

Date: 20th November 2023
Your ref: APP/M2270/V/21/3273015

CPRE Kent - The Countryside Charity
CPRE Kent, Queen's Head House,
Ashford Road, Charing,
Kent
TN27 0AD

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By email only.

Dear Mr Barber,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77 APPLICATION MADE BY BERKELEY HOMES (EASTERN COUNTIES) LTD LAND ADJACENT TO TURNDEN, HARTLEY ROAD, CRANBROOK

Call-in Reference: APP/M2270/V/21/3273015

CPRE Kent acted as a Rule 6 party at the Public Inquiry and were disappointed to see the Secretary of State's (SoS) decision of 6th April 2023 ('the Decision') quashed by the High Court.

We therefore welcome the opportunity to provide the following written representations in relation to the questions set out in the Secretary of State letter dated 31st October 2023.

a) the progress of the emerging Local Plan, as well as any relevant emerging or made Neighbourhood Plans;

At the time of the Inspector's Report, the emerging Local Plan 2020-2038 (the eLP) had completed Stage 1 hearings and, shortly thereafter, the Inspector agreed that it could move on to Stage 2 hearings. The Inspector issued his Initial Findings on 22nd November 2022. Following serious questions raised by the Inspector in the Initial Findings, the Council has been re-considering its development strategy. On the 13th November, the Council's Planning and Transportation Advisory Board considered various alternative options for altering the eLP, resolving to recommend significant changes be made to the submission plan.

This recommendation remains subject to Cabinet approval and then full Council approval. If approved, the revised plan will then be subject to a 6-week consultation period with the recommendation from the Advisory Board that this consultation should start in January 2024.

We note that the SoS in paragraph 13 of the Decision agreed with the Inspector that the emerging policies of the eLP carried limited weight, on the basis that the examination hearings had not yet concluded. The eLP is therefore at a no more advanced a stage now than it was on the date of the Decision. Indeed, procedurally it is at a less advanced state, as the Council has yet to finalise revisions to the eLP and there must be further public consultation before it is resubmitted for examination. It is therefore our view that little weight should be attached to the eLP and its policies.

This is particularly so because the amended wording of section 85 of the Countryside and Rights of Way Act 2000 will shortly come into effect (discussed further below) and must be applied by the Council in the context of Policy AL/CRS 3, along with other eLP allocations within the AONB. We have seen no evidence that the Council has considered its new statutory duty under section 85 in relation to the eLP, despite the fact that the duty will be in force by the time that the examination of the eLP resumes.

We also note that the SoS agreed with the Inspector that limited weight should be attached to the then-emerging Cranbrook & Sissinghurst Neighbourhood Plan. That Plan (C&SNP) was made on 4th October 2023 and therefore, the SoS should now give due weight to its Objectives and Policies, a number of which are relevant to a consideration of the present application. These include (but are not necessarily limited to):

- Objective 1: Heritage and Design (generally, including to retain the historic settlement pattern, to maintain and enhance the landscape setting of Cranbrook town centre and to maintain and enhance the surrounding historic farmsteads)
- Objective 2: Landscape and the Natural Environment (generally, in relation to protecting and enhancing landscape character and river catchments such as the Crane Valley, making a positive contribution to biodiversity and protecting the distinctive settlement pattern through protection of green gaps.
- Objective 4: Buildings for the Future (regarding energy efficiency, design and scale of development, for instance).
- Objective 7: Infrastructure (facilities and services to meet carbon neutrality by 2030).
- Landscape and Natural Environment Overall Policy Aims (page19), in particular to protect and enhance historic landscape character, natural beauty, biodiversity and river catchments such as the Crane Valley and protect distinctive settlement pattern through protection of green gaps between settlements.
- Policy LN3.1: Biodiversity and Ecology, in particular paragraphs 3.10-3.14 headed Local Protection and Enhancement of Crane Valley (see the related explanation in paragraphs 7.7-7.12 on pages107-8).
- Policy LN3.3: Protection of Historic Landscape Character, in particular protecting and enhancing the pattern of tracks, lanes, field boundaries, etc.
- Policy LN3.4: Green Gaps and Preventing Settlement Coalescence, in particular preserving the integrity of the green gaps between historic settlements, including that between Cranbrook and Hartley.
- Policy LN3.5: Protection of the High Weald AONB and its Setting, generally applicable.
- Policy HD 4.7a: Small Scale development Sites and Design Criteria, in particular, providing that small-scale brownfield sites will be supported and greenfield sites only

of 1-10 dwellings and subject to other requirements, including compliance with relevant design guides such as those of the High Weald AONB.

- Policy HD4.7b: Exceptions for Large-scale Developments and Community Involvement This Policy reads as follows and is applicable to the present application, as is the supporting text:

“a) Proposals for larger developments of 10 or more houses will be supported if it can be demonstrated that there are exceptional circumstances as prescribed by the NPPF and it can be demonstrated that their impact on the sensitive AONB landscape setting and the considerable environmental constraints can be effectively mitigated.”

b) Any such proposals should demonstrate effective physical integration with the existing settlement patterns within the historic landscape of the Parish.

c) The proposed development should contribute to sustainable development and should meet the place-shaping principles and design guidance of the National Design Guide (2019), The Kent Design Guide, the High Weald AONB Housing Design Guide (2019), the High Weald Colour Study (2017), and any successive or locally produced guidance adopted by the parish and demonstrate how design requirements have been met.

d) All planning applications should demonstrate how the advice and guidance contained within the Design Checklist (July 2022) prepared in support of the Neighbourhood Plan has been used to inform and influence development proposals.”

- Policy HD4.8: The Design of New Buildings Within or Within the Setting of Conservation Areas, for instance respecting local styles and, where practicable, using vernacular materials as detailed in the respective conservation area appraisals, as well as developments potentially affecting heritage assets being required to have regard to the Design Guidance in the C&SNP.
- Policy HD4.10: Avoidance of Light Pollution, applicable in its entirety.
- Section 7 Housing contains no Policies as such. It includes a description of the eLP's Strategy for Cranbrook and Sissinghurst and the draft allocation sites for the Parish. Paragraphs 7.9 and 7.10 refer to the still uncertain status of eLP Policy AL/CRS3. Paragraph 7.11 reads:

“The strength of support for the neighbourhood plan policy “Local Protection and Enhancement of the Crane Valley” (Landscape & Natural Environment) and robust evidence provided by Kent County Council during the Regulation 14 Consultation of the NDP, meant that the policy remained in the Regulation 16 Consultation version of the plan. In order to pass Examination, the Examiner asked for the policy to be deleted, however he was happy for the supporting text to be retained, in a slightly amended version, as part of revised Policy LN3.1, Biodiversity and Ecology. Furthermore, he also took account of the inclusion of a specific policy element about the Crane Valley in Policy IN9.4, Sustainable Drainage.”

Paragraph 7.11 does not prevent any provision of C&SNP from applying to the present application. Paragraph 7.12 concludes this section by noting that discussions may take place regarding an alternative strategy, should the need arise.

The Policies and other provisions of C&SNP, contain new or more specific requirements to be met by the present application. To put the case at its lowest, they support and add weight to the Secretary of State's findings, in agreement with the Inspector, of harm to the AONB (Decision, paragraphs 15 and 17). Furthermore, we submit, they support the conclusion reached by the Secretary of State that:

“Overall, he does not find that the scheme is sensitively designed having regard to its setting. He finds that the design of the proposal does not reflect the expectations of the High Weald Housing Design Guide, being of a generic suburban nature which does not reproduce the constituent elements of local settlements. He also considers that the layout of the scheme does not respond to its AONB setting.” (Decision, paragraph 16)

Taken as whole, therefore, the C&SNP supports the Secretary of State's decision to refuse permission and adds weight to the grounds on which he made the Decision.

b) the current housing land supply position:

We note that the Council updated its five-year supply position in October 2023, concluding that they have a five-year supply of 4.29 years. Whilst we are not in position to either agree or disagree with the updated five-year supply position, we would make the following observations on the statement:

- That 118 more dwellings were completed in 2022/23 than in 2021/2022.
- That by the Council's calculation, the Housing Delivery Test position has only marginally decreased by 1% from the 2022 figure from 97% to 96% meaning a 5% buffer remains.
- That the Council concludes *“lower house-building rates generally reflect national house-building trends following the Covid-19 Pandemic and its impact on the development industry”*.

On this basis, it is our view that the overall housing supply circumstances in Tunbridge Wells Borough have not materially changed from the date of the Decision in that, despite extremely challenging circumstances, housing completions are improving, albeit not as quickly as the Council had hoped for. This is owing to current short-term factors outside of the Council's control, which the granting of this application would do little to change.

A March 2023 appeal decision in Southbourne where Planning Inspector Benjamin Webb considered a similar shortfall and concluded¹:

¹ APP/L3815/W/21/3289451 – paragraph 22

“In these regards, whether the shortfall in 5YHLS is 0.64 years or 0.28 years makes little difference if it can be more appropriately addressed by utilising sites outside the AONB. This applies equally in relation to both market and affordable housing, particularly as in this case the provision of the latter would be no more than policy compliant. Based on the evidence before me, the need for and benefits of housing provision, together with the shortfall in 5YHLS, does not in and of itself constitute exceptional circumstances justifying major development within the AONB”.

We suggest that this decision supports the proposition that the Secretary of State should attach no greater weight to the current shortfall in the Council’s five-year housing land supply than he did to the shortfall at the time of the Decision.

c) Any material changes in circumstances, fact or policy, that may have arisen since the Inspector’s Report of 4 April 2022 was issued and which the parties consider to be material to the Secretary of State’s further consideration of this planning application.

The Levelling-up and Regeneration Act 2023 received Royal Assent on 26th October 2023 and contains provisions which are of material relevance to SoS’s reconsideration of this application. Notably, section 245 imposes stronger duties on public bodies regarding the protection of National Parks and AONBs. It will come into force two months after Royal Assent, namely on 26th December 2023. Section 245 (6) amends section 85 of the Countryside and Rights of Way Act 2000 by inserting new subsection (A1), which reads:

“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.”

For the purposes of section 85, a relevant authority includes any Minister of the Crown and any public body (including a district council). Subsection (A1) replaces the existing duty under subsection (1), namely:

“In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.”

Accordingly, from the imminent commencement date, the SoS must, in making his decision on this application, seek to further the purpose of conserving and enhancing the natural beauty of the High Weald AONB. In paragraph 17 of the Decision, SoS concluded:

“Overall the Secretary of State agrees with the Inspector at IR823 that there would be some harm to the HWAONB, which would be limited, and that the harm to the landscape and scenic beauty of the HWAONB attracts great weight.”

In our submission, the SoS should in compliance with the new duty in section 85(A1) not merely attach great weight to the harm the proposed development would cause to the AONB, but conclude that to grant permission would be contrary to his statutory duty.

A new version of the NPPF responding to the December 2022 consultation is anticipated imminently. Were this to be published ahead of a revised decision and in-line with the previously consulted upon text, material consideration would need to be given to:

- An increased emphasis on design and beautiful places (Chapter 12)
- The removal of the buffer requirement for a five-year supply within paragraph 75
- Change of emphasis with regard to the Standard Method

Given the current uncertainty in this regard, we wish to reserve the right to make further representations should the revised NPPF be published ahead of a new decision.

Para 5 - In addition, you also have until 21 November in which you may ask for the inquiry to be re-opened. In deciding whether the inquiry should be re-opened, the Secretary of State will consider all views that may be expressed to him on this matter, but the decision is ultimately one for him.

In light of the extremely narrow grounds on which the SoS has consented to the quashing of his decision, and on the basis that the applicant does not seek to challenge the Council's revised housing supply figure, CPRE Kent can see no justification for yet further time-consuming and costly inquiry hearings.

The changes in law and circumstances since the Inspector's Report and the Decision, in our submission, all support the refusal of permission, on grounds consistent with those on which SoS previously refused permission and are matters which the SoS can properly take into account on reconsideration of the matter without the need for the inquiry to be reopened.

Should any new evidence be submitted by any other party in response to the Secretary of State's letter of 31st October 2023, we would ask to be given the opportunity to comment on such evidence before the Secretary of State takes his decision.

If the Inquiry is reopened, we reserve the right to submit further evidence and to make further submissions on all relevant matters.

Should any further information be needed from CPRE Kent to conclude the decision, please do not hesitate to contact us.

Yours sincerely,



Dr Hilary Newport

Director

CPRE Kent