The Planning Inspectorate

Appeal Decision

Site visit made on 1 November 2022

by Helen Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2022

Appeal Ref: APP/C1435/W/22/3297388
Danecroft Nurseries, Station Road, Hellingly BN27 4EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Danecroft Developments Ltd against the decision of Wealden District Council.
- The application Ref WD/2019/1136/MAO, dated 20 May 2019, was refused by notice dated 8 November 2021.
- The development proposed is outline application for the erection of No.80 dwellings including access provision, with all other matters reserved.

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of No.80 dwellings including access provision at Danecroft Nurseries, Station Road, Hellingly BN27 4EU in accordance with the terms of the application, Ref WD/2019/1136/MAO, dated 20 May 2019, subject to the conditions in the schedule attached.

Preliminary Matters

2. The planning application was submitted in outline with all matters reserved except for access. I have therefore determined the appeal on this basis and taken all plans submitted to be for illustrative purposes only, except insofar as they show the access arrangements to the site.

Main Issues

3. The main issues are the effects of the proposal on:

    - the character and appearance of the surrounding area; and
    - highway safety, with particular regard to vehicular access.

Reasons

Character and appearance

4. The appeal site is located to the east of Hellingly village and north of Hailsham. The site is a large parcel of land comprising grassed areas and clusters of trees and vegetation. It is bounded by residential properties which front Park Road to the east and Station Road to the south. Access to the site is from Park Road.

5. Saved Policies GD2, EN1, and DC17 of the Wealden Local Plan (1998) (Local Plan) are relevant. Amongst other things, these policies restrict development outside development boundaries and focus new development within a defined

settlement hierarchy, in line with Policy WCS6 of the Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan (2013) (Core Strategy).

6. Although the application is in outline, the proposed development would result in an extension of the village beyond the development boundary into open countryside, which would conflict with Policies GD2, EN1, and DC17 of the Local Plan.

7. The prevailing pattern of development nearby is characterised by detached properties set within spacious plots, arranged in a loose-knit pattern. This, combined with the mature trees, grass verges and hedges to the road frontages, gives the area a semi-rural character.

8. Although the plans submitted are indicative only, the proposed dwellings would represent a noticeably greater density of development than is characteristic of the area. It would also include extensive areas of hardstanding required to provide vehicular access and car parking spaces. Cumulatively, these elements would significantly erode the spaciousness of the appeal site and result in an urbanising effect, which would be at odds with the verdant and semi-rural character of the surrounding area.

9. Whilst the site benefits from mature landscaping along its boundaries, this would not be sufficient to screen the proposed dwellings, especially during the winter months when the deciduous trees are not in leaf.

10. Although the topography of the site is generally flat, the proposed dwellings would be visible from the site entrance, and in views from neighbouring properties. Consequently, the scheme would be a visually intrusive form of development that would detract from the semi-rural appearance of the surrounding area.

11. For the reasons given, the proposal would fail to accord with Policies GD2, EN1, EN8, EN14, EN27, and DC17 of the Local Plan. Collectively, these policies restrict development in open countryside and seek to ensure new development respects local character. The proposal would also fail to accord with the aims and vision of the Hellingly Neighbourhood Plan (2021), which seeks to protect the rural character of the area and ensure Hellingly remains as essentially a rural parish.

12. The decision notice makes reference to Policy HG5 of the Local Plan. However, this policy relates to new development within the defined development boundaries. As the site is located outside the defined development boundaries, I find this policy not relevant to this main issue.

Highway safety

13. The proposed development would be served by a new access onto Park Road. The site would be linked to the main road by the existing junction which would be modified and re-aligned.

14. The Council is concerned that the proposed access would result in difficulty in manoeuvring for large service vehicles, with overhang to the highway verge on some sections of the route into the appeal site.

15. Although the Highway Authority does not object to the development, it notes from the tracking drawings that manoeuvring is tight for large refuse vehicles using the proposed access. This would result in the vehicles overhanging the highway verge on some sections of the route into the appeal site.

16. Whilst the turning manoeuvre would require the vehicle to overhang the pavement on some sections of the route, this would only be the case for larger vehicles which would visit the site infrequently. Furthermore, any overhanging of refuse, heavy goods or similarly sized vehicles would be significant and obvious enough for pedestrians and cyclists to react accordingly. Other vehicles approaching would also have time to react, as a large vehicle would be travelling at slow speed while manoeuvring around the sharp bends. Consequently, I am satisfied that safe access to the site from the surrounding area would be secured for all highway users.

17. The Council suggest that conflict may arise with pedestrians who have become accustomed to using old Park Road (U7693) as a 'footway' to access the nearby local school and services. However, the proposal would provide a pedestrian footway along the north side of the U7693 that would link the development to the existing crossing on the new stretch of Park Road.

18. The Council has raised concern about the proposal's potential conflict with an approved scheme (ref: WD/2020/0808/F). However, I find there would be no conflict because there would be a sufficient margin between the road and the parking spaces for that development. Furthermore, the Highway Authority is satisfied that the access arrangements can be accommodated.

19. Paragraph 111 of the National Planning Policy Framework ('the Framework') indicates that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. This has not been demonstrated and I conclude that a safe and suitable access to the site can be achieved in accordance with the Framework.

20. For the above reasons, the proposal accords with Policy TR3 of the Local Plan, Policy WCS14 of the Core Strategy and paragraph 110 of the Framework. Amongst other things, these policies require development to provide safe and suitable access and to not have an unacceptable impact on highway safety.

Other Matters

21. The appeal site is not located within 15km of the Ashdown Forest Special Protection Area (SPA) or Special Conservation Area (SAC). Therefore, the site does not fall within the Ashdown Forest SPA or SAC zone of influence. As such, a habitats regulations assessment is not necessary.

22. To the northwest of the appeal site are two Grade II and Grade II* listed buildings on Mill Lane, The Mill House and the Mill Building at The Old Water Mill. The Council has not raised this as an issue. Based on the evidence before me and the observations I made during my site visit, I find that the proposal would have a neutral effect on the significance of these heritage assets and would preserve their setting.

23. Local residents raise a number of concerns including in relation to flood risk and drainage issues, highway safety, noise and disturbance, and environmental

impacts. I have given careful consideration to these matters but based on the information provided they would not constitute reasons to dismiss the appeal.

Planning Obligation

24. The appellant has submitted a S106 planning obligation by deed of agreement dated 24 November 2022.

25. The Framework states that planning obligations should only be sought where they meet the tests set out in paragraph 57. These tests, which mirror those set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010, require that planning obligations are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

26. Within the obligation the owners of the appeal site undertake to provide affordable housing and green infrastructure within the development as approved under reserved matters approval in accordance with an approved scheme. The planning obligation also secures a travel plan and highway works. A bus service contribution and a travel plan audit fee would also be paid.

27. The obligation meets the requirements of Regulation 122 of the CIL Regulations and secures compliance with Local Plan policies in relation to affordable housing, green infrastructure, highway works and infrastructure delivery.

Planning Balance

28. The Council concedes that it cannot demonstrate a 5-year supply (5YHLS) of deliverable housing sites as required by the Framework. The latest published figure is 3.66 years as at 1st April 2021. The appellant argues that actual supply is lower, but the housing shortfall would be significant whichever figure is used.

29. The lack of a 5YHLS triggers the presumption in favour of development within paragraph 11d) of the Framework. This indicates that, where the requisite land supply does not exist, the most important policies for determining the application should be deemed out-of-date. Permission should therefore be granted unless: i) the application of policies within the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii) 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.

30. The appeal site is not subject to policies in the Framework that protect areas or assets of particular importance that provide a clear reason for refusing the development. The tilted balance set out within the second limb of paragraph 11d) is therefore relevant.

31. The Council's housing land supply shortfall is considerable and as such the benefits of housing delivery carry substantial weight in favour of the scheme. Saved policies GD2, EN1 and DC17 of the Local Plan seek to restrict development to within defined development boundaries. However, given the sizable housing shortfall, I find these policies to be out of date. I therefore attach very limited weight to the policy conflict arising from the site's location outside the development boundary.

32. The appeal site is situated in a sustainable location and occupants of the proposed dwellings would have reasonable access to a wide range of services and facilities within the town of Hailsham by use of sustainable modes of transport. The proposed development would make an important contribution to addressing the significant housing shortfall, and it would provide 35% of the units as affordable housing, thereby contributing to the social objective of sustainability. It would also contribute towards economic growth during the construction phase and spending by future occupants of the development would contribute to the local economy and help support local services and facilities in the area. Taken together, the benefits of the proposal would attract substantial weight.

33. In comparison, the identified harms are relatively few, including conflict with out-of-date policies in the Local Plan and the identified harm to the character and appearance of the area, to which I attach moderate weight.

34. The Council has raised no objection to the appeal scheme in respect of matters including biodiversity, trees, drainage and flooding. On the basis that there is no substantive evidence to demonstrate harm arising from the proposal in respect of these matters, neither do I. In terms of the planning balance, I find that a lack of identified harm in respect of these matters would comprise a neutral factor.

35. The proposal would be at odds with the spatial strategy in the development plan. It would also result in harm to the character and appearance of the area. That said, the benefits of the proposal would be substantial and sufficient to outweigh the totality of the harm identified. Thus, I have identified no adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. The proposal constitutes a sustainable form of development within the meaning of the Framework and Core Strategy Policy WCS14. Therefore, having regard to the provisions of the development plan and all material considerations, I conclude that planning permission should be granted.

Conditions

36. The Council has suggested conditions which I have considered, making amendments where necessary in the interests of clarity and consistency, and to ensure compliance with the tests contained in the Planning Practice Guidance and paragraph 56 of the Framework.

37. In the interests of certainty, I have imposed conditions concerning the timescales for the commencement of development and the submission of the reserved matters. The Council has suggested a condition for a one-year commencement period; however, I find this would be overly constraining on the development process and may not be achievable. Whilst the more usual timescale of three years may be a discouragement towards implementation to meet the housing shortfall, a two-year commencement would be reasonable.

38. In the interests of certainty, it is appropriate that there is a condition specifying the plans approved, including those relating to access.

39. Conditions requiring a ground contamination survey and a remediation scheme are necessary to ensure safe development of the site and to protect human health and the environment. These are worded as pre-commencement

conditions so that the survey and any remediation measures are implemented prior to ground disturbance.

40. A condition relating to the control of noise and dust is required to protect the living conditions of neighbouring occupiers and for the purposes of highway safety throughout the development works.

41. In the interests of highway safety, conditions are imposed relating to the vehicular access and the new estate road serving the development. A condition relating to a Construction Management Plan is required to protect the living conditions of neighbouring occupiers and for the purposes of highway safety through the development works.

42. A condition requiring an archaeological scheme of investigation is necessary to enable the recording of any items of historical or archaeological interest. This is worded as a pre-commencement condition so that the approved scheme is implemented prior to ground disturbance.

43. I have imposed conditions to ensure the adequate drainage of the site and to avoid flooding, and foul drainage. A condition relating to power-driven machinery and deliveries during the construction phase are required to protect the living conditions of neighbouring occupiers.

44. Conditions relating to lighting, wildlife management and biodiversity are necessary to protect wildlife and neighbouring residential amenities (in terms of flood-lighting).

45. A condition requiring an Arboricultural Method Statement is necessary in the interests of visual amenities of the area. This is worded as a pre-commencement so that the approved statement is implemented prior to ground disturbance. A condition relating to the protection of trees and shrubs is also necessary for the preservation of trees and hedges on the site.

46. I have omitted some of the Council's conditions where there was repetition or duplication, for example in relation to the travel plan which is secured in the S106. I have also deleted the conditions relating to air quality, as there is no evidence before me of any air quality management areas in Wealden District.

Conclusion

47. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Helen Smith

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall commence not later than two years from the date of approval of the last of the reserved matters to be approved.

2) This planning decision relates solely to the information contained within the application form, the following plans and documents:
    a. 8137/APP2 Topographical Survey, 24 May 2019
    b. 8137APP1-A Location Plan, 24 May 2019
    c. 8737X/01 B Swept Path, 10 August 2020
    d. 8737X/02 A Swept Path, 10 August 2020
    e. 8137/APP6B Revised Site Layout, 1 October 2020 (but only insofar as it shows the access to the site).

3) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters"), shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

4) Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.

5) Prior to works below ground level an investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include:
    a. A survey of the extent, scale and nature of contamination.
    b. An assessment of the potential risks to:
        i. Human health
        ii. Property (existing or proposed) including buildings, crops, livestock, pets, woodland, and service lines and pipes.
        iii. Adjoining land.
        iv. Groundwaters and surface waters.
        v. Ecological systems.
        vi. Archaeological sites and ancient monuments.
    c. An appraisal of remedial options and proposal of the preferred option(s).

6) Prior to works below ground level a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property, and the natural and historical environment must be prepared and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

7) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to

carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks' written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the local planning authority.

8) Prior to the commencement of the development, a scheme for the control of noise and dust shall be submitted to and approved in writing by the local planning authority. Details shall include any octave band sound levels and noise mitigation measures proposed to limit its impact. Upon development, work should be carried out in accordance with the approved scheme.

9) Before preparation of ground levels for residential development approved by this permission, full details of the means of vehicular access into the site, including the road width, kerb radii, visibility splays, details including sections of construction, finishing materials and the cross falls and longitudinal falls shall be submitted to and approved in writing by the local planning authority. The approved details of the access shall be completed before the commencement of the use of the land and buildings hereby permitted and the sightlines maintained free of all obstruction to visibility above 1.0 metres.

10) No development shall take place, including any ground works or works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. Thereafter the approved Plan shall be implemented and adhered to in full throughout the entire construction period. The Plan shall provide details as appropriate but not to be restricted to the following matters:
    a. The anticipated number, frequency and types of vehicles used during construction.
    b. The method of access and egress and routeing of vehicles during construction.
    c. The parking of vehicles by site operatives and visitors.
    d. The loading and unloading of plant, materials and waste.
    e. The storage of plant and materials used in construction of the development.
    f. The erection and maintenance of security hoarding.
    g. The provision and utilisation of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders).
    h. Details of public engagement both prior to and during construction works.

11) No development shall take place until the applicant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation, which shall be submitted to and approved in writing by the local planning authority. The scheme shall then be undertaken in accordance with the agreed details.

12) Prior to its installation, details of a scheme for foul and surface water drainage shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be completed before the development is first occupied and thereafter maintained as such.

13) The use of power-driven machinery during construction of the premises shall be restricted to Monday to Friday 0800-1800 hours, Saturday 0800-1300 hours, and at no time on Sundays, Bank or Public Holidays. Deliveries during the construction phase of the site shall be restricted to Monday to Friday 0800-1800 hours, Saturday 0800-1300 hours, and at no time on Sundays, Bank or Public Holidays.

14) No floodlighting, security lighting or other external means of illumination of the site shall be provided, installed or operated in the development, except in accordance with a detailed scheme which shall provide for lighting that is low level, hooded and directional, and has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and retained for the lifetime of the development. Thereafter, no additional lighting shall be installed without the prior written permission of the local planning authority.

15) Before preparation of ground levels for development approved a wildlife management plan shall be submitted and approved, to include as appropriate detailed proposals for the protection of bats, birds, reptiles, great crested newts and badgers, and measures for the mitigation of any harm to them likely to be caused by the development. The works and other measures forming part of that plan shall be carried out in accordance with it.

16) Prior to preparation of ground levels for the construction of the development hereby approved, a scheme for the enhancement of the site for biodiversity purposes, in accordance with the accompanying Preliminary Ecological Survey to include timescales for implementation and future management, shall be submitted to and approved in writing by the local planning authority. The approved scheme of enhancements shall be implemented in accordance with the approved details and thereafter so retained.

17) Prior to commencement of development, a full Arboricultural Method Statement shall be submitted to and approved in writing by the local planning authority which shall include numbering and detailing trees, confirming root protection areas, routing of service trenches, overhead services and carriageway positions and any details of no dig techniques along with associated use of geotextiles and an indication of the methodology for necessary ground treatments to deal with compacted areas of soil. The works shall be implemented in accordance with the approved details.

18) Prior to commencement of development, details of the form and position of fencing, which shall comply in full with BS5837:2012 Trees in relation to design, demolition & construction – Recommendations, for the protection of those trees, shrubs and natural features not scheduled for removal shall be submitted to and be to the written approval of the local planning authority, and such fencing shall be erected in the positions approved before the development is commenced and thereafter retained until such completion of the development, to the approval of the local planning authority. Hereafter, the fencing shall be referred to as the 'approved protection zone'.

*****End of Conditions*****