

Examination of the Tunbridge Wells  
Borough Local Plan

**Tunbridge Wells Borough Council**  
**Hearing Statement**

**Matter 6: The Strategy for Cranbrook  
and Sissinghurst**

**Issue 1: Turnden Farm, Cranbrook –  
Policy AL/CRS3**

**Document Reference: TWLP/130**



# Contents

Matter 6 – The Strategy for Cranbrook and Sissinghurst.....	3
Issue 1 – Turnden Farm, Cranbrook – Policy AL/CRS3 .....	3
Inspector’s Question 1: [re. Latest Position Regarding Development Proposals] .....	3
TWBC response to Question 1.....	3
Conclusion .....	7
Inspector’s Question 2: [re. Material Changes in Circumstances].....	8
TWBC response to Question 2.....	8
Conclusion .....	10
Inspector’s Question 3: [re. Main Modifications] .....	11
TWBC response to Question 3.....	11
Appendix 1: High Court Consent Order Quashing SoS Decision.....	13

# Matter 6 – The Strategy for Cranbrook and Sissinghurst

## Issue 1 – Turnden Farm, Cranbrook – Policy AL/CRS3

In the Council’s letter dated 4 May 2023<sup>1</sup>, it was concluded that the site remained justified as an allocation following the Secretary of State’s decision on a planning application for 165 dwellings and associated works<sup>2</sup>.

### Inspector’s Question 1: [re. Latest Position Regarding Development Proposals]

What is the latest position regarding development proposals for the site?

### TWBC response to Question 1

#### Introduction

1. The site was discussed at the Stage 2 hearing session, under Matter 7, Issue 7 Residential Site Allocations, held on 23 June 2022 and addressed by the Council’s written statement, document [TWLP/041](#).
2. It is a proposed residential site allocation in the [Submission Local Plan](#), (Policy AL/CRS 3), allocated for approximately 200-204 dwellings (net 164-168 dwellings), having regard to an extant planning consent for 36 dwellings, originally granted under reference [18/02571](#). Document TWLP/041 explains this further at para 71. It is noted that following a fire at the site, which destroyed the Grade II listed farmhouse, planning permission was granted on the 22 October 2021 (planning reference [21/01379](#)) for the erection of a replacement farmhouse, three additional dwellings (Plots 37-39), and the re-design of Plots 1-3 within the development for 36 dwellings approved under 18/02571/FULL (Phase 1), together with associated parking, car barns, and hard and soft landscaping work. This

---

<sup>1</sup> Examination Document TWLP\_109

<sup>2</sup> Reference APP/M2270/V/21/3273015

has the effect of reducing the net number of dwellings sought by the allocation to 161 – 165.

3. As set out in the Council's previous statement (document [TWLP/041](#)), at para 69, the site also benefits from a planning committee resolution (held on 27 January 2021) to grant planning permission for the construction of 165 dwellings (planning reference [20/00815](#)) with associated access, car parking, refuse/recycling storage, landscaping, earthworks and other associated works. Para 69 goes on to explain that in April 2021, the Secretary of State decided to call in the application, with an independent Inspector conducting a Public Inquiry, held during October and November 2021.
4. At the time of the Stage 2 hearing session (June 2022) the Secretary of State had not issued a decision on the application following the Public Inquiry.
5. The following response provides an update on matters since the Stage 2 hearing session.

### **Consideration**

6. Following the Public Inquiry in late 2021, and the Examination hearing session in June 2022, the Secretary of State issued a [decision](#) on the application, by letter dated 6 April 2023.
7. The letter noted that the Inspector recommended that the application should be approved, and planning permission granted, subject to conditions and Legal Agreements. However, for the reasons given the Secretary of State disagreed with the Inspector and refused the application.
8. In summary, the reasons given by the Secretary of State relate to:
  - Location of the application is not in accordance with Policies LBD1 of the Local Plan, Core Policies 1 and 14 of the Core Strategy, and Policy AL/STR 1 of the Site Allocations LP;
  - Scheme not considered to be sensitively designed having regard to its setting;
  - Weighing against the proposal is the harm to the landscape and the scenic beauty of the HWAONB which attracts great weight. There is further harm by way of conflict with the spatial strategy which attracts moderate weight, harm to air quality which is

afforded very limited weight and harm to the plan making process through prematurity which is afforded very limited weight;

- Concluding that exceptional circumstances do not exist to justify the proposed development in the AONB and that the development would not be in the public interest.

9. It is noted that the Inspector conducting the Public Inquiry had recommended to the Secretary of State that planning permission for the scheme proposed under 20/00815 be approved (a copy of the Planning Inspector's decision is attached to the Secretary of States decision) and in so doing specifically addressed the matter of impact upon the AONB, the benefits of the scheme including housing need concluding that the exceptional circumstances test in para 177 was met as set out in paragraphs 812 and 813:

*“812. I have found that the development would cause some harm to the landscape and scenic beauty of the HWAONB, which attracts great weight. There would also be very limited harm to air quality. However, given the limited extent of harm, including to the HWAONB, in the context of the area's particular housing needs and constraints alongside the wider benefits that would be delivered, these considerations amount to exceptional circumstances to justify development in the HWAONB in this location and the development would be in the public interest.*

*813. I would stress that this conclusion is not just a consequence of unmet housing need. Rather it is a unique combination of factors including market and affordable housing need, there being no adopted strategy to fully address current and on-going housing need, uncertainty over when, if and in what form the eLP might be adopted, the constrained nature of the Borough and the apparent lack of available alternative sites, and the limited extent and degree of harm that would arise from the proposed development. It is these matters, combined with the other identified benefits that would be delivered, that come together to form the exceptional circumstances required to justify this proposed development in the terms of para 177 of the Framework”.*

10. The Council wrote to the Inspector on the 4 May 2023 [[ID- TWLP-109](#)] providing the Inspector with a copy of the Secretary of State's decision [[ID-TWLP-108](#)].

11. In its letter of 4 May 2023, the Council explained that it had considered the implications of the decision for the proposed allocation, and that it is the Council's view that the implications of the decision are not such as to preclude the proposed allocation of the site for housing in the Local Plan.
12. Following the Secretary of State's decision to refuse the planning application, Berkeley Homes, the applicant and site owner, challenged the validity of the decision, and the High Court (on 6 October 2023) subsequently quashed the April 2023 Secretary of State's decision to refuse planning permission. A copy of the Consent Order issued by the High Court is attached at **Appendix 1** of this statement.
13. Since October 2023, the Secretary of State has been in the process of re-determining the planning application.
14. Despite the uncertainty regarding a new decision, Berkeley Homes remains committed to the delivery of the site, evidenced in part by its legal challenge. It has also made a representation to the Council's recent public consultation relating to the Council's response to the Inspector's Initial Findings ([rep number 121](#)) and through this, further demonstrates its commitment to the site, promoting it as available, achievable and suitable for development and allocation in the Local Plan.
15. Similarly, as explained at the Council's response to Question 2, the Council is committed to the continued allocation of the site in the Local Plan and does not consider there to be any material planning considerations/change in circumstances that would warrant its deletion as an allocation.
16. The site is considered to have a significant number of potential positive benefits which is acknowledged by the appeal inspector at paragraph 826 of the report, including being adjacent to the Cranbrook Limits to Built Development boundary, the contribution of a further 165 dwellings to the housing land supply of which 40% will be affordable housing, the limited harm to HWNL, there being a very large Biodiversity Net Gain area, and the inclusion of new public open space.
17. Relating to the Planning Call-in Inquiry, there has been an updated Statement of Common Ground between Berkeley Homes (Eastern Counties) Ltd and TWBC, dated November

2023. This will be reviewed before the Stage 3 hearing session to take place on 20 June, and if necessary, it will be updated further.

## Conclusion

18. The above response to Question 1, sets out the chain of events that have occurred since the site was discussed at the Stage 2 hearing session held on 23 June 2022. It identifies that the current position is that a new decision is awaited from the Secretary of State, with its original decision dated 6 April 2023, having been quashed by the High Court. Despite uncertainty, the site promotor and the Council remain committed to the allocation of the site in the Local Plan.

## Inspector's Question 2: [re. Material Changes in Circumstances]

Have there been any material changes in circumstances since the Stage 2 hearings to suggest that the allocation is unsound?

### TWBC response to Question 2

#### Consideration

19. The Council's response to Question 1 sets out the series of events that have occurred since the Stage 2 hearing sessions, at which this site was discussed at the hearing session held on 23 June 2022.
20. The Council does not consider there to be any material changes in circumstances since the Stage 2 hearings that would suggest the allocation is unsound.
21. As it stands, the planning application 20/00815/Full is awaiting a new decision by the Secretary of State, and as advised by the Council previously, there was nothing raised in the original, now quashed decision that resulted in the Council feeling that the allocation should be deleted from the Local Plan.
22. Further to the above, it should be noted that the parish of Cranbrook & Sissinghurst in which the Turnden site is located, now has a 'made' Neighbourhood Development Plan (NDP) [[PS-070](#)]. It was made at a meeting of TWBC's Full Council on 4 October 2023, having been successful at a referendum held on the 14 September 2023, since when it has formed part of the borough Council's Development Plan, carrying full weight in planning decisions.
23. The Council is satisfied that the made Neighbourhood Development Plan would not materially affect the ability to deliver development on the site, as envisaged by the proposed allocation. It is noted that the Independent Examiner, Mr Andrew Ashcroft, in his [Final Report](#) (dated 25 May 2023) following the examination of the Neighbourhood Development Plan, had due regard to the emerging Local Plan (see para 3.1 of the Final Report for example) and suggested modifications to the Plan to meet the basic conditions. In examining the neighbourhood plan, he had due regard to the emerging Local Plan, and recommended deletion of Policy LN3.5 - Local Protection & Enhancement of the Crane Valley, recognising that its approach was to restrict proposals for major development in parts of the Crane Valley (where Turnden Farm is located) beyond the footprint of existing



historic farmsteads or previously developed land. The policy was considered to be in direct conflict with the adopted Site Allocations Local Plan (SALP) and the submitted Local Plan.

24. The site is located within the High Weald AONB (now National Landscape). It is further noted that the High Weald AONB Unit has recently produced a new, updated [High Weald AONB Management Plan for the period 2024-2029](#). It was approved by the Joint Advisory Committee on 27th March 2024 for adoption by each of the Local Authorities. The new management plan will soon be entering the TWBC committee cycle, ending with Cabinet on 20 June 2024, where the intention is that it will be adopted for decision-making purposes. It will replace the current Plan Management Plan 2019 – 2024 [Core Document 2.1].
25. The Council is of the view that there is nothing within the new AONB Management Plan to indicate that the allocation should be reconsidered.
26. The Council is aware of the change in the statutory duty towards protected landscapes that applies to LPAs brought in by Section 245 (Protected Landscapes) of the Levelling Up and Regeneration Act 2023. This has been referred to in comments by interested parties including natural England and the High Weald National Landscapes Partnership (formerly High Weald AONB Unit).
27. In the absence of any further government guidance for LPAs in how the revised duty should be discharged, which now includes to ‘seek to further’ the statutory purposes of the area, the Council recognise that is an active duty, not a passive one. The Council has and continues to take an active role in seeking to “further the statutory purposes of the area” not only through decision making but also through its support for and contribution to partnerships and projects including to the High Weald AONB Management Plan and the High Weald National Landscape Partnership and the Kent High Weald Partnership. The Council is of the view that there is nothing within the revised duty that would justify the re consideration of the allocation of AL/CRS 3.
28. A revised version of the NPPF was published on 20 December 2023. Paragraphs 77 and 226 of the NPPF make it clear that Local Planning Authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years’ worth of housing against local housing need (where adopted

housing requirements are out-of-date) where the Local Planning Authority has an emerging Local Plan that has been submitted for examination or has reached Regulation 18 or 19 stage. Given that the council's emerging Local Plan is currently subject to examination, the council is only required to demonstrate a four-year supply. Moreover, the 5% buffer to the four and five-year target requirements is no longer applicable and given the council's latest Housing Delivery Test result of 96%, no other buffer should be applied.

29. The Department for Levelling Up, Housing and Communities (DLUHC) has provided clarification on 5 February 2024 that the four-year supply requirement will be based on the performance against 5-year housing land supply, and not an alternative calculation. The required four-year supply requirement calculated against a five-year supply (and no 5% buffer) results in a supply position of **4.50** years as at 1 April 2023. This position takes account of the shortfall in housing supply between 1 April 2020 – 31 March 2023.
30. Whilst this does show that the Council can demonstrate a 4.5 year housing land supply, the emerging Local Plan still requires allocated sites to meet ongoing need into the plan period.
31. As such, the Council maintains its position that the allocation remains sound. This is evidenced at paras 4.71-4.73 of the Officer report taken to Full Council on 13 December 2023 [[PS 065](#)] relating to the Council's response to the Inspector's Initial Findings, received November 2022.

## Conclusion

32. The Council's response to Question 2 sets out a number of material changes in circumstances, including that Cranbrook & Sissinghurst Parish now has a made Neighbourhood Development Plan, which carries full weight in planning decisions. There is also a new High Weald AONB Management Plan (scheduled to be adopted for decision making purposes by the Council at Cabinet on 20 June 2024), an updated NPPF and a revised and improved housing land supply position for the Council. The response to Question 2 sets these out in detail and concludes that none of these materially affect the Council's opinion on the allocation of the site, which it maintains is sound.

## Inspector's Question 3: [re. Main Modifications]

Are Main Modifications necessary to Policy AL/CRS3 to rectify any soundness matters?

### TWBC response to Question 3

#### Consideration

33. The Council does not consider main modifications are necessary to Policy AL/CRS 3 to make it sound. It is considered that the policy wording set out in the policy box in the [Submission Local Plan](#) (pages 187-118) is sound as written.
34. As set out previously, the site has been discussed at the Stage 2 hearing session held on 23 June 2022. The [Inspector's Initial Findings](#) letter, received November 2022, does not reference the site. It is likely that the Inspector will discuss the site in his report in due course.
35. If the Inspector feels, following the Stage 3 hearing session to be held on 20 June 2024, that main modifications are required in order to make the policy sound, then clearly the Council would wish for the opportunity to suggest modified text to address any such soundness issues, with the view that any revised policy wording would be consulted on through the main modifications consultation in due course.
36. Similarly, should the new decision by the Secretary of State be received prior to the conclusion of the Local Plan Examination, there may be a need for the Council to review the policy text in light of any decision made.

# Appendices

# Appendix 1: High Court Consent Order Quashing SoS Decision

**IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION  
PLANNING COURT**



AG-2023-LON-001510  
CO/1785/2023

**AC-2023-LON-001510**

**In the matter of an application for Planning Statutory Review**

**BETWEEN:**

**BERKELEY HOMES (EASTERN COUNTIES)  
LIMITED**

**Claimant**

**and**

**(1) SECRETARY OF STATE FOR LEVELLING UP,  
HOUSING AND COMMUNITIES**

**(2) TUNBRIDGE WELLS BOROUGH COUNCIL**

**Defendants**

The Honourable Mr Justice Eyre

UPON the Claimant's application for statutory review of the First Defendant's decision dated 6<sup>th</sup> April 2023 to refuse the Claimant's application for planning permission under reference APP.M2270/V/21/3273015 ("the Decision").

AND UPON the parties agreeing terms

AND UPON the Court being satisfied that it is appropriate to quash the Decision for the reasons set out in the Statement of Reasons

**IT IS ORDERED BY CONSENT:**

1. Permission is granted for the Claimant to bring planning statutory review proceedings pursuant to s.288 Town and Country Planning Act 1990.

2. The Claim with reference CO/1785/2023 is hereby allowed such that the Decision is quashed.

3. The Claimant's planning application, called in pursuant to s.77 of the Town and Country Planning Act 1990, is remitted for reconsideration by the First Defendant.

4. The First Defendant shall pay the Claimant's costs of and incidental to the Claim incurred since the date of the Decision by the First Defendant and up to the date of this consent order, to be assessed on the standard basis if not agreed.

### STATEMENT OF REASONS

1. The Claimant applied to the Second Defendant for planning permission for "the construction of 165 new dwellings with associated access, car parking, refuse/recycling storage, landscaping, earthworks and other associated works" ("the Proposed Development") on land adjacent to Turnden, Hartley Road, Cranbrook, TN17 3QX.

2. That application was called-in by the First Defendant for determination on 12 April 2021. A public inquiry was held between 21 September 2021 and 5 November 2021. The Inspector's report was issued on 4 April 2022 and the First Defendant's decision was issued on 6 April 2023 ("the Decision"). The First Defendant disagreed with the Inspector's recommendation to grant planning permission and instead refused planning permission.

3. Central to the First Defendant's Decision was his finding that the Second Defendant could demonstrate a 4.89 year supply of deliverable housing land (equating to a shortfall of 77 homes over the five-year period). This figure had been agreed at the inquiry. However, by the time of the First Defendant's decision, that figure was almost 18 months old. In the meantime, two inspectors appointed by the First Defendant to hear appeals elsewhere in the Second Defendant's area had come to different conclusions on housing land supply (Hawkhurst Golf Club (APP/M2270/W/21/3273022) and Highgate Hill (APP/M2270/W/21/3282908)). These appeal decisions were expressly drawn to the First Defendant's attention in a letter sent on behalf of the Claimant dated 22 April 2022.

4. The First Defendant accepts that these inspectors' findings on housing land supply were, in the circumstances of this case, material considerations for the purpose of his Decision: *DLA Delivery Ltd v Baroness Cumberledge of Newick*

[2018] EWCA Civ 1305. The First Defendant has stated to the Claimant that he had regard to these decisions and concluded that they did not affect his decision (DL6-7), albeit it is not accepted by the Claimant that due regard was paid to those decisions. However, the First Defendant accepts that, in the particular circumstances of this case, it was incumbent on him to grapple with the detail of those decisions in relation to matters of housing land supply and to provide reasons as to why he came to a different conclusion. He accepts that the reasons given in paragraphs 6-7 of his Decision letter did not meet the standard set out in *South Bucks District Council v Porter* [2004] UKHL 33, in that he did not adequately explain why, notwithstanding the inspectors' findings in the interim, he considered that the housing land supply position at the inquiry remained valid 18 months after the close of the inquiry.

5. The First Defendant also accepts that his assessment– for the purposes of paragraph 177 of the NPPF – that “exceptional circumstances” did not exist for granting planning permission for the Proposed Development was premised in part on his finding that the Second Defendant’s housing land supply was 4.89 years. In light of the concession in paragraph 4 above, the First Defendant accepts that his conclusion that there were no exceptional circumstances for the purposes of paragraph 177 of the NPPF (DL38) cannot stand because that conclusion was predicated, in part, on his finding that there was a 4.89 year housing land supply.

6. In these circumstances, the First Defendant has agreed to his Decision being quashed on grounds 1B and 4A as set out in the Claimant’s Statement of Facts and Grounds only (as summarised in paragraphs 41(b) and 69(a)).

7. For the avoidance of doubt:

a the First Defendant does not accept that there is merit in any of the grounds of challenge advanced within the Claimant’s Statement of Facts and Grounds, other than those grounds which raise the issues identified above (namely Grounds 1B and 4A)

b the Claimant maintains that all the grounds of challenge, including those not the subject of this order, are grounds that would have succeeded had this matter proceeded to Court.

APPROVED BY MR JUSTICE EYRE

06/10/2023.

BY THE COURT