The Planning Inspectorate

Appeal Decision

Hearing held and site visit made on 12 July 2022

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 4 August 2022

Appeal Ref: APP/C1435/W/22/3297371
Land at Old Orchard House, Horebeech Lane, Horam, East Sussex TN21 9DZ

- 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 Chailey Homes Ltd against the decision of Wealden District Council.
- The application Ref WD/2021/2356/MAO, dated 3 September 2021, was refused by notice dated 25 March 2022.
- The development proposed is the erection of up to 38 dwellings, access, landscaping and other associated infrastructure.

Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 38 dwellings, access, landscaping and other associated infrastructure at land at Old Orchard House, Horam, East Sussex TN21 9DZ in accordance with the terms of the application, Ref WD/2021/2356/MAO, dated 3 September 2021, subject to the conditions set out in the schedule attached to this decision.

Preliminary Matters

2. The application was made in outline, with all matters reserved for later consideration apart from access. I have dealt with the appeal on the same basis, taking the site layout in drawing no. 3278:01 Rev A.E as indicative only, other than in respect of the site entrance. The application date is that given on the application form.

3. A Unilateral Undertaking (UU) made by the appellant pursuant to Section 106 of the Town and Country Planning Act 1990 was discussed at the Hearing. A signed and completed version dated 22 July 2022 was subsequently provided, which the Council had agreed to. I address the obligations made in the UU below.

4. A full application for 58 dwellings relating to this site had been dismissed in an appeal decision made on 7 August 2020[1]. The previous Inspector's conclusions are material considerations in assessing the effects arising from the fewer dwellings now proposed.

Main Issues

5. The main issues in the appeal are:

[1] Appeal Ref: APP/C1435/W/19/3235754 for the proposed is erection of 58 dwellings, associated garages and infrastructure on land adjacent Old Orchard House, Horebeech Lane, Horam TN21 9DZ

- the effect of the proposed development on the character and appearance of the area and
- the accessibility future occupiers would have to regularly required services.

Reasons

Character and appearance

6. The appeal site comprises a parcel of rough grassland surrounded by thickly vegetated outer edges, including along the roadside frontage. The land is situated within the low-density housing fronting this southern section of Horebeech Lane, from where access is proposed. The land lies just outside the main built-up extent of Horam and opposite the site of 123 dwellings under construction to the north of Horebeech Lane. To the rear, the site runs up to the former railway line which now provides the Cuckoo Trail. This footpath and cycleway pass under Horebeech Lane and would provide an alternative route for non-motorised users from the development to the facilities in Horam.

7. The appeal site lies within the Low Weald landscape, outside both the South Downs National Park and the High Weald Area of Outstanding Natural Beauty (AONB). With reference to paragraph 174 of the National Planning Policy Framework (the Framework), there is not the onus here to protect and enhance valued landscapes in a manner commensurate with any statutory status. This requires me instead to recognise the intrinsic character and beauty of the countryside. Furthermore, as part of the Framework's aims for achieving well-designed places, paragraph 130 requires development to be sympathetic to local character, including the surrounding landscape setting.

8. Such intrinsic character and beauty are provided by the open field and its vegetated boundaries, which provide a green frame to the settlement edge. The site offers a break in development along the southern side of Horebeech Lane, which retains the appearance of countryside and provides a strongly rural character to this side of the road. Although the site is visually well contained, where any development would not impinge greatly in wider views, the access to the new access would puncture the roadside hedging and open up the enclosed site. The housing would inevitably have a suburbanising impact upon the rural scene in views from Horebeech Lane, and also those from the Cuckoo Trail.

9. The proposed housing would thus cause harm to the character and appearance of the area, due to the same noticeable urbanisation of the green break between Horam and the adjacent settlement at Marle Green found in the previous appeal decision. However, the significant reduction in dwelling numbers would allow for a lower density and more landscape dominated scheme. A wider extent of landscaping in and around the development would reduce the scheme's adverse visual impacts to an appreciable degree, due to the opportunity for a more verdant and spacious layout which would mollify the starkness of the suburbanising effects.

10. The relevant development plan policies are those of the Wealden Local Plan 1998 (LP), the Core Strategy Local Plan 2013 (CS) and the Affordable Housing Delivery Local Plan 2016. Over this issue, there remains conflict with LP policies GD2, DC17, EN1, EN8 and E27. Collectively, these resist housing outside the Horam development boundary to protect its character and countryside setting

and help achieve sustainable development. Furthermore, the proposal would exceed the scale of development identified for Horam in CS Policy WCS6. The proposal also conflicts with Policy WCS9, in not being a small scale affordable residential scheme, permissible in rural areas outside development boundaries in order to meet an identified local housing need. Both policies augment the CS rural areas' strategy for locating housing growth so as to protect the countryside.

Accessibility to regularly required services

11. In the previous appeal decision, the Inspector concluded that the 58 dwellings would lead to reliance on the private car by future occupiers. The situation is the same, insofar as Horam is a local service centre in the CS settlement hierarchy. This indicates a limited supply of social and economic infrastructure, including employment, and a place where local residents depend upon other centres to meet a broad range of needs, with there being some form of accessibility to these.

12. Horam's services, including a doctor, a dentist, a village hall and various other facilities including shops and churches, are located around 1km from the site. There are pedestrian footways along Horebeech Lane linking to these, as well as the alternative Cuckoo Trail pedestrian/cycle route into Horam. A primary school in Maynards Green and secondary school in Heathfield are within a modest drive from the site.

13. Horam has no railway station and the nearest bus stop for services to larger centres is approximately 850m from the site. There is no lighting to the Cuckoo Trail or along parts of Horebeech Lane, which would discourage pedestrian and cyclist use outside of daylight hours. The mix of housing sizes is yet to be provided, but the proposal would quite clearly generate a need for residents to travel outside of the village to access services and facilities, including employment and leisure.

14. Due to these factors, the proposal gives rise to conflict with CS Policies SP07 and SP09. This is insofar as these seek to minimise greenhouse gas emissions by concentrating development where it is related to public transport opportunities, to make it easier to travel by more sustainable modes.

Other Matters

15. Further concerns were raised by interested parties to the application, the appeal and at the Hearing. Regarding the proposed access arrangements, these are to the satisfaction of the local highway authority. Subject to conditions, the local highway network has the operational capacity to safely accommodate up to 38 additional dwellings in this location.

16. In the previous appeal, the Inspector found the proposal would harm the living conditions of the neighbouring occupiers at Old Orchard House, in respect of outlook, privacy and light. However, the reduced quantum of housing in the current scheme would permit a detailed layout which would avoid such harm.

17. Subject to conditions, the scheme would not increase flood risk and could be provided satisfactory foul and surface water drainage.

18. Health and dental services are generally over-stretched and those in Horam would need to respond to this further development. However, such concerns

would not be grounds for resisting the further houses proposed. The lower density scheme would provide some compensatory natural habitat and wildlife connectivity.

Scheme Benefits

19. It is common ground that the CS is out of date and does not meet Wealden's local housing needs. The plan provides for only 450 homes per annum as opposed to a requirement for 1,225, as calculated under the standard method set out in national planning guidance. Paragraph 74 of the Framework requires Councils identify and update annually a minimum five-year housing land supply (5YHLS) against their local housing need. Wealden can currently demonstrate a 3.66-year housing land supply. I consider this to be a substantial shortfall in meeting current Government policy requirements.

20. A lack of a 5YHLS has endured in Wealden for over six years. In this situation the Council has granted permission for housing in a number of sites outside the Horam settlement boundary, as detailed in the appellant's evidence. Unlike this proposal, these sites appear to have all been within a development boundary proposed in a Submission Local Plan. However, this was later withdrawn and the Council is now preparing a new Local Plan, due for Regulation 18 consultation later this year.

21. Paragraph 60 of the Framework refers to the Government's objective of significantly boosting the supply of homes. In the light of this and the substantial and long-standing shortfall in housing land supply in Wealden, with no imminent prospect of plan-led resolution, the up to 38 dwellings proposed is a social benefit to which I attach very significant weight. This is particularly as the scheme is of a scale which could come forward relatively quickly in response to meeting current housing needs.

22. The 35% affordable housing provided would comply with CS Policy WCS8. The appellant's evidence over an acute need for affordable housing in Wealden, with affordability worsening, was not challenged. This is a specific social benefit to which I also attach very significant weight. Quite significant weight is attached to the provision of two plots for self-build homes, as this would help meet a demand for such opportunities.

23. The development would provide appreciable economic benefits through the generation of jobs during the construction period, both directly and indirectly. Furthermore, the new residents would support local businesses within Horam and help maintain the viability of its services and facilities. In these respects, I attribute moderate weight to the proposal's local economic benefits.

Planning obligation

24. The UU secures the 35% affordable housing provision, 5% serviced plots for custom and self-build units, a link from the development to the Cuckoo Trail, children's play area provision and a financial contribution towards bus services. I have considered the obligations made against the tests set out in paragraph 57 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. I consider all to be 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.

Habitats Regulations

25. The appeal site is 7km beyond Ashdown Forest, which is an area classified under the Habitats Regulations[2] as a Special Protection Area (SPA) in relation to birds. This SPA is classified for its ground nesting species which are susceptible to increased recreational pressure. I am satisfied with the evidence that this proposal, in combination with other plans or projects, would have no likely significant effects upon the qualifying features of that SPA, due to increased recreational pressure.

26. Likewise, I am content with the evidence that this proposal would not adversely impact on the integrity of the characteristic heathland plant species in Ashdown Forest, for which it is also designated under the Habitats Regulations as a Special Area of Conservation (SAC). This is based on Natural England deciding that the air quality implications of the quantum of growth proposed for this District in the Submission Local Plan would not adversely affect the integrity of either Ashdown Forest, Lewes Downs or Pevensey Levels SACs.

Planning Balance

27. The appeal scheme would conflict with CS policies WCS6 and WCS9 and LP policies GD2, DC17, EN1, EN8 and E27. This is through being within countryside outside the defined Horam development boundary and causing some harm to the character and appearance of the area, by encroaching into the settlement's undeveloped rural surroundings. I have also found the proposal gives rise to conflict with CS Policies SP07 and SP09. This is insofar as future occupiers would generally need to have some private car access to meet all regularly required needs and this would then impact upon greenhouse gas emissions. These are quite fundamental conflicts and, despite the support of other policies, the proposal would be contrary to the development plan when read as a whole.

28. The Framework's presumption in favour of sustainable development, in paragraph 11, is a material consideration. The Council's lack of a 5YHLS deems the development policies most important for determining the appeal to be out-of-date. This does not mean these policies carry no weight but it reduces the amount I can attach to those restricting development outside development boundaries and which might prevent local housing needs being met.

29. The decisive harm to the living conditions of occupiers of Old Orchard House has been overcome since the last appeal and no longer weighs against the proposal. The access to the highway would still open the site up, with the loss of the thick roadside hedgerow, and the housing would occupy a field visible from the much-valued Cuckoo Trail. Through reserved matter approval based on the indicative layout submitted, the Council could require a strong landscape buffer around the site, including a re-planted set back from Horebeech Lane, and a low-density layout with tree-lined streets. The lower number of dwellings proposed thus provides for a greatly reduced level of harm to character and appearance, relative to that found by the Inspector in the previous appeal.

30. As a predominantly rural District, with a relatively poor public transport network, there are challenges in meeting local housing need without an associated degree of car dependency. In this case the housing is not within the

[2] Conservation of Habitats and Species Regulations 2017 (as amended).

800m walking distance to services recommended in the Manual for Streets. However, the distances are not greatly in excess of this and would be mainly accessible by footpaths. The scheme is on the edge of Horam, like the other recently approved schemes, rather than being any deeper in the countryside and beyond the limits of footway access. Cycling or walking to some services would remain a realistic option for many future occupiers of the proposed housing, who would be far from entirely dependent on car travel. The degree of harm from the level of service accessibility in this location would be at most moderate in weight.

31. Development growth in Wealden is constrained by the protected landscapes of the High Weald AONB and South Downs National Park, as well as ecologically sensitive areas such as Ashdown Forest and the Pevensey Levels. As a predominantly rural area, with a relative lack of previously developed land, it is unavoidable that some countryside will be required to be built on to meet housing needs. The benefits of the scheme towards meeting local housing need, including that which is affordable or provided on a self-build basis, are accounted for above. Any adverse impacts of allowing this housing would not significantly and demonstrably outweigh these considerable benefits, when assessed against the Framework policies taken as a whole. The presumption in favour of sustainable development therefore applies to the proposal.

Conditions and conclusion

32. I have considered the conditions suggested by the Council against the tests in Framework paragraph 56. This requires conditions be imposed where necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. These conditions were largely agreed by the appellant, apart from the one-year periods for reserved matters applications and subsequent commencement upon last approval of these, which might cause practical difficulties in being met. I have therefore amended the latter to two years. Otherwise, the standard outline conditions are necessary to encourage the early take up of the permission, given the pressing need to deliver housing in Wealden. I have made further amendments to the wording of other conditions, mainly in the interests of succinctness.

33. In addition to the standard conditions for outline permission (1-3), it is necessary in the interests of certainty to condition consent to the detailed plan showing the position and design of the vehicular access onto Horebeech Lane (4).

34. To satisfactorily address matters which might otherwise have comprised reasons for dismissing the appeal, a number of conditions need to be met prior to any development being allowed to commence. These conditions are necessary in the interests of investigating any on-site archaeology (5), ensuring highway safety through compliance with an agreed Construction Traffic Management Plan (7), securing off-site highway improvements (9) and requiring adequate means of surface water drainage (14, 15).

35. In the interests of ensuring such surface water drainage measures are delivered, conditions are also necessary to ensure the receiving water course is engineered up to standard (16) and the arrangements are provided prior to occupation (17). In the interests of ensuring suitable foul drainage, a condition is necessary requiring details to be agreed prior to ground levels being

prepared and these then being implemented as each dwelling becomes occupied (13). A post occupancy monitoring and management condition is also necessary to safeguard against ground or surface water pollution (18).

36. In the interests of promoting the take up of sustainable transport modes, a condition makes occupation of the housing dependent upon implementation of an agreed Travel Plan (11).

37. In the interests of sustainable development, a condition is necessary that ensures the development accords with agreed water and energy efficiencies and further carbon saving measures (6).

38. In the interests of certainty conditions are necessary to agree the location of the 65% market dwellings (8), the phased construction of the estate road to adoptable standards (10) and the dimensions and provision of parking spaces (12).

39. Further conditions are necessary to address air quality (19, 20), landscape management (21), Great Crested Newt mitigation (22), wildlife management (23), lighting (24) and tree/hedgerow protection (25).

40. A condition governing the provision and specification of the Cuckoo Trail link is covered in the UU, so does not need to be addressed by condition.

41. The Framework's presumption in favour of sustainable development is a material consideration sufficient to indicate this appeal be determined otherwise than in accordance with the development plan. Accordingly, based on the reasons given above and subject to the conditions set out below, I conclude that the appeal should succeed.

Jonathan Price

INSPECTOR

Schedule of Conditions

1) 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.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.

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

4) In respect of the means of access into the site from Horebeech Lane, the development hereby permitted shall be carried out in accordance with the following approved plan: 3278:01 Rev A.E.

5) No development shall take place until the appellant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

6) Before preparation of any groundworks or foundations for the development hereby approved, full details for the incorporation of water and energy efficiency measures, the promotion of renewable energy and sustainable construction within the development shall be submitted to and agreed in writing by the local planning authority and the development shall be carried out in accordance with the approved details and thereafter so retained.

7) No development shall commence on site until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. Thereafter, the approved CTMP shall be implemented and adhered to throughout the construction period. The CTMP shall include the following matters:

   - the anticipated number, frequency and types of vehicles used during construction,
   - the method of access and egress and routeing of vehicles during construction,
   - the parking of vehicles by site operatives and visitors,
   - the loading and unloading of plant, materials and waste,
   - the storage of plant and materials used in construction of the development,
   - the erection and maintenance of security hoarding,
   - 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),
   - details of public engagement both prior to and during construction works,
   - pre-condition survey accompanied by the local highway authority providing photographic evidence of the existing highway, to be carried out prior to commencement,
   - a scheme for the control of noise and dust,

- measures to manage flood risk, both on and off the site, during the construction phase.

8) The reserved matters shall identify the 65% market dwellings to be provided on site and the development shall thereafter be in accordance with these.

9) The development hereby permitted shall not commence until a scheme for off-site highway measures, including a 30-mph speed limit extension, gateway feature and north side footway/cycleway on Horebeech Lane, has been submitted to and approved in writing by the local planning authority. The approved highway measures shall thereafter be completed prior to occupation of any of the dwellings hereby permitted.

10) The new estate road shall be constructed to a standard for adoption as a maintainable highway in tandem with the phasing of housing development.

11) No part of the development shall be occupied until a Travel Plan has been approved in writing by the local planning authority. The Travel Plan shall thereafter be implemented as approved.

12) Parking spaces shall measure at least 2.5m by 5m (with an extra 50cm on each side where spaces abut walls, fences or hedges). Car parking shall be provided prior to the occupation of the associated dwellings and thereafter retained for that purpose.

13) Before preparation of ground levels of the development approved by this permission a scheme for foul drainage shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved before any of the dwellings served are occupied.

14) Prior to the commencement of development, a detailed surface water drainage system shall be submitted to and approved in writing by the local planning authority.

The surface water drainage system shall incorporate the following:

a) Detailed drawings and hydraulic calculations. The hydraulic calculations shall take into account the connectivity of the different surface water drainage features. The calculations shall demonstrate that surface water flows can be limited to the greenfield runoff rates for rainfall events with an annual probability of occurring greater than 1 in 2.33 and mean annual discharge (Qbar) for rainfall events with an annual probability of occurrence less than 1 in 2.33, including those with a 1 in 100 (plus climate change) annual probability of occurrence. An allowance for urban creep (recommended 10% increase in impermeable area) shall be incorporated within the calculations.
b) The proposed ground levels adjacent the western and southern boundaries, to allow for the conveyance of the existing overland surface water flow route without increasing flood risk on or offsite.
c) The detailed design of the surface water drainage features (attenuation ponds and swales), informed by findings of groundwater monitoring between autumn and spring. The design should leave at least 1m unsaturated zone between the base of the drainage structures and the highest recorded groundwater level. If this cannot

be achieved, details of measures which will be taken to manage the impacts of high groundwater on the hydraulic capacity and structural integrity of the drainage system should be provided.

d) Information on how surface water flows exceeding the capacity of the surface water drainage features will be managed safely.

The drainage shall be provided in accordance with the approved details before first occupation of the related dwellings.

15) The development hereby permitted shall not commence until a maintenance and management plan for the drainage system shall have been submitted to and approved in writing by the local planning authority. The management plan shall cover the following:

a) who will be responsible for managing all aspects of the surface water drainage system, including piped drains,
b) evidence of how these responsibility arrangements will remain in place throughout the lifetime of the development.

The approved maintenance and management plan shall thereafter be implemented and remain in place for the lifetime of the development.

16) Prior to the construction of the outfall, a condition survey of the watercourse which will take surface water runoff from the development shall be investigated and the results submitted to and approved in writing by the local planning authority and any improvements recommended to the condition of that watercourse carried out.

17) Prior to occupation of the development, evidence (including photographs) showing that the drainage system has been constructed to the final agreed detailed drainage designs shall have been submitted to and approved in writing by the local planning authority.

18) There shall be no discharge of foul or contaminated drainage from the site into either the groundwater or any surface waters, whether direct or via soakaways. Prior to being discharged into any watercourse, surface water sewer or soakaways system, all surface water drainage from parking areas and hardstandings shall be passed through trapped gullies and silt traps to BS 5911:1982, with an overall capacity compatible with the site being drained and shall be retained thereafter.

19) Unless otherwise agreed in writing, the development shall take place in accordance with the recommendations set out within the Air Quality Assessment authored by Phlorum Limited (date stamped 13 December 2021).

20) Prior to the construction of the roof of any dwellings hereby permitted, a scheme for the required onsite/offsite emissions off setting mitigation measures (in accordance with the development damage costs calculated within the submitted Air Quality Assessment or any amended Assessment provided with reserved matters detailing the number of dwellings to be provided) shall be submitted to and agreed in writing by the local planning authority. The agreed onsite/offsite emissions off setting mitigation measures shall be provided prior to the first occupation of the dwellings hereby approved.

21) Prior to the occupation of any of the dwellings hereby permitted, a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small privately owned, domestic gardens or areas to be adopted by the local highway authority, shall be submitted to and approved in writing by the local planning authority. The approved landscape management plan shall be adhered to for the lifetime of the development.

22) The development shall be carried out and thereafter maintained in accordance with the recommendations set out within the Great Crested Newt Report June 2021 and Ecological Update Report October 2020, both by Phlorum Ltd.

23) Before preparation of ground levels for the development hereby permitted, a wildlife management plan shall be submitted to and approved in writing by the local planning authority. This should include 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.

24) 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 have 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 thereafter.

25) No trees and hedgerows on the site shall be felled, reduced, pruned or destroyed without the consent in writing of the local planning authority. Furthermore, the following operations shall not be carried out within the approved protection zone of any tree or hedgerow, except with the consent of the local planning authority:-

- ground levels raised or lowered;
- roots cut, trenches dug or soil removed;
- buildings, roads or other engineering operations constructed or carried out;
- fires lit (or in a position where the flames could extend to within 5 metres of the foliage, branches or trunk of the tree or hedgerow as per the requirements of *BS5837:2012 Trees in relation to design, demolition & construction – Recommendations)*;
- vehicles driven;
- materials or equipment stored (as per the requirements of *British Standard 5837:2009 'Trees in Relation to Construction')*.

APPEARANCES

FOR THE APPELLANT:

Mark Best	Parker Dann Chartered Town Planning Consultants

FOR THE LOCAL PLANNING AUTHORITY:

Stacey Robins	Head Planning/Environmental Services, Wealden District Council
Stephanie Wood	Team Leader Development Management Wealden District Council

INTERESTED PARTIES:

Councillor David White	Wealden District Council
Councillor Neil Cleaver	Wealden District Council
Councillor Susan Stedman	Wealden District Council
Councillor Andrew Billings	Horam Parish Council
Lucy Atabey	Editor, Horam/Vines Cross Village Diary
Mike Gadd	Editor, Wealden Green Spaces
Tony Niblock	Local resident
Cornelie Usbourne	Local resident
Peter Knowles	Local resident
Brian Arnott	Local resident