

High Weald Joint Advisory Committee

Woodland Enterprise Centre
Hastings Road
Flimwell
East Sussex TN5 7PR

Tel: 01424 723011
Email: info@highweald.org



High Weald
National
Landscape

www.highweald.org

Working together to care for an Area of Outstanding Natural Beauty

Tunbridge Wells Borough Council

Emailed to: localplan@tunbridgewells.gov.uk

23rd February 2024

Dear Sirs

Revised Development Strategy to the Tunbridge Wells Submission Local Plan (SLP)

Thank you for the opportunity to make representations on the 'Revised Development Strategy to the Tunbridge Wells Submission Local Plan (SLP)' as part of the ongoing Examination process of the Local Plan.

We previously submitted representations on the TWBC draft Local Plan Regulation 19 consultation in June 2021, which for brevity will not be repeated in full here. These included a specific representation objecting to the proposed allocation of the site AL/CRS 3 (Turnden Farm, Hartley Rd, Cranbrook) for 164-168 new additional dwellings, as being contrary to national policy and guidance relating to major development in AONBs.

Our further representations set out in this response are related to our objection to the continued proposed allocation of site AL/CRS 3 in the SLP, despite a number of policy and legislative changes since the previous examination hearing sessions of 2022 and the LP Inspector's Initial Findings letter of 22nd November 2022, including:

- **the strengthened Section 85 duty of public bodies with regard to exercising functions affecting land in AONBs set out in the Levelling-Up and Regeneration Act 2023.**
- **the conclusive refusal on 4th April 2023 by the Secretary of State of the planning application at the proposed site allocation - application no. 20/00815/FULL (construction of 165 new dwellings with associated access, car parking, refuse/recycling storage, landscaping, earthworks and other associated works).** (Decision subsequently quashed, now subject to redetermination.)
- **the clarity regarding housing requirement figures in protected landscapes given by the Secretary of State in his speech of 19th December 2023 "Falling back in love with the future" given to accompany the publishing of the revised NPPF.**

and in view of the context of the restrictive nature of paragraphs 182 and 183 of the NPPF (paragraph numbers refer to the most recent version of the NPPF, published December 2023).

Each of these is discussed in more detail below.

Anglesey
Arnside and Silverdale
Blackdown Hills
Cannock Chase
Chichester Harbour
Chilterns
Clwydian Range
Cornwall
Cotswolds
Gower
Cranbourne Chase and Dee Valley
West Wiltshire Downs
Dedham Vale
Dorset
East Devon
Forest of Bowland
Howardian Hills
High Weald
Isle of Wight
Isles of Scilly
Kent Downs
Lincolnshire Wolds
Llyn
Malvern Hills
Mendip Hills
Nidderdale
Norfolk Coast
North Devon
North Pennines
North Wessex Downs
Northumberland Coast
Quantock Hills
Shropshire Hills
Solway Coast
South Devon
Suffolk Coast and Heaths
Surrey Hills
Tamar Valley
Wye Valley

We note that the LP Inspector issued his Initial Findings to TWBC on 22 November 2022. In those initial findings, the LP Inspector was silent on the matter of the appropriateness or otherwise of the proposed allocation of the site policy AL/CRS 3, which we have presumed was in part due to the application appeal associated with the site that was ongoing at that time. Nevertheless, it is important that the proposed allocation is now reconsidered in view of the changes to policy and legislation set out above, and described in more detail below.

Amended duty under Section 85 of the CROW Act.

- The Levelling-Up and Regeneration Act 2023 (Section 245 (5)), which came into force on 26th December 2023, has amended the Countryside and Rights of Way (CROW) Act, and in particular section 6 (a) amends section 85 of the CROW Act, relating to the general duty of public bodies etc, to
“In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.” [my underlining]
This is considered to represent a strengthening of the previous section 85 duty, which set out that *“a relevant authority shall have regard to the purpose....”*
- In order to be consistent with the forthcoming legislation, both TWBC and the Local Plan Inspector, each as a ‘relevant authority’, will need to consider the SLP’s overall development strategy, and the specific site allocation, within the context of the amended section 85 duty. to ‘seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty’.
- In this regard, we consider that in view of the harm to the landscape and scenic beauty to the HWAONB identified by both the Inspector and the Secretary of State in his refusal of the planning application at the site; harm to which the Secretary of State attached ‘great weight’ (discussed in more detail below), we consider that the Local Plan examination should conclude that the proposed allocation for major development in the High Weald AONB would not further the purpose of conserving and enhancing natural beauty and therefore allocating the site for major development would not accord with the duty.

Secretary of State refusal of application no. 20/00815/FULL for 165 dwellings at the proposed site allocation.

- We are disappointed and concerned to see that the Revised Development Strategy has not sought to delete the proposed allocation of site AL/CRS 3 despite the conclusive refusal of an application for development of the site by the Secretary of State in his decision of 4th April 2023. That decision was subsequently quashed on grounds relating to the accuracy of the housing land supply figure, and now is back with the Secretary of State (SoS) for redetermination. Nevertheless the SoS’s findings in relation to the development of the site contain a number of pertinent points that apply to the consideration of the appropriateness of the proposed allocation.
- We note that TWBC subsequently wrote to the LP Inspector on 4th May 2023, setting out their view that the implications of the SoS’s decision on application 20/00815/FULL were not such as to preclude the proposed allocation of the site for housing in the submission version Local Plan. However, TWBC’s website advised that at that stage, the LP Inspector was not seeking any

representations from interested parties on either the Council's latest position or the decision made by the Secretary of State, and that '*opportunities will be provided for participants to make any comments on this, and other aspects of the Plan, in due course in accordance with the published timescales.*' We understand this consultation is that opportunity.

- We cannot agree with TWBC's position with regard to the continued proposed allocation of this site, set out in the Council's letter to the LP Inspector of 4th May 2023:
"it is not considered that the main reason upon which the SoS refused planning application, namely the impact of this proposal on the HWAONB, precludes the likelihood that alternative proposals for the development of the site for housing, capable of addressing the identified impacts, could come forward and be considered favourably against the constraint policies at national and local level demonstrating exceptional circumstances in accordance with NPPF paras. 176- 177" [now paras 182 and 183]

- In this regard, we acknowledge that the SoS conclusions were made in relation to one specific development proposal, rather than the principle of the site allocation. Nevertheless the harms to the landscape and scenic beauty of the High Weald AONB that he identified - harms which, though he described as limited, he concluded attracted great weight - would appear to be primarily associated with the *principle* of major development at the site (concerning such matters as the presence of development, and detriment to the landscape setting of settlements). As such, they would inexorably apply similarly to any future development proposals of comparable scale in this location, such that the allocation of the site for major development would be contrary to policies in the NPPF which seek to conserve and enhance landscape and scenic beauty in AONBs.

- Additionally, the TWBC letter of 4th May sets out that:
"The SoS at para 16 of his decision found, amongst other things, that the design and layout were too generic having regard to the expectations of the HWAONB Design Guide. Thus, the SoS considered the design of the proposals to be a neutral and not a positive aspect of the scheme. This was clearly, in our view, material to the SoS's assessment of exceptional circumstances and the planning balance."

In this regard, we would comment that as design quality is matter which the Framework identifies as being a key component of sustainable development, this wouldn't be a factor which would contribute to the 'exceptional circumstances' test of major development in AONBs under NPPF para 183, i.e. even if a scheme *were* to be proposed for the site of high design quality this would not constitute 'exceptional circumstances' under para 177, or even a 'benefit' of the scheme. This is since high design quality is the *expectation* of new housing schemes in the High Weald AONB, reflecting the importance of design quality in the NPPF, in particular Chapter 12: Achieving well-designed places, of which para 126 sets out that "*The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve*". [my underlining]

- For the above reasons, we consider the SoS's comprehensive refusal of the planning application for the site, identifying harms to the landscape and scenic beauty of the AONB and concluding that exceptional circumstances did not exist to justify the proposed development in the AONB, means that any alternative proposals for the development of the site would be extremely unlikely to be able to overcome the restrictive nature of para 183 which presumes against major development in AONBs, nor demonstrate exceptional circumstances in accordance with

that paragraph. This is therefore considered to support the position of deleting the proposed site allocation in the SLP.

Major Development, exceptional circumstances and housing numbers in the AONB

- Paragraph 182 of the NPPF (December 2023) sets out that **“Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues.”** It goes on to say that **“The scale and extent of development within all these designated areas should be limited”**
- Paragraph 183 of the NPPF (December 2023) sets out that within Areas of Outstanding Natural Beauty **“permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest.”**
- Whilst the paragraph specifically refers to consideration of planning permissions, it has also been considered relevant by Local Plan Inspectors to allocations within Local Plans¹. Legal advice provided to the South Downs National Park Authority by Landmark Chambers also concluded that *“it would arguably amount to an error of law to fail to consider paragraph 116 (now 172) [now 183] at the site allocations stage of plan making for the National Park. The consequence of doing so would be to risk allocating land for major development that was undeliverable because it was incapable of meeting the major development test in the NPPF”*².
- There are a number of provisions in the NPPF that allow for a lesser housing requirement than the OAN, and it is considered that these should give confidence to decision-makers that the context of ‘meeting housing need’ need not be used to justify exceptional circumstances in the context of para 183:
 - Paragraph 11 (b) (i) of the NPPF sets out that strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless **“the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area”** The assets referred to are listed in footnote 7 and include Areas of Outstanding Natural Beauty.
 - Para 61 of the NPPF confirms that **“The outcome of the standard method is an advisory starting-point for establishing a housing requirement for the area”**.
 - Para 61 goes on to confirm that **“Strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need ...can be met over the plan period.”** [my underlining]. It can be reasonably concluded that the application of para 11 (b) (i), regarding the protection of assets including AONBs, would be an important consideration in determining the extent to which the identified housing need can be met.

¹ For instance, in the Vale of White Horse Local Plan Examination, the Inspector considered two proposed sites located within the North Wessex Downs AONB for 550 and 850 dwellings against the major development tests set out in paragraph 116 of the original NPPF (now incorporated into paragraph 172 [now 183] of the revised NPPF). He concluded that the specific need for housing to be provided within the AONB had not been demonstrated and the sites were subsequently deleted. (Vale of White Horse Local Plan 2031: Part 1 Inspector’s Report November 2016)

² [Landmark Chambers legal opinion on definition of major development \(2017\)](#)

- This is supported by advice in the NPPG, which sets out that, with regard to “*How should development within National Parks, the Broads and Areas of Outstanding Natural Beauty be approached?*”:

“The National Planning Policy Framework makes clear that the scale and extent of development in these areas should be limited, in view of the importance of conserving and enhancing their landscapes and scenic beauty. Its policies for protecting these areas may mean that it is not possible to meet objectively assessed needs for development in full through the plan-making process” (Paragraph: 041 Reference ID: 8-041-20190721)

- The interpretation of these paragraphs of the NPPF has been further clarified by the Secretary of State’s speech of 19th December 2023 given to accompany the publishing of the revised NPPF <https://www.gov.uk/government/speeches/falling-back-in-love-with-the-future>. This confirmed that, whilst the standard method of assessing housing need remains the basis on which communities should plan for new homes, ***“It has always been the case that this number was supposed to be advisory for local authorities.”*** and that:

“The new NPPF now, more clearly, upholds the spirit of the original intention. Local authorities have the comfort of knowing that they need not re-draw the green belt or sacrifice protected landscapes to meet housing numbers.”

We consider this clarification supports the position that meeting housing requirement figures should not be considered to constitute ‘exceptional circumstances’ within the context of para 183, in fact quite the opposite.

- Indeed, aligning with this position, the previous SoS decision to refuse the planning application for the site (discussed above) was made within the context of his acknowledging the need for both market and affordable housing in the Borough, and that the proposed development would make a significant contribution to the delivery of both. In his decision, delivery of housing was considered one of range of benefits of the development to which the Secretary of State collectively attributed ‘substantial weight’. Nevertheless he concluded that exceptional circumstances in the terms of paragraph 177 [now 183] of the NPPF did not exist to justify the proposed development in the AONB.

We consider all of the above national planning policy context gives clear support to TWBC, with its high coverage of protected landscape, to justify a reduced housing requirement in their submission Local Plan, and *not* to seek to allocate the major development site AL/CRS 3 within the High Weald AONB, since to do so would conflict with paragraph 183 of the NPPF which presents a presumption against major development in AONBs, and since there appear to be no pertaining exceptional circumstances, as per the qualification of paragraph 183.

Whilst it is accepted that some development will take place within the AONB, and some sites will be allocated for development within the AONB, it is considered that these should accord with paragraph 182 of the NPPF, which sets out that *“The scale and extent of development within all these designated areas should be limited”* [the ‘designated areas’ being National Parks, the Broads, and AONBs].

On the basis of the above, in order to ensure consistency with national policy relating to development in AONBs, we respectfully recommend that major development allocation AL/CRS 3 be deleted from the Submission Local Plan.

We would also take this opportunity to request that we are given the opportunity to participate in any future Examination hearing sessions.

The above comments are advisory and are the professional views of the High Weald National Landscape (AONB) Unit's Planning & Design Advisor on the potential impacts on the High Weald landscape. They are not necessarily the views of the High Weald Joint Advisory Committee.

Yours faithfully,

Diane Russell BSc Hons Dip Arch PgDip Arch Cons

Planning & Design Advisor, High Weald National Landscape Unit

Advising on an outstanding medieval landscape; connecting people, protecting beauty, restoring soils and nature.

Background Information about the High Weald National Landscape (AONB)



N.B. From November 22nd 2023, all AONBs are to be known as National Landscapes to reflect the importance of these protected landscapes (AONBs) alongside the UK's National Parks. High Weald National Landscape is the new name for this protected landscape. This change is endorsed by Natural England. The High Weald National Landscape remains an Area of Outstanding Natural Beauty insofar as all policy, legislation and guidance applies to the designated landscape. To be consistent with the NPPF, we will still be referring to the AONB in planning consultation responses. The statutory purpose of the designated landscape "to conserve and enhance the natural beauty of the designated landscape" remains unchanged and the High Weald AONB Management Plan remains valid.

The High Weald was designated in 1983 as an Area of Outstanding Natural Beauty. It is an exceptionally beautiful medieval landscape covering 564 square miles across the counties of East and West Sussex, Kent and Surrey.

The High Weald National Landscape Joint Advisory Committee is a partnership established in 1989 of 15 local authorities, Defra, Natural England and organisations representing farming, woodland, access and community interests. The JAC is responsible for publishing and monitoring the statutory AONB Management Plan. The JAC is supported by a small, dedicated staff team, the High Weald AONB Unit, which provides advice on how to conserve and enhance the AONB. The advice provided by the AONB Unit assists public bodies and statutory undertakers to meet their duty as set out in Section 85 of the Countryside and Rights of Way Act 2000 **to seek to further the purpose of conserving and enhancing the natural beauty of AONBs in making decisions that affect it.**

The High Weald AONB Unit is not a statutory body but an advisory one. It is not a local planning authority and the responsibility for determining planning applications remains with the 15 local authorities. The AONB Unit is not a statutory consultee on planning matters and it remains each local planning authority's decision whether or not they seek its advice on a particular planning application.

The scope of the advice in this letter is set by the statutory High Weald [AONB Management Plan](#), which has been adopted by all partner authorities, as 'their policy for the management of the area and for the carrying out of their functions in relation to it'.