

**Richard Kirkham and Russell Beswick's name for the site: Land north-west of Shrub Lane, Burwash, TN19 7BS**

**Known in Burwash as Watercress Field and known to Rother District Council as Strand Meadow**

**Previously RR/2018/1787/P**

**Now APP/U1430/W/19/3223824**

**Submission to the Inspector by Burwash: Save our Fields from Concrete**

- 1 The group presents the following submission for the appeal application by Richard Kirkham and Russell Beswick (the developers). The Inspector is invited to bear in mind that Russell Beswick has consistently refused to hand over the background documents for the viability issue or give the group access to the field for a daylight expert or an ecologist. This decision means that assertions of Russell Beswick must be given less weight and his character must be assessed with these refusals in mind.

#### **A The submission's main points**

- 2 The Inspector should dismiss this appeal. The submission's main points are as follows:
  - a) The development is not viable on the developers' own calculations. There is a section 106 agreement in place which obliges the developers to make four 1-bed flats and four 2-bed flats affordable. The Inspector cannot alter this agreement. It is in no one's interest for an unviable development to be approved, see section C.
  - b) The history of the removal of the affordable housing units shows clearly the serious deception made by Richard Kirkham and Russell Beswick on Rother District Council when they agreed to provide 40% affordable housing. They knew long before they submitted the application that it was not viable. The developers should not profit from such a serious deception, see section D.
  - c) Richard Kirkham and Russell Beswick cannot comply with the section 106 condition about the footpath to the village, see section E. They have made no real effort to obtain the necessary consents and it is unlikely that they could ever be obtained. Rother District Council has no desire to break this agreement. As the Inspector does not have the power to vary the section 106 agreement, the appeal serves no purpose.
  - d) The very poor design is such that dismissal is required, see section F. This rule is in para 7 and National Planning Policy Framework July 2018, para 130. This is linked to the second submission, which is that the housing designs remain urban in style, of exceptionally poor design and so fail to comply with Rother District Council's Core Strategy.
  - e) The insufficient daylight in many of the rooms makes these housing units unhealthy, see section G.
  - f) The plans for the housing units fail to comply with rules for building housing units in or near the High Weald Area of Outstanding Natural Beauty (AONB), see section H.
  - g) The historic village of Burwash, with the exceptionally large number of listed buildings in its High Street, many of which are medieval, deserves maximum protection. This has not happened. There are also listed buildings in Shrub Lane. This

ridgetop village needs its setting within the glorious High Weald AONB. The design of the housing units is inappropriate for this setting. This is dealt with in section I.

- h) The planning committee would be in breach of its Natural Environmental and Rural Communities Act 2006 s 40 obligations if they had granted this application. This because the application failed to conserve biodiversity in accordance with the ecology rules that apply, see section J.
- i) The housing density is inappropriate, see section K.
- j) Richard Kirkham and Russell Beswick have failed to assess the sewerage requirements of the site properly. In particular they have failed to provide any method for the sewage to be disposed of. The application seeks to sidestep the need for disposal of the sewage and then make it someone else's problem when, as they hope, the appeal is upheld. This submission is at section M.
- k) Rother District Council's task was to serve the community in its area. The community has expressed its opposition to the scheme. At the date of this submission there were 442 objectors to the scheme registered on the planning portal. One person made a comment critical of the development. No one registered their support for the scheme. That opposition and the reason the objectors gave is a valid consideration, see section R.

## **B Background to the application/The planning history**

3 The significant events are as follows:

- a) On 2 July 1985, Mr R C Kirkham made an application to Rother District Council for planning permission for 'residential development of 2 acres of land at Strand Meadow in Burwash'.
- b) The Council in its submission 'underlined the importance of the setting of the village and the Area of Outstanding Natural Beauty', see page 3 of the Inspector's letter, see Exhibits A page 9.
- c) On 5 September 1985, the Council refused the application on the following grounds:
  - i) The development was not in accordance with the County Structure Plan.
  - ii) There was an intention by the District Planning Authority that the land should remain the same.
  - iii) The development would be contrary to the approved policy in the 1981 Village policy.
  - iv) The site lay within a designated Area of Outstanding Natural Beauty and the proposal would be detrimental to the character and appearance of the area and contrary to the provisions of the County Structure plan.
  - v) Strand Meadow is of inadequate width to serve the proposed development.
- d) The decision was appealed and an inquiry was held on 2 and 3 October 1986.
- e) On 1 December 1986, the Inspector gave his reasons for refusing the development. He noted that the East Sussex Structure Plan had superseded the County Development Plan relied on by Rother District Council. He also noted the failure of the local authority to provide adequate housing. The reasons were:
  - i) The visual impact on part of the AONB, see Exhibits A page 11 para 11.

- ii) The widening of the carriageway in Strand Meadow would be insufficient to overcome the problems of the [17] extra houses, see para 12, see Exhibits A page 11.
  - iii) The quality of the landscape, see para 15, see Exhibits A page 12.
  - iv) The setting of the village, see para 15, see Exhibits A page 12.
  - v) The AONB, see para 15, see Exhibits A page 12.
  - vi) The detrimental visual impact on the surrounding landscape, see para 15, see Exhibits A page 12.
  - vii) The significant increase in traffic [generated would create] danger and inconvenience for the residents in the existing houses.
- f) Richard Kirkham and Russell Beswick allowed their planning permission, granted in 2011, to lapse.
- g) In 2017, Richard Kirkham and Russell Beswick applied for outline planning permission for this site. Before coming to any conclusions about the application, Burwash: Save our Fields from Concrete ('the group') consulted the local community. This was through public meetings and by inviting comment through e-mails. The consultation produced a view on the scheme which was shared by virtually all the local community. It was resolutely against the scheme. The Inspector is invited to proceed on the basis that the views expressed in this document and the views expressed by Burwash Parish Council are the community's view.
- h) A detailed planning application was made on 28 June 2018. Since then there have been repeated amendments to the scheme.

### **C The site is not viable**

- 4 The development is not viable on the developers' own calculations. There is a section 106 agreement in place which obliges the developers to make four 1-bed flats and four 2-bed flats affordable. The Inspector cannot alter this agreement. The applicant's consultant estimates that the expected site value when all the costs and sales are taken into account is minus £1,313,982, see Viability report para 5.1.2 and Worksheet 4 (page 5 of 5) (not exhibited) using the author's strange page numbering system. It is in no one's interest for an unviable development to be approved.
- 5 The appeal statement of case of the appellants at para 3.10 implies that their 'appeal scheme' can proceed with the Inspector agreeing that there need be no affordable homes on the site. This is wholly wrong.

### **D The serious deception on Rother District Council made by Richard Kirkham and Russell Beswick**

- 6 The history of this issue shows clearly the serious deception made by Richard Kirkham and Russell Beswick on Rother District Council. They should not profit from such a serious deception.

In **March 2003**, Burwash Parish Council resolved in its comments about a draft plan that Strand Meadow was unsuitable for development because 'the nature of the land ... was very wet and boggy'. The Council considered that construction would be extremely difficult and expensive with the consequence that any affordable housing would be most unlikely', see a draft letter to the planning officer, see Exhibits A page 17.

In **October 2011**, the developers' access statement for his outline planning permission referred to 40% of the housing being affordable, see the Planning, Design and Access Statement para 4.37.

In **February 2017**, the developers committed himself to 40% affordable housing units, see his Design and Access statement para 3.11.

In **July 2017**, planning permission was granted subject to conditions which included the provision of affordable housing units, see letter, see Exhibits E page 4.

On **7 March 2018**, Rother District Council, Richard and Carol Kirkham and Russell and Sharon Beswick signed a section 106 agreement for the site. Schedule 3 at page 21 sets out the owner's covenant with the Council. The major commitment was that the owners were not to permit occupation of more than 10 Open Market Dwellings until all the Affordable Housing Units had been constructed ready for occupation, see Schedule 3 para 2. Para 1.1 determines that the units would be four 1-bed flats and four 2-bed flats.

On a **date unknown**, a site inspection report is claimed to have been received, see Design and Access statement dated June 2018 para 5.9. The report is said to have claimed that due to ground conditions more expensive foundation piling would be required.

In **June 2018**, the developers drafted the Design and Access statement for a detailed planning permission for the site with the claim that it was no longer viable to include affordable housing and it was not possible to have the full quota of small housing units, see para 5.10.

On **25 June 2018**, Bespoke Property Consultants provided a viability report for the developers and claimed that the site was not viable for affordable housing.

On **28 June 2018**, planning permission was applied for.

On **4 December 2018**, Russell Beswick and Laurence Hulk attended a meeting arranged by Burwash: Save our Fields from Concrete. The county councillor for the area (who is also a district councillor) and two other district councillors with four parish councillors attended. At the meeting, which was recorded, Russell Beswick claimed that until the time of the viability report he had never done a proper costing of the development.

- 7 This statement is incapable of belief. The developers' viability consultant, Bespoke Property, estimates before professional fees are taken into account the construction cost the cost of building the development before taking into account 'preliminaries, overheads and profits and contingency' is £6,298,300, With those matters added the estimate is £6,909,136, see Appendix D. These figures are without VAT.
- 8 It is inconceivable that Richard Kirkham, who has owned the site since at least 1986, should not have known about the difficulties with the site and that it would expensive to develop when he applied for planning permission for the site. It is equally inconceivable that Russell Beswick, who has been a developer for most of his working life and is known to have a near-obsessive attention to detail should have failed to predict the problem that the development would not be profitable. No developer would approach a scheme which must have cost at least £5 million before the claimed unknown expenses without a proper valuation of the costs. The fact that Russell Beswick declines to serve the site inspection reports points to the so-called late information being a sham.
- 9 From around 1983, Richard Kirkham lived next to the development site at 19 Beechwood Close. When he sold the house, he kept the field. Richard Kirkham created the entrance

into Strand Meadow so he could move his caravan into the site. Richard Kirkham knows the field well.

- 10 The Inspector is invited to draw the obvious conclusion from the chronology in the last paragraph. The very short gap between signing the section 106 agreement and the discovery that the site was not viable suggests that Russell Beswick and Richard Kirkham waited until the formalities of the initial grant were completed and then moved to make the site more profitable by seeking to remove the affordable homes from the plan. They must have known that if a site was assessed as only capable of having 17 housing units on it, there was no chance of getting permission for 30 units without affordable homes.
- 11 The Inspector is invited to proceed on the basis that Richard Kirkham and Russell Beswick knew all along about the viability of the site. Further, Richard Kirkham and Russell Beswick deliberately offered the affordable homes to help obtain the planning permission for the high number of 30 housing units knowing full well that when they had obtained planning permission they would claim it wasn't viable so they could sell all the housing at a market price.

**E The houses cannot be occupied because of the section 106 agreement stipulation about the footpath link**

- 12 On 7 March 2018, Rother District Council, Richard and Carol Kirkham and Russell and Sharon Beswick signed the section 106 agreement for the site, see Exhibits B section 106 agreement. Schedule 2 Part 3 para 1 at page 27 of that agreement sets out the owner's covenant with the Council. There is an obligation 'prior to the construction of the final dwelling, to construct and provide the footpath in accordance with the approved specification and not to occupy or allow the occupation of the final dwelling until the footpath has been constructed and provided in accordance with the specification and open for use to the public.' Para 2 of the agreement is exceptionally badly drafted. Part of it provides that the development must have a footpath which does not require permission of the owners to pass and repass. As a footpath which stops at the boundary of the recreation ground would have no function, it can be inferred that 'the owners' refers to the owners of the Burwash Playing Field. This would be consistent with the route of the path previously agreed between the developers and Rother District Council.
- 13 The importance of the footpath is that it makes the development more sustainable and less car-based.
- 14 The chronology is as follows.
- 15 In **2006**, Rother District Council issued its local plan (not exhibited). There was a section about Burwash and the site in question. Policy VL1 stipulated that building on Watercress Field would only 'be permitted where:-
  1. no more than 17 dwellings are provided, of which 40% are affordable;
  2. an appropriate planting scheme is carried out at the time of the development to landscape the land between the new housing and dwellings in Rother View;
  3. a footpath is provided to link the new development to the existing recreation ground and Ham Lane;' [rest not listed].
- 16 The importance of this is that condition 3 helps to interpret the section 106 agreement and other commitments made.
- 17 On **16 August 2011**, Steve Mintram of the Burwash Playing Field Association replied to a letter from Mr Hulkes saying that the committee of the association remains of the opinion that a proposed footpath from Strand Meadow to Ham Lane via the playing field

would have a detrimental effect on their playing surfaces and would be a greater expense than at present so the association would not support such a footpath, see Exhibits E page 1.

- 18 In **October 2011** Richard and Carol Kirkham, in their planning application, promised 'to incorporate a footpath link extending west towards the existing footpath at Ham Lane'. Further, the 'applicant would also be willing to provide a footpath connection to the Burwash Playing Field to the south, but pre-application consultations have indicated that this would not be supported by the Burwash Playing Field Association who manage the facility', see the Design and Access statement para 3.8 and 5.3. In para 3.8 the letter dated 16 August 2011 was referred to.
- 19 On 15 December 2011, the officer's report said a section 106 agreement 'is required to secure ... the delivery of the footpath'.
- 20 In **February 2017**, Park Lane Homes (SE)'s Planning, Design and Access statement made a commitment that there would be 'the provision of a footpath link', see para 3.11.
- 21 In **July 2017**, the officer's report (Exhibits B Rother report) said the footpath was subject to the Local Inspector's comments and local opinion, all of which agreed that the footpath link and the community land were essential to better integrate the proposed residential development off Strand Meadow with the village, see para 6.10.1. In the conditions section, the officer said details of the footpath should be provided and approved in writing by the local planning authority. The footpath should be provided in accordance with the approved details before the occupation of the penultimate dwelling constructed. The reason for this was 'to ensure improved footpath integration with the village centre and [in] accordance with policy VL1 of the Rother local 2006 plan and policy TR2 of the Core Strategy' (not exhibited), see para 16.
- 22 In **July 2017**, when outline planning permission was granted, there was a condition attached to the grant of permission that 'there should be a footpath to join with the recreation ground/Ham Lane', see decision letter 21 July 2017 at Exhibits E page 4. This means that the footpath should be through the recreation ground to Ham Lane. The developers have had nearly 18 months to make the arrangements to comply with the condition, but they have done virtually nothing to obtain permission from anyone.
- 23 On **7 March 2018**, as already stated, Rother District Council, Richard and Carol Kirkham and Russell and Sharon Beswick signed the section 106 agreement for the site. Schedule 2 Part 3 para 1 at page 27 sets out the owner's covenant with the Council. There is an obligation 'prior to the construction of the final dwelling to construct and provide the footpath in accordance with the approved specification and not to occupy or allow the occupation of the final dwelling until the footpath has been constructed and provided in accordance with the specification and open for use to the public.' Para 2 of the agreement is exceptionally badly drafted. Part of it provides that the developers must have a footpath which does not require permission of the owners to pass and repass. As a footpath which stops at the boundary of the recreation ground would have no function, it can be inferred that 'the owners' refers to the owners of the Burwash Playing Field. This would be consistent with the route of the path previously agreed between the developers and the Council. Also, the likely meaning of the 'approved specification' is a footpath as specified in the Local Plan 2006 as the section 106 document has no specification for the footpath link in it.

- 24 In **June 2018**, when Park Lane Homes submitted their application, they said the ‘proposal included the creation of a 2.5m wide footpath link for public use...that would connect to an existing right of way across the adjoining public recreational ground’, see para 3.22.
- 25 On **4 August 2018**, Oliver Blaydon, the then Chairman of the Burwash Playing Field Association, wrote to Rother District Council about the planning application. He pointed out that the playing field ‘belonged to the village but is not public land. It is the sole responsibility of my committee to maintain and make decisions regarding Strand Meadow for the good of the village. The Parish, District and County Councils have no more authority over [our playing field] than they do any private property. If the developers or Council wish for [our playing field] to be altered in any way they should get in touch with me or our Secretary, Halina Keep, to begin the discussions as it is only by consent of our committee that this can happen’, see Exhibits E page 2.
- 26 It is understood from Park Lane Homes that there was a meeting at **the end of August 2018** with Oliver Blaydon, who was then the Chairman of the Burwash Playing Field Association, which has responsibilities for the recreational area. There was no formal approach to the association. It was an informal discussion between two individuals. The discussion was such that Oliver Blaydon did not think it was appropriate to report back to the committee about the meeting. It is understood that Park Lane Homes heard nothing to suggest that permission would ever be forthcoming.
- 27 On **17 January 2019**, Rother’s officer’s report, see Exhibits B Officers’ Report, said in the Consultation section, ‘a footpath link is to be provided south of the site which would pass through the playing field and then connect to the recreation ground to the south’. There is clearly a typo here. If the link is from the south of the site and passes through the playing field it must connect with Ham Lane in the village and not the recreation ground, see para 5.3.21. In the Appraisal section, the author states that ‘objectors have made reference to the footpath link with the recreation ground. Contrary to their contentions, the applicant confirms that discussions with the Burwash Playing Field Association have taken place and will continue in the event of that planning permission is granted.’
- 28 In **February 2019**, an Appeal statement of case was provided. At para 3.23 the following is stated.

### **Proposed Footpath Link**

3.23 The site allocation as part (iii) of Policy VL1 of the adopted Local Plan, requires the provision of a footpath to link the new development to the existing recreation ground to the south and Ham Lane to the west. As the Applicant does not own or control intervening land between the western end of the site and Ham Lane this footpath link cannot be achieved, but full planning permission (number RR/2011/2206/P) has been granted for a footpath link between the proposed housing area and the recreation ground, which in effect will provide a new pedestrian route between Strand Meadow and the recreation ground. (1) This footpath link proposal was retained as part of the outline planning permission for 30 dwellings on the site and the provision and maintenance of the footpath forms part of the associated bilateral planning obligation.

3.24 In the full application the subject of the appeal, the footpath link to the recreation ground has been retained (and its provision and maintenance will also be covered by the planning obligation) but the route where it enters the northern boundary of the

recreation ground has been slightly altered in order to retain existing boundary trees in this vicinity. (sic)

3.25 At the application stage consultations took place with the (now former) Chairman of the Burwash Playing Field Association (Oliver Blaydon) who confirmed that the recreation ground has not been adopted as public open space by the Council but it belongs to the village and is managed by the Burwash Playing Field Association.(2) More recently, consultations (3) have also taken place with Fiona Hosein of the Association with a view to the Applicant potentially providing a surfaced footpath link connecting the pedestrian access point from the application site to the sports pavilion where there is already a surfaced footpath leading to the central part of the village the High Street [sic]. This would be over part of the recreation ground where the Applicant already has a private right of way, but this provision would be subject of a separate arrangement with the Burwash Playing Field Association as this falls outside the scope and remit of the full planning application.

- 29 On **12 June 2019**, the Burwash Playing Field Association held a committee meeting to consider the issues generated by this appeal. A six-page resolution was passed, see Exhibits E BPFA resolution. That resolution makes clear that the association has not been formally approached by Park Lane Homes. The resolution makes clear the errors in the appeal case statement. The committee objected to the scheme and gave its reasons. The reasons included the health and safety problems and the security of their site and equipment. The resolution also pointed out the problems (leaving aside the section 106 agreement) of a footpath only leading to the playing field boundary.
- 30 There are the following points to be made about this.
- a) There is now an acceptance that the developers are unable to provide a footpath to the village.
  - b) This section of this submission shows Rother District Council's belief (at para 26 of this submission) that the footpath is attainable to be false.
  - c) The author of the Appeal statement of case, who declines to sign the statement or give his name, fails to address the issue that the footpath will lead only to a fence, which is of no use to anyone and will encourage some people to unlawfully break through the fence and enter the playing field causing health and safety dangers to those people and causing problems to those playing cricket and football on the playing field.
  - d) The unnamed author fails to address the issue of the section 106 agreement to provide the footpath link to the village.
  - e) Para 3.25 above is totally misleading. There has been no formal approach to the Burwash Playing Field Association. The first informal approaches gave the developers no sign that an agreement was likely. The second informal approach produced nothing of any interest at all.
- 31 The 'existing right of way' is a 'private right of way' and so not one that the public can access. It relates only to Richard and Carol Kirkham, see the Land Registry Register of title for the site. It is also understood that the issue has never been considered by the committee of the Association until June 2019 when they drafted their objection for the Inspector.

- 32 The suggestion in para 3.25 that there is a view that the link would carry on to the pavilion is based on no evidence at all. It is so misleading that it is a statement that breaks the rule that information put before a planning committee or the Planning Inspectorate must be correct and may not be designed to confuse. The fact that discussions will take place is no indication that permission will be granted. In fact, all the indications were and still are that permission was never going to be given. It is considered that the Burwash Playing Field Association could not give consent without consulting the village and after seeking permission from the Charity Commission. There are, however, no indications that the Burwash Playing Field Association would want to give permission bearing in mind the health and safety issue and the fear they have expressed of vandalism to the fields and the property stored there.
- 33 The reality is that for a long time Park Lane Homes must have known that the footpath link to the village was a false promise.
- 34 Park Lane Homes seems indifferent to the section 106 restraint.

### **F The planning committee was required to refuse this application because of the poor design for the housing**

- 35 This design requirement for new developments is based on both the national policy set out in the National Planning Policy Framework July 2018, para 130 and the local policy set out in the Core Strategy EN3.

#### *The policy*

- 36 The planning committee is required to refuse this application because of its poor design, see National Planning Policy Framework July 2018, para 130. The Rule is:
- ‘Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents.’
- 37 Interestingly applications with poor design are not susceptible to a grant with conditions imposed. There is a mandatory requirement to refuse applications where there is poor design.
- 38 It is necessary to look at the amended designs. The fact that the applicant has withdrawn his earlier designs is an acceptance that the first designs were inappropriate.

#### *The poor design*

- 39 Accompanying this paper is an assessment of the designs by Ian Franks Dip Arch RIBA Arb Dip UD, see Enclosure 1. Ian Franks is a senior distinguished architect who has worked on major architectural projects. It states:

### **STRAND MEADOW**

#### **Planning submission**

Design Review by Ian Franks Dip Arch RIBA Arb Dip UD

My name is Ian Franks and I have been a qualified architect for over 40 years. My experience ranges from being design director of a large International architectural practice to currently being partner in a smaller design-led practice working on high quality contextual projects – many involving conservation areas and sites with complex issues.

I have looked carefully at the proposals – particularly in light of the revised National Planning Policy Framework (NPPF2), which now has a stronger emphasis on design than its predecessor.

The government press release on the issue of design reads ‘refocusing on the quality and design of proposals which are in line with what local communities want, the framework ensures councils have confidence and tools to refuse permission for development that does not prioritise design quality and does not complement its surroundings’.

The Strand Meadow proposal is an example of where the design does not meet any of the aspirations the government is looking for.

### **Scale and Massing**

This proposal is located in an Area of Outstanding Natural Beauty (AONB) and should, therefore, have a relationship to its locality in terms of the built environment and nature and its unique setting. Burwash has a particular character which is predominantly ground + first floor + roof in which dormer windows are often added to create habitable space (see attached photos). The materiality comprises generally stock brick, timbered cladding, tile hanging and tiled roofs.

The proposal recognises these materials but uses them in a very arbitrary way – creating a vertical emphasis to the proposal which reinforces the main issue regarding heights. All of the units – both individual houses and apartments have a frontage of ground floor + first floor + second floor + large steep roof – with dormers in the apartments. This is certainly at least one floor too high in terms of scale and is made worse by the fact that access is generally up a large number of steps – creating a very inhibited development with poor accessibility. The development is clearly too high. The ‘artists impressions’ reinforce this. The key view across to the site, with the trees, is not ‘verified’.

There needs to be a number of long distance ‘verified’ views to be sure that the development does not affect the setting of the AONB. This should be required by the planning authority. Currently this has not been made clear in the submission and if provided would certainly show a development out of scale with its surroundings and setting.

### **Accessibility and amenity**

Again – relating to the scale/height of the development proposal – the design fails to properly address accessibility for the less able, infirmed and young. It is surprising that a development of 30 large units can only provide steps up to the entrances severely limiting the type of occupation. There are clearly too many steps.

In addition, the gardens appear to be too small for the site for family units, in particular. They are not what would be expected for large sized units. The linear layout, reminiscent of layouts from the 1970s/80s, reinforces this aspect of the design....there is no sense of community with this design approach.

### **Fenestration and facades**

The pattern of windows appears to be without recognition of the architectural language chosen. They are reminiscent of faux buildings of the 1970’s rather than contextual design relating to the character of the Burwash and its environs. It is as if choosing a certain palette of materials is enough without properly understanding the location and

setting. I would like to understand how these buildings relate to the 'genius loci' of the site and are not just a generic design which could be 'parachuted' down anywhere in the country.

### **Density**

Clearly the increase from the outline consent of 17 to 30 units, which I understand is now without any affordable provision, is an overdevelopment of the site and this is clear from the scale of the buildings and linearity of the layouts...just a continuous line of development without a sense of place.

### **Conclusion**

In my view this design proposal does not reflect the aspirations of the Burwash community and Council as it is not of a good enough [quality] and does not adequately complement its surroundings nor respect the AONB designation.

The design has no real quality, does not relate to the site specifics and is certainly too tall and over-developed in terms of the number of units. A scheme such as this – poor quality design – is not good enough for this location and does not represent the aspirations of the government to raise standards and eliminate mediocrity.

40 Ian Franks also looked at the new drawing and reported as follows.

I have looked at [the Burwash: Save our Fields from Concrete's] submission and to me it is very thorough on the design side.

The design has changed but fundamentally it is just a clumsy attempt to disguise the overall scale. The new roof form is out of character with the locality and now has an even more urban feel with the contrived dormers and enlarged windows and bays. The issues of accessibility, appropriateness of the design within the AONB and density still apply. The quality of the design in this important location is just not good enough and does not express architectural language that one would normally expect and does not show us where this design solution has come from. It does not have the design quality or express the uniqueness of this site and does not show respect, in relation to the design solution, to Burwash and its environs.

Ian Franks Dip Arch RIBA arb Dip UD

### **if...architecture**

41 The housing designs are exceptionally poor and are too urban in appearance and it would appear that they rely on the false premise of basing the design on the 1960s existing Strand Meadow houses which are probably the worst architecture in the whole village.

42 The group invites the Inspector to look at the proposed designs and it is suggested the design must be judged taking into account the location of this housing scheme. The Inspector is invited to adopt the view of Ian Franks.

43 Mr Pickup, who spoke for Richard Kirkham and Russell Beswick at the Planning Committee meeting, sought to undermine this by saying, "[Our] designers are very competent, and very established and do an awful lot of housing developments in this area and know this area extremely well. Unlike some London architects, maybe, who don't know this area, these architects do and also the developer himself [is] very experienced in this area, has done all [its] house building in this area, [it is] a local house building company," see page 8 (2/3rd down the page) of the Rother Committee transcript, see Exhibits B Planning meeting. This was misleading in two respects. He referred to those who designed the buildings. An official from his company told Robert Banks of Burwash:

Save our Fields from Concrete that there is only one architect at their consultancy and he only does work that has to be done by an architect. Further he had not done any work on the Watercress Field designs. The second misleading statement was that he implied the architects which were relied on by our group were London architects and did know the Burwash area. In fact, both have lived in the area for very many years and this is clear from their statements. It can be inferred that both these misleading statements were made deliberately.

*The National Planning Policy in detail*

44 There are also multiple breaches of the requirements listed at page 38 of National Planning Policy Framework July 2018 (not exhibited). These are listed in red.

page 38 Section **12. Achieving well-designed places**

para 124. The creation of high-quality buildings and places is fundamental to what the planning and development process should achieve.

**Breach 1 There are no high-quality buildings or even medium-quality buildings.**

Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.

**Breaches 2, 3 and 4 There was no engagement with the community and no proper engagement with Rother District Council and no engagement with Burwash Parish Council before the plans or the amended plans were submitted. There was one meeting between our group and Park Lane Homes (SE) at the instigation of our group. It took place on 4 December 2018, after the submissions period.**

125. Plans should, at the most appropriate level, set out a clear design vision and expectations, so that applicants have as much certainty as possible about what is likely to be acceptable.

**Breach 5 There has been no clear design vision. Sub-standard housing units have just been placed on a plan with no real thought as to design or their impact on the surrounding areas.**

Design policies should be developed with local communities, so they reflect local aspirations, and are grounded in an understanding and evaluation of each area's defining characteristics.

**Breach 2 see above.**

Neighbourhood plans can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development.

126. To provide maximum clarity about design expectations at an early stage, plans or supplementary planning documents should use visual tools such as design guides and codes.

**Breach 6 The poor quality of the designs shows that design guides and codes could not have been used properly.**

These provide a framework for creating distinctive places, with a consistent and high-quality standard of design.

**Breach 1 see above**

However, their level of detail and degree of prescription should be tailored to the circumstances in each place and should allow a suitable degree of variety where this would be justified.

**Breach 7 There has been no proper tailoring to the circumstances of Watercress Field.**

127. Planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

**Breach 8 These unsightly designs will not add to the overall quality of the area and are just cheap and poor housing units to maximise profit.**

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

**Breaches 9 and 10 There is no good architecture and no effective landscaping.**

c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

**Breach 11 The housing units are not sympathetic to the local character and history.**

d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

**Breach 12 The design fails utterly to create a welcoming and distinctive place to live, work or visit. If the housing were built, most local people who entered this estate would be utterly disappointed by the design of the units.**

e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

**Breach 13 With the withdrawal of the affordable housing allocation there is no appropriate mix of development. It does not provide the housing for local people that is required.**

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users;<sup>1</sup> and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

**Breach 14 There has been no attempt to create a high standard of amenity.**

**Breach 15 The units will undermine the quality of life of the nearby residents in Strand Meadow and Rother View.**

128. Design quality should be considered throughout the evolution and assessment of individual proposals.

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<sup>1</sup> Planning policies for housing should make use of the Government's optional technical standards for accessible and adaptable housing, where this would address an identified need for such properties. Policies may also make use of the nationally described space standard, where the need for an internal space standard can be justified.

**Breach 16 Design quality does not appear to have been considered at any stage.**

Early discussion between applicants, the local planning authority and local community about the design and style of emerging schemes is important for clarifying expectations and reconciling local and commercial interests. Applicants should work closely with those affected by their proposals to evolve designs that take account of the views of the community. Applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot.

**Breaches 2, 3 and 4 This part of the framework emphasises the importance of the principles that are stated earlier in this extract.**

129. Local planning authorities should ensure that they have access to, and make appropriate use of, tools and processes for assessing and improving the design of development. These include workshops to engage the local community, design advice and review arrangements, and assessment frameworks such as Building for Life.<sup>2</sup>

**It is clear that the Burwash community would welcome such arrangements.**

These are of most benefit if used as early as possible in the evolution of schemes and are particularly important for significant projects such as large-scale housing and mixed-use developments. In assessing applications, local planning authorities should have regard to the outcome from these processes, including any recommendations made by design review panels.

130. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. [Already listed at the beginning of this section]

Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).

131. In determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.

**Breach 17 Far from providing a high-level of sustainability, these designs are not sustainable at all. Park Lane Homes rely on a footpath link for which it appears they have made no real effort to obtain the necessary consents, see para 76.**

132. [Not listed as it deals with advertising.]

### *The Core Strategy*

45 The housing designs remain urban in style and are exceptionally poor and so fail to comply with the Council's Core Strategy requirements (not exhibited). The application must comply with **Policy RA1(i)** of the Core Strategy, which states that:

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<sup>2</sup> Birkbeck D and Kruczowski S (2015), Building for Life 12: The sign of a good place to live.

Para 12.40 ‘The needs of the rural villages will be addressed by:

Protection of the locally distinctive character of the villages, historic buildings and settings, with the design of any new development being expected to include appropriate high-quality response to local context and landscape.’

46 This proposed development is of clumsily designed blocks which are the standard housing that can be found throughout the UK. There is nothing local about the design. It is wholly unfit for an historic village like Burwash. It is also in breach of the Core Strategy, which says there should be ‘strong emphasis on design quality in all developments’.

47 There are the following breaches of Policy RA1(i):

- a) The locally distinctive character of the villages is not protected,
- b) The historic buildings and settings are not protected,
- c) There is no high-quality response to local context, and
- d) There is no appropriate high-quality response to the landscape.

48 Reliance is placed on the Core Strategy EN3, which follows.

**Para 17.33 Policy EN3: Design Quality**

New development will be required to be of high design quality by:

(i) Contributing positively to the character of the site and surroundings, including taking opportunities to improve areas of poor visual character or with poor townscape qualities, and

(ii) Demonstrating robust design solutions tested against the following Key Design Principles as appropriate (expanded in Appendix 4), tailored to a thorough and empathetic understanding of the particular site and context:

- (a) Character, Identity, Place-Making & Legibility
- (b) Continuity and Enclosure
- (c) Quality of Public Realm, Ease of Movement, and ‘Secured By Design’
- (d) Diversity
- (e) Landscape Setting of Buildings and Settlements
- (f) Design in Context (Understanding & appraisal of site and wider setting, and incorporation of existing site features into proposals)
- (g) Building Appearance & Architectural Quality
- (h) Sustainable Design and Construction.

49 There are multiple breaches of these requirements.

50 It is understood from the meeting with Russell Beswick and our group that he used the Strand Meadow designs as a template for the designs for Watercress Field.

51 It has always been understood that the policy of ‘Protection of the locally distinctive character of the villages, historic buildings and settings, with the design of any new development being expected to include appropriate high-quality response to local context and landscape’ means the designer needs to identify and choose prominent local design features. Sadly, Park Lane Homes have chosen to use below-standard modern design

features which are commonly found in urban and suburban developments nationwide where cost is the only consideration. The core strategy requires the local designs to be incorporated. The housing below is typical of Burwash except the last row where substantial detached houses are depicted. These are unusual in Burwash.



Illustration 1 Housing designs in Burwash village

- 52 It is understood from Russell Beswick, one of the developers, that the design started with him. He has no architectural qualifications. His designs were passed to his consultant designer, who produced the finished designs. As already stated, that consultant did not engage any architect to help with the designs. It can be inferred that the reason is the more corners that are cut, the cheaper the planning stage is, and that generates more profit for the developers.
- 53 The consultant’s designs were ‘not considered suitable’ by Rother District Council, see Rother’s planning report para 6.4.3 (not exhibited). They were thought to be ‘in essence a simplified replica of the town houses in Strand Meadow’, see the same para 6.4.3. They were asked to reduce the height of the buildings and amend the material.
- 54 What Rother District Council failed to address was that using the template of Strand Meadow was wholly unsuitable. They were houses similar to houses built throughout the UK where costs were the major consideration.
- 55 In the planning report (not exhibited), Rother District Council attempts to deal with ‘the lack of reference to the historic core of the village’, see para 6.4.5. It is suggested that there is ‘no direct link or relationship to the historic core of the village’. It is further suggested that the reference point is the modern housing estates to the north and east.
- 56 This approach fails to apply the rules listed earlier in this submission, particularly Policy EN3 para 17.33, see para 48 of this submission, where designs have to be seen in their ‘wider setting’. In any event, the site is exceptionally close to the historic core as it abuts the recreational ground which runs at the back of the High Street.

57 The use of Strand Meadow as a template runs contrary to all the rules for new housing. It simply replicates the housing designs of the 1970s and the 1980s. The modern rules expect the best of the local designs to be incorporated into a modern balanced design.

58 The unsuitability of using Strand Meadow as a template can be seen below.



Illustration 2 Houses in Strand Meadow nearest to Watercress Field, Nos 61 and 63



Illustration 3 The next block of houses in Strand Meadow, Nos 57 and 59



59 Illustration 4 The next block of houses in Strand Meadow, Nos 53 and 55



60 Illustration 5 The three blocks of housing in Strand Meadow nearest to Watercress Field, Nos 53, 55, 57, 59 and 61.



- 61 Illustration 6 Houses in Strand Meadow in the same row as the others in the four previous photographs, Nos 33, 35, 37, 39, 41, 43, 45 and 47.
- 62 The discredited designs in the five photographs above that belong to a previous age of cheap housing without the controls that are currently in place can provide no design template for a new development.

*The designs in detail*

- 63 The applicant's Planning, Design and Access Statement to Rother District Council is revealing. The title page is interesting. There is a computer-generated depiction of what units 11-18 will look like, see below.



Illustration 7. Old drawing for units 11-18, Drawing No 702/18/100

- 64 As Rother District Council rightly said, the housing is too tall. Its urban nature design is clear. This was replaced by a new design. The new designs are below. There is an irony here. Rother District Council complained about the first set of drawings, where one can see a link with the designs in Strand Meadow. The planners then promoted the

idea that the new designs were rightly based on the Strand Meadow designs. The reality is that the new designs have little or no link with the Strand Meadow designs. They are wholly inappropriate housing designs with a mismatch of unco-ordinated different design features.



Illustration 8. New drawing for units 11-18, Drawing No 702/18/101A

- 65 The drawing was replaced with 4702/18/101A, depicted above. If anything, the design is worse. The design is still too tall.
- 66 The units are still approached by steps, which is contrary to best practice about access for wheelchair users, the elderly and mothers with pushchairs and buggies. If one compares the drawing with the plans, one can see that the drawing is deceptive and likely to be intentionally so. The front of the building is a relatively flat expanse of land. The plans reveal a fall of about 4 metres. One can see why the compiler chose to label the drawing as ‘Illustrative purposes only’ and ‘Not to scale’.



Illustration 9. Old drawing for units 1-6, Drawing No 702/18/100

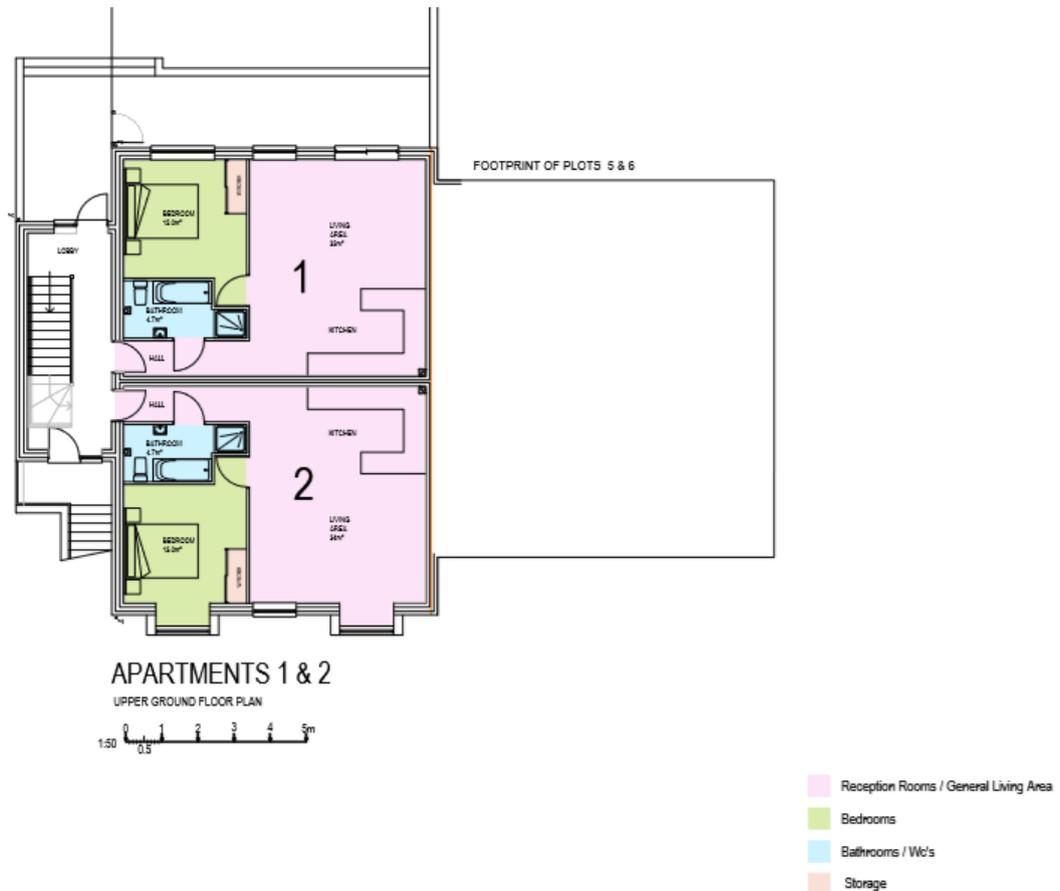
- 67 The old drawing for units 1-6, see above, shows prison-cell style windows which are wholly out of proportion to the rest of the design. The draftsman obviously never visited Burwash and failed to make the housing in sympathy with the local housing.
- 68 The new designs for flats 1-4 depicted below are interesting too. They are the left-hand section of buildings.



Illustration 10. New drawing for units 1-6, Drawing No 702/18/100A

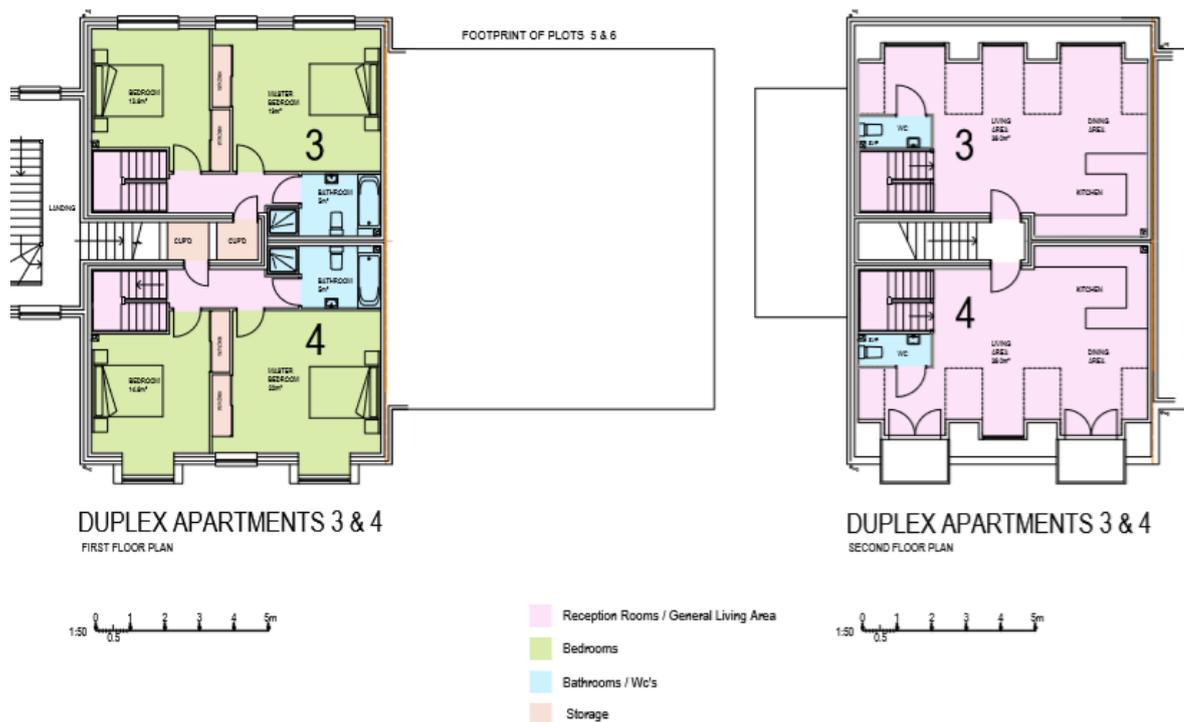
- 69 The new design shows that the roofline has been lowered. There are some hideous stick-on picture windows which is even more contrary to the rules than the previous design. The front elevation is not flush.

70 The ground floor is a storage unit and is called the lower ground floor. The first floor for flats 1-2, called the upper ground floor, is depicted below.



Plan 1. New plan for units 1-2, Drawing No 702/18/21A

71 The second floor, called the first floor, is bedrooms and bathrooms for flats 3-4, see below. The attic floor, called the second floor, is the living quarters for flats 3-4, also see below. The attic floor has much of the space taken away by the sloping roof, which cuts into all the living area.



Plan 2. New plan for flats 3-4, Drawing No 702/18/22A

72 Flats 3-4 have some alarming features.

- To reach the front door to flats 3-4, one would have to walk up the flight of stairs to the ground floor where the storage units are. Then one would have to walk up two flights of stairs to the lobby outside flats 1-2. Next one would have to walk up a flight of stairs to the landing outside the lower floor of flats 3-4. However, one would not be able to enter the flats. One would have to walk up an internal stair to the entrance to flats 3-4 on the attic floor. To reach the first floor of these flats one would have to walk down two flights of stairs to reach it. The design of the stairs is ridiculous and dangerous.
- There is no wheelchair access even though it could be put in.
- The elderly and parents with pushchairs and buggies are not considered. These flats would not be suitable for either group, for whom the stairs would be contrary to the need for proper access.
- The design of the living room to these flats is truly dreadful. It is open plan and is cut into by the low-pitch ceiling of this attic room four times. The room is cut into by the flight of stairs to the lower floor of the flat. There is no door at the top of the stairs.
- All the windows of flat 3 face south-east but because of the steep rising ground behind would never receive much sun for long periods of the year. All the windows in flat 4 face north-east and so the flat receives little or no sun at any time of year. There are no windows on the other two sides of the flats.

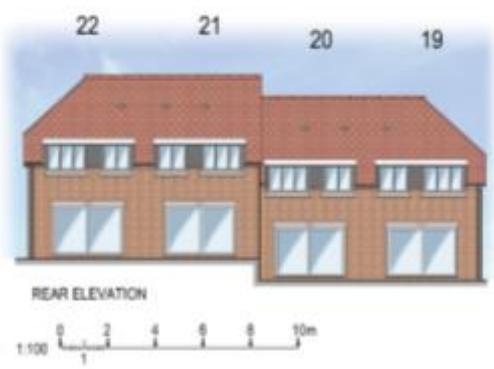
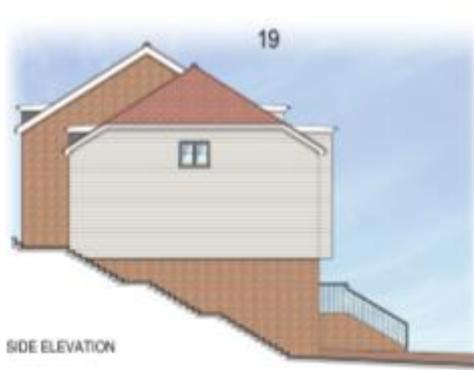
- f) The configuration of windows is likely to cause the occupants to have low mood or something worse. If one excludes the area immediately to the top of the stairs and the area where the front door opens along with the area where one would not be able to stand up, the usable area of the living rooms in the attic floor is about 3.5 metres by 4.5 metres. This is a completely claustrophobic space.
- g) To add insult to injury, flats 1-2 do not have a parking space outside the flats. Every other property does.
- h) The positioning of the flats near the entrance to the development does not appear to be a coincidence. It appears that the occupants of the flats who would be less affluent than the other properties are kept away from the properties that are thought to be more desirable.
- i) These factors for flats 1-4 are so contrary to national policies that the design can only be described as exceptionally poor.

73 Sections e) and f) are further developed in section G.

74 To understand the other housing units and grasp how exceptionally poor the design is, it is necessary to look at the designs for units 15-30. They follow.



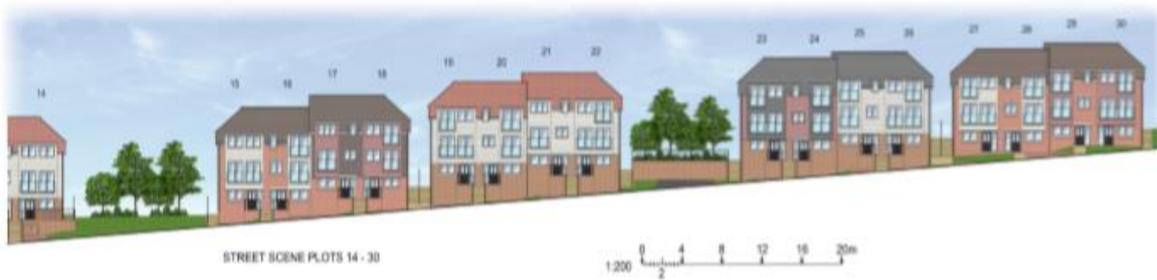
Plan 3 Units 15-18, Drawing No 4702/18/RE15-18A (amended)



75 Plan 4 Units 19-20, Drawing No 4702/18/RE19-22A (amended)



Plan 5 Units 23-26 Drawing No 4702/18/RE27-30A (amended)



Plan 6 Units 16-30, Drawing No 4702/18/RE-ST



Illustration 11 Units 5-14, Drawing No 4702/18/103B (amended)

- 76 The back of the units illustration above shows the total lack of appropriate design. It also shows the deceptive nature of the illustrations. The sharply rising slope is removed to make the illustration appear more attractive.
- 77 The new National Planning Policy Framework, which was published in July 2018, is central to the protection of the historic villages in the Rother District Council area. As

stated above, the planning committee was required to refuse the application when it has such poor designs.

- 78 The High Weald unit in its objection letter dated 9 August 2018 page 2 at Exhibits F, helpfully points out that ‘Design standards should also not be compromised due to viability and the topographical difficulties of the site. Objective S2 of the Management plan is to protect the historic pattern of settlement and Objective S3 is “To enhance the architectural quality of the High Weald”. It is considered that the proposed design conflicts with both objectives. It appears to take its design from the existing town houses in Strand Meadow, which were built prior to the designation of the AONB and are not characteristic of the historic settlement of Burwash. The proposed houses are excessively high and bulky on the street frontage which is most likely to be publicly visible from both within the site and the adjacent public rights of way. Their architectural design is uninspiring 1970s style, out of scale and character with the historic settlement and would detract from the setting of Burwash. The proposed layout also shows parking spaces dominating the street, including spaces adjacent to the stream. This gives the development a very hard, urban character, at variance with its edge of countryside location.’
- 79 In a further report dated 5 December the author of this opinion ‘confirmed that [the] revised plans do not overcome the objections that I set out in my previous letter’.
- 80 Burwash: Save our Fields from Concrete adopt these submissions.

### **G Daylight deprivation**

- 81 In the previous application, Burwash: Save our Fields from Concrete wrote in their submission at para 31
- e) All the windows of flat 3 face south-east but because of the steep rising ground behind would never receive much sun for long periods of the year. All the windows in flat 4 face north-east and so the flat receives little or no sun at any time of year. There are no windows on the other two sides of the flats.
  - f) The configuration of windows is likely to cause the occupants to have low mood or something worse. If one excludes the area immediately to the top of the stairs and the area where the front door opens along with the area where one would not be able to stand up, the usable area of the living rooms in the attic floor is about 3½ metres by 4½ metres. This is a completely claustrophobic space.
- 82 Burwash: Save our Fields from Concrete stands by these comments.
- 83 The comments prompted the developers in their appeal case statement to include a report from their consultant Herrington, see Exhibits G. The consultant clearly has difficulty with details and checking as the title page has in bold ‘February 2018’, when the report must have been drafted in 2019, because on the third page the consultant says he issued the report in 2019. On the second page the report is again dated 2018.
- 84 The report groups the rooms together as one unit which makes no sense. If all the dining rooms have no window it must be entirely irrelevant that there is light in another room. This approach is, however, accepted by the guide published by the Building Research Establishment. The establishment is funded by commercial contracts which must be overwhelmingly pro-development. Looking at the guide it is easy to see why no official body has adopted the guide as it has scant regard for the community.

85 Burwash: Save our Fields from Concrete has had great difficulty in finding an expert who can speak with authority about light deprivation at this level. Most health experts deal with patients and the expert required has to deal with future patients. Two experts said they were unable to deal with this. Five are looking at the issue today. One is hoped to be engaged today. It is hoped a report would be available for the deadline for the submissions but if not, the Inspector will be invited to receive late evidence.

**H The design fails to comply with the rules for building in or near the High Weald Area of Outstanding Natural Beauty (AONB)**

*The current policy*

86 The government's commitment to protecting AONBs can be found in its 2015 party manifesto (not exhibited), which stated that 'the government will protect the Green Belt and maintain protections for Areas of Outstanding Natural Beauty'. It is expected that this is one policy all mainstream political parties can agree on.

87 In line with this policy, on 27 May 2018, central government's commitment to protecting the AONB was reaffirmed. A press release from the Department for the Environment, Food and Rural Affairs (not exhibited) said, 'Environment Secretary Michael Gove has today committed to conserve and enhance England's most cherished landscapes as a new review launches into the nation's National Parks and Areas of Outstanding Natural Beauty (AONBs). An independent panel will look at how these iconic landscapes meet our needs in the 21st century – including whether there is scope for the current network of 34 AONBs and 10 National Parks to expand. Weakening or undermining their existing protections or geographic scope will not be part of the review, which will instead focus on how designated areas can boost wildlife, support the recovery of natural habitats and connect more people with nature. The terms of reference for the review are set out. It says in the short introduction, 'At the outset, it is important to state one thing the review will not do: propose reductions in either the geographic extent or the protections given to England's designated landscapes.' The objectives include, 'In the context of meeting both local and national priorities and wider environmental governance, the review will examine and make recommendations on:

- the existing statutory purposes for National Parks and AONBs and how effectively they are being met,
- the alignment of these purposes with the goals set out in the 25-Year Plan for the Environment,
- the case for extension or creation of new designated areas,
- how to improve individual and collective governance of National Parks and AONBs, and how that governance interacts with other national assets,
- how to enhance the environment and biodiversity in existing designations.

88 The press release also dealt with the department's paper, 'A Green Future: Our 25 Year Plan to Improve the Environment', which was published in January 2018. The foreword by the Prime Minister, Rt Hon Theresa May MP, says, 'Our natural environment is our most precious inheritance. The United Kingdom is blessed with a wonderful variety of natural landscapes and habitats and our 25 Year Environment Plan sets out our comprehensive and long-term approach to protecting and enhancing them in England for the next generation'. The foreword by the Secretary of State, Rt Hon Michael Gove MP, says, 'Population growth and economic development will mean more demand for

housing and this Government is committed to building many more homes. However, we will ensure that we support development and the environment by embedding the principle that new development should result in net environmental gain – with neglected or degraded land returned to health and habitats for wildlife restored or created’.

- 89 The underlining has been added to assist.
- 90 It is clear that central government’s policy is to strengthen, not weaken, the protection afforded to the AONBs.
- 91 Countryside and Rights of Way Act 2000 s 85 (not exhibited) requires Ministers of the Crown, local authorities and others to have ‘regard to the purpose of conserving and enhancing the natural beauty of AONBs’. The protection that needs to be accorded to the High Weald AONB is set out in National Planning Policy Framework July 2018 para 172, which is as follows:
172. 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. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads<sup>3</sup>. The scale and extent of development within these designated areas should be limited. Planning permission should be refused for major development<sup>4</sup> other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:
- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
  - b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
  - c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.
- 92 A similar and shorter requirement could be found at para 115 of the previous National Planning and Policy Framework.
- 93 No local consideration can remove the requirement that great weight needs to be given to the AONB factor.
- 94 The Core Strategy (not exhibited) sets out the general strategy for these developments, at page 87. It is as follows.

**Para 12.51 Policy RA2: General Strategy for the Countryside**

The overarching strategy for the Countryside is to:

- (i)-(ii) Not listed
- (iii) Strictly limit new development to that which supports local agricultural, economic or tourism needs and maintains or improves the rural character.

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<sup>3</sup> *English National Parks and the Broads: UK Government Vision and Circular 2010* provides further guidance and information about their statutory purposes, management and other matters.

<sup>4</sup> For the purposes of paragraphs 172 and 173, whether a proposal is ‘major development’ is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.

- 95 The relevant section here where housing has been approved is that the development must ‘maintain or improve the rural character’.
- 96 The High Weald AONB Advice Note dated October 2016 (not exhibited) describes this AONB as one of the best surviving medieval landscapes in Northern Europe, see page 2. Its Management Plan has been adopted by its 15 constituent local authorities. The plan has to be taken into account when Rother District Council is determining a planning application, see Core Strategy para 17.13.
- 97 The next matter to consider is how to apply the High Weald AONB factor to a planning application and the answer is that the policy has to be seen in its local context. That context relates to the specific area of the AONB in question and the settlements within the AONB. The part of the High Weald AONB that surrounds Burwash is one of the most important to protect. These principles have to be seen in the context of protecting the village of Burwash.
- 98 The East Sussex County Landscape Assessment places special emphasis on the Upper Rother Valley section of the High Weald in which Burwash parish is situated. Its vision for the area is, ‘A remote valley set in a rich, rolling landscape, creating fine views from settlements and offering an experience of remoteness and even solitude, assisted by minimal traffic’, see section 6. That vision is a worthy aspiration.
- 99 The High Weald unit in its objection letter dated 9 August 2018 page 2, see Exhibits F, set out at the end of the section before last is very relevant to this section as well as it deals with the importance of the AONB.

*Applying this policy to the current application*

- 100 If there are to be 30 housing units, the units must accord with para 12.59 of the Core Strategy. This states that ‘development must have regard to impacts on both landscape character and natural resources management.’
- 101 Here the impact of the design is severe. Trees will be destroyed, including some of the 94 trees subject to the August 2006 tree preservation order. The buildings are too high, so they will be an unacceptable intrusion into the nearby sight lines.
- 102 The key feature of this site is the medieval field systems. The High Weald unit in its objection letter dated 9 August 2018 page 2, helpfully points out that the site of the application has ‘**Field and Heath:** the application site comprises three Medieval (AD 1066-1499)’ assart fields with historic field boundaries. An assart is a piece of land converted from forest to arable use.
- 103 In a further report dated 5 December the author of this opinion ‘confirmed that these revised plans do not overcome the objections that I set out in my previous letter’.
- 104 As previously stated, the decision to build the houses has been made so the issue is whether the impact of these dwellings on the High Weald AONB has been mitigated in accordance with the rules. The damage to the AONB and the field and heath has not been mitigated. The alterations made are wholly insignificant. The application is misconceived.
- 105 In the Inspector’s report in 1986, see Exhibits A page 8, the Inspector noted the Rother District Council’s underlying the importance of the setting of the village and the following submission. The rolling pastureland and the steep ridges which are characteristic of the High Weald provide a very pleasing 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 AONB. The sloping fields which comprise the appeal site and 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 visually very intrusive and harmful.

106 This was true then and is true now. It applies to this and the next section.

**I The historic village of Burwash with the exceptionally large number of listed buildings in its High Street, many of which are medieval, deserves maximum protection. There are also listed buildings in Shrub Lane. This ridgetop village needs its setting within the glorious High Weald AONB.**

107 In the centre of this spectacular countryside is the village of Burwash. Few English villages, if any, have Burwash's quota of listed buildings in the High Street and the glorious collection of historic houses down the street. There are about 75 listed buildings in the conservation area, some covering more than one home. A high proportion are medieval. Soon Burwash may have a Grade I listed monument in the High Street. To the visitor entering Burwash, it must feel like entering a village in the 18th century. It is not just the sight of some of the magnificent buildings, it is the unique collection of outstanding buildings down the entire length of the village High Street that impresses visitors to Burwash. Burwash, with its High Street, is a jewel, and it needs its setting, as all precious stones need a setting. The setting for Burwash High Street is the spectacular AONB countryside around it. Both the village and the countryside setting need to be preserved and passed on safely to the next generation and successive generations.



Illustration 12 A view of Burwash High Street at the Shrub Lane end

108 The Core Strategy neatly sets out the protection required.

#### Para 12.40 **Policy RA1: Villages**

The needs of the rural villages will be addressed by:

- (i) Protection of the locally distinctive character of villages, historic buildings and settings, with the design of any new development being expected to include appropriate high-quality response to local context and landscape.

#### **Spatial Development Options**

Para 12.17 New development will need to be sensitive to the need to protect and enhance the distinctive landscape character of the district, particularly the AONB, and should reflect the prevailing landscape quality and character.

#### Para 7.66 **Policy OSS3: Location of development**

In assessing the suitability of a particular location for development, when both allocating land for development and determining planning applications, sites and/or proposals should accord with the relevant policies of this Core Strategy and be considered in the context of:

(i) The spatial strategy for the particular settlement or area, and its distinct character.

For the rest of this policy see **section F3** of this statement of case.

109 The importance of tourism is set out in the Core Strategy at Policy EC6, at page 141 and at para 12.32. Para 12.32 is as follows.

In all locations popular with visitors, there is a need to accommodate and manage tourist facilities and supporting services sensitively, in order to minimise impact upon the AONB, important habitats and wider countryside.

110 Rother District Council is clearly stressing the importance of the AONB and important habitats in tourist areas.

111 The County Landscape assessment identified forces for change which adversely impacted on the character of the High Weald including the Upper Rother valley, see letter dated 29 March 2017. One of these is: ‘creeping suburbanisation and cumulative changes in the rural landscape, roads and villages, which are not in sympathy with local distinctiveness or vernacular architecture.’

112 None of these matters are addressed by Richard Kirkham and Russell Beswick.

113 For many years, Rother District Council has placed great importance on preserving Burwash and its surrounding AONB. That policy was plainly right and should be supported. The Burwash conservation area and AONB surrounding it must not be chipped away with ill-conceived developments. The AONB must be preserved in line with the clear planning policies.

**J The current design will damage the ecology of the site and a grant of planning permission would place Rother District Council in breach of its statutory duties.**

114 The key factor in this section is that Russell Beswick has repeatedly refused to allow our ecologist to enter the site. This is no doubt to protect the sub-standard findings of his developer-orientated consultant. The Inspector is invited to treat all the findings by the Ash Partnership as unchecked and suspect. This approach is in line with the critical finding about the Ash Partnership in the next paragraph.

115 The planning committee would have been in breach of its Natural Environmental and Rural Communities Act 2006 s 40 (not exhibited) obligations if it granted this application, because this application fails to conserve biodiversity in accordance with the ecology rules that apply. Rother District Council should require accurate and recent assessments. In particular the County Ecologist and Richard Kirkham and Russell Beswick rely on a report paid for by the developers called the Ash Partnership report (not exhibited). That report is based on a ‘walkover survey’ at the site in August-September 2010 and early August 2016, see their report para 2.2. As the data is now about 3 years old, it cannot be properly relied on. The County Ecologist, in her report dated 26 November 2018, see Exhibits H, considers that the 2013 Biodiversity Code of Practice suggests that old data can be used. It does not deal with the situation where all the data is old and the part the County Ecologist seeks to rely on states that data 3 years old should

not normally be used. However, she does suggest that some areas require updated surveys and there are no plans for that to be done.

116 It appears that the County Ecologist has never visited the site or asked anyone to visit the site for her. Her reliance on the old developers' Ash Partnership report mean her conclusions have less weight than normal. She does, however, state:

- a) An updated badger survey is required, para 10,
- b) Appropriate mitigation and enhancement for the badgers is missing, para 10,
- c) The Ash Partnership report gives no consideration to the potential presence of dormice within the scrub area on the site, see para 12.  
[It should be noted that dormice have been seen by residents.]
- d) The inevitable presence of cats within the estate will require planting of prickly species, which has not been proposed.
- e) The surveys by the Ash Partnership were not carried out in accordance with best practice and there is a risk that the slow-worm population has been underestimated, para 14.
- f) Both the 2010 and 2016 surveys referred to by the Ash Partnership were undertaken over a compressed period of time, and at least one was undertaken above the recommended maximum temperature. The proposed measures for translocation are not sufficient; best practice guidance recommends 60 suitable days as the minimum capture effort for a low population of slow worms, see para 14.
- g) It is understood from the Design and Access Statement that a reptile capture and translocation process has commenced, with reptile exclusion fencing erected around the proposed development area. This is of concern given the shortcomings within the Ecological Appraisal report noted above, see para 15.
- h) The Design and Access Statement also states that the population can at least in part be retained in situ within the landscape buffer area (my emphasis). It is unclear what this means. Clarification is required as to what proportion of the population will be retained on site and if any animals are to be moved off site, details of the offsite receptor site should be provided, see para 15.
- i) Identification of an offsite receptor area may require additional surveys, see para 15.
- j) Details of measures to enhance the receptor site(s) for reptiles is also required, plus a detailed method statement for the translocation exercise to ensure it meets best practice, see para 15.
- k) All species of bats are fully protected under the Wildlife and Countryside Act 1981, as amended, and the Conservation of Habitats and Species Regulations 2010, making them European Protected Species. The Ecological Appraisal report states that three activity surveys were carried out in 2016; two dusk and one dawn. However, as two of these were conducted within one 24-hour period, they count as one survey, plus all three reported surveys were conducted over three consecutive days rather than being spaced out across the season. As such, they may not provide a true reflection of bat activity across the site, and a precautionary approach to mitigation design is recommended.

- 117 The fact that none of these matters were dealt with properly by the Ash Partnership is conclusive evidence that its report falls below the standard the Inspector, Rother District Council and the community is entitled to expect.
- 118 The National Planning Policy Framework 2018 para 170 (not exhibited) states:  
Planning policies and decisions should contribute to and enhance the natural and local environment by:
- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
  - b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;
  - c) [Re coasts Not relevant]
  - d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
  - e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and
  - f) [Re contaminated land not listed]
- 119 The key parts are highlighted in yellow.
- 120 The Ash Partnership report is dated February 2018, which is before this policy came into force. It was not drafted for this application. It was drafted for the previous one. The policy before was significantly different. This old policy is dealt with at the first of two paras numbered 6.1 of its report, which should read 5.1 because the report's para numbering system has gone wrong and the report clearly was never checked. Their attempts to assert that the development is ecologically compliant fail because they have been wrong on so many of the relevant points, see above. This means the report cannot be relied on.
- 121 It is understood that a reply to the County Ecologist has been drafted. It has not been posted on the portal.
- 122 The conclusions of the High Weald Joint Advisory Committee planning officer in their objection dated 9 August 2018, see Exhibits I, took into account the correct test. The planning officer objected to the scheme because:
- a) The development has potential ecological impacts on the site and adjacent woodland which are not addressed in the application material contrary to the Objectives G1, W2 and FH3 of the Management Plan, see page 1 and 4.
  - b) The attempts to address the ecological problems with the site that the Ash Partnership lists in the first para 6.3 (which should read 5.3) have no plan envisaged for them to be maintained, see page 3.

- c) Objective 6 of the Core Strategy will not be complied with because the intensity of the housing development is likely to put pressure on the threatened habitats, see page 3.
- d) The intensity of housing development proposed on this site is likely to put pressure on these habitats from informal use by residents and changes to the flows in the watercourse as a result of drainage proposals and adjacent hard surfaces. This would be contrary to Objective G1 of the Management Plan, which is “To restore the natural function of river catchments”, and FH3, which is “To enhance the ecological function of field and heath as part of the complex mosaic of High Weald habitats”.
- e) There is an ecological implication for the Acid/Neutral Flushes and the stream which then runs into ancient woodland (Shrub Wood). Ancient Woodland is an irreplaceable habitat and an important component of the AONB and damage to it would be contrary to Objective W2 “To enhance the ecological functioning of woodland at a landscape scale”. The ecological report does not consider the impact on Shrub Wood.
- f) In conclusion, the High Weald AONB Unit objects to the proposed development on the following grounds:  
[The non-ecological ones not listed]  
The development has potential ecological impacts on the site and adjacent ancient woodland which are not addressed in the application material contrary to Objectives G1, W2 and FH3 of the Management Plan.

123 Burwash: Save our Fields from Concrete adopts these submissions.

**I The housing density is inappropriate**

124 Many of the above objections are linked to an overall objection to the application which is that the housing density is too high and so inappropriate. The density is a further objection to each of the above objections. It impacts on the design. It impacts on compliance with blending in with the AONB. It affects the ability for the ecology mitigation measures to work. One example is listed at d) in para 120.

**J The developers have failed to assess the sewerage requirements of the site**

125 The relevant history is as follows.

26 May 2016 Mike Pickup, Park Lane Homes’ planning consultant, was told in a letter from Rother District Council that Southern Water has advised that the ‘drainage information is not acceptable’.

The developers’ Planning Design and Access Statement states at page 73 that there would be a private sewage treatment works (which has now been abandoned).

10 August 2018 Southern Water told Rother District Council that treatment capacity is not available for this development. Further, the development is premature.

18 September 2018 Southern Water repeated its message to Rother District Council that treatment capacity is not available for this development. The condition that they seek is that the development should await sewerage capacity.

126 In a letter from the Environment Agency dated 6 June 2019, Sara Gomes says they will comment at permitting stage. This is part of an unfortunate trend of certain authorities to put off an examination until a later stage, no doubt to save money. The community is entitled to expect the Environment Agency to present the relevant facts to the Inspector

and for the Inspector to be told that a private sewerage system is not acceptable as the sewage wastewater would flow into a ditch that dries up in the summer.

- 127 The plans have been changed twice since the final application was lodged. The current plan of Richard Kirkham and Russell Beswick is to just ignore the problem that there is no plan to deal with the sewage and hope Rother District Council and the Inspector will ignore their cavalier behaviour. The second stage is to start building and then pressurise the sewage authorities to build a sewage pipe for them.
- 128 The developers' Outline Drainage Scheme Version 3 plan dated 'June 18' with the needlessly long plan number of '16760-jmla-TP-OO-DR-D-2200-S4-PO4' is not the plan for the planning committee of Rother District Council. It a draft for approval by the developers. The developers' agent's attention to detail is such that he did not notice this when collecting the papers for the planning application or when collecting the papers for the appeal.
- 129 This plan shows that the sewage for each of the houses collects in one pipe next to the entrance to Watercress Field. This collection point also collects the storm water from the estate. The storm water has storage tanks. The combined water flows into a Swale 'S' Reed bed which would be wholly incapable of coping with the combined flow. There is then a box on the plan with this information, 'Existing watercourse to be investigated to establish condition. If found to be poorly maintained, remedial works to be agreed with local authority to improve water flow.'
- 130 This statement shows how poorly prepared and ill-considered the application is. The following points can be made.
- a) The issue is not whether the ditch is poorly maintained as this is just a tiny ditch. The issue is whether the ditch is of sufficient size and has sufficient flow to accept the sewage waste from the 30 housing units.
  - b) A cursory examination of the ditch would show it has neither the size nor the flow for the inevitable amount of sewage waste generated from the 30 housing units.
  - c) There are two explanations for the entry in the box referred to in the previous paragraph. The first is that no one looked at the ditch. The second is that the ditch was looked at and the applicants decided to pretend they didn't know about the ditch.
  - d) Whichever of the two is the explanation, it is either a serious omission or a deliberate act of deception.
  - e) The authorities that look after sewerage are Southern Water and the Environment Agency, not, as the consultant states, the local authority.
  - f) If the consultants, jmla, who prepared the plan don't know this, none of their advice and plans can carry any weight.
  - g) The plans ignore the advice that is in effect that discharge into the ditch would not be acceptable. The reason for this is that the ditch dries up during dry periods of the year. Below is a picture of the ditch taken ¼ mile downhill in 2018. Near Watercress Field, the ditch is smaller and contains much less water.



h)

Illustration 13

- 131 It is inappropriate to build estates where there is no provision for disposal of the sewage. Richard Kirkham and Russell Beswick’s tactic about sewerage requirements is an abuse of the planning process.

#### **N Putting the application and this submission in context**

- 132 The group recognises that Rother District Council has already granted permission for 30 housing units on the site and with a new detailed planning application there is not an opportunity to contend that that earlier decision was wrong. The issue must be whether the new application breaches the planning rules without trying to avoid the decisions made for the 2017 application. That means, for instance, the group does not contend that the application should be refused because the houses should not be built in the High Weald Area of Outstanding Beauty (the AONB) as that decision has already been taken. However, the group can and does submit that the housing units fail to conform to the planning policies for building within the AONB. Similarly, the fact that outline planning permission has been granted does not prevent examination as to whether the poor design of the latest plans is a reason for Rother District Council to refuse the application.

#### **O The housing quota**

- 133 Planning decisions involve a balance of different factors to produce a correct decision. Although there is the housing tilt when a local authority is in ‘housing deficit’, all the planning rules remain in place. The housing tilt in fact only applies to the grant of planning permission for a set housing quota. The tilt can’t apply once the housing units have been granted. From then on, all the planning policies apply with ‘no tilt’. The housing quota is irrelevant to this application because the previous grant of 30 housing units is not in issue. This is despite the clear inference that if the original planning inspector in 2006 and Rother District Council knew what is now known about the site and the viability issue, it is inconceivable that the field would have been considered suitable for housing.
- 134 The fact that the appellants’ appeal case statement relies heavily on the housing supply issue, which is not relevant as the outline permission has been passed, affects the whole credibility of their case statement.

#### **P The lack of local facilities**

135 Many of the objectors to this application rely on the lack of places at Burwash School and the fact that the local surgery is said to be at capacity. In planning terms, it is accepted that these matters are not normally significant. Cumulatively these matters add some weight to the major reasons listed for refusal of this application. They are, however, not a significant reason for dismissal of this appeal.

### **Q Traffic**

136 In Shrub Lane there is anger at the plans to make the traffic flow and the parking at Strand Meadow even more chaotic. Generally, there is an understanding that Shrub Lane cannot safely take any more traffic and another development is misconceived. However, it has to be remembered that this is a detailed planning application and the traffic matters were dealt with at the outline planning stage last year. The decision was based on flawed data and the finding was deeply flawed but it is accepted that the community cannot appeal this decision.

### **R The objectors**

137 Those who have made an objection to the application are listed in the Objector's Schedule I, see Exhibits F. Many objectors have made repeated objections. The schedule excludes all additional objections by the same individual. The total number of objectors is 442. One person made a critical comment. No one supported this scheme. About three-quarters of the objectors live in Burwash parish. Many of the others live in nearby parishes which are threatened by similar inappropriate cash-driven speculative developments. Unusually detailed objections have been given by many of them.

138 The developers in their Appeal Case Statement at para 3.1 state that some of the objectors live 'as far as (sic) field Western Australia, Italy, Paraguay, South Korea and New Zealand who obviously cannot conceivably be affected by the proposed development and have presumably been encouraged to submit an objection in order to increase the overall number'.

139 Both these suppositions are wholly false. The objectors from these countries are dealt with below.

140 Elizabeth Duncan of Western Australia says in her objection that she often stays with her family in Burwash, see Exhibits F E Duncan. She is the niece of a couple in Shrub Lane. She loves the area and has visited the area since she made her objection.

141 Eugenio Zoppis of Italy says in his objection that he has family roots in England and knows the High Weald AONB, which he has repeatedly visited, see Exhibits F Zoppis. Further he appreciates the rolling countryside, with the trees, the meadows and the ponds, where the hand of man appear to have gently touched up the creation, without spoiling its natural beauty yet. He is the brother-in-law of Santiago Ferriera below. He was given a degree by London University. He loves the area. He regularly stays with a resident in Shrub Lane.

142 Santiago Ferriera (aka as Muntada in the Objector's schedule) of Paraguay says in his objection: 'I have visited this wonderful area with its trees and wildlife many times and hope to be able to do so again,' see Exhibits F Ferriera He has visited the area regularly since 1972. He visits with his wife and until recently with his mother, who is now too old to travel. He too loves the area.

143 Hi Jung of South Korea says in her objection that she 'had recently spent her holidays in Burwash staying with friends', see Exhibits F H Jung. She also referred to her experience of the traffic in Shrub Lane and the beauty of Burwash. She comes to visit annually and

stays with a resident in Shrub Lane. She wants to live here as she loves the beauty of the place so much. She is the wife of Jongsong Lee below.

- 144 Jongsong Lee of South Korea, see Exhibits F J Lee, says in his objection that he has had wonderful holidays with his wife’s friends. He is a professor and an artist. In his objection he refers to ‘the inspirational character of medieval beauty of Burwash’. He too wants to live here.
- 145 Gabin Lee of South Korea is the daughter of Hi Jung and Jongsong Lee. She says in her objection that she visited her mother’s friends for a week, see Exhibits F Gabin Lee.
- 146 Mark Yates of New Zealand is the son-in-law of a Burwash resident. He was staying in Burwash when he made his objection, see Exhibits F M Yates.
- 147 The importance of the remark in the Appeal Case statement is that it shows those behind the appeal do not read the documents and are prepared to make unfounded comments without any checking. Behind the remark lies a worrying attitude towards the community who seek to comment.
- 148 It is submitted that the view of the community who know and understand the area is a relevant consideration.
- 149 From the Objectors Schedule at Exhibits F a comparison of the applicant’s figures and the developer’s schedule can be made. The Schedule compares each topic of objection.

<b>Number</b>	<b>Reason objecting for</b>	<b>Developers’ figure from Appeal Document 9</b>	<b>True figure from Objector’s Schedule II</b>	<b>Developers’ error</b>
1	Lack of affordable housing	289	341	52 too few
2	Access	238	163	165 too few
	Traffic		240	
3	AONB	81	194	113 too few
4	Drainage	99	115	16 too few
5	Infrastructure	84	101	17 too few
6	Design	57	103	46 too few
7	Overdevelopment	43	Not listed <sup>5</sup>	

<sup>5</sup> This is not listed as this is not a planning objection for those at the detailed application stage. However, density remains a planning objection. The difference between the two is small.

8	General objection	17	Not listed <sup>6</sup>	
9	Save our Fields from Concrete	16	Not listed <sup>7</sup>	
10	Ecology	24	107	83 too few
11	Footpath link	3		
12	Sewage		132	
13	Total objections	458		
14	Total objectors		442	

150 Some of the differences can be put down to the different categories. However, one of the tactics of the applicants is to list the objectors who relied on our submission, see Row 8 in the above table, and not list the fact that their objections covered most of the reasons in the table. This lowered the number of objections for each row. The scale of the under-recording of the objections and the consistency of the under-recording indicates that the under-recording was deliberate.

**Conclusion**

151 For all the above reasons the Inspector is invited to dismiss the appeal.

Robert Banks

14 June 2019

Affirmed by the group

15 June 2019

Burwash: Save our Fields from Concrete

<sup>6</sup> This is not listed as this is not a planning objection for those at the detailed application stage.

<sup>7</sup> Ditto. The reasons listed should have been divided up.