



Appeal Decision

Hearing held on 1 February 2022

Site visit made on 8 February 2022

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th March 2022

Appeal Ref: APP/M2270/W/20/3265584

Land to the west of Mill Lane and north of Sissinghurst Road, Sissinghurst

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Rachel Allwood of Sissinghurst Estates Ltd against the decision of Tunbridge Wells Borough Council.
 - The application Ref 19/00308/FULL, dated 28 January 2019, was refused by notice dated 20 August 2020.
 - The development proposed is erection of 42 new dwellings, alongside car parking, cycle parking, drainage, internal road network and the creation of a principal access off Sissinghurst Road (A262), plus public open space, a play area and associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development set out in the banner header above is taken from the appeal form. During the application process a revised scheme was submitted and consulted upon by the Council which reduced the number of dwellings proposed from 44 to 42. The description on the appeal form is therefore a more accurate description than that stated on the original application form.
3. The appellant has submitted a signed and dated Unilateral Undertaking (UU) under section 106 of the Town and Country Planning Act 1990 (as amended) in respect of contributions to affordable housing, community facilities, education, libraries, social care, community learning, youth provision, waste provision and health.
4. The Council refused the application on three grounds. The second and third reasons for refusal were on the grounds that in the absence of a completed legal agreement, the proposal would not secure provision for affordable housing and contributions towards community facilities. The submitted UU would secure these contributions and the Council has confirmed that its second and third reasons for refusal have therefore been addressed.
5. Prior to the Hearing, the appellant submitted an amended drawing setting out an alternative landscape masterplan where more trees would be retained on the Sissinghurst Road frontage but crown lifted. The Council's tree officer has reviewed the plans and raised a number of concerns. These included whether this is an appropriate treatment for some of the trees; whether the retention of

trees would block sight lines to the east; ongoing tree management; and the effect of a 'feature wall' which may necessitate the removal of some to retained trees. These plans have not been subject to wider consultation. In view of the concerns raised by the Council's tree officer and the absence of wider consultation, I have not taken this alternative scenario into account. I have therefore based my decision on the original landscape masterplan where a number of trees are removed.

Main Issues

6. The main issues are:

- the effect of the proposed development on highway safety; and
- whether there are any material considerations which mean that the decision should be made otherwise than in accordance with the development plan.

Reasons

Highway safety

7. The proposed development of 42 dwellings would be served by a single vehicle access onto the A262 Sissinghurst Road. This is an A road and forms part of Kent's priority route network and provides an important link across southern Kent. It also forms part of a bus route.
8. The local highway authority (LHA), Kent County Council, has objected to the scheme on the basis that the proposed access would not be served by sufficient visibility splays to ensure it would be safe for all users of the highway.
9. Sissinghurst Road is not a trunk road and the starting point for any assessment would be on the basis of Manual for Streets 2 (MfS2). However, it is a strategic road and subject to a 40 miles per hour (mph) speed limit and there is evidence of observed speeds along the road being higher than that.
10. Where actual speeds are above 40mph for significant periods of the day, MfS2 recommends the use of the Design Manual for Roads and Bridges (DMRB) parameters for calculating Stopping Sight Distances (SSDs) but applied in a way that respects local context and takes into account the key principles of MfS. The LHA adopted this approach and in the circumstances of the appeal site and speeds along Sissinghurst Road, I consider this appropriate.
11. I acknowledge that the DMRB documents make recommendations on design speeds rather than observed speeds, they nevertheless provide the basis for assessing what the SSD should be for the speeds observed. For this reason, documents related to the DMRB are relevant to this appeal but should be applied in the context of local circumstances.
12. The SSD is the distance within which drivers need to be able to see ahead and stop from a given speed. It is used to calculate the visibility splay at a junction to ensure there is adequate inter-visibility between vehicles on the major and minor arms. MfS recommends that a visibility splay have an X distance of 2.4m measured back from the give way line of the minor arm and a Y distance based on the recommended SSD value.

13. It is common ground between the parties that the recommended visibility splays should be calculated using the formula set out in the MfS2 and that the measurement of vehicle speeds for the purposes of the visibility calculations should be undertaken in accordance with DMRB document CA185 – Vehicle Speed Measurement November 2019 (CA185). The parties also agree that a reaction time of 2 seconds should be applied and a deceleration rate of 0.375g. This accords with the recommended values set out for SSD calculations for speeds above 60kph. The appellant has also undertaken 'gradient calculations' and concluded that the gradient calculation would not materially change the SSD.
14. There is dispute between the parties in relation to the correct speed on which to base the measurements, whether it should be adjusted for wet or dry conditions and where the visibility splay should be measured to on the road. MfS2 advises that for existing streets, the 85th percentile wet-weather speed is used for calculating the SSDs.
15. Two speed surveys were undertaken by the appellant, one in November 2019 and one in September 2020. Higher 85th percentile speeds were observed during the 2019 survey than the later survey. The appellant considers the more recent survey data should be used in the calculation of SSDs. She has based this on the speed limit along this section of Sissinghurst Road having been reduced from 60mph to 40mph in 2016 which has led to a gradual reduction in actual speeds as drivers become more aware of the limit and have changed their behaviour.
16. I have been provided with measurements of speed from April 2017 which indicates a higher 85th percentile speed than those observed in both the 2019 and 2020 surveys. This suggests that shortly after the change in speed limit, drivers continued to drive above the limit, potentially whilst getting used to the new speed limit. This is not unexpected. I appreciate that there is a downward trend in speed limits as shown by the survey results, however, this does not confirm that drivers were continuing to reduce their speeds to the revised limit in force. To my mind, 3 years seems plenty of time to have got used to the new limit and I am not persuaded that the differences in observed speeds between 2019 and 2020 can be attributed to this.
17. The Council has raised a concern about the use of the 2020 survey data given the measurements were taken during the Covid pandemic, and a time period not representative of normal circumstances. I have no evidence how any restrictions in place may have affected speeds. I therefore give this argument very limited weight.
18. CA185 advises that where there is a difference in the 85th percentile speeds derived from the individual speed measurement periods, the higher value shall be used in the subsequent design. These surveys were less than a year apart and I have nothing substantive to explain why traffic may be travelling slower in September 2020 compared to November 2019. I concur with this and consider that the calculation of the SSDs should be based upon the 2019 survey as this represents the higher value.
19. It has been argued that drivers will naturally reduce their speeds when they perceive the new houses and more development as they travel along Sissinghurst Road. However, even with the proposed tree removals, it is intended to retain substantial boundary vegetation along the road frontage.

Whilst it would be possible to glimpse development through the thinned trees along this frontage, I have no firm evidence that this would lead to a reduction in speeds along this stretch of the road. I therefore consider the required visibility should be based on current traffic speeds.

20. The 2019 survey indicated 85th percentile speeds of 45.5mph (73.2kph) to the left (east) and 46.4mph (74.7kph) to the right (west) in wet weather. This is the speed confirmed in the appellant's Technical Note¹ to the Council during the application stage. Subsequently, there have been some changes to those speeds, reducing it to 43.3mph to the left and 44mph to the east. The reasons for this are not clear. I have therefore based my assessment on the speeds set out within the appellant's Technical Note.
21. MfS2 advises that wet weather speeds should be used. On the other hand, more recent guidance set out in CA185, a DMRB document, advises that where speed measurements have been taken either partially or entirely in wet weather conditions, they should be adjusted to reflect dry weather conditions through the addition of 4kph (or 2.5mph) in the case of a single carriageway.
22. There is no single set of guidance to cover the scenario under which the appeal falls and there is some inconsistency between MfS2 and DMRB documents. MfS2 recommends that where speeds are above 60kph (37mph), the correct standard for assessment should be TD9/93. This document has however been superseded by DMRB document CD109 – Highway link design, published in 2020. Given that speeds are above 60kph, I consider it appropriate to adopt the approach set out in the most up to date guidance covering those speeds, in this case CD109.
23. I accept that traffic is often slower during wet weather conditions. However, it will move at a higher speed in dry conditions. In my view, it seems entirely appropriate to base the design of an access on those higher speeds to ensure the safety of the highway and all users of it.
24. I note that the advice provided to the LHA by National Highways (then Highways England) in relation to the approach taken in CD109, confirmed that the key reason for its change between TD9/93 and CD109 was that using an 85th percentile wet weather speed is counterproductive as measurements in wet weather conditions will result in an arbitrary low value that is not representative of what the actual worst case 85th percentile speed would be at a given location.
25. For these reasons, I have not based my assessment on an adjusted speed for wet weather conditions. Since the 2019 speed survey was undertaken in wet survey conditions, it should be adjusted to reflect dry weather conditions through the addition of 4kph. This gives a revised 85th percentile speed of 48mph (77kph) for westbound traffic and 48.9mph (78.7kph) for eastbound.
26. MfS2 advises that a more accurate assessment of the visibility splay is made by measuring to the nearside edge of the vehicle track. On this basis, the appellant has argued that the visibility splay should be measured to driver position rather than the back edge of the kerb as sought by the LHA. This would recognise that driver position is closer to the centre of the road.

¹ PJA Technical Note dated 19/12/2019

27. Sissinghurst Road has a single carriageway with two lanes, one in either direction. The Council has identified that this is relatively narrow for an A road, measuring some 6.5m. The appellant has undertaken a survey which indicates that nearly all eastbound motorcyclists riding along the road drive beyond 1m from the kerb and often much further. In some circumstances, I agree that this could justify a measurement offset from the kerb.
28. During my site visit, I observed reasonably high volumes of traffic along the road, this included cars, motorcycles and HGVs. In many cases, I saw vehicles travelling close to the kerb, particularly when passing an opposing vehicle. Moreover, I observed that the edge of the carriageway adjacent to the kerb line was clear of debris which also suggests that vehicles regularly travel close to the kerb as argued by the LHA. In such circumstances, whilst I accept that the evidence indicates that motorcyclists travel away from the kerb, as they are trained to do, they have the space to do so as they are relatively narrow vehicles utilising the full width of the carriageway. Larger vehicles travelling along the road are unable to adopt such positions, particularly in the circumstances I observed.
29. For this reason, I do not agree that measurements to a 1m offset position from the kerb is appropriate for the required visibility splay.
30. MfS2 sets out that where it would be unlikely that vehicles approaching from the left on the main arm will cross the centreline the visibility splay to the left can be measured to the centre line of the main arm. However, these circumstances do not exist here. There are no physical features such as traffic islands or solid white lines that would prevent a vehicle from crossing the line.
31. The appellant has submitted evidence to support her view that this is not an issue. This identified only 2 observed instances of a vehicle crossing the centre line and travelling at lower speeds, approximately between 15mph and 22mph. However, I cannot agree that this justifies a measurement to the centre line. It seems to me that it is highly likely that any vehicle overtaking a cyclist along this route would need to cross the centre line and there is nothing to stop them doing so. Moreover, it is also often the case that vehicles speed up to overtake others.
32. In the circumstances of the appeal site, with a relatively narrow carriageway, no carriageway separation, reasonably high traffic levels and on a bend in the road, I do not agree that the visibility splay should be measured to any point other than to the kerb line.
33. Drawing together the above considerations in relation to the visibility splays for vehicles exiting the site, I have been provided with a range of scenarios in relation to the 85th percentile speed, whether or not dry or wet weather conditions should be used and taking into account the gradient. I have also been asked to consider the point to which the visibility splay should be measured. For the reasons I have set out the 2019 survey should be used and the 85th percentile speeds based on dry weather conditions. The measurement should be taken to the kerb line.
34. MfS does not cover speeds above 37mph (60kph). CD109 sets out that the desirable minimum SSD for a speed of 70kph would be 120m and at one step below that, 90m. In this case, traffic speeds exceed 70kph which I note would

- be the case whether based on wet or dry conditions, although the speeds above 70kph would be greater in the latter circumstances.
35. For the 85th percentile speeds of 48mph and 48.9mph, the LHA requires a visibility splay adjusted to take into account the gradient of the road, of nearly 110m to the left and 109m to the right. Based on an X distance of 2.4m with a Y distance measured to the kerb, the proposed access would have a visibility splay of 73m to the left and 81m to the right.
 36. The achievable visibility splay would fall significantly below the requirements sought by the LHA to ensure safe access to and from the site. Both would fall approximately 30% below the requirement.
 37. Whilst the appellant has not disputed the driver perception time or deceleration rates in the calculation, she has nevertheless argued that the approach is conservative. The 2 second driver perception time is recommended for speeds above 60kph. The appellant considers this applies to very rural situations where drivers may be travelling at higher speeds.
 38. The deceleration rates applied are based on 'absolute minimums' for speeds above 60kph as set out in MfS2. Whilst such an approach is acceptable, it does create a more favourable SSD requirement. However, the appeal site is not in an urban area and traffic is travelling at speeds above 60kph. Given this, I do not consider the calculations and the agreed perception time to be unduly conservative.
 39. Sissinghurst Road is relatively narrow for an A road, with reasonably high traffic volumes and a bend which restricts visibility. Together with the shortfall in the visibility splay, this would, in my view, give rise to a considerable increase in the risk of conflict between road users.
 40. There is evidence to support the appellant's argument that National Highways does accept junction visibility splays below standard, sometimes by as much as 30% below standard, when considering designs for priority junctions. However, the acceptability of doing so needs to be considered within the circumstances of the proposal which for the reasons set out above, I have found would lead to an unacceptable effect on highway safety.
 41. My attention has been drawn to research² carried out by TMS Consultancy for MfS2 which found no evidence that a failure to provide visibility at priority junctions in accordance with the values recommended in MfS or the DMRB would result in an increased risk of injury collisions. The research concluded that it had been unable to demonstrate that road safety concerns regarding reduced Y distance are directly associated with increased collision risk at 'high-risk' urban sites.
 42. However, the context is not comparable to the appeal scheme which is proposing a priority junction onto the A262 in a rural setting. Furthermore, the study identified that many of the locations were straight roads with good forward visibility. This is not the case here. The A262 close to the appeal site bends which causes some limitations to forward visibility as well as for those emerging from a minor arm.

² Research for MfS2 – High Risk Collision Sites and Y Distance Visibility, TMS Consultancy, 2010

43. More recent research by Atkins³ into the relationship between junction visibility and collisions was undertaken into junctions on trunk roads which mainly consisted of non-urban roads with speed limits of over 40mph. This concluded that decreasing levels of compliance with the 'Y' distance requirements had no material impact on collisions rates, i.e. average collision rates did not obviously increase as the level of visibility decreases.
44. The evidence suggested that a relatively small shortfall in junction visibility will not directly lead to an increased risk of collisions. It also indicated that it is not uncommon for departures from standard to be permitted on the trunk road network, where visibility fell to within 70 to 100% of the standard range. This led the Atkins research to conclude that in most cases a one-step reduction in 'Y' distances, broadly equivalent to a 30% reduction in 'Y' distance visibility, for 70kph to 120kph roads is already predominantly accepted on the network.
45. However, the Atkins research was based upon documents TD41/95 and TD42/95. These have been withdrawn and replaced by CD123 Geometric design of at-grade priority and signal-controlled junctions in August 2019. This is part of a suite of documents associated with the DMRB. The guidance in CD123 does not indicate that the Y measurement should be reduced, indeed it states that it should correspond to the desirable minimum SSD for the speed of the major road. Therefore whilst the research is noted, there is nothing before me to suggest that it has led to a change in subsequent guidance in respect of a reduction in visibility requirement. I therefore only give this very limited weight in my decision.
46. I have noted the findings of the research to which I have been referred. I acknowledge the appellant's position that a shortfall in visibility does not mean highway safety is affected. However, this to my mind, begs the question as to why visibility splays are required and guidance produced to inform the provision of them. At the Hearing, I posed this question and the appellant could not provide a clear reason for this. It was however, suggested that drivers will use their own judgement to consider whether or not it is safe. Whilst I do not disagree that driver judgement is an important factor, this does not justify a substandard visibility splay.
47. The appellant has advised that there is further research into this which the appellant's highway witness has been involved in. However, as this is unpublished research and I have not seen any of its findings, I can give this very little weight.
48. It seems to me that on the basis of this evidence, a pragmatic approach should be taken, and that there is some flexibility that can be applied. Indeed, within the DMRB document CD109, I note that SSDs are given for different speeds as the 'desirable minimum' and at 'one step below desirable minimum'. I consider that had the LHA rigidly applied the requirements of CD109 it could have required a visibility splay based on a SSD of 120m for speeds of 70kph. In seeking a visibility splay less than this, it has evidently applied the requirements flexibly.
49. Mill Lane, to the east, assists in understanding the local context. However, this junction is acknowledged to have very limited visibility, more so than the proposed access to the appeal site. Evidence has been submitted to

³ Task 1-117: TD 41 & TD 42 Safety Research Findings Report, Atkins 2017

demonstrate that there have been no recorded collisions at this junction within the last 10 years, despite average vehicle movements. However, the survey data submitted indicates a very limited number of movements at the junction during weekday peak periods. Furthermore, local residents have set out that they avoid using the southern Mill Lane junction due to the poor visibility. Having exited this junction myself, I am aware that visibility is extremely limited. It follows that I find it entirely understandable that residents, having an alternative exit to the north of Mill Lane avoid the southern junction, which would act to reduce the risk of conflict. For this reason, I only give limited weight to the absence of collisions at this junction.

50. I do not consider that the proposed access from the appeal site would have anything like as poor visibility as Mill Lane. It would however have substandard access and be the only point for vehicular traffic to exit the proposed development onto the A262. With 42 dwellings this would be a reasonably intensive use of the site, with poor visibility and I consider this would give rise to a considerable increase in the risk of conflict.
51. The proposed development would include the formation of a footpath on the north side of Sissinghurst Road along the front of the site which would connect through the site to Mill Lane. This would include two informal crossing points as dropped kerbs with tactile paving, to the east and west of the proposed access road into the site.
52. The LHA requires the pedestrian visibility splay to be based on the same SSDs as for vehicles. At the Hearing, the LHA advised that a minimum requirement of 82m to the left and 97m to the right should be provided.
53. The appellant has submitted a drawing showing the visibility splays for both of the crossings. The southern side of both crossings are positioned on the outside of the bend where there are unobstructed sight lines for some distance along the road in both directions. However, the crossings on the northern side of the road would be on the inside of the bend with restricted visibility. The drawing indicates that the eastern crossing would have visibility of 79m to the east and 114m to the west and the western crossing, 98m each way. However, these splays pass through areas of vegetation outside the appellant's ownership. This includes a hedge on the far corner of Mill Lane as well as the line of vegetation to the west.
54. Visibility to the east of the eastern crossing falls short of the required visibility splay. Furthermore, in order to achieve satisfactory visibility, the scheme would require significant removal of boundary vegetation to the site frontage as well as to land outside the appellant's ownership. This may not be achievable. Moreover, the opening up of the site in this way, may give rise to other environmental harms to the character and appearance of the area such as the loss of its sylvan and rural character which could be inappropriate.
55. A Stage 1 Road Safety Audit (RSA)⁴ was undertaken. This concluded that there were no road safety problems associated with the proposed pedestrian crossing points. The LHA has however raised a concern that the position of the eastern crossing would not align with the pedestrian exit from the site which might give rise to pedestrians crossing the A262 where they emerge rather than walking

⁴ TMS Road Safety Audit Stage 1 Land at Sissinghurst Road, Sissinghurst, Kent, Ref 16688, dated 30 November 2021

to the crossing. At this point, visibility is poor and this would increase the risk of conflict between pedestrians and other highway users. However, it seems to me that had the scheme been acceptable in all other respects, it could have been possible for this footpath to have been repositioned to overcome this harm and a condition could have secured this.

56. As an alternative approach the appellant has suggested that a scheme of traffic calming be introduced along this stretch of Sissinghurst Road. This would provide a combination of a gateway feature with artwork to impress upon drivers that they are entering the wider settlement, red surfacing, 40mph roundels and slow marking, sections of high friction surfacing and vehicle activated speed repeater signs. Research referred to in DfT guidance⁵ has shown that measures, including conspicuous traffic signing and road marking, can bring about large speed reductions. Similarly, DfT advice⁶ has also identified that gateway features, depending on their scale, can also bring about speed reductions.
57. The measures proposed by the appellant seek to achieve greater compliance with the existing 40mph speed limit. In this case, the appellant considers that the proposals could achieve a 3mph reduction in traffic speeds.
58. The proposed traffic calming was subject to a Stage 1 RSA which identified that the proposed gateway feature and vehicle actuated signage could be obscured by dense vegetation. The lack of visibility could result in drivers continuing to travel at inappropriate speeds.
59. Whilst it would be possible to cut back vegetation along the highway, the proposed traffic calming measures are not supported by the LHA. High friction surfacing is only permitted in exceptional circumstances based on existing safety issues where other measures have failed. Similarly, vehicle activated speed repeater signs are also not permitted other than to address a persistent speed related problem and an accident problem. This is set out both within the LHA's own advice⁷ and national guidance⁸.
60. In this case, the proposed scheme would introduce a risk where one does not currently exist and there are no exceptional circumstances to justify such interventions.
61. The appellant maintains that the scheme can achieve safe access onto the highway at existing speeds. However, she has also proposed a reduction in the speed limit along this section of Sissinghurst Road to 30mph as an additional form of traffic calming. With a reduction in speed limit a reduced visibility splay would be required.
62. This stretch of Sissinghurst Road has a predominantly rural character. There is some limited development on the north side of Sissinghurst Road just east of the traffic roundabout with the A229 where it appears more semi-rural but otherwise the road is characterised by trees and hedgerows through which open fields can be glimpsed. This extends as far as Mill Lane, to the east of the appeal site where there is some limited development either side of the road

⁵ Department for Transport – LTN 01/07 – Traffic Calming

⁶ Department for Transport – Traffic Advisory Leaflet 01/94

⁷ Kent County Council - Highways Asset management Technical Advice Note 21/02, March 2021 and Kent County Council New Highway Works Requests Information Pack, 16 June 2021

⁸ Department for Transport – Traffic Advisory Leaflet 1/03, March 2003

which again gives way to undeveloped fields before entering the more built-up area on the village fringe.

63. In the absence of urbanising features which would provide visual clues to drivers that speeds may be lower, it seems to me that a reduction in speed would not be anticipated by drivers. This could result in confusion and potential collisions between road users as a consequence. I note this was a problem picked up in the RSA which identified that differential speeds along this stretch of road may lead to vehicle collisions, due to some drivers sticking to the lower limit and others far exceeding it.
64. Moreover, having regard to Department for Transport (DfT) advice⁹ on setting speed limits, the location does not accord with the types of locations where a 30mph speed limit should apply as it is not a built-up area and there is not development on both sides of the street. Even with the proposed development which may be visible through the frontage vegetation, I do not consider the character of the road would change so substantially as to justify the 30mph speed limit, taking into account the DfT advice.
65. The LHA have raised a concern about enforcement of the new speed limit. I accept that it would be feasible to enforce the speed limit. However, given that the existing speed limit is already exceeded, and from all accounts on a regular basis, it seems to me that unless there were to be frequent and ongoing speed enforcement along this road, the reduced speed limit is unlikely to be routinely achieved.
66. I appreciate that there are examples of 30mph speed limits used locally, including to the east of the appeal site further along the A262 towards the village. This section of road has a semi-rural character but drivers entering this area get a sense of entering a settlement with more urban development either side of the road, glimpses of playing fields with development beyond and domestic hedges and fences. This is markedly different from the character in the vicinity of the appeal site with open fields visible beyond vegetated boundaries with very limited built development. I appreciate that with the proposal and some thinning of trees along the frontage, there would be views of some of the proposed houses but the opposite side of the road would remain rural in character.
67. The introduction of a pedestrian route from Mill Lane to the footpath along the A262 would be a benefit of the scheme. A reduction in traffic speeds along the road would also be a benefit of the scheme providing a more pleasant environment for all road users and potential improved conditions for vehicles emerging from Mill Lane. However, these benefits cannot be achieved without causing other detriment to highway safety. They therefore carry limited weight in favour of the scheme.
68. For the reasons set out above, I conclude that the proposed development would significantly increase the risk of conflict between all road users along Sissinghurst Road. As such, it would cause considerable harm to highway safety. It would therefore conflict with Policy TP4 of the Tunbridge Wells Local Plan 2006 which requires a safely located access with adequate visibility to be created and for traffic generated by the development to not compromise the safe use of the road by others. It would also conflict with the National Planning

⁹ Department for Transport Circular 01/2013 – Setting Local Speed Limits

Policy Framework (the Framework) which seeks the provision of safe and suitable access to the site for all users and for development to be refused on highway grounds if there would be an unacceptable impact on highway safety.

Other considerations

69. The Council does not dispute that it cannot demonstrate a 5 year supply of deliverable housing sites. Its most recent position is that it has a 4.85 years supply which represents a shortfall of 104 of its housing requirement. The appellant considers the shortfall to be greater, with a supply of 4.10 years and a 544 shortfall.
70. The Council has not addressed in detail the sites disputed by the appellant as falling outside the definition of a 'deliverable' site as set out within the Framework. The Council's position is that whilst it has not been through the individual sites, it has given weight to the provision of housing in the planning balance.
71. The appellant asserts that the development plan is out of date as the Tunbridge Wells Borough Core Strategy Development Plan Document 2010 (the CS) predates the 2012 Framework. In addition, the Tunbridge Wells Borough Site Allocations Local Plan 2016 did not review the policies, it simply sought to deliver the CS. She asserts that those policies which restrict housing development are therefore out of date and should be attributed limited weight.
72. Paragraph 219 of the Framework sets out that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Therefore, whilst the plans pre-date the Framework this does not automatically mean they are all out of date. The Council acknowledges that those policies relating to housing supply are out of date, it does not agree that all plan policies are.
73. As both policies for the supply of housing are agreed to be out of date and the Council cannot demonstrate a 5 year supply of deliverable housing sites, in accordance with paragraph 11 of the Framework, a presumption in favour of sustainable development should apply. I return to this in my planning balance.
74. The Council is preparing a new local plan. The appeal site had been previously included in the Draft (Regulation 18) Local Plan published for consultation in September 2019, having been identified through the Council's Strategic Housing and Employment Land Availability Assessment. This concluded that the site was suitable, available and achievable and that site is adjoined by existing built development and in proximity to the Limits to Built Development (the LBD). In that context, it was considered that the site was likely to be sustainable.
75. However, the site was subsequently excluded from the Submitted Local Plan, submitted for examination on 1 November 2021. The Council has advised that this was for technical reasons relating to highway safety rather than an in principle objection. The inclusion or otherwise of the site within the emerging Local Plan is not a matter for me. However, highway safety matters in the context of the appeal proposal are before me and I have addressed these in my reasoning above.
76. I appreciate that Sissinghurst had been identified in the emerging local plan as a location for future growth and this included the appeal site as part of that.

The strategy has been revised which, in the appellant's view, has reduced the amount of development that would have been delivered on small and medium-sized sites in locations such as the appeal site.

77. The appellant has also highlighted the constrained nature of the Borough due to coverage by Green Belt and an Area of Outstanding Natural Beauty and whether, due to this and past under-delivery, the emerging local plan will deliver the houses needed. However, this is an emerging plan which has been submitted for examination. At this stage it carries no weight due to outstanding objections and it is not a matter before me to assess the robustness of the strategy set out within it.
78. The scheme would deliver 40% affordable housing in accordance with the emerging policy requirement which is higher than that set out within the CS. This would equate to 17 dwellings being delivered on the site which would meet a local need in an area with a significant affordability problem. This is a significant benefit of the scheme which also carries significant weight in its favour. The scheme would also provide a good mix of housing types and tenures to help meet local needs.
79. The proposed development would be well designed with good permeability within the site and improved connectivity along Mill Lane. This would benefit both future occupants as well as existing pedestrian and other users of Mill Lane. The provision of a footway and crossing to link to the southern footway along Sissinghurst Road would also be benefits of the scheme, but as I have outlined above, they carry limited weight due to highway safety concerns. The site would also be well connected to the services and facilities within the village.
80. In terms of visual impacts, the scheme could be integrated into the site without unduly affecting the landscape character or rural approach into Sissinghurst. The scheme would also deliver mitigation for habitat loss as well as a contribution towards biodiversity improvements off site. These improvements would be a benefit of the scheme that would carry moderate weight in its favour.
81. Through the construction and subsequent occupation of the proposed dwellings, the scheme would deliver a number of social and economic benefits through the use of local services and facilities. This would enhance the vitality of the area as well as generating expenditure and both direct and indirect employment. The Council would also benefit from additional revenue in tax contributions as well as the New Homes Bonus. The benefits associated with 42 dwellings in this regard carry moderate weight in the scheme's favour.

Planning Balance

82. The Council cannot demonstrate a 5 year supply of deliverable housing land. The shortfall, being either at the appellant's 4.10 years and the Council's 4.85 years, if at the lower end of that supply, is moderate to limited.
83. In such circumstances, paragraph 11 of the Framework indicates that housing policies should be regarded as out of date. Paragraph 11 d) of the Framework makes it clear that where development plan policies are out of date planning permission should be granted unless the adverse impacts of doing so would

significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

84. While the development would not accord with planning policies in terms of its location being outside the LBD, given the absence of a 5 year supply of deliverable housing land and that the policies for the delivery of housing are considered out of date, I give this conflict with policy only limited weight.
85. The provision of 42 dwellings in a reasonably accessible location would make a significant contribution to the Council's housing land supply. This carries significant weight in favour of the scheme. In addition, the scheme would also contribute to affordable housing, providing a policy compliant 17 dwellings on site. This also carries significant weight.
86. The proposed development would also deliver a range of social, economic and environmental benefits which together carry moderate weight. Overall, I attribute significant weight to the benefits of the scheme when taken together.
87. However, my finding is that the proposed access to serve the development would give rise to considerable harm to highway safety, conflicting with the development plan and the Framework. I attach substantial weight to that harm.
88. In my view, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Even if the shortfall in housing were to be as significant as the appellant's have stated, this would not alter my finding in this regard. Therefore, the proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.

Conclusion

89. The proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed.

Rachael Pipkin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Christopher Young, QC	
Mark Rose	Planning Witness
Andrew Williams	Landscape Witness
Philip Jones	Highways Witness
Matthew Franklin	Highways Witness
James Stacey	Affordable Housing Witness

FOR THE LOCAL PLANNING AUTHORITY:

Marie Bolton	Principal Planning Officer, Tunbridge Wells Borough Council
Louise Gordon	Kent County Council Highways

INTERESTED PARTIES:

Peter Mellor	Resident and Representative of Mill Lane and Cromptons Residents Association
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Hearing Documents

H1	Email setting out details of collision on A262
H2	Drawing 04608-TR-0018-P3 Pedestrian Crossing Achievable Visibility Splays