



Appeal Decision

Hearing held on 29 November 2022

Site visit made on 30 November 2022

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 January 2023

Appeal Ref: APP/M2270/W/21/3287392

Land off Angley Road, Cranbrook TN17 2HF

- 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 Piers Bryant of Heyworth Properties Ltd against the decision of Tunbridge Wells Borough Council.
 - The application Ref 21/00519/FULL, dated 11 February 2021, was refused by notice dated 27 May 2021.
 - The development proposed is the development of 35 residential units with associated garaging and parking and infrastructure including off site highway improvement works and a replacement pre-school children's daycare nursery facility with associated car parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was refused for 13 reasons. Reasons 9-13 were based on the absence of a planning agreement that was argued by the Council to be necessary to provide contributions for affordable housing and community services/facilities, including recreation, open space, health care, education, community hub, social care, waste and sustainable transport. A completed planning agreement under section 106 of the Town and Country Planning Act 1990 has been submitted as part of the appeal documents and the Council is satisfied that these reasons for refusal have been addressed. I will consider the planning agreement later.
3. Also at the appeal stage further evidence was submitted to seek to address the highway safety and air quality objections. The Council is satisfied that this information addresses the first and seventh reasons for refusal and I have found no reason to disagree.
4. Also in respect of the eighth reason for refusal, concerning the protection of the right of way across the site, the main parties have agreed that this can be addressed by a suitably worded condition in any approval. Again I agree.
5. The site lies within the High Weald Area of Outstanding Natural Beauty (the AONB). I am satisfied that having regard to the nature of the site in relation to the settlement of Cranbrook, the scale of the development and the setting, as well as the impact on the purposes for which the AONB has been designated and defined, the scheme would not be major development within the meaning of paragraph 177 of the National Planning Policy Framework (the Framework).

Main Issues

6. The main issues are:

- the effect of the development on the character and appearance of the area, having regard to the location within the High Weald AONB,
- the effect of the proposal on heritage assets, including the Grade II Listed buildings known as Island Cottages, the Wilsley Green Conservation Area and the Cranbrook Conservation Area,
- whether or not the scheme would result in an overall net gain to biodiversity,
- whether or not the proposed access arrangements would have an acceptable impact on biodiversity,
- whether or not the proposed access arrangements would lead to unacceptable tree loss and any related effect on the character and appearance of the area, and
- when examining the overall planning balance, if the proposal would not accord with the development plan when considered as a whole, whether or not material considerations indicate a decision should be made otherwise.

Reasons

The development plan

7. For the purposes of this appeal the development plan consists of the saved policies of the Tunbridge Wells Borough Local Plan (2006) (the Local Plan), the Tunbridge Wells Borough Core Strategy Development Plan Document (adopted 2010) (the Core Strategy) and the Tunbridge Wells Borough Site Allocations Local Plan (adopted 2016) (the Site Allocations Plan).
8. The Local Plan identifies the boundaries of the Limits to Built Development (LBD) around settlements within the Borough. Policy LBD1 of the Local Plan explains that outside the LBD, development will only be permitted where it would be in accordance with other development plan policies, although the references in the policy are to some outdated plans.
9. Policy CP1 of the Core Strategy explains that priority will be given to the allocation and release of previously developed land within the LBD of settlements. The policy goes on to explain that selected greenfield sites within and/or adjacent to the LBD of settlements in the main urban area and smaller rural towns will also be allocated and released as appropriate to maintain a sufficient phased supply of deliverable and developable land. The supporting text to Policy CP1 of the Core Strategy explains the process for allocating and release of land for housing development. This allocation and release is through the plan led approach and the Site Allocations Plan has been a vehicle for this to be pursued.
10. The appeal site lies beyond the LBD for Cranbrook and therefore is located within the countryside for planning purposes. It has not been allocated in the Site Allocations Plan for residential development. The scheme would, therefore, not comply with Policy LBD1 of the Local Plan and Policy CP1 of the Core Strategy as a matter of principle. Because of the location outside the LBD, and the type of proposed development, the scheme would not meet with the

approach to development in Policy CP14 of the Core Strategy which sets out the types of development acceptable in villages and rural areas. I will return to these policies in the planning balance, particularly in the light of the agreed lack of a five year supply of deliverable housing land.

Emerging plans

11. The Borough Council produced a consultation draft Local Plan¹ which showed a fairly substantial section of the appeal site as a housing allocation, albeit beyond the LBD. It was partly on the basis of this housing allocation that the planning application proposing the scheme was submitted.
12. The emerging Local Plan was then reviewed by the Council and updated such that the appeal site allocation, and some other housing allocations, were deleted. A part of the site, a reasonably sizeable, triangular area in the south west section of the appeal site is identified in the latest version of the emerging plan as a proposed Local Green Space. This is an area of the site beyond the proposed housing and would not be affected by the development.
13. This submission version² of the Local Plan is presently before the Local Plan examining Inspector. The appellant has made submissions to the Examining Inspector regarding the approach to housing delivery and the soundness of the plan. Local Plan hearings have taken place and the Examining Inspector has published his Initial Findings³. This identifies that further work is necessary before a conclusion can be reached that exceptional circumstances exist to release site allocations from the Green Belt and this includes the 170 hectares (up to 2,800 houses) at Tudeley. The Examining Inspector considers that this will have consequential impacts on other aspects of the Plan, including whether the Plan is able to identify a sufficient supply of housing land.
14. On the basis of this information, and that the Council appear to need to undertake further work to demonstrate the housing approach, I attach the policies of the emerging Local Plan limited weight in the overall considerations in this appeal.
15. The Parish Council is advancing the Cranbrook and Sissinghurst Neighbourhood Plan. I heard at the hearing that the Plan has been submitted to an independent examiner for consideration. The Neighbourhood Plan identifies the whole of the open grassed land of the appeal site (known locally as the Long Field), including the land for the proposed housing, as a Local Green Space. Given the stage that the Neighbourhood Plan has reached, the Council indicated at the hearing that it should be attributed limited weight in terms of the issues in this appeal. I agree with that conclusion.

Character and appearance, including the AONB

16. The appeal site has two reasonably discrete sections where development is proposed. The larger of the two areas is the present open space, including the adjoining day care nursery, where the new build housing and a replacement day care nursery is proposed. The other area adjoins Angley Road where it is proposed that a section of new road would link from Quaker Lane to Angley

¹ Regulation 18 stage of the Town and Country Planning (Local Planning) (England) Regulations 2012

² Regulation 19 stage of the Town and Country Planning (Local Planning) (England) Regulations 2012

³ Examination of the Tunbridge Wells Borough Local Plan : Initial Findings of the Examining Inspector November 2022.

Road, with the associated closure and landscaping of the existing angled accesses onto the main road. In this section of the decision, under this main issue, I will focus on the main site and deal with issues regarding the highway works later.

17. The site lies within the AONB. The primary purpose of AONBs is to conserve and enhance natural beauty. The High Weald AONB Management Plan 2019-2024 (the AONB Management Plan) contains a statement of significance and the commentary to this section explains that the High Weald AONB is characterised by dispersed historic settlements, a dense network of historic routeways, an abundance of ancient woodland and small irregularly shaped fields.
18. I have had regard to the range of landscape and other documents that have been referred to, including the Landscape Sensitivity Assessment of Additional Settlements in Tunbridge Wells⁴ (July 2018) and the Borough Landscape Character Area Assessment 2002 Second Edition (adopted 2011). This latter document identifies the site and surroundings within the Cranbrook Fruit Belt Local Character Area which includes the features such as the arable fields, orchards, woodland and the relationship of the land with Cranbrook.
19. The open space itself is a fairly sizeable, grassed area, with a level section towards the north east segment and with the land sloping down towards the general west, south and south west. Within this grassed area there are a limited number of small/medium height trees and groups of trees/bushes. Two public footpaths cross the site, one north-south within the eastern boundary and one that crosses the site diagonally from the west along its permissive route and more southerly in terms of its definitive line. The grassland area is mown fairly regularly giving it a more maintained and formal appearance than general grazing land.
20. The land has generally verdant and mature boundary planting with some established and attractive trees and hedging. There are some limited views into the land from Angley Road but generally the land is quite self-contained from the wider area with limited opportunities to view into the site and little visual connection to the wider surroundings when within the land, such as when walking along the footpaths.
21. In terms of the surroundings, there is to the south the Primary School constructed on part of the original Long Field. The boundary with the school is well established such that the school and its land is not especially visible. To the east is the open space known as Big Side, which are playing fields used by Cranbrook School, and further to the north east is the housing at Wilsley Green. To the broadly west are houses fronting Angley Road and the playing field known as Jaegers Field. On the other side of Angley Road behind the partial woodland screen are the pitches of Cranbrook Rugby Club.
22. Taking all these elements together, the surroundings to the proposed housing site consist predominantly of buildings and playing fields, albeit interspersed by verdant boundaries and other planting, such that the site and surroundings does not have a countryside feel. I consider that the proposed housing land can be characterised as urban fringe and that it relates more to the built form of Cranbrook than open countryside. Furthermore, the land, while pleasant and

⁴ Report for Tunbridge Wells Borough Council prepared by LUC

verdant in the ways that I have described, does not typify the identified and special qualities of the AONB and with its containment makes only a limited contribution to this wider landscape designation.

23. The Council highlight that the open character of the site contributes to the separation between Cranbrook and Wilsley Green. It does form a space between these built areas, however, I consider that this appears to be more in plan form than visually on the ground. The most important space is the Big Side which is more sizeable and open to wider views and which helps to more clearly define a separation between the two communities. The containment of the appeal site visually from the wider area means that it makes much less of a contribution as a buffer between the built areas.
24. It is within this context that the appeal scheme needs to be considered. The scheme would provide 35 residential units and a replacement day care nursery. The new access from Angley Road to the housing would not appear out of character in the general context of the housing to the broadly west and the width and nature of the main road. There would be views into the site of the new buildings, however, a generous landscaping scheme would help soften the effect from Angley Road such that the development would not be an overly dominant presence when travelling along the road with its general urban fringe character.
25. The loop design of the layout may not mimic the linear form of housing along the main road through parts of Wilsley Green but there is housing set back from the main road behind parts of the built form in Wilsley Green and in sections of Cranbrook to the south west. I do not consider that the scheme would undermine to a material extent the historic settlement or field pattern. This is because of the context of the general surroundings and how it has organically grown together with the positive qualities of the scheme and the enclosure within the original field boundaries.
26. The housing and day care nursery have been well-designed with features and bulk that reflect a general Wealden form of design and appearance. There is a variety of architectural detailing to the elevations and, with the reasonably informal layout and spacing between buildings around the road, the scheme in itself would have a character and identity that would suit its context.
27. The area of open land would be significantly reduced but there would remain a meaningful space that would have more formalised public access. The housing would front that public space in an acceptable manner and the alignment of the public footpaths, in particular with the path having a reasonably wide corridor along the eastern boundary, would continue to provide satisfactory routes for walkers.
28. With the contained nature of the site and its modest contribution to the separation between Cranbrook and Wilsley Green, the form of the development would not undermine the visual separation between built areas such that this would cause unacceptable harm.
29. Nevertheless, notwithstanding the merits of the development, the result of the scheme would be that a pleasant and significant part of the open space would be lost to built development. While I have taken into account the Landscape Assessment produced by the appellant, I consider that even when a comprehensive landscaping scheme has matured, there would still result in an

adverse effect to the character of the site simply by the introduction of built development of the scale and form proposed. This would detract from the existing open character and the visual amenities of the area experienced by walkers traversing the footpaths. While this adverse change may be modest it would still be harmful because of the nature of the change and the loss of the open space that contributes positively to the localised area.

30. The site may not clearly display the features that contribute to the special character of the AONB more widely. Nevertheless, the site is still designated as AONB land and the scheme would not conserve the landscape and scenic beauty of the site itself and this harm would detract from the positive contribution that the site makes to the area. There would, therefore, be harm to the character and appearance of the land within the AONB, although that harm would be modest and localised. Nevertheless, any harm to the landscape and scenic beauty of the AONB should, in accordance with the Framework, be attributed great weight.
31. On this basis, I conclude that the scheme would, in the modest and localised way that I have described, harm the character and appearance of the area and detract from the landscape and scenic beauty of the AONB. Consequently, the scheme would fail Policies EN1 and EN25 of the Local Plan, CP4 of the Core Strategy, the AONB Management Plan and the Framework which seek to conserve and enhance the locally distinctive sense of place.
32. Policy EN5 of the Local Plan is referenced in the related reason for refusal, however, as that policy concerns the effect of development on Conservation Areas I consider that policy matter below.

Heritage assets

33. The reason for refusal identifies harm to the significance of the Cranbrook Conservation Area (the Cranbrook CA), the Wilsley Green Conservation Area (the Wilsley Green CA) and the Grade II Listed Island Cottages. I will look at the effect of the development on these designated heritage assets in turn.
34. At the outset, I am mindful of the statutory duties to pay special attention to the desirability of preserving or enhancing the character or appearance of any land or buildings in a Conservation Area⁵ and to have special regard to the desirability of preserving listed buildings, their setting and features of special architectural or historic interest which they possess⁶.
35. The Cranbrook CA is significant including because of its rural setting, retaining many views of countryside, large gardens and other important green spaces within, and contiguous to, the CA. The Cranbrook CA Appraisal (June 2010) further explains that the CA covers much of the historic street pattern along the main roads through the centre with a high concentration of buildings of historic and architectural interest. The boundary of the Cranbrook CA extends north in a broad direction towards the appeal site, but stops somewhat short of the site itself. The CA does not include, for instance the Big Side or the built development to the south of the Primary School, or the Primary School area itself.

⁵ Section 72(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990.

⁶ Section 66(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990.

36. While I appreciate that undeveloped spaces around the CA can contribute to its character, the appeal site is separated from the boundary and is not experienced, in my view, in association with the CA even in sequential views for walkers. The particular position and character of this remaining part of the Long Field does not contribute to the significance or setting of the Cranbrook CA. Consequently, the development of the appeal site for housing, because of the intervening development, relationship to the boundary and the nature of the scheme, would not harm the significance or setting of the Cranbrook CA.
37. The Wilsley Green CA is separated from the Cranbrook CA and lies to the broadly north east. The Wilsley Green CA has elements of a generally linear form stretching from the Pound in the north east along the road to and including the strip of trees alongside Angley Road and the curtilages of The Hollies and Jasmine Cottage. These trees within the CA also fall within the red lined area of the appeal site. The boundary of the Wilsley Green CA also extends down and includes part of the frontage to the existing day care nursery.
38. The Wilsley Green CA Appraisal (October 2012) explains that the special interest of the area includes it being a dispersed rural settlement with attractive wooded surroundings, with some views out from the principal roads across rolling countryside and parkland. The significance also includes the survival of medieval and slightly later buildings associated with the weaving industry and the limited range of materials give the buildings a consistent, locally distinctive appearance.
39. The housing development would be set back from Angley Road and while it would be perceptible and change the character of the views, it would not be an overly prominent feature in those street views from the main road. It would have a limited and localised effect on the overall surroundings in which the edge of this part of the Wilsley Green CA was experienced. This new residential development would also be largely to the south west of the Wilsley Green CA and would not intrude into views or effect the main groupings of more historic and older buildings that form part of the significance of the CA.
40. Along the northern boundary, Plots 1-9 would abut the boundary of the CA and replace open space in this part of the site. However, this part of the CA includes the bungalow at The Hollies which is not an older or architecturally important building and therefore while there will be an effect and change to the character of this area it would be limited. There was some discussion at the hearing regarding the location of the earlier common land in this general area and the way that the older and pattern of buildings may have association with this space. However, there is not comprehensive and documented evidence on this matter and the proposed housing part of the appeal site was previously part of a larger field that stretched to the south, away from the core of the Wilsley Green CA, and did not appear to be clearly associated with the position and orientation of the older buildings along Angley Road.
41. Taking all these matters together, because the new built development would replace open space at the edge of, and within a small part of, the Wilsley Green CA, there would be a minor negative effect on the surroundings in which part of the CA is experienced and thereby on the significance of the CA.
42. The other main part of the proposal is the highway changes along the frontage with Angley Road. At the present time, the main length of Quaker Lane has a

generally east-west alignment. There is a junction at the western section of Quaker Lane, adjoining the western side of Island Cottages, and the road divides, splitting to the broadly north east and to the south west. This section of Quaker Lane is part of an original route. There are angled junctions at each end which join Angley Road.

43. The scheme would close these two end junctions and a new vehicular access would be created by extending the linear alignment of Quaker Lane through a section of the tree strip to join with Angley Road. The tree strip is a fairly prominent element within that part of the road, providing a well-established and verdant feature that provides, with the section of woodland on the other side of the road, an attractive and softening green character to those surroundings. It adds positively to the character and appearance of this part of the Wilsley Green CA.
44. The scheme would involve the removal of a section of the tree strip. It would break up this consistent and linear feature running parallel with both Angley Road and the adjoining part of Quaker Lane and replace a section with an engineered road junction. The trees that would be lost, principally oak and hornbeam, are a reasonable height and make a positive contribution to the street scene in conjunction with the other trees. This element of the scheme would cause harm to the character and appearance of the CA.
45. However, the two junctions at each end of Quaker Lane, where they join with Angley Road, are also engineered highway features and do not make a positive contribution to the CA. The scheme would see the closure of the roads and replacement with a section of landscaping. While the landscaping scheme at the present time shows some tree planting and undergrowth, this could be the subject of further details submitted pursuant to a condition as part of any approval. Such a landscaping scheme could be designed so as to grow to be seen as extensions to the tree strip. While this would take some time to mature, this element of the scheme would enhance the character and appearance of the CA.
46. The works at the two ends of this section of Quaker Lane would close this historic route to vehicles. However, it would still be possible to walk the route and the changes would not materially affect the legibility and understanding of the historic alignment.
47. Drawing these matters together, the insertion of the new road section and junction through the tree belt would be harmful. However this would be compensated to some extent by the closure of the other two accesses and the associated planting. Overall, as the linear tree strip would be fragmented into two sections, and therefore the visual presence of a continuous length of what appears to be a woodland strip undermined, and with the time taken for the planting at each end to reach the similar level of maturity as the section that would be lost, I consider that overall there would be a net harm to the character and appearance of this part of the CA and therefore to its significance as a whole.
48. Island Cottages, are four individually listed buildings that are located on a triangular shaped section of land bounded by roads. They are each a Grade II Listed Building, and date from the late 16th Century or early 17th Century. They are significant, including because of their age, mix and shape of roofs and

range of traditional materials which are characteristic of the older and attractive buildings within the Wilsley Green CA.

49. The setting of the buildings is quite tightly drawn around the buildings themselves. The housing development itself would not have an effect on their setting or significance because of the separation and intervening screening. However, in some views, particularly when approaching the Cottages along the linear section of Quaker Lane, the trees along Angley Road form part of the backdrop to the group of Cottages. This forms an attractive part of their setting in these views.
50. The removal of a section of the woodland strip would erode and harm an element of that setting with the introduction of a more engineered form to the surroundings in which the Cottages are experienced. The closure and planting of the ends of Quaker Lane onto Angley Road would not satisfactorily mitigate this harm because of the separation of these works from the listed buildings themselves.
51. To conclude, I have found no harm to the Cranbrook CA. However, for the reasons explained above, the proposal would harm the Wilsley Green CA and the setting of the Island Cottages. This harm, both individually and collectively, would conflict with Policies EN1, EN5 and EN13 of the Local Plan and Policy CP4 of the Core Strategy which seek that, in these respects, the Borough's heritage assets will be conserved and enhanced and special regard will be had to their settings.
52. Having regard to the policy approach in the Framework, and in particular paragraph 202, the harm to the Wilsley Green CA as a whole from the housing and the access works would be less than substantial to the significance of this designated heritage asset. The harm to the setting of the Island Cottages and thereby their significance would also be less than substantial to the significance of each of these listed buildings. The combined harm to the Wilsley Green CA and the listed buildings would also be less than substantial and because the impacts would be quite modest, the combined harm would be at the lower end of the less than substantial scale. Nevertheless, the Framework advises that any harm to the significance of a designated heritage asset should require clear and convincing justification and that great weight should be given to the asset's conservation, irrespective of the level of potential harm.
53. In accordance with the Framework, this harm should be weighed against the public benefits of the proposal. I set out the public benefits of the proposal in detail later in this decision and, for the reasons I explain, the benefits are weighty and substantial. In particular, the benefits include the provision of market and affordable housing in a location with good access to services and facilities other than by the private vehicle. Given the reasonably low level of combined harm that I have found, I am satisfied that the public benefits would clearly outweigh the harm I have identified in terms of the approach set out in paragraph 202 of the Framework and I will take this conclusion into account in my overall planning balance.

Whether or not the scheme would result in an overall net gain to biodiversity

54. Policy CP4 of the Core Strategy sets the policy approach for the environment. Criterion 3 provides policy requirements for nature conservation and biodiversity and includes the objective to avoid net loss of biodiversity across

the Borough as a whole. In terms of the Framework, paragraph 174 includes that decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity. At the present time, these policies provide the key tests in terms of this proposal and effectively require the scheme to demonstrate a net gain to biodiversity.

55. The appeal has been accompanied by an assessment and calculations for net gain using the Biodiversity Metric 3.0. Separate calculations have been undertaken for the main housing area and for the section of the site adjoining Angley Road.
56. In terms of the proposed housing site, there is a disagreement between the appellant's and Council's ecological experts on the base level for the assessment which predominantly concerns whether the semi-improved grassland of the site should be considered in moderate or good condition. There is also disagreement on whether the habitat types in the proposed landscaping scheme would be able to deliver the calculated gain.
57. In respect of the existing grassland condition, I am to some extent persuaded by the case made by the Council in terms of the scoring in the Condition Assessment Criteria Grassland (low distinctiveness). I do not have such detailed evidence to clearly demonstrate that the physical damage to the grassland area (which was said to be mainly caused by the footpaths) exceeded the 5% threshold or that the Himalayan Balsam clearly falls within the grassland area. In respect of this latter matter, the Arborweald Preliminary Ecological Survey and Appraisal: Extended Phase 1 (October 2018) (the Preliminary Ecological Survey) indicates the Himalayan Balsam is located within the hedgerow area in the south east corner and that observation is consistent with the evidence of the Council. The effect of the above indicates that the site could be considered to fall within the good condition category rather than the moderate one and therefore this would raise the biodiversity base level score.
58. Also on the evidence I heard, the Council raised doubt, based on the submitted information, with the likely success of the proposed Lowland Meadow planting and which would provide an important contribution to the habitat units.
59. However, on the other hand, the landscaping and some of the drainage aspects of the scheme would need to be worked up further and this could be the subject of details pursuant to a planning condition in any approval. I heard that the fairly substantial area for the underground drainage crates, which would disturb the grassland in this area, could likely be accommodated under parking and footpath areas and this would prevent the need to effect that area of grassland. This change would likely lead to a benefit to the calculations. Also, the proposed grass cutting regime as part of the management plan for the open space could be altered to be less frequent and this could also improve biodiversity net gain score. Furthermore, the submission of further details to ensure the greater likelihood for the success of the lowland meadow planting together with the potential, in my view, for a larger area of Lowland Meadow to be provided could also alter the calculations in favour of a net gain in biodiversity.
60. The appellant's ecological consultant was confident that a biodiversity net gain could be achieved. While I give some weight to the concerns raised by the Council, given the size of the site and the opportunities that this would provide,

I consider that there is a reasonable likelihood that with updated details and more information pursuant to a planning condition in any approval, that a biodiversity net gain could be achieved for the housing part of the appeal site.

61. In terms of the elements of the scheme adjoining Anglely Road, 14 trees would be removed. Some are better specimens than others and there is also some understorey vegetation. The details of the proposed planting scheme for each end section, where the sections of Quaker Lane are to be closed, are fairly limited in extent at this stage. I consider that there is an opportunity to work up details so that a landscaping scheme would effectively extend the woodland strip at each end and could include understorey planting. In particular, the south west section of land where the tarmac would be removed, and with the adjoining grass verge, would provide quite a reasonable sized area for planting. I consider that in terms of the Biodiversity Metric there is a likelihood that a landscaping scheme could be devised for these areas that showed a net gain to biodiversity despite the removal of the trees.
62. In the light of the above analysis, while I have some concerns with the details at the present time and the related metric calculations, I am satisfied that with a suitably worded condition in any approval, an appropriate and policy compliant landscaping and management scheme for both sites would be able to demonstrate a net gain to biodiversity. In these circumstances, I conclude that there would be no conflict with the approach to biodiversity net gain set out in Policy CP4 of the Core Strategy and the Framework.

Whether or not the proposed access arrangements would have an acceptable impact on biodiversity

63. A Preliminary Ecological Survey was undertaken for the housing part of the site. However, there was at that time no comparable and detailed survey work undertaken in respect of the section of the woodland strip proposed to be removed and which runs parallel with Anglely Road. I have noted the subsequent comments on this area in the Fellgrove Ecological & Arboricultural Review (November 2021 and revised in October 2022).
64. At the hearing, the appellant's ecological consultant indicated that there is some potential for bats to be present and highlighted this in respect of one oak that was proposed to be removed. He indicated that this could be checked by a climbing inspection or a single emergence survey. It was further said at the hearing that there are no cracks or fissures in the oak and therefore it was argued that the likelihood of bats was limited and, if they were to be found, the works would be subject to a protected species licence which would address this matter and could be dealt with by bat boxes and additional planting. Furthermore, the appellant made the case that it was not considered that further surveys were necessary in terms of reptiles because of the island location of the tree belt nor for dormice because the site was fragmented from other woodland and did not contain hazel.
65. On the other hand the Council's ecological officer highlighted the lack of a detailed ecological survey of the woodland and that bats and dormice are quite common. It was argued that there could be a connection for species with the habitats to the north and without the necessary survey work it was not possible to discount the presence of protected species.

66. The information shows that 14 trees would be removed from this section of the woodland strip and these would include oak and hornbeam. I have had regard to all the information including the tree assessment submitted as part of the Ecological and Arboricultural Review (Revised October 2022). These trees, especially where they are away from the overhead cables, would seem to have a reasonable life expectancy of decades ahead of them in normal circumstances and form an important and fairly central component of this linear tree strip with understorey vegetation. While the strip is separated by the main road it is not far from the larger area of woodland to the north.
67. On the face of it, it seems to me that the section of the woodland strip which would be affected by the scheme has the potential to be a habitat for wildlife. At my site visit I looked closely at the trees and in particular the three oaks that would be felled to make way for the road link. Despite what I heard, without a climbing survey it is difficult to be certain whether there are suitable cracks or fissures that could accommodate bats and in the absence of a dedicated survey it is not possible, it seems to me, to discount with reasonable certainty that the trees could be a roost for bats. All bat species, their breeding sites and resting places are protected by law as they are a European protected species. The Council highlight, in addition to bats, the potential for other species to be present and while this may be less likely than bats again there is not the detailed survey evidence to discount their possible presence.
68. The Council also raised at the hearing the requirements in Government Circular 06/2005⁷. This document includes the commentary that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The Circular goes on to explain that the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted.
69. Given all the information that is before me I consider that there is a reasonable likelihood of a protected species being present in the section of the proposed treed strip to be removed and which would be affected by the development. I do not consider that there are exceptional circumstances in this case or that it would be reasonable or appropriate to leave this matter to planning conditions or to the protected species licensing system. While the treed area to be lost may only be a small part of the site overall, the consideration and safeguarding of protected species is an important matter that should be considered as part of the planning proposal, as it has been on the main part of the site.
70. In these circumstances, I conclude that I have insufficient information to be satisfied that in respect of the treed section of the site to be lost that the scheme would not unacceptably harm protected species and therefore the biodiversity of the site. The proposal would therefore, in this respect, not comply with the requirements of Policy CP4 of the Core Strategy and the Framework which sets the approach to the consideration of the protection of biodiversity.

⁷ ODPM Circular 06/2005 - Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System – 16 August 2005

Whether or not the proposed access arrangements would lead to unacceptable tree loss and any related effect on the character and appearance of the area

71. This main issue has been examined in some of the considerations above but was included as a separate reason for refusal by the Council. The proposal would entail the immediate loss of 14 trees and fragmentation of the woodland strip. The loss of the trees in themselves would cause harm to the area, however, there would be some compensation resulting from the new planting in Quaker Lane although this would take time to mature.
72. There would be highway safety benefits from the proposal as it would provide easier visibility for drivers entering Angley Road. This is because the arrangements would reduce the need for drivers to look back over their shoulders when emerging onto Angley Road, which happens at the present time because of the angle of the junctions. The new access onto Angley Road is also necessary to provide sufficient junction separation with the new access into the housing site. The loss of the trees would therefore be necessary to enable a development which overall would provide a safe and suitable highway scheme. I will consider this in the overall planning balance. Nevertheless, there would be a net harm from this part of the development to the character and appearance of the area, including this part of the AONB, to which I attach great weight.
73. It is important not to double count this harm, because I have considered this impact as part of the effect of the proposal on designated heritage assets, including the Wilsley Green CA. However, I conclude that the works to the tree strip would result in a modest level of net harm to the character and appearance of the area, including the AONB. This would conflict with Policies LBD1, EN1, EN5, EN13 and EN25 of the Local Plan and Policies CP4 and CP12 of the Core Strategy which in this respect, notably, seek proposals to not result in the loss of trees important to the character of the landscape.

Other Matters

74. I have taken into account all the written representations both at the application and appeal stages, including those objections from the Parish Council, High Weald AONB Joint Advisory Committee, CPRE Kent and the Weald of Kent Protection Society. I have examined key objections, such as the impact on the AONB and heritage assets, in my considerations above.
75. There are some properties adjoining Quaker Lane, in the vicinity of Angley Road, such as Island Cottages and Kings Cottages, that do not have off road parking. The adjoining section of Quaker Lane provides a convenient place for these local residents to park. The closure and landscaping of the two ends of Quaker Lane would reduce the ability to park in these immediate areas. However, the majority of this section of Quaker Lane would remain and still provide areas for parking. Because there would be no through traffic there could be potentially more spaces for parking up against the closed ends of the two sections of road. Consequently, although a concern of local residents, I do not consider that the proposal would adversely affect local parking opportunities.
76. Objections have been received in respect of the effect of the proposal on the living conditions of the occupants of The Hollies and Jasmine Cottage. The Hollies is a bungalow positioned within a reasonably long and slim plot. Plots 1-

8 would be sited broadly south of the hedged rear boundary of The Hollies. Because of the separation and the established hedge along this boundary there would be limited intervisibility between the new properties and the openings along the rear of the bungalow. There may be some views from first floor windows of the proposed houses that would allow limited views towards a western, main garden to The Hollies and the attached sun room. However, given the separation, hedged boundary and relationship between properties this would not cause an unacceptable overlooking effect.

77. The spacing between The Hollies and the proposed dwellings along this side of the housing site, in combination with their position and bulk, would not be such as to cause an overbearing effect on the living conditions of the occupiers of The Hollies.
78. Jasmine Cottage is a dwelling sited beyond and close to the north east boundary of the proposed housing. The property has ground floor windows to various rooms, including the lounge, an office and kitchen, which are positioned quite close to the established southern, hedged boundary. On the first floor, and within the roof space, this property has a south facing window that lights the main bedroom and the only window to a second bedroom within a gable.
79. Plot 9 would be positioned broadly south of Jasmine Cottage. The partially hipped end gable would face towards Jasmine Cottage and in the absence of any side windows there would be no material level of overlooking from the new dwelling towards Jasmine Cottage.
80. While the outlook from the side windows, both ground and first floor, of Jasmine Cottage would be affected by the side of Plot 9, there would still be some angled views from the lounge and office windows on the ground floor and the bedroom windows on the second floor, towards the very broadly south west. Also some of the rooms, such as the lounge and main bedroom, have windows on other elevations of the dwelling. The main garden to Jasmine Cottage is to the broadly west and would still have a reasonably open aspect although the new development would be clearly apparent.
81. Overall, on balance, I am satisfied that the position, height and relationship of Plot 9, and the other sections of the development, to Jasmine Cottage would be sited so as to not create an overbearing effect or loss of daylight and sunlight to such an extent that it would be unacceptable. The Council carefully considered this issue at the planning application stage and found the impact acceptable and it did not form a reason for refusal. Having looked at this matter as part of this appeal I have found no reason to disagree.

Planning Agreement

82. The proposal is accompanied by a completed planning agreement. The agreement sets out obligations including in respect of affordable housing, Borough Council Contributions (NHS and recreation contributions) and County Council contributions (primary education, community/learning/social care/libraries, youth services, waste and highways/improvements).
83. The affordable housing obligation is required to meet the terms of Policy CP6 of the Core Strategy. In terms of the other obligations, the appeal has been accompanied by statements from the Borough Council and the County Council which set out in detail the requirements for each contribution which is included

within the planning agreement. The case has been well made to justify each obligation and the related level of contribution in each case.

84. Consequently, I am satisfied that each planning obligation alone and in combination is 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. The planning obligations, both alone and in combination, would meet with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and I attach them full weight.

Planning Balance

85. The site for the proposed housing is located outside the Limits to Built Development and has not been allocated for development. The scheme therefore conflicts with Policy LBD1 of the Local Plan, and Policies CP1 and CP14 of the Core Strategy. I have also found the scheme would harm the character and appearance of the area, including the AONB, conflicting with Policies EN1 and EN25 of the Local Plan and CP4 of the Core Strategy. The harm to heritage assets fails Policies EN1, EN5, EN13 and EN25 of the Local Plan and Policy CP4 and CP12 of the Core Strategy. The potential harm to protected species from the loss of the section of the woodland strip would conflict with Policy CP4 of the Core Strategy. Notwithstanding, in particular the compliance with the affordable housing, design and layout policies, and that there would be no conflict with highway or amenity issues, the scheme would conflict with the development plan when considered as a whole.
86. It is accepted by the main parties that the Council is unable to demonstrate a five year supply of deliverable housing land. For the purposes of this appeal the Statement of Common Ground provides the information that a supply of only 4.49 years can be shown, which would be a reasonable level of shortfall. In these circumstances, the starting point is that the presumption in favour of sustainable development as set out in paragraph 11d of the Framework is engaged. This indicates that planning permission should be granted unless, under paragraph 11d(i), that the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or under paragraph 11d(ii) that 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.
87. When considering the benefits of the development, the site is located such that occupants of the proposed housing would be able to access a wide range of services and facilities other than by the private car. The High Street is within easy walking distance and facilities such as the library, primary school and sports centre are nearby. There is access to bus routes including the services that pass along Angley Road. I am also conscious of the Government's objective to significantly boost the supply of housing. Consequently, on this medium sized and windfall site, the provision of market housing, with good access to services and facilities by residents other than by the private vehicle, could make a valuable and worthwhile contribution to help to meet the housing needs of the area and should afford substantial weight in favour of the scheme.
88. There is an undersupply of affordable housing across the plan area. The scheme would deliver 40% affordable housing, above the 35% policy

- requirement. The provision of affordable housing, with the 14 units proposed, should afford substantial weight in its own right.
89. There would be economic and social benefits from the construction works and, in due course, from the subsequent occupation of the housing and the use of the day care nursery. With the quantum of development proposed and having regard to the Framework, this should afford significant weight as a benefit of the scheme.
90. The provision of the replacement day care nursery with a new and purpose designed building, in a location where some children would be able to walk to the facility, should, based on the evidence I heard, afford moderate weight as a benefit in favour of the scheme.
91. I attach limited weight to the benefits from biodiversity net gain across the site as a whole as the level of gain is not yet certain and there are some concerns with the calculations as presently proposed. The provision of the public open space would be a worthwhile aspect of the scheme. I attach this moderate weight as a benefit as it would replace the larger open grassed space, albeit that this larger space has only an informal arrangement that allows public access at the present time.
92. I attach limited weight to the benefits that accrue from the acceptable layout, design and materials of the development, and that the housing would provide living space and gardens that would provide a high standard of amenity for future users. This is because these are general requirements of the Framework for all development. I attach moderate weight to the provision of energy efficient housing above the level required of the Building Regulations, including avoiding the need for gas boilers, and other elements of sustainable design such as the provision of EV charging points.
93. It is argued by the appellant that the County Council would benefit from the sale of its land for development and that this income would help support local services and facilities. I attach very limited weight to this as the support to local services and facilities is not guaranteed.
94. The obligations set out in the planning agreement, with the exception of the affordable housing contribution, essentially mitigate the effects of the new housing and the additional residents on the area and are therefore neutral in the overall balance.
95. The improvements to highway safety from the provision of the rearranged vehicular access of Quaker Lane onto Angley Road would be beneficial for the reasons I have explained. However, in my view any improvements in highway safety would be fairly modest and therefore I attribute this matter minor weight in favour of the scheme.
96. Overall, the cumulative benefits of the development, which include the matters I have highlighted above, are clearly worthwhile and should afford substantial weight in favour of the scheme.
97. In terms of the harm that would result from the scheme, the proposed housing would be on land beyond the settlement boundary. However, without a five year supply, the restriction of development to within the LBD and on those sites identified for release and allocation, are not able to deliver the required level of housing supply. In terms of the size and extent of Cranbrook, the site

is reasonably close to the LBD boundary and the housing would be delivered at a second tier settlement and at a scale that would be compatible with the strategic approach to housing delivery. Policy CP14 refers to the need to protect the countryside for its own sake which is contrary to the Framework policy approach. Given these matters, I attach very little weight to the conflict with Policy LBD1 of the Local Plan, and Policies CP1 and CP14 of the Core Strategy.

98. In terms of the issues with respect to the AONB, much of the Borough Council area lies within the AONB and there are some additional areas that are beyond the AONB which are Green Belt. The ability to provide housing outside these designated areas is therefore limited. At the hearing, it was highlighted that housing sites have been permitted on land within the AONB in the Borough and this includes a fairly recent permission at Cranbrook. In this respect, I saw at my site visit that works were underway for a housing development on land which appeared to be in part in the general vicinity of countryside at the edge of the town. The Council acknowledge that it is likely that AONB land will need to be used to deliver new housing to meet the identified need. Furthermore, as a matter of principle, the designation of land as AONB does not in itself exclude the consideration of housing development.
99. The policies which provide the tests to judge the effect of development on the character and appearance of the area, and in particular the AONB, such as Policies EN1 and EN25 of the Local Plan and CP4 of the Core Strategy, are all generally consistent with the Framework and I attach them full weight.
100. Nevertheless, the harm to the character and appearance of the area, including the AONB, in terms of the main site and the tree strip, would be modest and localised. Any harm to the landscape and scenic beauty of the AONB should be attributed great weight. However, this harm should be recognised in the context that it is likely that some AONB land would be required for new housing development across the Borough and, in this case, the site is close to the settlement and is not typical of the special qualities of the High Weald AONB. All these factors combine such that I do not consider that the harm to the AONB is at a level that it should provide a clear reason to refuse the application in terms of the wording and approach of paragraph 11d(i) of the Framework.
101. I have also identified harm to designated heritage assets. This combined harm is at the lower end of the less than substantial scale. Even so, the Framework requires that great weight should be given to the designated asset's conservation. The relevant development plan policies, in particular, Policies EN1, EN5, EN13 and EN25 of the Local Plan and Policy CP4 and CP12 of the Core Strategy all appear to be generally consistent with the Framework so far as they relate to the heritage issues in this appeal. I attach the policies full weight. Nevertheless, given the range and substance of the benefits which I have identified, as I have concluded previously, whilst there is harm to heritage assets this would, in terms of the requirements of paragraph 202 of the Framework, be outweighed by the public benefits of the scheme.
102. It follows that when examining the harm to the AONB and to the designated heritage assets neither issue provides a clear reason for refusing the proposal. As a consequence, the application of policies in the Framework that protect areas or assets of particular importance do not provide a clear reason on their

own to refuse the development proposed in terms of the test set by paragraph 11d(i) of the Framework. Nevertheless, the harms to the character and appearance of the area and to heritage assets weigh against the scheme in the overall planning balance.

103. Additionally I have found that there would be potential harm to protected species from the loss of the section of the woodland strip and this would conflict with Policy CP4 of the Core Strategy. I am conscious of the advice in Circular 06/2005 that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. Given the circumstances of this case, and the reasonable likelihood that a protected species may be found, that there is no exceptional reason why this should not be considered at this stage, I do not have confidence that all material considerations are before me on this issue. The possible presence of protected species, and the adverse impacts that could result from the proposal in that respect, are therefore a significant matter that weighs very substantially against the scheme. I am not satisfied that this matter could be addressed by a planning condition in any approval or through the protected species licensing system as the presence or otherwise of protected species needs to be investigated and the potential impacts understood as part of this planning proposal at this time.
104. Drawing all these matters together, the benefits of the scheme are wide ranging and worthwhile. Cumulatively they merit substantial weight in favour of approval. However, the combined harms that I have identified, in particular because of the potential adverse impacts to protected species that could result from the works within the woodland strip, weighs very substantially against the proposal. It is such that the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. As a consequence, the proposal would not constitute sustainable development and this weighs heavily against the scheme.
105. In coming to this view I have had regard to all the information in support of the scheme and the appeal decisions that have been submitted from both the Council and appellant. In terms of the appeal decisions, while I have noted the analysis and conclusions of all the other Inspectors, this scheme has distinctive and site specific issues, such as the issue concerning the potential effect on protected species. Consequently, there are material differences in this case compared with the other cases such that I attach them limited weight and I have reached this decision based on its merits.
106. As a consequence of the above analysis, I conclude that the scheme would not comply with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict.

Conclusion

107. For the reasons given above I conclude the appeal should be dismissed.

David Wyborn

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr John Collins	DHA Chartered Town Planners and Development Consultants
Mr David Allen	Allen & Allen Landscape Consultants
Mr Ian McCourt	Kent Design Partnership
Mr Richard James	Archaeology South East
Mr Lee Rowbottom	Fellgrove
Mr Paul Lulham	DHA Chartered Town Planners and Development Consultants
Mr Dan Blake	DHA Chartered Town Planners and Development Consultants

FOR THE LOCAL PLANNING AUTHORITY

Mrs Marie Bolton	Tunbridge Wells Borough Council
Mr David Scully	Tunbridge Wells Borough Council
Mrs Debbie Salter	Tunbridge Wells Borough Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Appeal decisions – APP/M2270/W/21/3283924 and 3288645 – Land adjacent to Wilsley Farm, Angley Road, Wilsley Green, Cranbrook, Kent TN17 2LE dated 22 September 2022.
2. Extract from Local Plan evidence base – Landscape Sensitivity Assessment – July 2018.
3. Examination of the Tunbridge Wells Borough Local Plan : Initial Findings of the Examining Inspector November 2022.
4. Planning Report dated 28 March 2018 for application 16/502860/OUT - land at Brick Kiln Farm, Cranbrook, Kent.
5. Planning Report dated 27 January 2021 for application 20/00815/FUL – land adjacent to Turnden, Hartley Road, Cranbrook, Kent TN17 3QX