



## Appeal Decision

Hearing held on 23 October 2013

Site visits made on 23 and 24 October 2013

by **Joanna Reid BA(Hons) BArch(Hons) RIBA**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 November 2013



**Appeal Ref: APP/M2270/A/13/2197861**

**Land south of Penns Yard, Pembury, Kent TN2 4XY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Town and Country Housing Group against the decision of Tunbridge Wells Borough Council.
- The application Ref 12/03453/FULMJ/TA1, dated 14 December 2012, was refused by notice dated 27 March 2013.
- The development proposed is 27 no. affordable rent residential units (2 x 2bed and 7 x 3bed houses, 6 x 1bed and 4 x 2bed flats, 8 x 2bed maisonettes) with 48 car parking spaces, garden areas, communal amenity space, children's play area and ecology receptor site: incorporating new access road and minor alterations to the existing parking arrangement for the existing affordable homes and relocation of lamp post.

### Decision

1. The appeal is allowed and planning permission is granted for 27 no. affordable rent residential units (2 x 2bed and 7 x 3bed houses, 6 x 1bed and 4 x 2bed flats, 8 x 2bed maisonettes) with 48 car parking spaces, garden areas, communal amenity space, children's play area and ecology receptor site: incorporating new access road and minor alterations to the existing parking arrangement for the existing affordable homes and relocation of lamp post at land south of Penns Yard, Pembury, Kent, TN2 4XY, in accordance with the terms of the application, Ref 12/03453/FULMJ/TA1, dated 14 December 2012, subject to the conditions set out in Schedule A at the end of this decision.

### Procedural matters

2. Kent County Council's agent has confirmed that the financial contributions referred to in the Council's reason for refusal 4 towards local libraries, youth facilities and community learning are not being sought. I shall deal with the appeal accordingly.
3. As the daylight was failing at the site visit on 23 October 2013 I carried out an unaccompanied site visit on 24 October 2013 to see the site from its surroundings and to see other nearby developments and features which had been drawn to my attention at the hearing.
4. The completed planning obligation was submitted after the hearing was closed to allow a drafting error to be corrected. Due to the angled alignment of the site boundaries to the compass points, the references to compass points in this decision are approximate. So, for 'south' read 'roughly south', and so on.

## Main issues

5. From my inspection of the site and its surroundings, and from the representations made at the hearing and in writing, I consider that the main issues in this appeal are:
- Whether the proposal would compromise the aims of local and national policy to control development in the Green Belt and in the countryside,
  - The effect that the proposed development would have on the landscape and scenic beauty of the High Weald Area of Outstanding Natural Beauty, and
  - Whether planning obligations for financial contributions towards youth and adult recreation space, adult social services, and primary education facilities would meet the statutory tests in *The Community Infrastructure Levy Regulations 2010* (the CIL).

## Reasons

### *Green Belt and countryside*

6. Part of the appeal site is outside but adjoining the Limits to Built Development (LBD) of the village of Pembury defined in the *Tunbridge Wells Borough Local Plan* (LP) Proposals Map, so that part of the site is within the countryside. That part is also within the Metropolitan Green Belt (Green Belt), where inappropriate development is, by definition, harmful.
7. Core Policy 2 of the *Tunbridge Wells Borough Local Development Framework Core Strategy* (CS) states that there will be a general presumption against inappropriate development that would not preserve the openness of the Green Belt, or which would conflict with the purpose of including land within it. Any new development should accord with the *National Planning Policy Framework* (Framework). The Framework states that the construction of new buildings in the Green Belt should be regarded as inappropriate. Exceptions to this include limited affordable housing for local community needs under policies set out in the Local Plan.
8. LP Policy MGB1 states that within the Green Belt planning permission will not be granted other than for, amongst other things, limited affordable housing to meet local needs in accordance with LP Policy H8. Where no alternative site is available to meet local needs within the LBD, LP Policy H8 aims to permit residential development outside the LBD provided that all of a number of criteria are met. LP Policy LBD1 states that outside the LBD development will only be permitted where it would be in accordance with all relevant Local Plan policies. Its aims include to ensure sustainable development patterns, and to limit development in the surrounding countryside.
9. The proposal, which is entirely for rented affordable dwellings, would meet part of the identified local housing need in Pembury, which the Council has a responsibility to provide. It would be in accordance with CS Strategic Objective SO5, which aims to provide high quality housing to meet the needs of all sectors of the community.
10. The housing need had been identified by the Council's Housing Department, and it was demonstrated in the Housing Needs Survey for the Parish of Pembury in 2008. At the hearing, it was confirmed that there were about 73 households on the Council's register at the end of September 2013 with a need

for affordable housing and a demonstrated local connection to the Parish of Pembury. Of these, about 36 households were in very high (Band 2) housing need. Thus, the scheme for 27 dwellings would only provide some of the affordable housing urgently needed by local people. The Council's planning witness confirmed that the need for the affordable housing is not in dispute.

11. CS Core Policies 1 and 14 were not concerns of the Council in their reasons for refusal. However, CS Core Policy 1 gives priority to the development of previously developed land within the LBD of settlements, but it sets out circumstances where, exceptionally, it may be appropriate to release sites outside the LBD. These include affordable housing, for local needs only, at the villages where the need cannot be met within the LBD in accordance with Core Policy 6. CS Core Policy 14 aims to restrict new development to sites within the LBD of villages. Outside the LBD affordable housing to meet an identified local need in perpetuity may be allowed in accordance with CS Core Policy 1.
12. The appellant's Evaluation Assessment of Potential Development Sites within Pembury considered land owned or managed by the appellant within the LBD, including 32 High Street, which has since been sold, and in and around Belfield Road. It concludes that the local need for affordable housing would not be met on existing sites within the LBD and that the appeal site is the only feasible and available site to meet some of that local need. From what I saw, and for the reasons given in the assessment, I agree. Whilst it might be possible to meet some of the need within the LBD in future, no suitable and available sites have been identified to meet the existing very high need. As the village is largely tightly bordered by the Green Belt and the Area of Outstanding Natural Beauty almost any site for affordable housing outside the LBD would be subject to similar constraints as the appeal site.
13. The appeal site is an overgrown area of land which was identified as being suitable for development as a rural exception site for affordable housing in the Council's 2009 Strategic Housing Land Availability Assessment (SHLAA). Other sites identified in the SHLAA would be well related to the LBD in compliance with CS Core Policy 6. However, the appeal site was considered to be the most suitable because it is close to the heart of the village and most local services, it is the smallest of the SHLAA sites outside but adjacent to the LBD, it is next to residential areas in Penns Yard and Camden Avenue, and it would be reached through the appellant's existing development by the Penns Yard cul-de-sac. Moreover, a small part of the site adjoining back and side gardens in Camden Avenue is within the LBD, where the principle of development is acceptable.
14. The only conflict alleged with CS Core Policy 6 and LP Policy H8 is that there is a chance that the affordable dwellings would not be available to meet local housing needs in perpetuity. The appellant has explained that a recent change in housing legislation has given some tenants who pay an affordable rent the right to acquire their home. Some settlements are designated protected areas, which are exempt from this provision, but Pembury is not one of them. As the housing would be grant funded the appellant would also not be able to offer tenancies which would fall outside these provisions. For the reasons given by the appellant in writing and at the hearing, I see no reason to disagree.
15. If dwellings at the site were to be acquired by their occupiers, they would cease to be available to meet local community needs. Because this recent change in housing legislation could prevent the existing local community need being met

- outside the LBD of Pembury on a rural exception site, there would be almost no opportunity to meet the local need in Pembury which exists now. This would be contrary to CS Strategic Objective SO5. Thus, there is a conflict between housing legislation and national and local planning policy.
16. The appellant and the Council's housing witness confirmed at the hearing that there has been minimal take up of the right to acquire in the appellant's other schemes in Pembury over the last 25 years, and almost no take up for around 10 years. The reasons for this include the high property values in Pembury, the reduced right to acquire discounts offered, and the low incomes of tenants. Therefore, it is expected that the chance of tenants exercising the right to acquire their homes would be minimal, if at all, over the life of the scheme.
  17. The appellant also explained that it would be in its interest, as the registered social landlord, to limit rights of mutual exchange with tenants outside the locality, in accordance with the principles of its charity status. Circumstances in the future may not reflect what has happened in the past. However, due to the existing very high need for the affordable dwellings and the minimal take up of the right to acquire in Pembury so far, and the restricted opportunities for mutual exchange, there would be only a slight chance that some affordable rented dwellings would not be available to meet local need in perpetuity.
  18. The Framework defines rural exception sites as small sites used for affordable housing in perpetuity where sites would not normally be used for housing. It advises that small numbers of market homes may be allowed on rural exception sites at the local planning authority's discretion. So, whilst none are proposed now, the slight chance that some dwellings may become market homes in the future would not prevent the site from being considered to be a rural exception site.
  19. The appellant has submitted a planning obligation which seeks to ensure that the affordable dwellings would be rented to people in housing need with a local connection to Pembury. It would not remove rights to acquire or mutual exchange because statutory rights under other legislation could not be limited by a planning obligation. So, it would not satisfy the letter of CS Policies 6 and 14 for the affordable housing to be available in perpetuity. However, the obligation would enable the dwellings to remain available to meet local need as far as it is reasonably possible, in accordance with the thrust of those Policies and LP Policy H8.
  20. Open market housing at much of the site would be contrary to local and national policy, because it would be in the Green Belt and in the countryside, so the obligation would be necessary to make the development acceptable in planning terms. It would be directly related to the whole of the proposed development, and as it would affect all of the dwellings it would be fairly and reasonably related in scale and kind to the development. As the obligation would satisfy all 3 of the statutory tests in the CIL, I shall take it into account.
  21. National and local policy refer to 'limited affordable housing' and 'small sites', but they do not define 'limited' or 'small'. Although the Council says that the scheme would not be limited in scale, character or number of units, the site area and the 27 dwellings would be small in relation to the physical scale of the village, the number of dwellings in it, and its population. The density would be relatively low at roughly 37.5 dwellings per hectare, so the amount of development on the site would be limited, and the mainly 2-storey dwellings

- would be in character with their surroundings. No speculative or general demand housing is proposed, so the scheme would be limited to affordable housing to meet local needs. The number of affordable dwellings would also be limited because the proposal would meet only part of the identified local need.
22. Furthermore, part of the site is within the LBD and the equivalent of roughly 5 dwellings, or the equivalent of roughly 3 of the plots, would be within the LBD. On this basis there would be only roughly 22 dwellings or roughly 24 plots that would be rightly classified as rural exception housing. This would be similar to the scheme including 23 rural exception dwellings permitted by the Council in Hawkhurst, where the population in Hawkhurst and Sandhurst Ward is similar to the population of Pembury Ward. Therefore, the scheme would provide limited affordable housing to meet local community needs.
  23. Having regard to the need for the development, the tension between housing legislation and local and national planning policy, the low potential for the rights to acquire or mutually exchange being exercised at the site, the ability to further reduce the potential for the right to acquire through means such as tenancy types, and the planning obligation to ensure that the rented affordable dwellings would only be allocated to eligible local people, the proposal falls to be considered as rural exception housing which is acceptable in terms of national and local policy in the countryside.
  24. Because the scheme would provide limited affordable housing to meet local community needs, it would not amount to inappropriate development in the Green Belt. As it would not, therefore, be necessary for the appellant to demonstrate very special circumstances, the Minister's statement drawn to my attention by the Council is not directly relevant to the appeal proposal.
  25. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence. Due to its limited scale and its spacious layout, and the siting of the dwellings within and close to the village, with a landscaped area in the southern part of the site furthest from the LBD, the scheme would achieve an acceptable balance between the need for the scheme and the essential characteristics of the Green Belt.
  26. Furthermore, the sympathetically designed scheme would respect the character and appearance of the nearby mainly residential development and its Green Belt countryside setting, so it would sustain the village status and setting of Pembury. No suitable and available site to meet the need within the village has been identified. Because the development would be well related to the village, it would not unacceptably encroach into the countryside or encourage unrestricted sprawl. As the spaces between the site and the A21 would be unaffected and there is a substantial area of Green Belt land on the opposite side of the A21, the development would not lead to unacceptable coalescence with, or cause Pembury to become a suburb of, Royal Tunbridge Wells. Thus, the scheme would also achieve an acceptable balance between the need for the development and the purposes of including land within the Green Belt.
  27. Because the proposal would be a valid exception to Green Belt policy, the scheme would not set a harmful precedent for development in the Green Belt. This is supported by the consultation draft of the Council's Site Allocations Development Plan Document, because Sites numbered 345 and 346, which adjoin the site to the west and east, are not proposed for allocation.

28. I consider that the proposal would not compromise the aims of local and national policy to control development in the Green Belt and in the countryside. It would satisfy CS Core Policies 1 and 2, the thrust of CS Core Policies 6 and 14, LP Policies LBD1 and MGB1, the thrust of LP Policy H8, and the Framework.

*Area of Outstanding Natural Beauty*

29. The part of the site that is outside the LBD is also within the Area of Outstanding Natural Beauty which has the highest status of protection in relation to landscape and scenic beauty. CS Core Policy 4 aims to conserve and enhance the Borough's urban and rural landscapes, including the Area of Outstanding Natural Beauty, and to use the *Tunbridge Wells Borough Local Development Framework Supplementary Planning Document Borough Landscape Character Area Assessment (LCA)* to manage, conserve and enhance the landscape as a whole.
30. The reasons for siting the affordable housing on a rural exception site in the Green Belt, given in the first main issue, apply with similar strength in the Area of Outstanding Natural Beauty because almost the entire village is also tightly bounded by, and outside, the Area of Outstanding Natural Beauty. They provide the exceptional circumstances whereby planning permission could be granted for major development in this designated area. The scheme would be in the public interest because it would provide affordable housing to meet some of the identified local need, and, because there is no public access to the site, it would not cause the loss of recreational opportunities.
31. The LCA explains that Pembury is a ridge-top settlement, and that the still dense surrounding forest cover means that it is not a visually dominant feature in the landscape. The self-contained 'introverted' character of the village is accentuated by its physical severance from its wider surroundings by the bypasses to the south and west. However, the village retains its 'forest village' character with tree cover extending up to the settlement edge, and its individual character and separateness from Royal Tunbridge Wells. The LCA 2011 Update recognises that the area has changed considerably, that it is likely to continue to do so, and that the preservation of the character of Pembury as a village is likely to be a key issue for future developments.
32. Most of the site is within the Area of Outstanding Natural Beauty, but nearby public views of the site are largely restricted to parts of Cornford Lane and Chalket Lane. It is within the mainly undeveloped land between the edge of the village and the A21, but the character of the landscape has been physically and aurally eroded by the road in its deep cutting and the associated traffic noise. Thus, the site is less sensitive to development than other parts of the Area of Outstanding Natural Beauty, including other sites around Pembury.
33. The scale, form, materials and design of the dwelling blocks would reflect the Kent vernacular. The height of the 2 part 3-storey flat blocks, which would be in keeping with the nearby 3-storey buildings in the High Street, would be contained by the fall down across the site from north to south and from east to west, so they would not look out of place. Due to its fairly low density and modest scale, and its spacious siting, the built form of the development would not unacceptably intrude into the countryside enclosed by the A21.
34. Existing boundary trees and hedgerows would be conserved. New trees and plants within and edging the development, including the deep landscaped area

- in the southern part of the site, would include indigenous species planting which would reinforce local distinctiveness. Thus, the landscaping would provide a sensitive transition to the rural landscape beyond the site, which includes the generous tree dominated spaces between the site and the A21.
35. From Cornford Lane, the west boundary planting, with the roofs of the dwellings beyond, would be little different to the present views of the dwellings and their gardens in Camden Avenue. In the restricted views from Chalket Lane the dwellings would have little visual impact due to the sporadic intervening vegetation and the existing evergreen planting by the east boundary. Even if part of that evergreen screen were to be reduced in height to increase the light in the garden by Block D, the traditional forms and materials of the well spaced dwelling blocks would complement their rural site.
36. The development would result in a small change to the form of the village, but it would have little visual impact in long views across the landscape, and it would preserve the forest village character and setting of Pembury. Because the scheme would be well related to the village, it would conserve the empty 'remote' and secretive woodland and heathland character and distinctiveness of the surrounding rural landscape.
37. Although the Council's reason for refusal refers to a presumption against new development, this is not a term in CS Core Policy 4. However, the scheme would achieve a sympathetic balance between the need for the rural exception housing and the conservation and enhancement of the natural beauty of the Area of Outstanding Natural Beauty. Because the scheme would harmonise with its urban and rural contexts it would sustain the intrinsic character and distinctiveness of the Borough's natural and built environment.
38. I consider that the proposed development would not harm the landscape and scenic beauty of the Area of Outstanding Natural Beauty. It would satisfy CS Policy 4 and the Framework.

*Financial contributions*

39. The Council is seeking a financial contribution towards off-site youth and adult recreation facilities in accordance with CS Core Policy 8, LP Policy R2 and the *Tunbridge Wells Borough Recreation Open Space Supplementary Planning Document (SPD)* which aim, amongst other things, to provide and maintain a range of recreational facilities.
40. Although land has been allocated for the proposed extensions to Woodside playing fields, beyond the eastern edge of the LBD of Pembury, in accordance with LP Policy R3, it has not been purchased. Moreover, planning permission has not been granted for the facilities proposed there. So, there would be little certainty that these extensions would be provided, and, thus, that the contribution would be necessary, even though the basis for seeking the contribution is set out in the SPD. Because it has not been demonstrated that the contribution would be necessary to make the development acceptable in planning terms, it would fail to meet that statutory test in the CIL.
41. The Council's parks and sports team leader has advised that the existing facilities at Lower Green Road, which is an easy walk from the site, would not be likely to attract further finance. Instead, the contribution would be likely to be spent at Rusthall. Rusthall is on the other side of Royal Tunbridge Wells and

about 5 km away, so people living at the site would be unlikely to use those facilities. As the Rusthall scheme would be outside the Parish of Pembury, it would be contrary to the SPD and LP Policy R2. Moreover, because this scheme would not be directly related to the development, it would not meet the statutory test in the CIL. Although a need for pitch drainage at the Lower Green Road facilities was raised by an interested party at the hearing, insufficient evidence was put to me to show that this would be necessary to make the development acceptable in planning terms.

42. The appellant has explained that Kent County Council would not normally expect financial contributions from affordable housing because it is a provision that meets local needs. However, as there is a chance that some dwellings may not be available to meet local needs in perpetuity, contributions towards primary education, and adult social services, are being sought.
43. The contributions would appear to have been calculated on the basis that all of the dwellings would not be available to meet local need from the outset. However, it has been found that there is only a slight chance that one or more dwellings could become general market housing in the future. Even if, in the very unlikely event that, all of the dwellings were to cease to be available as affordable housing to meet local community needs in the future, they would have been available to meet local needs in the meantime. It is accepted that these future circumstances could be difficult to predict. However, as it has not been shown that an allowance has been made for them, it is not possible to assess whether the contributions would be fairly and reasonably related in scale and kind to the development. So, that statutory test in the CIL would not be met.
44. For all of these reasons, each of the obligations for financial contributions towards youth and adult recreation space, adult social services, and primary education, fails to meet one of the statutory tests in the CIL. As it is necessary for all 3 of the statutory tests in the CIL to be met, I shall not take these obligations into account.

*Other matters*

45. There would be little physical change to the immediate settings of the 2 listed buildings at 21 and 23 High Street, which are either side of the junction of Penns Yard with the High Street, and the small part of the appeal site which includes part of the Penns Yard highway, which is within the Pembury Conservation Area. The scheme would be within the wider settings of these listed buildings and the Conservation Area but it would be largely screened by the existing development in Penns Yard, and its sympathetic Kent vernacular design would harmonise with its heritage contexts. As the listed buildings face the sometimes busy High Street, the additional vehicle and pedestrian comings and goings associated with the scheme would not damage their settings or the character of the Conservation Area. Therefore, the settings of the listed buildings at 21 and 23 High Street would be preserved, and the character and the appearance of the Conservation Area would be preserved.
46. Turning to highway safety and the free flow of traffic in Penns Yard and the High Street, and at the junction of these roads, the highway authority has raised no objections, subject to the imposition of planning conditions. The appellant's transport statement shows that the Penns Yard road and its junction with the High Street has sufficient capacity to accommodate the



development, and that no mitigation measures would be required beyond the already implemented waiting restrictions around the junction. The end of the Penns Yard road would be realigned, but the parking within the existing Penns Yard development would be relocated within that development. As the car and cycle parking for the future occupiers would exceed the highway authority's minimum standards the scheme would be self-sufficient in terms of parking for the occupiers and their visitors. So, the development would not be likely to promote any off-site parking which could lead to congestion in nearby streets.

47. The transport statement shows that there would not be any significant queuing at the junction in peak hours, so vehicle movements associated with the development would not be likely to cause harmful pollution. It confirms that the scheme would be well related to most facilities within Pembury and accessible by public transport, and that the traffic generated would not have a significant impact on the surrounding highway network. It does not raise concerns about access for emergency vehicles, and it explains that there are no clusters or patterns of accidents nearby that would cause concern in the context of the scheme. In the light of the transport statement and from what I saw, I see no reason to disagree with the highway authority's findings.
48. Due to its siting and design the development would respect nearby occupiers' living conditions with regard to outlook, privacy, and daylight and sunlight. Because of the oblique angles of view from the east-facing living area windows in the first and second floor flats in Block C, and as Blocks A and B are houses with first floor bedrooms, unacceptable overlooking of the patio areas in the back garden at 6 Camden Avenue would not be likely to occur. Because of their orientation, siting and form the dwellings would not cause unacceptable overshadowing, or a detrimental loss of daylight or sunlight, that would harm those occupiers' living conditions in their home or in their back garden.
49. The appellant's noise impact assessment has been carried out in accordance with recognised standards and practice. The proposed noise mitigation measures would ensure that the living conditions of the future occupiers, in their homes and outdoors, would not be harmed by traffic noise from the A21 dual carriageway. Acoustically attenuated ventilation to specified areas, which could be controlled by condition, would allow the future occupiers to ventilate and cool their homes without the need to open windows.
50. The scheme has been designed in accordance with Lifetime Homes standards. There would be safe and easy access for people with disabilities and specific access requirements, and one house has been designed specifically for a family needing wheelchair accessible accommodation. The scheme has also been designed to achieve Secured by Design certification, which takes into account the well established principles of natural surveillance and defensible space. So, the on-site children's play area for the proposed and existing schemes in Penns Yard would not be likely to attract antisocial behaviour.
51. The appellant's extended phase 1 habitat survey concluded that the site has low ecological value, and that no protected species were likely to be impacted upon by the proposal. The site clearance works for the initial survey, which were carried out in accordance with the appellant's reptile method statement and mitigation strategy, found no evidence of reptiles at the site. However, an ecology receptor site is proposed so that, in the unlikely event that reptiles are found during site clearance for development, they can be translocated. The

well vegetated areas within the site could provide routes for wildlife, and the indigenous species planting and ecology receptor site, including hibernacula and log piles, would enhance opportunities for biodiversity.

52. The scheme was revised to take into account views expressed in the public consultation of 2011, and subsequent pre-application discussions with the Council. It is supported by substantial evidence of compliance with other planning issues including soil conditions, arboriculture and the use of energy. The petition submitted with the Council's questionnaire includes roughly 1600 signatures, but the weight to be attached to it is lessened for a number of reasons. The signatures are undated so it is not clear whether it was signed before or after amendments were made to the scheme. The statements on the petition do not appear on each page, so some signatories may not have been aware of them. Some signatories have not included their full address, and a proportion of them appear to live outside Pembury, in settlements including Tonbridge, Sevenoaks, Uckfield and London.
53. The appellant's offer of a 'ransom strip' was withdrawn because it was not considered to be good planning by the Council, and it was not part of the proposal before me. All of the representations of interested parties and the petition have been taken into account. However, none of the points raised against the scheme, individually or cumulatively, outweigh the planning considerations that have led to my conclusions. Therefore, planning permission should be granted subject to conditions.

#### *Conditions*

54. The Council's suggested conditions have been considered in the light of the advice in Circular 11/95 *The Use of Conditions in Planning Permissions* and the Framework. The condition identifying the approved plans is reasonable and necessary for the avoidance of doubt and in the interests of proper planning. Conditions for visibility splays, for car parking, access and turning areas, and for a construction method statement, are necessary in the interests of highway safety. The condition to control external lighting is necessary in the interests of biodiversity and to protect the character and appearance of the area.
55. The conditions to control external materials, hard and soft landscape works, and boundary treatment are reasonable and necessary to protect the character and appearance of the area. The condition for boundary treatment is also necessary to protect the privacy of neighbouring occupiers, and to protect future occupiers from traffic noise in their gardens. As the Council's suggested landscaping condition includes retained trees, the condition in the appellant's arboricultural impact assessment for an arboricultural method statement is reasonable to ensure that trees and hedges within and close to the site are protected during construction, to safeguard the character and appearance of the locality and to conserve the landscape and natural beauty of the Area of Outstanding Natural Beauty. Because most of the site is within the Green Belt and the Area of Outstanding Natural Beauty, and part is within their setting, these designations provide the exceptional circumstances whereby it is reasonable to withdraw the specified permitted development rights.
56. The condition for acoustically attenuated mechanical ventilation is necessary to safeguard future occupiers from traffic noise in their homes. The condition to control working hours during demolition or construction is reasonable to protect the living conditions of nearby occupiers. The condition for foul and surface

water drainage details is necessary in the interests of public health and to avoid flooding. The condition for the children's play area is reasonable for the safety and wellbeing of its users. These conditions have been imposed.

57. If a planted tree or shrub should fail because it is unsuited to the site, or if a retained tree or shrub should fail, it would not be reasonable to require its replacement with a tree or shrub of the same species and size. The tailpiece in the landscaping condition is reasonable to give the Council the discretion to approve a different species and/or size if necessary. The tailpieces have been removed from other conditions because there is an established procedure to deal with revisions to planning conditions.
58. The appellant's geotechnical consultant's ground investigation report confirms that there is no evidence of potential contamination on or close to the site, so the Council's suggested condition is not reasonable or necessary. Insufficient evidence has been put to me to show that traffic calming would be necessary in the interests of highway safety. These conditions have not been imposed.

#### *Conclusion*

59. For the reasons given above and having regard to all other matters raised, the appeal succeeds.

*Joanna Reid*

INSPECTOR

#### **Schedule A**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 5037-P100B, 4721-P101D, 4721-P102A, 4721-P103A, 4721-P110A, 4721-P111A, 4721-P112A, 4721-P113A, 4721-P114C, 4721-P115, 4721-P116, 4721-P117A, 4721-P118A, 4721-P119, 4721-P120, 4721-P121D, 25252 C.01C, 25252 SKC.02G, and TCHG/12/01Rev.B.
- 3) No dwelling shall be occupied until space has been laid out within the site in accordance with approved plan 4721-P121D, and surfaced and drained in accordance with details submitted to and approved in writing by the local planning authority, for cars to be parked, for the loading and unloading of vehicles, and for vehicles to turn so that they may enter and leave the site in forward gear, and those areas shall not thereafter be used for any purpose other than the parking, loading and unloading and turning of vehicles.
- 4) No external lighting shall be installed until its details have been submitted to and approved in writing by the local planning authority. External lighting shall be installed in accordance with the approved details and it shall be retained as such thereafter.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall

be adhered to throughout the construction period. The Statement shall provide for:

- i) the parking of vehicles of site operatives and visitors
  - ii) loading and unloading of plant and materials
  - iii) wheel washing facilities
- 6) No development shall take place until samples and details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 7) No other development shall take place until the areas of land within the visibility splays shown on approved plan 25252 C.01C have been reduced in level and cleared of any obstruction exceeding a height of 0.6 m above the level of the nearest part of the carriageway and the lighting column currently within the visibility splay has been relocated to the position shown on approved plan 25252 C.01C, and the visibility splays shall be retained as such thereafter.
  - 8) No development shall take place until an Arboricultural Method Statement has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved Arboricultural Method Statement.
  - 9) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme approved in writing by the local planning authority. If within a period of 5 years from the date of the completion of the development any tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted or retained shall be planted at the same place, unless the local planning authority gives its written approval to any variation.
  - 10) No development shall take place until details of foul and surface water drainage have been submitted to and approved in writing by the local planning authority, and development shall be carried out in accordance with the approved details. If the details include a sustainable urban drainage system, no development shall take place until details of the implementation, maintenance, and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The sustainable drainage scheme shall be implemented and thereafter managed and maintained in accordance with the approved details which shall include a timetable for its implementation, and a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.
  - 11) Notwithstanding the provisions of *The Town and Country Planning (General Permitted Development) Order 1995* as amended (or any order revoking and re-enacting that Order with or without modification), no

development shall be carried out within Classes A, B, C or E of Part 1 of Schedule 2 of that Order.

- 12) Demolition or construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays.
- 13) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. No dwelling shall be occupied until the boundary treatment has been carried out in accordance with the approved details and the boundary treatment shall be retained as approved thereafter.
- 14) No development shall take place until details of the acoustically attenuated mechanical ventilation systems in accordance with the appellant's noise impact assessment have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the approved mechanical ventilation systems have been installed in accordance with the approved details, and they shall be maintained as approved in efficient working order thereafter.
- 15) No development shall take place until details of the children's play area, including equipment, surfacing, and boundary treatment, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and shall be retained as such thereafter.

End of Schedule A

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mike Allwood	New business manager, Town and Country Housing Group
Mrs J Tasker BSc(Hons) BTP MRTPI	Appellant's agent, Robinson Escott Planning
Mrs Tanja Napoli BArch RIBA	Appellant's architect, Churchill Hui
Daniel Salmon BSc(Hons) MRICS	Chartered surveyor, Lawson Queay

### **FOR THE LOCAL PLANNING AUTHORITY:**

Nancy Redgrove	Principal planning officer, Tunbridge Wells Borough Council
Sarah Lewis	Housing officer, Tunbridge Wells Borough Council

### **INTERESTED PERSONS:**

Cllr Mike Tompsett	Tunbridge Wells Borough and Ward Councillor
Cllr June Crowhurst	Tunbridge Wells Borough and Ward Councillor and chair of Pembury Parish Council

Cllr Paul Barrington-King	Tunbridge Wells Borough and Ward Councillor and cabinet member for sustainability
Cllr Chris Hoare	Kent County Councillor for Tunbridge Wells East
Dr Wendy Le-Las PhD MRTPI FRSA	Chartered planner, Le-Las Associates, representing Pembury Parish Council
Deborah Horwood	Local resident, representing residents of Penns Yard
David Coleman	Local resident and planning chair of Pembury Parish Council
Kathryn Franklin	Local resident, representing the Pembury Society
Steve Brice	Local resident

### **DOCUMENTS PUT IN AT THE HEARING**

- 1 List of Pembury representatives wishing to speak, put in by Dr Le-Las.
- 2 Certified copy of unilateral undertaking, put in by the appellant.
- 3 Plan TCHG/12/01Rev.B, put in by the appellant.
- 4 Statement with plan and photographs, put in by Ms Horwood and Ms Sheppard.
- 5 Appendix 1 of Kent County Council statement, put in by the Council.
- 6 CS Core Policy 8, put in by the Council.
- 7 Email from Nancy Redgrove to Team P16 at The Planning Inspectorate sent 24 September 2013 12:27, put in by the Council.
- 8 CS Strategic Objective SO5, put in by the Council.
- 9 LP Policy R3, put in by the Council.
- 10 Notification of Grant of Permission to Develop Land ref TW/05/02102/FULMJ/PJT, photographs and plan, for 23 rural exception dwellings in Hawkhurst, put in by the appellant.
- 11 Notification of Grant of Permission to Develop Land ref TW/05/00719/FULMJ/DP1, plan and associated documents, for Cornford House, Cornford Lane, put in by the appellant.
- 12 LP Inset Map 11 – Pembury, put in by the Council.
- 13 Email from the appellant's solicitor sent 22 October 2013 09:49, put in by the appellant.
- 14 Email from Sarah Lewis sent 14 October 2013 12:00, put in by the appellant.
- 15 Photographs taken during the site clearance in November 2011, put in by the appellant.
- 16 Map showing Rusthall in relation to Royal Tunbridge Wells and Pembury, put in by the appellant.

### **DOCUMENT PUT IN AFTER THE HEARING**

- 17 Certified copy of corrected unilateral undertaking, put in by the appellant.