



The countryside charity
Sussex

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Attn.: Case Officer: Ms Leanne Richardson

Arun District Council: Planning

planning@arun.gov.uk

10 September 2024

Dear Ms Richardson

CPRE Sussex representation objecting to:

A/154/24/OUT

Outline planning application with all matters reserved (except access from Bewley Road) for the construction of up to 190 No. residential dwellings and a community building (Use Class E (d,e) or F2(b)), together with the provision of open space, landscaping and associated infrastructure. This application is a Departure from the Development Plan, may affect a Public Right of Way, may affect the character and appearance of the Angmering Conservation Area and may affect the setting of Listed Buildings

Land West of Bewley Road Angmering

Our reasons for objecting to this application are explained below.

1. The application, which is a departure from the development plan, is predicated on the applicant's questionable presumption that Arun District Council must approve the application because "*the most important policies for determining the application are rendered out of date by the Council's Housing Delivery Test results and the accepted lack of a 5 year housing land supply*" (Planning and Affordable Housing Statement, paragraph 7.7).

2. However, the Court of Appeal ruling on two appeals by Gladman Developments shows that that even where development plan policies are rendered out of date by housing land shortfalls, they remain potentially relevant to the application of the tilted balance and decision-makers are not legally bound to disregard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).

2.1 Court of Appeal ruling 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.

2.2 The ruling emphasised 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.

2.3 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.

2.4 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).

3. Contrary to Arun Local Plan Policy SD SP2 Built Up Area Boundary, the site of the proposed development is outside of Angmering's Built Up Area Boundary.

3.1 Policy SD SP2 stipulates that development should be focused within the Built Up Area Boundaries.

4. The proposed development is contrary to Policy C SP1 Countryside.

4.1 Policy C SP1 stipulates that outside Built Up Area Boundaries (as identified on policies maps) land will be defined as countryside and will be recognised for its intrinsic character and beauty and that development will be permitted in the countryside where it meets the criteria specified in the policy, none of which are met by the proposed development.

5. The applicant's Ecological Impact Assessment (EclA) is incomplete.

5.0.1 The application should not be determined without the full/completed Ecological and Impact Assessment.

5.1 Under the heading Survey Limitations, the EclA advises, at paragraph 1.3.8, that some of the surveys were still in progress at the time the EclA was written, including the bat activity survey, dormouse survey and otter and water vole surveys.

5.2 In addition, EclA Appendix 7: Hedgerow Survey, Table A6.1 Hedgerow Survey Results states 'Survey still being undertaken' in respect of each of the hedgerows H1, H2, H4, H5, H6 and H7, combined lengths totaling 802 metres (H3 is excluded from the survey because "*it does not qualify under the Hedgerow Regulations as it adjoins residential properties*").

5.3 Paragraph 1.3.8 states that "*all surveys are due to be completed October 2024*".

5.4 Government Circular 06/2005: 'Biodiversity and Geological Conservation-Statutory Obligations and their impact within the planning system' (NPPF Foot Note 65 refers):

Paragraph 98: *“The presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat”*.

Paragraph 99: *“It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted”*.

5.5 Accordingly, the application should not be determined without the full Ecological and Impact Assessment, which will not be completed until October. Without this data the council cannot fulfil its biodiversity duty under the NERC Act, Section 40.

6. Contrary to Natural England and Defra Guidance Protected Species and Development: advice for local planning authorities (last updated 25 Oct 2023), no on-site breeding bird surveys were undertaken in March, July and August.

6.1 The Guidance stipulates under the heading When to Survey Birds (Breeding): March to August.

6.2 The on-site Breeding Birds’ survey conducted for the applicant was confined to April, May and June (one site visit/month in each of the three months).

7. Contrary to the Natural England and Defra Guidance, bird surveys were not undertaken on-site during July, August, September, October, November, January, February and March.

7.1 Consequently, contrary to Natural England Guidance, how the application could/would affect birds on-site July to March, including red and amber listed bird species of Conservation Concern, as well as rare and most threatened species under Section 41 of the Natural Environment and Rural Communities Act (2006), cannot be considered by the council’s decision takers.

8. To enable the Council to have regard for the conservation of Section 41 bird species as part of their planning decision, a full on-site bird survey, including wintering birds, is required.

9. To ensure that the integrity of the Arun Valley SPA and Ramsar site is maintained, it would be prudent to refuse as a precautionary measure, the applicant’s proposed extension of Angmering’s Built Up Area into the essential protective buffer zone.

9.1 The applicant’s Ecological Impact Assessment (EclA), paragraph 2.1.4, states:

“Approximately 1.9ha of the northern most part of the site lies within Arun Valley SPA Functionally Connected Land (FCL) Impact Risk Zone (IRZ) 2”.

“The FCL Zone 2 represents a 500m buffer around the FCL Zone 1 (Core Habitats) within evidence and high probability of usage by SPA/Ramsar birds”.

“FCL Zone 2 includes areas of additional habitat where some records for Bewick’s swan and/or other notified bird species occur”.

9.2 The Local Plan stipulates, at paragraph 17.1.26, that

“The Habitats Regulations also conclude that the Arun Valley SPA is vulnerable to unsympathetic management. It is important that an appropriate hydrological regime is maintained, which includes winter flooding”.

The SPA *“ is vulnerable to water quality deterioration, loss of functionality connected land and recreation pressure (including disturbance)”.*

“Additionally, impact risk zones for this SPA have been defined covering areas in the foraging distance of Bewick’s Swans, which include wide areas falling inside the planning responsibility of this Local Plan”.

“Loss of habitat within these impact zones, which is regularly used by foraging Bewick’s Swans (i.e. is functionally linked to the SPA), could have a significant effect on the SPA, and will need reassessment under the Habitats Regulations at Project level”

9.3 The EclA states, at paragraph 3.2.2’ *“Site habitats were considered sub-optimal for Bewick’s swan and other bird species associated with the Arun Valley SPA and Ramsar designations and the site is considered not likely to represent functionally-linked land, there would be no likely significant effect on the interest features of the Arun Valley SPA and Ramsar site”.*

9.4 However, to ensure that the integrity of the SPA and Ramsar site is maintained, and notwithstanding the EclA’s assessment, it would be prudent to refuse as a precautionary measure the applicant’s proposed extension of Angmering’s Built Up Area into the designated protective buffer zone.

9.5 After all, the Local Plan recognises and acknowledges that the SPA and Ramsar site are *“vulnerable to water quality deterioration, loss of functionality connected land and recreation pressure (including disturbance)”* (paragraph 17.1.26).

10. Will there be sufficient Wastewater Treatment capacity and related infrastructure capacity to receive and treat sewerage from the development without storm overflows or discharges of untreated or partially treated sewerage into water courses?

10.1 The applicant’s Planning and Affordable Housing Statement (PAHS) states that Southern Water confirmed in March 2024 that there is currently adequate capacity in the local sewage network to accommodate foul flows from the proposed development (paragraph 8.65).

10.2 However, Southern Water in its letter to Arun District Council, dated 21 August 2024, advised that “*no discharge of foul/surface water sewage from the site shall be discharged into the public system until offsite drainage works to provide sufficient capacity within the foul surface water network to cope with the additional sewerage flows are complete*”.

10.3 Surprisingly the receiving Wastewater Treatment works is not identified either in the application bundle or Southern Water’s correspondence with the District Council.

10.4 Will there be sufficient Wastewater Treatment and related infrastructure capacity to receive and treat sewerage from the development without storm overflows or discharges of untreated or partially treated sewerage into water courses?

11. Many of the statements/reports submitted by the applicant appear to be poor quality low resolution black and white scans made without regard for colour plates, diagrams, graphics and indicative plans and annotations, with consequent loss of definition and clarity.

11.1 They should be replaced, please, with the original pdfs/documents.

CPRE Sussex asks that the application be refused for the reasons explained above (paragraphs 1 to 10.4).

Yours faithfully,

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

Trustee CPRE Sussex

Copy to:

Chair CPRE Sussex