The Planning Inspectorate

Appeal Decision

Hearing held on 14 and 15 June 2023

Site visit made on 14 June 2023

by M Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2023

Appeal Ref: APP/C1435/W/23/3317468
Clear View Farm, Chiddingly Road, Horam, Heathfield TN21 0JJ

- 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 Mr Chris Mian (Whitehall Homes LLP) against the decision of Wealden District Council.
- The application Ref WD/2022/1781/MAJ, dated 8 July 2022, was refused by notice dated 3 February 2023.
- The development proposed is redevelopment of the existing site and equestrian facilities to provide 51 residential dwellings with associated access works, garaging, car parking, site landscaping and woodland management.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Whitehall Homes LLP against Wealden District Council. An application for costs was also made by Wealden District Council against Whitehall Homes LLP. Each application is the subject of a separate Decision.

Preliminary Matters

3. A copy of several missing documents referred to in the appeal statements were submitted during the hearing. Information relating to the Ashdown Forest Special Area of Conservation was provided by the Council along with historic mapping relating to the nearby ancient woodland. A written representation of objection from a local resident was also handed to me during the hearing. All parties present at the hearing were given an opportunity to comment on these documents and they raised no objection to their submission.

4. Amended drainage plans were submitted shortly before the hearing[1]. Whilst the Council raised concerns that they had insufficient time to properly consider these details, the plans do not significantly alter the overall drainage strategy for the site that was proposed as part of the planning application. In any event, they are illustrative only. The Council accepted that the plans did not alter their overall objections to the scheme. Overall, I am satisfied that interested parties would not be unduly prejudiced by the submission of the aforementioned evidence and I have therefore accepted these documents.

[1] Documents - HD3

5. A draft Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 was submitted by the appellant during the hearing and subsequently signed[2]. This is referred to in my reasoning below.

6. Reference was made during the hearing to the draft Horam Neighbourhood Plan (2023-2039), and a copy was provided. However, this document is at Regulation 14 consultation stage, has not been through independent examination, and a referendum is some way off. Therefore, it attracts only limited weight as a material consideration for the purposes of this appeal.

Main Issues

7. The main issues in this case are:

- The effect of the proposal on the character and appearance of the area, with particular regard to design.
- The effect of the proposal on ancient woodland.

Reasons

Character and appearance

8. The appeal site is located outside the nearest settlement of Horam, as depicted by the development boundary which forms part of the development plan. Therefore, for the purposes of planning policy, it is in the countryside.

9. The stretch of Chiddingly Road between Horam and the appeal site is fronted on one side by mainly semi-detached dwellings which are set back from the road. When combined with the hedgerows and vegetation on the opposite side, the street has a verdant, suburban character.

10. The front part of the appeal site includes one of the existing dwellings fronting Chiddingly Road. The rear and majority part of the site comprises an expansive area of land which includes stables and associated equine facilities and structures, along with extensive grassed areas generally used for paddocking horses. Further to the rear is a large area of ancient woodland and grassland. Whilst residential gardens associated with properties on Chiddingly Road back onto the site, these are large, and trees and vegetation are also prevalent features along most of the site's boundaries. Therefore, obtainable views of existing housing from this part of the site are limited[3].

11. The larger buildings and structures associated with the equine use are generally concentrated towards the south eastern portion of the site. Along with the existing access, which links these equestrian facilities with Chiddingly Road, these parts of the site have a more suburban appearance. However, the majority of the built form would be sited within the rear part of the site, which is heavily influenced by its spaciousness and sylvan setting. As a result of the aforementioned factors, it has a largely rural character and appearance.

12. My main concern in this case relates to the proposed layout and overall design characteristics of the scheme. In this regard, saved Policy EN27 of the Wealden District Local Plan 1998 (Local Plan) sets out a requirement for development to respect the character of adjoining development having regard

[2] Document - HD9
[3] Including new build housing development generally beyond the north eastern boundary known as 'Four Seasons'

to scale, form, site coverage and density. This is largely reflective of paragraph 130(d) of the National Planning Policy Framework (the Framework) which states, amongst other things, that decisions should ensure that development is sympathetic to local character.

13. The sole point of access would be taken from Chiddingly Road via a new 'entrance road'[4], which would be faced by several dwellings. In particular, the dwellings associated with proposed plots 2 and 3 would be positioned close to the road with limited front garden space. These plots would include hardstanding driveways designed to accommodate multiple vehicles side-by-side and in tandem. This would result in extensive hard surfacing and vehicles featuring prominently in the street. In addition, the main areas of outdoor amenity space would be situated to the side of these dwellings, with associated boundary treatments further encroaching into the street scene. When combined with the existing boundary treatments associated with the rear garden of no 12 Chiddingly Road, located immediately opposite these plots, the street would have an urban and enclosed feel.

14. I appreciate that existing mature trees would be retained close to the junction with Chiddingly Road, and landscaping would be provided along the entrance road. However, due to the built form and layout proposed, which would occupy most of the space available in this part of the site, there would be insufficient space to accommodate the planting and visual relief necessary to mitigate the effects of the urban features in the street.

15. Whilst the existing arrangement and appearance of buildings and spaces within the entrance road area is generally unremarkable, as part of the proposal it would form a gateway and entrance into the wider housing estate. However, the proposed entrance road layout would fail to provide an appropriate transition between the more spacious proportions and characteristics of the immediate street pattern, and the rural character of land to the rear.

16. Turning to the remainder of the scheme. Contrary to the concerns reported by the Council during the hearing, I do not find the style and appearance of individual dwellings to be of concern. Nevertheless, this is just one factor to consider when determining whether a scheme creates an attractive place. In this case, and despite the proposal's attempts to create its own identity and character, it would do so in a way which pays little heed to local character and context.

17. This is mainly due to the condensed arrangement and density of the proposed layout. I do not dispute that the scheme would be within the range of densities previously accepted by the Council and reflected in other recent developments[5]. However, to my mind, achieving an appropriate density is not a purely mathematical exercise; rather, it is the result of a scheme with good urban design principles which combines layout, form and scale in a way that responds positively to the context[6].

18. With this in mind, the driveways fronting the main spine road, which would run generally north east to south west, would in many instances appear double

[4] As depicted by 4.9 of Design & Access Statement
[5] Appellant Statement of Case appendix A2(xii)
[6] National Design Guide page 19.

width[7], with some of the associated parking spaces being located in front of the prevailing building line. The houses would also be relatively close to each other with only a modest set-back from the street.

19. In some areas of the site dwellings would be laid out in a less formal manner[8]. Nevertheless, many elements of built form would still be located relatively close to the street in these areas. There would be more space between the buildings in the 'woodland edge' area of the site, but these spaces would be largely infilled by areas of courtyard parking. Therefore, when considering the scheme in its entirety, it would exhibit a strong pattern of containment, with little in the way of open space to relieve the relatively close-knit and prevalent arrangement of buildings, boundary treatments and hard surfacing. The larger rear gardens proposed would do little to alter the way in which the development would be experienced from the streets.

20. I appreciate that the ancient woodland and adjacent buffer form part of the scheme, and these areas would be reinforced by additional planting and a long-term maintenance plan. However, these areas would not be accessible, with access actively (and understandably) discouraged to protect the biodiversity value of these spaces. Therefore, whilst these spaces would provide an attractive backdrop, they would perform a limited function and would not successfully integrate the built form into the verdant surroundings. Moreover, whilst extensive landscaping would be provided throughout, and further landscaping details could be secured by planning condition, it would not be sufficient to address the scheme's constrained overall layout.

21. I saw on my site visit that a number of housing schemes in the locality have been built along cul-de-sacs and set away from the main road. Therefore, the 'backland' nature of the proposal is not in itself a reason to withhold permission. Moreover, Chiddingly Road is likely to become more developed in the near future as a result of an approved housing scheme[9]. However, it does not appear to me that this additional housing would significantly alter the suburban character of Chiddingly Road. In any event, it does not justify an overtly urban form of development of the type proposed here.

22. I also saw on my site visit that the 'Four Seasons' development displays a number of similar design and layout characteristics to the proposed scheme. However, the prevalence of existing vegetation and the lack of a proposed pedestrian/vehicular connection serves to significantly curtail any visual and functional relationship between the two sites when experienced on the ground, despite their close proximity. Consequently, it makes a limited contribution to the appeal site's context.

23. Despite the Council's objections, I am satisfied that the dimensions and location of on-street parking spaces proposed would be sufficient to allow vehicles to park in a safe and considerate manner, without harming the street scene. Moreover, I am not convinced that loss of light or excessive leaf litter would be a significant issue for future occupiers of the proposed housing such that they would seek the removal of trees located within the rear gardens of other properties on Chiddingly Road.

[7] That is to say, driveways associated with many individual plots would be located adjacent to one another creating a driveway with a double width
[8] Particularly the 'private drive' and 'internal street' areas
[9] Wealden District Council planning permission reference - WD/2020/0950/MAO

24. I am also satisfied that wider landscape and visual impacts would not be significantly harmful in this case on account of the appeal site's location away from the existing street, its wooded setting, and the general lack of public footpaths and obtainable views outside of the site's immediate confines. However, this does not address the scheme's overall urban form and appearance which would unacceptably contrast with the rural character of the immediate surroundings, and the more informal and spacious suburban character of Chiddingly Road. Therefore, the scheme would fail to respond appropriately to existing local character and identity.

25. As a result, it would harm the character and appearance of the area, failing to achieve good design. Accordingly, the proposal would conflict with Policy EN27 of the Local Plan and paragraphs 126 and 130 of the Framework. These seek, amongst other matters, to ensure that site coverage, scale, form, density and design respects the character of adjoining development, is visually attractive, sympathetic to local character and adds to the overall quality of the area.

26. Whilst not forming part of the development plan, there would also be conflict with various policies set out in the Wealden Design Guide Supplementary Planning Document 2008 and the National Design Guide 2021.

Ancient Woodland

27. Most of the built form proposed would be located in excess of 15m away from the ancient semi-natural woodland, as advocated by standing advice issued jointly by Natural England and the Forestry Commission[10]. The exception to this concerns the proposed drainage attenuation basin and associated infrastructure, some of which would be sited within the 15m buffer. However, national guidance advocates the provision of suitable sustainable drainage schemes within buffer zones. Moreover, the buffer zone would be landscaped and not accessible to members of the public. There is no reason for me to consider the proposed buffers inadequate.

28. It is proposed to capture a large proportion of the surface water runoff from the main site within a drainage basin and attenuation tank. It is then proposed to discharge this water into the nearest suitable watercourse, located within the ancient woodland. The Council's concerns relate to the proposed infrastructure, mechanism and effects of discharging this water into the watercourse, and the subsequent impact on the ancient woodland.

29. The appellant has identified two potential drainage solutions. One of these would involve discharging surface water into an existing ditch which lies in the ancient woodland, which itself discharges into the main watercourse/stream. The force of water arising from the scheme would largely be attenuated by a hydrobrake installed within the drainage basin and another attenuation tank. No substantive evidence was provided by the Council to support their assertion that the volume or velocity of water would erode the ditch or the receiving watercourse to the extent that it would cause loss or deterioration of the ancient woodland, even during and following periods of heavy rainfall.

30. In addition, according to the Council, run-off from existing gardens in the area could bypass the drainage scheme, adding to the velocity and/or volume of water within the ditch. Again, the Council presented no detailed evidence to

[10] As set out in national guidance - Ancient woodland, ancient trees and veteran trees: advice for making planning decisions

refute the appellant's proposition that this would represent insignificant hydrological change. It is also noteworthy that the submitted illustrative plan shows that boulders could be provided within the ditch as an erosion protection measure[11]. Therefore, it has been demonstrated to my satisfaction that this scheme could be designed to ensure the protection of the ancient woodland.

31. Notwithstanding this, I am aware of the Council's concerns relating to the nature of the ditch, and that according to them it does not have the benefit of planning permission, nor do any retrospective works necessary to construct the ditch form part of this proposal.

32. Whilst I am unable to conclude with any degree of certainty the origins of this ditch, the provision of an acceptable drainage scheme would not necessarily be reliant on the use of it. This is because the alternative solution would be to provide a piped outfall directly into the watercourse/stream, by routing the outfall pipe underneath the ancient woodland. It would involve the use of trenchless installation methods, with the pipe located up to approximately 5m below ground level and installed via a chamber which would be located within the buffer zone.

33. A large proportion of the drainage pipe would route under an existing manure pile, which is a negative feature of the woodland. The specification of existing soils in the area has also been assessed by the appellant and it was found that they comprise clay substrate, and not organic sub-soils, thus they make no discernible contribution towards supporting woodland biodiversity. Even if that was not the case, and the soil profiles actively supported the biodiversity value of the ancient woodland, it appears to me that most of the pipe would be of sufficient depth so as not to interfere with nutrient rich soils which generally lie closer to the woodland's surface.

34. In respect of the proposed headwall required to address the piped outfall discharging into the watercourse, this would be a pre-fabricated structure involving limited construction and excavation works. Whilst I observed on my site visit some limited evidence of plant species along the bank of the watercourse in the general vicinity of the proposed headwall, which I was told by the Council is indicative of ancient woodland flora, I see no reason why a flexible approach could not be adopted in relation to the precise siting of the headwall to avoid sensitive biodiversity features.

35. As a result of the foregoing, including that the majority of the installation would be below ground within an area which makes no positive contribution to the value of the ancient woodland; I am satisfied that this alternative drainage scheme could be devised without harming the integrity of the ancient woodland, subject to a suitably worded planning condition requiring the submission of a detailed scheme.

36. As I have previously observed, the Council have not provided substantive evidence to support their assertion that the additional runoff would lead to erosion of the ditch. The same applies to the receiving watercourse/stream within the woodland as a result of the alternative scheme. Conversely, the appellant has provided several technical appraisals to support their argument that changes to hydrology would be minimal, with flow rates and volumes mitigated as a result of attenuation measures. This also includes the

[11] As shown on illustrative plans document - HD3

illustrative drainage strategy which shows a reduced outfall pipe gradient, thus reducing the flow rate of water into the stream. I am satisfied that any changes to hydrology would not negatively affect the ancient woodland.

37. In terms of water quality, measures to prevent polluted surface water discharge into the ancient woodland would be incorporated into the sustainable drainage scheme and ongoing maintenance of the drainage system would be employed, specific details of which could be required by planning condition[12].

38. National guidance requires that the existing condition of ancient woodland should not be taken into account when assessing the merits of a proposal. Therefore, its existing condition should not be a reason to grant planning permission. Be that as it may, and whilst the proposal would result in very localised disturbance to the woodland primarily as a result of the option which would involve the construction of the headwall feature, this does not equate to deterioration of the ancient woodland. Any effects arising from construction or from the discharge of water into the ancient woodland would be mitigated by virtue of the scheme's design, which includes ensuring the avoidance of tree root protection areas. Therefore, there is no requirement in this case to demonstrate 'wholly exceptional reasons' to allow the proposal as there would be no loss or deterioration of the ancient woodland in this case, in compliance with paragraph 180 of the Framework.

39. In conclusion, the proposal would not result in the loss or deterioration of ancient woodland. It would comply with Saved Policy EN13 of the Local Plan and Policies WCS12, WCS13 and WCS14 of the Wealden Core Strategy Local Plan 2013 (Core Strategy) which require, amongst other matters, that the District's green infrastructure and biodiversity is protected, including ancient woodlands, in the pursuit of sustainable development. The proposal would also comply with paragraphs 174 and 180 of the Framework which require that sites of biodiversity value are protected, and that loss or deterioration of ancient woodland is resisted. For these reasons it would also address the Wealden Design Guide Supplementary Planning Document 2008.

Rightmove

Other Matters

40. The Council's reasons for refusal include one relating to highway safety and capacity. However, the Highway Authority have since removed their objection on the basis that remaining concerns could be mitigated through the imposition of planning conditions and S106 obligations. The Council confirmed in their statement of case that they no longer wished to defend this reason for refusal. I have no reason to take a different view and do not find that this proposal would lead to unacceptable harm to highway safety or significant road capacity issues.

41. In response to the Council's fourth reason for refusal, the appellant submitted a UU. The Council have confirmed that each planning obligation would address the requirements of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. Therefore, I am satisfied that the UU addresses this reason for refusal.

42. I recognise that the proposal has the potential to affect the integrity of Ashdown Forest Special Area of Conservation[13], and that the Council are

[12] The general principles being set out in the appellant's appeal statement appendices document B3 - xviii
[13] Under the Conservation of Habitats and Species Regulations 2017

satisfied that there would be no impact in this case. However, it has not been necessary for me to consider this matter further given that I am dismissing the appeal.

43. I appreciate that the appellant has amended previous iterations of the scheme in an attempt to address the Council's concerns. Be that as it may, I am obliged to deal with the proposal as presented in this appeal, which is what I have done. I deal with allegations relating to unreasonable behaviour in the associated costs decisions.

Planning Balance and Conclusion

44. The Council's housing land supply position stands at less than 4 years which represents a significant shortfall. As such, the Council are unable to demonstrate a five-year supply of deliverable housing sites. Therefore, the policies which are the most important for determining the appeal are deemed out of date. In such circumstances, paragraph 11d)(ii) of the Framework indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

45. In light of this, the provision of 51 dwellings would make a notable contribution to the District's housing needs. The scheme would provide a housing mix in line with the needs of the area and there is no reason why the scheme could not be delivered quickly. As such, the benefits of housing in this case carry very significant weight.

46. The provision of affordable housing would be in line with planning policy requirements. Moreover, recent affordable housing delivery appears to have been significantly below the area's need. Approximately 5% of the scheme would also comprise custom/self-build housing. The proposed children's play area and open space would also provide community and recreational benefits. Overall, these social benefits carry significant weight in favour.

47. Environmental benefits in this case include enhancement and long-term management of the ancient woodland along with the buffer zone adjacent[14]. There is no prospect of extensive ancient woodland improvements coming forward without the proposal. It is noteworthy too that the existing manure pile, a negative biodiversity feature. would be removed to allow this part of the ancient woodland to flourish. As a result of these measures, along with other landscaping within the housing portion of the site, the biodiversity net gain overall would be approximately 20%. Finally, the proposed housing would utilise some previously developed land. These environmental benefits weigh significantly in favour of the scheme.

48. The benefits to the economy during construction and indirectly through an increase in local spending by future residents of the scheme carries moderate weight in favour. The proposal would provide suitable living conditions for future occupiers of the development. This matter attracts limited weight in favour.

49. Bus stop/service improvements and upgrading of the existing footway between the appeal site entrance and the A267 are proposed. These improvements

[14] As detailed in the submitted UU – HD9

would address the requirements of the Framework by promoting walking and public transport and would result in moderate benefits.

50. As well as ensuring the protection of the ancient woodland, the proposal would also protect the dark skies of the High Weald Area of Outstanding Natural Beauty. In this regard the scheme would achieve the requirements of policy, and so these considerations carry no weight in the planning balance.

51. Turning to harm, the proposal would harm the character and appearance of the area due to its failure to integrate into its wider surroundings. It would fail to deliver a high-quality, beautiful scheme. The Framework indicates that development that is not well designed should be refused. This matter carries very substantial weight.

52. I appreciate that any conflict with policies relating to the site's location outside the settlement boundary[15] carry limited weight due to the Council's deficient housing land supply position. Moreover, there are a number of Local Plan policies which this proposal would satisfy. However, the conflict with Local Plan policy in relation to design would be overriding. Therefore, I find conflict with the development plan when read as a whole.

53. Overall, I find that the harm identified in this case would significantly and demonstrably outweigh the benefits outlined. The proposal would not constitute sustainable development with regard to paragraph 11d)(ii) of the Framework. Therefore, this decision should be taken in accordance with the development plan, and no material considerations indicate otherwise. This leads me to conclude that the appeal should be dismissed.

M Woodward

INSPECTOR

Richborough

[15] In particular Saved Policies GD2 and DC17 of the Local Plan and WCS6 and WCS9 of the Core Strategy

APPEARANCES

FOR THE APPELLANT:

Chris Sampson B.A. (Hons) Dip.TP MRTPI - Kember Loudon Williams
Andrew Coalbrook MICFor MRICS M.Arbor.A Dip.Arb – Arboricultural Consultant
Martin Roberts MICHT ACIWEM – GTA Civils and Transport
Mr Chris Mian – Whitehall Homes LLP - appellant

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Taylor – Senior Planning and Appeals Officer
Ben Rainbow – Biodiversity and Arboriculture
David Massheder – Tree and Landscape Officer

INTERESTED PARTIES (denoting those persons who took part in the hearing and whose names were recorded):
Anne Sadler
Susan Steadman
Sue Lane
Richard Carter
Mike Wilding
Ms Wilson
Pierre Lederer
Tim Unsworth

Richborough

DOCUMENTS SUBMITTED DURING AND AFTER THE HEARING:

HD1. Historic maps of ancient woodland.

HD2. Representation received from neighbour including photographs of ancient woodland.

HD3. 1105 – Drainage Strategy – Outfall options velocity reduction measures (V1 - June 2023) – 2 pages.

HD4. Ashdown Special Area of Conservation information.

HD5. List of Suggested Planning Conditions (V2).

HD6. Draft Unilateral Undertaking (undated).

HD7. Council written costs application.

HD8. Draft Horam Neighbourhood Plan.

HD9. S106 - Unilateral Undertaking dated 27th June 2023.

Richborough