

Watercress Field, Strand Meadow, Burwash

RR/2020/1822/P

Burwash: Save our Fields' objection

(slightly amended to take account of new material etc. served after January 2021)

	<p>It had been hoped there would be a picture of the trees and shrubs at the end of the proposed footpath, but the developer's agent prohibited anyone from entering the field, including to take photographs.</p> <p>That decision illustrates the developer's involvement with the community and their confidence in their preparation for their application.</p>
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Introduction to the objection

- 1 Anyone looking at Watercress Field could see it was not suitable for a housing estate and prior to 2011 the site was regularly rejected for development. The slope, the beauty and the name, Watercress Field, showed its unsuitability. However, a Local Plan considered the site could increase the number of affordable homes. In 2011, this resulted in outline planning consent for 17 homes. In 2017, Park Lane Homes (Sole director: Russell Beswick, Company Secretary: his wife), the developer, put forward plans to build 30 homes and promised 40% of the homes would be 'affordable'. The Rother case officer advised in her report that this was contrary to Rother District Council Policy VL1, but further advised that there were 'the benefits of the affordable homes and footpath link' etc. She added that 'these benefits were, and still are necessary to accompany any development and to reflect local needs'. The committee agreed to the outline planning permission on the assumption that they were increasing the number of affordable homes built in the District and there was a footpath link.

For the officer's report, see www.burwashsaveourfields.org.uk/Exhibits 7a 2017 application Rother Planning Officer's report.

- 2 There were three problems with this.
 - a) The evidence points to Park Lane Homes (Sole director Russell Beswick, Company Secretary his wife) never having intended to build the affordable homes, see para 54. This is line with the District Valuer's conclusions, see para 57a.
 - b) The site had not been properly assessed by anyone except the developer, particularly for its inherent building problems and for the impact on the Area of Outstanding Natural Beauty (AONB).
 - c) The site had never been, was not and never will be suitable for a housing estate. The fact that up to 30 homes were approved does not solve the problem of how to fit 30 houses onto the site without adversely impacting on the AONB and breaching other planning rules.

- 3 Rother District Council planners have always backed the developer. In January 2019, when the detailed planning application was considered, the Councillors listened to the arguments and turned the scheme down unanimously. Park Lane Homes appealed. In July 2019, the Planning Inspector dismissed the appeal primarily because of the impact on the AONB and design defects. He felt those issues were so strong, he did not need to rule on the other issues.
- 4 In January 2020, Park Lane Homes had arranged a ‘public consultation’ exercise in Burwash for new designs. Neither he nor any member of the Park Lane Homes company nor any member of the company managing the development attended. There was just an architect and his assistant who were unable to answer most of the questions asked. They only knew about the design. The developer’s team spread the idea that the design was now acceptable so there could be no objection to the scheme. Why it was thought that argument could be accepted is hard to imagine.
- 5 The local community strongly opposes this application. The members of Burwash: Save our Fields agree with them and object to the application for the following reasons:
- Very significant damage to the AONB, see para 14
 - The scheme is not viable, see para 62
 - There is poor design, see para 37
 - The site is not sustainable, which is linked to the lack of foot access to the village centre, see para 21
 - The developer is unable to comply with his section 106 obligation about the footpath to the village, see paras 22
 - The developer is unable to comply with his section 106 obligation about affordable homes, see paras 54
 - The form and scale of the development is unsuitable, see para 31
 - Rother District Council cannot comply with its ecology and biodiversity obligations, see para 79b

The two elephants in the room

Elephant One The affordable homes

- 6 The applicant has signed a section 106 agreement to provide 40% affordable homes, see Part 3 para 1 of the agreement. The applicant says the site is not viable in his 2018 application. This application does not address this issue. On the applicant’s case, he is putting forward a development which is not viable. This application does not ask for and is not permitted to ask for an amendment to the section 106. This elephant is dealt with in more detail at para 54 below.

For the section 106, see www.burwashsaveourfields.org.uk/Exhibits 22 Section 106.

Elephant Two The alpine footpath to nowhere

- 7 In Condition 16 of the grant of planning permission that the reserve matters relate to, 2011/582/P, it states that the applicant must ‘ensure footpath integration with the village centre and its services’. The provision of this footpath was confirmed in the section 106. The applicant’s agent claims he only has to take the footpath to the ‘recreation ground’.

This is false as the footpath has to connect with the village centre. This application does not address this issue. On the applicant's case, he is putting forward a development which will never be able to satisfy Condition 16. As stated before, this application does not ask and is not permitted to ask for an amendment to Condition 16 as this is a reserve matters application. This elephant is dealt with in more detail at para 22 below.

For the section 106, see www.burwashsaveourfields.org.uk/Exhibits 22 Section 106.

Considering the elephants in the room

- 8 The applicant is unable to satisfy two of the conditions now or in the future. The question arises as to why the application has been lodged. It is believed the hope is that the obstacles to this planning application can be removed in stages.
- Create the illusion that only design is for determination and say that that problem has been solved.
 - Ask the Council to say nine of the conditions have been met. This is this application.
 - If granted, say the scheme is not viable, and say the Council should remove the affordable provisions of the section 106.
 - If granted, apply to say the whole scheme is now ready for building save the footpath condition and the left-over conditions. Ask that the footpath condition be removed, as it is not the fault of the developer that the condition cannot be satisfied.
 - Sit back and reap the profits.
- 9 Rother District Council should not be treated in this way. In 2006, had there been no footpath link in the application, the Inspector is unlikely to have selected the site for Local Plan's housing allocation. The same must apply to the outline planning permission in 2011. Also in 2011, the applicant made the promise of affordable housing the basis of the application. Without them, the application would have failed. Similarly in 2017, without the footpath and the affordable homes the application would have failed.
- 10 The applicant should not be able to achieve planning permission by this approach when it would have been unsuccessful with an open approach.

Understanding the planning application

- 11 The developer presents this application as a reserve matters to a grant of outline planning permission and falsely states the only matter in issue is the design. To understand the issues, particularly the footpath and affordability issue it is necessary to understand the background.
- a) **2 July 1985** RR/85.1339 Mr R C Kirkham (who is still seeking to develop the field) asked for 'residential development' at Strand Meadow.
 - b) Rother District Council in its submission 'underlined the importance of the setting of the village and the Area of Outstanding Natural Beauty.
 - c) **5 September 1985** the Rother District Council refused the application on grounds including:
 - i) The site lay within the AONB and the proposal would be detrimental to the character and appearance of the area.

- ii) Strand Meadow is of inadequate width to serve the proposed development.
- d) **The defendant appealed.**
- e) **1 December 1986** T/APP/Ui430/A/85/041450/PS The Appeal was dismissed. The grounds included:
 - i) The AONB, see para 15 of the notice. The visual impact on part of the AONB, para 11 of the notice.
 - ii) The detrimental visual impact on the surrounding landscape, see para 15 of the notice.
 - iii) The widening of the carriageway in Strand Meadow would be insufficient to overcome the problems of the [17] extra houses, see para 12 of the notice.
 - iv) The quality of the landscape, see para 15 of the notice.
 - v) The setting of the village, see para 15 of the notice.
 - vi) The significant increase in traffic [generated would create] danger and inconvenience for the residents in the existing houses.

For the Inspector's decision, see www.burwashsaveourfields.org.uk/Exhibits 1 1986 Inspector's decision
- f) **July 2006** The Rother District Local Plan is published, which allocated the site in question for no more than 17 dwellings of which 40% were to be affordable. Conditions included 'a footpath to link the development to the existing recreation ground and Ham Lane. This policy was VL1.

For Policy VL1, see www.burwashsaveourfields.org.uk/Exhibits 2 2006 Policy VL1.
- g) **20 October 2011** RR/2011/2205/P and RR/2011/2206/P Richard Kirkham and Park Lane Homes' future agent applied for planning permission, RR/2011/2205/P. The two also applied for planning permission for a recreational land and creation of footpath link(s), RR/2011/2206/P. The agent and Rother District council treated the applications together. However, the decision notices were quite separate. The basis of the application was 'the acute need for affordable homes', see Design and Access statement page 10. There were to be 17 homes with 40% being affordable. The officer reported to the planning committee that it was not possible to assess landscape effects without levels and sections, see the agenda para 6.3.2.

For the 2011 Design and Access statement, see www.burwashsaveourfields.org.uk/Exhibits 6 2011 Design and Access statement.

For the agenda, see www.burwashsaveourfields.org.uk/Exhibits 3 2011 Planning application Agenda.
- h) The odd feature of this application was that the decision notice for the outline planning permission is dated 19 July 2017 after the next application was lodged. The decision notice for the Footpath and Recreation Ground application is dated 20 July 2017.

For the decision notices, see www.burwashsaveourfields.org.uk/Exhibits 4 and 5 2011 application Decision notices 1 and 2.

- i) **3 March 2017** RR/2017/582/P Park Lane Homes with its agent applied for outline planning permission for this site, There were to be up to 30 homes with 40% affordable. The impact on the AONB was not properly assessed. Neither were the traffic problems in Strand Meadow and Shrub Lane properly considered. The Council granted permission for up to 30 homes and road access through Strand Meadow. It is this application that the current reserve matters relate to.

For the decision notice, see www.burwashsaveourfields.org.uk/Exhibits 7 2017 Decision notice.

- j) **7 March 2018** Richard and Carol Kirkham (the owners of Watercress Field), Russell and Sharon Beswick (the sole director and company secretary of Park Lane Homes, the developer), an official of Rother District Council and an official of East Sussex County Council signed the section 106 for Watercress Field. There were multiple obligations for the developer and owners, including providing the full proportion of affordable homes, providing the ‘footpath in accordance with the Specification’ and Highways obligations.

For the section 106, see www.burwashsaveourfields.org.uk/Exhibits 22 Section 106.

- k) **28 June 2018** RR/2018/1787/P A detailed planning application was lodged. The application sought to remove the affordable homes obligation. There were repeated amendments to the application. The planning committee refused the application by 12-0.

For Decision notice, see www.burwashsaveourfields.org.uk/Exhibits 9 2018 application Decision notice.

- l) **1 March 2019** APP/U1430/W/19/3223824 The applicant lodged an appeal for the refusal. On 15 July 2019, the appeal was refused on multiple grounds.

For Dismissal notice, see www.burwashsaveourfields.org.uk/Exhibits 8 2018 application Appeal Decision.

- m) **26 November 2019** The developer’s agent and the new architect met the councillors of Burwash Parish Council. Some plans were shown to the councillors. The public could not ask any questions until after the plans were partly revealed. Burwash: Save our Fields also asked to see the developer at a time just before the Parish Council meeting. This was agreed. Shortly after the agreement the architect cancelled the meeting.

- n) **8 January 2020** An architect and his assistant attend a ‘public consultation.’ Neither the developer nor his agent attend. Only a site plan, some computer drawings and a leaflet containing misinformation were available. The forms that were filled in by the public almost universally condemned the scheme. For more detail see para 69 below.

For a report about the consultation, see www.burwashsaveourfields.org.uk/Exhibits 11 2020 January exercise.

- o) **12 October 2020** RR/2020/1822/P This application was lodged.

The Inspector’s findings

- 12 The critical matter for this application is to consider the findings of the Inspector and see how they have and have not been addressed.

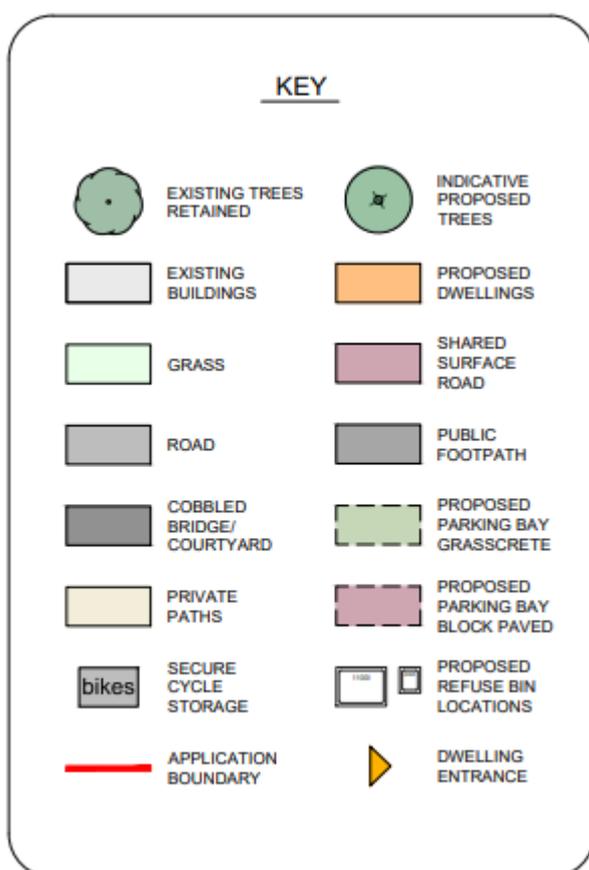
Inspector's findings (with the report paras)	How it has been addressed	Comments
<p>Poor design</p> <p>The design concept results in a hard semi-urban appearance, Not sympathetic with the distinctive features and architecture of Burwash, Paras 6 and 8</p>	A new architect was appointed.	The design is an improvement but the previous design was so dreadful it would be hard not to have made an improvement. Because of the site constraints, the design is still not acceptable.
<p>No design review</p> <p>Para 10</p>	A peer review was produced	The peer review document is riddled with errors and written by what appears to be a former close member of the West Sussex architectural fraternity.
<p>Working up a design with the local community</p> <p>Para 10</p>	It has not been addressed	The developer has treated the local community with indifference.
<p>No formal Landscape and Visual Impact statement</p> <p>Para 11</p>	Landscape and Visual Appraisal provided	The report pays lip service to the problems and then signs the scheme off. It ignores the primary finding of the Inspector which is that the 30 houses cannot be accommodated on the site without having a significantly damaging impact on the AONB.
<p>Scale and appearance of the proposed buildings which would cause significant harm.</p> <p>Paras 13, 24 and 33</p>	Hiring a new architect.	However the new plans cannot overcome the problems of the scale of 30 houses.
<p>Form and appearance</p> <p>The allocation does not justify the form and</p>	The design has been tinkered with.	The developer can do nothing about the impact of

appearance of the proposal, which are [his] principal concerns. Paras 23 and 32		30 houses on this sensitive site.
AONB The scheme would significantly harm the character and appearance of the area and the landscape of the AONB, which it would fail to conserve or enhance. Para 15, 26, 32 and 33	The scheme has been tinkered with by a new architect.	This is one of the main findings. The architect is unable to deal with the impact so many houses would have on the AONB and the views from its footpaths.
Affordable homes The Inspector noted the concerns, but because of the weight of factors indicating a dismissal was required, he found it not necessary to address this issue.		The application ignores this.

Area of Outstanding Natural Beauty (AONB)

- 13 The whole site is in the High Weald AONB. The Inspector in July 2019 found that a planning proposal for 30 homes on this site was:
- a) An ‘overly large development [which was] harmful and locally [a] prominent suburban intrusion into the landscape of the AONB’, see para 9 of the report.
 - b) ‘the scheme would significantly harm the character and appearance of the area and the landscape of the AONB’, para 15 of the report.
- For the Inspector’s decision notice, see www.burwashsaveourfields.org.uk/Exhibits 8 2018 application Appeal Decision.
- 14 The exceptionally historic and beautiful village of Burwash needs its setting in the AONB. The village should not be disfigured by a suburban housing estate in this ancient field.
- 15 As stated, the developer has tried to overcome this objection by pretending that the different design will overcome the Inspector’s objection. His different design cannot overcome the AONB objection.





The new site plan is above. For the full plan, see www.burwashsaveourfields.org.uk/Exhibits 23 Site map.

- 16 As already stated, the problem is that the site cannot accommodate 30 houses into this sloping field without damaging the AONB. The new architect that Park Lane Homes employed has moved the houses down the hill slightly and made them two rather than three stories high. He has also moved the top house, No 30, further up the field. He has created a terrace of five houses at nearly right angles to the other houses. The difference in height is about a metre for the second half of the development, which is a piffling difference. (The precise figures for plot 11 is 75.9m to 74.65m above sea level; for plot 17, it is 79.10m to 77.57m and for plot 26, it is 83.80m to 82.50m.) In estimating the height the architect has ignored the chimney pots, so the houses would be slightly higher than he claims in his drawing.

For the site section plan, see www.burwashsaveourfields.org.uk/Exhibits 24 Site section plan.

- 17 In presenting the estimated heights the architect has only chosen to estimate the height for Plots 4, 11, 17 and 26. If he had chosen to include the group of houses that are nearly at right angles to the slope, it is inevitable that the house furthest up the slope, number 25, would have a height greater than the previous house number 25. On 23 November 2020, Burwash: Save our Fields asked for the section drawings for plots 25 and 30 to see whether the section drawings were unrepresentative. Laurence Hulkes from the developers responded by telling us, ‘We can confirm all other drawings are available on

the [Rother] Council's website.' That is a pretty good insight into the developer's attitude for the community.

For the full e-mail, see www.burwashsaveourfields.org.uk/Exhibits 16 E-mail to the developer dated 3 December 2020.

- 18 The Inspector noticed at para 11 of his decision notice that the trees which the developer considered would shield the development were deciduous, so offering little protection to the AONB in winter. The inevitable conclusion made by the Inspector that 30 houses will significantly harm the AONB applies to the present application as much as it applied to the last one.
- 19 The AONB issue is sidestepped by the developer. Protecting the AONB in line with the Planning Inspector's decision is vital.
- 20 The High Weald unit says the site cannot take this number of houses without causing unacceptable harm to the character of the AONB, see page 2 of their report.

For the report, see www.burwashsaveourfields.org.uk/Exhibits 19 High Weald Unit 2020 objection.

The alpine footpath to nowhere

- 21 In their October 2011 application, the owners and the applicants in outline planning permission, promised 'to incorporate a footpath link extending west towards the existing footpath at Ham Lane'. In the 2018 section 106, the developer also agreed to provide the 'specified' footpath. In these latest plans the footpath just goes to a tall, thick collection of trees and scrubs at the edge of a sports ground. Just before the path reaches the boundary, there is a steep slope on both paths which makes the footpath impassable for those with mobility issues. Those who manage the playing field have always declined to permit a footpath link across their land.
- 22 The Burwash Playing Field Association Trustee and Management Committee's 2020 reasons included:
 - The safety of playing field users
 - It would limit some sport users' ability to use the playing field, e.g. cricketers might not be able to use the playing field
 - Site security
 - Health and Safety obligations
 - Concern there would be easier access encouraging criminal activity
 - Increased insurance costs
 - Litter problems
 - The likely light pollution with the introduction of lighting at the instigation of the police. Burwash is a Dark Skies Area.

For the full objection, see www.burwashsaveourfields.org.uk/Exhibits 14 Burwash Playing Field Association objection.

- 23 No-one from the developer side has formally approached the Playing Field Association for permission for the footpath to enter or traverse the playing field land. One informal

approach was made to one member of the committee in August 2018. Since then no approach to the association has been made.

- 24 Condition 1 of the reserved matters refers to the ‘access’ to the site. Access must include the footpath. Condition 16 (not subject to this application) requires the developer to provide a footpath **link**, in accordance with the approved details’. It appears that the ‘approved details’ relate to the previous commitments given for a footpath to Ham Lane and the village. More critical is the word ‘link’. Taking the footpath to a tall and thick collection of trees and shrubs and no further cannot be described as a ‘link’. ‘Link’ must mean link with the village. The word is conclusively defined by the accompanying reason to Condition 16.

Reason: To ensure improved footpath integration with the village centre and its services in accordance with Policy VL1 of the Rother District Local Plan (2006) and Policy TR2 Policy

- 25 For the decision notice, see www.burwashsaveourfields.org.uk/Exhibits 7 2017 Decision notice.

To understand the reference, Policy VL1 was the July 2006 Rother District Local Plan. It allocated the site in question for no more than 17 dwellings of which 40% were to be affordable. Conditions included ‘a footpath to link the development to the existing recreation ground and Ham Lane’.

For the VL1 Policy, see www.burwashsaveourfields.org.uk/Exhibits 2 2006 VL1 Policy. TR2 of the Rother District Local Plan Core Strategy is below.

‘Integrated Transport

Improvements in the provision and use sustainable transport will be achieved through:

- (i)-(iii) Not listed;
- (iv) Improvements to the pedestrian environment and wider public realm to encourage **integration between different** modes of transport, employment areas and **settlement centres**; (sic)
- (v)–(vi) Not listed’
- 26 There can be no doubt of the interpretation. The footpath link is important and was one of the reasons why the site was given outline planning permission. It would have made the development less car based. In any event, with the section 106 agreement in place, the development cannot lawfully proceed.
- 27 The developer makes no mention of this problem in the application. However, on 16 November 2020, Mike Pickup from the agent company wrote to Burwash Parish Council and asserted at the top of page 2, ‘the reserve matters proposal includes a footpath route in accordance with the requirements of the planning obligation’.
- On 4 December 2020, the same agent wrote again to Burwash Parish Council for their meeting on 8 December 2020 when the 2020 application was considered. He asserted at para 1.

‘The proposed footpath link

1.1 Planning condition 16 of the outline consent requires details of the proposed footpath link ... the specific details required by condition 16 have not been submitted at this stage and do not therefore, form part of the current reserved matters application.

The footpath link is required to be available for public use “from the Residential Site to the Recreation Ground Site” and is to be managed and maintained by an appointed management company. There is no planning obligation or other limitation requiring the Applicant to provide a footpath link beyond the site boundary and across the public recreation ground.’

28 This is false for the following reasons:

- a) Condition 1 deals with access and the footpath is part of the access to and from the site so the footpath is an issue to consider. It is common for one issue to be in more than one condition.
- b) Condition 16 requires the footpath link to connect with the village services.
- c) Even if the condition was for public use “from the Residential Site to the Recreation Ground Site”, the applicant fails to provide this because his route goes to a tall thick collection of trees and scrubs and does not connect with the Recreation Ground as the hedge cannot be destroyed to link with a neighbouring property without consent of the other party.

For the e-mail, see www.burwashsaveourfields.org.uk/Exhibits 15 Developer’s e-mail 4-12-20.

Like the affordable homes issue the footpath to nowhere makes the developer’s approach in the words of the Inspector at para 24 of his decision notice also ‘hypothetical’.

For the Inspector’s report, see www.burwashsaveourfields.org.uk/Exhibits 8 2018 application Appeal decision.

29 The footpath issue is illustrative of the misleading nature of this application and how it is in disarray.

Form and scale

30 The original application was for 17 homes. This site became known as BU2. The 17 housing units were based on 30 housing units per hectare. That made about 17 units. The developer has increased this to 30. This doubling up of the units and the increase in density would inevitably cause significantly greater damage to the AONB. The planning official cannot have considered properly whether 30 homes could be accommodated on the site.

31 In July 2017, the planning committee waived the planning application through without the help they were entitled to have received from the developer. When the detailed planning application was lodged the site was properly examined. The planners continued to support the developer and the councillors looked at all the factors and rejected the application 12-0. Unfortunately, the reasons given by the councillors were not properly reflected in their decision notice.

32 However, the Inspector conducting the appeal considered that there was a marked difference between a scheme of 17 homes and the proposed 30 homes and as a result [the original consent] does not justify the form and the appearance of the [developer’s]

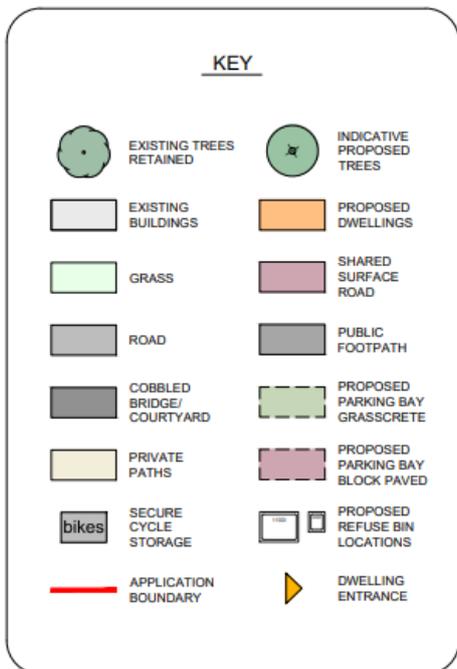
proposal. He also said the scale of the buildings would harm the landscape, see Appendix 1 para 23.

For the Inspector's report, see www.burwashsaveourfields.org.uk/Exhibits 8 2018 application Appeal decision.

- 33 This assessment is as true today as it was then. Cramming all these houses onto the site may be seen as an opportunity to maximise the profits. In reality, the 30 homes and the resulting density is one of the factors that creates the most problems.
- 34 The High Weald unit in their current objection state that the application implies that outline permission has been granted for 30 dwellings. They point that Condition 6 says that the number of dwellings "should not exceed 30" and that this does not mean that it has been accepted that 30 dwellings can be accommodated on this site, see www.burwashsaveourfields.org.uk/Exhibits 19 High Weald Unit 2020 objection. It is up to the developer to show it is. He failed to do that in the 2018 detailed planning and he failed again at the appeal.
- 35 The approach taken by the developer is that the 30 housing units has been agreed. That misstates the grant and the implications that follow.

Poor Design

- 36 In the developer's Planning statement at para 5.5, he says the issue is whether the new scheme has met the Inspector's concerns. The Inspector determined the appeal following Rother District Council's refusal of the last application. The developer ignores the main issues while over many pages just congratulates the drafters of the scheme. The Inspector in fact rejected the scheme on character, appearance, AONB, scale as well as design. Although the design has improved, it is not yet acceptable.
- 37 The basic objection to the design is that it breaches the High Weald AONB Management Plan 2019-2024 Objective S3, 'To enhance the architectural quality of the High Weald and ensure development reflects the character of the High Weald in its scale, layout and design. The scale and layout are important because they and 'appearance' are part of the requirements on Condition 1 that the developer seeks to discharge. Condition 1 and Objective S3 should be read together.



For a larger scale plan see para 18 or see www.burwashsaveourfields.org.uk/Exhibits 23 Site map.

- 38 The above plan taken from Plan 0022, shows graphically the problem with trying to fit 30 homes into such a tight space.
- 39 Planning rules and design guides apply to all sides of proposed buildings. The uniformity and suburban feel can be judged by looking at the rear elevations of the buildings.





- 40 There is a conflict of style. The top half has a pretend bijou olde worlde look. The bottom half has the suburban launderette look. The design is wholly inappropriate for an East Sussex village.
- 41 The High Weald unit in its objection letter to the earlier and failed proposal, dated 9 August 2018, helpfully points out that ‘Design standards should also not be compromised due to viability and the topographical difficulties of the site. Objective S2 of the Management plan is to protect the historic pattern of settlement and Objective S3 is “To enhance the architectural quality of the High Weald”.

For the High Weald Unit 2018 objection, see

www.burwashsaveourfields.org.uk/Exhibits 18 High Weald Unit 2018 objection.

- 42 Ian Franks Dip Arch RIBA Dip UD ARB, a senior and well-respected architect, who lives in Burwash, objected to the application (Date Submitted 13-12-20) on the following basis:

‘I have worked on many large-scale projects and I have looked very carefully at the application. It is clear to me that the site is overdeveloped in relation to its potential. It is a steep site and this limits the development potential of the site. To have 30 residential units with nearly all having stepped access goes against current policy in terms of accessibility for all ages - from mothers and babies to the elderly and mobility impaired. Even if permitted under the building regulations it is pushing the site too hard. The layout of the proposal is contrived with certain blocks being turned to fit more units on the site. The architecture has improved since the last application but the concept of houses with linear shared car parking is not appropriate in this rural location where self-contained parking attached to a unit is what would be expected along with space for cycles and adequate electric charging points. This is not a good response to the 'genius loci' of this site and I believe that the design does not work and needs a total rethink with a significant reduction in the number of units and with full accessibility for all.’

For the full objection, see www.burwashsaveourfields.org.uk/Exhibits 20 Ian Frank’s objection.

- 43 The large number of steps to the entrances to houses mean they are unusable for the elderly, those with mobility issues and those with buggies. The Inspector noted this in his appeal decision at para 17.

‘Some of the properties, such as Plots 19-22, would have a front door around two metres above the ground level, with access required via twelve steps. There would be additional flights of steps to access the rear garden. This would present an accessibility challenge for those with mobility difficulties but also for small children, those needing to use a

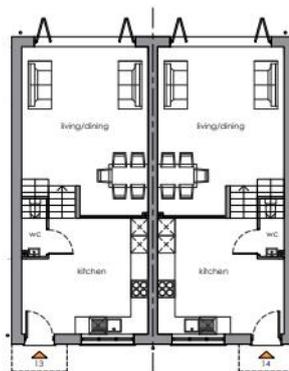
pram or residents wishing to simply move household items into the house and garden.’ In the next paragraph he says such steps are probably unavoidable. This leads back to the main point, which is the problem of this site for a housing estate.

- 44 When the planning committee considered the slope and similar housing designs, Cllr. Mrs Earl-Williams said, “I cannot see that any other than pretty abled-bodied people would be able to live there. Unless you are a goat.” For a copy of the document, see www.burwashsaveourfields.org.uk/Exhibits 29 Transcript of Rother DC Planning meeting 17 January 2019 page 12.
- 45 Step problems have generated increasing awareness recently. In the 2018 failed application, one of Rother District Council’s reasons for refusal was the plan’s ‘poor pedestrian access arrangements (both site wide and within the individual plots), which are primarily stepped and do not provide access for all’. This recognition is most welcome and this principle should be reapplied to the current application.

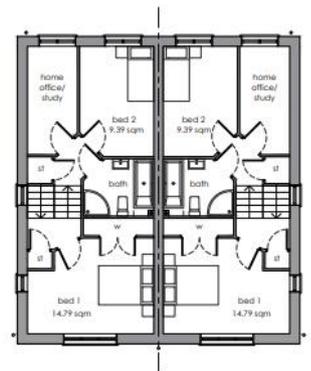
For Decision notice, see www.burwashsaveourfields.org.uk/Exhibits 7 2018 application, Decision notice.



STREET
scene



GROUND
floor plan



FIRST
floor plan

- 46 The design for units 15-16, above, is typical of the scheme. Units 1-20 are very similar. Units 1-2 have the worst step problem. The street scene shows the double set of steps to each house door. The ground floor plan shows the five steps that divide each of the ground floors. The first-floor plan shows the five steps which divide up the first floor. This remains housing which would be very problematic for those with mobility issues, those with young children and the elderly.
- 47 Cllr. Mary Barnes at the last Rother planning meeting said, “my main concern is about the abundance of steps”. She also expressed her “unease the way the application has come forward.”
- For a copy of the document, see www.burwashsaveourfields.org.uk/Exhibits 29 Transcript of Rother DC Planning meeting 17 January 2019 page 12-13.
- 48 For a recent Inspector’s decision in Burwash that took the modern approach to steps, the elderly and those with mobility issues, there is the Red Cross hut application (decided on 27 November 2020). The application was refused. Although the site was an infill site

adjoining the development boundary, the damage to the AONB was a significant reason for the refusal.

For the decision notice, see www.burwashsaveourfields.org.uk/Exhibits 21 Red Cross hut Appeal notice.

Design The High Weald unit

49 In the High Wealds unit’s objection to the 2018 application, the High Weald unit noted the following factors.

- a) **‘Geology, landform, water systems and climate:** The topography of this site is very challenging for built development. It is a steep sided valley with a spring / springs issuing from near the southern boundary, cutting down through the site to the north-western boundary where it flows north-east into Shrub Wood, an ancient woodland and then into the River Rother.
- b) Design standards should also not be compromised due to viability and the topographical difficulties of the site.’

50 These points were well made.

For the 2018 objection, see www.burwashsaveourfields.org.uk/Exhibits 18 High Weald Unit 2018 objection.

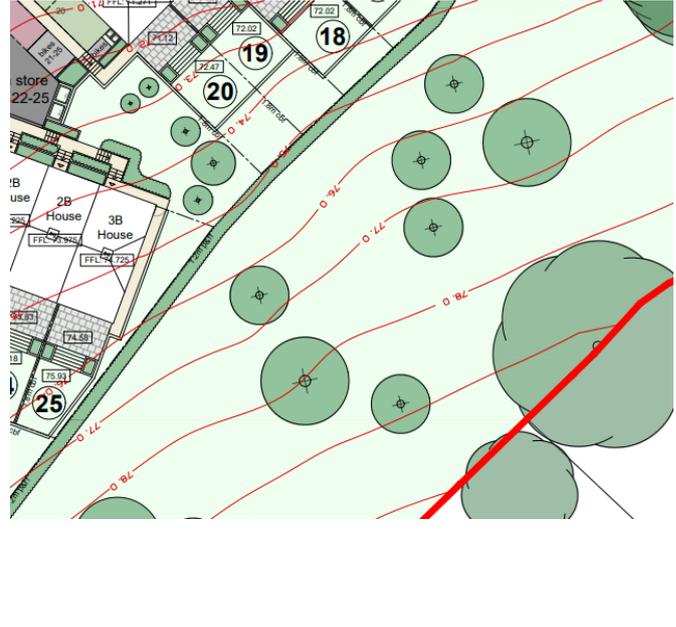
Design The claimed Peer review

51 Accompanying the application is a document claiming to be independent ‘peer review’ by Neil Holland. The claim and the reality are stark as the table below shows.

The claim (with the para number)	The reality	Comment
The review is independent, see Planning Design and Access statement paras 5.7, 5.24, 5.29 and 6.8.	Neil Holland and the architect appear he have had a long association together.	This means the so-called review can never be independent.
The author is an architect, see para 1.1	Checks with the records of the Royal Institute of British Architects and Architects Registration Board show he is not a member.	It looks as if he retired in 2016. He is now not permitted to describe himself as an architect.
The development is at the lower part of the site to minimise the impact, see para 3.8 Similar statements are at para 1.4 and 4.1	The development occupies the whole of the permitted site. If Neil Holland has included the recreational ground, he is making an entirely false point.	This means the author is prepared to make false points to bolster the chances of the developer, who is almost certainly paying for the so-called review.

There is an agreed percentage of affordable homes, see para 1.4	There are no affordable homes.	The statement indicates that Neil Holland knows little or nothing about the scheme but is prepared to add in factors to make the scheme attractive.
The proposed footpath is a link to the centre of the village obviating the need for unnecessary car journeys, see para 4.5.	There is no footpath linking the development to the village centre.	Ditto

Neil Holland's drawing	The architect's drawing
	
<p>Neil Holland has extended the width of the houses 21-25 and reduced the slope to make them more appealing. This false representation is the frontispice on the Planning, Design and Access statement and on the so-called peer review.</p>	<p>The scale drawing of the same houses drawn by the architect.</p>
<p>He has also added wisteria on a north-east wall and what looks like roses to make the scene cosier. Neither will grow there.</p>	

	
<p>The slope, which Neil Holland says at para 2.5 is steeply sloping, has been removed in the picture drawn by him.</p> <p>A garden has been created opposite the houses when none exists. The street furniture bears no relation to furniture depicted by the architect.</p>	<p>The house in the illustration is No 25 on the plan above.</p> <p>This is all part of Neil Holland’s policy to falsely make the development more appealing.</p>

52 Neil Holland portrays an almost flat idealised scene which ignores the very steep slope. This review must have been sent to the architect and the developer and his agent, who inevitably must have seen the misrepresentations and all of them must have turned a blind eye to the errors. Interestingly and unsurprisingly, they are all to the advantage of the developer. The peer review’s opinions are worthless and the way they have been presented damages the application.

Affordable homes

53 The developer has known for a long time that the site has problems, such as the slope, the name, Watercress Field (a reminder of the ground water and the springs), and the need for piling. He obtained outline planning permission with a false promise of 40% affordable homes. It is important to remember that there have been at least two viability exercises. No developer would take on a project without working how viable the scheme was. That exercise would make three viability exercises.

54 In the 2006 Local Plan, the top five issues identified in the Management Plan for the settlement component included: “The need to address the declining affordability of housing and the provision of workspace for rural businesses as part of the sustainable development of settlements, in order to maintain rural function”. As already stated, the first viability exercise named as such by the developer was when viability was used as an excuse to increase the housing on the site from 17 units to 30. It was noted by the High

Weald unit that in the failed 2018 application, it had been submitted as a full planning application rather than reserved matters to the outline, primarily because the developer wishes to remove the requirement for affordable housing on viability grounds. The unit further noted that 'whilst it is understood that viability would be challenging given the topography, this suggests that the site is not suitable for housing development, not that the provision of much needed affordable housing should be compromised to use this site.'

55 That remains true for this application.

For the High Weald Unit 2018 objection, see www.burwashsaveourfields.org.uk/Exhibits 18 High Weald Unit 2018 objection.

56 If it is claimed that the developer did once intend to provide affordable homes, the chronology is significant:

- a) October 2011: planning permission for 17 homes with 40% affordable granted. This was in line with the 2006 Local Plan.
- b) The first viability exercise, named as such by the developer, takes place, (presumably in preparation for the 2017 planning application). It is mentioned in the officer's report for the 2018 application at para 6.2.2. The officer said the increase in the number of houses from 17 to 30 units arises because of the developer's payment for the ransom strip at the entrance to the site has rendered the application for 17 houses 'unviable'. Details of this assessment, which must have come from the developer, have never been made public.

For the officer's report, see www.burwashsaveourfields.org.uk/Exhibits 10 2018 Officer's report.

- c) 3 March 2017: Park Lane Homes applied for 30 homes with 40 % affordable homes.
- d) February 2018: date on the plans for the 2018 application.
- e) 7 March 2018: Russell Beswick signed a section 106 agreement to provide 40% affordable homes, see Part 3 para 1.
- f) 7 March 2018: Decision notice for the 2017 application issued (same day) granting planning permission for 30 homes with 40% affordable homes.
- g) Unknown date: Second Viability report, named as such by the developer, ordered. (Although the report refers to the request for a report, no date for that is given.)
- h) June 2018: Date of Planning, Design and Access statement (precise date not given)
- i) 25 June 2018: 57-page Viability report issued.
- j) 28 June 2018: Application for planning permission for 30 homes with no affordable homes lodged.

57 The clear inference is that the as soon as Park Lane Homes obtained permission for 30 homes on the promise of 40% affordable homes, the company ordered a report which took some time to prepare. Importantly, the 40% affordable homes promise was not reduced but removed entirely, which could not be all attributed to previously unknown additional costs as claimed. Park Lane Homes has always refused to reveal the site investigation report, produced at the time. The latest refusal was on 24 November 2020, see www.burwashsaveourfields.org.uk/Exhibits 16 E-mail to the developer dated 3 December 2020.

The scheme is not viable

57a (new para) The District Valuer's report on the Developer's 2018 Viability report makes interesting reading. Among its findings were:

- a) 'No detail has been supplied to justify why the appellant considered the scheme to be viable when permission was granted [March 2018] but now considers the scheme is unviable', see para 2.2 of his report.
- b) I consider the abnormalities would have been known to the agent when affordable quantum were agreed, so I question why these are being highlighted now', see para 6.2 of his report.
- c) 'I do not consider adopting an average of sales values would provide an accurate indication of the achievable sale values for the units [the applicant's approach], particularly when the evidence relied on is all second-hand evidence, see para 5.2 of his report.
- d) The applicant has 'not outlined how they [the compilers of the report] have arrived at their values', see para 5.12 of his report.
- e) No evidence has been provided to support the land values, see para 7.2 of his report.
- f) The scheme is more viable than the applicant's appraisal suggests, see para 9.1 of his report.

For the report, see www.burwashsaveourfields.org.uk/Exhibits 31 District Valuer's report.

58 This planning application does not address the viability issue and on the applicant's case, he is putting forward a development which is not viable. This application, a reserve matters application, does not ask for and is not permitted to ask for an amendment to the section 106.

For the section 106, see www.burwashsaveourfields.org.uk/Exhibits 22 Section 106.

59 One problem that will never go away is the steep slope. The slope is so great, Cllr. Curtis, when the 2018 application was before the committee, said that "when the committee reached the entrance to the site they waited for the cable car to come", see page 10 of the transcript. He also asked why there were plans to build there in the first place, see the same page. Cllr. Ellison at the committee meeting asked "why it had taken so long to realise the steep slope, which is very difficult." Cllr. Prochak said when she visited the site, she could see what a difficult site it was, see transcript page 11.

60 At the same meeting, Cllr. Mrs Kirby-Green said, "The developer has had an interest in this site since 2005. He has only realised the constraints of the hill in the last 12 months. Constraints that the Parish Council and the local people had known for years. This development will not deliver what this community needs", see transcript, page 16.

For a copy of the transcript, see www.burwashsaveourfields.org.uk/Exhibits 29 Transcript of the Rother DC planning meeting dated 17 January 2019.

61 To summarise, in March 2018, the developer signed, with others from his side, a section 106 contract promising those affordable homes. The developer then claimed he could not afford to build the affordable homes and asked for the contract to be amended. Rother District Council refused to do that. That decision was right and the Council should stand firm. The Inspector made a particular note that the scheme was unviable and considered the developer's approach to be 'hypothetical'.

For the section 106 agreement, see www.burwashsaveourfields.org.uk/Exhibits 22 Section 106.

62 It is understood that the reason for the developer asking for detailed planning permission was that that procedure enabled him to apply for the section 106 affordable home commitment to be removed. The attempt failed. The developer should be judged as accepting the site is not viable.

63 Unfortunately, the section 106 agreement does not prevent the site being built on without affordable homes. It only prevents the houses being occupied without compliance with the section 106 agreement. If the developer considered trying to take advantage of that loophole, the Supreme Court judgment in *Alexander Devine v Housing Solutions Ltd* 2020 UKSC 45 6 November 2020, shows clearly the punitive way Courts and Tribunals would treat such behaviour.

For the law report, see www.burwashsaveourfields.org.uk/Exhibits 12 *Alexander Devine v Housing Solutions Ltd* 2020 UKSC 45.

64 The developer makes no mention of this problem. The Council should see through the presumed plan, which is to remove the conditions, and later say that the site is not viable so the affordable homes' condition needs to be removed.

The housing deficit

65 The developer has consistently relied on Rother District Council's housing deficit. This factor does not override planning rules. Recently, the Court of Appeal (Civil Div) in *Monkhill Limited v Sec of State for Housing, Communities and Local Government* 2021 EWCA Civ 74, laid down that the tilted balance when a local authority is in housing deficit, known also as positive presumption, applied in favour of sustainable development is not available in every case. It is 'deliberately disapplied' where policies in the NPPF that are designed to protect areas or assets of particular importance are engaged. This means the housing deficit principles is not a relevant factor in this application.

For law report, see www.burwashsaveourfields.org.uk/Exhibits 31 *Monkhill Ltd. v Sec of State* 2021 EWCA Civ 74.

For an explanation why finding suitable land for housing in Burwash is so difficult, see www.burwashsaveourfields.org.uk/Exhibits 13 Burwash and its housing allocation.

Traffic

66 In Shrub Lane there is anger at the plans to make the traffic flow and the parking at Strand Meadow even more chaotic. Generally, there is an understanding that Shrub Lane cannot safely take any more traffic and another large development is misconceived.

Landscape and visual appraisal report

67 This report served by Park Lane Homes is defective because it ignores the primary finding of the Inspector which was that 'the development would be a harmful and locally prominent suburban intrusion into the landscape of the AONB,' see para 9 of the report. The same is true for the current proposals. The report considered 'the existing landscape value of the site and the surrounding area is High to medium.' There are significant errors in it like the weight given to the footpath link to the Recreation Ground (para 3.1.4) when no such link exists. The author finally and unconvincingly arrives at the conclusion required by the developer, who is paying for the report.

The inadequate consultation

- 68 The developer’s Community Involvement statement says, ‘the design team have sought extensive involvement from the community regarding this scheme.’ This is not true. There was no community involvement in the latest plans. All the house designs have been changed since the December 2019/January 2020 designs were seen.
- 69 When the December 2019/January 2020 plans were subject of a village event on 8 January 2020, the developer and his agent declined to attend and only the architect was left to show those present some inaccurate artist’s impressions (not of great significance), an inaccurate leaflet and a site plan. He showed no housing plans or any other material. The architect’s assistant admitted that the computer drawings were not wholly accurate. The leaflet was inaccurate because it repeatedly referred to the footpath connecting the site with the playing fields and in one place saying the footpath provides an important connection with the sports facilities and Burwash village centre beyond. On the same page the leaflet said the tree removal would be minimal. In the developer’s Arborical Assessment report only trees of 75 mm are noted but still 50 trees will be felled on the site.
- 70 The consultation exercise has been deceptive, reluctant and lacked information. Interestingly, virtually everyone who filled in a form during that January 2020 exercise was hostile to the proposal. The Parish Council figures were: 2 people were for the scheme (one was an investor living outside Sussex and the other was also from outside the village). 63 people did not support the scheme.
- 71 However, previously on 17 January 2019, Cllr Mary Barnes had said that she “was very surprised that a development of 30 houses should not be shared for consultation with the Parish.” She “wondered whether the absence of the affordable homes was the reason for not sharing [the application] with the Parish.” She was also “left with the suspicion that he [presumably the developer] really didn’t want to have a public consultation.” Similar considerations apply to this application.
- 72 The Parish Council drafted a summary of the event. The Council recorded the following responses.

Issue	Percent/No of people
No affordable/social housing	69% 45 people
Site not suitable	52% 34 people
Access concerns (including steepness of the proposed footpath and difficulties for elderly, disabled and families with young children)	46% 30 people
Concerns about traffic issues	45% 29 people
Too many units	43% 28 people
Parking concerns	32% 21 people

Concerns about the pressures on the local infrastructure (incl. school and surgery) .	29% 19 people
The design had improved (with reservations)	28% 18 people
The designs did not comply with the High Weald unit guide	25% 16 people
Impact on AONB	15% 10 people

73 This record is in marked contrast to the record of the responses listed at Appendix C of the developer's Statement of Community involvement, below.

Ref	Comment/Objection	Qty	Percentage	Rank
1	Improved Design	17	29.31%	9
2	Design Not Improved	21	36.21%	5
3	Affordable Housing	39	67.24%	2
4	Ecology	5	8.62%	11
5	Over Development	25	43.10%	3
6	Light Pollution	2	3.45%	12
7	Access/Parking	44	75.86%	1
8	Footpath Link	14	24.14%	10
9	Infrastructure	20	34.48%	=6
10	Drainage	23	39.66%	4
11	Topography	19	32.76%	8
12	Wrong Location	20	34.48%	=6

Interestingly, the 'improved design' is placed at the top although it was ranked only 9th. The fact that the second column was a list of reasons people objected to the scheme is mostly missing.

For the Parish Council report, see www.burwashsaveourfields.org.uk/Exhibits 17 Parish Council Summary of the 8 January 2020 event.

For an assessment of the event, see www.burwashsaveourfields.org.uk/Exhibits 11 2020 January event.

For the Statement of Community involvement, see www.burwashsaveourfields.org.uk/Exhibits 25 Statement of Community Involvement.

74 In the failed detailed planning application of 2018, the developer sought no consultation with the Parish Council or the wider community. Also in 2018, after the 21-day consultation period was over, Burwash: Save our Fields asked to meet the developer and his agent. A meeting took place. The developer and his agent complained about the questions asked and that the meeting was recorded, even though they both had consented to that at the beginning. Since then they have refused to engage with the group and blocked almost all the group's attempts at obtaining proper information about the applications. In 2021, Russell Beswick again refused to meet us.

75 On 17 January 2019, Cllr. Oliver at the last planning meeting for this site said, “I just want to say a word about viability, access, including affordability, design; all these issues are there. What I feel very sad about this, is this obviously has been around for a long time: is that the developer here, has made commercial errors and is looking to resolve those commercial errors. He is looking for that to be borne by the residents of the neighbourhood who live there, and have lived there as their homes with minimal consultation. I just don’t think it is fair.”

76 Cllr. Ganley said he was “very concerned that the developer chose to trivialise the thoughts and livelihoods and lives of 500 people in the village, which has been there for many thousands or hundreds of years”, see Transcript page 15.

For a copy of the document, see www.burwashsaveourfields.org.uk/Exhibits 29 Transcript of Rother DC Planning meeting 17 January 2019 page 12.

The ecology

77 The developer has refused all requests for our ecologist to visit the site. The latest refusal was on 24 November 2020, when the group requests ‘permission for an ecologist to visit the site. The developer’s agent replied ‘No, as we have previously advised in our email to you dated 17 February 2020 the reports that have been submitted with the Reserved Matters application have been produced by qualified professionals who are experts in their individual fields.’

For the full e-mail, see www.burwashsaveourfields.org.uk/Exhibits 16 E-mail to the developer dated 3 December 2020.

78 In the 2018 application, the County Ecologist found eight significant failings in the developer’s ecologist’s report and three areas of concern. The High Weald Joint Advisory Committee planning officer in her submission objected to the scheme because: ‘The development has potential ecological impacts on the site and adjacent woodland which are not addressed in the application material contrary to their policies.’ The developer used the same ecologist in 2020. That ecologist seeks to keep parts of his report from the public so that they cannot be shown to our ecologist or checked by the group.

79 It is absurd to suggest that where there is an ecologist, who makes mistakes, always in favour of the developer, it is permissible to say no other expert should be permitted to visit the site. If the developer’s ecologist was good at his or her job, he or she would welcome another ecologist finding his or her account was correct.

79a (new para) On 4 February 2021, the County Ecologist reported to Rother District Council. She does not appear to have the benefit of any other ecologist report than the developer’s report. For quite understandable reasons she does not appear to have visited the site. She made the following findings:

- a) ‘The application documentation has not met best practice standards and/or the requirements of the National Environment and Rural Communities Act 2006 and the NPPF 2018.’ See the Introduction to the report.
- b) The developer’s ecology report ‘provides no certainty over what measures will be implemented to avoid harm and provide a net gain in biodiversity. BS42020, section 6.6.2 states that an ecological report should avoid language that suggests that recommended actions “may”, “might” or “could” be carried out by the applicant, e.g. when describing proposed mitigation, compensation or enhancement. Instead, the

report should be written such that it is clear and unambiguous as to whether a recommended course of action is necessary and is to be followed or implemented by the applicant.’ See para 5 of the report.

- c) ‘The Ecological Appraisal report states that three activity surveys were carried out in 2016; two dusk and one dawn. However, as two of these were conducted within one 24 hour period, they count as one survey, plus all three reported surveys were conducted over three consecutive days rather than being spaced out across the season. As such, they may not provide a true reflection of bat activity across the site.’ See para 11 of the report.
 - d) ‘The landscape plan does not include all the recommendations from the Ecological Appraisal, including provision of a wildlife pond in the landscape buffer and the provision of dormouse, bird and bat boxes.’ See para 24 of the report.
- 79b (new para) The report also concludes that ‘it is possible that the risk is capable of being mitigated to acceptable levels by the application of planning conditions which are outlined in this response.’ See the introduction to the report. The risk is presumably the risk to the ecology. If it is only possible that the risk can be mitigated it can be inferred that the risk is more likely not to be capable of mitigation. In any event the ecological proposals should not be signed off until the County Ecologist and the planning committee are satisfied the risk would be mitigated not possibly mitigated.
- 79b (new para) In the developer’s Arborical Assessment report only trees of 75 mm are noted but still 50 trees will be felled on the site. This loss is hardly considered at all anywhere.
- 79c (new para) It appears there is no ecology or biodiversity condition attached to the 2018 grant of planning permission. It could be argued that this issue is bound up in Condition 1 or Condition 5. It matters not because Natural Environment and Rural Communities Act 2006 s 40 states that: ‘Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.’ The duty applies to all local authorities. Conserving biodiversity includes restoring and enhancing species and populations and habitats, as well as protecting them. The National Planning Policy Framework 2018 (NPPF) para 170 states that ‘the planning system should contribute to and enhance the natural and local environment by... protecting and enhancing ... sites of biodiversity or geological value...’ and ‘minimising impacts on and providing net gains for biodiversity ...’ principles that local planning authorities should seek to apply when determining planning applications to protect and enhance biodiversity; these include refusing planning permission if significant harm to biodiversity from a development cannot be avoided This summary of the law has helpfully been provided by the County Ecologist. The exceptions in para 170 and in the later paragraph, 175, do not apply as is made clear by the County Ecologist.
- 80 (amended para) With a) the developer employing an ecologist who does not approach the issues properly, b) the developer always refusing to allow an independent ecologist to visit and produce a balanced report and c) the County Ecologist unable to say the risk has been mitigated, it is far too early to sign off the ecology part of this application. In particular, the NPPF 2018 prohibits this.

Ecology The High Weald unit

- 81 The High Weald unit’s 2018 objection made the following points.

- a) ‘The development has potential ecological impacts on the site and adjacent ancient woodland which are not addressed in the application material contrary to Objectives G1, W2 and FH3 of the Management Plan.
- b) **Woodland:** The main area of ancient woodland is Shrub Wood to the north-east, but there are also smaller areas of woodland and shaws within the fields to the **north and west.**
- c) **Field and Heath:** the application site comprises three Medieval (AD 1066 - AD 1499) assart fields with historic field boundaries.
- d) The attempts to address the ecological problems with the site that the Ash Partnership [the developer’s ecologist] lists in the first para 6.3 [which should read 5.3] have no plan envisaged for them to be maintained.
- e) Objective 6 of the Core Strategy will not be complied with because the intensity of the housing development is likely to put pressure on the threatened habitats.
- f) The intensity of housing development proposed on this site is likely to put pressure on these habitats from informal use by residents and changes to the flows in the watercourse as a result of drainage proposals and adjacent hard surfaces. This would be contrary to Objective G1 of the Management Plan, which is “To restore the natural function of river catchments”, and FH3, which is “To enhance the ecological function of field and heath as part of the complex mosaic of High Weald habitats”.
- g) There is an ecological implication for the Acid/Neutral Flushes and the stream which then runs into ancient woodland (Shrub Wood). Ancient Woodland is an irreplaceable habitat and an important component of the AONB and damage to it would be contrary to Objective W2 “To enhance the ecological functioning of woodland at a landscape scale”. The ecological report does not consider the impact on Shrub Wood.’

82 All these matters needed to be addressed. That hasn’t happened.

83 The High Weald unit’s 2020 objection made the following points:

- a) ‘Insufficient details are provided of the amount of soil that would need to be excavated and how this would be treated, contrary to objective G2 of the Management Plan.
- b) The ecological assessment report submitted with the application has a number of deficiencies which are detailed in an Appendix to this letter.
- c) A Landscape and Ecological Management Plan has not been included and is essential to secure the ongoing benefits of the site and to meet objective FH3 of the Management Plan.
- d) This is a steep site and the creation of building platforms and the road will require a significant amount of soil removal. There are no details provided of the amount of excavation required, where the soil will be stored during construction, or where it will be placed at the end of the build if it is not to be removed from site. These are important issues for this site and should form part of the submission to demonstrate that excavation has been minimised and good practice followed (see DEFRA’s ‘Construction Code of Practice for the Sustainable Use of Soils on Construction

Sites'). The application is therefore contrary to objective G2 of the High Weald AONB Management Plan "To protect and enhance soils, sandstone outcrops, and other important landform and geological features".

84 The group adopts these submissions.

For the High Weald Unit 2018 and 2020 objections and 2020 Appendix, see www.burwashsaveourfields.org.uk/Exhibits 18 and 19 High Weald Unit 2018 and 2020 objection.

The important historic setting of this site

85 The field is very close to the exceptionally historically important village of Burwash with its medieval High Street. The High Weald unit in its 2018 objection helpfully stated the position.

'Heritage issues

- a) **Settlement:** Burwash is a medieval village with most of the historic development along the ridgetop route, now the A265. More modern development north of the ridge is located off Shrub Lane in Strand Meadow and Rother View.
- b) **Routeways:** Historic public rights of way cross land to the north and west of the site, connecting into the wider countryside and back into the centre of Burwash. Shrub Lane is also a historic route.
- c) The poor design of the houses and layout is uncharacteristic of the historic settlement of Burwash and would be detrimental to the character of the area and the AONB, contrary to Objectives S2 and S3 of the Management Plan.'

For the objection, see www.burwashsaveourfields.org.uk/Exhibits 18 High Weald Unit 2018 objection.

86 These points put the landscape context of the site well and should be adopted.

Archaeology report

87 In marked contrast to the rest of the application, the Archaeology evaluation report, dated August 2018, is well structured, detailed, balanced and a useful report. The work is of a high standard. However, without the major conditions being able to be signed off it would be premature to sign this one off as new events may need a re-evaluation and it would be inappropriate. Also regulations and requirements may change.

The objectors

88 The last similar planning application in 2018 had over 460 different objectors (the appeal and the application). No one supported the scheme. The scale of opposition to that application is a relevant factor when linked to the developer's refusal properly to engage with the local community and his inability to deal with the community's specific objections.

89 This time it has been difficult to let the community know about the scheme, Lockdown meant there could be no meetings and for most of the consultation period no leafletting by members. Despite this, there are over 396 objections to the scheme (being careful to list people who made a joint application and ignoring objections listed twice by Rother). There were 20 more objectors from Burwash than there were to the 2018 application. Last time there were no portal supporters for the 2018 application and the 2019 appeal.

This time there was one person whose support was given with conditions that the site would be sensitive to the surroundings and the sewage issue was resolved. Jane Lewis of St Leonards also believed the scheme ‘would be brilliant for people in Burwash’. As she declined to give her address, it is assumed she is the Jane Lewis who works for Park Lane Homes which is based in St Leonards. The group has disqualified her comment when counting the comments for and against the scheme until it has been shown she is not an employee of Park Lane. Although this suggestion was made in our other submissions, no one connected with this application has sought to deny this suggestion.

90 (amended) It is hoped that despite the Covid restrictions councillors will be able to attend a site meeting and see the slope and the comments the residents of Strand Meadow had placed in their windows and elsewhere in their street. Councillors in the failed 2018 application planning committee particularly noticed this. Cllr. Curtis said, “the houses, regardless of [whether] they were rented or owned, or whatever and out of 100 houses, every single one has got a poster.” The posters had different messages on them but they all opposed the Park Lane Homes scheme.

91 Rev Graham Lewis sums up the feeling of the village. He said in his comment on the Portal, ‘I write in my capacity as the Vicar with current responsibility for Burwash parish following the retirement of the local Rector. This particular application has caused great distress to the villagers, both because of the multiple failings to meet what would normally be considered acceptable standards, and the failure to treat the community with respect. I am particularly concerned for the residents of Strand Meadow, where some of my own church members live.’

For the objection, see www.burwashsaveourfields.org.uk/Exhibits 28 Rev. Graham Lewis’ objection.

Park Lane Homes acceptance of this submission

92 In an email dated 7 January 2021, the solicitor acting for Park Lane Homes and Russell Beswick complained about the content in the earlier version of this submission. However, no complaint was made of what are now paragraphs 5-57, 63-69, 73-74, 78-89 and 94-103.

Applying the issues to the application

93 To apply the issues to the application, it is logical to divide up the 2020 application. However, before that exercise is undertaken, it should be noted that the decision letter, dated 7 March 2018, with the conditions in issue, states that the applicant is reminded of the desirability of entering into pre-application discussion with the local planning authority in relation to any reserve applications matter. In the form to this application, the applicant says, he has not sought pre-application advice. This means the applicant cannot complain if permission is refused for matters which could have been resolved during pre-application advice stage.

For the Decision notice, see www.burwashsaveourfields.org.uk/Exhibits 7 2017 Decision notice.

Application 1 (Condition 1)

94 Although the Planning, Design and Access statement is far from clear, the developer is seeking Condition 1 approval, which is about the **access**, appearance, hard and soft landscaping, layout and scale of the site. This needs to be divided up.

Access

- 95 This does not include permission to connect with Strand Meadow as this has already been granted. It does include the access that the individual houses have to the service road. Perhaps more importantly, it includes the footpath link to the village. The developer has not provided the access to the village that he has undertaken to provide in the section 106 agreement. This alone means the application should be refused.

Appearance

- 96 This means the design, and more importantly, the impact on the AONB. Although the design has been improved, the previous designs had no architect involvement and were truly dreadful so it would be hard to design something that was not an improvement. For the reasons already given, there is a clear, adverse impact on the AONB. This also on its own means the application should be refused.

The layout and scale

- 97 GOV.UK defines scale in reserve applications as ‘the height, width and length of each building proposed within the development in relation to its surroundings’. Surroundings include the AONB, and the scale, the height etc, must also be seen as a factor to be judged on its impact on the AONB and neighbouring properties, like Rother View to the south.
- 98 GOV.UK defines layout as ‘the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development’. The open spaces within and outside the development include the development’s impact on the AONB.

Application 1 Conditions 2 and 3

- 99 Condition 2 is procedural only. Condition 3 is conditional on approval of the reserve matters. Both should remain in force.

Applications 2-6 (Conditions 7-10, 13 and 19)

- 100 Condition 7 relates to drainage, Condition 8 relates to parking and turning of vehicles, Condition 9 and 10 relate to archaeology, Condition 13 relates to levels of buildings and hard surfaces and Condition 19 relates to landscaping. These conditions only apply when Conditions 1 and 2 have been approved.
- 100a It is better conditions are not approved piecemeal. Information and regulations change. These conditions should only be considered in the unlikely event that the developer is able to meet Condition 1.

The other conditions

- 101 The developer has not sought approval for Conditions 4-6, 11-12, 14-18 and 20-22. Some are directions, so would not appear to need approval. Critically Condition 16 (which requires a footpath to the village) cannot be complied with and is not subject to any application.

Ecology

- 102 (new para) With the developer employing an ecologist who does not approach the issues properly, with the developer always refusing to allow an independent ecologist to visit and produce a balanced report and the County Ecologist unable to say the risk has been mitigated, it is far too early to sign off the ecology part of this application. In particular

the NPPF 2018 prohibits this. The duty to consider ecology and biodiversity, see para 79b, means no conditions should be signed off until the ecological and biodiversity requirements have been met.

Conclusion

- 103 The Inspector and Rother District Council were right to reject the previous scheme. This application should also be rejected because the developer has failed to discharge his responsibilities in Condition 1. Furthermore, the developer cannot proceed because on his own account the scheme is not viable and Condition 16 cannot be satisfied. The failure to address the ecology and biodiversity issues require that all the applications to sign off the conditions should be refused. The conditions should not be approved piecemeal as the factual basis and regulatory controls may and are likely to change.

(in alphabetical order)

9 February 2021

Robert Banks	Helga Castle
Gary Churchill	Lesley Elmslie
Tina Freedman	Julian Kenny
David King	Helene King
Eleanor Kirby-Green	Sue Kork
Thilo Kork	Jane Moore
Nick Moore	Michael Mulholland
Richard Pope	Ian Rees
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