



The countryside charity
Sussex

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Attention: Case Officer Ms Amanda Wilkes

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

3 June 2023

Dear Ms Wilkes,

Representation submitted for and on behalf of CPRE Sussex objecting to

DC/23/0189

Sandgate Nursery, West End Lane, Henfield, West Sussex BN5 9RD

Outline application for erection of a continuing care retirement community of up to 72 units of accommodation (Use Class C2) and up to 10 starter homes (Use Class C3) with associated community facilities including medical centre and on-site laundry and catering facilities, with access, infrastructure, open space, landscaping and associated works (all matters reserved except for access).

CPRE Sussex asks that this application be refused for the reasons explained below.

WATER NEUTRALITY

1. The site falls within the Sussex North Water Supply Zone. Whether or not DC/23/0189 could achieve water neutrality is therefore a critical planning matter.

1.1 Natural England is concerned that abstraction of water within the North Water Supply Zone is having an adverse impact on the protected sites and habitats within the Arun Valley, including the Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site.

1.2 Natural England therefore stipulates that new development within the zone should achieve water neutrality such that water use is equal to, or less than what it was before the development took place.

1.3 HDPF Policy 31 Green Infrastructure and Biodiversity, 4 a) and b), and 5, establishes that permission will be refused where development is anticipated to have an adverse impact on biodiversity sites such as SPAs and SACs, unless appropriate mitigation measures are provided.

1.4 The Sussex North Water Neutrality Study: Part C – Mitigation Strategy Final Report November 2022, *“builds on the analysis in Parts A and B and develops a draft*

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strategy to achieve water neutrality. The purpose of the Strategy is to demonstrate that the Local Plan growth of the commissioning LPAs can be delivered in compliance with the Habitat Regulations (i.e. that the Local Plans will be water neutral)” (paragraph 9).

2. The requirement for the proposed scheme, DC/23/0189, to achieve Water Neutrality should be considered and calculated against the site’s baseline of zero water consumption.

2.1 The site comprises an old plant nursery, which has remained unused for over 20 years (Ecological Impact Assessment, January 2023, paragraph 37), with zero usage of mains water for more than 20 years in consequence.

2.2 The requirement for DC/23/0189 to achieve Water Neutrality should therefore be considered and calculated against the site’s 20 plus years baseline of zero water consumption.

3. Water demand for the scheme, including up to 72 units of accommodation, 10 starter homes, and on-site facilities, including on-site laundry and catering facilities, seems not to have been calculated.

3.1 This essential data and calculations should be provided.

4. The applicant’s Planning, Design and Access Statement (PDAS), February 2023, advises only that, at paragraphs:

“3. The water efficiency measures incorporated within the houses will ensure that the water consumption is less than 85 litres per person per day and achieves the standard required by Natural England for development sites located in the Sussex North Water Supply Zone” (17th bullet). And under the heading Water Neutrality at paragraphs:

“5.60. Through water efficiency measures, the development will achieve the 85 litres per person per day target”.

“5.62. Notwithstanding that the former nursery use would have extracted mains water in association with this use, the following approach is taken to water neutrality”

“5.63. As set out above (PDAS paragraphs 3 and 5.6 quoted above), the development will achieve the Natural England target of 85 litres per person per day”.

“5.64 The application lies within the Principal Aquifer which supplies the Sussex North Water Supply Zone. The indicative drainage strategy seeks to dispose of surface water to the ground via infiltration. There will be an increase in the amount of water that naturally infiltrates to the ground currently, as whilst there will be some degree of runoff from the existing site, the development proposes to discharge all runoff from the impermeable areas to the ground, which would replenish the aquifer”.

“5.65 Therefore the water consumption from the site will be offset by discharging surface water to the ground which would replenish the aquifer”.

5. The emphatic statement “water consumption from the site will be offset by discharging surface water (e.g runoff from the impermeable areas) to the ground which would replenish the aquifer” is not supported by any hydrology or geology assessment.

5.1 Moreover, surface water is dependent on rainfall and whether the quantity of surface water resulting from rainfall and discharged from the scheme to the ground would be consistently sufficient to offset the scheme's water consumption has to be considered and determined.

6. Note that the application's Ecological Impact Assessment (paragraph 6.4) advises that as Water Neutrality for the proposed development "*is not achievable within the site itself, adequate contribution to an established offsetting scheme will be required*".

6.1 Is the applicant's proposed offsetting of the scheme's water consumption by discharging runoff from impermeable areas to the ground an established offsetting measure?

7. The applicant's stated intent to offset the scheme's water consumption by discharging surface water to the ground is neither mentioned nor identified in the 'Water Use Statement' given at Section 6 of the applicant's Sustainability and Energy Statement, (SES) 16 January 2023.

7.1 Instead, the statement identifies, and lists means by which water consumption of "less than 85 litres per day" could or might be achieved for the scheme, including various off-setting measures and water efficiency devices.

8. The SES advises that these water efficiency devices have yet to be "*fully evaluated*" and "*subject to an evaluation based on technical performance, cost and market appeal*" (SES, page 19).

8.1 Accordingly, whether incorporation of these water efficiency devices "*will ensure the water consumption is less than 85 litres per person per day*" are unproven, and therefore uncertain.

9. The Sussex North Water Neutrality Study: Part C – Mitigation Strategy Final Report November 2022 states at paragraph 54 that "*The objective of the Strategy is to enable the Local Plans to proceed towards adoption. Priority of access to offsetting delivered through the LPA-led Offsetting Scheme should therefore be given to sites allocated in Local Plans and/or identified in the associated, published Local Plan housing trajectories (for example an allowance for Windfall). Speculative development, that may not be compliant with the Local Plan (to be defined individually by the LPAs) would not be prioritised in the Strategy*".

9.1 DC/23/0189 is a speculative application.

LOCAL PLAN POLICIES

10. 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, 3 February 2021 (See below paragraph 9).

10.1 This was made clear in Horsham District by the Appeal Decisions: APP/Z3825/W/20/3261401 Land north of Sandy Lane, Henfield, West Sussex, decision

date 19 August 2021, and APP/Z3825/W/21/3281657 Longlands, West Chiltington Road, Pulborough, RH20 2EE, decision date 18 March 2022.

10.2 Notwithstanding the lack of a 5-year land supply both appeals were dismissed.

11. The dismissal of these appeals, despite the absence of a 5-year supply, is in line with the Court of Appeal ruling on two appeals by Gladman Developments Limited (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.

11.1 The Court of Appeal 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.

11.2 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.

11.3 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).

12. The Inspector who determined 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).

13. How the Inspector who determined APP/Z3825/W/20/3261401 Land north of Sandy Lane, Henfield, West Sussex (DC/20/0427) interpreted and gave weight to Henfield Neighbourhood Plan (HNP) and HDPF policies is also pertinent to DC/23/0189, notably HNP Policy 1 and HDPF Policies 4, 25 and 26, at paragraphs 5, 6, 7 and 8 below.

14. DC/23/0189 conflicts with the Spatial Plan within HNP Policy 1.

14.1 The Inspector considered that *“Policy 1 of the HNP sets out a Spatial Plan for the Parish. It reaffirms the built-up area boundary and states that development proposals outside of this boundary will be supported where they conform, as appropriate to their location in the neighbourhood area, to national, HDPF and South Downs Local Plan policies in respect of development in the countryside. The explanatory text notes that the effect of the policy is to confine housing and other development proposals to within the built-up area boundaries. The HNP allocates sites for 270 dwellings but this does not include the appeal site; its approach to sites outside of the built-up area boundary is parasitic upon the HDPF. Thus, the proposal is also in conflict with the Spatial Plan within HNP Policy 1 (P1.2)”* (APP/Z3825/W/20/3261401, paragraph 17).

14.2 DC/23/0189 conflicts with the Spatial Plan within HNP Policy 1.

15. DC/23/0189 is contrary to HDPF Policy 4 Strategic Policy: Settlement Expansion because the site is outside of Henfield's built-up boundaries and is neither allocated in the HDPF, nor in Henfield's Neighbourhood Plan formally made 23 June 2021.

15.1 The application, if permitted, would therefore undermine the spatial strategy for the district, which is predicated on planned expansion of existing settlements through the Local Plan or neighbourhood planning.

15.2 How Policy 4 should be interpreted is explained by the Planning Inspector who decided APP/Z3825/W/20/326140.

15.3 The Inspector considered "*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. The first criterion stipulates that the site should adjoin an existing settlement edge and should also be allocated in the Local Plan or in a neighbourhood plan. On plain reading, the policy does not permit unallocated sites outside of built-up area boundaries. The appellant's interpretation would undermine the spatial strategy which is predicated on planned expansion of existing settlements through the Local Plan or neighbourhood planning*" (paragraph 11).

16. DC/23/0189 is contrary to HDPF Policy 25 Strategic Policy: The Natural Environment and Landscape Character, because it would change the site's character to the detriment of the area's intrinsic character and beauty and Henfield's rural setting.

16.1 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.

16.2 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).

16.3 DC/23/0189 conflicts with Policy 25(1) because it would harm Henfield's rural setting.

17. DC/23/0189 is contrary to HDPF Policy 26 Strategic Policy: Countryside Protection.

17.1 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).

17.2 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 apply to DC/23/0189.

BIODIVERSITY AND ECOLOGY

18. Natural England's Standing Advice, 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' (14 January 2022), is "a material planning consideration for local planning authorities (LPA). You should take this advice into account when making planning decisions. It forms part of a collection of standing advice for protected species".

18.1 *Natural England's 'standing advice' "is general advice that Natural England, as a statutory consultee, gives to LPAs. It:*

- *avoids the need to consult on every planning application*
- *helps you make planning decisions on development proposals"*

<https://www.gov.uk/guidance/wild-birds-advice-for-making-planning-decisions>

[Protected species and development: advice for local planning authorities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/protected-species-and-development-advice-for-local-planning-authorities)

19. Natural England's 'Standing Advice', 'Guidance Wild birds: advice for making planning decisions' stipulates that "LPAs should 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". And that

"Some wild birds are listed as rare and most threatened species under Section 41 of the Natural Environment and Rural Communities Act (2006). You must have regard for the conservation of Section 41 species as part of your planning decision".

<https://www.gov.uk/guidance/wild-birds-advice-for-making-planning-decisions>

[Habitats and species of principal importance in England - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/habitats-and-species-of-principal-importance-in-england)

20. a **Contrary to Natural England's 'Standing Advice Guidance Wild birds: advice for making planning decisions', whether the site supports wild birds listed as rare and most threatened species under Section 41 of the NERC Act (2006) has not been determined because the application has been submitted without an onsite bird survey.**

20. b **Therefore, to enable and ensure compliance with Natural's England's stipulation that local planning authorities must have regard for the conservation of Section 41 species an onsite bird survey is needed, and the results submitted to HDC for consideration in the deciding of DC/23/0189.**

<https://www.gov.uk/government/publications/habitats-and-species-of-principal-importance-in-england>

20.1 **The applicants' 'Preliminary Ecological Appraisal', informed by a Phase 1 survey of the site's habitats undertaken and completed on one day (13 July 2022), states that:**

"Woodland and scrub on site provide suitable nesting habitat for breeding birds. As such, the site is considered to have high potential to support breeding birds" (paragraphs 3.22 and 6.8). And that

“The baseline features evaluated as important (through site designation, legislative protection or priority status on NERC Act 2006 Section 41 lists), so needing an assessment of effects, are as follows. On site: • Mature treelines; • Bats (roosts and foraging and commuting habitat); • GCN • Reptiles; • and, • Breeding birds”.

20.2 While additional surveys were undertaken on-site for bats and reptiles in 2022, with a Great Crested Newt (GCN) survey to follow in Spring 2023, the site has not been surveyed for birds. Consequently, bird species breeding there have not been recorded.

20.3 Since the applicant’s Preliminary Ecological Appraisal advises that *“the site is considered to have high potential to support breeding birds”* (paragraphs 3.22 and 6.8) and to enable HDC to comply with Natural England’s ‘Standing Advice Guidance Wild birds: advice for making planning decisions’ an onsite bird survey is needed for this application and the results submitted to HDC decision takers to consider.

<https://www.gov.uk/guidance/wild-birds-advice-for-making-planning-decisions>

CPRE Sussex asks that DC/23/0189 be refused for the compelling reasons explained above.

Yours faithfully,

[Redacted Signature]

Trustee CPRE Sussex

Copy to:

Chair CPRE Sussex