balance under paragraph 11d).**

4.1 Court of Appeal ruling 3 February 2021: Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government and Corby Borough Council and Uttlesford District Council. Neutral Citation Number: [2021] EWCA Civ 104. Case No: C1/2020/0542/QBACF. Date: 03/02/2021.

4.2 The ruling emphasised that where a council lacks the required five-year housing land supply this may tilt the balance in favour of proposed residential schemes, but it does not render grants of planning permission automatic.

4.3 Gladman Developments argued that when the tilted balance is engaged due to a housing-land shortfall, decision-makers must assess proposals against relevant policies in the NPPF and that local plan policies simply do not come into that exercise.

4.4 But the Court of Appeal ruled that even where development plan policies are rendered out of date by housing land shortfalls, they remain potentially relevant to the application of the tilted balance and decision-makers are not legally bound to disregard policies of the development plan when applying the tilted balance under paragraph 11d) ii (Court of Appeal ruling, paragraph 42).

**5. That the DC/21/2007 application’s presumption of automatic approval is questionable has been demonstrated in Horsham District by the Appeal Decisions APP/Z3825/W/20/3261401 Land north of Sandy Lane, Henfield, West Sussex (35 new dwellings including 35% affordable homes)’ Decision date 19 August 2021, and APP/Z3825/W/21/3281657 Longlands, West Chiltington Road, Pulborough, RH20 2EE (DC/20/2216: 4 dwellings). Decision date 18 March 2022.**

5.1 Notwithstanding the lack of a 5-year housing land supply and Horsham’s ‘outdated’ local plan, these appeals were dismissed.

**6. Attention is also drawn to the recent dismissal of Appeal Ref: APP/C1435/W/23/3331659 Land north of B2204, The Green, Ninfield TN33 9JE (WD/2022/2689/MAO erection of up to 72 dwellings including affordable and specialist housing). Decision date 15th April 2024.**

6.1 Wealden, like Horsham, is unable to demonstrate a 5-year housing land supply, and its local plan is ‘outdated’.

6.2 Nevertheless, the Inspector who dismissed the Appeal considered that although “the policies that are most important for the determination of the application are deemed to be out of date, this does not mean they do not apply and overall, the proposal conflicts with the development plan as a whole” (paragraph 36).

**7. The Inspector who dismissed APP/Z3825/W/21/3281657 Longlands, West Chiltington Road, Pulborough, RH20 2EE (DC/20/2216)** considered that although the HDPF “is over five years old and the Council is unable to demonstrate a five-year supply of deliverable housing sites”, and “the proposed houses would be surrounded by existing development, the policies in the HDPF set out an overall strategy for the pattern and scale of places in line with the National Planning Policy Framework” (paragraph 10).

**8. How the Inspector who dismissed APP/Z3825/W/20/3261401 Land north of Sandy Lane, Henfield, West Sussex (DC/20/0427)** interpreted and gave weight to HDPF policies despite the lack of a five-year supply, is also pertinent to DC/21/2007, notably HDPF Policy 4 Strategic Policy: Settlement Expansion, Policy 25 District Character and the Natural Environment, and Policy 26 Countryside Protection.

**9. The proposed scheme, DC/21/2007, is contrary to HDPF Policy 4 Strategic Policy:** Settlement Expansion, fifth bullet “that outside the built-up area boundaries development will be supported where ‘The development is contained within an existing defensible boundary and the landscape and townscape character features are maintained and enhanced”.

9.1 West Chiltington’s BUAB is the boundary set by the HDPF. Land west of Smock Alley is outside of that boundary.

9.2 That Land west of Smock Alley is not contained within an existing defensible boundary was made clear by the Planning Inspector’s findings in respect of DC/15/1389 Land west of Smock Alley, West Chiltington, West Sussex (Appeal Ref: APP/Z3825/W/16/3146231, decision date 2 November 2016).

9.3 The Inspector found that “Whilst in the vicinity of the appeal site the built-up area boundary is irregular it has an obvious termination on this side of the road after Lavender Cottage. On the opposite side of the road there are large, detached houses in substantial grounds providing for a dispersed and semi-rural character which is further emphasised by its edge of settlement location”.

9.4 In the Inspector’s view the appeal site “has more relationship with the rural character outside the built-up area than the adjoining settlement” (paragraph 34).

9.5 HDC’s Planning Committee Report (23 April 2024) for the application considered that “This area has retained a rural feel with a verdant setting”.

**10. DC/21/2007 would conflict with HDPF Policy 25 Strategic Policy: District Character and the Natural Environment** because the proposed development would result in material harm to the character and appearance of the area, in particular having regard to the individual settlement characteristics, including the separation of the two built-up areas of West Chiltington.

10.1 The Inspector who dismissed Appeal Ref: APP/Z3825/W/16/3146231, decision date 2 November 2016, (DC/15/1389 Land west of Smock Alley) concluded that the proposed development would conflict with HDPF Policy 25 because it would result in material harm to the character and appearance of the area, in particular having regard to the individual settlement characteristics, including the separation of the two built-up areas of West Chiltington (paragraph 37).

10.2 The Inspector found that:

“The development of this site would add to the built development in the area and encroach into the countryside between the two parts of settlement. Whilst this may not be contrary to the wording of the policy referring to settlement separation it goes to the heart of the purpose of the policy. The encroachment and coalescence of these two distinct elements would alter the individual settlement characteristics of this settlement and which is a matter that is addressed in policy 25 and with which the proposal would conflict” (Paragraph 35).

“Whilst there may not be direct line of sight between the elements of the settlement at this point the cumulative erosion of the gap by small scale development would undermine the gap and any distinction between the separate elements to the detriment of the characteristics of the settlement” (Paragraph 36).

And “that the proposed development would result in material harm to the character and appearance of the area, in particular having regard to the individual settlement characteristics, including the separation of the two built-up areas of West Chiltington. This would conflict with Policy 25 of the HDPF” (Paragraph 37).

**11. How the applicant’s proposed usage of the proposed public open space by the area’s ‘wider locality’ would impact on the amenity of residents and near neighbours, and the Site’s ecology, biodiversity and Biodiversity Net Gain, needs to be assessed and considered.**

11.1 The applicant’s Planning Statement, paragraph 6.17, indicates that the proposed Public Open Space includes areas designated as natural areas/wildlife buffers/wildlife areas and **is intended for the recreational use of the wider locality**, as well for the scheme’s residents.

11.2 The paragraph states that “The public Open Space has been designed to create an attractive space for residents to use, whilst also incorporating ecological benefits with the incorporation of a retention pond. Such provision fits better with the characteristics of the

site and surroundings and **provides Public Open Space needs for the residents and wider locality**. Therefore, it can be considered that the proposal complies with Policy 26 of the HDPF”.

**12. Felling of trees and the creation visibility road splays on road frontage would be detrimental to the area’s rural character, an area which HDC’s Planning Committee Report (23 April 2024) re DC/21/2007 states that the area in which the Site is located has “retained a rural feel with a verdant setting”.**

12.1 The applicant’s Design and Access Statement states, at paragraph 2.3, that: ‘The proposed development will retain and enhance the existing field boundaries, retaining all trees with only minor pruning required at the site entrance’.

12.2 This is misleading because the applicant’s Arboricultural Assessment & Method Statement advises that: ‘ten trees are to be removed to facilitate the proposals, including two oak trees on the road frontage’ (page 1, and paragraphs 5.2, 5.3, 5.4 and 5.5).

12.2 The applicant’s Transport Statement, Appendix B Proposed Site Arrangements, and paragraphs 4.5, 4.6, 4.7, shows the two oak trees on the road frontage (Smock Alley frontage) will be removed to accommodate a 53.6 metre visibility splay to the north and a 55.9 metre splay to the south, in consequence of which, too, the existing roadside verge will be much reduced.

12.3 This would add to the urbanising impact of the proposed scheme on the area’s rural character, an area which HDC’s Planning Committee Report (23 April 2024) for the application states has “retained a rural feel with a verdant setting.”

### **Biodiversity and Ecology**

**13. Natural England’s ‘Guidance Wild Birds: advice for making planning decisions. How to assess a planning application when there are wild birds on or near a proposed development site’ (published 14 January 2022) is Natural England’s ‘standing advice’ for wild birds, which is “a material planning consideration for local planning authorities (LPA), which should take this advice into account when making planning decisions. It forms part of a [collection of standing advice for protected species](#). “**

14. Two Ecological Appraisals have been submitted by the applicant in respect of DC/21/2007: ‘Smock Alley, West Chiltington Common, Ecological Appraisal’, dated June 2021, and the subsequent ‘Smock Alley, Higgs lane, Chiltington: Ecological Appraisal Addendum’, dated 8 August 2023, being an ‘updated site walkover’ undertaken by an ecologist on 21 April 2023.

14.1 The Ecological Appraisal, dated June 2021, comprises a desk study and an Extended Phase 1 Habitat Survey.

**15. Other than on-Site bat activity and badger surveys, no other on-Site surveys of the Site’s fauna were undertaken.** Instead, “to provide additional background to the appraisal and highlight likely features or species groups of interest, a review of biological

records was undertaken to identify sites designated for their nature conservation value, and existing records of protected or notable species of relevance to the Site”. (Ecological Appraisal, June 2021, paragraph 2.3).

**16. In respect of wild birds, the Ecological Appraisal advised that “The hedgerows, scrub and trees within and immediately adjacent to the Site provided suitable nesting and foraging opportunities for a range of widespread species of bird” (paragraph 3.4).**

16.1 The Addendum Appraisal, dated 21 April 2023, confirmed that the Site “continued to provide suitable nesting and foraging opportunities for a range of widespread species of birds”. And that “a bird’s nest was recorded in a cherry tree on the eastern boundary” (page 9).

16.2 The Ecological Appraisal’s Table 3.2 summarises records of protected and notable species of relevance to the Site within 1km, including 38 species of birds, of which there are x15 NERC Section 41, x5 Wildlife and Countryside Act 2018: Schedule 1, and x3 Red and x7 Amber list bird species.

**17. However, contrary to Natural England’s Guidance Wild Birds (see paragraph 19 below), which bird species nest and forage on the Site, and whether NERC Section 41, Wildlife and Countryside Act Schedule 1 and Red and Amber list species, has not been determined.**

17.1 Without that data, which can only be obtained by on-Site surveys, how the development and change of land use would impact on bird species nesting, foraging and wintering there, which are likely to include NERC Section 41, Wildlife and Countryside Act Schedule 1, and Red and Amber list birds, cannot be assessed.

**18. Natural England’s ‘Guidance Wild Birds: advice for making planning decisions. How to assess a planning application when there are wild birds on or near a proposed development site’ (published 14 January 2022)’ is Natural England’s ‘standing advice’ for wild birds, which is “a material planning consideration for local planning authorities (LPA), which should take this advice into account when making planning decisions. It forms part of a [collection of standing advice for protected species](#).**

**18.1 Under the heading ‘When to ask for a survey’ the Guidance states that local planning authorities “should ask for a survey if distribution and historical records suggest wild birds may be present”. And that local planning authorities should also ask for a survey if the proposal site is likely to affect:**

- breeding birds
- wintering birds
- Barn Owls and other birds listed in [Schedule 1 of the Wildlife and Countryside Act](#)
- birds listed in [Section 41 of the Natural Environment and Rural Communities Act 2006](#)
- Red and Amber list birds of conservation concern [red and amber list birds of conservation concern](#)

Note, too, the Guidance's advice that "Absence of a record does not mean there are no wild birds. It could mean there is no survey data available for that location"

**19. On-Site wild bird surveys for DC/21/2007 should have been asked for, and should be asked for, to determine which bird species nest, forage and winter on the Site.**

**19.1 Without this essential data the council cannot fulfil its biodiversity duty under the NERC Act, Section 40.**

**20. Government Circular 06/2005: 'Biodiversity and Geological Conservation- Statutory Obligations and their impact within the planning system' (NPPF Foot Note 65 refers):**

Paragraph 98: "*The presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat*".

Paragraph 99: "*It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted*".

**20.1 Without this data the council cannot fulfil its biodiversity duty under the NERC Act, Section 40.**

**21. The Ecological Appraisal Addendum', 8 August 2023, states that update bat activity surveys "are being conducted in May to October 2023".** Results of the activity surveys conducted May to July are presented in the Appraisal, with the advice that the results of the surveys which had yet to be completed would be "provided to the council in November 2023".

21.1 Were these results subsequently presented to Horsham District Council?

Yours faithfully

Dr R F Smith, DPhil, BA (Hons), PGCE, FRGS

Trustee CPRE Sussex

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Chair CPRE Sussex