



Appeal Decision

Hearing held on 20 February 2024

Site visit made on 20 February 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2024

Appeal Ref: APP/C1435/W/23/3328328

Land off Potmans Lane, Lunsford Cross, Ninfield TN39 5JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Barry Hepburn against the decision of Wealden District Council.
 - The application Ref WD/2022/0649/MAJ dated 7 March 2022 was refused by notice dated 24 February 2023.
 - The development proposed is frontage development of 13 no. dwellings comprising a mix of two, three and four bedroom detached and semi-detached houses.
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Decision

1. The appeal is allowed and planning permission is granted for frontage development of 13 no. dwellings comprising a mix of two, three and four bedroom detached and semi-detached houses at land off Potmans Lane, Lunsford Cross, Ninfield TN39 5JL in accordance with the terms of the application, Ref WD/2022/0649/MAJ, dated 7 March 2022, subject to the conditions in the attached Schedule.

Application for costs

2. An application for costs was made by Mr Barry Hepburn against Wealden District Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The Council's second reason for refusal, and part of their first reason for refusal, related to effects on the future occupiers of the development from the Lunsford Cross Wastewater Treatment Works. Following the submission of evidence on this matter during the appeal process, the Council advise they no longer have an objection on this ground. I have no reason to disagree.

Main Issues

4. In light of the above, the remaining main issues are:
 - whether this development is suitable for this site having regard to the settlement hierarchy, its accessibility to services and facilities, and its contribution to rural communities; and
 - whether there are other considerations that indicate a decision other than in accordance with the development plan.

Reasons

5. The site is located adjacent to and opposite dwellings within the small settlement of Lunsford Cross. The nearest settlement with a development boundary defined in the development plan is Ninfield which is around a mile away. The parties agree that the site is substantially detached from this development boundary.
6. Chapter 3 of the Wealden District Core Strategy (2013) identifies Ninfield as a local service centre in the settlement hierarchy, and policy WCS6 of that document states that 50 additional dwellings are allocated for Ninfield to 2027. It was confirmed at the hearing that around 200 homes either had planning permission, were being built or had been completed over the plan period, but that many of these were outside, but contiguous with, the development boundary for Ninfield.
7. Chapter 3 of the Core Strategy also states, in paragraph 3.6, that development boundaries may have to be extended where housing is required. It is not disputed that, District wide, the Council cannot demonstrate a sufficient supply of housing. Although it is not explicit that housing would be preferable on sites adjacent to settlement boundaries rather than detached from them, the reference to development boundaries being 'extended', would suggest that. Indeed, those sites adjacent to the development boundary of Ninfield on which housing has been permitted would support this view.
8. As such, due to the appeal site's position significantly detached from the development boundary of Ninfield, the proposal would be contrary to the settlement hierarchy and so would not be supported by policy WCS6 which seeks to focus development towards the larger settlements. Furthermore it would conflict with policies GD2 and DC17 of the Wealden Local Plan (1998) which both state that development beyond development boundaries will be resisted.
9. With regard to the accessibility of the site to services and facilities, it is clear that there are no services and facilities in Lunsford Cross, other than the bus stops which are positioned around the junction of Potmans Lane with Ninfield Road. According to the timetables posted at the stops, they are served by buses running between Eastbourne and Hastings and are served by one bus per hour in each direction roughly between 7am and 9pm Monday to Saturdays, and every 2 hours between 10am and 6pm on Sundays.
10. There are some services in Ninfield including a primary school, a shop and post office, pubs and churches. Although only a mile from the site, the route to them along Ninfield Road is, for the most part, lacking a pavement and so, in combination with the busyness of the road, it would not be an attractive option for pedestrians. There is a far greater range of services and facilities in the other direction along Ninfield Road, in Sidley, which is effectively a part of Bexhill. These include a greater range of shops and a secondary school, and there is a train station in Bexhill town centre. Although there is a pavement which would allow safe pedestrian access to Sidley, it is a greater distance than Ninfield, estimated at 3km by the Council, and the train station is around 5km away. In my view it is unlikely that residents of the development would find walking to either Sidley or Ninfield to be a reasonable prospect, nor given the busyness of the road, would cycling to access these services be attractive.

11. As such, despite the bus service available, I consider that it is more likely that most residents of the development would be reliant on their own cars to access even day-to-day services and facilities. My view on this is consistent with the Inspector for the appeal on the adjacent site¹.
12. In terms of the contribution the development could make to local services, it is possible that future residents would use, and so help to sustain, the bus service through Lunsford Cross. Moreover, although only reasonably accessible by car, residents may use the village shop, pubs, churches and children may attend the primary school if there is capacity. I also accept however that for employment and for most shopping trips, residents would be likely to travel to Sidley, Bexhill or other larger towns. The support therefore for rural communities, as set out in the National Planning Policy Framework (the '**Framework**'), is therefore limited.
13. Overall, the development would be substantially detached from the nearest development boundary, its occupiers would be mainly reliant on the private car to access services and facilities, and it would provide limited support to the rural community. It would therefore fail to accord with policies WCS6, DC17 and GD2 as set out above, and would contrast with spatial objectives SPO7 and SPO8 of the Core strategy which encourage a reduction in car travel and the sustainable growth of the District's villages.

Other considerations

14. The parties agree that the Council can currently only demonstrate a 3.83 year supply of housing land. At present, this is a modest shortfall against the requirement in paragraph 77 of the Framework to identify a minimum of 5 **years' worth** of housing supply. However this requirement is reduced to 4 years if there is an emerging local plan that has reached Regulation 18 or 19 stage. I was advised at the hearing that it is likely the Regulation 18 consultation process will commence in mid March. Even from that point, the Council's **3.83** year supply would not be sufficient, albeit the shortfall would be very limited. In any case, the presence of a shortfall means paragraph 11 d) of the Framework is engaged which means the local policies which are most important for determining the proposal are deemed to be out of date, and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.
15. The Council accepts that policies WCS6, DC17 and GD2 are out of date as they seek to restrict development beyond development boundaries, though consider that WCS6, at least, remains important in focussing development towards established settlements. I agree that it can still be given weight even if it is deemed to be out of date.
16. Even though the number of houses recently permitted in Ninfield far exceeds the identified requirement for that settlement, the provision of 13 homes towards the Council's supply at a time where there is a District-wide shortfall, would be a considerable benefit and would be supported by paragraph 60 of the Framework which seeks to significantly boost the supply of homes. This carries substantial weight.

¹ Ref: APP/C1435/W/18/3214378

17. A unilateral undertaking has been provided which seeks to ensure the provision of four of the proposed units as affordable housing and an additional payment for off-site affordable housing. This Undertaking meets the tests set out in the Community Infrastructure Levy (CIL) Regulations and I am therefore able to take it into account. The Council's authority monitoring report shows that for the year 2022/23, 218 affordable housing units were built against an interim target of 100 units annually, and the target for the previous year was also exceeded. This shows a good record of providing affordable housing and so, whilst paragraph 63 of the Framework supports the provision of affordable housing, I give this benefit only moderate weight.
18. There would be some benefit to the local economy during the construction period of the development, and subsequently from its occupiers which may, as set out above, be directly focussed to Ninfield. This is supported by Paragraphs 83 and 85 of the Framework. But given the modest size of the proposal and the **site's** dislocation from Ninfield, this benefit would be limited.
19. Conversely, paragraph 109 of the Framework recognises that development should be focussed on locations that are sustainable through limiting the need to travel and offering a genuine choice of transport modes. However the paragraph goes on to recognise that opportunities for sustainable transport will vary between urban and rural areas. In that respect the regular bus service to Lunsford Cross is acknowledged. Nonetheless, overall, by being in a location which would mean occupants are largely reliant on their cars, the proposal would conflict with this paragraph and is a matter which carries considerable weight.
20. Taking the Framework as a whole I consider that the harm resulting from the **proposal's** location does not significantly and demonstrably outweigh the benefits of the provision of 13 units, including the provision of affordable housing, at a time when the Council cannot demonstrate a sufficient supply. The presumption in favour of sustainable development therefore applies.
21. Consequently the development would accord with Local Plan policy EN1 and Core Strategy policy WCS14 which also support sustainable development.

Other matters

22. Though not referred to in the reasons for refusal, brief reference was made in the Council's evidence to harm being caused to the character and appearance of the area as the development would involve the introduction of built form on a presently open and verdant site. Though the proposal would involve development on land that is presently used for grazing, it would merely extend the current linear form of development to the south, up to the current field boundary which is delineated by mature trees. Indeed this would provide a more definitive edge to the settlement than at present as there is little boundary treatment between the existing adjacent house to the south and the appeal site. The development would also not extend any further north than the houses opposite. The character of the immediate area, of being housing in a linear form fronting the road with agricultural land behind and to the north, would be maintained.
23. Consequently there would be no harm to the character and appearance of the area, and indeed the Council accepted that their concerns in this regard alone would not have warranted the refusal of planning permission. As such the

proposal would accord with Local Plan policies EN27 which requires development to respect the character of adjoining development, and EN8 which expects development to conserve the low rolling agricultural character of the Low Weald landscape. It would also respect the **Core Strategy's** spatial objectives SPO1, which seeks to enhance and manage the District's distinct landscapes, and SPO13 which encourages the development of high-quality living environments.

24. There is some concern locally that local infrastructure would be unable to cope with the extra demands placed on it by the occupation of the development. However I was advised that for the previous outline permission at the site, a payment of £201,000 was made to the Council under the CIL Regulations. Although this was subsequently refunded, I have no reason not to consider that a similar value would be due for this development which would contribute to local infrastructure as appropriate.
25. The houses themselves would be of a variety of sizes, designs and finishing materials appropriate to their setting. Final details of materials would need to be submitted to and approved by the Council. Also the houses would be set back from Potmans Lane so would be unlikely to result in any unacceptable overshadowing to the properties opposite.
26. There would be an increase in traffic along Potmans Lane as a result of the development. But I have no reason to consider this would be such that it would affect the efficient operation of the road or its junction with Ninfield Road. The lack of objection from the Highways Authority supports my view. In their consultation response, they also requested an agreement to secure the provision of a pavement and highway drainage, which may address local concerns about the flooding of Potmans Lane.
27. The site is largely pasture, which has a low biodiversity value, and the frontage hedgerow and trees on the north boundary would be retained. There would most likely be a substantial biodiversity gain resulting from the proposed landscaping including a hedge along the rear boundary and bird and bat boxes.
28. I acknowledge the dismissed appeal on the adjacent site. In that case the Inspector considered that the harms resulting from the likely reliance on the private car would not be outweighed by the benefit of four houses, particularly given their position isolated from Lunsford Cross. In the case before me, even though the relationship with local services and facilities is comparable, the benefit of 13 units is greater and they would be contiguous with the existing built form in Lunsford Cross. Furthermore the dismissed appeal decision relating to development on Catsfield Road², is distinguishable from the case before me as in that appeal the Inspector found harm to the character and appearance of the area in addition to the conflict with development boundary policies.
29. The Parish Council referred to the emerging Ninfield Neighbourhood Plan at the hearing. However no policies were provided to me and it was explained that the examination process is not yet complete. Moreover, the issues that were discussed with reference to this Plan related to detailed design such as finishing materials, lighting and highways design which can be controlled by conditions.

² Ref APP/C1435/W/21/3272342

Conditions

30. The Council have suggested a number of conditions, most of which were agreed between the parties. Indeed the only condition that remained in dispute at the hearing was that relating to the commencement of development. Although the Council suggest 18 months would be a sufficient period within which to commence development in order to expedite the provision of housing at a time when there is an undersupply, I do not consider this circumstance is sufficient justification to warrant a departure from the three years set out in Section 91 of the Town and Country Planning Act 1990.
31. I have slightly altered the wording of some of the other conditions so as to better reflect the guidance in the Framework and the Planning Practice Guidance (PPG).
32. I have included a condition identifying the approved plans in the interests of certainty. Two conditions are included in order to protect any archaeological interest, and conditions relating to finishing materials, tree protection, landscaping and external lighting are necessary in the interests of protecting the character and appearance of the area. Conditions are also attached to ensure the satisfactory drainage of the site and the highway.
33. Other conditions are attached in the interests of promoting the sustainable use of resources, promoting sustainable modes of travel, preserving biodiversity, and two conditions relating to obscure glazing and a construction management plan are necessary to protect the living conditions of neighbouring residents. A number of conditions are also imposed in the interests of highway safety.
34. I have not imposed the condition withdrawing permitted development rights. The PPG advises that such conditions may not pass the test of reasonableness or necessity, and I see no reason why the suggested condition would be necessary in this case.

Planning Balance and Conclusion

35. The development would conflict with policies WCS6, DC17 and GD2 of the development plan. **However the Council's failure to demonstrate a sufficient supply of housing means I give limited weight to them.** The provisions of the Framework, including the presumption in favour of sustainable development, is a consideration that indicates a decision other than in accordance with the development plan. As such, the appeal is allowed.

A Owen

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 80012/22/BH/01 Rev B, 80012/22/BH/03, 80012/22/BH/04 Rev B, 80012/22/BH/05 Rev C, 80012/22/BH/06 Rev C, 80012/22/BH/07 Rev C, 80012/22/BH/08 Rev D, 80012/22/BH/09 Rev D, 80012/22/BH/10 Rev E, 80012/22/BH/11 Rev D, 80012/22/BH/12 Rev C, 80012/22/BH/13 Rev C, 80012/22/BH/14 Rev A, 80012/22/BH/15 Rev A, ZAK-010-001 and ZAK-010-002.
- 3) No development shall commence until a Written Scheme of Investigation for archaeological works has been submitted to and approved in writing by the local planning authority.
- 4) No phase of the development shall commence until the archaeological site investigation and post investigation assessment (including provision for analysis, publication and dissemination of results and archive deposition) for that phase has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 3.
- 5) No development shall commence until a schedule (photographs and/or catalogue details) of the external materials to be used on the external surfaces of the development has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved schedule.
- 6) No development shall commence until details of water and energy efficiency measures, and of the promotion of renewable energy and sustainable construction as part of the development, have been submitted to and approved in writing by the local planning authority. The approved details shall be carried out prior to the occupation of the development and retained as such thereafter.
- 7) Notwithstanding the surface water drainage details shown on drawing ref. 80012/22/BH/14 Rev A, no development shall commence until the following information has been submitted to and approved in writing by the local planning authority:
 - a. Detailed plans, layouts and sections of the proposed drainage system which includes pollution/silt control devices and construction details of any non-standard features;
 - b. Detailed drawings and hydraulic calculations which shall take into account the connectivity of the different surface water drainage features. The calculations shall demonstrate that surface water runoff from the proposed development shall be limited to greenfield runoff rates for rainfall events, including those with a 1 in 100 (plus climate change) annual probability of occurrence;
 - c. Maintenance and management plan for the for the entire surface water drainage system which shall include, details of who will be responsible for managing all aspects of the surface water drainage system including the cross-road connection to the highway drainage

system; and evidence of how these responsibilities and arrangements will remain in place throughout the lifetime of the development.

The drainage shall be provided in accordance with the approved details, and the development shall not be occupied until evidence (including as built drawings and photographs) has been submitted to and approved in writing by the local planning authority showing that the drainage system has been constructed in accordance with the approved details and drainage designs. The development shall thereafter be maintained and managed in accordance with the approved details for the lifetime of the development.

- 8) No development shall commence until a Tree Protection Plan (TPP) and an Arboricultural Method Statement (AMS) have been submitted to and approved in writing by the local planning authority. The TPP and AMS shall include details of the specification and location of exclusion fencing, ground protection and any construction activity that may take place within the root protection areas of trees shown on the TPP, including installation of service routings, surface water drainage channels and attenuation basin. All works shall be carried out in accordance with the approved details.
- 9) No development shall commence until details of the required highway works, specifically the construction of a footpath along the frontage of the site from the access to connect with the existing footpath to the south of the site along Potmans Lane, have been submitted to and approved in writing by the local planning authority. The details of the highway works shall be supported by a road safety audit and technical submissions. The approved highway works shall be completed along with any required ancillary works prior to the first occupation of the dwellings hereby permitted.
- 10) No development shall commence until details of the required remedial works to the highway drainage system, into which the development would connect, have been submitted to and approved in writing by the local planning authority. The approved remedial works to the highway drainage system shall be completed along with any required ancillary works prior to the first occupation of the dwellings hereby permitted.
- 11) No dwelling shall be occupied until the access has been provided as shown on drawing ref. 80012/22/BH/03 and laid out and constructed in accordance with details first submitted to and approved in writing by the local planning authority.
- 12) The access shall not be used until visibility splays of 2.4m by 43m are provided in both directions. The visibility splays shall be maintained as such thereafter.
- 13) No dwelling shall be occupied until the parking and turning areas have been provided in accordance with drawing ref. 80012/22/BH/03 and laid out and constructed in accordance with details first submitted to and approved in writing by the local planning authority. Parking spaces shall measure at least 2.5m by 5m (with an extra 50cm on each side where spaces abut walls, fences or hedges).
- 14) No dwelling shall be occupied until details of cycle storage, which shall be covered and secure, has been submitted to and approved in writing by the

local planning authority. The areas shall thereafter be kept available for the parking of cycles.

- 15) The development hereby permitted shall take place in accordance with the Construction Management Plan (Version 1) dated May 2021, produced by ZAK Infrastructure Ltd. The Construction Management Plan shall be implemented and adhered to throughout the entire construction period for the development.
- 16) The development hereby permitted shall take place in accordance with the approved landscaping plan drawing ref. 80012/22/BH/15 Rev A. All planting, seeding and/or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the dwellings or the completion of the development, whichever is the sooner, and any trees, shrubs, hedges or plants which within a period of five years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All hard landscaping comprised in the approved details of landscaping shall be carried out prior to the first occupation of the dwellings or the completion of the development, whichever is the sooner, and shall be retained as such thereafter.
- 17) The development hereby permitted shall take place in accordance with the recommendations set out within the Preliminary Ecological Appraisal (21/118) dated 11 April 2022, produced by JWK Wildlife Surveys Limited, including the implementation of the ecological enhancement measures. The approved ecological enhancement measures shall be retained as such thereafter.
- 18) Prior to the installation of any external lighting to the site, details shall first be submitted to and approved in writing by the local planning authority. The details should provide for lighting that is low level, hooded and directional. External lighting shall only be installed and maintained in accordance with the approved details.
- 19) The dwelling on Plot 1 hereby permitted shall not be occupied until the window at first floor level on the south elevation has been fitted with obscured glazing, and no part of that window that is less than 1.5 metres above the floor of the room in which it is installed shall be capable of being opened. Once installed the obscured glazing shall be retained as such thereafter.

APPEARANCES

FOR THE APPELLANT:

Jonathan Clay	Cornerstone Barristers
Martin Carpenter	Director Enplan
Cathy Fishenden	Enplan
Barry Hepburn	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Declan Redman	Senior Planning Officer
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INTERESTED PARTIES:

Jackie Scarff	Ninfield Parish Council
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DOCUMENTS SUBMITTED AT THE HEARING

Block plan 79715/18/BH/03 and Block plan 79715/18/BH/03 Rev A submitted with application ref WD/2019/0566/MRM

Closing submission from the Appellant

DOCUMENTS SUBMITTED AFTER THE HEARING

Completed unilateral undertaking

S171 Forms N and R and S171 licence



Costs Decision

Hearing held on 20 February 2024

Site visit made on 20 February 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2024

Costs application in relation to Appeal Ref: APP/C1435/W/23/3328328
Land off Potmans Lane, Lunsford Cross, Ninfield TN39 5JL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Barry Hepburn for a full award of costs against Wealden District Council.
 - The appeal was against the refusal of planning permission for frontage development of 13 no. dwellings comprising a mix of two, three and four bedroom detached and semi-detached houses.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. It adds that local planning authorities are at risk of an award of costs against them if they behave unreasonably with respect to the substance of the matter under appeal, for example, by not determining similar cases in a consistent manner, by refusing planning permission on a planning ground capable of being dealt with by conditions or by preventing development that should clearly be permitted having regard to material considerations.
4. Outline planning permission was granted at the site for 13 units in 2016. In the officer's report for that application, it was stated that the site would have reasonable access to services and to public transport links and that, as the site is close to facilities within north Bexhill, **it is not considered that the site's** location would be unsustainable in location terms. Subsequent to this, in 2019, the Inspector for an appeal on the adjacent site stated in his decision that the site is not a particularly suitable location for the proposed development and that occupiers would be reliant on private cars to access everyday services. There is no suggestion that there has been a change in the proximity of such services to the site or the level of services or facilities since 2016.
5. It was not unreasonable, in the appeal before me, for the Council to adopt a stance on this issue to reflect the later 2019 appeal decision, which is in contrast to their earlier view in 2016.
6. It is noted that in determining an application for housing at the Corner House, which is effectively at the bottom of Potmans Lane, the officer's report identified that alternative forms of transport to the private care are reasonable

for a rural location. However that site is almost immediately adjacent to the bus stops in Lunsford Cross so has better access to this service than the appeal site; a point also noted in the officer's report for that application.

7. As such, in terms of the considerations to assess when evaluating the **accessibility of the site's location, there** was new evidence before them that **wasn't before them at** the time of the outline permission in 2016 and hence the **change in the Council's stance in that time was not unreasonable**. They have therefore not been inconsistent.
8. The second reason for refusal related to odour pollution. Southern Water were consulted on the application and requested an odour assessment be provided on the basis that they apply a precautionary buffer zone for any development located within 500 metres of the boundary of a Wastewater Treatment Works; which the appeal site is. Although the assessment was provided and showed that there would be no odour impact, it was not unreasonable for this to be requested given Southern Water's approach. Moreover, given the fundamental nature of the concern, it was not unreasonable to require this to be addressed before the determination of the application instead of dealing with it by a condition.
9. It is noted that odour was not an issue for the recent application for the Corner House, but the Council state that as that application was not for a major development, Southern Water would not have been consulted.
10. There is a lack of clarity regarding whether there is an extant planning permission at the site. However, this matter is a consideration secondary to the assessment of the development against the development plan. Clearly were the permission extant this would carry greater weight than if it **wasn't**. But even if it **wasn't**, the granting of outline consent and some of the reserved matters, would nonetheless be a significant material consideration. This is also recognised in the **officer's** report insofar as it states that there should be no change in the decision made by the Council if there is no change in circumstances since the granting of outline permission. As a result, it was clear the Council had regard to their previous decision as a significant material consideration and there was therefore no unreasonable behaviour on behalf of the Council in this regard.

Conclusion

11. In summary, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and so an award of costs is not justified.

A Owen

INSPECTOR