

Appeal against non-determination by
Ashford Borough Council
on an application for planning permission
for the erection of no. 7 dwellings
and associated landscaping
with access from Poplar Road.

Wittersham Parish Council

23 Hilltop Drive

Rye

East Sussex

TN31 7HT

email: wittershampc@googlemail.com

Tel: 07944 183798

Preamble

1. This is the response of Wittersham Parish Council, (“the parish council”) to the applicant’s Appeal in the matter of the planning application titled above, after non-determination by Ashford BC, the planning authority (“ABC” or “the planning authority”).
2. The parish council objected to the application when first consulted in July 2021 and submitted a detailed statement of its reasons to the planning authority. A number of those reasons for objecting that were advanced in that document (now attached hereto as an appendix for easy reference) have not been repeated in the paragraphs immediately below, but they all remain part of the parish council’s case along with what follows here.
3. The parish council considered its response to the current Appeal at a meeting on 10th May 2022. **The parish council remains opposed to the application and to the appeal, and advances the following reasons in addition to those put forward last year.**

Planning Principles and Considerations

Plan-led Development

4. The underlying principle running as a golden thread through Town and Country Planning for over 70 years has been “Plan-led” development, meaning that Plans produced by the planning authority take the lead in deciding development applications, as and when they arise.
5. The significance of these Plans is obvious when one considers that they cannot even take legal effect until government appointed and specially trained Inspectors have carried out an examination of them in public and declared them as meeting the necessary legal, practical and evidential standards laid down by the government and in accordance with the Inspectors’ findings of local circumstances.
6. The government’s National Planning Policy Framework (NPPF), which carries force as legal guidance to planning authorities, emphasises this point in para. 2 where it says:
Planning law requires that applications for planning permission be determined in accordance with the development plan.
7. Such plans, once confirmed by the Inspectors and adopted by the planning authority, contain a multiplicity of policies which, taken together in balance, will be adduced to support a decision at planning authority level to approve or reject a development application. That might be for considering windfall applications, a small but important part of the planning authority’s overall development targets, or when specific proposals for building out a site previously allocated for development within the Plan come forward for consideration.
8. Nevertheless, the legal principle remains that applications for development are decided in accordance with the Plan, and the same principle will apply if an application is appealed to an Inspector on grounds of non-determination or refusal, and whose decision will include reasons for it drawn from the Plan.

9. In the case of land from which the northern part has been drawn for the purposes of the application at this appeal, this was put forward as a site submission to the planning authority in 2013 during a 'Call for Sites' consultation (SHELAA), during the early stages of compilation of Ashford Plan 2030.
10. The site was assessed at that time by the planning authority which, when it had the opportunity to review its planning demands and opportunities across the whole borough, decided not to take up the offer of this land for inclusion in the Plan for development of housing, and therefore the land in question did not become a designated site for inclusion in the Plan. An assessment by the planning authority at the time, quoted in the applicant's submission, states that the planning authority concluded:

This site is located on the edge of a settlement, quite far from the serices [sic] offered. Development of this site would have a detrimental impact on the rural setting and character of this key entrance of the village.
11. At this point, it is worth mentioning that a different site in Wittersham, designated site S.61, **was** included in the final draft of the Plan which went forward for Examination in Public, but that site was then itself removed from the Plan put forward for adoption at the behest of the Inspectors. We can therefore see that the current appeal concerns land that was judged less suitable for development by the planning authority than an equally available alternative, yet that alternative was in turn judged unsuitable for inclusion in the final Plan by the Inspectors during their Examination in Public.
12. The applicant's consultant in his statement of case has explained all the reasons why he believes the application can match policies in the Plan (and elsewhere) that support it being approved. A key strand in his argument is Policy HOU5 in the adopted ABC Plan 2030 which allows consideration, on their merits, of potential development sites adjoining (or very close to) existing development (the village confines) in villages such as Wittersham.
13. In doing so, the applicant seeks to demonstrate that his scheme is in accordance with the Plan (or at least of a policy within it). But this ignores the fact that in preparing the Plan, the planning authority explicitly considered this site's potential for inclusion for housing provision, but then ruled it out as unsuitable. It is not logical to claim the site is supported by the Plan through application of a generic policy for possible windfall or opportunistic sites, when this specific site had been explicitly considered and rejected from inclusion in the same Plan. The pivotal element of the planning system since 1947, therefore, namely, that it is a Plan-led process, very strongly suggests that this Appeal should fail.

AONB Issues

14. The parish of Wittersham falls wholly within the High Weald AONB, and therefore all and any development in the parish must proceed within those obligations and constraints that flow from its designation. This means that development applications in the parish will face additional scrutiny or assessment by the planning authority (or an Inspector at appeal) before they can go ahead, but in many cases this is a balancing exercise, and while certain developments would be impossible, this is not a bar to any development whatever. History in Wittersham shows that some developments are possible when they are held to meet the relevant tests, and with the significant proportion of land in England covered by National Parks or AONBs, it could hardly be otherwise.

15. A particular situation arises where a development proposal might be judged by the planning authority (or Inspector) to be a 'Major Development', a term with a particular status given to it by the NPPF, para 177, and associated footnote no. 60. Being judged as a Major Development will, in general, impose a very high hurdle against consent under the NPPF and may very likely, in the event, lead to refusal.
16. The decision on whether a proposal would be a major development is left to the decision maker, and a lot of discussion seems to focus on the scale of such a proposal, such as how many houses are involved. But NPPF footnote 60 is quite explicit that this is not the correct test. It reads:

*60 For the purposes of paragraphs 176 and 177, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale **and setting**, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined. [emphasis added]*

17. This makes it clear that, should circumstances dictate, the decision maker is entitled to consider a proposal as a major development if they judge it meets the criteria in the light of its 'impact' - using that term as a compilation of the three factors from the footnote.
18. On its own, the parish council makes no suggestion that 7 houses, in other circumstances, would automatically be in line to be judged a major development, but in this application, **the setting** is highly influential in demonstrating that this is no minor development but is, in fact, open to being judged as 'major' by way of *impact*. This has two strands.
19. First, such a judgement in an Area of Outstanding Natural Beauty should relate in particular to *visual* impact, and that in turn will partly relate to quantum: how far away can the impact be readily detected, from how many directions, etc. In this case, the site proposed is very open across agricultural fields. Stretching NW along Poplar Road until the next property is encountered, the present gap between buildings in the relevant section of road is currently 650 metres, making a substantial break between the built-up centre of Wittersham and the first isolated property to be encountered. Running away from the main road in a NW-SW quadrant between the B2082 and The Meadows (that forms the boundary of the village confines), the land is flat and largely open, stretching away for a long distance through scattered trees, leaving the development site to dominate the corner of a large quadrant of largely open land.
20. Second, the NPPF footnote draws particular attention to the purposes for which the area has been designated. A key reason for the designation, and a matter deserving conservation, was put to the council directly by an officer from the AONB Unit during discussions in a different context, and this reason was the preservation of mediaeval field boundaries. The proposal at appeal occupies part of two fields, between which part of an old field boundary survives, but which will be obliterated should the appeal be granted.
21. The parish council therefore takes the view that the decision maker would be entitled to consider this proposal at appeal to be a 'major development' in view of the impact it would have on its setting and the purposes for which the AONB was designated, all as specifically provided for in NPPF para. 177 and footnote 60, and it should therefore be refused on those grounds.

Benefits of the Proposal to set against harm to the AONB

22. Even where such considerations over major development might be found not to apply, any development in the AONB requiring planning permission needs to meet a test to balance the reasons for it against the harm that may result to the objects of the AONB, and this will be proportionate according to scale on both sides of that balance.
23. In the case of this proposal, it is noted that the size of the site is quoted in the application as a remarkably accurate 0.4942 HA, a very tiny 58 M2 below the 0.5 HA limit which would impose further obligations on the developer. This small margin of just 1.16%, if accurate, is apparently enough to remove any obligation to provide any affordable housing, or indeed anything else that would contribute to the continuing development of a small rural village and its sustainability into the future, usually a major pre-occupation for planners and government.
24. This position is in stark contrast to a larger development (21/1406/AS) that is supported by the parish council and will be considered by the ABC Planning Committee in June 2022. That development for a total of 30 houses contains 12 affordable units and includes a number of bungalows from 1-bed upwards, both affordable and market, all of which, if approved, would provide a significant uptick to the village's available mix of housing provision and tenures, and cover the housing need identified in a survey conducted by the parish council (with ABC support).
25. This point is mentioned simply to demonstrate that the parish council is not trying to resist all housing in the village, far from it, but to help ensure, where it can influence things, that developments make contributions to the village in relation to their impact, and that the parish can also make a proportionate contribution to the need for housing both for local needs and in the wider context.
26. A number of other small opportunistic developments have also been supported by the parish council in recent years, and some of them have been consented by the planning authority.

Access to the proposed development

27. The applicant proposes two entrance/exit points onto Poplar Road, with the seven properties served from those two points by short service roads within the development. It is stated that these will be designed sufficient for small service vehicles to enter and exit the completed development in forward gear.
28. It is further proposed that refuse vehicles will service the development from a parked position on Poplar Road, and the highway authority (KCC) has confirmed that, in their opinion, this would be satisfactory.
29. Between the proposal and the KCC opinion above lie some uncertainties. First, the refuse collection service is very unlikely to collect wheeled bins from individual houses and pull them out to the parked vehicle, while the plan shows no space for the bins to be left alongside the highway where the vehicle will park. Bear in mind that the vehicle will not be able to enter and leave the site in forward gear, should this proposed arrangement prove unsatisfactory, as the vehicle is far bigger than can be accommodated by the applicant's specified road layout.
30. An additional problem concerns fuel. There is no mains gas in the village and so all properties are served by bulk deliveries of oil or propane LPG. These deliveries by

large vehicles take far longer than a refuse collection, so the vehicle will be parked on the B road for much longer than the highway authority has perhaps envisaged, and they will be coming to the individual properties at different times, rather than collecting refuse all at once.

31. The highway authority further suggests that parking on the highway is commensurate with what happens further along the road, but as the applicant's data shows, even the 85th percentile speeds here are greatly above the 30 mph limit at even the nearer end of the proposed site to the village centre, and will tend to be even higher at the further end. This is a recipe for vehicle accidents, potentially at high closing speeds.
32. The highway authority has supported the applicant's suggestion that the 30 mph limit be moved further west towards Tenterden, but their own speed data already shows that the speed limit has a negligible impact on actual speeds, and so moving it would appear to have little benefit. Should the Inspector be minded to grant the application, however, the parish council urges that the developer be required to fund and provide a speed reducing chicane on the B2082 at the point beyond the scheme where the 30 mph limit is imposed. Less preventative action than this would create an unacceptable accident risk. Should the highway authority be unwilling to permit such a mitigation measure, then the scheme should be refused on safety grounds.
33. Apart from vehicle safety, there is a potential problem for pedestrian access which is shown exiting the internal network onto a small paved 'refuge' at the corner of The Meadows. The land lying between the highway strip running along the west side of The Meadows and the hedgerow boundary along the eastern side of the applicant's land is in private ownership and not known as being available to the applicant to meet the proposed layout. Unless this can be clarified satisfactorily, it is unclear that pedestrians can safely enter or exit the site for the purpose of walking to and from village facilities, in which event the case for sustainability is severely weakened.

Summary

34. Wittersham Parish Council objects strongly to this planning application and argues here against the appeal being upheld. It adduced further reasons in its objection to the planning authority in July 2021, attached here as an appendix, and they are all repeated for the benefit of the Inspector's consideration in reaching a decision.
35. The parish council is not against development in the parish and supports an application for 30 houses in Stocks Road, Wittersham, which will be decided by the Planning Committee of ABC at its meeting in June 2022.
36. The land subject to this appeal was submitted in 2013 for consideration by the planning authority as part of the SHELAA process that led to the current Ashford Plan 2030, but it was ruled out from inclusion in the Plan at that time for planning reasons.
37. The appellant argues his case using policy HOU5, but that policy is to cover opportunistic or windfall developments close to a settlement that arise after the Plan has been finalised and adopted, not to allow a site already specifically excluded from inclusion in the Plan, at the time the planning authority could give full consideration to all its issues and sites in an orderly way, then to creep back in later. The watch word here is Plan-led, and the Plan excluded this site.
38. The NPPF puts on the Inspector the obligation to decide whether this scheme is to be considered as a Major Development within the terms of NPPF para. 177 and footnote 60.

39. Should the Inspector be minded to grant the Appeal, notwithstanding those arguments made here, the parish council urges careful consideration of the safety considerations relating to the proposed access which, though found acceptable to the highway authority, cause anxiety to those who live here and see the regular behaviour on that section of road.

Yvonne Osborne
Clerk
Wittersham Parish Council

16th May 2022

(see Appendix attached)

Text of Wittersham Parish Council's objection to the planning application submitted to the ABC Planning Portal, 12th July 2021

Wittersham Parish Council objects to the application. Detailed Reasoning:

The parish council held a remote public meeting for residents and applicant to express their views on the application on 6th July 2021, and then met for a physical council meeting outdoors (in keeping with latest requirements) on 8th July to discuss the issues raised and reach its decision.

The issues discussed fell into a number of groups, of which AONB & related issues and housing need were pre-eminent.

1. AONB

This site, like all of Wittersham parish, falls within High Weald AONB with the additional planning considerations that brings. This particular site, however, is visually particularly open and without buildings of any sort for a long distance over flat and relatively open ground across the whole quadrant left by Poplar Road and The Meadows, and therefore covering a major part of the approach to the village either by road (B2082) or by foot across country (see High Weald Landscape Trail and connecting PROW).

In 20/00541/AS (Land South of 63 The Street), ABC rejected an application for a single house adjoining the village confines, and the decision was upheld at appeal (APP/E2205/W/21/3266995). In doing so, the Inspector placed great weight on the requirements of the AONB, despite the application otherwise falling within the broad parameters of ABC Plan Policy HOU5, and she also held the AONB to over-ride the NPPF presumption for development when the 5YHLS is not demonstrated (as is presently the case).

Although every development of any kind in Wittersham potentially engages the requirements of AONB policy, the parish council recognises that some proposals are acceptable and some are not, within a balancing exercise of harm to the AONB assessed against any justifiable benefits from the proposals. The council felt the very significant harm to the AONB in this case was not suitably balanced by any advantages to be demonstrated through building these houses at this sensitive location (see 3. below).

It is also noted that part of an ancient field boundary, marked by trees running north-south through the proposal site, would be removed, yet the continuing presence of ancient field boundaries is a key reason for the designation of this particular AONB.

2. Inter-relationship between AONB and HOU5

The proposed site falls within the coverage of ABC Policy HOU5. So did 20/00541/AS (see above). In rejecting that appeal, however, the Inspector implicitly reduced the potential value of support from Policy HOU5 for applications wherever AONB is engaged. It is noted that 18 or 19 of those settlements within the 24 covered by HOU5 do not fall within AONB (or at least not in respect of the village confines where HOU5 applies). The parish council therefore wonders whether, in light of the Inspector's decision, HOU5 may carry less positive weight in Wittersham than had been intended and understood.

3. Housing Need and proposals for the site

Wittersham PC commissioned a local housing requirements survey in 2017 using the ABC format, conducted by ACRK and jointly funded by the borough and parish councils.

In short, identified requirements were primarily for affordable houses, and bungalows (both affordable and market). It is noted that these proposals provide neither. Even if the proposals were reworked to include the ABC requirement that would apply to a site above 0.5 HA, amounting to the inclusion of three properties on affordable terms, this would still represent a major negative impact on the AONB for, at best, very marginal beneficial value to the village in terms of housing supply for its identified requirements.

These proposals for a ribbon-development of seven properties are unexceptional in terms of their architecture or in any contribution to place-making. In an arable field, the impacts on the continuous boundary hedgerow will also be deleterious to habitats and wildlife.

It is noted that there are no proposals brought forward at this stage for disposal of foul or surface water. These are matters of great significance at this location and the council believes they cannot be treated as reserved matters but must be openly resolved and agreed before any decision (except to refuse) can be given.

Although Foul Drainage is a matter for Southern Water, it is noted that the main sewers in Wittersham are under stress at a number of locations with periodic overflows into the streets. Should proposals be brought forward to join to the main sewer network, they will join it 'at the end of the line', a distinction presently held by Coombe Lands, where extensive work by SW was required recently to resolve ongoing problems.

Land in Wittersham is also very slow to drain and the ground here is flat. The site already hosts a pond. Handling of surface water will also therefore be of more than the usual minor significance were any scheme to be considered for consent.

It is noted that it will be impossible for refuse or fuel supply (oil or propane, as there is no mains gas in the village) vehicles to enter and exit the proposed properties off the B2082, therefore leading to regular traffic issues, as fuel supply is much more protracted than refuse collection.

These proposals will also add two new access points onto B2082 where speeds already exceed the 30mph limit substantially.

Conclusions

These proposals would have a very significant impact locally on the AONB, visible across a considerable distance of open land.

To set against that strong reason for refusal, the council notes no benefit to the village community from providing any of the housing which the recent WPC/ABC housing survey identified as needed, nor any contribution to the street scene or place-making.

The parish council therefore objects to these proposals and urges that they be refused.

ENDS