

Appeal Decision

Hearing held on 6 February 2019

Site visit made on 7 February 2019

by Jameson Bridgwater PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 April 2019

Appeal Ref: APP/M2270/W/18/3199819

Brook House, Cranbrook Road, Hawkhurst, Cranbrook TN18 5EE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr P Paulding T/A Esquire Developments Ltd against the decision of Tunbridge Wells Borough Council.
 - The application Ref 17/03780/OUT, dated 10 November 2017.
 - The development proposed is described as 'Proposed Demolition of Existing Building and Erection of 25 Apartments with Affordable Housing, Parking Provision, New Highway Access and Other Ancillary Works'.
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Decision

1. The appeal is allowed and outline planning permission is granted for the Proposed Demolition of Existing Building and Erection of 25 Apartments with Affordable Housing, Parking Provision, New Highway Access and Other Ancillary Works at Brook House, Cranbrook Road, Hawkhurst, Cranbrook TN18 5EE in accordance with the terms of the application, Ref. 17/03780/OUT, dated 10 November 2017, subject to the 22 conditions in the attached schedule.

Preliminary matters

2. Two Unilateral Undertakings relating to the provision of affordable housing and libraries were submitted as part of their appeal under section 106 of the Town and Country Planning Act 1990. I deal with the contents of these below.
 3. Since the submission of the appellant's appeal, the revised National Planning Policy Framework (the Framework) was published and came into force on 24 July 2018. As indicated in their statements, the parties were clearly aware of the preparation of this and the Hearing gave both parties the opportunity to address any implications arising from the adoption of this document.
 4. The Hearing sat for 1 day. I carried out unaccompanied site visits on 5 and 7 February 2019.
 5. Two Statements of Common Ground (Planning and Highways) were submitted which set out the matters of agreement and those in dispute.
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6. The appeal application was made in outline form with all matters apart from access reserved for subsequent approval.

Application for costs

7. An application for costs was made by Mr P Paulding T/A Esquire Developments Ltd against Tunbridge Wells Borough Council. This application is the subject of a separate decision.

Main issues

8. The main issues in the appeal are:
 - the effect of the proposal on the highway safety; and
 - the effect of the proposal on the surface water flooding; and
 - the effect of the proposal on the character and appearance of the area.

Reasons

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The Development Plan comprises the Tunbridge Wells Core Strategy (CS), the Tunbridge Wells Borough Site Allocation document (SAD), the saved policies of the Tunbridge Wells Borough Wide Local Plan (LP) and the Hawkhurst Neighbourhood Plan (HNP).
10. The appeal site is located to the north side of Hawkhurst and is a component part of a wider housing allocation for approximately 40 dwellings (Policy AL/HA1 of the SAD). It is common ground that the appeal site is a brownfield site/previously developed land and that the proposal is consistent with Policy CP1 of the CS. Notwithstanding this, the appeal site has a number of constraints, these include brook/stream that runs through the site, changes in levels and the requirement to retain an established tree screen that is a constituent part of the landscape character of the area.
11. The appeal proposal seeks to develop the part of the housing allocation that is within the control of the appellant, whilst ensuring that the remaining part of the site which is in different ownership could be brought forward at a later date. Therefore, whilst it is unfortunate, based on the evidence before me and what I heard at the Hearing I am of the view that it is unlikely that a single scheme for the whole housing site allocation that could potentially utilise a single site access will come forward due to the on-going land ownership issues.

Highway safety

12. The Council and the Local Highway Authority have argued that the proposed access for the development which includes a demand activated signal-controlled junction would result in harm to highway safety and that the design solution is not appropriate given the overall scale of both the proposed development and the overall housing allocation of approximately 40 dwellings. Their preferred option would be to have a single access for the whole housing site allocation. without the requirement for signalised control. However, as set out above given the land ownership constraints it is not possible to achieve

these outcomes and as such without the provision of a signal-controlled junction the necessary visibility could not be achieved due to a combination of vegetation and highway geometry. Furthermore, there is no substantive technical evidence before me to suggest that traffic signals would increase traffic congestion or materially increase the displacement of on-street parking to the detriment of highway safety. Consequently, at the Hearing the Highway Authority accepted that the proposal would not result in an unacceptable impact on highway safety, nor would the residual cumulative impacts on the road network be severe. Therefore, whilst I accept that it is unusual to find traffic signals used on a development of this scale, given the site-specific constraints, I consider that the proposed demand activated signal-controlled junction is a cost-effective mitigation that ensures that there would not be any significant impacts on the transport network or highway safety.

13. Therefore, having reached the conclusions above, that the proposed signalised junction in this site-specific circumstance would be appropriate and as such the development would not result in severe harm to highway safety. The proposal would therefore be consistent with Core Policy 3 of the CS, Policies EN1, TP3 and TP4 of LP and Policy AL/HA1 of the SAD. In reaching this conclusion I have had regard to Paragraphs 102,103 and 108-111 inclusive of the Framework.

Surface water

14. The appellant's proposed surface water drainage solution for the development would be attenuation with controlled discharge to the watercourse at the boundary. This is supported by a flood risk assessment¹ that concludes that there would be a very low risk of flooding to or from the development. Furthermore, Policy AL/HA1 of the SAD does not identify any site-specific surface water issues that would need to be addressed as part of any subsequent planning application. Nonetheless, the Council have argued that they require greater detail to demonstrate that surface water can be appropriately managed within the site.
15. Therefore, whilst I accept that the precise detail of the surface water drainage scheme has not been provided within the outline application, the appeal site is located within Flood Zone 1. These are locations where the Framework seeks to steer new development due to it having the lowest probability of flooding. Therefore, given that the layout, scale, appearance, internal access roads, and landscaping of the proposed development are all still to be resolved, it is reasonable for a detailed surface water drainage scheme to be completed as part of the final design process. Consequently, there is no substantive technical reason why surface water drainage for the proposed development could not be adequately addressed by the imposition of conditions requiring the submission of a detailed scheme, particularly given that the site is within an area identified as having a very low risk of flooding.
16. Therefore, based on all of the evidence before me I conclude that subject to the imposition of planning conditions (No's 1, 11 and 12) the proposed development would be highly unlikely to materially increase the risk of surface

¹ Land at Springfield Garden Centre FRA and Hydraulic Modelling Report – 13 September 2017

water flooding. As such, the proposal would not conflict with Policy EN16 of the LP and Policy AL/HA1 of the SAD. In reaching this conclusion I have had regard to Paragraphs 162 to 165 of the Framework.

Character and appearance

17. Whilst the original application was submitted in outline form with all matters apart from access reserved for subsequent approval; the Council argued that the proposal would result in a development that was cramped and out of character with the surrounding area. Notwithstanding this, it was accepted by the Council at the Hearing that given the constraints associated with the site the final design solution would be unlikely to differ greatly from the submitted illustrated layout (two blocks of apartments). I have therefore used it as a broad guide in relation to assessing the effects of the proposal on the character and appearance of the area. In doing so I accept that there is potential for an alternative site layout and arrangement, although the access to the site would be fixed.
18. Based on the evidence before me and my observations I accept that whilst elements of the new development would be visible, the views would be largely contained by the natural topography of the site and its surroundings and as such the effect of the proposed development would be localised. Furthermore, these views would not be out of context in the setting of Hawkhurst being a nucleated settlement that already has built development particularly to the south and south east of the appeal site. Further, due to the topography of the appeal site a sensitively planned and implemented landscaping scheme consistent with the landscape character of the area would ensure that the proposal would be viewed as an organic extension of the settlement.
19. I have carefully considered the Council's representations in relation to the proposed layout and its correlation with the provision of garden/amenity space and parking. However, it was common ground that the proposed scheme is largely dictated by the site-specific constraints and whilst it could be argued that the proposed garden areas would be smaller than the prevailing character in and around Cranbrook Road the scheme would not appear cramped in this site-specific context. Furthermore, if the scheme was to alter significantly as part of the reserved matters process the Council would have the opportunity to raise its concerns as part of their determination of the application.
20. Having reached the conclusions above the proposal would not result in material harm to the character and appearance of the area. The proposal would therefore be consistent with Policies CP4 and CP13 of the CS, Policies EN1 and H5 of the and Policy AL/HA1 of the Site Allocations Local Plan. In reaching this conclusion I have had regard to Paragraphs 162 to 165 of the Framework.

Planning obligations

21. At the time the appeal was submitted the appellant had not provided planning obligations in relation to affordable housing, libraries, recreation and open space. However, the appellant has as part of their appeal submitted two planning obligations in the form of unilateral undertakings pursuant to Section 106 of the Act, which addressed affordable housing and Libraries. Both planning obligations have been submitted in a 2-part counterpart form but both

of them, taken together, constitute a single agreement. I have considered the obligations against the tests in Regulation 122 of the CIL Regulations 2010 and the Framework

22. The Council has identified a need for affordable homes in the area, this is set out in Core Policy 6 of the CS. The policy states that developments on sites providing affordable housing will generally provide 35% of the total number of dwellings as affordable housing (9 dwellings). The policy further sets out circumstances where site specific factors can be considered if they effect viability in terms of cost. The appellant's first unilateral undertaking provides for 6 affordable rented units but also includes two alternative provisions that provide 6 shared equity and 2 social rented units (8 units in total) or 1 shared and 4 social rented units (5 in total). The obligation also establishes the evidence requirements for the eligibility of qualifying persons. In support of their obligation the appellant's have submitted a viability report in accordance with the requirements of the policy.
23. I have therefore carefully considered the Council's response in relation to both the proposed quantum of affordable housing and their comments with regard to the viability report. However, based on the evidence before me and what I heard at the Hearing I consider that the site-specific constraints are a significant factor in relation to the viability and delivery of part of this housing allocation. Furthermore, the provision of 6 affordable rented units would make a meaningful contribution to the supply of affordable housing in Hawkhurst.
24. Therefore, the provision for affordable housing as set out in the unilateral undertaking is consistent with the requirements of Core Policies 1, 6 and 13 of the CS and Policy AL/HA1 of the Site Allocations Local Plan.
25. The second unilateral undertaking addresses the need to make contributions towards library provision to address the demand generated from the proposed residential development. Based on evidence before me I consider that provisions contained within the unilateral undertaking are reasonably related in scale and kind to the needs generated by the proposed development. Furthermore, they are consistent with the requirements of Core Policies 1, 8 and 13 of the CS and Policy AL/HA1 of the Site Allocations Local Plan.
26. No obligation was provided in relation to the Council's requirement for recreation and open space provision. However, based on carefully considering the viability evidence before me and the comments of the Parish Council I consider that in this appeal specific circumstance the provision of a contribution towards open space could put the viability and ultimately the deliverability of housing from this specific scheme at risk. As such, there would be no conflict with Core Policies 1, 8 and 13 of the CS, Policy R2 of the LP and Policy AL/HA1 of the SAD.
27. I therefore consider that the obligations meet the necessary tests in law, and I have taken account of them in reaching my decision.

Conditions

28. The conditions suggested by the Council have been considered in light of the advice contained within the Framework and the national Planning Practice Guidance. In addition to the standard outline implementation conditions, it is

necessary for the avoidance of doubt and in the interests of certainty to define the plans with which the scheme should accord. In the interests of the character and appearance of the area a condition is necessary to control external materials to be used in the development. Moreover, it is necessary to apply conditions relating to levels (slab levels/access road/retaining structures) in the interests of the character and appearance of the area. In the interests of the living conditions of future occupiers of the development it is necessary to apply conditions in relation to details of any plant (ventilation/refrigeration/air conditioning) and waste management/storage provision.

29. To minimise the risk of flooding, it is necessary for conditions requiring the submission of schemes for foul/surface water drainage and a sustainable urban drainage to be agreed with the Local Planning Authority. It is necessary to impose conditions requiring an assessment of ground conditions and for details of any required remediation to be submitted to and approved by the Local Planning Authority. In the interests of highway safety, it is necessary to provide details of the access road, turning arrangements, external lighting and parking to be submitted at the reserved matters stage.
30. It is necessary in the interests of amenity to require by condition the submission of a landscape scheme which minimises the risk to biodiversity securing the protection of habitats. Further it is necessary to control and agree details of methods of construction and environmental management in the interests of local residents. It is necessary in the interests of sustainability to impose a condition to ensure that the development be provided with electric vehicle charging points.

Conclusion

31. For the above reasons, and having carefully considered all other matters raised, I conclude that the appeal should be allowed, and outline planning permission granted.

Jameson Bridgwater

INSPECTOR

CONDITIONS SCHEDULE

1. Approval of the details of the layout, scale, appearance, internal access roads, and landscaping of the development (hereafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before development commences 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 no later than the expiration of 3 years from the date of this permission.

3. The development hereby permitted shall be begun no later than the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
 - Drawing SK-014E Junction Visibility and vehicle swept path analysis Option 12
 - Drawing 2233SC/01 Site Location Plan
 - KB Ecology Report 2015/06/03 Dated 8 September 2015
 - Quaife Woodlands Report AR/3357 Dated 30 October 2017
5. No building work shall commence above slab level until written details including source/ manufacturer, and samples of bricks, tiles, cladding and roofing materials to be used externally shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced and the development shall be carried out using the approved external materials.
6. No building work shall commence above slab level until a landscape scheme designed in accordance with the principles of the Council's landscape character guidance has been submitted to and approved in writing by the local planning authority. The scheme shall show all existing trees, hedges and blocks of landscaping on, and immediately adjacent to, the site and indicate whether they are to be retained or removed. It shall detail measures for protection of species to be retained, provide details of on-site replacement planting to mitigate any loss of amenity and biodiversity value together with the location of any habitat piles] and include a planting specification, a programme of implementation and a 5-year management plan.
7. Prior to the commencement of the development a Code of Construction Practice shall be submitted to and approval in writing by the Local Planning Authority. The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003) unless previously agreed in writing by the Local Planning Authority.

The code shall include:

- An indicative programme for carrying out the works
 - Measures to minimise the production of dust on the site(s)
 - Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s)
 - Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site(s)
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- Design and provision of site hoardings
- Management of traffic visiting the site(s) including temporary parking or holding areas
- Provision of off-road parking for all site operatives
- Measures to prevent the transfer of mud and extraneous material onto the public highway
- Measures to manage the production of waste and to maximise the re-use of materials
- Measures to minimise the potential for pollution of groundwater and surface water
- The location and design of site office(s) and storage compounds
- The location of temporary vehicle access points to the site(s) during the construction works
- The arrangements for public consultation and liaison during the construction works

- 8 Prior to the commencement of development, a Landscape and Ecological Management Plan (LEMP), a written scheme (in general conformity with BS42020) for the long-term management of the open space and wildlife corridors shall be submitted to and approved in writing by the Borough Council, to include a clear plan indicating the areas to be retained as open space and wildlife corridors. The approved management and monitoring plan shall be implemented in accordance with the approved proposals within it and shall be carried out in perpetuity;

The LEMP shall be accompanied by a detailed scheme of soft landscaping to demonstrate that the landscaping proposals are in full accordance with the approved LEMP and have been informed by the existing landscape characteristics of the site and by any loss of existing vegetation on the site. The development shall be carried out in accordance with the approved plan;

No tree/shrub clearance works shall be carried out on the site between 1 March and 31 August inclusive, unless the site is surveyed beforehand for breeding birds and a scheme to protect breeding birds is submitted to and approved in writing by the Local Planning Authority. If such a scheme is submitted and approved development shall thereafter only be carried out in accordance with the approved scheme;

The LEMP shall detail measures for protection of species to be retained, provide details of on-site replacement planning to mitigate any loss of amenity and biodiversity together with a programme of implementation and management plan.

The landscape scheme shall specifically address the need to provide internal and perimeter landscaping.

- 9 No development shall take place until details for the disposal of foul sewage have been submitted and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

- 10 Prior to the commencement of development, details of any measures to be taken to divert the public sewers shall be submitted to and approved in writing by the Local Planning Authority, in consultation with Southern Water. The approved details shall be implemented as approved.
- 11 No development shall take place until the details required by condition 1 shall demonstrate that requirements for surface water drainage for all rain fall durations and intensities up to and including the climate change adjusted critical 100-year storm can be accommodated within the proposed development layout, without increase flood risk on or off site.
- The drainage scheme shall also demonstrate that silt and pollutants resulting from the site can be adequately managed to ensure there is no pollution risk to receiving waters and that appropriate operational maintenance and access requirements for each drainage feature are provided.
- 12 The development hereby permitted shall not be occupied until a Verification Report pertaining to the surface water drainage system, carried out by a suitably qualified professional, has been submitted to the Local Planning Authority which demonstrates the suitable modelled operation of the drainage system such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; topographical survey of 'as constructed' features; and an operation and maintenance manual for the sustainable drainage scheme as constructed.
- 13 Prior to commencement of above ground construction works, details shall be submitted to and approved in writing by the Local Planning Authority of the existing and proposed ground levels detailing any changes to levels and including finished ground floor slab levels and any retaining structures and areas of cut and fill. Such matters to be demonstrated through long-sections showing how the site relates to surrounding development. The development shall be undertaken in accordance with the approved plans.
- 14 No building work shall commence above slab level until, details of the storage and screening of refuse shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and the refuse facilities shall thereafter be retained.
- 15 (a) If during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority.

(b) Upon completion of the building works, a closure report shall be submitted to include the following;

- Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.
- Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report submitted prior to occupation, together with the necessary documentation detailing what waste materials have been removed from the site.

If no contamination has been discovered during the build, then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.

- 16 The developer must ensure a watching brief is carried out by a suitable consultant during demolition and foundation works. Any measures to control any contamination identified during these activities shall be agreed with the LPA before further construction commences.
- 17 No external lighting shall be installed until a detailed scheme of lighting has been submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. This scheme shall take note of and refer to the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2005 (and any subsequent revisions) and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The scheme of lighting shall be installed, maintained and operated in accordance with the approved scheme unless the Local Planning Authority gives its written consent to any variation.
- 18 Publicly accessible EV "rapid charge" point (of 22kW or faster) should be provided per 10 residential dwellings (where no dedicated off-street parking is provided) and/or per 1000m² of commercial floor space. Ideally any dwellings with dedicated off-street parking should be provided with their own charge points for low-emission plug-in vehicles. Where these things are not practicable, contribution towards installation at nearby locations should be considered.
- 19 Prior to the first use of the premises, details of any plant (including ventilation, refrigeration and air conditioning) or ducting system to be used in pursuance of this permission shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. The scheme shall ensure that the noise generated at the boundary of any noise sensitive property shall not exceed Noise Rating Curve NR35 (in areas of low background sound levels a

target of NR30 shall be achieved) as defined by BS8233: 2014 Guidance on sound insulation and noise reduction for buildings and the Chartered Institute of Building Engineers (CIBSE) Environmental Design Guide 2006. The equipment shall be maintained in a condition so that it does not exceed NR35 as described above, whenever it's operating. After installation of the approved plant, no new plant or ducting system shall be used without the prior written consent of the Local Planning Authority

- 20 Details pursuant to condition 1 shall include facilities for the parking and turning of vehicles shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved plans and completed prior to the first occupation of the dwellings they serve and retained thereafter for the lifetime of the development.
- 21 The off-site works, the design of which is shown in plan SK-014E, shall be implemented in accordance with approved plans prior to first occupation of the development hereby approved.
- 22 No development shall commence until details of the proposed access road through the site including sections and plans demonstrating the gradients together with a timetable for implementation has been submitted to the Local Planning Authority. The development shall not be occupied until such time as the works have been implemented in full accordance with the approved scheme and timetable

APPEARANCES

FOR THE APPELLANT:

Andrew Street	Consilium Town Planning Services Limited
Gavin Maclean	Mott MacDonald
Malcolm Gordon	Mott MacDonald
Tim Mitford-Slade	Strutt and Parker
John Bradden	Esquire Developments Limited
Paul Paulding	Esquire Developments Limited
Paul Henry	Esquire Developments Limited

FOR THE LOCAL PLANNING AUTHORITY:

Marie Bolton	Tunbridge Wells Borough Council
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Margaret Parker

Kent County Council

Paul Thrower

Kent County Council

Bronwyn Buntine

Kent County Council

INTERESTED PERSONS:

David Brown

Local resident

Keith Lagden

Local resident

Richborough Estates