



The countryside charity
Sussex

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Attn.: Case Officer Ms A Chamberlin

Rother District Council Strategy and Planning
Town Hall
Bexhill on Sea
TN39 3JX

5 February 2024

Dear Ms Chamberlin,

CPRE Sussex Representation objecting to

RR/2023/2540/P Outline: Erection of up to 7 dwellings and associated infrastructure with all matters reserved except for access. Burgh Hill – Land south of, Hurst Green.

CPRE Sussex asks that this application be refused for the reasons explained below

1. The proposed scheme and site is allocated in the Hurst Green Parish Neighbourhood Plan 2021 – 2039 Pre-Submission Draft: Policy HG2: Housing Strategy: HG11 Cooks Field, Burgh Hill (Policy HGSA1) - 7 dwellings.

<https://hurstgreen2030.uk>

2. **The applicant's Landscape and Visual Impact Assessment: 2.0 Description of the Site and the Proposal: Figure 4 Indicative Site Layout: Framework and Masterplan, shows that the field (not allocated for development in the plan) adjoining HG11 Cooks Field seems to be included in the applicant's application.**

2.2 This field is identified and annotated in the Figure 4 Indicative Site Layout plan as a 'Possible Area of Public Open Space subject to further design development in conjunction with the design team'. The two fields are also shown together as if they constituted a single site, though without annotation, on the application's Indicative Site Layout Plan 326_PL-102 Rev E.

2.3 Rother District Council and Hurst Green Parish Council should seek clarification of whether the field is included in the application, and the applicant's intent regarding the additional field.

3. **The Pre-Submission Version of the Hurst Green Parish Neighbourhood Plan was subject to formal Regulation 14 consultation 27 July 2022 to 17 September 2022, since when preparation for the next stage of the Plan has paused.**

<https://www.rother.gov.uk/planning-and-building-control/planning-policy/neighbourhood-planning/neighbourhood-plans-in-preparation/hurst-green-neighbourhood-plan/>

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Campaign to Protect Rural England Sussex Branch CIO | Registered charity number: 1156568

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3.1 The Pre-Submission Version of the Hurst Green Parish Neighbourhood Plan has yet to be examined, made and adopted.

3.3 The application to develop the site has therefore been submitted before completion of the Neighbourhood Plan process.

4. The Court of Appeal has ruled that even where development plan policies are rendered out of date by housing land shortfalls, they remain potentially relevant to the application of the tilted balance and decision-makers are not legally bound to disregard policies of the development plan when applying the tilted balance.

4.1 The application is predicated on the questionable presumption that because the 'most recently published land supply figure by the LPA is 2.89 years (as of April 2021)' is 'substantially below the 5-year target set by the NPPF. Further to the above the LPA has not performed adequately with regards to the housing delivery test (2021 measurement)' Rother District must approve the application (Planning Statement paragraph 5.13).

4.2 However, the Court of Appeal ruling on two appeals by Gladman Developments Limited (3 February 2021): Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government and Corby Borough Council and Uttlesford District Council. Neutral Citation Number: [2021] EWCA Civ 104. Case No: C1/2020/0542/QBACF. Date: 03/02/2021 demonstrates that where a council lacks the required five-year housing land supply this may tilt the balance in favour of proposed residential schemes, but it does not render grants of planning permission automatic.

4.3 Gladman Developments argued that when the tilted balance is engaged due to a housing-land shortfall, decision-makers must assess proposals against relevant policies in the NPPF and that local plan policies simply do not come into that exercise.

4.4 But the Court of Appeal ruled that even where development plan policies are rendered out of date by housing land shortfalls, they remain potentially relevant to the application of the tilted balance and decision-makers are not legally bound to disregard policies of the development plan when applying the tilted balance under paragraph 11d) ii (Court of Appeal ruling, paragraph 42).

5. The outline application has been submitted as a concept proposal with an indicative site layout plan, a Landscape Visual Impact Assessment (LVIA) informed by the indicative layout site plan and concept Design and Access Statement, with all matters except for access and the intent to grub out a 170m long hedgerow considered to be Important according to the Hedgerow Regulations 1997, reserved for future consideration.

5.1 The absence of essential detail is an obstacle to sound decision taking.

6. It is CPRE Sussex's view that this 170m length of Important hedgerow, which is located within the Area of Outstanding Natural Beauty, should NOT be removed.

6.1 Hedgerows are Habitats of Principal Importance in England (Guidance: Habitats and species of principal importance in England. List of priority habitats and species in England ('Section 41 habitats and species') for public bodies, landowners and funders to use for biodiversity conservation).

6.1.2 This is NOT acknowledged in the applicant's Hedgerow Assessment.

6.2 NPPF paragraph 182 stipulates that in relation to conserving and enhancing the natural environment Areas of Outstanding Natural Beauty, together National Parks and the Broads, have the highest status of protection (NPPF revised Dec 2023).

7. A 4-seasons bird survey of the hedge and the site should be provided for this application.

7.1 Criteria outlined in Schedule 1 of the Hedgerows Regulations 1997, includes

- Evidence of certain categories of species of birds, animals or plants listed in Schedules 1, 5 and 8 of the Wildlife and Countryside Act 1981 or the Joint Nature Conservation Committee (JNCC) publications such as British Red Data Books

7.2 The applicant's Hedgerow Assessment paragraph 6.5 advises

'A Dormouse survey completed in October 2023 concluded that the hedgerow supports dormice with one individual observed and a nest recorded. Bat activity surveys were also completed in October 2023; these concluded that the hedgerow was used by foraging bats with the activity being dominated by pipistrelles'.

7.3 Disturbingly, the Important hedgerow has not been subject to an actual bird survey. Consequently, birds breeding, nesting, foraging and sheltering in the hedge have not been recorded, which means that the impact on birds of removing the hedge cannot be considered by decision takers.

7.4 The applicant's Preliminary Ecological Appraisal, at paragraph 4.15, advises that 'the hedges and trees on site provide nesting opportunities for birds. The site was surveyed outside the nesting season of March – August and searched for evidence of previous nesting by birds, of which none were recorded but birds are expected to nest on site within trees and hedgerows in the future'.

7.4.1 The consultancy employed to produce the Preliminary Ecological Appraisal did NOT identify by on-site survey and record birds breeding, nesting, foraging on the site or in the hedge.

7.5 A 4-seasons bird survey of the hedge and the site should be provided for this application.

In conclusion, CPRE Sussex asks that this cursory outline application be refused for the reasons explained above.

Yours faithfully,

Dr R F Smith DPhil, BA (Hons), FRGS

Trustee CPRE Sussex
Copy to Chair CPRE Sussex