



Our Ref: GHC/GoldenXcarparkresub

BY EMAIL ONLY – FAO RALPH FORDER

Planning & Building Control Service

Wealden District Council
Council Offices
Vicarage Lane
Hailsham
East Sussex
BN27 2AX

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990
ERECTION OF TERRACE OF FIVE TWO STOREY DWELLINGS WITH PARKING AND
AMENITY SPACE.
FORMER GOLDEN CROSS INN CAR PARK, DEANLAND ROAD, GOLDEN CROSS,
CHIDDINGLY, BN27 4AW
WEALDEN REFERENCE WD/2020/0249/F**

This letter is being submitted to supplement and update the material which accompanied the planning application in January. It has the specific purpose of elaborating on and considering further the inter-relationship between the pronouncements of three Inspectors:

1. Appeal APP/C1435/W/17/3180696 – appeal allowed by Inspector Ayres for four units on a site close to the current application site (the Ayres decision).
2. Appeal APP/C1435/W/19/3223713 – dismissal of an appeal relating to an application identical to this in November 2019 by Inspector Crouch (the Crouch decision).
3. Conclusions of Inspector Nurser on the soundness of the emerging Wealden District Local Plan dated 20th December 2019 (the Nurser decision).

I set out the key matters and issues identified by each and their conclusions on those points first and then move to a comparison of their findings and what the outcome is in terms of the proper context for the consideration of the current application.

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Finally, we address the housing land supply position as set out in the Authority Monitoring Report and including the recent letter from the Ministry for Housing, Communities and Local Government (MHCLG) to the District Council relating to Housing Delivery over 2019 and the conclusion that there was a shortfall with only 87% delivery of requirement (revised up from the February figure of 83%).

1. THE AYRES DECISION

Inspector Ayres identified the main issue at paragraph 3 of the decision letter as:

"whether the site is in a suitable location for development, having regards to the principles of sustainability."

In that Inspector's view, Golden Cross falls within the "other unclassified settlements category" in the context of 2013 Core Strategy Policy. The Inspector identified availability of public transport (bus) along the A22, a benefit to which "moderate weight" was attached (paragraph 5). However, a generally low level of access in terms of a range of modes was found (paragraph 6) which "weighed against the proposal".

In paragraph 8 the Inspector turned to the critical issue of the adequacy of the housing land supply noting that it was accepted by the local planning authority that this was inadequate. The appeal therefore fell to be considered in the context of paragraphs 49 and then 14 of the then National Planning Policy Framework (the Framework). The conclusion is set out in the remainder of that paragraph and paragraph 9, with further balancing in paragraphs 10 and 11. It concluded that:

- i) While the proposal conflicted with development plan policies, because these "would prevent improvements to the shortfall in the supply of housing", then "limited weight to the conflict with them" arose.
- ii) "High dependency upon the use of private vehicles" and "relatively limited" employment opportunities carried "substantial weight."
- iii) Paragraph 11 sets out a series of circumstances weighing in favour of the proposal and again "substantial weight" was attached to these.



Overall, (paragraph 23), Inspector Ayres found that the appeal proposal:

"conflicts with the WLP and WSCLP in respect of the strategy for delivering housing in suitable locations. However, in the particular circumstances of this appeal I find that overall the adverse impacts identified above do not significantly and demonstrably outweigh the social and economic benefits. Consequently the presumption in favour of sustainable development applies. In this case, it is a material consideration which outweighs the conflict with the development plan as a whole and indicates that planning permission should be granted for development that is not in accordance with it."

Inspector Ayres found no reason not to, in effect, apply the "tilted balance" and granted planning permission.

2. THE CROUCH DECISION

This was issued almost two years after the Ayres decision during which time there had been progress on but no resolution of the emerging Wealden Local Plan and so little weight was attached to **the policies** (my emboldening) of the emerging Plan. Inspector Crouch identified main issues at paragraph 6 as:

- "• whether the principle of residential development is acceptable having regard to local planning policy, and*
- the in combination effects of the proposal on the Ashdown Forest designated Special Area of Conservation (SAC), and Lewes Downs SAC."*

While recognising the "variety of uses" in the immediate vicinity and so the location as an "unclassified settlement" he found the site nonetheless to be "within the countryside". He too identified conflicts with development plan policies.

The essential difference in approach in relation to "the planning balance" was that in relation to issues concerning habitat protection and the *"internationally important ecological designations"* Inspector Crouch adopted (paragraph 16) the *"precautionary principle"* and that consequently *"adverse effects must be assumed"*. Notwithstanding the scale of the proposal he concluded that:



"Evidence before me indicates that there is potential for habitat degradation within the SACs through air pollution associated with the proposed development, which has the potential to affect the integrity of the SACs. The proposal would therefore be contrary to Policy WCS12 of the CS which seeks to ensure development does not have an adverse effect on the integrity of the Ashdown Forest Special Protection Area of Conservation."

On that basis he concluded that the "tilted balance" should not be applied:

"when the proposal is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects) without an appropriate assessment concluding that the project will not adversely affect the integrity of the habitats site, which is not the case in this decision."

It is clear from the evidence on that appeal that Inspector Crouch adopted the position of the Council as presented through the Local Plan, on these issues notwithstanding that the matters had yet to be concluded upon. He therefore accepted the Wealden approach on impacts on the Ashdown Forest SAC and so the logic to his approach to determination and the refusal is discernible.

3. THE NURSER DECISION

As you know this is a decision on the soundness of the emerging Local Plan, at Examination at the time of the Crouch decision, and so does not make any site-specific comments. However, the general conclusions establish what is, in effect, the appropriate approach to and the context for development management in Wealden.

Having set out the broad principles required by the Framework for development plan preparation and the "Duty to Co-operate", the Inspector set out what she identified as the main issue at paragraph 4:

"My central concern in respect of the legal compliance of the plan relates to the lack of constructive engagement with neighbouring authorities and Natural England in respect of impacts on habitats and landscape and in respect of the issue of unmet housing need in Eastbourne."



Two particular points emerge. The more fundamental is the position reached on habitat impacts (a basic consideration for Inspector Crouch). In paragraphs 6, 7, 8, and 9 specifically, Inspector Nurser sets out inherent problems with the Wealden approach before setting out her conclusion in paragraph 10 which merits reproduction in full (my underlining):

"The Council's approach was not justified on any reasonable assessment of the evidence. The Council chose not to follow Natural England's advice in this regard. Whilst the Council may be entitled to take a different view from the advice of a nationally important body and an acknowledged expert in the subject, it needs to support its position with adequate evidence. It did not do so but instead took a position which was in scientific terms lacking in credibility. In coming to this conclusion, I have carefully considered the detailed critique by Professor Sutton of both the Council's and other's evidence. However, it is clear that there is a significant problem with the substantial evidence base which supports the HRA and therefore the LP is not justified even if I had concluded that the DtC had been met." (DtC – Duty to Co-operate).

The second point is where Inspector Nurser goes on at length to criticise the approach to the DtC more generally and including whether it would have been possible for the emerging Plan to address the unmet needs of adjoining Eastbourne District. Paragraph 31 includes overarching statements relating to the strategy of the emerging Plan to the quantum of development that should be accommodated and locations where this could be achieved:

"...it is not possible to escape the conclusion that, had the Council properly engaged with and heeded Natural England's advice and had the Council properly involved itself in a constructive discussion with neighbouring authorities about both the impacts of the plan and the ability to help in meeting Eastbourne's unmet housing need, the overarching development strategy of the submitted LP – the planned quantum and distribution of development, and whether the Council considers itself to be in a position to be able to take any of Eastbourne's unmet housing needs – could have been different. As has been shown, the Council chose not to accept the advice of Natural England in respect of emissions modelling but selected a model which failed to take into account known factors influencing future emissions. This approach, by overstating future emissions and hence likely effects on the Ashdown Forest and potentially other SACs, has had the potential to magnify constraints,



constrain development potential and so inappropriately influence possible development scenarios." (My underlining)

Inspector Nurser concluded and advised that the Local Plan was not able to proceed further in Examination and in February 2020, the District Council formally withdrew the Plan.

4. CONCLUSIONS AND IMPLICATIONS

The two Section 78 decisions referenced above were determined differently essentially as a consequence of contrasting conclusions on the appropriateness and effect of applying the "tilted balance". This itself arose from the different information available on and the status of that information relating to potential impacts on Air Quality and of these on specially protected habitats, notably the Ashdown Forest.

Inspector Ayres was presented with **NO** evidence suggesting that there would be adverse impacts on protected habitats. Consequently, given an acknowledged inadequate housing land supply, the Inspector followed the approach that the development plan was not up to date and granted planning permission. It is relevant that this decision was made some time after an identical proposal was dismissed at appeal under a different housing land supply context – the tilted balance for Inspector Ayres inevitably weighed heavily in favour of the appeal proposal.

The situation on this point was fundamentally different for Inspector Crouch. The emerging Local Plan was at that time at Examination and the District Council was leading evidence to Inspector Nurser on the basis of its assessment of Habitat impacts and presented that evidence to Inspector Crouch. Inspector Crouch had before him submissions made on behalf of this applicant that because of the fundamental conflict between Wealden and Natural England (and others) he should not apply weight to the Wealden position but in the absence of a resolution of the issue and indeed with no contrary technical evidence presented in the appeal context then the Framework advice took him to find against the proposal at that time.

The crucial change now is that Inspector Nurser has concluded unequivocally against the Wealden position and found their scientific evidence and so the policy approach based upon it to be unsound. The District Council have not challenged this and have withdrawn that



emerging Local Plan. The conclusion on the tilted balance must therefore now revert to that as adopted by Inspector Ayres.

5. FIVE YEAR HOUSING LAND SUPPLY AND THE HOUSING DELIVERY TEST

The latest published Council position is taken from the 2018 /19 Authority Monitoring report which shows a five year supply of 3.67 years or 73.4% of requirement. That report stressed that with the emerging Local Plan going to Examination it was likely that the figure would change. However, that Plan has been withdrawn and so the 3.67 year figure is most recent and appropriate and so the position in relation to the tilted balance remains as set out above.

The outcome of the Housing Delivery Test for Wealden, as updated, was a delivery of 87% of requirement over the preceding three years and so the Council now has to prepare a Housing Action Plan to demonstrate how they will address the housing supply shortfall. While the Framework indicates that the position on the Delivery Test can also be a basis to introduce the tilted balance, the five year supply shortfall remains the key. Given that, as the latest Authority Monitoring Report stated, it will be a new Local Plan that allocates new sites and will be the basis for meeting the housing land requirement there is no certainty over the time period that will be required for changing this position.

In these circumstances the same presumption as found by Inspector Ayres must apply.

If there is any additional information required or matters you wish to discuss please do not hesitate to contact me.

Yours faithfully

A black rectangular box redacting the signature of Graham Connell.

Graham Connell
Director
WYG Environment Planning Transport Limited