
Appeal Decision

Site visit made on 1 October 2025

by **L Francis BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13th November 2025

Appeal Ref: APP/U1430/W/25/3361707

Land to south of Burgh Hill, Hurst Green TN19 7QX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr M Skinner, Landstrom Group Ltd against the decision of Rother District Council.
 - The application Ref is RR/2023/2540/P.
 - The development proposed is an outline application for up to 7 dwellings and associated infrastructure with all matters except for access reserved for future consideration.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted an outline application with detailed plans in relation to access only. I have therefore determined the appeal on the basis that appearance, layout, scale and landscaping would be reserved matters. The appellant has submitted indicative plans to show how up to 7 dwellings in the site would potentially be arranged, including circulation space, garages and gardens. These drawings are for illustrative purposes only.
3. The appeal is accompanied by a planning obligation in the form of a Unilateral Undertaking (UU) dated 18 June 2025 to secure affordable housing and a scheme of Biodiversity Net Gain (BNG). I have had regard to the obligation in my consideration of the appeal. Although the planning application was not refused on the basis of affordable housing provision, the Council has objected to the provisions of the UU in this respect. I shall therefore deal with this as a main issue.
4. Since the planning application was refused, the appeal site has been removed as a housing site from the referendum draft of the Hurst Green Neighbourhood Plan (NP). The draft NP has been confirmed to meet the basic conditions and will proceed to a referendum to be formally made. Given the advanced stage, I attach substantial weight to the policies of the referendum version of the plan.
5. In 2023, designated Areas of Outstanding Natural Beauty in England and Wales became "National Landscapes". The appeal site falls within the High Weald Area of Outstanding Natural Beauty (the AONB) which has become the High Weald National Landscape (HWNL).
6. Section 245 of the Levelling Up and Regeneration Act 2023 (LURA) amended the duty on relevant authorities in respect of their interactions with statutory purposes of National Landscapes, as set out in Section 85 of the Countryside and Rights of Way

Act 2000 (as amended) (CRoW Act). In so far as it relates to this appeal, the amendment now requires relevant authorities “in exercising or performing any function in relation to or so as to affect land in an AONB... to seek to further the purpose of conserving and enhancing the natural beauty of the AONB”. As such, it is incumbent on me to evidence consideration of ways to further the purpose of conserving and enhancing the natural beauty of the HWNL.

Main Issues

7. The main issues are:

- whether the proposal secures adequate provision of affordable housing; and,
- the effect of the proposal on the character and appearance of the area with particular regard to the landscape, scenic and natural beauty of the HWNL.

Reasons

Affordable Housing

8. Policy DHG1(iv) (a) of the Rother Development and Site Allocations Local Plan 2019 (DaSA) requires the provision of 40% on-site affordable housing on schemes of 6 dwellings or more within the HWNL. The policy is clear that in normal circumstances, the full affordable housing obligation should be met on-site and should be secured by legal agreement to ensure nomination rights and that the affordable housing will remain available. The Council's committee report states that the required affordable housing equates to 2.8 units. As this is not a whole number, it recommends 2 dwellings should be provided on site, with a commuted sum for the remaining 0.8 units should be provided in lieu of on-site provision.
9. The policy is consistent with the Framework, which expects affordable housing to be delivered on site unless there is robust justification for off-site provision or a financial contribution. No circumstances have been presented with the appeal to indicate that off-site provision or a payment in lieu of any on-site affordable housing would be justified in this case. It is necessary to secure the provision of affordable housing at outline stage.
10. The UU allows a flexible approach, requiring the submission of a scheme to be agreed with the Council prior to the commencement of development to include the number, location, size, tenure(s), specification and timing of the dwellings to be constructed. However, the UU also allows for the affordable housing to be delivered on or off site, or in the form of a financial contribution in lieu of on-site provision. The planning obligation as submitted does not provide sufficient certainty that a policy compliant quantity of on-site affordable housing would be delivered, due to the flexibility in the drafting. I cannot be certain that the obligation would be fairly and reasonably related in scale and kind as required by Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the Framework. I shall not therefore take it into account in my decision.
11. Consequently, there would be conflict with DaSA Policy DHG1 which requires affordable housing to be provided on-site at a proportion of 40% within the HWNL.

High Weald National Landscape

12. The appeal site comprises an undeveloped field which forms a gap in the built development on the south side of Burgh Hill. Leading from the village centre, Burgh Hill itself is lined with low density linear residential development which extends either side of the appeal site as well as along the opposite side of the road.
13. The site gently slopes to the south-east, which becomes a much steeper gradient between the appeal site and the A265. The appeal site is separated from Burgh Hill by a substantial hedgerow and to its east side, the field is set above the level of the road. The hedgerow's height and density is such that views from the street over the field and rolling landscape beyond are most apparent from the more western reaches of the appeal site and in private views from the dwellings opposite. There is a Public Right of Way (PRoW) which broadly follows the western boundary of the site from which there are open views of the appeal site. Another PRoW runs to the north towards Burgh Wood, though this has restricted views of the appeal site and landscape beyond. There are more open and long-distance views from the A21 and landscape ridge to the south looking towards the appeal site.
14. The group of trees lining the eastern boundary is protected by a group Tree Preservation Order (TPO). To the western boundary, there is a line of large poplar trees which, although not protected, form a distinctive landscape feature. To the south, the evidence indicates a hedgerow once ran along this field boundary but has since been removed, although there are sporadic trees along the field line. As a result, the historic field pattern here has been somewhat degraded.
15. Planning Practice Guidance (PPG) refers to the relevance of management plans for National Landscapes for assessing planning applications. Whilst these do not form part of the development plan, they help to set out the strategic context for development and provide evidence of the value and special qualities of these areas. In this case, there is a management plan, The High Weald AONB Management Plan 2024-2029 (Management Plan), which is therefore a material consideration.
16. The Management Plan finds that the HWNL in this area is characterised by an historic and irregular field pattern surrounded by hedges and areas of dense woodland, set around a network of historic routeways. Its outstanding beauty derives from its essentially rural and small-scale landscape character, high proportion of natural surfaces, tranquillity and dark skies. Objective S1 of the Management Plan is to protect the historic pattern and character of settlements, and Objective S2 aims to ensure that development reflects the character of High Weald in its siting, scale, layout and design. The site is at the edge of the built-up area and borders other dwellings as well as open countryside; it is not in an area of unspoilt or remote character. Nevertheless, its semi-rural character and the hedgerow bordering the historic routeway of Burgh Hill contribute to the landscape and scenic beauty of the HWNL.
17. Paragraph 189 of the National Planning Policy Framework (the Framework) sets out that great weight should be given to conserving and enhancing the landscape and scenic beauty of these areas. This is supported by Policy EN1 of the Rother Local Plan Core Strategy 2014 (Core Strategy) and Policies DEN1 and DEN2 of the DaSA.
18. Although the plans submitted with the appeal are for illustrative purposes only, it would be reasonable to assume the form of development would be linear to enable the site to accommodate up to 7 dwellings. The proposed access points would be

consistent with a linear pattern of development and would reflect similar access points to dwellings on either side of Burgh Hill. The hedgerow and trees bordering Burgh Hill would be removed. The proposal would effectively continue an existing pattern of built development that is found either side and opposite the appeal site. Although private views across the HWNL from the dwellings opposite would be significantly changed, the relationship between these dwellings and those proposed would be similar to that found elsewhere along Burgh Hill. Matters of detailed design, materials, form and scale would fall to be considered at reserved matters stage.

19. The appellant's Landscape and Visual Impact Assessment (LVIA) identifies 10 key publicly accessible views from the surrounding area which I agree are representative. Of these views, 3 are identified in the LVIA as having moderate or major adverse visual effects which are judged to be significant. Each of these views is in close proximity to the site.
20. Views 1 and 2 are taken from Burgh Hill, opposite the appeal site. Whilst these are treated as static viewpoints in the LVIA, a similar effect would be apparent for the length of the appeal site and slightly beyond its east and west boundaries where there are more oblique views. View 3 is taken from the PRow looking at the site from the south-west. Again, this is a static viewpoint, and I consider a similar effect would be apparent when walking along the PRow adjacent to the site and to its south-west. In terms of the visual effect and its significance at completion of development, viewpoint 1 (for pedestrians), is judged to be a major adverse visual effect and significant. Viewpoints 1 (for drivers), 2 and 3 are judged to be a moderate adverse visual effect and significant.
21. After planting establishment (at 15 years) viewpoint 1 for pedestrians would be a major adverse visual effect and significant; viewpoints 1 (drivers) and 2 would be moderate adverse visual effect and significant. Viewpoint 3 would be slight to moderate visual effect and significant. I agree with this assessment both at completion and as a residual effect after planting establishment on the basis that planting would have matured and softened the effects of the scheme on views from close quarters.
22. My attention has been drawn to views across the valley, in particular, from the allotments adjacent to the A21. The zone of theoretical visibility extends from viewpoint 8 south-west across fields and the wooded ridge. I viewed the site from the footway adjacent to the allotments, and whilst walking north towards Hurst Green from the allotments. I consider this would be a similar effect to viewpoint 8 in the LVIA. The appeal site would be clearly visible, but the views would be at a significant distance. There would be a perceptible change to the view as a result of the appeal scheme, but given the distance involved, I agree with the LVIA assessment that as a residual impact (15 years following planting) there would be a minor adverse visual effect which is not significant. The implications for the wider landscape from this aspect would be limited as the housing would be a minor component of the overall landscape scene in these views.
23. The removal of the hedgerow and its replacement with a footpath would have a suburbanising effect on the immediate street scene. However, this would be a localised effect along a stretch of a road which already has residential development to either side and opposite. There is already a pedestrian footway to the eastern reaches of Burgh Hill; it would not be a feature that would be alien to the character of the surrounding area.

24. As identified above, the landscape effect would be a clearly perceptible, long-term change to an area of countryside that makes a contribution to the local landscape character and consequently to the HWNL. The most significant visual effects however would be restricted to highly localised views from Burgh Hill itself, and the PRoW to the south-west, as well as from surrounding private gardens and dwellings.
25. Mitigation is proposed in the form of a replacement native species hedgerow, set back from the proposed footway and punctuated by the access points. The hedgerow would extend along the other boundaries of the site, and the hedgerow would also be reinstated along the boundary between the appeal site and the lower, more steeply sloping field. The proposal includes the planting of native heavy standard oak trees either side of the access points, to form a connected tree canopy to assist in habitat connectivity. Additional tree planting would take place across the site. The mitigation measures would need to be specified and agreed in detail through the use of conditions including a landscape and ecological management plan, had the appeal been allowed.
26. In conclusion on this main issue therefore, I find that the effect on the HWNL would be highly localised and the key characteristics of this area of the HWNL in terms of a rolling landscape of irregularly shaped fields and ridge-top settlements, would be conserved. Given the proposal's proximity to other dwellings, there would not be a harmful effect upon the dark skies or tranquillity of the HWNL. As such, with the mitigation measures in place, the landscape, scenic and natural beauty of the HWNL would be conserved and the proposal would accord with Section 85 of the CRoW Act, as amended by LURA.
27. The proposed development would be consistent with the objectives of the Management Plan. It would be in line with the aims regarding the built and natural environment of the district, particularly to the HWNL, as expressed in Core Strategy Policy EN1 and DaSA Policies DEN1 and DEN2, and Framework paragraph 189.

Other Matters

28. Although not within the Hust Green settlement boundary, the appeal site directly borders the boundary on its north, east and west sides. The appeal site is within a short walk of facilities including shops, the village hall, play area and public house. Although the proposed footpath would not provide a seamless link with the footway which starts from South View Close, it would enable better pedestrian connectivity and would make walking a more realistic alternative to the private car.
29. I have been referred to a refusal of planning permission (RR/2022/461/P) and subsequently dismissed appeal regarding a proposed house in Dallington, East Sussex, which was refused due to its location outside the settlement boundary and effect on the HWNL, amongst other matters. As the location of this site is some distance away and relates to a different settlement boundary, I do not consider it is directly comparable to the scheme before me.
30. Despite being in a sustainable location with regard to access to services and facilities, it is not a matter in dispute that the location of the appeal scheme would conflict with the Council's strategy for the location of development as it is not located within the settlement boundary. This is as set out in Core Strategy Policies OSS2, OSS3 and DIM2 of the DaSA as well as Policy HG1 of the draft NP. Taken together, these policies seek to focus new development within defined settlement boundaries

and allocated sites, and in the countryside, restrict development to that which accords with specific local plan policies.

31. The Council is satisfied that the proposed access points from Burgh Hill would provide appropriate visibility splays and would be acceptable in highway safety terms. An additional 7 dwellings would not result in additional trip generation sufficient to significantly increase the volume of traffic on the local highway network. I note that the Highway Authority have not objected to the scheme, and whilst I note the views of interested parties in this regard, there is no compelling evidence before me which would lead me to disagree with the Council's conclusions.
32. Whilst the site was identified as suitable for residential development in previous iterations of the draft NP, it has been removed from the version due to be considered at referendum. The removal of the site from the allocations within the NP does not preclude residential development in this location, subject to compliance with other policies in the development plan.
33. I note there have been previous applications for planning permission at the appeal site which were refused during the 1950s to 1970s. The legislative and policy context has evolved since these decisions and other matters may also have materially changed since this time. I cannot be satisfied that the circumstances are sufficiently similar to the appeal before me and the previous refusal of residential development in this location does not in itself indicate that the appeal should be dismissed. Similarly, I have also been referred to a 2019 report by AECOM for Hurst Green Parish Council. The report was for the use of the Parish Council and is not adopted planning policy against which the appeal falls to be considered.
34. My attention has been drawn to a planning application refused by the Council (reference RR/2024/1972/P) for residential development located further to the west along Burgh Hill. I have little detail of this proposal before me, and in any event, I am required to consider the appeal scheme on its own merits in light of the evidence submitted and individual circumstances of the appeal.
35. I acknowledge that there were a significant number of representations from interested parties, including those submitted by Hurst Green Parish Council, Etchingham Parish Council, the Burgh Hill Community Group and the Council for the Preservation of Rural England. In addition to the main issues identified above, there are concerns relating to other planning and non-planning matters including the designation of the hedgerow under the Hedgerow Regulations 1997, effects upon biodiversity, archaeology, views, privacy, precedent, surface water and drainage and tree protection. As I am dismissing the appeal on one of the main issues for the reasons given above, I have not pursued these matters further.

Planning Balance

36. The Council acknowledges that it cannot demonstrate a 5-year supply of deliverable housing sites. The reported supply is equivalent to 2.63 years, a substantial shortfall. The most recently published Housing Delivery Test indicates the Council's performance to be at 43%.
37. Consequently, paragraph 11 d) of the Framework is applicable which indicates that where the policies which are most important for determining the application are out-of-date, granting permission unless, as set out in 11 d) i) there are circumstances where the application of policies in the Framework to protect areas or assets of

particular importance provides a strong reason for refusing the proposal. As I have found that the proposal would be acceptable in terms of its effect on the HWNL, the provisions of Footnote 7 do not apply and the appeal proposal benefits from the presumption in favour of sustainable development set out in paragraph 11 d) ii) of the Framework.

38. Footnote 8 of the Framework is clear that the policies which are most important for determining the application are deemed out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard for key policies for directing development to sustainable locations, making effective use of land, securing well designed places and providing affordable homes, individually or in combination.
39. The need for housing is well established, even allowing for the allocations in the draft NP. The Framework explains that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. The appeal site would make a small but important contribution to the Council's supply of housing, supporting the Government's aim of significantly boosting the supply of homes. There would be temporary and ongoing socio-economic benefits from the development through construction and the future residents' use of local shops and services, but given the scale of development, those benefits would be modest. I attach limited weight to the benefit achieved through the landscaping and biodiversity scheme as this would be primarily for mitigation purposes. The proposed footpath would provide a small benefit in the form of improved pedestrian connectivity.
40. The Framework aims to achieve sustainable travel and to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The Framework seeks to avoid the development of isolated homes in the countryside. The proposed dwellings, although just outside the development boundary, would not be isolated and would be located within walking distance of services and facilities.
41. However, as set out above, the proposal would conflict with a key policy of the Framework to deliver affordable housing on-site. The harm I have identified through the lack of clarity or certainty in the planning obligation would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole.

Conclusion

42. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

L Francis

INSPECTOR