

PLANNING OBJECTION

Application Reference: RR/2020/1562/P

Proposed 29 no. new dwellings and 1 no. communal building, all with parking and new access from The Green and Church Road.

The Brooks, Church Road, Catsfield, TN33 9DP

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Appendix 1 – Photographs provided by Parish Council

1 INTRODUCTION

Instructions

- 1.1 AH Planning has been instructed by Catsfield Parish Council to submit comments to Rother District Council in relation to planning application ref. RR/2020/1562/P at the Brooks, Church Road, Catsfield, TN33 9DP.
- 1.2 Catsfield Parish Council wishes to **strongly object** to the planning application and has instructed us to consider the papers, including the planning application form and supporting documents, against the relevant national planning policy and guidance and the Local Plan. The Parish Council has significant concerns about the proposed development and has instructed us to consider the substance of the application and submit representations as appropriate.
- 1.3 The Parish Council is disappointed that no pre-application advice was sought by the applicant prior to the submission of this planning application. This is particularly surprising given that the applicant has accepted the proposals are not in accordance with the Local Plan, and the unfavourable findings of the 2013 SHLAA.
- 1.4 Having reviewed the papers we have no option other than to object to the proposal, which would lead to unacceptable adverse impacts, contrary to the relevant policies in the Local Plan and the NPPF. The harms would, in our view, clearly and demonstrably outweigh the public benefits of the proposal, even with the 'tilted balance' engaged.
- 1.5 Furthermore, as submitted, the application does not provide sufficient information to consider the full impacts of the proposal. Should the applicant fail to provide this information (see section 2), the application should be refused.

Description of Development

- 1.6 The description of development is as follows:

“Outline: Proposed 29 no. new dwellings and 1 no. communal building, all with parking and new access from The Green and Church Road.”

- 1.7 The applicant has selected 'layout' as a matter to be determined on the application form (see section 2 below), however the applicant's planning statement refers to this as a reserved matter. It is assumed that this is a reserved matter, if this is not the case and layout is to be determined, then we would ask that the description of development is amended, and new forms submitted for re-consultation.

Government Advice and Local Plan Policy

- 1.8 In preparing the comments made within this report, we have considered the papers submitted with the application, including the planning application form, and supporting documents, against the relevant national and local planning policy and guidance.

Principle of Development

- 1.9 It is considered that the proposed development is unacceptable in principle in that it is in clear conflict with the policies in the adopted Local Plan and the NPPF (as detailed in Sections 3 and 4 of this document).

Procedural Matters

- 1.10 It is our contention that on the evidence submitted to date, the Applicant has failed to provide sufficient supporting information to judge the impact of the proposals. Further, that the Applicant has failed to understand and consider the issues; as such any grant of consent (based on that failure) may well fall foul of the tests laid out in the Crown Estates case mentioned below and, if approved, may well be susceptible to a claim for Judicial Review. As you will appreciate, the matter of fairness in the determination of planning applications is discussed at [2004] J.P.L. 1316 with particular reference to *Auborn Court Ltd v Kingston and St. Andrew Corporation* [2004] WLR 62219 and *R. (on the applicant of David Rubin) v First Secretary of State, Harrow London Borough Council*, 9 February 2004. Whilst we have every confidence in the Council's diligence in processing this application, I am instructed to evaluate the process against the legal requirements detailed in the above cases.

2 FURTHER INFORMATION REQUIRED

Further Information required by the Local Planning Authority

2.1 The local planning authority may direct an applicant in writing to provide officers with any evidence in respect of the application, as is reasonable for them to call for, to verify any information given to them. If the direction is not complied with, the application is incomplete, and the local planning authority should notify the applicant accordingly. We formally request the following documents:

- **Application Form, Question 4** – The Applicant has selected ‘layout’ as a matter to be determined, however the Planning Statement refers to this as a reserved matter. Clarification is urgently sought on what matters are to be determined with this planning application. If layout is to be determined, then we would ask that the description of development is amended, and new forms submitted for re-consultation.
- **Application Form, Question 12** – The Applicant has selected that there are no trees or hedgerows on the site. However, there appears to be several trees within the site boundary. The local planning authority should confirm this urgently with the applicant and request a Tree Survey where appropriate.
- **Application Form, Question 13a** – The Applicant has selected that no protected or priority species are likely to be affected. However, this is not consistent with the recommendations in the submitted Preliminary Ecological Appraisal. This application should not be determined by the local planning authority until all ecology surveys and mitigation are available.
- **Application Form, Question 17** – The Applicant has selected that there will be 2 no. employees from the proposed development and has included opening hours on the application form. However, there is no information submitted with the Application on the use of the ‘community building’. It is not possible, on the basis of the information submitted, to understand the nature of the proposals and the impacts without this information.
- **Access** – The application is submitted with access to be considered, however the submitted plans do not provide access drawings or information on visibility splays or pedestrian access. As currently submitted, the application fails to provide sufficient information for approval of site access.
- **Flooding** – The submitted drainage strategy suggests that the SuDS attenuation ponds are to be located on the existing watercourses within site. We share the concerns raised by the Pavensey and Cuckmere Drainage Board that this is not an acceptable solution given existing flooding pressures in the area, and that these watercourses also receive surface water run-off from Church Road and The Green.

Inchoate Application

2.2 Under s.327A (2) introduced by s.42 of the Planning and Compulsory Purchase Act 2004:

“The Local Planning Authority must not entertain such an application if it fails to comply with the requirements.”

2.3 ‘The requirement’ in this case is the formal manner in which the application must be made and the formal content of any document or other matter which accompanies the

application. As detailed above, we would contest that the application, in its current form, is inchoate and does not provide sufficient information to give decision takers or neighbouring residents a clear understanding of the proposals. We would therefore ask that the Council refuse consent, in circumstances where the Applicant has submitted an application that does not meet “the requirements”, having regard to the referable tests set out in the statutory development plan.

3 NATIONAL PLANNING POLICY FRAMEWORK

- 3.1 The National Planning Policy Framework (NPPF) was published by the Ministry of Housing, Communities and Local Government in February 2019. The key paragraphs of relevance to the determination of this application are discussed in this section.

Achieving Sustainable Development

- 3.2 **Paragraph 8** states that achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

c) an environmental objective – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

- 3.3 Comment: As will be set out within this objection, there are significant social and environmental harms that clearly and demonstrably outweigh the public benefits of the proposal. These include landscape harm and harm to the setting of the village, harm to the setting of heritage assets and harm in relation to ecology. For these reasons, the application proposal can not be said to represent sustainable development.

Making Effective Use of Land

- 3.4 **Paragraph 117** states that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously developed or 'brownfield' land.

- 3.5 **Paragraph 118** outlines that planning policies and decisions should:

a) encourage multiple benefits from both urban and rural land, including through mixed use schemes and taking opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access to the countryside;

b) recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production;

c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;

d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure); and

e) support opportunities to use the airspace above existing residential and commercial premises for new homes. In particular, they should allow upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers.

3.6 **Paragraph 122** outlines that planning policies and decisions should support development that makes efficient use of land, taking into account:

a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;

b) local market conditions and viability;

c) the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;

d) the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change; and

e) the importance of securing well-designed, attractive and healthy places.

3.7 Comment: The proposal seeks to provide 29 dwellings on a substantial site extending some 3.8 hectares in size. The proposal cannot efficiently use the land due to constraints in relation to the on-site watercourse. This additionally results in harm to the prevailing character and setting of the village, as the proposed dwellings will need to be set back from the village in a layout that does not respond positively to the current pattern of development. For these reasons, the proposal conflicts with Paragraph 122(d) and (e).

Achieving Well-Designed Places

3.8 **Paragraph 124** notes that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. 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.

- 3.9 **Paragraph 127** requires that 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;
 - b) are visually attractive as a result of good architecture, layout and appropriate and 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);
 - 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;
 - 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
 - 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; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 3.10 **Paragraph 128** states that design quality should be considered throughout the evolution and assessment of individual proposals. 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.
- 3.11 **Paragraph 130** outlines that 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. 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).
- 3.12 Comment: Notwithstanding that this is an outline planning application with all matters reserved except for access, it is still important that the proposal demonstrates that an acceptable development could be delivered on the site at the reserved matters stage. As set out above at paragraph 3.7, the site constraints – principally the watercourse – will result in a pattern of development that is not sympathetic to local character or the landscape setting.

Conserving and enhancing the natural environment

- 3.13 **Paragraph 170** states that planning policies and decisions “should contribute to and enhance the natural and local environment by:

...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”

- 3.14 Comment: The proposal fails to recognise the intrinsic character and beauty of the countryside and would lead to unacceptable harm to the rural character of this area of countryside to the south of the village. The proposal is therefore contrary to Paragraph 170 of the NPPF.

Conserving and enhancing the historic environment

- 3.15 **Paragraph 193** states that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the assets conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

- 3.16 **Paragraph 194** states that any harm to the significance of designated heritage assets should require clear and convincing justification.

- 3.17 **Paragraph 196** states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

- 3.18 Comment: The Applicant has submitted a Heritage Statement with the planning application. The Heritage Statement states at paragraph 7.3, “the proposed development will adversely impact the setting of the nearest two Listed Buildings - Brookside Datchett Dene and Pear Tree Cottage - which stand to the immediate north of the Site”. The Heritage Statement does not carry out a heritage balance exercise, as required by Paragraph 196 of the Framework. In our view, the application will lead to less than substantial harm to the significance of designated heritage assets that is not outweighed by the public benefits of the proposal, contrary to paragraph 196 of the NPPF.

Promoting sustainable transport

- 3.19 **Paragraph 108** states that in assessing applications for development, “it should be ensured that:

...b) safe and suitable access to the site can be achieved for all users”

- 3.20 **Paragraph 110** states that applications for development should “a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas... c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles”

- 3.21 Comment: As set out above in Section 2, the submitted application does not include access drawings or information on visibility splays or pedestrian access. The application proposal fails, therefore, to ensure that safe and suitable access can be achieved, and fails to create a place that is safe, secure and attractive, contrary to Paragraphs 108 and 110 of the NPPF.

4 LOCAL PLAN

- 4.1 This section considers the relevant policies of the Rother District Local Plan. At the time of writing, this comprises the Rother Core Strategy Local Plan (2014), the saved policies of the Rother District Local Plan (2006) and the Development and Site Allocations Local Plan (2019).
- 4.2 The site lies within the 'open countryside' outside the development boundary for Catsfield. The boundary for the High Weald AONB lies immediately to the north of the village.
- 4.3 It is accepted that due to the lack of a five-year housing land supply, relevant policies for the supply of housing are out-of-date. However, notwithstanding its diminished weight, the Local Plan remains the starting point for the determination of all planning applications.
- 4.4 As set out above in Section 1, The Parish Council is disappointed that the applicant has not sought pre-application advice prior to submitting this application, particularly given the unfavourable findings of the 2013 SHLAA and the policy conflict with the adopted Local Plan, which will be discussed in this section.
- 4.5 It is noted that the Council is currently in the process of preparing a new Local Plan – 'New Local Plan 2019-2039', however this is still at an early stage of preparation and is not afforded any weight at this time.

Rother Core Strategy Local Plan (2014) and saved policies of the Rother Local Plan (2006)

Overall Spatial Strategy

- 4.6 **Core Strategy Policy OSS1 – Overall Spatial Development Strategy:** Policy OSS1 sets the overall spatial development strategy for the District over the plan-period. It makes provision for some 5,700 dwellings, with development focussed on Bexhill, together with some development in Battle and Rye, and limited growth of villages.
- 4.7 **Core Strategy Policy OSS2 – Use of Development Boundaries:** Policy OSS2 states that development boundaries around settlements will continue to differentiate between areas where most forms of new development would be acceptable and where they would not. The policy states that development boundaries will be review by the Development and Site Allocations DPD. This document was adopted in 2019, and provided an allocation in Catsfield to meet the required level of growth for the village.
- 4.8 **Core Strategy Policy OSS3 – Location of Development:** Policy OSS3 sets out the criteria for assessing the suitability of particular locations for development and determining planning applications. This criterion includes consideration of the spatial strategy for the settlement and its distinct character, the character and qualities of the landscape, and any constraints to development on the site.
- 4.9 **Core Strategy Policy OSS4 – General Development Considerations:** Policy OSS4 sets out additional criteria for considering development proposals, including that it respects and does not detract from the character and appearance of the locality.
- 4.10 **Comment:** The proposed development will cause significant harm to the character and appearance of the village, by reason of its location, scale and mass. The proposal

would detract from the character and appearance of the village and the surrounding countryside, contrary to Policies OSS3 and OSS4 of the Local Plan.

Rural Accessibility

- 4.11 **Core Strategy Policy RA1 – Villages:** Policy RA1 sets out how the Council’s planning policies for meeting the needs of rural villages. It states that these will be addressed by protecting the locally distinctive character of villages and historic buildings and settings.
- 4.12 **Core Strategy Policy RA2 – General Strategy for the Countryside:** Policy RA2 sets out the Council’s overarching strategy for the countryside. This includes (viii) “generally conserving the intrinsic value, locally distinctive rural character, landscape features, built heritage, and the natural and ecological resources of the countryside”.
- 4.13 **Core Strategy Policy RA3 – Development in the Countryside:** Policy RA3 states that new dwellings will only be allowed in the countryside in ‘extremely limited circumstances’, including rural exception sites, dwellings to support farming and the conversion of farm buildings.
- 4.14 Comment: As set out above, the proposal would result in significant harm to the prevailing character and setting of the village, as the proposed dwellings will need to be set back from the village in a layout that does not respond positively to the current pattern of development. The proposal is therefore in conflict with policies RA1 and RA2 of the Local Plan.
- 4.15 The proposal lies outside of the development boundary for Catsfield, so is also contrary to Policy RA3, although it is accepted that this policy carries diminished weight owing to the council’s inability to demonstrate a five year housing land supply.

Environment

- 4.16 **Core Strategy Policy EN1 – Landscape Stewardship:** Policy EN1 states that the Council will ensure the protection and, where possible, enhancement, of the district’s landscape features, including native hedgerows, copses, field patterns, ancient routeways, ditches and barrows, and ponds and watercourses.
- 4.17 **Core Strategy Policy EN2 – Stewardship of the Historic Built Environment:** Policy EN2 relates to development proposals affecting the historic built environment, and states that such proposals will be required to reinforce the special character of the district’s historic settlements, including villages, towns and suburbs, through siting, scale, form, and design.
- 4.18 **Core Strategy Policy EN3 – Design Quality:** Policy EN3 states that proposals for new development will be required to be of high design quality and contribute positively to the character of the site and its surroundings
- 4.19 **Core Strategy Policy EN5 – Biodiversity and Green Space:** Policy EN5 sets out a series of ways in which biodiversity, geodiversity and green space will be protected and enhanced. Criteria (viii) states that the Council will ensure that development retains, protects and enhances habitats of ecological interest, including ancient woodland, water features and hedgerows, and provides for appropriate management of these features.
- 4.20 Comment: The proposal would represent a significant encroachment into the countryside and cause harm to the setting of the village, clearly visible from the road

frontage on Church Road. The rolling agricultural character of the site, which is a key feature of the Local Landscape Character Area, would be lost. The harm to the landscape and the setting of the village should be afforded significant weight in the overall planning balance. For these reasons, the proposal is in conflict with Policy EN1 and EN3 of the Local Plan.

- 4.21 In relation to biodiversity, the proposal is not accompanied by the required reports and mitigation to ensure that it would protect and enhance habitats of ecological interest, contrary to Policy EN5.
- 4.22 In relation to stewardship of the historic environment, the applicant accepts that the proposal would adversely impact the setting of the nearest two Listed Buildings - Brookside Datchett Dene and Pear Tree Cottage. In our view, the application will lead to less than substantial harm to the significance of designated heritage assets that is not outweighed by the public benefits of the proposal, contrary to Policy EN2 and Paragraph 196 of the NPPF.

Services and Facilities

- 4.23 **Core Strategy Policy CO1 – Community Facilities and Services:** Policy CO1 states that the Council will permit new community facilities in appropriate locations where they meet identified community needs, having regard to population characteristics, Local Action Plans and recognised standards of provision.
- 4.24 The application proposal includes a community building, however no further information is provided within the documents as to the nature of this building, and no information is provided on the ‘identified community need’ for this building. As such, this element of the proposal should be apportioned no weight in the overall planning balance.

Transport and Accessibility

- 4.25 **Core Strategy Policy TR3 – Access and New Development:** Policy TR3 states that new development should minimise the need to travel and support good access to employment, services and community facilities, as well as ensure adequate, safe access arrangements.
- 4.26 The application is submitted with access to be considered, however the submitted plans do not provide access drawings or information on visibility splays or pedestrian access. As currently submitted, the application fails to provide sufficient information for approval of site access, contrary to Policy TR3 of the Local Plan.

5 PLANNING COMMENT – PRINCIPLE OF DEVELOPMENT

- 5.1 Section 38 (6) of the Town and Country Planning and Compulsory Purchase Act 2004 places a statutory duty on local planning authorities to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.
- 5.2 At the time of writing, the development plan comprises the Rother Core Strategy Local Plan (2014), the saved policies of the Rother District Local Plan (2006) and the Development and Site Allocations Local Plan (2019).

Location and Project

- 5.3 There is an elementary and fundamental problem which needs to be resolved at the outset in the making of decisions under s.38 (6). The first point is often determinative – location comes first followed by project because an examination of for example; the National Planning Policy Framework demonstrates that location governs what might or might not be granted permission in the area concerned.
- 5.4 In this regard, Policy OSS3 is particularly referable, in circumstances where it not only addresses the issue of a sustainable location, but also site size and relationship with the local area which is directly referable to the scheme currently under consideration. In view of this, it is imperative that the proposal meets the Council's requirements, as laid out at Policy OSS3, detailed at Section 4 of this objection.
- 5.5 The 'project' in this instance is contrary to the provisions of the National Planning Policy Framework and the policies contained within the Local Plan as outlined at Sections 3 and 4 of this submission.

Statutory Development Plan

- 5.6 The statutory Development Plan comprises the Rother Core Strategy Local Plan (2014), the saved policies of the Rother District Local Plan (2006) and the Development and Site Allocations Local Plan (2019). The principle of development falls to be considered against Policies OSS2, OSS3, OSS4, RA1, RA2, RA3, EN1, EN2, EN3, EN5 and TR3. All of these policies are dealt with in detail at Section 4 of this Statement and are contained within the draft reasons for refusal included at Section 6.

Summary

- 5.7 Given that the proposal does not constitute sustainable development and the criterion set out in Policies OSS2, OSS3, OSS4, RA1, RA2, RA3, EN1, EN2, EN3, EN5 and TR3 of the adopted Local Plan are not met, there is a legitimate expectation, based on Section 70(2) of the Town and Country Planning Act 1990, Section 38(6) of the Planning and Compulsory Purchase Act 2004 that the proposed development will be refused. The matter of other material considerations is dealt with in Section 7.

6 DRAFT REASONS FOR REFUSAL

- 6.1 As detailed throughout this objection, we consider that this application should be refused. To assist officers, please refer to the following draft reasons for refusal, which we consider summarise the key points raised within this document. They read as follows:

Reason for Refusal 1 – Landscape

The proposed development will cause significant harm to the character and appearance of the village, by reason of its location, scale and mass. The proposal would detract from the character and appearance of the village and the surrounding countryside and cause harm to local amenity, contrary to Policies OSS3, OSS4, EN1, EN3, RA1, RA2 and RA3 of the Local Plan and Paragraph 170 of the NPPF.

Reason for Refusal 2 – Ecology

The application fails to demonstrate that the proposal would protect and enhance habitats of ecological interest, contrary to Policy EN5 of the Local Plan and Paragraph 170 of the NPPF.

Reason for Refusal 3 – Heritage

The proposed development will lead to less than substantial harm to the significance of designated heritage assets Brookside Datchett Dene and Pear Tree Cottage that is not outweighed by the public benefits of the proposal, contrary to Policy EN2 and Paragraph 196 of the NPPF.

Reason for Refusal 4 – Access

The proposal does not provide the required detail on vehicular and pedestrian access. The application proposal fails, therefore, to ensure that safe and suitable access can be achieved, and fails to create a place that is safe, secure and attractive, contrary to Policy TR3 of the Local Plan and Paragraphs 108 and 110 of the NPPF.

Reasons for Refusal Comment

- 6.2 It is considered that the reasons outlined above are robust reasons for refusal, given that the development is contrary to the Local Plan and the National Planning Policy Framework. In circumstances where these considerations have been reflected in the above reasons, we would ask that the Council implement these as part of the 'Refusal of Planning Permission' notice.

7 PLANNING COMMENT – OTHER MATERIAL PLANNING CONSIDERATIONS

- 7.1 **Principle of Development - Other Material Considerations:** Where there are other material considerations which ‘indicate otherwise’ the development plan should nevertheless be the starting point, and those other material considerations weighed in reaching a decision. The issues involved are dealt with in the decision of the House of Lords in *City of Edinburgh Council v Secretary of State for Scotland* [1998] J.P.L. 224, HL. We have been asked to establish, in due course, whether the Council has had regard to the presumption in favour of the development plan, whether the other considerations which the Council regarded as material were relevant considerations to which they were entitled to have regard and whether, looked at as a whole, the decision is rational. Having reviewed the application it would be difficult to conclude other than the material considerations cited are of sufficient weight to override the fact that the development is not in accordance with the adopted development plan.
- 7.2 **Material consideration: sustainable development:** Sustainable development is a cornerstone of Government policy and is always a material consideration. It was held in *Aldi Stores Ltd and British Gas plc v Secretary of State for the Environment and Daventry DC* (1996) J.P.L B93 that an inspector was entitled to find that there would be demonstrable harm in respect of proposals contrary to sustainability policies and the effects on local amenity. As laid out at Section 3 and 4, the development fails to demonstrate a sustainable form of development and as such should be refused outright.
- 7.3 **Loss of visual amenity:** As correctly noted by the applicant in the Planning Statement, no one has a legal right to a view under the English planning regime. However, damage to the visual amenity of a locality is a material consideration, such as a building totally out of keeping with the surrounding area. In *Worcester City Council v Worcester Consolidated Municipal Charity* (1994) 9 P.A.D. 723 an inspector upheld the refusal of an application where the scale and location of the proposal would have a serious detrimental effect on the visual amenities of the locality.
- 7.4 **Decision Making: Planning Balance:** In addition to those matters relating to decision making, such as the development plan and sustainable development, there is inevitably a balancing exercise to be carried out; few decisions are free of such an approach. The phrase “overall-advantage” reflects this balance; the decision-maker must attach what weight they consider appropriate to the material consideration in question. The so-called “overall-advantage” is nothing more than the weighing of often disparate planning considerations so that it can be said that the advantages outweigh the disadvantages, or the reverse.
- 7.5 In this case, there are adverse impacts that would significantly and demonstrably outweigh the benefits of the proposal. We would therefore kindly request that the application be refused outright.
- 7.6 **Failure to take account of relevant matters:** There are several referable cases where there has been a failure to take account of the relevant matters two of which are noted, namely:

- 7.7 **Tameside Metropolitan Borough Council v Secretary of State for the Environment (1984) J.P.P. 180** It was alleged on appeal to the High Court that the Inspector had erred in law in that he had failed to take into account a material consideration, namely matters relating to traffic and other consequences likely to flow from the granting of planning permission. Held that the decision letter did not deal with the traffic issues raised at all, except referable in one sentence and thus a substantial point had not been properly dealt with. The decision was quashed.
- 7.8 **Crown Estates Commissioners v. Secretary of State for the Environment and Holderness Borough Council (1994) J.P.P B113** Where there is evidence on a material issue, it is incumbent upon the Council to make a finding on that evidence, within reason. Further, the Council must be in a position to understand all live issues and thus be able to deal with them accordingly.
- 7.9 The decision-maker ought to take into account a matter, which might cause him to reach a different conclusion from which he would reach if he did not take it into account. Where statute obliges the decision-maker to take a matter into account, it is a matter of law whether or not it was done. *Bolton Metropolitan District Council v. Secretary for the Environment (1991) J.P.L 241*. This report details those matters, which the applicant has failed to deal with adequately, and failings in the applications.
- 7.10 It is our concern on the evidence submitted to date, that the Applicant has failed to provide sufficient supporting information to judge the impact of the proposals in regard to particular regard to access and ecology and biodiversity. Further, the Applicant has not understood the live issues and has failed to deal with them; as such any grant of consent may well fall foul of the tests laid out in the Crown Estates case mentioned above and would be susceptible to a claim for Judicial Review if approved.

8 CONCLUSIONS

- 8.1 The Parish Council strongly objects to this poorly conceived application which has completely disregarded the provisions of the National Planning Policy Framework and the Local Plan. The proposed development would result in a significant encroachment into the countryside to the detriment of the character and setting of the village. In addition, the application fails to demonstrate that a development of this scale could be delivered on the site without giving rise to additional harmful impacts in relation to highways and road safety, heritage and ecology and biodiversity.
- 8.2 In view of the above we trust that the application will be refused outright. Should additional information be submitted, or a revised scheme be prepared, we would ask that third parties be given further opportunity to comment as necessary.
- 8.3 We would be grateful if you could confirm receipt of this objection and the likely timeframe for determination of the application.

Appendix 1

Photographs provided by Parish Council



Figure 1 - Surface Water Flooding on Church Road



Figure 2 - Surface Water flooding on Church Road



Figure 3 - Standing surface water on southern site boundary



Figure 4 - Standing surface water on site



Figure 5 – Landscape views of the site



Figure 6 – Landscape views of the site



Figure 5 – Landscape views of the site



Figure 8 – Landscape views of the site



Figure 9 – Landscape views of the site