



Land south of the A271 and east of
the A22, Lower Horsebridge,
Hailsham

Appeal ref: APP/C1435/W/23/3335625

LPA ref: WD/2022/3222/MAO

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Appellant Proof: **REBUTTAL
PLANNING**

Prepared by: Andrew Elliott
BSc(Hons) MSc MBA
MRTPI MIED
Technical Director

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1. INTRODUCTION AND SCOPE OF REBUTTAL EVIDENCE

1.1 This rebuttal proof of evidence has been prepared to respond to specific points raised in the proof of evidence of Mrs Claire Turner of Wealden District Council (WDC) on planning matters.

1.2 It is limited to:

- Matters which are of relevance but have only arisen after the exchange of evidence, and
- Information contained in WDC's proofs that was not known (or could not reasonably have been discovered) at the time my original proof of evidence was prepared.

1.3 I do not respond in this rebuttal proof of evidence to every point raised in the planning evidence of WDC or indeed points in the wider evidence of the Council on landscape and heritage matters. Rather, I respond here to the planning points that I consider will most assist the Inquiry. The fact that I have not responded with a rebuttal to any other specific point in WDC's evidence should not in any way be taken that I accept that it is correct or that some concession is made.

1.4 This rebuttal has been prepared on the same terms as my main proof of evidence and it remains that the opinions expressed are my true and professional opinions given in accordance with the guidelines of my professional institution, the Royal Town Planning Institute.

1.5 The matters which have arisen that I wish to comment upon are:

- WDC's assessment of heritage harm and public benefits (paragraph 11d) i of the NPPF)
- The application of the 'tilted balance', and
- WDC's overall assessment of benefits and adverse impacts (paragraph 11d) ii of the NPPF).

1.6 To assist the Inquiry I have prepared a tabular summary of the differing positions in respect to benefits and harms as listed in Mrs Turner's evidence and my own, which is enclosed at Appendix A. I shared the content of this with

Mrs Turner on 3 April to seek to agree it with her. Mrs Turner replied on 8 April to confirm that she does not see the need for a tabulated summary of the planning balance, that the Council's position on the planning balance matters is set out in her proof of evidence and that she does not agree the contents of the table. I will refer to this summary table where relevant in my rebuttal.

2. WDC's ASSESSMENT OF HERITAGE HARM AND PUBLIC BENEFITS

- 2.1 In concluding on the importance and weight to be given to the issue of harm to heritage assets for this appeal, Mrs Turner states at paragraph 1.8 of her planning proof of evidence (CD 13.11), that:

"It is my view that the public benefits do not outweigh the resultant harm which indicates there is a clear reason for refusing the proposed development (paragraph 11(d)(i) NPPF)".

- 2.2 This specific position in respect of the application of paragraph 11d) i of the NPPF and a "clear reason for refusal" has not been previously expressed by WDC.
- 2.3 I note that WDC has hitherto implied that the application of the presumption in favour of sustainable development is as per paragraph 11d) ii of the NPPF, which refers to the balancing the benefits of the appeal proposals with *all* harms that are identified¹. In other words WDC has not previously stated a view that heritage harm alone, when considered against the public benefits of the proposals, provides a basis upon which to refuse the proposed development applying paragraph 11d) i of the NPPF. The Council's updated position on this issue has only become clear following the exchange of evidence.
- 2.4 In response I clarify the Appellant's position is that the application of policies in the NPPF which relate to designated heritage assets *do not* provide a clear reason for refusing the proposed development.
- 2.5 The significance of the designated heritage assets, and the level of harm to the significance of the designated assets through the proposed development, is considered in detail in Dr James Weir's proof of evidence (CD 13.16). I set out my interpretation of the public benefits of the appeal proposals that outweigh the identified less than substantial harm to the significance of heritage assets in my main proof of evidence (CD 13.11). Of particular importance I also remark at paragraph 6.7 of my evidence that WDC has failed to fully recognise, or

¹ WDC's previous position is stated for example at the final paragraph of the delegated officers report (CD, page 59), in item 3.1 of the areas for disagreement table of the General Planning Statement of Common Ground (CD 13.8), and at paragraph 6.5.7 of WDC's statement of case (CD 13.5),

otherwise place sufficient weight in the balance to, the full range of benefits that the proposed development can offer.

- 2.6 Whilst WDC has now belatedly confirmed a view that the determination of the appeal scheme is a 'paragraph 11d) i case', I am of the view that the Council does not seek to identify, or otherwise put enough weight in the balance on, the full range of public benefits of the appeal proposals. These benefits provide justification for the development when balanced against the harm to heritage assets *alone* (i.e. the paragraph 11d) i assessment) and also when otherwise balanced alongside all of the harm / adverse impacts that have been identified (i.e. the paragraph 11d) ii assessment).
- 2.7 I note that at paragraph 7.5 of Mrs Turner's evidence she confirms that if the Inspector disagrees that paragraph 11d) i of the NPPF applies then paragraph 11d) ii applies. She then goes on to consider a range of benefits and disbenefits of the proposals, which I have summarised in Appendix A.

3. APPLICATION OF THE 'TILTED BALANCE'

- 3.1 As identified in section 2 above, WDC is now saying that the determination of the appeal is not on the basis of paragraph 11d) ii of the NPPF, but that paragraph 11d) i applies because the Council considers that the less than substantial heritage harm is not outweighed by the public benefits of the appeal proposals.
- 3.2 Further to this, paragraph 4.15 of Mrs Turner's evidence (CD 13.11) miscommunicates the 'tilted balance', by suggesting that it is not relevant where paragraph 11d) i applies.
- 3.3 My understanding of the correct approach is that the tilted balance (presumption in favour of sustainable development) applies where there are no relevant development plan policies or the most important policies for determining the application are deemed to be out of date. It can then only be disapplied if:
- paragraph 11d) i applies (i.e. *if it is concluded in this case that the application of NPPF policies that protect heritage assets provides a clear reason for refusing the appeal proposals*), or
 - the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, as per paragraph 11d) ii.
- 3.4 It is the Appellant's position that the tilted balance applies and that it is not disapplied either by paragraph 11d) i or 11d) ii.

4. WDC's OVERALL ASSESSMENT OF BENEFITS AND ADVERSE IMPACTS

- 4.1 As evidenced by the tabular summary at Appendix A, there is a wide range of disagreement between the Council and Appellant on the overall of weight to be afforded to the benefits and adverse impacts of the proposals. Whilst we both use the same five point scale for assessing weight, Mrs Turner and I come to very different conclusions on the overall planning balance.

Provision of market and affordable homes

- 4.2 In terms of the weight that Mrs Turner places on the benefit of providing additional homes, I consider it bizarre that reduced weight is given in this case compared with the Very Substantial Weight 'normally' attributed by the Council, simply on the basis of an indicative mix of homes shown on an illustrative layout.
- 4.3 In responding to the planning application consultation, WDC's Housing Development Officer correctly summarises that the proposed mix of units across the site has not been provided at this outline stage (CD 3.18).
- 4.4 In my view the provision of a policy compliant level of 35% affordable housing in circumstances where there is an acute need is sufficient alone to merit Very Substantial Weight in the planning balance. Notwithstanding this, I also identify a range of wider benefits of providing market and affordable homes in my evidence that further underpin the Very Substantial weighting.
- 4.5 I also find it strange that Mrs Turner has not referenced the benefit of providing plots for self-build / custom build homes in her proof of evidence given that the Council is otherwise failing in its duty to provide them and has requested this provision.
- 4.6 As planning case officer, Mrs Turner provided limited comment on the preferred mix of new homes before the determination of the application. Mrs Turner did not recommend or encourage the applicant (now Appellant) to explore alternative design options by reason, we understand, of officers overriding concern about the suitability of developing the appeal site in principle. Therefore, a suitable focus of this planning appeal is on the merits of

developing this site in principle and not detailed consideration of development form, layout or housing mix.

- 4.7 Nevertheless, the design comments now provided by Mrs Turner have value for developing the content of a reserved matters scheme and signal that a carefully considered process is necessary to develop a detailed design for a compact form of development in this location. It is proposed that this be progressed firstly through a masterplan and design code to address the site-specific opportunities and constraints in greater detail. This approach can ensure that the benefits of the appeal proposals outlined in my evidence (provision of homes, multiple benefits of multifunctional greenspace and non-car accessibility improvements) can be optimised.
- 4.8 The detailed design process will ensure a well-considered arrangement of internal and external spaces is developed to suit the specific needs of the intended users of the development.

Frontage development in the form of continuous apartment blocks

- 4.9 Mrs Turner has provided detailed comments in her evidence in respect of the implications of continuous apartment blocks being proposed on the site frontage.
- 4.10 As per my comments above, detailed design is to be addressed at reserved matters stage. Nevertheless, in preparing the illustrative layout (and subsequently in preparing visualisations for views requested by the Council for the purposes of the appeal) a 'worst case' approach has been used in respect of the massing of the frontage by applying the maximum proposed height parameter in the form of a continuous built frontage along the A271 for the purposes of a rigorous assessment. The illustrative layout presents just one option in terms of possible form and design of residential development on the A271 frontage.
- 4.11 As Mrs Turner identifies at paragraph 6.40 of her evidence the options for achieving good acoustic design include reducing gaps between buildings. This approach has been adopted and tested through the preparation of the illustrative layout proposals for residential buildings along much of the western side of the appeal site adjacent to the A22. The findings of the application stage noise impact assessment demonstrate that a frontage that comprises a mix of

detached, semi-detached and short terraces is also entirely feasible as part of a good acoustic design approach (see for example sound contour plots within Appendix D of CD 1.22).

- 4.12 I note that there are examples of existing development in the local area which minimise gaps between buildings, with the effect that they act as a noise barrier to shield private garden spaces to the rear. I draw attention in particular to the design approach of development on both sides of the A271 Lower Horsebridge road to the east of the appeal site in the vicinity of the Pay Gate Cottages bus stops, shown in the photographs below (post codes BN27 4DN and BN27 4DL). These properties were historically built on the edge of the village, extending the linear form of frontage development westwards. Pairs of semi-detached properties at up to 2.5 storeys in height front the road with relatively small gaps between each pair of properties.



Houses on the southern side of the A271, Lower Horsebridge. These are identified as 'positive buildings' on Map 4 of the HNP (CD 5.4 page 65).



Brookland Terrace on the northern side of the A271, Lower Horsebridge.

Ecology and net gain in biodiversity, landscape enhancements and public access

- 4.13 Mrs Turner applies Limited Weight to the benefit of ecological enhancement / biodiversity net gain, however it is not clear whether this weighting is applied because the reserved matters for landscaping including biodiversity enhancement are not yet confirmed, and thus more weight could ultimately be given to this benefit, or whether in her view Limited Weight is the maximum benefit she considers should be afforded to the appeal proposals which include a large multifunctional greenspace area comprising amenity and natural greenspace.
- 4.14 I note that Mrs Turner has attributed No Weight to the benefit of landscape enhancements and No Weight to the provision of a substantial area of multifunctional greenspace in terms of improved public access. It is very difficult to understand why Mrs Turner affords no weight at all to the public benefit of permanently providing public access to a multifunctional greenspace park alongside the Lower Horsebridge Stream noting that:
- The proposed greenspace comprises over four hectares of land where there is presently no public access at all

- Visitors to the greenspace can experience the wider riverside landscape that the Council places considerable importance on and the provision will encourage more appreciation of it by additional users
- Ms Bolger places importance on the attractive wide band of landscape provision on the edge of Welbury Meadows in her evidence (paragraph 4.6.4, CD 13.9) and the Appellant is effectively mirroring that on the northern side of the River Cuckmere / Lower Horsebridge Stream, and
- A broad corridor of the amenity land (in flood zone 2) will be available for year round use except in very infrequent extreme flood conditions.

Access and connectivity

- 4.15 An important material change of planning circumstances that is not referenced in Mrs Turner's evidence is WDC Planning Committee South's resolution to grant approval for the Council's own Sports Hub development on 25 January 2024.
- 4.16 The non-car accessibility improvements, which the Appellant has confirmed in agreement with the local highway authority through the Transport and Highways Statement of Common Ground (SoCG) and are proposed to be secured in a legal agreement, offer public benefit by enhancing accessibility to the 'permitted' Sports Hub (see for example paragraph 3.10.4 of the SoCG, CD 13.7). This public benefit could not be confirmed by the Appellant at the time the appeal was lodged because the Sports Hub application had not been considered by WDC's Planning Committee South. They also offer public benefit to other non-car users in the A271 corridor.
- 4.17 Given that WDC has now decided in principle not to contest its original reason for refusal 3 related to the non-car accessibility of the site, presumably on the basis of the Sports Hub decision, recent bus service improvements along the A271, and the content of the Transport and Highways SoCG (including the confirmed transport related heads of terms for a section 106 agreement as set out in section 5 of the SoCG between the Appellant and local highway authority), it is surprising that no commentary is provided whatsoever in Mrs Turner's evidence in relation to the Sports Hub, bus services and/or the weight in the planning balance that should be given to the wider public benefits of the proposed non-car accessibility improvements.

5. HELLINGLY NEIGHBOURHOOD PLAN POLICIES

- 5.1 Mrs Turner has referenced HNP Policies LHB1 and LHB2 in her evidence, for example in relation to policy on building height (paragraph 6.43 of CD 13.11).
- 5.2 I consider that the appeal site does not lie within the 'Village Area' as shown in Map 4 on page 65 of the HNP (CD 5.4) and therefore policies LHB1 and LHB2 are not generally applicable. Exceptions to this are parts iii) and iv) of LHB1 which are relevant in terms of protecting the historic development pattern of the village, key views and the sense of openness and rural character of the setting of the settlement.
- 5.3 The appeal proposals respect the separate identity of the village which the HNP seeks to protect and are spatially detached from it by the absolute constraint of the river flood plain. Unlike the residential developments WDC has approved that adjoin the north-western and north-eastern sides of the village, the proposals do not extend development into a more open and rural countryside landscape to the north.
- 5.4 Notably, the appeal proposals also provide structural landscape provision that responds positively to the wider policy objectives of the HNP, including HNDP4 Green and Blue Infrastructure and HNDP5 Biodiversity which aren't referenced in Mrs Turner's proof of evidence.
- 5.5 At paragraph 6 of the HNP it is recognised that Hellingly parish lies on the edge of the rapidly expanding town of Hailsham and that there is a challenge in meeting the broad HNP objectives and the wider needs in Wealden District. Whilst emphasising that development plan policies are out of date in terms of Wealden District's housing provision, I consider that the appeal proposals offer a balanced approach to meeting objectively assessed growth needs in a suitable location whilst seeking to respond positively to HNP policies and objectives.

6. CHARACTER AND IDENTITY OF THE LOCAL AREA

- 6.1 Reflecting overall on the evidence of Mrs Turner and Ms Bolger, I strongly disagree that there is a clear distinction between 'rural' and 'urban' in this location or that the proposals will be isolated or fail to belong to the local area.
- 6.2 Paul Warren and I share the view that the immediate landscape / townscape setting of the appeal site can be characterised as a fairly self-contained urban fringe character area including river corridor landscape of pleasing but not extraordinary quality. It comprises the following main elements:
- Built development adjoining Boship roundabout
 - The boundaries of the A22 and A271 (which have largely severed the character area from wider countryside to the west and north)
 - The Appellant's other field landholding along the river
 - Built form on the western and southern sides of Lower Horsebridge village, and
 - The northern edge of the Welbury Meadows development and Cuckmere Close, which overlook the village and river and contribute riverside vegetation. They define the southern extent of the character area.
- 6.3 From spending time in and around the area I suggest that the most notable characteristics of the surroundings are:
- The green appearance of the landscape
 - Built development / roads around its edges
 - Relatively high levels of traffic and noise associated with the main roads, and
 - High levels of intervisibility across the shallow valley area (for example the pitched roofscape of the Welbury Meadows residential development is visible in the background from most parts of character area).
- 6.4 To mixed levels of success, the design of the built form of the Welbury Meadows development has taken cues from 'positive' / vernacular buildings in the immediate local area. Welbury Meadows also contributes to the landscape surroundings through its naturalistic riverside planting. This provides stronger connection of the development with the character area and reinforces that it is part of the locally distinctive identity (see photographs below).



Vernacular buildings at A271, Lower Horsebridge,
(Pay Gate Cottages bus stop)



Terrace of town houses and apartments at Hawksley Crescent,
Welbury Meadows



Boship Farm Hotel, adjoining Boship Roundabout



Apartments at Berkley Avenue, Welbury Meadows



Semi natural landscape planting on the edge of the river corridor,
Welbury Meadows.
(Photograph taken from the southern edge of the appeal site, looking south).

- 6.5 The appeal proposals will not harm the edges of well-defined settlements or intrude into open countryside. I consider that, subject to a well-considered detailed design approach, the development of the appeal proposals will be consistent with the prevailing character of the area and not appear out of place.
- 6.6 Whilst proposed development of the appeal site will reduce the overall area of open green land in the character area and remove views over a field from roads in the vicinity of the Boship roundabout, it is considered that the appeal proposals can make a positive environmental contribution to the area in respect of ecological enhancement, increased public access to (and appreciation of) the river corridor, the amount and quality of accessible amenity greenspace available locally, mitigating road noise (principally by reducing traffic speed along the A271 and using buildings as road noise shields) and by making walking and cycling through the area more attractive.
- 6.7 Importantly, the proposed development will be wholly consistent in principle with the local character area as defined above and, if the buildings and greenspace are well designed at detailed stage, provides opportunities to enhance the amenity and attractiveness of north west Hailsham. In the context of other local developments now proposed by WDC this is a positive approach to planning and managing change in the area.
- 6.8 I note that the Appellant attempted to engage positively with WDC at pre-application stage and then subsequently before the determination of the

application (see for example CDs 12.2 and 12.3). Whilst officers have not felt able to respond positively the Appellant remains keen to secure the optimum benefit from development at its landholding, including the further environmental and recreational potential of the riverside land in its ownership which forms a major constituent part of the local character area.