

LAND AT CHICHELE ROAD, OXTED, SURREY RH8 0NZ

TANDRIDGE DISTRICT COUNCIL

PINS Appeal Ref No.: APP/M3645/W/24/3345915

LPA Ref No.: TA/2023/1345

OPENING STATEMENT FOR THE LPA

Introduction

1. This is an appeal of the Appellant's application for full planning permission for development comprising:

“Proposed residential development 116 dwellings (Class C3) including affordable housing with associated access, car parking, soft landscaping and play provision”
2. The site is in the Green Belt and on land which (i) adjoins the Surrey Hills National Landscape (“**the AONB**”) and AGLV and (ii) is proposed by Natural England for future inclusion within the AONB.
3. The LPA refused permission under delegated powers on 26 February 2024. The decision notice set out seven reasons for refusal.
4. In response to some of the reasons for refusal, the Appellant has submitted further ecological surveys and assessment as well as a number of scheme alterations and clarifications including an updated Planning Layout¹. These have now resolved the concerns raised by the LPA under reasons for refusal 2, 3 and 6 in relation to ecology, important trees and ancient woodland subject to the imposition of suitable conditions and execution of the s.106 agreement.

¹ CD7.17. The LPA accepts this can properly and fairly be accepted on appeal and addressed at the inquiry.

5. The remaining reasons for refusal concern the impact of the scheme on green belt, on landscape character (including the character of the adjacent AONB), on the natural environment and on the proposed scheme to vary the boundary of the AONB.
6. These opening submissions first address the decision-making framework before turning to the LPA's case on the harms and benefits of the scheme as assessed against the Inspector's main issues.

Decision-making framework

7. Both the AONB and the Green Belt have the highest level of policy protection under the NPPF and the development plan. Given the Green Belt location, and the Appellant's agreement that the proposal is inappropriate development within it, the decision-making process is likely to be common ground. The LPA will say that the following is the correct approach:
 - (1) Paragraph 11(d) NPPF is engaged due to the LPA's housing land supply ('HLS') position;
 - (2) The 'most important policies' within the development plan are therefore deemed to be out of date; this includes at least those policies which form the basis for the outstanding reasons for refusal;
 - (3) Both Paragraph 152/153 NPPF and paragraph 182 NPPF are capable of constituting a "clear reason for refusing the development proposed" for the purposes of paragraph 11(d)(i) (for the latter see *Monkhill v SSHLG* [2021] P.T.S.R. 1432)
 - (4) Whether that is the case here turns on whether very special circumstances case is met, as any harm to the AONB (or indeed any other harm or benefit) falls to be weighed in the very special circumstances balance;
8. It follows that, if the LPA's case is accepted and the very special circumstances test is not met:
 - (1) the appeal scheme will not be in accordance with the development plan taken as a whole (as the protection of the green belt is secured in DPI10 in terms consistent with the NPPF),

- (2) paragraph 152 and 153 NPPF will provide a clear reason for refusing the scheme so that the tilted balance in paragraph 11(d)(ii) NPPF is not engaged,
 - (3) there are no other material considerations of sufficient weight to indicate a determination otherwise than in accordance with the development plan,²
 - (4) therefore planning permission should be refused.
9. On the other hand, if the Appellant's case is accepted and the very special circumstances test is met, with neither the LPA's case nor that of the Rule 6 party succeeding in showing the contrary:
- (1) Neither paragraph 152 nor 182 NPPF (nor indeed any flooding or highways paragraphs relied upon by the R6 party) will provide a clear reason for refusal,
 - (2) therefore the tilted balance in para 11(d)(ii) NPPF will be engaged,
 - (3) the adverse impacts of the appeal scheme would not significantly and demonstrably outweigh the benefits; and
 - (4) therefore planning permission should be granted, even were the Inspector to identify some conflict with the development plan.

The LPA's case

10. The LPA considers that very special circumstances have not been shown and as a result planning permission should be refused for the appeal scheme.

Main Issue 1: VSC

11. It is acknowledged that the proposed development would deliver several material benefits, principally in the form of market and affordable housing which it is agreed should carry substantial weight. It is also accepted, as part of the justification for the weight given to those benefits, that that the LPA faces a severe housing land supply deficit and a history of persistent under-delivery. This position has undoubtedly been exacerbated by the failure of the emerging local plan which was submitted in January 2019 but withdrawn following the inspectors' report in February 2024.

² The only material consideration raised which might conceivably amount to such a factor is the draft NPPF and WMS. The LPA will argue that given the limited weight which can be attached to the draft, such a contention would be without merit.

12. However, since that decision, as Mr Thurlow will explain, the LPA has been taking proactive steps to address the short term pipeline housing need through grants of permission consistent with the Interim Policy Statement for Housing Delivery (“**IPSHD**”) and has also been seeking to provide affordable housing directly. It is acknowledged that this is not enough to meet needs and that when the LPA succeeds in bringing forward its local plan it will have to look to appropriate green belt sites (along with others) in order to be able to meet need, but it goes to the question of whether the circumstances are sufficiently special circumstances to justify the release of a site like this outside of the plan process.
13. The LPA’s judgement is that they are not. The harm to green belt by reason of inappropriateness (to which substantial weight must be given), along with the other harm arising, are not “*clearly outweighed by other considerations*”.
14. The other harms arising include other harm to the green belt – which must also be given substantial weight per NPPF 153.
15. In this regard the LPA consider that the Appellant’s witnesses have significantly underplayed the contribution which the site currently makes to the green belt. This will be explored by Mr Thurlow and Ms Hooper. The site is open at present and can be perceived as such from the edge of the settlement as well as from nearby parcels of greenbelt. It serves several of the purposes of greenbelt, making a contribution particularly in respect of the prevention of sprawl and encroachment into higher quality countryside.
16. Other harms to be weighed arise under main issues 2, 4 and 6.

Main Issue 2: Landscape impacts

17. On landscape impacts, Ms Hooper will explain that substantial harm arises both to the landscape character of the site itself and to the AONB and AGLV by development in their settings.
 - (1) The site is an intact rural landscape set at the foot of the North Downs, between the urban edge of north Oxted and the AONB. The site contributes positively to the setting of its surroundings and reflects the landscape quality of the adjacent AONB.

- (2) The site has value beyond the ordinary which is reflected by Natural England's decision that it should be included in the AONB and which shows that it should be protected and enhanced now under NPPF 180.
 - (3) The site and other landscape receptors are more susceptible to development of this kind than the Appellant has recognised. It cannot accommodate the 116 homes proposed without undue consequences for their landscape baseline. In this, the Appellant places too much reliance on the availability of public viewpoints and underplays the degree to which the site forms part of a connected and coherent wider landscape.
 - (4) The magnitude of effects is also underassessed, particularly in relation to the magnitude of the effect on the receptors beyond the site.
18. This leads to major adverse landscape effects on the AONB and the site as a valued landscape.
 19. In respect of the valued landscape, 180(a) of the NPPF provides that they should be protected and enhanced.
 20. In respect of the AONB, great weight must be given to its conservation and enhancement under NPPF 182, and development in its setting must be sensitively located and designed.
 21. This policy requirement is now supplemented by the statutory duty in s.85(A1) of the Countryside and Rights of Way Act 2000 which changes the previous "*have regard*" duty to a mandatory obligation to "*seek to further*" the purposes of the AONB. While the LPA would agree that this does not mean that any development resulting in harm to the AONB must be refused, it will be submitted that Parliament's intention is to strengthen the duty and this cannot solely be addressed by applying the policy tests which predate the enactment of the new provision. The Inspector, in carrying out her assessment of the scheme, must seek to further the purposes.

Main Issue 4: Natural environment

22. As set out above, the LPA now accepts that the impacts on biodiversity and the ancient woodland within the site are capable of being addressed through conditions and the

section 106, although there are still matters of detail under discussion between the parties.

23. One remaining issue arises from the Appellant's proposed foot link to FP75 to the north east.
24. This element of the scheme, which was not part of the original application³ but was introduced just before determination in late January 2024, has been of uncertain status and the LPA is not aware of whether the Appellant is in a position to commit to provide it across third party land.
25. As Mr Thurlow sets out in his proof, and will be discussed at the roundtable session, the LPA considers that this footpath link would give rise to additional harm in the form of increased foot traffic to the Chalk Pit Woods SNCI and ancient woodland. This irreplaceable habitat is identified by Mr Philips who explains that he has examined the woodland and concluded that informal recreation is currently taking place which "*is having a negative impact on the woodland*".
26. Mr Phillips asserts that the likely additional impacts of introducing more footfall to the adjoining footpath should not be assessed on the assumption that future residents will act unlawfully. However, he provides no evidence to show that access to the woods is trespassory (it is at least possible that it is with consent or that public rights have been acquired) or to disprove the basic probability (which he seems to accept) that future residents will follow established access routes in the same way as current local residents. The LPA says that any precautionary approach must include the possibility (or indeed the likelihood) that residents will act in a way which may impinge on the niceties of property law.
27. For these reasons, the LPA considers that the footpath link should not be provided.

Main Issue 6: Natural England Boundary Variation

28. The final main issue to be addressed by the LPA concerns the potential prejudicial effect which developing the site would have on the proposed variation to the boundary of the AONB.

³ See CDI.9

29. This is distinct from any weight which the Inspector might give to Natural England's view that the site has the characteristics for inclusion.
30. The LPA say that it is a material consideration that the site is being considered for future inclusion and, following Natural England's confirmation of their original view following consultation it is a consideration which can be given moderate weight. The development would conflict with Natural England's proposed modification – a significant additional harm in its own right.

Draft NPPF

31. The draft NPPF is under consultation. The consultation period runs until 24 September 2024.
32. The draft NPPF changes have not been through any previous consultation or formal process. They are necessarily subject to alteration following consultation and, indeed, this is evident from the recent past where it has been common for changes to be developed or even dropped following consultation.

In these circumstances, it is rightly agreed that the changes proposed are a material consideration of only limited weight. Conclusion

33. In due course, the LPA will invite the Inspector to dismiss the appeal.

Matthew Dale-Harris

Landmark Chambers

24 September 2024