

Watercress Field, Strand Meadow, Burwash

RR/2020/1822/P

Burwash: Save our Fields' objection

Comments on the case officer's report

To see the Exhibits visit see www.burwashsaveourfields.org.uk/Exhibits

Introduction

- 1 Councillors may wish to consider the case officers' report in the Agenda for 18 February 2021 planning meeting with care. Overall, councillors may consider it is very similar to the facts relied on and the arguments which were rejected by the planning committee and the Inspector. The members of Burwash: Save our Fields hope it would be helpful to correct the misstatements and omissions in it.
- 2 It is understood reliance may be placed on the fact that the field is in the development plan. That development plan referred to 17 housing units. The planning committee and the Inspector dealt with a different proposal than the one in the 2006 development plan.
- 3 Key points are highlighted in yellow.

The reasons for refusal both by the council and the Inspector

- 4 Para 4.4 It is said that the 2018 application was refused on design and lack of a section 106 agreement only. Para 8.8.1 It is suggested the failed application was rejected only for design reasons.
- 5 In fact the Council refused the application on the following grounds:
 - a) Uncharacteristic and out of context with the historic settlement of Burwash,
 - b) Uncharacteristic and out of context with the historic settlement of the High Weald AONB,
 - c) Reason a) and reason b) would cause harm to the verdant character of this edge of the countryside and that was shown by:
 - i) The poor pedestrian access arrangements (both site wide and within individual plots) which are primarily stepped and do not provide access to all,
 - ii) The urban (rather than rural) character and appearance of the buildings,
 - iii) The excessive height,
 - iv) The inappropriate scale when compared with prevalent village design,
 - v) The design of the shallow pitch roofs incorporating inappropriate flat roof dormers and
 - vi) The inadequate levels of light.
 - d) The development does not represent a high quality response to the local context and landscape and so would be contrary to:
 - i) Policies OSS4, RA1, CO6, EN1, EN3, and TR3 of the Core Strategy,

- ii) Policies DHG4, DEN1 and DEN2 of the emerging Development and Site Allocations Local Plan Proposed submission Oct 2018, and
- iii) Paras 124, 127 and 128 of the NPPF.

6 For the decision, see Exhibits 8.

7 The difference is very significant. There is no mention of the section 106 agreement.

8 Para 4.4 The reasons for the Inspector's dismissal of the appeal are not listed. Councillors may feel the reasons are central to this application. Accompanying this note is the Inspector's report with the reasons highlighted in yellow.

The AONB

9 Para 8.11.2 It is welcomed that it is stated that the AONB issue is said to be a principal issue. It is a pity that the author goes on to say that 'it has already been considered as part of the considerations at the outline stage.' In 2011, there were only 17 houses proposed and the case officer said, 'it was not possible to assess landscape effects without levels and sections, see the planning agenda para 6.3.2.

10 There is no mention in the Summary of the impact on the AONB of 30 housing units which was such a dominant consideration for the planning committee in 2018-2019 and the Inspector in 2019.

11 Para 2.2 Line 3 The Inspector did not consider the 30 similar houses in the failed application would be 'relatively hidden' as suggested. He said, 'I observed it is apparent that the development would be particularly prominent in views from the public footpaths to the south, west and north of the appeal site, which are elevated above the ghyll. The boundary landscaping would provide some screening and softening, but it is largely deciduous and thin in places and therefore the development would be readily apparent, particularly when the trees were not in leaf,' see para 11 of the Decision notice.

12 Para 3.1 The two separate occasions refer to one scheme for 17 houses and one for up to 30 houses.

13 Para 3.5 It is said the heights of the buildings have been reduced. Para 8.8.7 It is suggested that the latest proposals have lower buildings. That is not true as plot 30 and the block at right angles to the other will be higher.

14 The height above sea level is significant as that makes the buildings more prominent. Some have been reduced but others are still higher¹ than before.

15 It is important to remember that any housing deficit cannot cause a tilt to the planning process here. This sometimes enables a planning application to be granted when without there being a deficit, it would not be granted. The Court of Appeal decided on 28 January 2021, that the tilt does not apply where the issue is impact on the AONB and other factors.

The alpine footpath to nowhere

16 Para 1 and 2 There is no mention of the access requirement in Condition 1, which counsellors may feel is one of the important factors for consideration. Para 8.2 The principle of 'access' is missing from the reserve matters' list.

¹ The height that matters is not only the height of the building but also the height above sea level because that is what determines how prominent the building is when seen from various vantage points.

- 17 Para 6.15.2 The applicant accepts in his submission to the Parish Council he has to provide a public right of way. The right of way referred to is a private right of way. It will need to be investigated. However it is a red herring.
- 18 Para 8.7 Condition 1 access is part of access and the lack of a footpath is access.
- 19 Para 6.15.2 It is said discussions have been proceeding over 2-3 years. No one connected with the applicant has made a formal approach to the Burwash Playing Field's Association. There was one informal meeting with one committee member only. That was met by a refusal. That refusal and the recent refusals in 2019 and 2020 have not been mentioned.
- 20 Para 8.18.2 It is a misreading of Condition 16 to say the footpath link only need to go to the edge of the playing fields ignores the reason for the imposition of Condition 16 which is part of Condition 16. It states:
'Reason: To ensure improved footpath integration with the village centre and its services in accordance with Policy VL1 of the Rother District Local Plan (2206) and Policy TR2 of the Rother District Local Plan Core Strategy.'
- 21 For interpreting Condition 16 (Exhibits 4), see para 24 of the main submission. Not only are the reasons part of Condition 16, but the reasons have to be considered under the principles of purposive construction for judicial interpretation.
- 22 It is wrong to rely on the private right of way as the developer has accepted that the footpath has to be a public right way and sustainability cannot be based on private rights of way. Further the developer has produced the private right of way at the last minute in a document that has been removed from the planning portal. They have never said in any document on the portal that they are relying on this as they have consistently said they only need to take the path to the boundary. The plan relied on shows the private right of way on the land of a householder and the Playing Field land. There is no direct evidence that there is a private right of way over the householder's land. The Playing Fields and the householder with Covid restrictions has had insufficient evidence to check out the position of this claimed right of way that no one has used in over 35 years.
- 23 The existence of this private path is a red herring.
- 24 Para 16.15.2 It is said the path would not impact on the users and pitches/courts. The reasons given by the Burwash Playing Field Association Trustee and Management Committee's 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

25 Para 8.3 It is said the permission allows for a scheme for 30 units. In fact the permission was granted for 'up to 30 units' subject to considerations of the AONB and all other relevant factors. The real issue is, can the units be built without breaching the rules for the ANOB etc. In considering that issue the councillors are invited to consider the Inspector's and previous planning committee's clear conclusion on that issue.

26 Para 8 The author fails to deal with the AONB issue properly. The dominant issue before the committee is whether the new scheme which is so similar to the failed scheme has the same adverse impact on the AONB.

Making decisions for this site piecemeal

27 Para 8.4 It is suggested that the conditions need not be discharged at the same time. However the issue is whether the planning committee should allow the key conditions to be discharged piecemeal. If the councillors decide that they should not be dealt with piecemeal then the whole application should be refused. The way paragraph 8.4 is written and the reminder in the next paragraph, it looks as if the case officer considers the developer can raise issues at any time. This implies it is proper for the conditions in the grant of permission and the conditions in the 106 to be submitted at a convenient time for the developer up and including when the houses are occupied. Such an approach is wholly inappropriate.

28 The group asks would a Health authority think it proper to sign off the designs for the second floor and the roof of a new hospital when the rest of the building was going to consider at a later application.

Viability and affordable home

29 There is a conflict between the developer and the case officer. The developer has made it clear in written correspondence with the clerk to Burwash Parish Council that they stand by the Viability report and there will be no affordable housing with this scheme. It is hoped this correspondence will be available to the planning committee. The case officer in para 8.5 is inviting the committee to proceed on the basis that there will be affordable homes. The details of the affordable homes are given.

30 This conflict needs to be resolved and committee needs to approach this application on what the developer says and not the case officer's presumption.

31 Para 8.6 It is stated that the developer is not raising the viability issue. This does not stop the councillors considering this issue. 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.'

For the report, see Exhibits 31.

32 The case officer in 2011 Watercress Field application was the same case officer for this application. In 2011, she said in her report that this [development] 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’.

33 No reason is given why she has changed her mind.

34 Viability is a very live issue. If the developer is telling the truth now about viability the scheme is not viable and he will, on a grant of this application, be back to take advantage of the piecemeal approach. For more detail see para 53 of the main submission.

Impact on residents

35 Para 8.10.2 It is suggested that there would be no direct impacts on the residents of Rother View. The Inspector in 1986) found there would be an impact for the 17 houses then proposed, see Exhibits 1. The impact of looking at 30 rather than 17 would be greater. In para 10 the Inspector said:

‘The Council, in its submission, underlined the importance of the setting of the village and the Area of Outstanding Natural Beauty. The rolling pastureland and steep ridges which are characteristic of the High Weald provide a very pleasant landscape of high visual quality. Burwash is typical of many villages in this area in that it is perched on the top of a narrow ridge and its appearance and setting are an integral part of the Area of Outstanding natural Beauty. The sloping fields which comprise the appeal site and the adjoining land are an integral part of the setting of the village in the landscape and housing on any part of this land would be visible from a distance and would be visually very intrusive and harmful.’

36 Few could express this better than the Inspector. The medieval landscape has not changed since 1986, It is unfortunate the support local communities have from the planners has changed.

High Weald unit

37 8.11.4 It is a pity the High Weald Unit’s consistent views about this site have been so side-lined and ignored. For the 2018 submission, see Exhibits 18. The 2020 submission is enclosed. They are of course the experts in this field. The reasons for the case officer’s rejection are given.

- a) The history and nature of the site (which adds support to the High Weald unit and adds nothing to undermine their view)
- b) Local Plan Inspector (who dealt with a plan for 17 houses)
- c) The last Appeal Inspector (who gave powerful backing to the High Weald unit’s view and said nothing to undermine it)
- d) The conclusions of the LVIA (who added no real support about the AONB)
- e) The County Landscape officer (who did not address the Inspector’s views properly).

38 None of these can be a reason to reject the important opinion from the experts.

Ecology

39 Para 8.12.1 The County Ecologist 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 than not to be capable of mitigation. In any event the ecological factor in this application should not be signed off until the County Ecologist and the planning committee are satisfied the risk would be mitigated not possibly mitigated.

- 40 It is to be regretted that the case officer failed to say that the County Ecologist could not say the risks will be mitigated.

The barrister's opinion

- 41 This document has been removed from the portal because of data protection breaches by the developer's agent
- 42 Reliance is placed on the barrister's opinion about the meaning of 'up to 30 units' when the barrister was asked the wrong question. He was asked 'Is the HWAONB [High Weald AONB] unit officer correct in her claim that "up to 30 units" approved by condition 6 in the outline application does not mean that 30 units is acceptable? [the typos have been left in]
- 43 The barrister appears to have been sent few documents and the lack of proper documents would have hampered his ability to come to a correct conclusion. The High Weald statement is true because the up to 30 units grant must be seen as the initial step. The next step is whether the developer can show, with the designs revealed afterwards, that the new plans will have an inverse impact on the AONB. As already stated that issue was considered by the Council and the Inspector and the arguments of the developer failed. The suggestion that the Council has determined that up to 30 units can be accommodated whatever, is false.
- 44 Para 5 of the advice. The barrister falls into grave error when it is asserted that the LPA must have necessarily reached the view that the proposed development (which at that stage in 2017 had no detailed drawings) would not cause unacceptable harm to the AONB. Bearing in mind the planning committee has decided and the Inspector has determined that the proposed development would have such unacceptable harm, an unconvincing inference in 2017 can have no bearing on the issues before the planning committee, when the issue has so emphatically decided since then.
- 45 Para 6 of the advice. The conclusion in the last sentence leaves out the impact on AONB so is irrelevant.

The attempt at consultation

- 46 Para 3.4 The developer and his agent declined to attend the 'public consultation' so it is stretching the meaning of the phrase to say the plans have been subject to public consultation. Also, building plans were not made available. Yet even if there was consultation, it cannot make an inappropriate scheme acceptable.
- 47 For more detail, see para 68 of the main submission.

Other matters

- 48 Para 2.0 The Parish Council has said they do not believe there is scope for the allotments to be supported.
- 49 Para 6.15.1 It is said the applicant has responded to all the comments. Most of the comments have not been dealt with. Key issues are ignored. Points 1, 2, 4, 5, 6, 7, 8, 9, 10 (both parts), 11-16, 18, 21-35, 37-41 fail to deal with the issues raised and are often

factually incorrect. Points 3, 5, 6, 17, 20, 36 and 42 are dealt with in this submission although most of them are non-points. Point 19 made a false inference as to what the group said. The reality is that there are no points of substance to reply to.

- 50 Para 8.8.5 It is suggested the form and scale of the scheme has significantly changed. It has not.
- 51 Para 8.10.6 It is suggested ‘the landscape effect would be very localised and overall landscape effect would be small in magnitude.’ No reason is given why the directly opposite finding of both the planning committee and the Inspector should be disregarded.
- 52 In 2017, there was no proper examinations of the effects on the landscape. In 2019, the planning committee considered that there would be an adverse impact on the AONB and rejected the plans. The Inspector was of the same view and dismissed the appeal.
- 53 Para 9 The matters in error in this section have already been dealt with.

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11 February 2021

Burwash: Save Our Fields

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