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Attn: Case Officer Jason Hawkes

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

11 November 2024

Dear Mr Hawkes,

CPRE Sussex representation objecting to

**DC/24/1619**

**Land to The West of Smock Alley South of Little Haglands West Chiltington**

**Erection of 14No. 2, 3 and 4-bedroom dwellings, including 4 bungalows with access from Smock Alley, vehicle parking, public open space, landscaping and a borehole**

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

1. “The proposal is a re-submission of a scheme that was previously refused by the Council (under reference DC/21/2007), and the quantum of units, scale, design and layout of the proposed development has not changed” (DC/24/1619 Planning Statement (Incorporating Affordable Housing Statement and Statement of Community Involvement), dated 11Oct24, paragraph 4.8).

1.1 DC/21/2007 was also the subject of an Appeal, Appeal Reference: APP/Z3825/W/24/3349208, recently withdrawn by the appellant.

1.2 Horsham District Council has refused previous applications to develop land west of Smock Alley: DC/14/2248 subsequently dismissed at Appeal, Ref: APP/Z3825/W/15/3022944, and DC/14/1389 subsequently dismissed at Appeal Ref: APP/Z3825/W/16/3146231.

**2. The application is predicated on the questionable presumption that the proposed scheme cannot be refused because:**

- HDC is unable to demonstrate a 5-year housing land supply.
- The site has been allocated for residential development in the ‘emerging local plan’.

- The site has been allocated for residential development within West Chiltington’s draft Neighbourhood Plan, with amendments made to the built-up area boundary.
- Housing delivery in Horsham District measured against the Government’s Housing Delivery Test is "below 75% of the requirement over the previous three years” (Planning Statement (Incorporating Affordable Housing Statement and Statement of Community Involvement), 11 October 2024, paragraph 5.7).

2.1 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 yet-to-be-made Neighbourhood Plan is subject to further public consultation.

2.2 NPPF paragraph 80 stipulates that “Until new Housing Delivery Test results are published, the previously published result should be used”. The Government’s most recent Housing Delivery Test measurement results were those for 2022, published 19 December 2023. The results for 2023 have yet to be published.

<https://www.gov.uk/government/collections/housing-delivery-test>

## **Local Plan Policies and Appeal Decisions**

3. DC/24/1619 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 11 d).**

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/24/1619 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 15 April 2024.**

6.1 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).

6.2 DC/24/2016 also, overall, conflicts with the HDPF.

**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/24/1619,** 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/24/1619, is contrary to HDPF Policy 4 Strategic Policy: Settlement Expansion, fifth bullet** “that outside the built-up area boundaries (BUAB) 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 the application site, 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 DC/21/2007, which DC/24/1619 has superseded, considered that "This area has retained a rural feel with a verdant setting".

**10. DC/24/1619 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. 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 has “retained a rural feel with a verdant setting”.**

11.1 The applicant’s Design and Access Statement, August 2021, 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’.

11.2 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).

11.2 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.

11.4 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) in respect of DC/21/2007 states has “retained a rural feel with a verdant setting”.

## **Noise pollution: the need for an Acoustic Impact Assessment**

**12. To ensure compliance with HDPF Policy 24 Strategic Policy: Environmental Protection an acoustic impact assessment is required in respect of the applicant’s proposed borehole water treatment plant (which includes a ‘borehole pump),** described variously by the applicant as a ‘Water Treatment Plant’ (Site Plan: Water Treatment Plant, dated 23 Apr 24) and ‘Treatment and Plant Room’ (Water Neutrality Report Design & Maintenance Supporting Detail Castle Properties (Southern) Limited – Land West of Smock Alley, West Chiltington, 22 Feb 23).

12.1 HDC’s Planning Committee Report (23 April 2024) in respect of DC/21/2007 (subsequently superseded by the identical DC/24/1619), recommended that given the proximity of the borehole’s water treatment plant (which includes a ‘borehole’ pump’) to adjacent properties, “a condition is recommended requiring the submission of an acoustic

impact assessment, including any required attenuation measures, to ensure that the noise impact of the plant is acceptable”.

12.2 Unfortunately, despite HDC’s recommendation, an acoustic impact assessment for the plant has not been provided either for DC/21/2007 or the subsequent DC/24/1619.

12.3 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”

### **Light pollution: clarification needed**

#### **13. Clarification on whether the development will be provided with street lighting and/or any other external lighting should be obtained for the reasons explained below.**

13.1 A Design and Access Statement, August 2021, has not been submitted for DC/24/1619.

13.2 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”.

13.3 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).

13.4 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”.

### **Biodiversity and Ecology**

## **A Wildlife Friendly Lighting Strategy should be secured by a Condition of Consent**

**14. To avoid impacts from light disturbance A Wildlife Friendly Lighting Strategy should be secured by a Condition of Consent and implemented in full as specified by Place Services in their advice to HDC, 18 December 2023, and in the applicant’s Ecological Appraisal Addendum, 8 August 2023.**

14.0.1 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”

(Ecological Appraisal Addendum, 8 August 2023, page 15).

14.0.2 And because the applicant has not submitted a Design and Access Statement for DC/24/1619, and the Design and Access Statement for the previous application, DC/21/2007, made no mention of light-spill and the need for mitigation.

14.2 The Ecological Appraisal Addendum advises, under the heading Mitigation, that “A sensitive lighting scheme will be provided, which could be secured through a suitably worded planning condition”.

“This will be designed to avoid light-spill onto the adjacent semi-natural habitats. This will include: – an absence of external lighting in the immediate area around these habitats where possible; – the use of sensors or timers; – use of low lux LED lighting; and – provision of baffles and screens on light fittings to limit light spill. – 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](http://www.bats.org.uk/pages/bats_and_lighting.html) “

14.3 Place Services in their advice to HDC, 18 December 2023, “support the recommendation that a Wildlife Friendly Lighting Strategy is implemented for this application (Ecological Appraisal Addendum (LUC, August 2023) to avoid impacts from light disturbance”. And advise that “This should be secured by a Condition of Consent and implemented in full”.

14.4 Specifics are listed on the third page of the ‘advice’.

## **Barbastelle bats: results of on-Site bat activity survey, published February 2024, overlooked**

**15. Contrary to the applicant’s Planning Statement (Incorporating Affordable Housing Statement and Statement of Community Involvement), 11 October 2024,**

**Barbastelle bats had been recorded on the proposed development site, on 23, 24 and 25 September 2023.**

15.1 The applicant's Planning Statement, 11 Oct 24, states that

"The site is located within the 12km wider conservation area for The Mens SAC, which includes Barbastelle bats as its qualifying feature. Various bat species were recorded during the surveys, but no Barbastelle bats were detected" (paragraph 6.37).

**15.2 Barbastelle bats were however detected and recorded on the Site, on 23<sup>rd</sup>, 24<sup>th</sup> and 25<sup>th</sup> September 2023** (Land West of Smock Alley South of Little Haglands, West Chiltington (Application No. DC/21/2007): August to October 2023 Bat Activity Survey Results, published 23 Feb 24), pages 3, 8, 10).

15.3 The report states that "this demonstrates that the species likely occasionally uses the hedgerow as a commuting corridor to reach further habitat in the wider area" (pages 3 and 4).

15.4 The hedgerow in question is "the native species rich hedge, between the northern and southern fields" (page 2). A map showing the location of bat recording positions can be found in Appendix A of the report.

15.5 Note that one month of bat survey data was lost "due to recording errors within the equipment" (page 2).

**16. The authors of HDC's Planning Committee Report (23 April 2024) in respect of DC/21/2007 were apparently unaware that Barbastelle bats had been detected and recorded at the Site, in September 2023.**

16.1 The Committee's report, citing Ecological Appraisal Addendum, August 2023, advises at paragraph 6.6.1 that Barbastelle bats had **not** been recorded at the Site.

**Natural England's 'Guidance Wild Birds: advice for making planning decisions' ignored**

**17. 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 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 ".**

**18. Two Ecological Appraisals were submitted by the applicant in respect of DC/21/2007: 'Smock Alley, West Chiltington Common, Ecological Appraisal', dated August 2021, and the subsequent 'Smock Alley, Hags lane, Chiltington: Ecological Appraisal Addendum', dated 8 August 2023, being an 'updated site walkover' undertaken by an ecologist on 21 April 2023.**



18.0.1 No additional surveys have been undertaken for DC/24/1619

18.1 The Ecological Appraisal, August 2021, comprises a desk study and an Extended Phase 1 Habitat Survey.

**19. 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, August 2021, paragraph 2.3).

**20. In respect of wild birds, the Ecological Appraisal, August 2021, 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).

20.1 The Appraisal Addendum, dated August 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).

20.2 The Ecological Appraisal's Table 3.2 details 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.

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

21.1 Without that data, which can only be obtained by on-Site survey, 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.

**22. 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 (LPAs), which should take this advice into account when making planning decisions. It forms part of a collection of standing advice for protected species”.

22.1 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.

22.2 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".

**23. On-Site wild bird surveys for DC/24/1619 should have been asked for and should be asked for to determine which bird species nest, forage and winter on the Site.**

23.1 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.

**24. 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".

## **Affordable housing**

**25. Whether DC/24/1619 would meet the community's need for affordable rented homes is in doubt**

**25.1 "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".**

25.1 HDC Housing Officer's comments, dated 4 November 2024, re DC/24/1619:

“The site has proposed to deliver 2x1 beds (40%) ,2x2 beds (40%) and 1x3 (10%) beds as affordable housing, the site has proposed to deliver a range of properties sizes from 1-4 beds. Housing Officers would welcome further conversation in relation to the affordable housing tenure sizes”.

“There is clear evidence that the need in West Chiltington requires a higher percentage of 3 bed units to be delivered in line with current local demand. 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% (4 units) delivered as affordable/social rent and 30% (1 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 affordable housing tenure sizes”.

“Housing Officers also require confirmation in relation to the affordable housing tenure split and sizes that would be allocated to each tenure before being able to support this application”.

In conclusion, CPRE Sussex asks that DC/24/1619 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