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# Appeal Decision

Hearing held on 13 July 2023

Site visits made on 13 July 2023

**by Richard Clegg BA(Hons) DMS MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24 August 2023**

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**Appeal Ref: APP/C1435/W/23/3316101**

**Linda House, Little London Road, Horam, TN21 0BL**

- 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 Whitehall Homes LLP against the decision of Wealden District Council.
  - The application Ref WD/2021/2458/MAJ, dated 16 September 2021, was refused by notice dated 7 December 2022.
  - The development proposed is demolition of the existing house and outbuildings, erection of 34 dwellings, access and internal roads, parking, ancillary structures, landscaping, drainage and other associated works.
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## Decision

1. The appeal is dismissed.

## Preliminary matters

2. When the application was submitted, the proposal involved the erection of 39 dwellings. Prior to determination of the application by the Local Planning Authority (LPA), the scheme was amended to reduce the number of dwellings to 34, and I have considered the appeal on this basis.
3. A landscape and visual impact assessment (Documents A3 & A4) and landscape statement (Document A2) had been prepared for the Appellant by Illman Young Landscape Design Ltd. The intended landscape witness from Illman Young was unable to attend the hearing, and she was replaced by Ms Priscott of Anne Priscott Associates who did not submit any additional documentation, but explained that she agreed with the views expressed in the hearing statement.
4. A unilateral undertaking has been submitted in connection with the appeal proposal (Document A8). It contains obligations concerning affordable housing, first homes, green infrastructure, self/ custom-build housing, highway works, and a bus service contribution.

## Main Issues

5. Having regard to the representations of the parties, I consider that the main issues in this appeal are:
  - (i) The effect of the proposed development on the character and appearance of the area, including the High Weald Area of Outstanding Natural Beauty (AONB).

- (ii) Whether the appeal site is a sustainable location for the residential development proposed.
- (iii) The effect of other considerations, including housing land supply, on the overall planning balance.

## **Reasons**

### ***Character and appearance***

6. Linda House is situated about 185m to the north-west of the development boundary of Horam<sup>1</sup>, within which there is a concentration of built development. Beyond the development boundary, this part of Little London Road is characterised by frontage residential development, with properties set in large gardens and substantial tree cover along the roadside. To the rear of Linda House the land falls away to the north-east: there is a garden area extending from the house, the further part of which is more informal in nature. Beyond a low fence, the site continues as a field used for the grazing of horses. A group of out-buildings is close to the south-east boundary.
7. The area around Horam has been the subject of a series of landscape assessments. I agree with the Appellant that the East Sussex Landscape Character Assessment and the Wealden Landscape and Settlement Character assessment are more relevant than the National Character Assessment in relation to this proposal for 34 dwellings. In the East Sussex assessment, the site is within Area 5 - South Slopes of the High Weald, whose key characteristics include an intricate small-scale landscape with a strong pattern of hedgerows and frequent scattered small woods and shaws. In the Wealden assessment, reference is made to pockets of ancient woodland around the settlement of Horam within a predominantly ancient field pattern. The settlement edges are all considered to be sensitive, and I note that the subsequent Wealden Local Plan Sites Landscape and Ecological Assessment Study reached the view that the northern part of the appeal site was highly sensitive to development.
8. Most of the appeal site is open land, with an area of ancient woodland to the north and other blocks of woodland beyond the field to the east from which the site is only separated by a line of trees. Much of the site forms an integral part of the pattern of fields and woodland on undulating ground in this small-scale landscape.
9. The field and the northern part of the area used as a garden fall within the High Weald AONB<sup>2</sup>. The AONB Management Plan explains that the outstanding beauty of the High Weald stems from its essentially rural and human scale character, and included in defining components of character are small, irregular and productive fields, bounded by hedgerows and woods. The Appellant's landscape and visual impact assessment refers to the presence of the existing house and its garden, the influence of adjacent domestic uses and traffic noise, and the effect of horse grazing on the condition of the land. In consequence, it concludes that the site as a whole is only of moderate value with a moderate sensitivity to change, and that it has a moderate landscape capacity. Whilst the land within the AONB is not in agricultural use, it nevertheless represents an area of open land largely contained by boundaries of woodland and tree

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<sup>1</sup> The development boundary is shown on Inset Map No 32 of the Wealden Local Plan Proposals Map.

<sup>2</sup> The AONB boundary is shown superimposed on the proposed site plan in Document O9.

cover. When viewed from the position of the AONB boundary within the site, its contribution to the mosaic of fields and woodland, which is such an attractive feature of this part of the AONB, is readily apparent. Bearing in mind also its close relationship to the field to the east, I find that the land within the AONB, which comprises the greater part of the site and is set back from the road, is of high value and highly sensitive to the residential development proposed.

10. The proposal would involve the loss of open land within the AONB with the construction of 29 dwellings on this part of the site<sup>3</sup>. There would be no loss of established field boundaries and the scale of the proposal has been reduced in the light of discussions with the LPA. Bearing this in mind, that the southern part of the site is outside the AONB, and the proximity of the site to the main built-up area of Horam, I do not consider that the proposal is major development in the AONB. Consequently the presumption against such development in paragraph 177 of the National Planning Policy Framework (NPPF) does not apply in this case.
11. The development has been reduced in scale and would be set within tree cover, with limited built form close to the road. The density would be no more than 18 dwellings per hectare, with the lowest densities close to the ancient woodland. Although the scheme includes some flats, these are included in buildings which resemble two-storey houses, and the design of dwellings uses materials which reflect the character of the area. Notwithstanding these attributes, the proposal would involve a high and adverse magnitude of change to the local landscape. Most of the development would take place within the AONB, where it would represent significant urban encroachment onto a characteristic parcel of open land within the landscape mosaic of the High Weald. The housing proposed would damagingly alter the pattern of the landscape mosaic close to the edge of the AONB, contrary to Objective FH2 of the AONB Management Plan. Moreover, the development as a whole, including the southern part of the site by Little London Road, would have a greater impact, and the change to a more intense urban form would significantly detract from the adjacent part of the AONB to the north-west.
12. AONBs have the highest status of protection in relation to landscape and scenic beauty. The proposed development would cause significant damage to the natural beauty and character of the landscape, and in consequence it would conflict with Policy EN6 of the Wealden Local Plan and paragraph 176 of the NPPF which makes it clear that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs.
13. I am also concerned about the physical extent of the development in this part of Horam. Built development is concentrated further to the south, where housing does extend in depth to the east of the A267. That is not the case in the vicinity of the appeal site which is characterised by frontage development in substantial plots. Development in depth from Little London Road would not only harm the landscape of the area, but would represent a damaging contrast with the pattern of built development in this part of Horam: the failure to respect the character of adjoining development would be contrary to Part 1 of Local Plan Policy EN27.

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<sup>3</sup> The position of the AONB boundary is agreed between the main parties, Document A9.

14. The site falls away from the road and is well contained by woodland and other tree cover. In consequence, views of the housing would be limited to a short stretch of Little London Road from where the existing house can be seen, and potentially a few heavily filtered views from the Cuckoo Trail, about 300m to the east, during the winter months. The absence of clear views of the proposed development does not overcome my concern about the harm to the character of the area. The proposed scheme would erode a characteristic feature of an attractive and important landscape, and establish a new built form at odds with the pattern of development in the locality.
15. Standing advice from Natural England is for a 15m buffer zone to be maintained at the edge of ancient woodland. In this case the buffer zone would be 20m, and shrub planting on the woodland edge within the buffer would develop into a physical barrier offering further protection to the woodland. The proposal would not have a direct adverse effect on the ancient woodland.
16. I conclude that the proposed development would have a significantly harmful effect on the character and appearance of the area, including the High Weald AONB, a matter to which I give considerable weight.

### ***Locational sustainability***

17. It is common ground between the main parties that the site is about 400m from the start of the centre of Horam (identified as the shops on the B2203, close to the junction with Little London Road). Horam is identified as a local service centre under Policy WCS6 of the Wealden Core Strategy Local Plan. It has a reasonable range of facilities and services, including a small supermarket. Another convenience store is closer to the site, at the filling station on Little London Road. There is a footway along the east side of Little London Road between the centre of Horam and the site, and, allowing for the upward gradient towards the site, the distance can be covered on foot relatively quickly. A bus service is available in the centre, which provides links to other settlements and to schools. Contained in the unilateral undertaking are planning obligations to provide a contribution of £37,400 towards improvements to bus service frequencies and a later evening service and/ or increased capacity on the Heathfield Community College service, and to provide real-time information at the two bus stops to the south of the appeal site.
18. To the north-west of the filling station, a section of footway adjacent to the carriageway of Little London Road is relatively narrow and subject to parking, causing an obstruction to pedestrian movement. A scheme to address this situation through a widened or new footway would be secured through a planning obligation, as would dropped kerbs and tactile paving at the access to the south of Oak Glen. These measures and those relating to the bus service would be necessary to encourage the use of sustainable modes of transport to and from the appeal site. They would also be of benefit to the wider community.
19. The development boundary for Horam is drawn around the concentration of development to the south of the appeal site. Policy WCS6 of the Core Strategy Local Plan envisages 100 additional dwellings in Horam coming forward in the

period 2006-2027 (with a higher number of up to 150 referred to in figure 11)<sup>4</sup>. The LPA explained that in the period from April 2013- March 2023 sites with a capacity of 526 dwellings had come forward in Horam, of which 328 had been completed. These figures were not disputed by the Appellant. Given that Wealden does not have a five years supply of housing land (below, para 21), the LPA has accepted that the development boundary would be breached.

20. Horam has been accepted as an appropriate location for new housing, and local services would be readily accessible from the site at Linda House. I conclude that the site would be a sustainable location for the residential development proposed.

### ***Other considerations***

#### *Housing land supply*

21. There is no dispute between the main parties that Wealden does not have a five years housing land supply. The statement of common ground records that the current level of supply is sufficient for only 3.92 years. The appeal proposal would contribute towards meeting the deficit in supply, and this consideration merits significant weight.

#### *Housing mix*

22. The scheme includes a range of dwelling sizes, and both market and affordable housing. In its response to the planning application, the Council's Housing Service commented that there is an acute shortage of affordable housing in Horam and the surrounding area. Policy AFH1 of the Affordable Housing Delivery Plan seeks the provision of 35% affordable housing, and the 12 affordable units would be policy compliant. The affordable housing would include both social units and first homes, and its provision attracts significant weight. Both social units and first homes would be secured by planning obligations. In addition, 5% of the plots would be provided for self-build units, the provision of which would be the subject of a further planning obligation. There are 174 individuals on the Council's self-build and custom housebuilding register<sup>5</sup>, and the provision of self-build plots is a consideration to which I accord moderate weight.

#### *Economic considerations*

23. The Appellant argues that the development would generate employment during the construction period, both directly and through the supply chain. Future occupiers would support local businesses, helping to sustain jobs and services, with household expenditure also being captured further afield. There is no indication of the scale of this contribution to the local economy, and the benefits mentioned would arise from any development of this size. I note that the Appellant is a small/medium enterprise based in this part of the country, but in itself that does not indicate a greater level of benefit in terms of jobs and support for suppliers.
24. Reference is made by the Appellant to several suggested financial benefits to the Council. Any community infrastructure levy payments would be required

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<sup>4</sup> The table within Policy WCS6 indicates 100 net additional dwellings at Horam, whereas figure 11 in the supporting text shows a range of 51-150 dwellings.

<sup>5</sup> Document A2 appendix 8.

towards the cost of infrastructure provision and, as such, represent mitigation and not a benefit. Payments made under the unilateral undertaking would be to secure bus service improvements and affordable housing if no registered provider were found for on-site provision. This would not represent additional discretionary income to the Council, although the improved bus services and affordable housing would be separate benefits of the scheme.

25. Insofar as council tax receipts and the new homes bonus is concerned, I am mindful that paragraph 21b-011 of Planning Practice Guidance advises that it would not be appropriate to make a decision based on the potential for the development to make money for a local authority. Overall, I consider that the economic benefits of the proposal carry moderate weight.

#### *Social considerations*

26. The Appellant suggests that the development would enhance the vitality of the local community. The existing range of facilities and services (above, para 17) is an indication that Horam does not lack vitality, and it is likely that the level of recent and committed housing development (above, para 19) would have already provided a boost to community activity. It is not clear that the proposal would provide any additional material benefit in this regard.

#### *Biodiversity*

27. Most of the trees which would be removed have been assessed as being in poor condition, and the scheme would also result in the removal of semi-improved grassland, ornamental planting and scrub. The landscape master-plan proposes the planting of native trees, shrubs and hedging, wildflower, tussock and amenity grassland, marginal planting within the drainage basin, and a pond wildflower grass mixture. Landscaping, biodiversity enhancement, wildlife management and the protection of retained trees could all be the subject of conditions. A biodiversity net gain of 8% has been calculated, to which I accord moderate weight.

#### *Drainage*

28. Nearby landowners have expressed concern about the effect of surface water run-off from the appeal site onto their property. The Site Drainage Strategy indicates a discharge rate of 2.6l/s, slightly below the existing off-site flow rate of 2.7l/s<sup>6</sup>. A condition is suggested which would require approval of a detailed design for the surface water drainage system and which stipulates a limit to flows of 2.6l/s. This limited reduction in discharge is a benefit which carries modest weight.

#### *Planning obligations*

29. I have already referred to planning obligations concerning affordable housing (including first homes), certain highway works, self-build housing, bus stop information signs and bus service contributions.
30. A further obligation requires provision of the green infrastructure within the site and establishes responsibility for its future maintenance. This is important to ensure a satisfactory standard of development.

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<sup>6</sup> Site Drainage Strategy ref 11267/104 rev P5, Flood Risk Assessment V5, GTA Civils & Transport Ltd, para 3.8.

31. Within schedule 7, which covers highway works, an obligation requires provision of the vehicular access into the site. This is a matter which is also the subject of a suggested condition: the access could be satisfactorily secured by this means, and the obligation does not meet the test of necessity.
32. With the exception of the obligation in schedule 7 requiring the provision of a new vehicular access into the site (the first highway works), the obligations in the unilateral undertaking are directly related to the development, are fairly and reasonably related to it in scale and kind, and would be necessary for it to be acceptable in planning terms. With that single exception, I find that the statutory tests in Regulation 122 of the Community Infrastructure Levy Regulations are met, and that the provisions of the unilateral undertaking are material considerations in this appeal.

#### *Other appeals*

33. The Appellant has drawn my attention to a number of appeals where planning permission has been granted for residential development in AONBs, two of which involved a greater number of dwellings than in the proposal before me. Two of the proposals were in other parts of the country, and whilst the proposal at Hawkhurst involved a scheme for 71 dwellings in the High Weald, that is in another part of this AONB and I note that the appeal decision refers to the site being located on the southern edge of the main built-up area, indicating a different relationship to the settlement than in the proposal at Horam. Moreover, the effect of any proposal, including the extent of any harm, on an AONB is subject to site-specific considerations. The assessments reached in the appeal decisions submitted by the Appellant do not indicate that the appeal proposal would not have a significant adverse effect on the High Weald AONB.

#### **Conclusions**

34. The proposal is for residential development outside the development boundary of Horam where new housing will generally be resisted under Policy DC17 unless it conforms with other policies of the Wealden Local Plan. Those circumstances are set out in paragraph 5.91 of the Local Plan: none apply to the proposal, which accordingly conflicts with Policy DC17. In the Core Strategy, Policy WCS6 retains the development boundary for Horam, and indicates a scale of development of 100 additional dwellings up to 2027 (up to 150 referred to in figure 11), a figure which has already been significantly exceeded: in consequence the proposal would conflict with Policy WCS6. Moreover, the proposal would conflict with Policy EN6 of the Local Plan because of its damaging impact on the natural beauty and landscape of the High Weald AONB, and as the depth of development would be out of keeping with its surroundings the proposal would fail to comply with Part 1 of Local Plan Policy EN27.
35. Other relevant policies of the Development Plan include Policies EN13, EN14 and CS2 of the Local Plan concerning ancient woodlands, landscaping and drainage respectively, Policy AFH1 of the Affordable Housing Delivery Plan concerning the level of affordable housing, and Policies WCS7 and WCS12 of the Core Strategy which cover infrastructure and biodiversity. There is nothing before me to indicate that the requirements of these policies would not be met. However, given the location of the appeal site beyond the development boundary for Horam and the harm which would be caused to the AONB, I

conclude that the proposed development would conflict with the Development Plan considered as a whole.

36. There is not a five years supply of deliverable housing sites in Wealden. Footnote 8 and paragraph 11(d) of the NPPF explain that in this situation the policies (in the Development Plan) which are most important for determining the proposal are out-of-date. In this case the most important policies are Policy WCS6 of the Core Strategy and Policies DC17 and EN6 of the Local Plan. The presumption in favour of sustainable development indicates that planning permission should be granted in that situation unless one of two circumstances apply. Of relevance here is limb (i) of paragraph 11(d) which refers to a situation where the application of policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusing the development proposed: the policies referred to in footnote 7 include those relating to AONBs.
37. The policy in paragraph 176 of the NPPF seeks to conserve and enhance the landscape and scenic beauty of AONBs. In contrast, the proposal would cause significant harm to the High Weald AONB, and the application of this policy, which protects the AONB, provides a clear reason for refusing the development proposed. The tilted balance in limb (ii) of paragraph 11(d) does not, therefore, come into play.
38. The proposal would provide much-needed housing in a range of dwelling sizes and in a sustainable location, a factor which carries significant weight, as does the inclusion of affordable housing within the scheme. The provision of plots for custom-build housing, economic considerations, biodiversity net gain and the benefits to the wider community of footway works on Little London Road and improvements to the bus service are all factors which carry moderate weight, and in addition modest weight should be attributed to the off-site benefit of the surface water drainage scheme. In contrast the impact of the development proposed, extending back from the road to the eastern field boundary and resulting in the loss of the open land on the site within the High Weald AONB would cause significant harm to that designated area, a landscape which has the highest status of protection, and this is a matter which carries considerable weight. The matters which support the proposal are insufficient to outweigh the harm which it would cause.
39. For the reasons given above, and having regard to all matters raised, including the suggested conditions, I conclude that the appeal should be dismissed.

*Richard Clegg*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                                             |                                   |
|---------------------------------------------|-----------------------------------|
| Mr J M Buckwell BA(Hons), MA<br>MRTPI MIEMA | Director (Planning), DHA Planning |
| Ms A Priscott BA(Hons) CMLI                 | Anne Priscott Associates Ltd      |
| Mr C Mian BSc(Hons)<br>PgDipSurv            | Whitehall Homes LLP               |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|              |                                     |
|--------------|-------------------------------------|
| Mr S Carey   | Senior Planning Officer, Wealden DC |
| Mr T Chicken | Assistant Planning Officer          |

### **INTERESTED PERSONS:**

|                       |                                                               |
|-----------------------|---------------------------------------------------------------|
| Councillor C Usborne  | Member of the District Council for Horam & Punnetts Town Ward |
| Councillor A Billings | Member of Horam PC, and on behalf of the Parish Council       |
| Mrs S Lane            | Chair, Horam Neighbourhood Local Plan Steering Group          |
| Mr P Digweed          | Local resident                                                |
| Mr J E Hornby         | Local resident                                                |
| Mr C Hudson           | Adjacent landowner, and on behalf of Mrs Hudson               |

## **THE APPELLANT'S DOCUMENTS**

- A1 The Appellant's statement of case.
- A2 Appendices to Document A1.
- A3 Landscape statement.
- A4 Landscape and visual impact assessment.
- A5 Figures and appendices relating to Document A4.
- A6 Letter dated 29 June 2023 from Ms Priscott to The Planning Inspectorate concerning the Appellant's landscape evidence.
- A7 Location plan relating to appendix 4 in Document L3.
- A8 Unilateral undertaking relating to the appeal proposal.
- A9 Email dated 25 July 2023 from Mr Buckwell to The Planning Inspectorate concerning Document O9.

## **THE LPA'S DOCUMENTS**

- L1 Letter dated 17 April 2023 from Mr Carey accompanying Document L2.
- L2 The LPA's statement of case.
- L3 Appendices to Document L2.

## **OTHER DOCUMENTS**

- O1 Suggested programme of site visits. Submitted by Ms Priscott.
- O2 Schedule of relevant plans and other documents. Agreed by the Appellant and the LPA.
- O3 Wealden District Core Strategy Local Plan.
- O4 Wealden Local Plan Chapter 4.
- O5 Councillor Billings's statement on behalf of Horam Parish Council.
- O6 Extracts from the emerging Horam Neighbourhood Plan. Submitted by Councillor Billings.
- O7 Councillor Osborne's statement.
- O8 Regulation 2(4) notice.
- O9 Proposed site plan with AONB boundary. Agreed by the Appellant and the LPA.

Richborough