
Appeal Decision

Inquiry held on 29, 30 & 31 October and 1, 5, 6 & 20 November 2013

Site visit made on 6 November 2013

by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 April 2014

Appeal Ref: APP/M2270/A/13/2198919

Land at Fowler's Park, Hawkhurst, Kent

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Ward Homes, Mr and Mrs J Tyrwhitt and Mr and Mrs AP Towell against Tunbridge Wells Borough Council.
 - The application Ref TW/13/00014/FULMJ, is dated 3 January 2013.
 - The development proposed is the redevelopment of the site to provide 120 dwellings with associated access, car parking, landscaping and open space provision.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Inquiry opened on 29 October 2013 and sat on the days stated above. Although it closed on 20 November, after the Inquiry, further comments were received from the appeal parties ('the Parties') regarding the case of *Hunston Properties*¹, and I am grateful for all of these all of which will be taken into account. On 6 March 2014, the Government published the *National Planning Practice Guidance*. By way of letter dated 17 March 2014, the Parties were given an opportunity to make any comments on the relevance of the planning guidance; both parties had no comments to submit. I will take the relevant guidance into consideration.
3. An executed unilateral undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 as amended was submitted. The appellants unilaterally agreed to contribute towards the provision of the following services: education, library, adult social services, 42 dwellings as affordable housing (AFH), bus service improvements, and footpath improvements. The Unilateral Undertaking (UU) is a material consideration.

¹ The Parties referred to *Hunston Properties Ltd v Secretary of State for Communities and Local Government & St Albans City and District Council* [2013] EWHC 2678 (Admin). Subsequently, the High Court's judgement was appealed in the Court of Appeal. The CoA's judgement was heard on 20 November 2013 and judgement issued on 12 December 2013 Neutral Citation Number: [2013] EWCA Civ 1610. I will refer to the case as '*Hunston Properties*'.

The appeal site and the proposed development

4. In section 2 of the statement of common ground (SoCG), the description of the site and its surroundings is set out. Hawkhurst is defined as a small rural town² because of the availability of the local amenities. The site is situated within the High Weald Area of Outstanding Natural Beauty (referred to as '*the AONB*').
5. The site is situated outside of the settlement of Hawkhurst as set out in the Tunbridge Wells Borough Core Strategy (CS) 2010 and the Tunbridge Wells Local Plan (LP) 2006 (I will return to relevant local and national planning policies later). The site is contiguous to the eastern limits of the built development (referred to as '*the LBD*'). It is 10.34 ha of which 6.6 ha is proposed for new residential development excluding the access road, associated land and ancient woodland. The site is irregular in shape and comprises a number of agricultural fields.
6. The development comprises the erection of 120 dwellings with associated access, car parking, and landscaping and open space provision. The planning application was submitted on 11 January 2013 and the Council failed to determine it within the relevant statutory period. On 7 August, the Council's planning committee resolved that had the application been determined by the Council, it would have been refused. The Council's deemed reasons for refusal of the application set out eight areas of concern with the development. However, the statement of common ground (SoCG) indicates that reason three and eight have been addressed by the submission of amended plans which were considered at the Inquiry. With regards to highway and AFH matters, these had also been narrowed down and any outstanding issue I will deal with as other considerations.

Main Issues

7. These are the following:
 1. Having regard to the location of the site in the AONB and outside the defined settlement boundary to Hawkhurst as identified in local planning policies, whether its current release for residential development is justified by housing land supply considerations having particular regard to the effect of the development upon the visual and landscape character of the AONB,
 2. Whether or not the development would satisfy local and national planning policies which seek high quality design, having particular regard to the effect of the development upon the character and appearance of Hawkhurst,
 3. The effect of the proposed development upon protected trees, ecology and biodiversity.

Reasons

First main issue - Having regard to the location of the site in the AONB and outside the defined settlement boundary to Hawkhurst as identified in local planning policies, whether its current release for residential development is justified by housing land supply considerations having particular regard to the effect of the development upon the visual and landscape character of the AONB.

² Local residents have persuaded the Council to describe Hawkhurst as a village rather than a town.

8. The nub of the Council's main argument, forcefully put at the Inquiry, is that the site is within the AONB where local and national planning policies restrict residential development of this kind. There is an in principle objection to the scheme because, the Council claims, the development would fundamentally conflict with CS and LP Policies. The argument is that a 5-year housing land supply (referred to as '*the HLS*') can be demonstrated as required by the National Planning Policy Framework. It follows that there is no reason to release this Greenfield site, because other sites are coming forward and these are identified in the Strategic Housing Land Availability Assessment ('*the SHLAA*').
9. The appellants' main arguments are that an identified need exists for the development of the site now because the Council cannot demonstrate a deliverable 5-year HLS. The contention is that there is considerable uncertainty regarding the deliverability of a number of sites included within the HLS such that a significant shortfall compared to the 5-year requirement exists. That shortfall becomes substantially greater when more up-to-date indicators of need, such as household and population projections are considered. On this basis, the assertion is that local planning policies, which have a bearing upon the supply of housing, are out-of-date. In addition, the claim is that limited weight can be attached to emerging local policies which allocate sites for housing.
10. I will next set out the local planning policies which the Parties agree are relevant. Saved LP Policy LBD1 relates to development proposals outside of the LBD. Also of relevance to the consideration of this appeal is Policy H6 (f), which allocates land at Springfield Gardens, Hawkhurst for 40 dwellings on previously-developed land (pdl) though it is yet to be developed. CS Core Policy 1 sets out the delivery of development objectives. It states that in pursuit of the spatial strategy set out in box 3 (chapter 4) and to ensure that development is delivered in a managed way, the Council will allocate sufficient sites in the emerging Site Allocations Development Plan Document ('the SADPD'). Broadly speaking, the Policy aims to prioritise the allocation and release of pdl within the LBD though it acknowledges that Greenfield sites within and/or adjacent to the LBD of settlements in the main urban area and small rural towns will also be allocated/released as appropriate to maintain a sufficient phased supply of deliverable and developable land.
11. CS Core Policy 6 relates to housing provision. It states that new housing will be delivered on sites to be allocated and released in accordance with Core Policy 1. Sufficient sites will be allocated and released to meet the Borough's housing target; 6,000 dwellings over the plan period (2006 to 2026). This equates to 300 dwellings per annum (dpa). CS Core Policy 13 relates to development in Hawkhurst. It states that all new development will have particular regard to conserving and enhancing the character of the Conservation Areas and for the setting of the town within the AONB. The Policy allocates a total of 240 dwellings for Hawkhurst of which 130 are already completed or with planning permission.
12. Turning to the SADPD, it is in the process of preparation. Preferred options have been consulted upon in March – May 2013, and, at the time of the Inquiry, I was told that the Council is likely to consider the proposed submission document in January/February 2014.

13. The up-to-date position with the SADPD was communicated to me via The Planning Inspectorate in an email dated 31 March 2014; no comments were received from the appellants' agent. The Council has considered all of the representations made and has an almost complete revised proposed submission document; the Council will start the formal committee stage after the Local Government elections in May 2014 with a view to consultation upon the proposed submission document in September 2014. This is in line with the Council's adopted Local Development Scheme (LDS). It is then intended to submit for examination in January 2015 with work commencing in earnest on the Core Strategy Review at that time. The LDS and timetable for submission of the SADPD and Core Strategy Review remains in place.
14. At the moment, the residual housing requirement for Hawkhurst remains just over 90 dwellings; at the Inquiry 110 dwellings was the requirement. There has also been a recent planning permission for a 90-bed residential care home within the settlement, which paragraph 037 of the PPG states should be counted towards the housing numbers.
15. At the Inquiry, the Council confirmed that the following three sites are proposed in the SADPD: Hawkhurst Castle, land off Highgate Hill and Birchfield Rye Road. The site is not proposed for allocation at this time and it performed poorly in terms of sustainable development criteria. But there is recognition by the Council that some of the site could provide for growth beyond the plan period.
16. The Council is concerned about prejudging the emerging SADPD, however, that does not automatically mean that all planning applications for residential development have to be put on hold; a planning decision is still required taking into account all relevant material planning considerations³. Given the guidance in paragraph 216 of the Framework, I take the view that the SADPD carries limited weight in the context of this appeal mainly because of the stage it has reached. Although it shows the direction of travel, the SADPD is still emerging and it may change in the future, due to the extent of the unresolved objections and the potential scrutiny by an independent Inspector; it is yet to be found 'sound'.
17. Paragraph 14 of the Framework states that at the heart of the Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan-making and decision-taking. A core principle of the Framework is that planning decisions should be plan led. The Ministerial Forward states that '*sustainable*' means ensuring that better lives for ourselves don't mean worse lives for future generations; '*development*' means growth and '*sustainable development*' is about change for the better, and not only in our built environment.
18. Paragraph 47 to the Framework says that to boost significantly the supply of housing, local planning authorities should use their evidence base to ensure that their LP meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies, including identifying key sites which are critical to the delivery of the housing strategy over the plan period. In addition, authorities should identify and update annually a supply of specific deliverable sites sufficient to provide

³ See the case of *Stratford on Avon District Council v Secretary of State for Communities and Local Government & others* [2013] EWHC 2074.

5-years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Paragraph 49 says that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites [my emphasis added].

19. The appellants' argument, forcefully put, is that the 300 dpa CS housing target is out-of-date. The contention is that the evidence base used to underpin the adopted target is inadequate, because more up-to-date data should be used to assess housing need. For example, the evidence base includes the West Kent Strategic Housing Market Assessment ('the SHMA') which dates back to December 2008 and has not been updated⁴. The argument is that the Council adopted the housing target that was identified in the now revoked regional spatial strategy for the South East of England without assessing actual housing needs for the Borough.
20. Household and population projections⁵, which, incidentally, are commonly applied in core strategy examinations, are useful tools when identifying housing needs for an area, but they are just one piece of the overall evidence base. Nonetheless, the data produced by the Department and the Office for National Statistics suggests that there is likely to be significant demand in housing in the area, due to household and population projections. Mr Dineen's evidence is that, by using the *What Homes Where* interactive calculator, if past trends continue, there is a need for 10,548 dwellings for 2006 to 2026 to meet current trends. That equates to 527 dpa. The 2011 based interim household projections provide a requirement of 6,344 dwellings or 634 dpa; well above the CS adopted figure.
21. The Council did not produce cogent evidence to discount these findings. Instead, they rely upon the argument that the adopted target of 300 dpa is a constraint based figure which has been the subject of robust examination by an independent Inspector.
22. In my view, household projections, though useful, do not take account of land-use constraints for planning purposes. Considerable amount of land within the Borough is either designated as the Green Belt or is located within the AONB. The data can assist in identifying the likely level of housing need but it cannot solely be relied upon to produce a housing target figure as these statistics do not take account of land-use constraints. Rather than taking a broad-brush approach, I concur with the Council's arguments that this type of raw data would need to be translated and applied in the context of the environmental constraints that exist in this particular Borough. Therefore, while the data appears to show an upward trend for housing demand, I am not persuaded that the adopted CS housing target is necessarily or justifiably out-of-date.
23. Another criticism of using household and population projections to identify housing need is that the derived figures are not the same as identifying the figures for the housing market areas. The Borough cannot operate in a local

⁴ See appendix AD11 of Mr Dineen's Proof of Evidence (PoE).

⁵ See the Local Government Association and the Planning Advisory Service report: Ten key principles for owning your housing number- finding your objectively assessed needs July 2013 attached at appendix AD12 of Mr Dineen's bundle of evidence.

planning vacuum because of the duty to co-operate. Given the land-use constraints in the Borough, the required housing growth might be located in less constrained areas outside of the Borough, because it is likely that it would be part of a wide SHMA area. The household and population figures do not take account of that possibility whereas the local planning process would take such matters into consideration.

24. The Framework aims to strengthen local decision-making and reinforce the importance of up-to-date local plans. It does not automatically follow that the adopted CS housing target is out-of-date because it was adopted prior to the Framework or that recent household and population projections have not been taken into account in terms of the evidence base. In this case, the evidence base has moved on since the adoption of the CS in 2010, but the CS has been the subject of a robust and vigorous examination by the Secretary of State. The Council accepts that it must review the CS housing target which is being pursued as part of the SADPD process. I take the view that the local planning process is the best place to have a debate about the future housing needs of the Borough which would take into consideration data from household and population projections.
25. Taking all of the above points together, I find that the figures derived by Mr Dineen from the housing and population projection figures cannot be relied upon as a proxy expression of housing need in the Borough. The adopted CS target of 300 dpa can be considered up-to-date for the purposes of this appeal. The matter is far from clear-cut because I have significant concerns about deliverability which I will review next.
26. Footnote 11 of the Framework states that to be *deliverable*, sites should be *available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that the development is viable* [emphasis added]. The footnote also states that sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within 5 years.
27. At the time of the Inquiry, the 5-year housing requirement was 1,663 dwellings including the 5 % buffer. Extant permissions account for 1,125, and once figures for windfalls, rural exception sites, small identified sites, capacity on pdl sites in and outside of the LBD, Greenfield sites in the LBD, undetermined planning applications and prior notifications are considered, the total 5-year supply is 1,984. The Council's position is that they can demonstrate a 5.97 years of HLS. In contrast, applying the Council's calculation methodology, the submission on behalf of the appellants is that there is only 3.89 years' worth of HLS; they question the deliverability of the following five sites.
 - (1) The Gas Works: This site is part of the old gasworks which is partly developed for residential purposes and is owned by Southern Gas. The assessment is for 170 dwellings on the undeveloped part of the gasworks. The Council's assertion is that pre-application discussions for residential development have taken place as recently as October 2013 and the site is likely to come forward. However, the SHLAA acknowledges that this site is heavily contaminated which is a potential constraint upon deliverability. Apart from possible viability issues, significant

decommissioning and remediation works are likely to be required all of which would take considerable time. In all probability, the presented evidence shows that this site is unlikely to come forward within the 5-year period.

- (2) The WA Turner site: The assessment is for 116 units. However, the Council's October 2013 list for the 5-year HLS sites withdrew this site. That is unsurprising given Mr Dineen's evidence of a firm intention by the operators of this meat processing plant to remain in situ.
 - (3) Telephone Engineering Centre: The assessment is for 73 units. This site is currently occupied by British Telecommunications and there has been a recent letting of the workshop on the site though the Council stated that does not affect the deliverability within the next 5-years. The submitted information seems to indicate that BT has aspirations to move and consolidate elsewhere, but there are significant doubts over the deliverability of housing on this site. Negotiations with the Council and planning agents appear to be at an elementary stage and no firm proposals have been submitted.
 - (4) The Hop Pocket: The assessment is for 25 units. Mrs Marshall conceded that the mixed-use planning permission for this particular site is unviable. The assertion was that the site remains available for development, but it has been undeveloped since 2008. Mr Dineen's evidence to the Inquiry was that the owner confirmed to him that the planning permission is likely to be revisited in the future.
 - (5) Land at Medway Road: The assessment is for eight units and makes a small contribution towards the Borough's housing target. The site is occupied by a national producer of a prestige brand with around 100 employees and there is some doubt as to whether or not the current occupier is likely to remain on the site and expand operations.
28. The presented evidence does not indicate that these sites are available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered within 5-years and in particular that the development is viable. I concur with the appellants' submission that all 276 units should be disregarded as part of the 5-year HLS. The Council argued that there are other potential housing sites in the pipeline.
29. The Council argued that a new category of housing sites should be included within the HLS. These are offices that are subject to prior notification applications under the terms of the GPDO⁶: undetermined prior notifications:
30. The assessment is that 31 units would be delivered within the next 5-years. In closing, the Council's assertion was that these sites have planning permission by the new planning regime for the conversion of office buildings to residential uses. The exception applies for three years and no affordable housing would be required. However, it does not necessarily follow that an application under

⁶ Class J – change of use; The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013, statutory instrument No. 1101 which came into force on 30 May 2013.

this regime means that the site is deliverable and should be included within the HLS. There are uncertainties which would need to be considered. For example, there might be land-use constraints such as highway considerations which need particular attention. The application might be speculative to ascertain potential residential development of the site. And there might be lack of clarity as to whether or not the site would be available for commencement by the cut off date. In addition, there might be an in principle planning objection which would require some negotiations thereby delaying the potential delivery of these sites for housing.

31. There is one exception, however. The Council had determined a prior notification application for Calverley House which is for 51 units. This can be considered as the equivalent to a site with residential planning permission. Nonetheless, I concur with the appellants' assertions that there is some uncertainty as to the delivery of this site within the next 3 years. The Inquiry was held at the property and it appeared to me that the building was fully occupied and functional as an employment or office site. There are two long leaseholders among the current occupiers. Further, the fact that it is in full use is indicative that one cannot be sure that there is a commercial incentive to change to residential use if that was possible. Mr Dineen's first hand evidence was that conversations with the owners indicate that even they do not know whether the consent would be implemented.
32. The Knight's Park site: The Council states that in December 2013 a formal resolution has been made to grant outline planning permission subject to securing a section 106 planning agreement though there are no specific details of the nature of the resolution⁷. The appellants' agents were given the opportunity to comment upon this submission. The Knight's Park site is proposed in the SADPD for 500 houses; 300 are said to be deliverable within the next 5-years. The assertion was that the Borough's housing needs would be met as a result of the grant of planning permission in one single blow. For the following reasons, I am not so sure.
33. The site is identified in the LP and the CS as a safeguarded inside the Green Belt. It was intended to meet the longer term development needs stretching well beyond the plan period. Despite the extensive SADPD consultation process and pre planning application consultations with the Council, it is being released 3 years after the adoption of the CS and less than half way through the CS plan period to 2026.
34. The Framework states that when defining Green Belt boundaries, Council's should, where necessary, identify in their plans areas of safeguarded land between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period. They should make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following a local plan review, which proposes the development.
35. The Council's submission is that there is a Green Belt reviews as part of the CS review. In cross-examination, Mrs Marshall claimed that the site is included in the emerging SADPD and there had been no substantive objections to the policy proposing its release now. However, I agree with the appellants'

⁷ See letter dated 02/01/2014.

submission that it would be premature to regard this site as available now because there is no satisfactory evidence to show that it would be developed within the next 5 years.

36. In any event, even if this site is included in the HLS, I have some reservations about the claimed delivery rates. The house builder indicates a target to build-out 75 to 100 units annually on the Knight's Park site. House builders operate in a very competitive market where it could be in their interests to exaggerate sales estimates in order to thwart a rival. I am therefore cautious about the estimated delivery/sales provided on behalf of the developer.
37. It is also not lost on me that it would be in the appellants' interests to downplay the delivery/sales figures. Nonetheless, the estimates presented by Mr Dineen appear to be realistic. Long lead times are associated with sites of this scale. It is unclear as to what, if any, infrastructure would be required which might be subject to lengthy S106 planning obligation negotiations, including highway improvements and provision for affordable housing. There would be a need to discharge pre-commencement and other planning conditions. All of these uncertainties would take considerable time before development actually commences on the land.
38. I also attach some weight to Mr Dineen's assertion that the current market might not support the claimed volume of sales. Dependent upon obtaining one or two volume house builders, his estimates are that about 100 and 160 units would be delivered within the 5 year period. In fact, the Council acknowledges that the detailed application for 300 dwellings would only start contributing towards the end of the 5-year period. Given the considerable uncertainty over the grant of planning permission for this particular site and the timeframe required to commence development, the completion rates are likely to be much closer to Mr Dineen's realistic assessment rather than the optimistic assertions made by the developer. I take the view that the number of dwellings delivered over the 5-year period from Knight's Park would be very much less than the predicted 300.
39. Turning to the submission that a recent planning permission for a 90-bed residential care home within Hawkhurst has been granted, there is no specific information about the deliverability of this particular development.
40. I find the Council's assertion that any potential shortfall in deliverable housing sites could be made up within the next 5-years through the SHLAA sites or other sites allocated in the draft SADPD, is not borne out by the presented evidence because these sites are not available now.
41. Taking all of the points in the preceding paragraphs together, I find that the Council cannot demonstrate a satisfactory supply of deliverable housing sites for the next 5-years. Notwithstanding the reasons behind them and the Council's assertion that the CS is to be reviewed once the SADPD is adopted, I find, in particular, LP Policies LBD1 and H6 (f) together with CS Core Policies 6 and 13 have a bearing upon the supply of housing in general and in Hawkhurst and must, for the purposes of the Framework, be considered out-of-date given the fact that the Council cannot demonstrate a 5-year supply of deliverable housing land. In these circumstances, greater weight would need to be attached to the Framework⁸. In my view, this finding attracts significant

⁸ For further guidance on the implementation of the Framework see paragraph 214 and 215.

weight in favour of the development because of the Government's aim to boost the supply of housing and to stimulate the economy.

42. However, the matter is far from clear-cut. Whilst it can be reasonably argued that CS Core Policy 6 is specific to housing, the aims of saved LP Policy LBD1 and CS Core Policy 13 are multi-faceted and not relating to housing in isolation. They do aim the achievement of wider and important planning aims of, amongst others, protecting open countryside. Due to the broader nature of these Policies I do not consider that it would be appropriate to abandon these Policies. Whilst there may be some implications for HLS, the other purposes of the Policies are still relevant and important and worthy of full weight.
43. Given its edge-of-settlement positioning, I concur with the appellants' view that the site is located in a reasonably sustainable location and, having regard to the overall guidance in the Framework, would be suitable for development. The immediate vicinity includes schools, health facilities, and local amenities such as shops. It is accessible by public transport with good links to other nearby settlements, and the bus stops are within walking distances. Such a location would meet with the Government's objectives of locating new housing in sustainable areas so that people are less dependent upon private transport to get around. This consideration attracts considerable weight in favour of the scheme.
44. Drawing all of the above threads together, the provision of 120 dwellings would make a material contribution towards the delivery of much needed quality homes in Hawkhurst. Together with the AFH element, these findings attract substantial weight in favour of the grant of planning permission.
45. Where relevant development plan policies are out-of-date, or are significantly in conflict with the advice contained in the Framework, the advice in paragraph 14 is that decision-takers should grant planning permission unless any adverse impacts of doing so would *significantly and demonstrably* [my emphasis] outweigh the benefits, when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted. In this context, the Parties agreed that the main area of concern is the potential visual effect of the development upon the AONB.
46. Saved LP Policy EN25 states that outside of the LBD development will be required to satisfy its criteria. Amongst other matters, it states that the proposal would have a minimal impact on the landscape character of the locality, and it would have no detrimental impact on the landscape setting of settlements. CS Core Policy 4 states that the Borough's built and natural environments are rich in heritage assets, landscape value and biodiversity, which combine to create a unique and distinctive sense of place and local character such as the AONB, which will be conserved and enhanced by applying its criteria.
47. Great weight should be given to conserving landscape and scenic beauty in AONB's, which have the highest status of protection in relation to landscape and scenic beauty. Paragraph 116 of the Framework states that planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of the need for the development, including in terms of

any national considerations, and the impact of permitting it, or refusing it, upon the local economy; the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated. I find LP Policy EN25 and CS Core Policy 4 consistent with this advice and carry full weight.

48. Around 70% of the Borough is designated in the AONB. The scenic beauty of the AONB is derived from undulating and rolling countryside, dispersed settlements, historic farmsteads, ancient tracks and route ways, ancient woodlands, heaths and shaws with a heritage of woodland industries and iron working and small, irregularly shaped and productive fields. The High Weald's topography emphasises the natural beauty of the area, which is said to be one of the best surviving coherent medieval landscapes in Northern Europe⁹.
49. Hawkhurst is located on a broad, high plateau on the main ridgeline between the Rother Valley and Hexden Channel. It is conspicuous along the ridgeline. It dates from before the 13th Century. The historic settlement pattern is characterised by the layout of the traditional village centre, and clusters of white painted, dark-framed weather boarded dwellings nestled around a small green. The settlement is considerably larger and there are examples of modern developments in the locality. The site is part of the designated AONB, it is part of a network of peaceful, managed, farmed landscape of pasture and open arable fields on the gentle open slopes rolling down from the plateau. The undulating topography of the site plays an important role on the landscape character. Given the rising and falling nature of the landscape, the development would be visible from various public vantage points.
50. The appellants' main arguments are that the CS recognises the release of land to augment the supply of housing land as set out in Core Policy 1 and this is reflected in the emerging SADPD. The Borough is constrained by land designated as Green Belt and the AONB, which washes over the whole settlement of Hawkhurst. The site is contiguous with the LBD to the west and it would be contiguous with that to the south once the LBD has been revised as anticipated by the Council. In association with land at Birchfield, the SHLAA identified that the site could accommodate up to 150 new dwellings. Nonetheless, the undeveloped quality of the site makes a significant contribution to the landscape character. Although it has been identified in the SHLAA for future release, it does not automatically follow that the extent and scale of the development would not demonstrably harm the landscape.
51. The design and access statement illustrates the concepts behind the layout of the scheme. The development would wrap around the western and southern edges of Hawkhurst and it would not infringe the top of the ridge, which would be secured by the new village green and the presence of the veteran trees. In addition, significant mitigation measures would aim to overcome the visual effect of the development upon the landscape. However, the development would be seen as an urban extension to Hawkhurst and it would be out-of-keeping with the character of the settlement pattern, due to the location and built-form of the dwellings.

⁹ *High Weald Area of Outstanding Natural Beauty Management Plan 2009.*

52. Additionally, the location and siting of the new access road, which would extend beyond the LBD, would represent a significant encroachment into the countryside. Despite the hedgerow as part of a mitigation scheme, the access would be seen as an alien feature on the landscape, and it would be out-of-keeping with the undeveloped character of this part of the countryside.
53. In this location, the development would be seen as an unacceptable visual protuberance on landscape. This is because of the extent and scale of the development combined with the location of the access road. I find that the development would have a materially detrimental visual effect upon the natural scenic and beauty of this part of the AONB, and it would undermine the open and mainly undeveloped appearance of the site thereby harming features which are integral to the character of Hawkhurst.
54. Taking all of the points in the preceding paragraphs together, I find that the development would have a significant and demonstrable visual effect upon the landscape character of the AONB. The development fundamentally conflicts with advice contained within paragraphs 115 and 116 of the Framework, which seek to restrict this kind of development in designated areas such as the AONB. Accordingly, the development would fail to comply with the main aims and objectives of LP Policy EN25 and CS Core Policy 4.
55. I have reviewed all of the arguments about the need for the development on the site given the Council's HLS. There are some economic and social benefits of the scheme. Nevertheless, I take the view that these considerations, individually or collectively, do not amount to exceptional circumstances. The presented evidence does not show that the grant of planning permission for the development would be in the public interest.
56. On the first main issue I conclude as follows. The development would help address an identified shortfall in deliverable housing sites. The site is suitable and sustainable for residential development of 120 dwellings given its edge of settlement location. National policy in the Framework seeks to boost significantly the supply of housing and this provides a strong consideration in favour of the current release of the site contrary to LP Policy LBD1, CS Core Policies 6 and 13 insofar as they have a bearing upon the supply and location housing. However, the scale and location of the development would have a significant and demonstrable visual effect upon the wider landscape which is designated as an AONB.

Second main issue - Whether or not the development would satisfy local and national planning policies which seek high quality design, having particular regard to the effect of the development upon the character and appearance of Hawkhurst.

57. The aim of CS Core Policy 4 is to ensure that any proposal for development conserves and enhances locally distinctive features which are made up from the Borough's built and natural environments. Core Policy 5 sets out broad sustainable design principles for all developments to follow. LP Policy EN1 also reflects the Policy in the CS, and requires the design of the proposal, encompassing scale, layout and orientation of buildings, site coverage by buildings, external appearance, roofscape, materials and landscaping, would respect the context of the site.

58. I find these local planning policies broadly reflective of guidance contained in paragraphs 17, 56 and 64 of the Framework. The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
59. Urban design is the art of making places for people. It includes the way places work as well as how they look. It concerns the connections between people and places, movement and urban form, nature and the built fabric, and the processes for ensuring successful villages, towns and cities. Urban design is a key to creating sustainable developments and the conditions for a flourishing economic life. Good design can help create lively places with distinctive character; streets and public spaces that are safe, accessible, pleasant to use and human in scale; and places that inspire because of the imagination and sensitivity of their designers.
60. Supporting documents were submitted with the planning application. These include a design and access statement, detailed architectural drawings which were slightly amended, and planning statements. Cross-sections have been submitted which illustrate the overall ridge heights of the dwellings. At the Inquiry, there was much discussion about the design of the scheme. In this context, the nub of the appellants' main argument is that the development would reflect the settlement pattern of Hawkhurst; it would form a coherent and cohesive rounding off for the settlement.
61. I recognise that there are some positive aspects of the proposal in terms of the scheme's architectural merits, the external appearance of the properties, the internal road layout, vehicle parking spaces, and open spaces including the village green. The proposal would include good pedestrian routes in and out of the estate, irrespective of the Council's concerns about connectivity. That said, the undulating topography of the site reinforces the historic rural setting of Hawkhurst and I have strong reservations about the effect of the development upon the appearance of Hawkhurst.
62. It is an identified feature of the AONB geology that the settlements tend to be built on the upper ridges; the Wealden topography is characterised by deeply incised, ridged and faulted landform. Generally, the site's topography is characterised by the main north-to-south ridgeline, which runs across the site near the proposed village green at its high point and it then dips sharply north from a mid point. The development would be designed to avoid the top of the ridge and the steep decline to the north, and it would wrap round the existing urban edge to the west and south.
63. Nonetheless, the scheme would involve significant alterations to the site's natural contours. The dwellings would have a variety of ridge heights and they would have a stepped roof pattern because of the changing ground levels. Additionally, to the southern part of the site there would be a need to cut into the land to make the construction of the estate much easier. To the northern parts, there would be a landscaped buffer zone, which would seek to define the edges of the built-up area from the ancient woodland by open spaces and marshy swales.

64. Given the extent of the alterations to the land levels, I consider that the artificial steep embankment to the north and the stepped pattern of housing resulting in an untypical roofscape would form noticeably dominant features on the landscape. The development would be prominent from public vantage points because of the bulk and massing of the dwellings. In this location, the development would visually harm the appearance of Hawkhurst because it would be seen as a large-scale urban extension. Visually, the estate's design and layout would be inconsistent with the historic settlement pattern.
65. I am also concerned about the location and extent of the new access road. Extensive mitigation measures would include the planting of fast-growing hedgerow; the aim would be to camouflage the roadway. However, the new curving roadway would be located within an existing agricultural field set some distance from the development and established LBD. It would represent further encroachment of the designated countryside and have an urbanising effect.
66. Taking all of the above points together, I concur with the Council's view that the development would not result in a good example of design due to the manner in which the scheme deals with the changing ground levels and the location of the access road. The scheme would not function well and it would not add to the overall quality of the area nor respond to locally distinctive features such as the historic settlement pattern. Accordingly, the development would fail to comply with LP Policy EN1, CS Core Policies 4 and 5. The scheme would not satisfy advice contained in paragraphs 17, 56 and 64 of the Framework.
67. For all of the above reasons, I conclude that the development would fail to satisfy local and national planning policies which seek high quality design and, in turn, it would have a materially harmful visual effect upon the traditional and historic character and appearance of Hawkhurst.

Third main issue - The effect of the development upon protected trees, ecology and biodiversity.

68. The Council's concerns are that the development would result in the loss of or threat to existing protected and mature trees. At the time of the Inquiry, most of these concerns were satisfactorily addressed given the amount of the now available expert evidence. In this section, I will deal with the main areas of disagreement, starting with concerns about the wellbeing of some of the protected trees.
69. T34 – T38: Two mature Chestnuts, one veteran and one important, which are situated either side of the hedgerow (which would be breached to form the access). The Council's concern relates to their long-term health given the extent of the root protection areas (RPA). However, the scheme would involve the removal of competitor trees, the removal of harmful ploughing activities close to these trees, the improvement of the soil profile and protecting them by the use of park or estate fencing. There would be some potential for an appropriate and detailed veteran tree management plan. I find that the likely longevity of the veteran trees would be increased along with their potential value in terms of visual amenity as a result of the development.
70. T71 – T73: Three significant trees on the village green of which two are veteran trees. In terms of the impact of the development upon these trees, I

favour Mr Hyett's assessment. In Examination-in-Chief, his view was that the low impact works proposed to form the footpath impinged only upon 0.42% of the default RPA of the trees, which would not materially harm the well-being of these trees. In addition, the benefits to the health of these trees could be secured by a management plan and the cessation of ploughing within their RPAs. On behalf of the Council, Mr Docker acknowledged that the proposal to protect these trees by park fencing would work, because it would decrease activity under the trees, reduce the chances of soil compaction and provide less competition.

71. T97: A group of trees which the experts agreed are in decline. In any event, the scheme would not harm these trees because the houses would be located sufficiently away from the RPAs. Level changes would not be proposed immediately around these trees or within their RPAs.
72. I find that the development would not harm the longevity of these trees which make a positive contribution to the character and appearance of the area subject to suitable RPAs and agreed landscape mitigation measures.
73. On ecological matters, a SoCG, which includes the provision of an ecological management plan (to meet with British Standard: 42020 August 2013), has been agreed. Additionally, the UU makes provisions for the delivery of a management plan and monitoring. Turning to the concern about Dormouse, the proposals would result in the loss of a small area of habitat but the Parties agree that only minimal areas of on-site habitat are to be disturbed as a consequence of the development. This is mainly down to hedgerow breaches. However, significant and extensive mitigation measures, such as Dormouse bridges, would be implemented as part of the development. These measures would be acceptable and favourable to the long-term conservation of this species. Any licensing for the work would need to be obtained from Natural England.
74. I conclude that the development would not result in the loss or threaten the longevity of protected trees, or adversely harm matters of acknowledged ecological or habitat importance. Accordingly, the proposal would comply with LP Policies EN1 and EN13 and CS Core Policy 4, which are broadly consistent with advice found in paragraphs 17, 56, 57 and 61 of the Framework.

Other considerations

75. There is an agreed SoCG on highway matters and broadly speaking there are no technical highway safety grounds to refuse planning permission. Nonetheless, local residents expressed some concern about the effect of the development upon traffic and congestion. There is a constraint at the cross roads in the centre of Hawkhurst given the contrived layout of the junction, which is congested at peak periods, but that is some distance away from the site. I concur with the local highway authority's view that the technical evidence indicates that the residential development of this site would not increase the risk to other highway users.
76. The development would be within walking distance of local amenities and public transport such as bus stops. Some weight can be attached to the proposal to increase the bus services to the town at peak hours. This would go towards the sustainability of Hawkhurst and further give future residents of the scheme alternative modes of transport. In addition, the UU makes provision for

improvements to a nearby public footpath. I find that the development would make adequate provision for ease of use of alternative modes of transport. The scheme would satisfy the objectives of LP Policy TP4 and CS Core Policy 3 and advice contained within paragraphs 32 and 34 of the Framework.

77. In closing, the Council confirmed that the proposed AFH would be satisfactory and it would meet with local planning policies; I have no reason to find otherwise. In addition, the location of the AFH element would be acceptable given the overall structure and layout of the estate.
78. Local residents expressed some concern about surface water drainage, which was addressed in the appellants' flood risk assessment. On this matter evidence was submitted by Ardent Consulting Engineers on behalf of the appellants. The Environment Agency does not object to the development in principle, but it would require a complex flow control to be incorporated into the drainage infrastructure. There is no technical evidence to contradict Ardent's assertion that the likely water discharge from the development would not have a harmful impact downstream. There would, therefore, be no requirement on planning grounds to upgrade off-site culverts on capacity grounds. In any event, the Parties agreed that a suitably worded condition could be imposed to regulate the provision of drainage and surface water run-off without increasing flood risk elsewhere.

Overall balancing exercise

79. The lack of a deliverable five-year supply of housing land weighs significantly in favour of the grant of planning permission for the development and it would be in a generally sustainable location. The development would not materially harm matters of acknowledged importance in terms of protected trees, ecology or biodiversity. There are other identified and quantified economic, environmental and social benefits of the scheme. Furthermore, there are no objections to the development in terms of highway, draining and the provision and location of AFH. All of these matters can be secured through the executed UU.
80. However, the development would have a materially harmful visual effect upon the AONB. Additionally, the design of the development would fail to comply with local and national planning policies given the potential effect upon the character and appearance of Hawkhurst.
81. On balance, I consider it to be of greater weight that the grant of planning permission for this scheme would materially harm the visual and landscape character of the AONB because of the site's location and it would fail to represent high standard of urban design given the scale of the development.

Overall conclusion

82. Therefore, for the reasons given above, and having considered all other matters, I conclude that the appeal should be dismissed.

A U Ghafoor

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

William Upton	Of Counsel instructed by Tunbridge Wells Borough Council's legal services manager
He called	
Jean Marshall BA (Hons) Dip TP MRTPI	Planning Policy Manager
Dan Docker HND M Arbor Association	Tree Officer
David Scully BA (Hons) Dip LA CMLI	Landscape and Biodiversity Officer
Ruth Chambers BA (Hons) PG Dip MRTPI	Principal Planning Officer Development Management

FOR THE APPELLANT:

Mark Lowe QC	Of Counsel instructed by Armstrong Rigg Planning on behalf of the appellants
He/She called	
Dr Sarah Jackson BSc (Hons) MRes PhD	Ecological expert
Richard Hyett BSc (Hons), MSc Tech Cert (ArborA) MArbour	Arboriculture expert, Pegasus Planning
Matthew Last BEng (Hons) MCIHT	Highway consultant, Ardent Consulting Engineers
Stephen Wadsworth BA (Hons) DipLA, Dip UD CMLI	Landscape expert, Pegasus Planning
Brian Sutherland B.ARCH (Hons) BSc ARCH RIBA	Design expert, BDB Design
Alastair Dineen BSc (Hons) DipSurv	Housing Land Supply, Intelligent Land
Geoff Armstrong BA (Hons) MRTPI	Expert witness of planning matters, Armstrong Rigg Planning

INTERESTED PERSONS:

Andrew McTrusty	Hawkhurst Parish Council
John Cook	Save our Village campaign group
Charles Brinsley	Local resident
Klaire Lander	DHA Planning
John Hunt	Local resident
M Cox	Local resident
Sarah Heron	Interested Party
Councillor J Cunningham	Hawkhurst & Sandhurst Ward Member

ALL DOCUMENTS HANDED IN AT THE INQUIRY

Day 1

- 1 Letter of Inquiry notification
- 2 Walking distances & extract from Manual for Streets
- 3 Draft S106 Unilateral Undertaking
- 4 Ardent Hydrology note
- 5 Written representation from Charles Brinsley
- 6 Written representation from Councillor J Cunningham
- 7 Written representation from Sigma Planning Services
- 8 Written representation from John Cook
- 9 Written representation from Countryside Properties
- 10 Written representation from John Hunt
- 11 Written representation from Environment Agency
- 12 Kent Districts
- 13 Keystone Ecology SoCG
- 14 Supplementary note on design
- 15 Site Allocations Development Plan Document consultation draft 2013

Day 2

- 1 Email dated 19 November 2013
- 2 Core Strategy Development Plan Document 2010
- 3 Ardent Engineers SoCG - Highways
- 4 DHA Planning Statement
- 5 Planning statement Dandara – Kinghams Park
- 6 Amended plans attached to landscape assessment
- 7 Local development scheme October 2013
- 8 Written representation from Francesca Laugharne

Day 4

- 1 Supplementary proof of evidence on design matters
- 2 Extract – capacity assessment for potential allocation sites – site no. 194 Former Gas works
- 3 LDF Supplementary Planning Guidance Borough Landscape Character Area Assessment 2002 2nd Edition adopted October

2011

Day 5

- 1 Five year Housing Land Supply November 2012 to October 2013
- 2 Email representation dated 3 November 2013
- 3 Drawing no. 5849/04 – hard landscape and boundary treatment layout
- 4 Drawing no. 5849/P/91 – layout extract maintenance access areas
- 5 Letter dated 1 October 2013
- 6 Ardent consultants addendum surface water drainage matters

Day 6

- 1 Suggested conditions
- 2 Email dated 5 November 2013
- 3 Letter from C Brinsley 5 November 2013

Day 7

- 1 Email dated 18 November 2013
- 2 Email dated 15 November 2013
- 3 Kent County Council Highway section 18 November 2013
- 4 Extract from draft version of the National Planning Practice Guidance
- 5 Copy of Unilateral Undertaking
- 6 Additional conditions
- 7 Email dated 11 November 2013
- 8 Bound version of the Unilateral Undertaking
- 9 *Hunston Properties Ltd v DCLG & St Albans District Council* [2013] EWHC 2678 (Admin) – transcript
- 10 *Stratford-on-Avon DC v DCLG* [2013] EWHC 2074 (Admin)