



The countryside charity
Sussex

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Attn: Case Officer Ms Stephanie Bryant

Horsham District Council
Parkside
Chart Way
Horsham
West Sussex
RH12 1RL

19 November 2024

Dear Ms Bryant,

CPRE Sussex representation objecting to

DC/24/1581

Land at 508967 124469 Marringdean Road Billingshurst West Sussex

Outline planning application for up to 79 dwellings (including affordable housing) with all matters reserved except access.

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

Local Plan Policies

1. This planning application is predicated on the questionable presumption that the proposed un-planned-for scheme should be approved because Horsham District Council does not “have a policy compliant supply of deliverable sites as required by national policy” (Planning Statement (Including Affordable Housing Statement, paragraph 1.6).
2. **The applicant’s Planning Statement (Including Affordable Housing Statement) for DC/24/1581 acknowledges at paragraph 1.6 that “In general terms, development of this site would breach countryside policies”.**
3. **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Appeal ruling on two appeals by Gladman Developments shows that that even where development plan policies are rendered out of date by housing land shortfalls, they remain potentially relevant to the application of the tilted balance and decision-makers are not legally bound to disregard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 11 d).**

3.0.1 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.

3.1 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.

3.2 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.

3.3 But the Court of Appeal ruled that even where development plan policies are rendered out of date by housing land shortfalls, they remain potentially relevant to the application of the tilted balance and decision-makers are not legally bound to disregard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).

4. That the application’s presumption of automatic approval is questionable has been demonstrated in Horsham District by the Appeal Decisions:

- APP3825/W/21/3266503 Land south of Newhouse Farm, Old Crawley Road, Horsham (DC/20/0470: 473 dwellings). Decision date 30 July 2021.

-- **Contrary to the impression given by applicant’s Planning Statement (Including Affordable Housing Statement) at paragraph 4.23, APP/Z3825/W/21/3266503 was dismissed.**

- 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 Chilton Road, Pulborough, RH20 2EE (DC/20/2216: 4 dwellings). Decision date 18 March 2022.

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

5. 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 15 April 2024.

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

6. The Inspector who dismissed APP/Z3825/W/21/3281657 Longlands, West Chiltington Road, Pulborough, RH20 2EE (DC/20/2216) considered that although the Horsham District Planning Framework (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).

7. 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/24/1619, notably HDPF Policy 4 Strategic Policy: Settlement Expansion, Policy 25 District Character and the Natural Environment, and Policy 26 Countryside Protection.

8. DC/24/1581 is contrary to HDPF Policy 4 Strategic Policy: Settlement Expansion because the site is outside of Billingshurst’s built-up boundaries and is neither allocated in the HDPF, nor in HDC’s shortly to be examined Regulation 19 plan, nor in Billingshurst’s Neighbourhood Plan.

8.1 How Policy 4 Strategic Policy: Settlement Expansion should be interpreted is explained by the Planning Inspector who decided APP/Z3825/W/20/3261401 (paragraph 11). The Inspector considered that “Policy 4 sets out the circumstances under which development will be permitted outside of built-up area boundaries. The use of the term ‘and’ within the policy is a clear indicator that proposals should meet all five criteria in order to be acceptable”.

8.2 Accordingly, DC/24/1581 is contrary to HDPF Policy 4, and if permitted would undermine the spatial strategy for the district, which is predicated on planned expansion of existing settlements through the Local Plan or neighbourhood planning.

9. DC/24/1581 is contrary to HDPF Policy 25 Strategic Policy: The Natural Environment and Landscape Character, because it would change the character of the site and its locality to the detriment of the area’s intrinsic character and Billingshurst’s rural setting.

9.1 The applicant’s Design and Access Statement acknowledges that the “The character of the site is predominantly rural” (page 12).

9.2 How Policy 25 should be interpreted and applied where a site is not a valued landscape within the meaning of NPPF paragraph 174 a) is explained by the Planning Inspector who determined APP/Z3825/W/20/3261401.

9.2.1 The Inspector states “The Council is not contending that the site is a valued landscape within the meaning of paragraph 174 a) of the Framework. However, paragraph 174 b) of the Framework recognises the intrinsic character and beauty of the countryside. Policy 25(1) of the HDPF is consistent with national policy in seeking to protect, conserve

and enhance landscape and townscape character, taking into account individual settlement characteristics. In harming the rural setting of the village, the proposal would conflict with this policy” (paragraph 46).

9.3 DC/24/1581 conflicts with Policy 25(1) because it would urbanise and therefore harm Billingshurst’s rural setting.

10. DC/24/1581 is contrary to HDPF Policy 26 Strategic Policy: Countryside Protection.

10.1 The Inspector who determined APP/Z3825/W/20/3261401 gave weight to Policy 26 in his decision to refuse the appeal (paragraphs 12 and 47).

10.2 The Inspector advised that “Policy 26 seeks to protect the rural and undeveloped nature of the countryside against inappropriate development. In order to be acceptable, a proposal outside of settlement boundaries must be essential to its countryside location and it must meet one of the four criteria. Although it is suggested that the proposal would enable the sustainable development of rural areas, there is no compelling evidence to persuade me that major housing schemes should be deemed acceptable in principle under this policy” (paragraph 12).

10.3 Policy 26 states that outside built-up area boundaries, the rural character and undeveloped nature of the countryside will be protected against inappropriate development, and that any proposal must be essential to its countryside location and must additionally meet one of four identified criteria, none of which are met by DC/24/1581.

An Archaeological and Heritage Assessment should be provided for the application

11. The application has been submitted without an Archaeological and Heritage assessment. An assessment informed by LIDAR and geophysical surveys should be provided for this application.

11.0.1 The assessment should be informed by and illustrated with map coverage of the Site and its locality: the Billingshurst Parish Tithe Map (1841), and Ordnance Survey, County Series, commencing in later 19th century.

11.1 HDPF Policy 34 Cultural and Heritage Assets stipulates:

“The Council recognises that heritage assets are an irreplaceable resource, and as such the Council will sustain and enhance its historic environment through positive management of development affecting heritage assets. Applications for such development will be required to:

“Ensure appropriate archaeological research, investigation, recording and reporting of both above and below-ground archaeology, and retention where required, with any assessment provided as appropriate” (requirement 8).

A Lighting Plan should be provided for the application

12. The Application has been submitted without a Lighting Plan. To ensure compliance with NPPF paragraph 191 and HDPF Policy 24 Strategic Policy: Environmental Protection, the applicant should be asked to provide a Lighting Plan for the application (see paragraphs 11.1, 11.2, 11.3, and 12.1 below).

12.0.1 The Lighting Plan should include lighting for the construction phase of development and detailed modelling of cumulative light spill from new residential dwellings, pathway bollards and security lights.

12.0.2 Potential adverse impacts should be considered and measures for implementation to prevent or minimise harm identified, and if needs be secured by Condition.

12.1 NPPF (December 2023) paragraph 191 stipulates that Planning policies and decisions should “ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation”.

12.2 The HDPF stipulates that:

“In order to maintain, and where necessary improve, the quality of the environment in Horsham district, the potential for development to generate pollution will need to be considered and appropriately mitigated where necessary” (paragraph 9.9). And the Council will seek to ensure that “Where necessary the appropriate types and locations of lighting should be used, so as not to give rise to unnecessary light pollution, particularly in rural areas” (paragraph 9.10).

12.3 The applicant’s Design and Access Statement acknowledges that the “The character of the site is predominantly rural” (page 12).

12.4 HDPF Policy 24 Strategic Policy: Environmental Protection stipulates that “The high quality of the district’s environment will be protected through the planning process and the provision of local guidance documents. Taking into account any relevant Planning Guidance Documents, developments will be expected to minimise exposure to and the emission of pollutants including **noise**, odour, air and light pollution”.

Ecology and Biodiversity

A Wildlife Friendly Lighting Strategy for the development should be secured by a Condition of Consent

13. To avoid impacts from light disturbance A Wildlife Friendly Lighting Strategy should be secured by a Condition of Consent and implemented in full.

13.0. Detailed guidance on sensitive lighting for developments is provided by the Bat Conservation Trust and can be found at the following website address:

http://www.bats.org.uk/pages/bats_and_lighting.html “

13.1 This is essential because

“Once occupied, the residential development has the potential to cause increased light-spill onto adjacent semi-natural habitats, if suitable design measures are not put in place.

A significant increase in light-spill onto the hedgerows and mature trees would result in these features becoming less accessible to bats, as most bat species will avoid well-lit areas where the risk of predation is perceived to be higher” (I am here quoting DC/24/ 1619 Land to The West of Smock Alley South of Little Haglands West Chiltington: LUC Ecological Appraisal Addendum, 8 August 2023, page 15).

13.2 The Design and Access Statement for DC/24/1581 make no mention of light-spill and its affects and the need for mitigation.

13.3 The application’s Shadow Habitats Regulation Assessment (SHRA), September 2024, confirmation of the need for a sensitive lighting scheme reinforces the need for the securing by Condition, a Wildlife Friendly Lighting Strategy for the development (paragraph 5.26).

Barbastelle bats

14. The applicant’s Design and Access Statement (DAS) is potentially misleading where it states (at page 14) that “Relatively low levels of bat activity have been recorded across the site, with the majority of registrations being for common and widespread species”, omitting to mention that Barbastelle were among the bat species recorded.

14.1 As for the statement that the levels of recorded bat activity were ‘relatively low’, relative to what and where?

15. Barbastelle bats were among the bat species detected and recorded on the Site in April, May, June, July, August and September 2023, and reported in the applicant’s Ecological Appraisal (paragraph 4.9, and Appendix 2: Results of Bat Surveys figures/tables 1,2,3,4,5 and 6).

15.1 Barbastelle is a ‘qualifying feature’ of the Men’s Special Area of Conservation (SAC), which is located approximately 5.4km to the west of the Site.

15.2 Whether the proposed development could or would impact adversely on foraging and commuting Barbastelle, and their commuting routes across the wider area and the integrity of the SAC, is an important consideration.

15.3 The Shadow Habitats Regulation Assessment (SHRA), September 2024, advises that “through the delivery of habitat enhancement measures such as supplementary planting and the implementation of a long-term management regime, **and mitigation measures such as the design of a sensitive lighting scheme which retains dark corridors around the site’s boundary, the hedgerows and woodland band which are considered to be of greatest value for all bat species are to be protected, and their functionality preserved and enhanced**” (paragraph 5.26). And that:

“In view of this, there is not considered to be the potential for development at the Application Site to result in loss, interruption, or diminution of the ecological value of the routes used by Barbastelle bats, when flying from the Men’s SACs to reach their foraging grounds” (paragraph 5.27).

15.4 The SHRA advice regarding the need for a sensitive lighting scheme reinforces the need for the securing by Condition, a Wildlife Friendly Lighting Strategy for the development.

Natural England’s ‘Guidance Wild Birds: advice for making planning decisions’ ignored

16. The applicant’s Ecological Statement states that “General observations were made during the site surveys of any faunal use of the site, with specific attention paid to the potential presence of protected species. Specific surveys were undertaken with regard to bats, Hazel Dormouse, amphibians and reptiles”.

16.1 Unfortunately, no specific on-Site surveys of birds were undertaken.

16.2 The Ecological Statement advises that “A small number of common bird species were recorded within the application site during the surveys” “and it is considered that the hedgerows and trees within the application site offer suitable foraging and nesting opportunities for a range of birds” (paragraph 5.4.54).

17. The omission of specific On-Site bird surveys to determine whether 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, and Red and Amber list birds of conservation concern use the site is contrary to 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).

17.0.1 This Guidance is Natural England’s ‘standing advice’ for wild birds and 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“.

17.1 Citing the Sussex Biodiversity Records Centre (BRC) as source regarding recorded wild birds in the locality, the Ecological Statement advises that “the closest were from approximately 0.63km away south of the application boundaries. These records were for Red Kites, House Martin, Nightingales, and Marsh Tit” (paragraph 4.20). And “For the sake of completeness, other species in the local area were Lapwing, Kingfisher, Cuckoo, Merlin, Hobby, Spotted Flycatcher, Black redstart, Song thrush, Green woodpecker, Red bunting, Yellow hammer, Sky lark, Kestrel and Barn owl” (paragraph 4.21).

17.2 These bird species include 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, and Red and Amber list birds of conservation concern.

17.3 Surprisingly, the status and importance of these birds is not acknowledged in the Ecological Appraisal.

17.4 Note 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”.

18. 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.

19. BRC records cited by the Ecological Appraisal show that wild birds are present in the local area. The proposed development and resulting change of land use is likely to affect bird species that use the site, and on-Site bird surveys are therefore required.

19.1 To comply with Natural England’s Guidance, on-Site wild bird surveys for DC/24/1619 should be requested and provided before the application is determined in committee.

19.2 Without this essential data the council cannot fulfil its biodiversity duty under the NERC Act, Section 40, nor their Government Circular 06/2005 Biodiversity and Geological Conservation Statutory Obligations (NPPF Foot Note 65 refers).

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”.

Water Neutrality

21. SNOWS in email dated 5 November 2024, considered that “The outline planning application DC/24/1581 does not currently contain enough detail about how the water usage will be offset, so we are unable to add it to the SNOWS register at this stage” (SNOWS email to HDC Planning: Planning Application- Consultation DC/24/1518, dated 5 November 2024).

Affordable Housing:

No mention is made of a potential affordable housing provider

No mention of the split of the affordable rented units that HDC would expect to see

22. Would the proposed scheme meet the community’s needs for affordable homes, including affordable social renters?

22.1 “Housing Officers need reassurance that there are registered providers who would be willing to take on the site and tenure sizes as proposed before we would be able to support the site”.

22.2 Horsham District Council: Housing Department advised on 8 November that:

“The Housing Register in Billingshurst currently has 246 households waiting for housing of which is broken down to 62 households (25%) in need of a 1-bedroom unit, 39 households (16%) in need of a 2-bedroom unit, 116 households (47%) in need of a 3-bedroom unit and 29 households (12%) in need of 4 or more bedrooms”.

“The site has proposed to deliver 9x1 bed (32%), 9x2 beds (32%), 7x3 (25%) beds 3x4 beds (11%) as affordable housing. Housing Officers would welcome further conversation in relation to the affordable housing tenure sizes”.

“There is clear evidence that the need in Billingshurst requires a higher percentage of 3 bed units to be delivered and a reduction in the number of 2 and 1 bed units. Households with a 3 or 4 bed needs are the longest waiting on our housing register currently with some waiting as long as 8 years to be rehoused.

“There is also no mention of the split of the affordable rented units we would expect to see a 70% (19 units) delivered as affordable/social rent and 30% (8 unit) as shared ownership”.

“No mention is made of a potential affordable housing provider, and Housing Officers would urge the applicant to reach an agreement with a provider as soon as possible to clarify and confirm tenure split, and secure funding arrangements for the affordable homes and ensure the layout and specifications of the affordable units meet the provider’s requirements”.

Housing Officers need reassurance that there are registered providers who would be willing to take on the site and tenure sizes as proposed before we would be able to support the site.

“Housing Officers require further conversation in relation to the affordable rented units size delivery, we would first need confirmation of what size units would be going to each tenure (affordable rent or shared ownership). We would also require the applicant to look at currently local demand and increase the delivery of 3 bed units in line with current demand”.

In conclusion, CPRE Sussex asks that DC/24/1581 be refused for the reasons explained above

Yours faithfully,

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

Trustee CPRE Sussex

Copy to:

Chair CPRE Sussex