

APPEAL A: APP/E2205/W/20/3259450

APPEAL B: APP/E2205/W/20/3259462

APPEAL C: APP/E2205/W/20/3259465

**APPEALS A AND B BY TELEREAL TRILIUM
APPEAL C BY TELE PROPERTY INVESTMENTS LTD**

SECTION 78 TOWN AND COUNTRY PLANNING ACT 1990

LAND AT:

APPEAL A: FORMER WYE COLLEGE BUILDINGS, WYE, ASHFORD

APPEAL B: OCCUPATION ROAD, WYE, ASHFORD

APPEAL C: FORMER ADAS SITE, OLANTIGH ROAD, WYE, ASHFORD

**CLOSING STATEMENT ON BEHALF
ASHFORD BOROUGH COUNCIL**

Introduction

1. There are three conjoined appeals before this inquiry:
 - (i) Appeal A: the conversion of the former Wye College Buildings, Wye to provide 38 dwellings and community space together with two new dwellings;
 - (ii) Appeal B: residential development of 40 dwellings at Occupation Road, Wye; and
 - (iii) Appeal C: residential development of 20 dwellings at the former ADAS site, Olantigh Road, Wye.
2. These closing submissions address Appeals B and C only. As the Council explained in opening, following the exchange of evidence and a further review of its case, the Council determined that it would not resist Appeal A at the inquiry and in consequence:
 - (i) The Council no longer alleges a conflict with policy COM1 of the Ashford Local Plan;
 - (ii) Those parts of Lesley Westphal's proof of evidence identified in CD/26/t are no longer relied on;
 - (iii) The Council did not call Jeremy Fazzalaro nor rely on his written evidence (which addressed only the heritage impacts of keeping the Latin School in community use); and
 - (iv) There were no remaining issues as between the Appellant and the Council in relation to Appeal A.

Main issues in relation to Appeals B and C

3. The main issues between the parties on Appeals B and C are:
 - (i) Whether or not the proposal would provide a suitable location for housing, having regard to the provisions of the development plan;
 - (ii) The effect of the proposal on the Kent Downs Area of Outstanding Natural Beauty and on the character and appearance of the area generally;
 - (iii) Whether the proposal would make adequate provision for the infrastructure needed to support the development; and
 - (iv) the effect of the proposal on sites designated for nature conservation at Stodmarsh lakes.
4. The third main issue has been addressed by the provision of a section 106 agreement in relation to each of these appeals. The Council has submitted CIL Regulation 122 statements to sit alongside the section 106 agreements and which explains how each of the contributions within the agreements meets the relevant tests [CD/37d and f]. The contents of the CIL justification statements is relied upon but not rehearsed in these submissions.

Main issues (i) – in relation to both Appeals B and C – the principle of development

5. As set out in the statements of common ground the Council does not contest the principle of residential development on these sites [CD/35b, §6.3] [CD/35c, §5.2].

Main issues (iv) – in relation to both Appeals B and C – Stodmarsh Lakes

6. The Council explained its position in opening and why it was not actively participating on this issue through the inquiry. As the Inspector is aware, the Council received advice from Natural England during the course of 2020 that increasing levels of nitrates and phosphates at the nationally and internationally designated protected sites at Stodmarsh lakes, east of Canterbury, are having an adverse effect on the integrity of the habitat of the lakes.
7. In consequence, it advised, in line with the precautionary principle, that applications for certain types of development – including housing – within the Stour river catchment and/or which discharge to particular Waste Water Treatment Works within the catchment should be the subject of an Appropriate Assessment prior to any decision to grant planning permission, given that it is not presently possible to conclude such types of development would not have a likely significant effect on the designated sites.
8. The Inspector is now the competent authority for the purposes of the Conservation of Habitats and Species Regulations (England and Wales) Regulations 2017 (as amended) and is therefore responsible for carrying out any appropriate assessment. The Appellant and Natural England have provided information to assist in this process.
9. The Council is in the process of recruiting specialist advisers in relation to the Stodmarsh issue more widely. This remains in progress and, accordingly, the Council did not adduce any evidence on this issue nor has it made any submissions in relation to it. Clearly, however, the Inspector will need to be satisfied that there is no adverse effect on integrity on the designated sites.

Main issues (ii)

The importance of design policies

10. This is a case where many matters are agreed and the remaining issues between the Council and Appellant are limited in number and nature. However, this should not diminish their importance. In particular, because they relate to design.
11. High quality design is though now a key aspect of sustainable development under the NPPF. Paragraph 130 is clear that planning permission should be refused for development of poor design that fails to take the opportunities for improving the character and quality of an area.
12. High quality design is also an explicit requirement of the development plan here. As Steve Fidgett ("SF") accepted in XX, design, as well as the protection of the AONB, is built into the vision of the Ashford Local Plan ("ALP") [CD/2, p.8]. Policy SP1 Strategic Objectives [CD/2, p.9] is designed to deliver the vision. A core principle planning applications are expected to adhere to is the creation of the highest quality design (criterion d). Policy SP6 is entitled 'Promoting high Quality Design' [CD/2, p.40] and requires development to be of high quality design that responds positively to design policy and guidance at local and national levels. The Wye Neighbourhood Plan contains equivalent standards. Policy WNP 2 [CD/3, p.33] is entitled High Quality Design and requires just that. It states that proposals for all forms of new development must plan positively for the achievement of high quality and inclusive built and landscaping design, at the same time demonstrating they have sought to conserve local distinctiveness and the aesthetic qualities of traditional rural settlements and buildings found in the Kent Downs AONB. Applications proposing unsympathetic designs which fail to respect the connections between people and places, or are inappropriate to its location, landscape or biodiversity considerations will be refused. It specifically incorporates the principles and guidelines of the Wye Village Design Statement 2000 [CD/6d] which, although not part of the development plan is incorporated into this policy and is in its own right a material consideration which the parties agree contains useful guidance to support Policies SP6, HOU3A and HOU5 of the ALP [CD/35b, §5.3].
13. There is often a temptation to diminish the importance of issues in relation to design and to focus on more technical issues. However, it would be wrong to succumb to such temptations in light on the importance national policy places on this issue and, more importantly, in light of the centrality of it to the relevant development plan policies.
14. This is the chance to get the redevelopment of the former Wye College buildings and land right. As SF acknowledged in XX, the inquiry is into detailed applications. This is the only opportunity to ensure that the developments meet development plan and national policies which demand high standards of design.
15. All of this accords with the Government's clear direction of travel – seeking to place even greater emphasis on the importance of good design. Design is a clear priority for the Government. This can be seen in the Planning White Paper – Planning for the Future. The introduction to the White Paper rues the lack of focus on design in the current planning system. A central plank of the White Paper – Pillar Two (of three) – is entitled *Planning for beautiful and sustainable places*. The desire is to create a system that results in a high quality environment of which local people can be proud and which reflects what is special about the local area. The intent is that the planning system should place a higher regard on quality, design and local vernacular than ever before. This only serves to emphasise the importance and weight to be given to any development plan conflict in this regard.

16. In light of the above, SF agreed in XX:

- (i) There are specific applicable development plan policies on achieving High Quality Design. It is plain that – albeit SF was hesitant on this point – this sets a high bar (which is not diluted by the need to develop land efficiently);
- (ii) These policies are consistent with the NPPF which identifies high quality design as a fundamental or key aspect of sustainable development;
- (iii) The direction of travel in Government policy is to place even greater emphasis on design;
- (iv) Whereas there are specific policies relating to outstanding and innovative design, the Appellant has made no case that the development proposals are outstanding or innovative and does not rely on these policies;
- (v) The context in this case is that both Appeal Sites B and C lie in highly sensitive locations. They are in the AONB; they lie where the AONB/ countryside meets the village; it is a village with a high density of heritage assets; the sites are visible from the Kent Downs ridge and the Wye Crown which are identified as part of the special qualities of the AONB and views from which are sought to be protected by development plan policies (WNP1c). This sensitivity only adds to the importance and weight to be applied to design policies;
- (vi) These are detailed applications. This is the moment in the consenting process where the detailed design has to be signed off against these policies demanding high quality design;
- (vii) There is nothing between the parties on the importance of design the need to achieve a high quality design. The difference is whether or not the proposals achieve the high quality design required; and
- (viii) It is agreed that if Inspector concludes that the proposals do not meet the relevant design threshold then, given the development plan policies and the importance of the consideration, he could refuse on that basis.

SF's approach to design policies

17. The approach agreed above was not reflected in SF's own approach to design policies in his written evidence and in his evidence in chief. SF applied an automatic reduction in weight to the design policies as a result of there being no 5yr HLS and footnote 7 to the NPPF (see by way of example [SF, p.41, §4.100]). This approach was wrong in law in a number of ways.
18. First, the 5yr HLS position operates only as a trigger to engage 11(d). Development plan policies are relevant to the balancing exercises under 11(d) (see the Court of Appeal judgment in *Gladman Developments v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 104 at [39]-[42]) and plainly have to be taken into account under the s.38(6) exercise in any event. The fact that the most important policies are deemed out of date under 11(d) does not dictate the weight to be applied to those policies or any conflict with them – those are matters of planning judgment for the decision maker (Gladman at [38]). In coming to a conclusion on the weight to be given to development plan policies consistency with the NPPF is a factor the Inspector is entitled to take into account (Gladman at [68]). There is nothing in footnote 7 or paragraph 11(d) that dictates the issue of weight. It is a matter for the decision

maker (Gladman at [40]). If the relevant policy remains consistent with national policy and, as here, ought to be applied to the delivery of housing (i.e. it does not influence the need or ability for housing to come forward but simply demands that if and when it does it meets relevant design standards), then there is no reason to give anything but full weight to these policies. When SF states that the lack of 5yr HLS means that weight attached to a breach of a design policy is to be (mandatorily) reduced (see, for example, SF, p.25, §3.71), he is wrong in law.

19. SF exhibits a further misunderstanding. There is a consistent refrain to policies relating to the supply of housing in his proof. But, as he agreed in XX, that was a concept found in the 2012 NPPF and not in the current version.

Design issues: Appeal B

The Appeal Site

20. As set out above, the village itself is sensitive and lies in a sensitive location. The Appeal Site particularly so given that it projects into the countryside, sits alongside the North Downs Way which forms a pedestrian entrance to the village and which is used by (many) walkers enjoying the AONB. As such it is a very important entrance to the village that links physically links it to the North Downs/ wider AONB and it is visible from surrounding footpaths and the ridge to the east. As Ryan Hilton ("RH") agreed in XX, it is a sensitive site requiring a sensitive design approach.

Extent of development

21. Whilst the Appellant relies on the fact that the footprint of the proposed development is less than the footprint of the existing buildings on the Appeal Site [RH, p.26, §7.3.5], this does not take into account the far more material point that the proposed development takes up a materially greater extent of the Appeal Site and projects further into the AONB.
22. CD/17c – the existing and proposed block plan – demonstrates this. As RH agreed in XX, when the Inspector considers whether or not the Council is correct to say that what is proposed is overdevelopment, he will need to consider not just the number of dwellings per hectare but the extent to which the development extends into the countryside and whether or not that is appropriate. There is clearly a material extension of built form into the AONB and in the Council's submission this is indicative of overdevelopment.

Density

23. What is important is not density itself – for it is a crude measure – but whether or not the scheme properly reflects the character of the area (and position in relation to the village) in which it is proposed.
24. The Masterplan recognises that the density of built development varies across the village from higher density, mostly terraced housing, in the centre of Wye, to lower density detached and semi-detached houses, on the periphery of the village [CD/9, p.10]. This is part of the village's character and policies require development to reflect the character of the area:
 - (i) HOU3a a) requires development to be of a layout, design and appearance that is appropriate to and is compatible with the character and density of the surrounding area [CD/2, p.207];

- (ii) HOU5 f) ii) & iv) requires the preservation or enhancement of the setting of the nearest settlement and for the proposals to be consistent with local character [CD/2, p.209-210];¹
 - (iii) Housing density has been identified as a critical issue for any new developments, particularly on the edge of the village [CD/3, p.41, §5.3.3]. It is in this context that WNP10 states that densities of below 20dph will be acceptable in developments on the edge of the village [CD/3, p.41]. RH agreed in XX that 20dph was not a form of minimum standard but a recognition that an appropriate density could be below that level and it is the character of the village edge that is the primary driver that will determine the appropriate density; and
 - (iv) The Village Design Statement emphasises the importance of the approaches to the villages [CD/6d, p.17].
25. Despite this policy context, as RH agreed in XX, none of the masterplan, the design and access statement nor RH's proof look at the density that is typically found on the edge of the village. RH agreed it was fair to record that the Appellant has at no stage offered an analysis equivalent to that done by LW [LW p/e, App.7 [CD/26j] and LW p/e, p.37, §§7.2.6 and following].
26. What LW's evidence shows is that at the five vehicular routes into the village – with the exception of the development on former Wye Depot site (for the reasons LW explained, not least, the policy of minimum densities at the time) – the prevailing densities are significantly lower than that proposed at about 10-14 dph (with which range RH confirmed in XX he did not quarrel).
27. A common feature of these entrances is larger plots with, generally, no development behind. Where there is, the plots are large. The three houses on Olantigh Road represent 5dph and these lie at the current entrance to the village in the area in which both schemes B and C are proposed.
28. The appeal scheme by contrast is 21.3 dph in the developable area which no Appellant witness suggested was an inappropriate way of measuring density². Indeed, it is, plainly, the appropriate way of measuring density. The inclusion of the Strawberry Field/ grazing meadow (which gives an alternative figure of 12.4 dph) does not properly reflect the densities proposed in the developable area.
29. Whilst, RH states that the proposed housing comes with "spacious gardens" [RH, p.17, §6.3.4] he accepted in XX that the he made that observation by reference, not to gardens observed on the ground that are part of the character of the area, but by reference to HOU15 and the "starting point" for amenity space. The plot sizes proposed are not representative of the character of the village entrances. Moreover, the proposals when viewed from the North Downs Way in particular layer house behind house which, again, does not reflect the prevailing character of the area (see for example the north south lines of development comprised in plots 3-7 and 24-12 and 19-15).

¹ As set out in LW's evidence, the Council applies HOU5 to Appeal Site C and HOU3a and HOU5 to Appeal Site B. Which applies depends on the settlement boundary. There is no development plan boundary in the vicinity of the Appeal Sites. It is plainly relevant therefore to have regard to the lie of the land and existing development as the Council did in adopting as informal guidance the boundary that runs through part of the Appeal Site B (see SF, p.15, Fig.2).

² RH, p.25, §7.3.3 identifies the developable area as 1.88ha. $40/1.88 = 21.3$.

Change in density across the site

30. Whilst the DAS tell us that “The density varies throughout the development, with a noticeable reduction from west to east, reflecting the move away from the village towards the adjoining open countryside. Pockets of higher density terraced, and semi-detached houses are located at the west of the site” [CD/18d, p.34], any reduction in density is achieved by having fewer but large units on the eastern side of the site (broadly units 32-40).
31. When viewed from the North Downs Way, however, there is a continuous block of development with no space between units 35-37. Such that the space around the individual houses that would be expected from a lower density is not apparent. Whilst the density may be lower to the east, any concomitant lowering of effects is not discernible.

Open space

32. Whilst RH identifies the grouping of houses around open spaces as a notable characteristic of Wye [RH, p.11, §5.2.1], the DAS make no mention whatsoever of grouping housing around open spaces.
33. Instead, it refers to the design incorporating a linear park – or as RH describes it, “a strip” [RH, p.18. §6.3.8] – between the new access and the North Downs Way [CD/18d, pp.30-32]. This area will house the SUDs ponds as well as now PTP (a 20m x 10m underground tank with some associated fencing above ground) (both of which decrease the utility of the space to residents). It does not penetrate the development itself but rather sits on its edge segregated by the roadway and a number of laybys within the road.
34. The north south orientated open space at the centre of the scheme is a relatively small space – smaller e.g. than the group of back gardens to the east and west of the central open space – which, as RH agreed, is covered to a large degree (50%) by hard surfacing and is most likely to be used only by those residents whose dwellings face onto that space (6 or so plots).
35. RH agreed in XX that LW is correct to say that the scheme does not allow the countryside to extend into the site in such a way as to promote the transition between countryside and built development [LW, p.41, §7.2.13].

Proximity to northern site boundary

36. It can be seen from the Proposed Site Plan [CD/17d] that in the case of plots 15, plot 32 and plot 40 the dwellings and, in particular, the garages are close to boundary. As RH agreed in XX, the garages are proposed to be in the order of 5m high and the dwellings c.8m high. The landscaping boundary adjacent to these plots is limited to 1.5m (see the landscape plan [CD/18k]). This is a further indicator of overdevelopment. In the above regard the development is cramped as a result of the need to fit too much into the developable area.

Suburban layout

37. One of the great curiosities of the Appellant’s approach to design is that it explicitly set out to achieve a suburban layout as recorded in the DAS [CD/18d, p.30]. The Inspector will have to come to a view as to whether that is appropriate for this location but in the Council’s view and

having regard to the agreed sensitivities of the site it is plainly not and does not reflect the character of the rest of the village edge.

38. Ironically, the Appellant has had material success in meeting this inappropriate target: with smaller plots than those found at village edge; a broadly rectangular road layout to which the housing generally faces; and which has a constant width save where it includes parking bays. There is no variation or different character areas around the site. As LW said in chief, having talked to the highways authority, there is scope for variation in the road aside from the southern part which will need to provide access to the commercial units to the south. The Village Design Statement explicitly references the need for roads in new developments to be appropriate to the rural character of the village (Layout point 3) [CD/6d, p.21].
39. The clusters of parking areas (see the Proposed Site Layout plan [CD/17d] and plots 3 and 4, the north west corner of the site, the area between plots 20 and 19 (which lies almost opposite a layby parking area and the visitor car park to the east) are a clear urbanising feature.

Roadside verges

40. As LW explains in her proof [LW, p.44, §7.2.19], apart from the green space to the south of the access road, the general design approach is to rely on individual front gardens to provide space and greenery around the road way and accesses. LW provided an analysis of village entrances in her Appendix 10 [CD/26/m]. This shows the prevailing character of the village entrances – whilst by no means uniform – are united by a more natural, less manicured and more rural character than that proposed. It is clear from the Village Design Statement that the approaches to the village are important to residents. Further, it specifically references the suburban style architecture of Denne Close as a detractor of the village character [CD/6d, p.17] and states that a stereotypical suburban look to entrances to the village should be avoided [CD/6d, p.21].

Conclusion

41. In short, the scheme as proposed would amount to over-development of the site. A less dense scheme could, in the Council's view, provide more opportunity to bring the countryside into the site, as envisaged by the Kent Downs AONB Management Plan and the Masterplan, to mitigate the impacts of the scheme upon the wider AONB, including views around the site. As proposed, the scheme would cause harm to the natural beauty of the AONB.

Design issues: Appeal C

42. The Appellant has been candid that the starting point of its design for this site was not to understand the prevailing character of the area but the “pre-requisite” need to extract the same value as converting the existing building to 52 dwellings [CD/9, p.66] (the Council’s position in relation to the permitted development scheme is set out in its report to committee on the Masterplan and is not repeated here [CD/11, §§6-13]). This patently the wrong approach and unlikely to lead to good design.
43. Before turning to the detail of the Appeal C issues, it is worth noting RH’s observation that the reduction in units sought by the Council (from 20 to 15) would make no difference [RH, §7.7.6]. It is an observation that shows a real lack of imagination. If 5 units were taken out of the site, say units 9-13, it would open the whole of the central part of the site and provide enormous flexibility to re-arrange other units around the edges. The housing could retreat from higher land, a less formal layout could be adopted with more landscaping and a chance to put in a wide

landscaped belt running from the front of the site to the rear to allow real views through the site from the entrance and to permit the countryside to penetrate into the appeal site. A wholly different scheme could be constructed more like the Wootton Farm scheme which is addressed below.

44. The detailed points are similar in nature to those taken under Appeal B and are stated shortly for that reason alone.

Sensitivity of the site

45. For the same reasons as set out above in relation to Appeal B, Appeal Site C is also in a sensitive location. Indeed, due to its separation from the village, it is if anything in a more sensitive location.

Suburban layout

46. Again, the Appellant's aspiration was to create a suburban layout [CD/22c, p.30]. Again, this was an inappropriate ambition but one in which the Appellant has succeeded:

- (i) The Proposed Site Layout [CD/21d] shows houses set in a generally linear layout fronting on the access road with a uniform set back;
- (ii) There is a regimented sequence of house, garage, house, garage which is plain to see on the street views [CD/21s]. This is particularly noticeable looking from the access towards the east which view culminates in units 6 and 7;
- (iii) The approach garaging contrasts markedly with that taken on the Orchard Gate scheme where the garaging is generally set behind the housing so that it does not rival houses for attention [CD/25c(2)];
- (iv) The width of the access is wide and uniform – excepting that a few pinch points between garages have been created (see plots 5/6 and 9/10 and 13/17);
- (v) Again, whilst the density across the site may lower from west to east, the effect is not felt on the ground. The two larger houses sit at the eastern side of the site but the size and position of garages on these plots (7 and 8) disguise the lower density such that no benefits accrue;
- (vi) The development does not allow the countryside to penetrate into the site, a lower number of units would afford the designer the ability to do this (by contrast Wootton Farm [CD/25c(2)] has a much looser scale of development allowing views through the site and Orchard Gate [CD/25c(2)] – the denser of these two developments – has a more organic form of development with green fingers penetrating the site between units 21 to 31, through 13/15 and 16/20 and from adjacent to unit 2 into the space between units 11 and 24);
- (vii) The design largely ignores the level changes across the site. This is contrary to the Village Design Statement which states (Landscape 3) "full advantage should be taken of the land form for any significant new developments on the edges of the village" [CD/6d, p.21]. Here the largest houses are on the highest land. Whilst that land may continue to rise to the east and there is planting upon it [CD/36l], the site and development would plainly

be visible from North Downs to the east and Wye Crown [CD22/h1, p.94] and to a much greater extent than the existing buildings (which are 6.5m to parapet [RH, §7.8.6] with a flat roof as compared to the proposed development of 8.5m to ridge).

47. The underlying issue, once again, is overdevelopment. This is a scheme which is dense and of too a suburban style for a site which does not even adjoin the village boundary and which is separated from the rest of the village.

Orchard Gate and Wootton Farm

48. RH placed no little reliance on these developments. We do ask that the Inspector visits them or at least familiarises himself with them via street view. These are undoubtably examples of good design. They are markedly different from the appeal schemes now being considered and, in the Council's view, demonstrates the case against rather than for the developments.
49. Moreover, whilst RH states that both developments take "cues from other new rural developments" referring to Orchard Farm and Wootton Farm [RH, p.16, §6.3.1], this is clearly not right. There is no reference at all to Wootton Farm in the DAS for either scheme. There is no reference at all to either Orchard Farm or Wootton Farm in the evaluation or main section of the DAS [CD/18d]. The first part of the DAS does mention Orchard Gate in that two photographs of that scheme are included but there is no associated text or explanation of the relevance of the photographs [CD/18c, p.22]. The same photographs are shown in the Masterplan [CD/9, p.55]. Aside from these photographs there is no other mention of these schemes in the application documents or those on which they were based (such as the Masterplan).
50. Orchard Gate [CD/25/c(2)] is a scheme that has a lower density than the appeal scheme (15dph) but with a layout that LW described as more organic – some houses are clustered, others form courtyards, others are on large plots. The scheme makes more use of terraced housing designed to look like individual buildings and fewer detached housing which helps to create a less formulaic approach to layout and character. As LW explained, as you move around the road layout on the Orchard Gate site, it is not clear what form or layout of housing that will emerge next. There are small courtyards, narrow accesses and paths leading around the site where the end of the path is not readily visible from the start. Houses lie at irregular angles to the road, footpaths and each other. Furthermore, there are material differences and variation in house types offered: barn conversions, farmhouses and small cottages are all part of the offer. As a result, the feel is more organic and less suburban than a typical housing estate.
51. Wootton Farm [CD/25/c(2)] is an entirely different scheme from the appeal schemes. It is a rural site, also in the AONB, close to small village (with approximately 700 residents) and comprises the redevelopment of a former farm with 13 new dwellings alongside some existing houses. The density is, as RH agreed in XX, significantly lower than the appeal schemes (at about 6 dph). He further agreed that Wootton Farm has a looser less regimented and informal layout, it has greater variation in plot sizes and there are views through the housing to the countryside beyond which are not incorporated into the appeal schemes.
52. These two schemes make the Council's case. They do not support the Appellant's designs.

Landscape

53. Landscape impacts are best judged on site and not in written submissions. The following short points are made for present purposes.

54. First, there was a material omission in the landscape assessment which undermines its value. AC agreed that, the special characteristics and qualities of the AONB represent the reasons for its designation and are the define its landscape character. These include “dramatic landform and views” [CD/22h, p.28] which AC agreed would include views from the North Downs ridge and the Wye Crown. Further, he agreed that the landscape character of the Kent Downs AONB Wye LCA expressly includes “long views” [CD/22h, p.29]. In other words, views are, in this instance, a characteristic of the landscape.
55. Despite, this, long views were not traced through and the impacts upon them were not assessed in the context of the landscape character assessment [CD/22h, p.83].
56. The Appellant worked hard in the inquiry to suggest that landscape and visual impact assessments distinguish between the two and, of course, they do but in this case views are a landscape characteristic and it was the Appellant who did not properly understand this, not LW. This was a material omission in the landscape assessment.
57. Secondly, the visual assessment was shown in XX to be unreliable. Perhaps the best example (and it is an example only) is Viewpoint 3 [CD/22h, pp.60-63] (XX by RW) where the effect is assessed as neutral but AC identified as positives in the existing view glimpses of the North Downs ridge and the vegetation on the appeal site both of which would be – he accepted – adversely affected, whilst the detracting elements would in some cases be increased – parking – or stay the same as in the case of the commercial buildings. The other ‘detracting’ element – the horticultural buildings on site – AC accepted to be the type of building to be expected in the AONB. A conclusion that the impact is neutral, in these circumstances, simply does not stand up to analysis.
58. The assessment that VP2 [CD/22h, pp.56-59] is beneficial is similarly flawed where the footprint of the development extends markedly to the east closer to the viewing point. In order to make good his assessment, AC relies almost entirely on boundary planting to provide total screening. The assumption that development ought to be screened is an indicator that it is not appropriate development in context of the AONB. Moreover, as AC confirmed in XX, he gave no consideration of construction effects or Y1 effects but leapt instead to a point where planting was established (despite the fact that there has been no assurance that mature trees would be planted) and ignoring the fact that the DAS refers to filtered views out of the site at this location [CD/18c, p.19]. At heart, this assessment assumes that an avowedly suburban development is better than open field for highly sensitive receptors on a national way in the AONB. Common sense is a useful tool even in technical areas and it suggests that a beneficial impact would not arise.
59. Another way in which the visual assessment was flawed was that, as AC agreed in XX, the users of the North Downs Way, a national trail in the AONB, were at the “highest echelon” of sensitivity. However, as a quick review of the summary tables of visual effects shows, no proper consideration was given to the sensitivity of receptor in the assessment.
60. AC said this was because the schemes are not EIA development. That is not a proper answer: as he accepted, the sensitivity of the receptor is wholly immune to whether or not the development is EIA development. Again, this indicates an unreliable assessment in the context of development proposed in area of national importance and high sensitivity.

Planning balance

Approach

61. The Inspector must:
- (i) Have regard to the statutory development plan (section 70(2) of the Town and Country Planning Act 1990 (the 1990 Act);
 - (ii) Have regard to material considerations (section 70(2));
 - (iii) Determine the appeal in accordance with the development plan unless material considerations indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004); and
 - (iv) Apply the duty under section 85 of the CROW Act. This is a statutory duty to which considerable weight must be attached
62. The presumption in favour of sustainable development contained in paragraph 11 does not displace that statutory balancing exercise under section 38(6) of the 2004 Act. Paragraph 12 of the NPPF is clear that where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted.
63. It is accepted that here paragraph 11 (d) is engaged as a result of the 5yr HLS position.³ The next question, therefore, is whether one or more “Footnote 6” policies are relevant to the determination of the application or appeal (limb (i)) In relation to Appeals B and C, it is agreed that the AONB policies are such policies.
64. Accordingly, the decision-maker must consider whether the application AONB policies provides a clear reason to refuse. In so far as AONB policies are concerned, the Court of Appeal in the *Monkshill* judgment has affirmed that development need not be major development in order for there to be a clear reason for refusal and that the first part of paragraph 172 which requires great weight to be placed on the conservation and enhancement of landscape and scenic beauty in the AONB is capable of providing a clear reason for refusal. As the court said – “the policy is not actually expressed in terms of an expectation that the decision will be in favour of the protection of the landscape and scenic beauty of the AONB or against harm to that interest but that is the real sense of it” [*Monkshill* at [30]].
65. The AONB policy imports a general balancing exercise – applying great weight to the AONB issue but with no limitation on factors that can be considered in the balancing exercise (unlike, for example, paragraph 196 where it is only the less than substantial heritage harm (and no other) that is to be weighed against the public benefits). If, therefore, the Inspector concludes, having given great weight to AONB harm, that the balance (having regard to all the benefits in this case) is against the development, there would be a clear reason for refusal and as SF agreed, that is the end of it. Limb (ii) of paragraph 11 (d) would not be relevant [*Monkshill*, in the High Court at [45] approved by CoA at [18]].

³ This is agreed to be 4.8yrs. The suggestion that it may be lower by the Appellant is not one that was sought to be made good through evidence and should be given no weight, not least because it is making a case wholly at odds with the Appellant’s position on this scheme (that there is no issue arising from Stodmarsh that ought to hold back this scheme).

The balance

66. Whilst the Council recognise that the redevelopment of the Appeal B and C sites would deliver a number of important benefits, this does not mean that a key element to Government policy – high quality design – the need for which is reflected in the relevant development plan policies – can be set aside. The design issues and harm to the AONB (to which great weight should be applied) cause material harm. The fact that there would be almost no delivery of affordable housing is also a negative albeit it is recognised that this arises from national policy. That though does not change the reality of a lack of delivery for those waiting for such homes. The appropriate course of action is to refuse on this basis as a result of conflict with the development plan on design and AONB grounds. This is a singular opportunity to ensure the redevelopment of a highly sensitive village is done to the high standards of design demanded by the development plan, national policies and the Government. Paragraph 11 (d) does not assist the Appellant in this regard because there is a clear reason for refusal arising from the AONB harm.

Conclusion

67. For all these reasons, the Council invites the Inspector to dismiss Appeals B and C.

MARK WESTMORELAND SMITH

12 February 2021

**Francis Taylor Building,
Inner Temple,
London, EC4Y 7BY.**